

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON D.C. 20549

Form 10-K

(Mark One)

- Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the fiscal year ended December 30, 2002, or
or
Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the transition period from to

Commission file number 000-50052

Cosi, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

06-1393745
(I.R.S. Employer
Identification No.)

242 West 36th St.
New York, NY
(Address of principal executive offices)

10018
(Zip code)

(212) 653-1600
(Registrant's telephone number, including area code)

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

Securities registered pursuant to Section 12(g) of the Act:
Common Stock, \$.01 par value
(Title of class)

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. No []

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12 b-2). Yes No x

The aggregate market value of the registrant's Common Stock held by non-affiliates as of December 30, 2002 was approximately \$ 67.2 million. The Company did not have publicly traded securities as of July 1, 2002.

Number of shares outstanding of the registrant's common stock, as of March 28, 2003: Common Stock, \$.01 par value: 16,573,553 shares.

The Company intends to file a definitive proxy statement pursuant to

Regulation 14A within 120 days of the end of the fiscal year ended December 30, 2002. Portions of such proxy statement are incorporated by reference in response to Part III, Items 10, 11, 12, and 13.

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PART I

ITEM 1. BUSINESS

GENERAL

We own and operate 94 fast casual restaurants in eleven states and the District of Columbia. Our Cosi restaurants are all-day cafes that feature signature bread and coffee products in an environment we adjust appropriately throughout the day. Our Cosi restaurants offer breakfast, lunch, afternoon coffee, dinner, and dessert menus full of creative, cravable foods and beverages.

We operate our restaurants in two formats: Cosi and Cosi Downtown. All of our restaurants offer breakfast, lunch and afternoon coffee in a counter service format. After 5 p.m., our Cosi restaurants add table service and offer dinner and dessert in a casual dining format. Cosi Downtown restaurants, which are located in non-residential central business districts close, for the day, in the early evening. All of our restaurants are designed to be welcoming and comfortable, featuring oversized sofas, chairs and tables, and faux painted

walls. The atmosphere of Cosi is appropriately managed for each daypart by changing the music, both style and volume, and lighting throughout the day. The design scheme of our counters and bars, menu boards as well as condiment counters and server stations incorporate warm colors and geometric patterns, intended to create a visual vocabulary that can be easily identified by our customers.

Our restaurants are located in a wide range of markets and trade areas, including business districts and residential communities in both urban and suburban locations. We believe that we have created significant brand equity in our markets and that we have demonstrated the appeal of our concept to a wide variety of customers. We opened 17 restaurants in 2001, 25 restaurants in 2002 and expect to open six restaurants in 2003, all of which have been opened as of March 31, 2003. In 2003 we announced our intention to incorporate a franchising and area developer model into our business strategy. We expect that Company owned restaurants will always be an important part of our new restaurant growth, and we believe that incorporating a franchising and area developer model into our strategy will position us to maximize the market potential for the Cosi brand and concept consistent with our available capital and thus maximize shareholder value.

HISTORY

Cosi was created through the October 1999 merger of two restaurant concepts, Cosi Sandwich Bar, Inc. and Xando, Incorporated. Each company served a similar customer, but focused on different parts of the day.

Cosi Sandwich Bar. The Cosi Sandwich Bar concept was created in Paris in the early 1990's and brought to the United States by us in 1996. Cosi Sandwich Bar's signature "crackly crust" flatbread, derived from a generations-old Italian recipe, was prepared daily at each restaurant where fresh loaves were baked throughout the day. Cosi Sandwich Bar focused on selling sandwiches in high-density central business districts in New York, Washington DC, Boston and Philadelphia.

Xando Coffee and Bar. Xando Coffee and Bar, founded in 1994, was an innovative concept that went beyond the traditional specialty coffee bar. Xando Coffee and Bar locations were open for five dayparts. The 5 p.m. "unveiling" of a full liquor bar featured coffee cocktails and was intended to create a dynamic evening environment. The atmosphere of Xando Coffee and Bar was adjusted appropriately for each daypart by changing the music and lighting throughout the day. The evening environment was completed by the addition of table service.

Since the merger, we have added Cosi Sandwich Bar products to the Xando Coffee and Bar five daypart platform. We believe we have created a restaurant concept that satisfies our customers' needs from Wake Up Call to Last Call(R).

CONCEPT AND BUSINESS STRATEGY

Our objective is to build a nationwide system of distinctive restaurants that generate attractive unit economics by appealing to a broad range of customers across five dayparts: breakfast, lunch, afternoon coffee, dinner and dessert.

Our strategy is to offer a differentiated menu featuring our signature bread and coffee products in a comfortable, warm and inclusive atmosphere. We believe that our menu offering of proprietary products distinguishes us from our competition. Our menu items do not require extensive preparation on site. Our restaurants are located in a wide range of markets and trade areas, which include business districts and residential communities in both urban and suburban locations. Additionally, a wide range of our products is available outside of the four walls of our restaurants through our catering services.

PEOPLE

At the end of fiscal 2002 we had 3,055 employees, 93 of which served in

administrative or executive capacities, 258 of which served as restaurant management personnel, and 2,704 of which were hourly restaurant personnel. See Recent Developments for a description of reductions we have made to our Executive and General and Administrative staffing subsequent to December 30, 2002.

None of our employees are covered by collective bargaining agreements, and we have never experienced an organized work stoppage or strike. We believe that our working conditions and compensation packages are competitive and consider relations with our employees to be good.

SYSTEMS INFRASTRUCTURE

We use an ASP model, which allows us to have the latest in technology and up to the minute information without continually having to re-invest in hardware and personnel. Our strategy includes utilizing web technology to put information into the hands of the people who need to make decisions in a timely manner.

Our point of sale, back-office modules, and our Oracle financials systems are fully integrated. This integration allows us to all be working with the same, accurate data with minimal staffing. All information relating to restaurant operations is uploaded onto a secure web site five times a day for review and pre-selected reports are distributed to our operations team via wireless and e-mail solutions.

We have a redundancy and back-up plan in place for all data as well as a disaster recovery plan. The plan encompasses daily back up, weekly off-site storage, and redundant facilities.

PURCHASING

We have relationships with some of the country's leading food and paper providers to provide our restaurants with high quality proprietary food items at competitive prices. We source and negotiate prices directly with these suppliers and distribute these products to our restaurants through one distributor. Così does not utilize a commissary system. Our inventory control system allows each restaurant to place orders electronically with our master distributor and then transmit the invoice electronically to our accounts payable system. Our scalable system eliminates duplicate work, and we believe gives our management tight control of costs while ensuring quality and consistency across all restaurants.

We purchase coffee through a single supplier. In the event of a business interruption, our supplier is required to utilize the services of a third party roaster to fulfill its obligations. If the services of a third party roaster are used, our supplier will guarantee that the pricing formula and product fulfillment standards stated in our contract will remain in effect throughout such business interruption period. We may terminate our agreement with this supplier upon 180 days notice.

During fiscal year 2002, we entered into a beverage marketing agreement with the Coca-Cola Company. Under the agreement, we are obligated to purchase approximately 2.0 million gallons of fountain syrups at the then-current annually published national chain account prices.

During 2002, we received \$600,000 in allowances from food and beverage suppliers, which is being recognized ratably based on actual product purchased. We may receive additional amounts if certain purchase levels are achieved.

Our primary suppliers and master distributor, Maines Food and Paper Service, Inc., have parallel facilities and systems to minimize the risk of any disruption of our supply chain.

COMPETITION

The restaurant industry is intensely competitive and we compete with many well-established food service companies, including other sandwich retailers, specialty coffee retailers, bagel shops, fast food restaurants, delicatessens,

cafes, bars, take-out food service companies, supermarkets and convenience stores. The principal factors on which we compete are taste, quality and price of product offered, customer service, atmosphere, location and overall guest experience. Our competitors change with each of the five dayparts, ranging from coffee bars and bakery cafes in the morning daypart, to fast food restaurants and cafes during the lunch and afternoon dayparts, to casual dining chains during the dinner and dessert dayparts. Many of our competitors or potential competitors have substantially greater financial and other resources than we do which may allow them to react to changes in pricing, marketing and the quick service restaurant industry better than we can. We also compete with other employers in our markets for hourly workers and may be subject to higher labor costs. We believe that our concept, attractive price-value relationship and quality of products and service allow us to compete favorably with our competitors.

INTELLECTUAL PROPERTY

We have the following US Trademark registrations: "COSI," "Totally Toasted Almond Mocha," "Mocha Kiss," "Squagels," "Xando," our sun and moon logo, "Wake Up Call to Last Call," "Symphony Blend," "King of Hearts Blend," "Xandwich," "Generation XO," "Screamers," "Cosi Corners," and "Warm `n Cosi Melts". We have a US Trademark application pending for: "Cosi Downtown." "Arctic" is an unregistered trademark.

We have registered the trademark "COSI" in seven foreign jurisdictions with respect to goods and services. We also have applications pending for registration for the trademark "COSI" in four other foreign jurisdictions.

GOVERNMENT REGULATION

Our restaurants are subject to regulation by federal agencies and to licensing and regulation by state and local health, sanitation, building, zoning, safety, fire and other departments relating to the development and operation of restaurants. These regulations include matters relating to environmental, building, construction and zoning requirements and the preparation and sale of food and alcoholic beverages. Our facilities are licensed and subject to regulation under state and local fire, health and safety codes.

Many of our restaurants are required to obtain a license to sell alcoholic beverages on the premises from a state authority and, in certain locations, county and/or municipal authorities. Typically, licenses must be renewed annually and may be revoked or suspended for cause at any time. Alcoholic beverage control regulations relate to numerous aspects of the daily operations of each of our restaurants, including minimum age of patrons and employees, hours of operation, advertising, wholesale purchasing, inventory control and handling, and storage and dispensing of alcoholic beverages. We have not encountered any material problems relating to alcoholic beverage licenses to date. The failure to receive or retain a liquor license in a particular location could adversely affect that restaurant and our ability to obtain such a license elsewhere.

We are subject to "dram shop" statutes in the states in which our restaurants are located. These statutes generally provide a person injured by an intoxicated person the right to recover damages from an establishment that wrongfully served alcoholic beverages to the intoxicated individual. We carry liquor liability coverage as part of our existing comprehensive general liability insurance, which we believe is consistent with coverage carried by other entities in the restaurant industry. Although we are covered by insurance, a judgment against us under a dram-shop statute in excess of our liability coverage could have a material adverse effect on us.

Our operations are also subject to federal and state laws governing such matters as wages, working conditions, citizenship requirements and overtime. Some states have set minimum wage requirements higher than the federal level. Significant numbers of hourly personnel at our restaurants are paid at rates related to the federal minimum wage and, accordingly, increases in the minimum wage will increase labor costs. We are also subject to the Americans With Disability Act of 1990, which, among other things, prohibits discrimination on the basis of disability in public accommodations and employment. We are required to comply with the Americans with Disabilities Act and regulations relating to accommodating the needs of the disabled in connection with the construction of new facilities and with significant renovations of existing facilities.

EXECUTIVE OFFICERS

The executive officers of the Company are set forth below. Each holds the officers indicated until his or her successor is chosen and qualified at a regular meeting of the Board of Directors.

| Name | Age | Position |
|---------------------|-----|--|
| ---- | --- | ----- |
| Jay Wainwright | 32 | Chief Executive Officer, President and Director |
| Nick Marsh | 34 | Chief Operating Officer and Director |
| Kenneth S. Betuker | 50 | Chief Financial Officer, Treasurer and Secretary |
| David Orwasher | 47 | Chief Development Officer |
| Gilbert Melott | 39 | Vice President of People |
| James M. Riley, Jr. | 39 | Vice President of Store Development |
| Charles Gray | 30 | Vice President of Information Systems |

Jay Wainwright, Chief Executive Officer and Director. Mr. Wainwright, a founder of Cosi Sandwich Bar, Inc., served as Chairman and Chief Executive Officer of that entity from its inception in 1996 until its merger with Xando, Incorporated in 1999. Mr. Wainwright currently serves as Chief Executive Officer and President. Mr. Wainwright received a Bachelor of Arts degree from Hamilton College. Mr. Wainwright is the nephew of Eric Gleacher, one of our Directors.

Nick Marsh, Chief Operating Officer and Director. Mr. Marsh, a founder of Xando Coffee and Bar, served as President of that entity from its incorporation in 1994 until the merger with Cosi Sandwich Bar, Inc. in 1999. Mr. Marsh currently serves as Chief Operating Officer. Prior to founding Xando Coffee and Bar, Mr. Marsh was a management consultant with the strategy firm of Marakon Associates and was Vice President of Mergers and Acquisitions for Shawmut Bank in Hartford, Connecticut, for two years. Mr. Marsh graduated from Princeton University, cum laude, in 1990 with a Bachelor of Arts degree.

Kenneth S. Betuker, Chief Financial Officer. Mr. Betuker has served as Chief Financial Officer of Cosi since May 2000. Prior to joining Cosi, Mr. Betuker was the Chief Financial Officer at Noodle Kidoodle, Inc., from 1996 to May 2000, and the Chief Financial and Administrative Officer of First National Supermarkets, Inc. (a subsidiary of Royal Ahold, NV), from 1986 to 1996. Mr. Betuker graduated from Cleveland State University, cum laude, with a Bachelor of Science degree, and was awarded a Masters Degree in Business Administration, with Highest Distinction, from Babson College.

David Orwasher, Chief Development Officer. Mr. Orwasher joined Cosi as Chief Development Officer in December 2001. From 1996 to 2000, Mr. Orwasher served as Vice President of Development and Asset Management for the Eastern U.S. for Starbucks Corporation where he helped build the real estate development and asset management organization and helped open over four hundred stores in numerous markets in the Eastern U.S. Prior to joining Cosi, from 2000 to 2001, he served as the Chief Development Officer for Zoots, a dry cleaning company founded by Tom Stemberg and Todd Krasnow of Staples, Inc. Before joining Starbucks, Mr. Orwasher spent five years as Associate Counsel and Director of Leasing and Brokerage for the Breslin Realty Development Corp., in addition to spending approximately five years with the real estate group at Marriott International, Inc. and two years with the Hershey Foods Corporation, Friendly Restaurant Division. Mr. Orwasher is a graduate of Vassar College, where he received a Bachelor of Arts degree in Environmental Science, he earned a Juris Doctor degree from Pace University. He is a licensed attorney and is admitted to practice in the states of New York and Connecticut.

Gilbert Melott, Vice President of People. Mr. Melott has served as our Vice President of Human Resources and Training since December 2001. From December 1995 to November 2001, he was with Bannigan's, as Executive Director of Training and as Vice President of People, Process and Education. Prior to joining Bannigan's, Mr. Melott was a Division Director of Human Resources at Sheraton Holding Corporation in Boston and spent four years as Divisional Training and Development Manager at TGI Friday's. Mr. Melott is a nationally recognized expert in generational workplace studies and recipient of Industry of Choice awards for achievement in training and education. Mr. Melott received a Bachelor of Science degree in Marketing and Organizational Communication from Fordham University in 1985.

James M. Riley, Jr., Vice President of Store Development. Mr. Riley has served as our Vice President of Store Development since May 2000. Prior to joining Cosi, he was Chief Development Officer for Corners, Inc. from January 1998 to April 2000. Prior to joining Corners, Mr. Riley was with Boston Chicken, Inc. and Einstein Bros. Bagels, where he participated in opening over 200 locations. Mr. Riley has a Bachelor's degree in Construction Management and Architectural Engineering from Wentworth Institute of Technology in Boston, Massachusetts.

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Charles Gray, Vice President of Information Systems. Mr. Gray currently serves as our Vice President of Information Systems, and has been with Cosi since September 1998. Mr. Gray is a ten year veteran in the food service industry having served as Director of Training for RANCH *1, Inc. from 1996 to 1998, Director of Operation Services for Einstein Bros. Bagels from 1995 to 1996, and Assistant Director of Training for Boston Market Corporation from 1992 to 1995. Mr. Gray is a graduate of the State University of New York at Albany.

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ITEM 2. PROPERTIES

All of our restaurants are located on leased properties. Each lease typically has a 10 year base rent period, with various renewal options. Each lease requires a base rent, and some locations provide for contingent rental payments. At most locations, we reimburse the landlords for a proportionate share of either the landlord's taxes or yearly increases in the landlord's taxes.

The following table depicts existing restaurants, by region as of December 30, 2002:

| STREET ADDRESS | CITY | DATE OPENED | FORMAT |
|----------------------------|-----------------|----------------|---------------|
| NORTHEAST: | | | |
| 103 Pratt Street..... | Hartford, CT | October 1994 | Cosi (a) |
| 338 Elm Street..... | New Haven, CT | March 1996 | Cosi |
| 970 Farmington Avenue..... | W. Hartford, CT | August 1999 | Cosi |
| 133 Federal Street..... | Boston, MA | October 1998 | Cosi Downtown |
| 53 State Street..... | Boston, MA | May 1999 | Cosi Downtown |
| 14 Milk Street..... | Boston, MA | July 1999 | Cosi Downtown |
| 2160 Broadway..... | New York, NY | May 1997 | Cosi |
| 504 Avenue of the Americas | New York, NY | March 1998 | Cosi |
| 257 Park Avenue South..... | New York, NY | February 1999 | Cosi |
| 165 East 52nd Street..... | New York, NY | February 1996 | Cosi Downtown |
| 38 East 45th Street..... | New York, NY | February 1997 | Cosi Downtown |
| 11 West 42nd Street..... | New York, NY | June 1997 | Cosi Downtown |
| 60 East 56th Street..... | New York, NY | September 1997 | Cosi Downtown |
| 3 World Financial Center.. | New York, NY | January 1998 | Cosi Downtown |
| 55 Broad Street..... | New York, NY | March 1998 | Cosi Downtown |
| 54 Pine Street..... | New York, NY | May 1998 | Cosi Downtown |
| 1633 Broadway..... | New York, NY | July 1998 | Cosi Downtown |
| 61 West 48th Street..... | New York, NY | August 1998 | Cosi Downtown |
| 202 West 36th Street..... | New York, NY | November 1998 | Cosi Downtown |
| 3 East 17th Street..... | New York, NY | February 1999 | Cosi Downtown |
| 685 Third Avenue..... | New York, NY | June 1999 | Cosi Downtown |
| 461 Park Avenue South..... | New York, NY | January 2000 | Cosi |
| 279 Main Street..... | Huntington, NY | February 2000 | Cosi |
| 50 Purchase Street..... | Rye, NY | March 2000 | Cosi |
| 38 East 51st Street..... | New York, NY | July 2000 | Cosi Downtown |
| 841 Broadway..... | New York, NY | September 2000 | Cosi |
| 15 S. Moger Avenue..... | Mt. Kisco, NY | December 2000 | Cosi |
| 116 Montague Street..... | Brooklyn, NY | March 2001 | Cosi |
| 545 Washington Boulevard.. | Jersey City, NJ | May 2001 | Cosi Downtown |

| | | | |
|----------------------------|------------------|----------------|---------------|
| 369 Lexington Avenue..... | New York, NY | August 2001 | Cosi Downtown |
| 77 Quaker Ridge Road..... | New Rochelle, NY | November 2001 | Cosi |
| 1298 Boston Post Road..... | Larchmont, NY | December 2001 | Cosi |
| 471 Mount Pleasant Road... | Livingston, NJ | September 2002 | Cosi |
| 3 Quality Way..... | Iselin, NJ | November 2002 | Cosi (b) |
| 29 Washington St..... | Morristown, NJ | December 2002 | Cosi |
| 498 7th Ave..... | New York, NY | December 2002 | Cosi |
| 385 West Main Street..... | Avon, CT | December 2002 | Cosi |

(a) Currently operating as a Xando Coffee and Bar location.

(b) Closed subsequent to December 30, 2002.

| STREET ADDRESS | CITY | DATE OPENED | FORMAT |
|--------------------------------|-------------------------|----------------|---------------|
| MID-ATLANTIC: | | | |
| 235 South 15th Street..... | Philadelphia, PA | September 1996 | Cosi |
| 325 Chestnut Street..... | Philadelphia, PA | April 1997 | Cosi |
| 1128 Walnut Street..... | Philadelphia, PA | December 1997 | Cosi |
| 3601 Walnut Street..... | Philadelphia, PA | August 1998 | Cosi |
| 761 Lancaster Avenue..... | Bryn Mawr, PA | September 1998 | Cosi |
| 215 Lombard Street..... | Philadelphia, PA | May 1999 | Cosi |
| 1700 Market Street..... | Philadelphia, PA | September 1999 | Cosi Downtown |
| 1720 Walnut Street..... | Philadelphia, PA | October 2000 | Cosi |
| King of Prussia Mall..... | King of Prussia, PA | November 2001 | Cosi |
| 11909 Democracy Drive..... | Reston, VA | May 2001 | Cosi |
| 3003 N. Charles Street..... | Baltimore, MD | December 1998 | Cosi (a) |
| 1350 Connecticut Avenue..... | Washington, DC | September 1997 | Cosi |
| 1647 20th Street NW..... | Washington, DC | August 1998 | Cosi |
| 301 Pennsylvania Avenue SE.... | Washington, DC | March 1999 | Cosi |
| 2050 Wilson Boulevard..... | Arlington, VA | April 1999 | Cosi |
| 1700 Pennsylvania Avenue..... | Washington, DC | August 1999 | Cosi Downtown |
| 700 King Street..... | Alexandria, VA | May 2000 | Cosi |
| 700 11th Street..... | Washington, DC | May 2000 | Cosi |
| 4250 Fairfax Drive..... | Arlington, VA | June 2000 | Cosi |
| 1919 M Street..... | Washington, DC | September 2000 | Cosi |
| 1001 Pennsylvania Avenue NW... | Washington, DC | October 2000 | Cosi Downtown |
| 7251 Woodmont Avenue..... | Bethesda, MD | December 2000 | Cosi |
| 1501 K Street NW..... | Washington, DC | December 2001 | Cosi Downtown |
| 1875 K Street..... | Washington, DC | July 2002 | Cosi Downtown |
| 601 Pennsylvania Ave. NW..... | Washington, DC | September 2002 | Cosi |
| 1275 K Street..... | Washington, DC | September 2002 | Cosi |
| 295 Main St..... | Exton, PA | November 2002 | Cosi |
| 5252 Wisconsin Ave..... | Washington, DC | December 2002 | Cosi |
| MID-WEST: | | | |
| 116 S. Michigan Avenue..... | Chicago, IL | September 2000 | Cosi |
| 57 E. Grand Street..... | Chicago, IL | October 2000 | Cosi |
| 230 W. Washington Street..... | Chicago, IL | November 2000 | Cosi Downtown |
| 1200 North State Parkway..... | Chicago, IL | February 2001 | Cosi (b) |
| 203 North LaSalle Street..... | Chicago, IL | May 2001 | Cosi Downtown |
| 230 West Monroe Street..... | Chicago, IL | May 2002 | Cosi Downtown |
| 1101 Lake Street..... | Oak Park, IL | June 2001 | Cosi |
| 21-25 East Chicago Avenue..... | Hinsdale, IL | December 2001 | Cosi |
| 149 North Weber Road..... | Bolingbrook, IL | May 2002 | Cosi (b) |
| 1402 Commons Drive..... | Geneva, IL | September 2002 | Cosi |
| 4074 The Strand West..... | Columbus, OH | October 2001 | Cosi |
| 6390 Sawmill Road..... | Columbus, OH | September 2002 | Cosi |
| 2212 East Main Street..... | Bexley, OH | September 2002 | Cosi |
| 301 South State Street..... | Ann Arbor, MI | May 2001 | Cosi |
| 101 North Old Woodward Avenue. | Birmingham, MI | August 2001 | Cosi |
| 301 East Grand River Avenue... | East Lansing, MI | May 2002 | Cosi |
| 44951 Schoenherr Road..... | Sterling Heights, MI | May 2002 | Cosi |
| 8775 N. Port Washington Road.. | Fox Point, WI | December 2001 | Cosi |
| 30995 Orchard Lake Road..... | Farmington Hills, MI | July 2002 | Cosi |
| 84 N. Adams Road..... | Rochester Hills, | September 2002 | Cosi |

| | | | |
|--------------------------------|-------------------|---------------|---------------|
| | MI | | |
| 28674 Telegraph Rd..... | Southfield, MI | November 2002 | Cosi |
| 1478 Bethel Rd..... | Columbus, OH | November 2002 | Cosi |
| 233 North Michigan Ave..... | Chicago, IL | December 2002 | Cosi Downtown |
| 37652 Twelve Mile Road..... | Farmington Hills, | December 2002 | Cosi |
| | MI | | |
| 12 East Wilson Bridge Road.... | Worthington, OH | December 2002 | Cosi |
| 15131 LaGrange Rd..... | Orland Park, IL | December 2002 | Cosi |

- (a) Currently operating as a Xando Coffee and Bar location.
- (b) Closed subsequent to December 30, 2002.

ITEM 3. LEGAL PROCEEDINGS

From time to time, we are a defendant in litigation arising in the ordinary course of our business, including claims resulting from "slip and fall" accidents, claims under federal and state laws governing access to public accommodations, employment related claims and claims from guests alleging illness, injury or other food quality, health or operational concerns. To date, none of such litigation, some of which is covered by insurance, has had a material adverse effect on our consolidated financial position, results of operations or cash flows.

On February 5, 2003, a purported shareholder class action complaint was filed in the United States District Court for the Southern District of New York (the "Court"), alleging that the Company and various of its officers and directors and the Underwriter violated Sections 11, 12(a)(2) and 15 of the Securities Act of 1933, as amended, by misstating, and by failing to disclose, certain financial and other business information (Sheel Mohnot v. Cosi, Inc., et al., No. 03 CV 812). At least six additional class action complaints with similar allegations were later filed (collectively, the "Securities Act Litigation"). The Securities Act Litigation is brought on behalf of a purported class of purchasers of the Company's stock allegedly traceable to its November 22, 2002 initial public offering (the "IPO"). The complaints in the Securities Act Litigation generally claim that at the time of the IPO, the Company's offering materials failed to disclose that the funds raised through the IPO would be insufficient to implement the Company's expansion plan; that it was improbable that the Company would be able to open 53 to 59 new stores in 2003; that at the time of the IPO, Cosi had negative working capital and therefore did not have available working capital to repay certain debts; and that the principal purpose for going forward with the IPO was to repay certain existing shareholders and members of the Board of Directors for certain debts and to operate the Company's existing restaurants.

On February 21, 2003, a purported shareholder class action complaint was filed in the Court alleging that the Company and certain of its officers and directors violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10-b promulgated thereunder, by issuing a series of material misrepresentations to the market between November 22, 2002 and February 4, 2003 (the "Class Period") (Georgette Pacia v. Cosi, Inc. et al., No. 03-CV-1156) (the "Securities Exchange Act Litigation"). The emphasis of the allegations in the complaint in the Securities Exchange Act Litigation is that the defendants knowingly or recklessly caused misrepresentations and omissions to be made regarding the Company's operating condition and future business prospects. Among other things, plaintiffs in the Securities Exchange Act Litigation allege that defendants failed to disclose that the funds raised by the IPO would be insufficient to implement the Company's expansion plan; that at the time of the IPO, defendants should have known that the costs of expansion would be greater than the cash available to the Company, making it improbable that the Company would be able to successfully continue to open new stores at the pace announced by the Company; and that defendants failed to disclose that a reduction in the offering price of the IPO would result in the Company being forced to abandon its growth strategy.

The plaintiffs in the Securities Act Litigation and the Securities Exchange Act Litigation (the "Litigations") generally seek to recover compensatory damages, expert fees, attorneys' fees, costs of Court and pre- and post-judgment interest. The Underwriter is seeking indemnification from the Company for any

damages assessed against it in the Securities Act Litigation. The Litigations are at a preliminary stage, and the Company expects that these related lawsuits will be consolidated into a single action. The Company believes that it has meritorious defenses to these claims, and intends to vigorously defend against them.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

Not Applicable

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PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

(A)

(I) MARKET INFORMATION.

On November 22, 2002 the Company's common stock began trading on The Nasdaq National Market under the symbol "COSI". Prior to that time, there was no public trading market for the Company's common stock. The following table sets forth the high and low sale prices as reported by Nasdaq for the fiscal periods indicated.

| 2002 | High | Low |
|--|---------|--------|
| Fourth Quarter (beginning November 22) | \$10.93 | \$5.47 |
| 2003 | High | Low |
| First Quarter (through March 21) | \$6.08 | \$1.66 |

On March 21, 2003, the last sale price for the Common Stock, as reported on the Nasdaq National Market System, was \$2.09

(II) HOLDERS.

On March 28, 2003, the Company had 230 holders of record of its Common Stock.

(III) DIVIDENDS.

The Company has never paid cash dividends on its capital stock and does not intend to pay cash dividends in the foreseeable future.

(IV) RECENT SALES OF UNREGISTERED SECURITIES

(A) ISSUANCES OF SHARES OF SERIES C PREFERRED STOCK.

On February 23, 2002, the Company issued a total of 2,029,923 shares of Series C to 72 investors, 69 of which were accredited investors (46 of which represented to the Company that they were a natural person with a net worth over \$1 million, 1 of which was a bank as defined in Section 3(a)(2) of the Securities Act, 1 of which was an organization described in Section 501(c)(3) of the IRC, 5 of which represented to the Company that they were a natural person with individual income greater than \$200,000, or, if married, combined income with spouse of over \$300,000, in 2 of the last 3 years, 4 of which were a trust with assets exceeding \$5 million, not formed for the specific purpose of acquiring the securities offered, and 13 of which represented to the Company that they were an entity in which all the equity owners are accredited investors) and 24 of which

were existing shareholders of the Company, for an aggregate purchase price of \$19,284,229.37, or \$9.50 per share. Participating in this sale were 20 principals and 1 vice president of William Blair & Company, L.L.C.

(B) OPTION ISSUANCES TO, AND EXERCISES BY, EMPLOYEES, DIRECTORS AND CONSULTANTS.

On January 30, 2002, the Company sold 56,250 shares of its Common Stock to a former director for aggregate consideration of \$351,562.50, or approximately \$6.25 per share, pursuant to the exercise of outstanding stock options granted prior to January 2, 2001.

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On February 11, 2002, the Company sold 41 shares of its Common Stock to an employee for aggregate consideration of \$287, or approximately \$7.00 per share, pursuant to the exercise of stock options granted prior to January 2, 2001.

(C) ISSUANCES AND EXERCISES OF WARRANTS.

On January 18, 2002, the Company issued a stock purchase warrant to purchase 8,785 shares of Common Stock at \$0.01 per share to two investors, pursuant to a Note and Warrant Purchase Agreement.

On June 3, 2002, the Company sold 2,198 shares of its Common Stock to an existing shareholder for an aggregate consideration of \$21.98 pursuant to the exercise of outstanding warrants.

On July 17, 2002, the Company sold 220 shares of its Common Stock to two existing shareholders for an aggregate consideration of \$3.84 pursuant to the exercise of outstanding warrants.

On August 1, 2002, the Company sold 144 shares of its Common Stock to two existing shareholders for an aggregate consideration of \$2.52 pursuant to the exercise of outstanding warrants.

On August 2, 2002, the Company sold 220 shares of its Common Stock to an existing shareholder for an aggregate consideration of \$3.85 pursuant to the exercise of outstanding warrants.

On August 12, 2002, the Company issued stock purchase warrants to purchase 983,671 shares of Common Stock at \$6.00 per share to 20 investors, all of which were accredited investors and 18 of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

During September 2002, the Company issued stock purchase warrants to purchase 210,002 shares of Common Stock at \$6.00 per share to 20 investors, all of which were accredited investors and 18 of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

During October 2002, the Company issued stock purchase warrants to purchase 360,001 shares of Common Stock at \$6.00 per share to 20 investors, all of which were accredited investors and 18 of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

During November 2002, the Company issued stock purchase warrants to purchase 516,330 shares of Common Stock at \$6.00 per share to 9 investors, all of which were accredited investors and all of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

On December 19, 2002, the Company sold 4,396 shares of its Common Stock to an existing shareholder for an aggregate consideration of \$43.96 pursuant to the exercise of outstanding warrants.

(D) ISSUANCES OF PROMISSORY NOTES.

On January 18, 2002, the Company sold a promissory note in the principal amount of \$500,000, to two investors, pursuant to a Note and Warrant Purchase Agreement.

During September 2002, the Company sold promissory notes in the principal amount

of \$3.0 million to 20 investors, all of which were accredited investors and 18 of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

During October 2002, the Company sold promissory notes in the principal amount of \$6.5 million to 20 investors, all of which were accredited investors and 18 of which were existing shareholders of the Company, pursuant to a Senior Secured Note and Warrant Purchase Agreement.

There were no underwriters employed in connection with any of the transactions set forth in this Item 5.

The issuances described in this Item 5 prior to June 4, 2002 do not reflect the 1.75 to 1 reverse stock split.

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The issuances described in (a), (c) (except for the 6th, 7th and 8th issuances) and (d) were made in reliance upon the exemption from registration provided pursuant to Section 4(2) of the Securities Act. The Company determined that each of these sales qualified as private placements under Section 4(2) because (i) neither the issuer nor any person acting on its behalf offered or sold these securities by any form of general solicitation or general advertising, (ii) no private placement included more than 3 non-accredited investors, (iii) in connection with each private placement, the Company provided written disclosure with respect to all relevant financial and other information to each investor, and (iv) the Company provided written disclosure to each purchaser prior to sale stating that the securities had not been registered under the Securities Act and, therefore, could not be resold unless they were registered under the Securities Act or unless an exemption from registration was available. The 6th, 7th and 8th issuances described in (c) were made in reliance upon the exemption from registration provided pursuant to Rule 506 of Regulation D, promulgated under the Securities Act.

The sales of the Company's common stock pursuant to the exercise of stock options described in (b) we made in reliance upon the exemption from registration provided pursuant to Rule 701 promulgated under the Securities Act as securities sold pursuant to certain compensatory benefit plans and contracts relating to compensation.

USE OF PROCEEDS

We registered and sold 5,555,556 shares of our common stock, par value \$0.01, to the public at an aggregate offering price of \$38,888,892 or \$7.00 per share pursuant to registration statement No. 333-86390, which was declared effective on November 21, 2002. The offering has terminated. The lead underwriter of the offering was William Blair & Company, LLC. Through December 30, 2002, we incurred the following expenses in connection with our initial public offering:

| | |
|--|---------|
| ----- | |
| In \$ Millions | |
| ----- | |
| Gross Proceeds | \$ 38.9 |
| ----- | |
| Underwriter's Commissions | (2.7) |
| ----- | |
| Other costs of issuance paid by the Company | (3.4) |
| ----- | |
| Net Proceeds to the Company | \$ 32.8 |
| ===== | |
| ----- | |

The net offering proceeds to us through December 30, 2002 after deducting the total expenses above were approximately \$32.8 million.

| In \$ Millions | Intended Use Of Proceeds as stated in prospectus | Actual Use of Proceeds through December 30, 2002 |
|---|---|---|
| Develop new restaurants and maintain and remodel existing restaurants | \$ 19.6 | \$ 8.5 |
| Prepay outstanding 13% senior subordinated notes due 2006 | 6.6 | 6.6 |
| Retire all outstanding 12% senior secured notes | 7.5 | 7.5 |

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Equity Compensation Plan Information

| Plan Category | Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights | Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights | Number of Securities Remaining available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column(a)) |
|--|--|--|---|
| | (a) | (b) | (c) |
| Equity Compensation Plans Approved by Security Holders | 3,406,332 | \$10.41 | 2,943,794 |
| Equity Compensation Plans Not Approved by Security Holders | None | None | None |

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ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with the consolidated financial statements and notes thereto included in Item 8 of Part II, "Financial Statements and Supplementary Data", and the information contained herein in Item 7 of Part II, "Management's Discussion and Analysis of Financial Condition and Results of Operations." Historical results are not necessarily indicative of future results.

SELECTED CONSOLIDATED FINANCIAL AND OPERATING DATA

| | FISCAL YEAR | | | | |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|
| | 2002 | 2001 | 2000 | 1999 | 1998 |
| (IN THOUSANDS, EXCEPT PER SHARE DATA) | | | | | |
| Statement of Operations | | | | | |
| Data: | | | | | |
| Net sales | \$ 84,424.2 | \$ 70,184.1 | \$ 51,222.8 | \$ 37,262.2 | \$ 20,686.7 |
| Costs and expenses: | | | | | |

| | | | | | |
|---|--------------|--------------|--------------|--------------|-------------|
| Cost of goods sold | 22,697.5 | 18,791.7 | 13,844.0 | 10,838.5 | 6,332.9 |
| Restaurant operating expenses | 50,852.7 | 45,114.5 | 32,172.9 | 22,236.2 | 11,386.5 |
| Total costs of sales | 73,550.2 | 63,906.2 | 46,016.9 | 33,074.7 | 17,719.4 |
| General and administrative expenses | 17,811.7 | 18,361.5 | 14,774.2 | 14,024.3 | 7,728.7 |
| Depreciation and amortization | 5,851.2 | 6,690.0 | 6,158.1 | 3,155.2 | 1,196.6 |
| Restaurant pre-opening expenses | 1,845.1 | 1,438.8 | 1,409.5 | 661.4 | 720.9 |
| Provision for losses on asset impairments and disposals | 1,056.5 | 8,486.3 | 5,847.5 | 4,208.7 | -- |
| Merger costs and related expenses | -- | -- | -- | 8,958.7 | -- |
| Lease termination costs | (1,165.0) | 6,410.7 | 477.3 | 3,437.1 | -- |
| Stock compensation | -- | -- | -- | 4,512.6 | -- |
| Operating income (loss) ... | (14,525.5) | (35,109.4) | (23,460.7) | (34,770.5) | (6,678.9) |
| Other income (expense): | | | | | |
| Interest income | 98.3 | 340.5 | 441.4 | 478.6 | 406.6 |
| Interest expense | (1,192.6) | (527.5) | (210.7) | (206.1) | (94.6) |
| Amortization of Deferred Financing Costs | (549.0) | (126.9) | -- | -- | -- |
| Loss on Extinguishment of Debt | (5,083.2) | -- | -- | -- | -- |
| Other income (expense) | 380.9 | -- | -- | -- | -- |
| Total other income (expense), net | (6,345.6) | (313.9) | 230.7 | 272.5 | 312.0 |
| Net income (loss) | (20,871.1) | (35,423.3) | (23,230.0) | (34,498.0) | (6,366.9) |
| Preferred stock dividends | (8,193.6) | (6,678.1) | (4,219.7) | (2,561.3) | (1,064.4) |
| Net income (loss) attributable to common stockholders | \$(29,064.7) | \$(42,101.4) | \$(27,449.7) | \$(37,059.3) | \$(7,431.3) |
| Net income (loss) per common share: | | | | | |
| Basic and diluted | \$(5.04) | \$(9.34) | \$(6.09) | \$(8.79) | \$(2.18) |
| Shares used in computing net income per common share (in thousands) | | | | | |
| Basic and diluted | 5,763 | 4,507 | 4,504 | 4,215 | 3,406 |

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Fiscal Year

| | 2002 | 2001 | 2000 | 1999 | 1998 |
|--|---------------------------------------|------|------|------|------|
| | (in thousands, except per share data) | | | | |

Selected Balance Sheet

| | | | | | |
|--|----------|----------|----------|----------|----------|
| Data: | | | | | |
| Cash and cash equivalents | 13,032.3 | 4,469.6 | 5,062.9 | 6,985.7 | 6,494.6 |
| Total assets | 66,243.1 | 35,388.4 | 32,065.8 | 25,856.6 | 24,982.8 |
| Total debt and capital lease obligations | 1,648.5 | 11,180.0 | 4,435.8 | 1,645.6 | 989.4 |
| Mandatorily redeemable | -- | 92,289.3 | 61,695.3 | 35,020.5 | 16,680.5 |

| | | | | | |
|---|------------|------------|------------|------------|------------|
| preferred stock | | | | | |
| Total common stockholders' equity (deficit) | 39,327.0 | (88,979.9) | (48,275.3) | (20,825.7) | 3,378.7 |
| Selected Statement of Cash Flow Data: | | | | | |
| Cash flow from operating activities | (5,812.7) | (12,382.2) | (8,539.1) | (8,539.7) | (3,146.9) |
| Cash flow from investing activities | (27,464.2) | (20,267.9) | (18,347.7) | (14,742.3) | (11,704.6) |
| Cash flow from financing activities | 41,839.7 | 32,056.8 | 24,964.0 | 23,773.2 | 18,510.6 |
| Selected Operating Data: | | | | | |
| Restaurants open at end of period | 91 | 67 | 52 | 36 | 25 |

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

We own and operate 94 fast casual restaurants in 11 states and the District of Columbia. Cosi restaurants are all-day cafes that feature signature bread and coffee products in an environment that changes throughout the day. Cosi restaurants offer breakfast, lunch, afternoon coffee, dinner, and dessert menus full of creative, cravable foods and beverages.

We operate our restaurants in two formats: Cosi and Cosi Downtown. All of our restaurants offer our signature bread and coffee products for breakfast, lunch and afternoon coffee in a counter service format. After 5 p.m., our Cosi restaurants add table service and offer dinner and dessert in a casual dining format. Cosi Downtown restaurants, which are located in non-residential central business districts, close for the day in the early evening. By operating in multiple dayparts, we believe we are able to maximize revenues and leverage both development and operating costs.

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We opened 17 new restaurants in fiscal 2000, 17 new restaurants in fiscal 2001, and 25 new restaurants in fiscal 2002. We closed one restaurant and our mini-training restaurant associated with the Xando Coffee and Bar former headquarters in fiscal 2000 and closed one restaurant in addition to our World Trade Center restaurant, our World Trade Center kiosk and our World Financial Center restaurant which were closed due to the events of September 11th in fiscal 2001. We closed one restaurant in the first quarter of fiscal 2002, which was not suited for remodeling to our current prototype. Our World Financial Center restaurant re-opened on September 9, 2002.

| | 2000 | | 2001 | | 2002 |
|---------------------------------------|------|-----|------|---------|--------|
| Restaurants open at Beginning of year | 38 | (a) | 53 | (a) | 67 |
| Restaurants Opened | 17 | | 17 | | 25 (b) |
| Restaurants Closed | 2 | | 3 | (a) (b) | 1 |
| Restaurants open at End of Year | 53 | (a) | 67 | | 91 |

(a) Includes Kiosk location formerly operated in World Trade Center Plaza.

(b) Excludes World Financial Center location which closed 9/11/01 and re-opened 9/9/02

Our financial performance in fiscal 2001 and fiscal 2002 was adversely affected by the results of the 16 restaurants that we operated in New York Central Business District locations. These restaurants have high, market specific, fixed expenses and were disproportionately impacted by the economic recession in 2001 and 2002 and the events of September 11th, 2001.

CRITICAL ACCOUNTING POLICIES

Our consolidated financial statements and the notes to our consolidated financial statements contain information that is pertinent to management's discussion and analysis. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities. We believe the following critical accounting policies involve additional management judgment due to the sensitivity of the methods, assumptions, and estimates necessary in determining the related asset and liability amounts.

Statement of Financial Accounting Standards, or SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," supercedes SFAS 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," and APB Opinion No. 30, "Reporting Results of Operations Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions." This statement retains the fundamental provisions of SFAS 121 for recognition and measurement of impairment, but amends the accounting and reporting standards for segments of a business to be disposed of. We adopted the provisions of this statement beginning in fiscal 2002. This standard requires management judgments regarding the future operating and disposition plans for marginally performing assets, and estimates of expected realizable values for assets to be sold. Actual results may differ from those estimates. The application of SFAS 144 and previously SFAS 121 has affected the amount and timing of charges to operating results that have been significant in recent years. We evaluate possible impairment at the individual restaurant level, and record an impairment loss whenever we determine impairment factors are present. We consider a history of restaurant operating losses to be the primary indicator of potential impairment for individual restaurant locations. We have identified certain units that have been impaired, and recorded charges of approximately \$1.1 million (related to two restaurants) , \$7.2 million (related to fourteen restaurants, including one damaged in the events of September 11, 2001), and \$5.8 million (related to ten restaurants) in the statements of operations for 2002, 2001 and 2000, respectively. We have historically not recorded material additional impairment charges subsequent to the initial determination of impairment.

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We have estimated our likely liability under contractual leases for restaurants that have been, or will be closed. Such estimates have affected the amount and timing of charges to operating results that have been significant in recent years, and are impacted by management's judgments about the time it may take to find a suitable subtenant or assignee, or the terms under which a termination of the lease agreement may be negotiated with the landlord.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," which addresses accounting for restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The adoption of SFAS 146 is not expected to have a significant impact on the Company's financial position and results of operations.

In December 2002, the FASB issued Statement No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure." SFAS 148 amends SFAS 123 "Accounting for Stock-Based Compensation" to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require more prominent disclosures in

both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The additional disclosure requirements of SFAS 148 are effective for fiscal years ending after December 15, 2002 and have been incorporated into the accompanying financial statements and footnotes. The Company has elected to continue to follow the intrinsic value method of accounting as prescribed by APB 25 to account for employee stock options.

We have recorded a full valuation allowance to reduce our deferred tax assets related to net operating loss carry forwards. A positive adjustment to income will be required in future years if we determine that we could realize these deferred tax assets.

NET SALES

Our sales are composed almost entirely of food and beverage sales.

COMPARABLE RESTAURANT SALES

In calculating comparable restaurant sales, we include a restaurant in the comparable restaurant base after it has been in operation for 15 full months. At fiscal year end 2000, there were 34 restaurants in the comparable restaurant base. At fiscal year end 2001, there were 40 restaurants in the comparable restaurant base. At fiscal year end 2002, there were 57 restaurants in our comparable restaurant base.

COSTS AND EXPENSES

Cost of goods sold. Cost of goods sold is composed of food and beverage costs. Food and beverage costs are variable, and increase with sales volume.

Restaurant operating expenses. Restaurant operating expenses include direct hourly and management wages, bonuses, taxes and benefits for restaurant employees, and other direct restaurant level operating expenses including the cost of supplies, restaurant repairs and maintenance, utilities, rents and related occupancy costs.

General and administrative expenses. General and administrative expenses include all corporate and administrative functions that support our restaurants and provide an infrastructure to facilitate our future growth. Components of these expenses include executive management; supervisory and staff salaries, bonuses and related taxes and employee benefits; travel; information systems; training; support center rent and related occupancy costs and professional and consulting fees. The salaries, bonus and employee benefits costs included as general and administrative expenses are generally more fixed in nature and do not vary directly with the number of restaurants we operate.

Depreciation and amortization. Depreciation and amortization principally includes depreciation on restaurant assets.

Restaurant pre-opening expenses. Restaurant pre-opening expenses, which are expensed as incurred, include the costs of recruiting, hiring and training the initial restaurant work force, travel, the cost of food and labor used during the period before opening, the cost of initial quantities of supplies, and other direct costs related to the opening of or remodeling of a restaurant.

Our fiscal year ends on the Monday falling nearest to December 31st. Fiscal years 2000, 2001 and 2002 each included 52 weeks.

RESULTS OF OPERATIONS

Our operating results for fiscal years 2000, 2001 and 2002 expressed as a percentage of sales were as follows:

| | FISCAL YEAR | | |
|---|-------------|---------|---------|
| | 2002 | 2001 | 2000 |
| Net sales | 100.0% | 100.0% | 100.0% |
| Costs and Expenses: | | | |
| Cost of goods sold | 26.9% | 26.8% | 27.0% |
| Restaurant operating expenses | 60.2% | 64.3% | 62.8% |
| Total costs of sales | 87.1% | 91.1% | 89.8% |
| General and administrative | 21.1% | 26.2% | 28.8% |
| expenses | | | |
| Depreciation and amortization | 6.9% | 9.5% | 12.0% |
| Restaurant pre-opening expenses | 2.2% | 2.1% | 2.8% |
| Provision for losses on asset | | | |
| impairments and disposals | 1.3% | 12.1% | 11.4% |
| Lease termination costs | (1.4)% | 9.1% | 0.9% |
| Operating income (loss) | (17.2)% | (50.0)% | (45.8)% |
| Other income (expense): | | | |
| Interest income | 0.1% | 0.5% | 0.9% |
| Interest expense | (1.4)% | (0.9)% | (0.4)% |
| Amortization of Deferred | | | |
| Financing Costs | (0.7)% | (0.1)% | -- |
| Loss on Early Extinguishment of | (6.0)% | -- | -- |
| Debt | | | |
| Other income (expense) | 0.5% | -- | -- |
| Total other income (expense), net | (7.5)% | (0.4)% | 0.5% |
| Net income (loss) | (24.7)% | (50.5)% | (45.4)% |

FISCAL YEAR 2002 VS. FISCAL YEAR 2001

NET SALES

Sales increased \$14.2 million, or 20.3%, to \$84.4 million in 2002, from \$70.2 million in fiscal 2001. This increase was primarily due to the full period contribution of sales from restaurants opened in fiscal 2001, from sales of restaurants opened in 2002 and from an increase in comparable restaurant sales of 4%. This was partially offset by the loss of our World Trade Center restaurant and the closure of our World Financial Center restaurant due to the events of September 11, 2001. Our World Financial Center restaurant reopened in September 2002. Additionally, one restaurant was not suited for remodeling to our current prototype and was closed during the period. Comparable restaurant sales were adversely affected by the effect of the economic downturn on our New York City Central Business District restaurants, the effect of September 11 on all of our restaurants and the reduction of our menu pricing during the first quarter of fiscal 2002. Excluding the New York City Central Business District restaurants, comparable restaurant sales increased 9% for the year. This increase was driven by the sales performance of the six remodeled restaurants that were open for the full period and the eight restaurants that were remodeled during the period, all of which were remodeled to incorporate our full product line.

COSTS AND EXPENSES

Cost of goods sold. Cost of goods sold increased \$3.9 million or 20.8% to \$22.7 million in fiscal 2002, from \$18.8 million in fiscal 2001. As a percentage of sales, cost of goods sold increased to 26.9% of sales in fiscal 2002, from 26.8% in fiscal 2001. The increase in cost of goods sold as a percentage of sales was primarily due to the reduction in our menu pricing during the first quarter of fiscal 2002, and to a shift in our sales mix due to the expansion of our food offering in 2002. During the year, food sales increased to 70.7% of total sales, from 66.2% last year, with an offsetting reduction in our beverage sales, which were 29.3% of total sales, compared to 33.8% last year. Our food sales have a higher cost of sales when compared to our beverage sales. These increases were partially offset by improvements in our food costs, as a percentage of food sales, as we were able to reduce our ingredient costs through better purchasing and through menu changes.

Restaurant operating expenses. Restaurant operating expenses increased by

\$5.7 million, or 12.7%, to \$50.8 million in fiscal 2002, from \$45.1 million in fiscal 2001. This increase is primarily due to the increase in the number of restaurants in operation this year. As a percentage of sales, restaurant operating expenses decreased to 60.2% of sales in fiscal 2002, from 64.3% in fiscal 2001. This reduction was primarily due to reductions in our labor costs.

General and administrative costs. General and administrative costs decreased by \$0.6 million, or 3.0%, to \$17.8 million in fiscal 2002, from \$18.4 million in fiscal 2001. As a percentage of sales, general and administrative costs decreased to 21.1% of sales in fiscal 2002, from 26.2% of sales in fiscal 2001. The decrease as a percentage of sales was primarily due to sales leverage against these costs. General and administrative costs in 2001 included approximately \$0.8 million of one-time expenses including severance payments related to the continued enhancement of our management team. Excluding these one-time costs from 2001, our general and administrative costs were essentially held flat in 2002.

Depreciation and amortization. Depreciation and amortization decreased \$0.8 million, or 12.5%, to \$5.9 million in fiscal 2002, from \$6.7 million in fiscal 2001. This decrease was primarily due to additional depreciation expense in the first half of fiscal 2001 on assets to be disposed of in connection with restaurant remodels, as well as reduced depreciation in fiscal 2002 on assets for which impairment write-downs were taken in fiscal 2001. As a percentage of restaurant sales, depreciation and amortization decreased to 6.9% of sales in fiscal 2002, compared to 9.5% of sales in fiscal 2001. During 2002, our store opening program was weighted toward the latter part of the year, with 12 of the 25 new restaurants opening in the last quarter. Therefore, only a limited amount of depreciation expense was recorded for these new restaurants in 2002.

Restaurant pre-opening expenses. Restaurant pre-opening expenses increased to \$1.8 million in fiscal 2002, from \$1.4 million in fiscal 2001. As a percentage of restaurant sales, restaurant pre-opening expenses increased to 2.2% of sales in fiscal 2002, from 2.1% of sales in fiscal 2001. This increase as a percentage of sales is due to the limited amount of sales recorded by our restaurants opened in 2002. As noted above, 12 of the 25 new restaurants were opened in the last quarter. Including restaurants which were remodeled in each year, restaurant pre-opening costs were reduced from approximately \$63,000 per restaurant in 2001 to \$54,000 in 2002.

Loss on impairment of property and equipment and restaurant closures. During fiscal 2002, we recognized \$1.1 million of asset impairment costs (related to two under performing restaurants) compared to \$7.2 million (related to 14 restaurants) in 2001. In 2001 we also recorded restaurant closure costs of \$1.3 million related to the loss of our World Trade Center restaurant.

Lease termination costs. During 2002, we recorded a credit of \$1.2 million, as we revised our estimates of the expected cost to terminate leases on locations that are closed, or are expected to close. Of this amount, \$0.4 million was related to a reserve we had established last year for our restaurant in the World Financial Center, which had been closed due to the terrorist attacks on September 11, 2001. That restaurant was reopened in September of 2002, and has been performing satisfactorily since then. The remaining \$0.8 million of adjustments to our lease termination reserves represent revisions to our estimated liabilities related to ten other locations that are closed, or are expected to close. During fiscal 2001, we recorded \$6.4 million of these costs.

Interest income and expense. During fiscal 2002 interest income was \$0.1 million, down from \$0.3 million from the same period a year ago. This was due to a decrease in the average investable cash balance during the period, and lower interest rates available on short-term investments. Interest expense increased \$0.6 million to \$1.2 million from \$0.6 million in fiscal 2001. The increase in interest expense is due to borrowings under our 12% senior secured notes due 2004 and our 13% senior subordinated notes due 2006, neither of which were outstanding during the first nine months of fiscal 2001. Those notes were repaid in December 2002 with proceeds from our initial public offering.

Amortization of deferred financing costs and debt discount. During fiscal 2002, we recorded \$0.5 million in amortization of deferred financing costs, and

accretion of debt discount on our Senior Secured Credit Facility, our Senior Subordinated Credit Facility and on our Equipment Loan Credit Facility. This compares to \$0.1 million recorded in 2001, primarily related to our Equipment Loan Credit Facility. The increase is due to amortization of debt discount related to our Senior Subordinated Credit Facility, which was in place for eleven months of the year and due to amortization of deferred financing costs and debt discount related to our Senior Secured Credit Facility, which was in place for a portion of the third and fourth quarters in fiscal 2002.

Loss on early extinguishment of debt. In the fourth quarter of fiscal 2002 we repaid our Senior Subordinated and Senior Secured Credit Facilities. At the time of repayment we wrote off \$5.1 million in unamortized deferred financing costs and debt discount related to these Credit Facilities.

Other income. During fiscal 2002 we recorded \$0.4 million of other income, principally the receipt of business interruption insurance proceeds related to our World Financial Center restaurant, which was closed from September 11, 2001 until early September 2002.

FISCAL YEAR 2001 VS. FISCAL YEAR 2000

NET SALES

Sales increased \$19.0 million, or 37.1%, to \$70.2 million in fiscal 2001, from \$51.2 million in fiscal 2000. This increase was primarily due to sales from the 17 new restaurants opened in fiscal 2001, and the full year contribution of sales from restaurants opened in fiscal 2000. This increase was partially offset by a 2% decrease in sales of the restaurants in our comparable restaurant base at the end of the period, the closure of our World Financial Center restaurant due to the events of September 11th, the closure of the mini-training restaurant associated with the Xando Coffee and Bar former headquarters and one additional restaurant closure. The decrease in comparable restaurant sales was primarily due to the especially acute effect of the economic downturn on our New York Central Business District restaurants as well as the significant impact of the events of September 11th. Excluding the New York Central Business District restaurants, comparable restaurant sales increased 7% in fiscal 2001, including an 11% increase in the fourth quarter of fiscal 2001. This increase was partially due to comparable restaurant sales in six restaurants that were remodeled during the year to incorporate our full product line.

COSTS AND EXPENSES

Cost of goods sold. Cost of goods sold increased \$5.0 million, or 35.7%, to \$18.8 million in fiscal 2001, from \$13.8 million in fiscal 2000. As a percentage of sales, cost of goods sold decreased to 26.8% of sales in fiscal 2001, from 27.0% in fiscal 2000. The decrease in cost of goods sold was primarily due to the full year benefit of the elimination of our commissary during fiscal 2000.

Restaurant operating expenses. Restaurant operating expenses increased \$12.9 million, or 40.2%, to \$45.1 million in fiscal 2001, from \$32.2 million in fiscal 2000. As a percentage of sales, restaurant operating expenses increased to 64.3% of sales in fiscal 2001, from 62.8% in fiscal 2000. This increase, which was primarily labor costs, was due to the development of the Cosi and Cosi Downtown prototypes, and the related restaurant operating systems. These prototypes are expected to be the basis for the future expansion of both the Cosi and Cosi Downtown concepts. Additionally, sales were adversely affected by the events of September 11th, which resulted in the fixed components of restaurant operating expenses increasing as a percentage of sales.

General and administrative expenses. General and administrative expenses increased \$3.6 million, or 24.3%, from \$14.8 million in fiscal 2000 to \$18.4 million in fiscal 2001. The increase was primarily due to the development of the support systems associated with our growth strategy and \$0.8 million of one-time expenses, including severance payments related to the continued enhancement of our management team. As a percentage of sales, general and administrative expenses decreased to 26.2% of sales in fiscal 2001, from 28.8% of sales in fiscal 2000, due to leveraging of our existing infrastructure.

Depreciation and amortization. Depreciation and amortization increased \$0.5 million, or 8.6%, to \$6.7 million in fiscal 2001, from \$6.2 million in fiscal 2000. This increase was due to depreciation on restaurants opened in 2001 and a full year's depreciation on restaurants opened in 2000 of \$1.4 million. These increases were offset by a \$0.9 million reduction from asset impairment write-downs in connection with continued refinement of our restaurant prototype.

Restaurant pre-opening expenses. Restaurant pre-opening expenses remained constant at \$1.4 million in fiscal 2001, despite an increase in the number of restaurants opened or remodeled. We opened or remodeled 23 restaurants in 2001 versus 18 in 2000. Both labor and travel costs were reduced in our average pre-opening expenses per restaurant as we continued the refinement of our training programs and penetrated existing markets.

Loss on impairment of property and equipment and restaurant closures. Loss on impairment of property and equipment and restaurant closures increased \$2.6 million to \$8.5 million in fiscal 2001, from \$5.8 million in fiscal 2000. These costs were due to asset impairment write-downs, the loss of our World Trade Center restaurant, World Trade Center kiosk and World Financial Center restaurant and the closure of a restaurant.

Lease termination costs. Lease termination costs increased \$5.9 million to \$6.4 million in fiscal 2001, compared to \$0.5 million in fiscal 2000. These costs were primarily due to lease terminations in connection with restaurants closed or planned to close in connection with the continued refinement of our restaurant prototype in fiscal 2001.

Interest income and expense. Interest income decreased \$0.1 million to \$0.3 million in fiscal 2001, from \$0.4 million in fiscal 2000. Interest expense increased \$0.4 million to \$0.6 million in fiscal 2001, from \$0.2 million in fiscal 2000. The increase is due to interest on our term loans drawn down in late fiscal 2000, which were outstanding for all of fiscal 2001, and interest on our senior subordinated debt, which was issued in November 2001.

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Amortization of Deferred Financing Costs and Debt Discount. During 2001 we recorded \$0.1 million in amortization of deferred financing costs and debt discount primarily related to our Equipment Loan Credit Facility.

POTENTIAL FLUCTUATIONS IN QUARTERLY RESULTS AND SEASONALITY

Our quarterly operating results may fluctuate significantly as a result of a variety of factors, including the timing of new restaurant openings and related expenses, profitability of new restaurants, increases or decreases in comparable restaurant sales, general economic conditions, consumer confidence in the economy, consumer preferences, competitive factors, unanticipated increases in food, labor, commodity, energy, insurance and other operating costs, weather conditions and seasonal fluctuations.

LIQUIDITY AND CAPITAL RESOURCES

Cash and cash equivalents were \$13.0 million on December 30, 2002 compared with \$4.5 million at December 31, 2001 and \$5.1 million at January 1, 2001. Our working capital was \$0.7 million as of December 30, 2002, compared with a deficit of \$5.3 million at December 31, 2001 and a deficit of \$2.8 million at January 1, 2001. Our principal requirements for cash are capital expenditures for the development of new restaurants, and for maintaining or remodeling existing restaurants and funding operations. To date we have financed our requirements for capital with private equity and debt financings, and with the proceeds of the initial public offering of our common stock.

In August 2002, we entered into a Senior Secured Note and Warrant Purchase Agreement with certain of our existing shareholders and members of our board of directors. This agreement provided us with a \$16.4 million credit facility available for general corporate purposes. This credit facility was increased to \$25.0 million in November 2002. The facility allowed us to draw down funds from time to time until August 12, 2003. Each borrowing was evidenced by a senior note, bearing interest at 12% per annum. Interest on the notes accrued and was payable, together with principal, in August 2004. This credit facility terminated upon the consummation of our initial public offering of our common

stock and all amounts then outstanding were repaid. Prior to the initial public offering of our common stock in November 2002 and during the year ended December 31, 2001, we met our requirements for capital with proceeds from the sale of Series C preferred stock and the issuance of Senior Subordinated and Senior Secured Notes.

Net cash used in operating activities for the fifty-two weeks ended December 30, 2002 was \$5.8 million, compared to \$12.4 million for the fifty-two weeks ended December 31, 2001 and \$8.5 million for the fifty-two weeks ended January 1, 2001. Funds used in operating activities in 2002 decreased primarily as a result of a reduction in our net loss compared to 2001, and an increase in our accounts payable at year-end. Accounts payable were unusually high at year-end due to the high level of purchases associated with our new restaurants opened in the fourth quarter of 2002, and to be opened in the first quarter of 2003.

Total capital expenditures for the fifty-two weeks ended December 30, 2002 were \$27.2 million, compared to expenditures of \$20.4 million for the fifty-two weeks ended December 31, 2001. These expenditures were primarily related to the opening of 25 new restaurants, and remodeling nine restaurants, including the reopening of our World Financial Center restaurant, during the fifty-two weeks ended December 30, 2002, and opening 17 new restaurants, and remodeling six existing restaurants in 2001. Total capital expenditures were \$18.2 million for fiscal 2000, and were primarily related to the opening of 17 new restaurants, and for remodeling one existing restaurant.

Net cash provided by financing activities was \$41.8 million for the fifty-two weeks ended December 30, 2002, \$32.1 million for the fifty-two weeks ended December 31, 2001 and \$25.0 million for the fifty-two weeks ended January 1, 2001. During fiscal 2002 we issued approximately 1.1 million shares of Series C preferred stock, and received approximately \$19.3 million, net of offering costs. Of this, approximately \$3.6 million represented the exchange of approximately \$3.5 million face amount of our 13% Senior Subordinated Notes and accrued interest. We also issued approximately 5.6 million shares of our common stock in our initial public offering, and received approximately \$32.8 million, net of offering costs. Prior to our initial public offering, we issued approximately \$0.5 million of additional Senior Subordinated Notes and accrued \$0.8 million of interest on these notes, and issued approximately \$9.5 million face amount of our 12% Senior Secured notes and accrued \$0.2 million of interest on these notes. During the period, we made scheduled repayments of \$1.2 and \$0.5 million related to our other outstanding long-term debt and capital lease obligations, respectively. Approximately \$6.6 million of the proceeds from our initial public offering were used to repay our outstanding 13% Senior Subordinated notes, including accrued interest and pre-payment premium, and approximately \$7.5 million of proceeds and approximately \$2.1 million of available cash were used to repay our outstanding 12% Senior Secured notes, including accrued interest. In fiscal 2001, we sold approximately 1.4 million shares of Series C Preferred Stock and received approximately \$24.1 million, net of offering costs. In November 2001, we entered into Senior Subordinated Note and Warrant purchase agreements with a group of investors, pursuant to which we received approximately \$9.3 million in proceeds. During 2001, we entered into other financing agreements totaling approximately \$0.4 million and repaid approximately \$1.4 million on existing loans and capital leases. There are two notes payable outstanding under our equipment loan credit facility: a note payable due September 1, 2003 at an interest rate of 9.1%, and a note payable due December 1, 2003 at an interest rate of 8.5%.

During the first quarter of fiscal 2003, we have experienced lower sales and operating profits than we had projected, mostly related to underperformance at new restaurants opened in the second half of 2002 and in the first quarter of 2003, and severe winter weather in the Northeast. In addition, our cash position has been adversely impacted by the payment of costs associated with restaurants in our development pipeline that we have determined not to open. Principally because of these developments, the Company determined that it was prudent to seek additional financing. Consequently, we have obtained a \$3 million line of credit (the "Loan") from a bank to be used for general corporate purposes. The Loan bears interest at 75 basis points over the bank's prime lending rate and is secured by all of our tangible and intangible property, other than equipment

pledged to secure our equipment loan credit facility (see page F-12). The Loan matures in May 2004. We have agreed to pay the bank fees and expenses of approximately \$22,000 upon funding of the Loan. The Loan is guaranteed, jointly and severally, by Eric J. Gleacher, one of our Directors; Charles G. Phillips, one of our shareholders, and an entity related to ZAM Holdings, LP, our largest shareholder (together, "the Guarantors"). At any time during the term of the Loan, the Guarantors have the right to require the bank to assign the Loan to the Guarantors. If the Loan has not been assigned by the bank to the Guarantors, and has not been paid in full by August 15, 2003, then the bank is required to assign the Loan to the Guarantors. If approved by our Shareholders, upon assignment of the Loan to the Guarantors, the Loan will be convertible into shares of our common stock, under certain circumstances, at the option of the Guarantors, at a conversion price equal to the lesser of \$1.50 or 85% of the weighted average price per share of our common stock for the fifteen trading day period ending three trading days before the conversion date.

We currently anticipate making a rights offering (the "Offering") to our existing shareholders to raise approximately \$12 million. We currently anticipate that the Offering will give our existing shareholders the right to purchase shares of our common stock at a purchase price per share equal to the lesser of \$1.50 or 85% of the weighted average price per share of our common stock for the fifteen trading day period ending three trading days before the expiration date of the Offering. A group of our shareholders, including the Guarantors or related entities, have indicated that they will commit to purchase shares in the offering, or provide other funding support, in the amount of \$8.5 million of the \$12 million offering. This shareholder group's commitment to purchase shares in the offering will be subject to shareholder approval of the equity conversion feature of the Loan.

The terms of the Loan and the Offering were reviewed and approved by a committee of our board comprised of disinterested directors.

We intend to file a registration statement with the Securities and Exchange Commission relating to the Offering. The timing and completion of the Offering is subject to market conditions and other contingencies. There can be no assurance that we will be able to complete the Offering on terms acceptable to the company or at all. The Offering will only be made pursuant to a prospectus filed with the Securities and Exchange Commission. This does not constitute an offer to sell, or the solicitation of an offer to buy, any securities nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of any such state or jurisdiction.

We currently estimate that our capital expenditures during 2003 will be approximately \$3.8 million, principally for the opening of six new restaurants, and for maintaining and remodeling existing restaurants. Most of these expenditures have been paid and the remaining will be funded through existing cash balances and from the proceeds from the Loan. We anticipate that our capital expenditures for the remainder of the year will be minimal.

Our future capital requirements and the adequacy of available funds will depend on many factors, including our ability to generate cash from operations, the pace of our expansion, real estate markets, the availability of suitable site locations and the nature of the arrangements negotiated with landlords. We presently anticipate that our current cash balances, proceeds from the Loan, and internally generated cash flows will be sufficient to fund our cash requirements for the next twelve months.

Our cash resources going forward will be highly dependant upon the level of internally generated cash from operations and upon any potential future financing transactions, including the Offering.

CONTRACTUAL OBLIGATIONS

As of December 30, 2002

| CONTRACTUAL OBLIGATIONS | (IN THOUSANDS) | 1 YEAR | 1 TO 3 YEARS | YEARS | 5 YEARS |
|---|----------------|------------|--------------|----------|----------|
| Notes Payable | \$ 1,529.1 | \$ 1,280.4 | \$ 86.9 | \$ 79.0 | \$ 82.8 |
| Employment Agreements | 3,421.9 | 1,482.0 | 1,939.9 | | |
| Capital Lease Obligations | 119.4 | 116.9 | 2.5 | | |
| Operating Lease Obligations (a) (b) | 105,775.3 | 12,082.9 | 24,872.1 | 24,665.8 | 44,154.5 |

- (a) Amounts shown are net of \$2.5 million of sublease rental income due under non-cancelable subleases.
- (b) Includes approximately \$12.6 million of obligations on leases for restaurants that have either been closed or are planned to be closed.

We are obligated under non-cancelable operating leases for our restaurants and our administrative offices. Lease terms are generally for ten years with renewal options and generally require us to pay a proportionate share of real estate taxes, insurance, common area and other operating costs. Some restaurant leases provide for contingent rental payments.

Except for the foregoing, we have no off-balance sheet contractual arrangements. We have no unconditional purchase arrangements except that as of December 30, 2002 we were party to contracts with respect to the construction of restaurants for which approximately \$2.6 million remained to be invoiced to us, we are obligated to purchase approximately \$1.1 million of roasted coffee between now and fiscal year end 2003, and we are obligated to purchase approximately 2.0 million gallons of fountain syrups at the then-current annually published national chain account prices under a beverage marketing agreement with the Coca-Cola company. Historically we have not purchased nor entered into interest rate swaps or future, forward option or other instruments designed to hedge against changes in interest rates or the price of commodities we purchase, except as described above.

RECENT DEVELOPMENTS

During the first quarter of Fiscal 2003, we announced our intention to create a franchising and area development program. While we expect that Company owned stores will always be an important part of our new store growth, we believe that incorporating a franchising and area developer model into our strategy will position us to maximize the market potential for the Cosi brand and concept consistent with our available capital and thus maximize shareholder value. We also announced that our Chairman and CEO had resigned, and that we are slowing the growth of our company owned stores. We announced that as a result, we have reduced our general and administrative staff by approximately 30% (24 positions were eliminated), and announced that we expected to record a one-time charge of approximately \$1.7 million in the first quarter of 2003 to provide for severance costs related to the executive and general and administrative staff reductions.

Subsequent to making that announcement on February 3, 2003, we have determined that additional changes to our executive management are appropriate, and now expect that the charge in the first quarter of 2003 to provide for severance costs related to the executive and general and administrative staff reductions will be approximately \$3.7 million.

In addition, during the first quarter of 2003, we expect to record additional charges of \$2.1 million to write down assets at three restaurant locations that were closed during the first quarter of 2003, and on 25 locations which were in our development pipeline, but which have been cancelled.

During the first quarter of fiscal 2003, we have experienced lower sales and operating profits than we had projected, mostly related to new restaurants opened in the second half of 2002 and in the first quarter of 2003, and severe winter weather in the Northeast. Three under performing restaurants have been closed during the first quarter of 2003, and we may close up to ten additional under performing restaurants. We have obtained a \$3 million line of credit (the "Loan") from a bank to be used for general corporate purposes. The Loan bears interest at 75 basis points over the bank's prime lending rate and is secured by all of our tangible and intangible property, other than equipment pledged to secure our equipment loan credit facility (see page F-12). The Loan matures in May 2004. We have agreed to pay the bank fees and expenses of approximately \$22,000 upon funding of the Loan. The Loan is guaranteed, jointly and severally, by Eric J. Gleacher, one of our Directors;

Charles G. Phillips, one of our shareholders and an entity related to ZAM Holdings, LP, our largest shareholder, (together, "the Guarantors"). At any time during the term of the Loan the Guarantors have the right to require the bank to assign the Loan to the Guarantors. If the Loan has not been assigned by the bank to the Guarantors, and has not been paid in full by August 15, 2003, then the bank is required to assign the Loan to the Guarantors. If approved by our shareholders, upon assignment of the loan to the Guarantors, the Loan will be convertible into shares of our common stock, under certain circumstances, at the option of the Guarantors, at a conversion price equal to the lesser of \$1.50 or 85% of the weighted average price per share of our common stock for the fifteen trading day period ending three trading days before the conversion date.

We currently anticipate making a rights offering (the "Offering") to our existing shareholders to raise approximately \$12 million. We currently anticipate that the Offering will give each of our existing shareholders the right to purchase shares of our common stock at a purchase price per share equal to the lesser of \$1.50 or 85% of the weighted average price per share of our common stock for the fifteen trading day period ending three trading days before the expiration date of the Offering. A group of our shareholders, including the Guarantors or related entities, have indicated that they will commit to purchase shares in the offering, or provide other funding support, in the amount of \$8.5 million of the \$12 million offering. This shareholder group's commitment to purchase shares in the offering will be subject to shareholder approval of the equity conversion feature of the loan.

The terms of the Loan and the Offering were reviewed and approved by a committee of our board comprised of disinterested directors.

We intend to file a registration statement with the Securities and Exchange Commission relating to the Offering. The timing and completion of the Offering is subject to market conditions and other contingencies. There can be no assurance that we will be able to complete the Offering on terms acceptable to the company or at all. The Offering will only be made pursuant to a prospectus filed with the Securities and Exchange Commission. This does not constitute an offer to sell, or the solicitation of an offer to buy, any securities nor shall there be any sale of securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of any such state or jurisdiction.

On March 31, 2003 Mr. William D. Forrest joined our Board of Directors, and was elected Chairman of the Board. Mr. Forrest is a Managing Director at Gleacher Partners, L.L.C. Eric Gleacher, who was previously Chairman of the Board, will remain a Director. Jay Wainwright will serve as interim Chief Executive Officer until a successor is hired, and Nick Marsh will be stepping down as our Chief Operating Officer, and will be leaving the company.

Management's near term focus will be to improve profitability and cash flow from existing units, with reduced general and administrative costs, under the leadership of our new Chairman, William D. Forrest. Assuming completion of the Offering, management believes that it will be able to address problem units, open new restaurants as appropriate, and incorporate a franchise and area development program into our strategy.

On February 5, 2003, a purported shareholder class action complaint was filed in the United States District Court for the Southern District of New York (the "Court"), alleging that the Company and various of its officers and directors and the Underwriter violated Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 by misstating, and by failing to disclose, certain financial and other business information (Sheel Mohnot v. Cosi, Inc., et al., No. 03 CV 812). At least six additional class action complaints with similar allegations were later filed (collectively, the "Securities Act Litigation"). The Securities Act Litigation is brought on behalf of a purported class of purchasers of the Company's stock allegedly traceable to its November 22, 2002 initial public offering ("IPO"). The complaints in the Securities Act Litigation generally claim that at the time of the IPO, the Company's offering materials failed to disclose that the funds raised through the IPO would be insufficient to implement the Company's expansion plan; that it was improbable that the Company would be able to open 53 to 59 new stores in 2003; that at the time of the IPO, Cosi had negative working capital and therefore did not have available working capital to repay certain debts; and that the principal purpose for going forward with the IPO was to repay certain existing shareholders and members of

the Board of Directors for certain debts and to operate the Company's existing restaurants.

On February 21, 2003, a purported shareholder class action complaint was filed in the Court alleging that the Company and certain of its officers and directors violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10-b promulgated thereunder, by issuing a series of material misrepresentations to the market between November 22, 2002 and February 4, 2003 (the "Class Period") (Georgette Pacia v. Cosi, Inc. et al., No. 03-CV-1156) (the "Securities Exchange Act Litigation"). The emphasis of the allegations in the complaint in the Securities Exchange Act Litigation is that the defendants knowingly or recklessly caused misrepresentations and omissions to be made regarding the Company's operating condition and future business prospects. Among other things, plaintiffs in the Securities Exchange Act Litigation allege that defendants failed to disclose that the funds raised by the IPO would be insufficient to implement the Company's expansion plan; that at the time of the IPO, defendants should have known that the costs of expansion would be greater than the cash available to the Company, making it improbable that the Company would be able to successfully continue to open new stores at the pace announced by the Company; and that defendants failed to disclose that a reduction in the offering price of the IPO would result in the Company being forced to abandon its growth strategy.

The plaintiffs in the Securities Act Litigation and the Securities Exchange Act Litigation (the "Litigations") generally seek to recover compensatory damages, expert fees, attorneys' fees, costs of Court and pre- and post-judgment interest. The Underwriter is seeking indemnification from the Company for any damages assessed against it in the Securities Act Litigation. The Litigations are at a preliminary stage, and the Company expects that these related lawsuits will be consolidated into a single action. The Company believes that it has meritorious defenses to these claims, and intends to vigorously defend against them.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In April 2002, the FASB approved SFAS 145, "Rescission of FASB Statements No. 4, 44 and 54, Amendment of SFAS 13, and Technical Corrections." SFAS 145 rescinds previous accounting guidance, which required all gains and losses from extinguishment of debt be classified as an extraordinary item. Under SFAS 145 classification of debt extinguishment depends on the facts and circumstances of the transaction. SFAS 145 is effective for fiscal years beginning after May 15, 2002. The Company does not expect SFAS 145 to have a material impact on the Company's financial position or results of its operations.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," which addresses accounting for restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The adoption of SFAS 146 is not expected to have a significant impact on the Company's financial position or results of its operations.

In December 2002, the FASB issued Statement No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure." SFAS 148 amends SFAS 123 "Accounting for Stock-Based Compensation" to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require more prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The additional disclosure requirements of SFAS 148 are effective for fiscal years ending after December 15, 2002 and have been incorporated into the accompanying financial statements and footnotes. The Company has elected to continue to follow the intrinsic value method of accounting as prescribed by APB 25 to account for employee stock options.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our market risk exposures are related to our cash, cash equivalents, investments and interest that we pay on our debt. We have no derivative financial instruments or derivative commodity instruments in our cash, cash equivalents and investments. We invest our excess cash in investment grade highly liquid short-term investments. These investments are not held for trading or other speculative purposes. Changes in interest rates affect the investment income we earn on our investments and, therefore, impact our cash flows and results of operations.

All of our transactions are conducted, and our accounts are denominated, in United States dollars. Accordingly, we are not exposed to foreign currency risk.

INFLATION

The primary inflationary factors affecting our business are food and labor costs. A large number of our restaurant personnel are paid at rates based on the applicable minimum wage, and increases in the minimum wage will directly affect our labor costs. Many of our leases require us to pay taxes, maintenance, repairs, insurance and utilities, all of which are generally subject to inflationary increases. We believe that inflation has not had a material impact on our results of operations in recent years.

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FORWARD-LOOKING STATEMENTS

Matters discussed in this report which relate to events or developments which are expected to occur in the future, including any discussion, expressed or implied, of anticipated growth, operating results or earnings constitute forward-looking statements. Forward-looking statements are based on management's beliefs, assumptions and expectations of our future economic performance, taking into account the information currently available to management. These statements are not statements of historical fact. Forward-looking statements involve risks and uncertainties that may cause our actual results, performance or financial condition to differ materially from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Factors that could contribute to these differences include, but are not limited to:

- o the cost of our principal food products;
- o labor shortages or increased labor costs;
- o changes in consumer preferences and demographic trends;
- o increasing competition in the fast casual dining segment of the restaurant industry;
- o expansion into new markets;
- o our ability to effectively manage our business with a reduced general and administrative staff;
- o our ability to incorporate a franchising and area development model in to our strategy;
- o the availability and cost of additional financing;
- o fluctuations in our quarterly results;
- o increased government regulation;
- o supply and delivery shortages or interruptions;
- o market saturation due to new restaurant openings;
- o inadequate protection of our intellectual property;

- o adverse weather conditions which impact customer traffic at our restaurants; and
- o adverse economic conditions.

The words "believe," "may," "will," "should," "anticipate," "estimate," "expect," "intend," "objective," "seek," "plan," "strive" or similar words, or the negatives of these words, identify forward-looking statements. We qualify any forward-looking statements entirely by these cautionary factors.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this item is listed in Item 16 (a) of Part IV of this Form 10-K.

ITEM 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

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PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

The information required to be furnished pursuant to this item with respect to Directors of the Company will be set forth under the caption "Election of Directors" in the registrant's proxy statement (the "Proxy Statement") to be furnished to stockholders in connection with the solicitation of proxies by the Company's Board of Directors for use at the 2003 Annual Meeting of Stockholders to be held on May 22, 2003, and is incorporated herein by reference, and the information with respect to Executive Officers is set forth, pursuant to General Instruction G of Form 10-K, under Part I of this Report.

The information required to be furnished pursuant to this item with respect to compliance with Section 16(a) of the Exchange Act will be set forth under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy Statement, and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION.

The information required to be furnished pursuant to this item will be set forth under the caption "Executive Compensation" in the Proxy Statement, and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The information required to be furnished pursuant to this item will be set forth under the captions "Voting Securities," "Security Ownership of Management" and "Equity Compensation Plan Information" in the Proxy Statement, and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

The information required to be furnished pursuant to this item will be set forth under the caption "Certain Relationships and Related Party Transactions" in the Proxy Statement, and is incorporated herein by reference.

ITEM 14. CONTROLS AND PROCEDURES.

Under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, the Company has evaluated the effectiveness of the design and operation

of its disclosure controls and procedures within 90 days of the filing date of this annual report, and, based on their evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective. There were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation.

ITEM 15. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

The information required to be furnished pursuant to this item will be set forth under the caption "Principal Accountant Fees and Services" in the Proxy Statement, and is incorporated herein by reference.

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PART IV

ITEM 16. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K.

(a) LIST OF FINANCIAL STATEMENTS, FINANCIAL STATEMENT SCHEDULES AND EXHIBITS:

FINANCIAL STATEMENTS:

The financial statements required to be filed hereunder are listed on page F-1 hereof.

FINANCIAL STATEMENT SCHEDULES:

The financial statement schedules required to be filed hereunder are listed on page S-1 hereof.

All other schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

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| EXHIBIT NUMBER | DESCRIPTION OF EXHIBIT |
|-------------------|--|
| 2.1# | -- Merger Agreement by and among Xando, Incorporated, Xando Merger Corp. and Cosi Sandwich Bar, Inc., dated as of October 4, 1999. (Filed as exhibit 2.1 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 3.1 | -- Amended and Restated Certificate of Incorporation of Cosi, Inc. |
| 3.2 | -- Amended and Restated By-Laws of Cosi, Inc. |
| 4.1# | -- Form of Certificate of Common Stock. (Filed as exhibit 4.1 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 4.2 | -- Rights Agreement between Cosi, Inc. and American Stock Transfer and Trust Company as Rights Agent. |
| 4.3# | -- Amended and Restated Registration Agreement, dated as of March 30, 1999. (Filed as exhibit 4.3 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 10.1# | -- Amended and Restated Cosi Stock Incentive Plan. (Filed as exhibit 10.1 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 10.2# | -- Cosi Employee Stock Purchase Plan. (Filed as exhibit 10.2 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 10.3# | -- Cosi Non-Employee Director Stock Incentive Plan. (Filed as exhibit 10.3 to the Company's Registration Statement |

- 10.4# -- on Form S-1, file #333-86390)
Cosi Sandwich Bar, Inc. Incentive Stock Option Plan(Filed as exhibit 10.4 to the Company's Registration Statement on Form S-1, file #333-86390)
- 10.5.1# -- Employment Agreement between Cosi and Jay Wainwright, effective as of January 1, 2002. (Filed as exhibit 10.5.2 to the Company's Registration Statement on Form S-1, file #333-86390)
- 10.5.2# -- Employment Agreement between Cosi and Nick Marsh, effective as of January 1, 2002. . (Filed as exhibit 10.5.3 to the Company's Registration Statement on Form S-1, file #333-86390)
- 10.5.3# -- Employment Agreement between Cosi and David Orwasher, effective as of January 1, 2002. (Filed as exhibit 10.5.4 to the Company's Registration Statement on Form S-1, file #333-86390)
- 10.6# -- Amended and Restated Distributor Service Agreement between Cosi and Maines Paper & Food Service, Inc., dated as of June 18, 2002.(1). (Filed as exhibit 10.6 to the Company's Registration Statement on Form S-1, file #333-86390)
- 10.7# -- Form of Senior Secured Note and Warrant Purchase Statement Agreement (Filed as exhibit 4.1 to the Company's Registration on Form S-1, file #333-86390)
- 21.1# -- Subsidiaries of Cosi, Inc. . (Filed as exhibit 21.1 to the Company's Registration Statement on Form S-1, file #333-86390)
- 99.1 -- Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.2 -- Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

- Previously filed

- (1) Portions of Exhibit 10.6 have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment.

(b) REPORTS ON FORM 8-K.

The Company filed a Current Report on Form 8-K on February 4, 2003, which attached and incorporated by reference the Company's press release dated February 3, 2003, announcing the resignation of Chairman and CEO Andrew Stenzler, the appointment of Jay Wainwright as CEO and the election of Eric Gleacher as Chairman of the Board of Directors.

The Company filed a Current Report on Form 8-K on February 26, 2003, which attached and incorporated by reference the Company's press release dated February 25, 2003 reporting the Company's financial results for the fourth fiscal quarter and fiscal year ended December 30, 2002.

its behalf by the undersigned, thereunto duly authorized.

Cosi, Inc.

By: /s/ Jay Wainwright
Chief Executive Officer

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has been signed by the following persons in the capacities and on the date indicated:

| SIGNATURE | TITLE | DATE |
|--|--|----------------|
| /s/ Jay Wainwright Jay Wainwright | Chief Executive Officer | |
| /s/ William D. Forrest William D. Forrest | Chairman | March 31, 2003 |
| /s/ Terry Diamond Terry Diamond | Director | March 31, 2003 |
| /s/ Creed L. Ford III / Creed L. Ford III | Director | March 31, 2003 |
| /s/ Eric Gleacher Eric Gleacher | Director | March 31, 2003 |
| /s/ Nick Marsh Nick Marsh | Chief Operating Officer and Director | March 31, 2003 |
| /s/ D. Ian McKinnon D. Ian McKinnon | Director | March 31, 2003 |
| /s/ Jeffrey M. Stork Jeffrey M. Stork | Director | March 31, 2003 |
| /s/ Greg Wooley Greg Wooley | Director | March 31, 2003 |
| /s/ Kenneth S. Betuker Kenneth S. Betuker | Chief Financial Officer (Chief Accounting Officer) Treasurer and Secretary | March 31, 2003 |

Kenneth S. Betuker

CERTIFICATIONS

I, Jay Wainwright, Chief Executive Officer, certify that:

1. I have reviewed this annual report on Form 10-K of Cosi, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 31, 2003

By: /s/ Jay Wainwright

Jay Wainwright
Chief Executive Officer

CERTIFICATIONS

I, Kenneth S. Betuker, Chief Financial Officer Officer, certify that:

1. I have reviewed this annual report on Form 10-K of Cosi, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
 - c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 31, 2003

By: /s/ Kenneth S. Betuker

Kenneth S. Betuker
Chief Financial Officer

CONSOLIDATED FINANCIAL STATEMENTS

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REPORT OF INDEPENDENT AUDITORS

To the Board of Directors
Cosi, Inc.

We have audited the accompanying consolidated balance sheets of Cosi, Inc. as of December 30, 2002 and December 31, 2001 and the related consolidated statements of operations, redeemable securities and stockholders' equity and cash flows for each of the three years in the period ended December 30, 2002. These financial statements are the responsibility of the Corporation's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Cosi, Inc. at December 30, 2002 and December 31, 2001, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 30, 2002, in conformity with accounting principles generally accepted in the United States.

As discussed in Note 2, the Company adopted SFAS No. 142, "Goodwill and Other Intangible Assets" effective January 1, 2002.

/s/ ERNST & YOUNG LLP

New York, New York
February 19, 2003 except for Note 17,
as to which the date is March 31, 2003

COSI, INC.
CONSOLIDATED BALANCE SHEETS

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|---|----------------------|----------------------|
| | ----- | ----- |
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 13,032,307 | \$ 4,469,571 |
| Accounts receivable, net of allowances of \$232,129 and \$219,845 | 1,511,526 | 1,198,786 |
| Inventory | 1,465,730 | 1,403,806 |
| Prepaid expenses and other current assets | 1,676,279 | 568,353 |
| | ----- | ----- |
| Total current assets | 17,685,842 | 7,640,516 |
| PROPERTY, EQUIPMENT AND LEASEHOLD | | |
| IMPROVEMENTS, net | 45,755,319 | 25,507,195 |
| INTANGIBLES, SECURITY DEPOSITS AND OTHER ASSETS, net | 2,801,919 | 2,240,733 |
| | ----- | ----- |
| Total assets | \$ 66,243,080 | \$ 35,388,444 |
| | ===== | ===== |
| LIABILITIES, REDEEMABLE SECURITIES AND STOCKHOLDERS' EQUITY | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | \$ 8,925,245 | \$ 4,737,121 |
| Accrued liabilities | 5,922,408 | 4,951,809 |
| Current portion of other liabilities | 671,601 | 1,678,880 |
| Current portion of capital lease obligations | 116,940 | 441,862 |
| Current portion of long-term debt | 1,280,432 | 1,136,835 |
| | ----- | ----- |
| Total current liabilities | 16,916,626 | 12,946,507 |
| OTHER LIABILITIES, net of current portion | 9,748,334 | 9,531,364 |
| CAPITAL LEASE OBLIGATIONS, net of current portion | 2,485 | 135,236 |
| LONG-TERM DEBT, net of current portion | 248,650 | 9,466,022 |
| | ----- | ----- |
| Total liabilities | 26,916,095 | 32,079,129 |
| COMMITMENTS AND CONTINGENCIES (Note 13) | | |
| REDEEMABLE SECURITIES: | | |
| Series A Convertible Preferred stock -- \$0.01 par value; 2,005,862 authorized, 1,146,206 issued and outstanding; aggregate liquidation preference \$18,768,150, including accrued dividends of \$4,727,116 in 2001 | -- | 18,318,205 |
| Series C Convertible Preferred stock-- \$0.01 par value; 10,510,191 authorized 4,161,589 issued and outstanding, aggregate liquidation preference of \$74,524,713 including accrued dividends of \$8,807,592 in 2001 | -- | 73,971,056 |
| | ----- | ----- |
| Total redeemable securities | -- | 92,289,261 |
| STOCKHOLDERS' EQUITY (DEFICIT): | | |
| Common stock-- \$0.01 par value: 100,000,000 shares authorized, 16,573,514 and 4,511,494 shares issued and outstanding, respectively | 165,735 | 45,115 |
| Additional paid-in capital | 189,255,034 | 32,004,032 |
| Notes receivable from stockholders | (2,974,804) | (2,974,804) |
| | ----- | ----- |
| Accumulated deficit | (147,118,980) | (118,054,289) |
| | ----- | ----- |
| Total stockholders' equity (deficit) | 39,326,985 | (88,979,946) |
| | ----- | ----- |
| Total liabilities, redeemable securities and stockholders' equity (deficit) | \$ 66,243,080 | \$ 35,388,444 |
| | ===== | ===== |

The accompanying notes are an integral part of these
consolidated statements.

COSI, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

FOR THE YEARS ENDED

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 | JANUARY 1, 2001 |
|--|----------------------|----------------------|--------------------|
| NET SALES | \$ 84,424,247 | \$ 70,184,136 | \$ 51,222,818 |
| COST OF SALES: | | | |
| Cost of goods sold | 22,697,549 | 18,791,711 | 13,843,992 |
| Restaurant operating expenses | 50,852,670 | 45,114,495 | 32,172,860 |
| TOTAL COST OF SALES | 73,550,219 | 63,906,206 | 46,016,852 |
| GENERAL AND ADMINISTRATIVE EXPENSES | 17,811,712 | 18,361,511 | 14,774,234 |
| DEPRECIATION AND AMORTIZATION | 5,851,207 | 6,689,985 | 6,158,146 |
| RESTAURANT PRE-OPENING EXPENSES | 1,845,120 | 1,438,783 | 1,409,497 |
| PROVISION FOR LOSSES ON ASSET IMPAIRMENTS AND DISPOSALS | 1,056,471 | 8,486,309 | 5,847,545 |
| LEASE TERMINATION COSTS | (1,164,984) | 6,410,759 | 477,266 |
| Operating loss | (14,525,498) | (35,109,417) | (23,460,722) |
| INTEREST INCOME | 98,334 | 340,453 | 441,350 |
| INTEREST EXPENSE | (1,192,598) | (527,511) | (210,655) |
| AMORTIZATION OF DEFERRED FINANCING COSTS | (548,972) | (126,868) | |
| LOSS ON EARLY EXTINGUISHMENT OF DEBT | (5,083,188) | | |
| OTHER INCOME (EXPENSE) | 380,871 | -- | -- |
| Net loss | (20,871,051) | (35,423,343) | (23,230,027) |
| PREFERRED STOCK DIVIDENDS | (8,193,640) | (6,678,085) | (4,219,684) |
| NET LOSS ATTRIBUTABLE TO COMMON STOCK | (29,064,691) | \$(42,101,428) | \$(27,449,711) |
| PER SHARE DATA: | | | |
| Net Loss Per Share: | | | |
| Basic and diluted | \$ (5.04) | \$ (9.34) | \$ (6.09) |
| Weighted Average Common Shares Outstanding: | | | |
| Actual | 5,762,818 | 4,507,237 | 4,503,862 |

The accompanying notes are an integral part of these consolidated statements.

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COSI, INC.
CONSOLIDATED STATEMENTS OF REDEEMABLE SECURITIES AND STOCKHOLDERS' EQUITY
For the Years Ended JANUARY 1, 2001, DECEMBER 31, 2001
and December 30, 2002

| | REDEEMABLE SECURITIES | | | | |
|---|---|------------|---|------------|-----------------------------------|
| | SERIES A CONVERTIBLE PREFERRED STOCK | | SERIES C CONVERTIBLE PREFERRED STOCK | | TOTAL REDEEMABLE SECURITIES |
| | NUMBER OF SHARES | AMOUNT | NUMBER OF SHARES | AMOUNT | |
| BALANCE, January 3, 2000 | 1,146,206 | 15,118,619 | 1,268,981 | 19,901,891 | 35,020,510 |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | 1,426,936 | 22,455,104 | 22,455,104 |
| Accrued preferred stock dividend ... | -- | 1,320,434 | -- | 2,649,775 | 3,970,209 |
| Accretion of preferred stock to liquidation value | -- | 224,936 | -- | 24,539 | 249,475 |
| Issuance of common stock | -- | -- | -- | -- | -- |
| Net loss | -- | -- | -- | -- | -- |
| BALANCE, January 1, 2001 | 1,146,206 | 16,663,989 | 2,695,917 | 45,031,309 | 61,695,298 |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | 1,465,672 | 23,915,878 | 23,915,878 |
| Issuance of warrants | -- | -- | -- | -- | -- |
| Issuance of warrants in connection with preferred stock financing ... | -- | -- | -- | -- | -- |
| Accrued preferred stock dividend ... | -- | 1,429,280 | -- | 4,980,812 | 6,410,092 |
| Accretion of preferred stock to liquidation value | -- | 224,936 | -- | 43,057 | 267,993 |
| Issuance of common stock | -- | -- | -- | -- | -- |
| Net loss | -- | -- | -- | -- | -- |
| BALANCE, December 31, 2001 | 1,146,206 | 18,318,205 | 4,161,589 | 73,971,056 | 92,289,261 |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | 942,629 | 15,626,611 | 15,626,611 |
| Issuance of warrants | -- | -- | -- | -- | -- |
| Issuance of warrants in connection with preferred stock financing ... | -- | -- | -- | -- | -- |
| Accrued preferred stock dividend ... | -- | 1,376,383 | -- | 6,473,731 | 7,850,114 |

| | | | | | |
|--|-------------|--------------|-------------|--------------|---------------|
| Accretion of preferred stock to liquidation value | -- | 200,836 | -- | 142,690 | 343,526 |
| Exchange of senior subordinated debt and warrants for Series C Convertible Preferred Stock (Note 16) | -- | -- | 217,327 | 3,613,075 | 3,613,075 |
| Issuance of common stock | -- | -- | -- | -- | -- |
| Conversion to common stock | (1,146,206) | (19,895,424) | (5,321,545) | (99,827,163) | (119,722,587) |
| Net loss | -- | -- | -- | -- | -- |
| BALANCE, December 30, 2002 | -- | \$-- | -- | \$-- | \$-- |

[TABLE CONTINUED]

| COMMON STOCK | | | | | | |
|--|------------------|------------|----------------------------|------------------------------------|---------------------|---------------|
| | NUMBER OF SHARES | AMOUNT | ADDITIONAL PAID-IN CAPITAL | NOTES RECEIVABLE FROM STOCKHOLDERS | ACCUMULATED DEFICIT | TOTAL |
| BALANCE, January 3, 2000 | 4,503,815 | 45,038 | 30,606,697 | (2,974,804) | (48,503,150) | (20,826,219) |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | -- | -- | -- | -- |
| Accrued preferred stock dividend | -- | -- | -- | -- | (3,970,209) | (3,970,209) |
| Accretion of preferred stock to liquidation value | -- | -- | -- | -- | (249,475) | (249,475) |
| Issuance of common stock | 54 | 1 | 634 | -- | -- | 635 |
| Net loss | -- | -- | -- | -- | (23,230,027) | (23,230,027) |
| BALANCE, January 1, 2001 | 4,503,869 | 45,039 | 30,607,331 | (2,974,804) | (75,952,861) | (48,275,295) |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | -- | -- | -- | -- |
| Issuance of warrants | -- | -- | 1,098,469 | -- | -- | 1,098,469 |
| Issuance of warrants in connection with preferred stock financing | -- | -- | 231,631 | -- | -- | 231,631 |
| Accrued preferred stock dividend | -- | -- | -- | -- | (6,410,092) | (6,410,092) |
| Accretion of preferred stock to liquidation value | -- | -- | -- | -- | (267,993) | (267,993) |
| Issuance of common stock | 7,625 | 76 | 66,601 | -- | -- | 66,677 |
| Net loss | -- | -- | -- | -- | (35,423,343) | (35,423,343) |
| BALANCE, December 31, 2001 | 4,511,494 | 45,115 | 32,004,032 | (2,974,804) | (118,054,289) | (88,979,946) |
| Issuance of Series C convertible preferred stock, net of issuance costs | -- | -- | -- | -- | -- | -- |
| Issuance of warrants | -- | -- | 4,901,874 | -- | -- | 4,901,874 |
| Issuance of warrants in connection with preferred stock financing | -- | -- | 43,900 | -- | -- | 43,900 |
| Accrued preferred stock dividend | -- | -- | -- | -- | (7,850,114) | (7,850,114) |
| Accretion of preferred stock to liquidation value | -- | -- | -- | -- | (343,526) | (343,526) |
| Exchange of senior subordinated debt and warrants for Series C Convertible Preferred Stock (Note 16) | -- | -- | (429,865) | -- | -- | (429,865) |
| Issuance of common stock | 5,594,409 | 55,944 | 33,077,182 | -- | -- | 33,133,126 |
| Conversion to common stock | 6,467,611 | 64,676 | 119,657,911 | -- | -- | 119,722,587 |
| Net loss | -- | -- | -- | -- | (20,871,051) | (20,871,051) |
| BALANCE, December 30, 2002 | 16,573,514 | \$ 165,735 | \$ 189,255,034 | \$ (2,974,804) | \$ (147,118,980) | \$ 39,326,985 |

The accompanying notes are an integral part of these consolidated statements.

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COSI, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

| | DECEMBER 30, 2002 | FOR THE YEARS ENDED DECEMBER 31, 2001 | JANUARY 1, 2001 |
|---|----------------------|---|--------------------|
| CASH FLOWS FROM OPERATING ACTIVITIES: | | | |
| Net loss | \$ (20,871,051) | \$ (35,423,343) | \$ (23,230,027) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | | |
| Depreciation and amortization | 5,851,207 | 6,689,985 | 6,158,146 |

| | | | |
|---|---------------|--------------|--------------|
| Amortization of deferred financing costs | 548,972 | 126,868 | -- |
| Loss on early extinguishment of debt | 5,083,188 | -- | -- |
| Asset impairments and disposals | 1,056,471 | 9,933,142 | 5,847,545 |
| Provision for bad debts | 27,000 | 3,600 | 73,330 |
| Changes in operating assets and liabilities: | | | |
| Accounts receivable | (339,740) | 762,161 | (1,653,944) |
| Inventory | (61,924) | (492,934) | (397,048) |
| Other assets | (367,352) | (619,006) | 667,935 |
| Accounts payable | 4,188,124 | 918,150 | 2,282,931 |
| Accrued liabilities | 970,599 | (255,229) | 2,358,273 |
| Accrued merger and integration | -- | -- | (639,300) |
| Accrued contractual lease increases | 785,794 | 825,772 | 628,401 |
| Prepaid expenses and other current assets | (1,107,926) | (53,084) | (198,203) |
| Lease termination accrual | (1,576,103) | 5,201,674 | (437,146) |
| Net cash used in operating activities | (5,812,741) | (12,382,244) | (8,539,107) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | | |
| Purchases of property, equipment and leasehold improvements | (27,155,800) | (20,350,590) | (18,161,055) |
| Payments made for security deposits | (308,404) | 82,725 | (186,693) |
| Net cash used in investing activities | (27,464,204) | (20,267,865) | (18,347,748) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | | |
| Proceeds from issuance of common stock | 33,133,126 | 66,677 | 635 |
| Net proceeds from issuance of preferred stock | 15,670,511 | 24,147,509 | 22,455,104 |
| Retirement of Sr. Subordinated & Sr. Secured Notes | (16,320,692) | -- | -- |
| Principal payments on capital lease obligations | (457,673) | (572,060) | (303,783) |
| Proceeds from long-term debt plus related Warrants and accrued interest | 10,980,647 | 9,269,198 | 2,998,977 |
| Principal payments on long-term debt | (1,166,238) | (854,516) | (186,947) |
| Net cash provided by financing activities | 41,839,681 | 32,056,808 | 24,963,986 |
| Net increase (decrease) in cash | 8,562,736 | (593,301) | (1,922,869) |
| CASH AND CASH EQUIVALENTS, beginning of year | 4,469,571 | 5,062,872 | 6,985,741 |
| CASH AND CASH EQUIVALENTS, end of year | \$ 13,032,307 | \$ 4,469,571 | \$ 5,062,872 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION: | | | |
| Cash paid during the year for: | | | |
| Interest | \$ 1,323,459 | \$ 466,764 | \$ 220,492 |
| Corporate franchise and income taxes | \$ 118,690 | \$ 277,198 | \$ 7,931 |
| Non-cash financing transactions: | | | |
| Assets acquired under capital leases | \$-- | \$-- | \$ 134,678 |
| Conversion of Senior Subordinated Debt to Series C Preferred | \$ 3,183,210 | \$-- | \$-- |
| Conversion of Warrants to Series C Preferred | \$ 429,865 | \$-- | \$-- |

The accompanying notes are an integral part of these consolidated statements.

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COSI, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
JANUARY 1, 2001, DECEMBER 31, 2001 AND DECEMBER 30, 2002

1. DESCRIPTION AND ORGANIZATION OF BUSINESS

Cosi, Inc. and subsidiaries (the "Company" or "Cosi") engages in the business of operating restaurants, which sell high-quality coffees and sandwiches along with a variety of coffee beverages, teas, baked goods and alcoholic beverages. As of December 30, 2002, the Company had 91 restaurants in operation in Connecticut, New York, the District of Columbia, Pennsylvania, Maryland, Massachusetts, Virginia, Illinois, New Jersey, Michigan, Ohio and Wisconsin.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FISCAL YEAR END

The Company's fiscal year ends on the Monday closest to December 31. Fiscal years 2002, 2001 and 2000 ended on December 30, 2002, December 31, 2001 and January 1, 2001, respectively. Fiscal 2002, 2001 and 2000 each contained 52

weeks.

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

CASH AND CASH EQUIVALENTS

The Company considers all short-term liquid investments with a maturity of three months or less when purchased to be cash equivalents. At December 30, 2002 and December 31, 2001, \$9.4 million and \$1.4 million, respectively, was invested primarily in commercial paper and money market accounts and is classified as cash and cash equivalents in the accompanying consolidated balance sheets.

CONCENTRATIONS OF CREDIT RISK

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash deposits and accounts receivable. The Company places its cash deposits in FDIC insured financial institutions, commercial paper and money market funds. Cash deposits may exceed FDIC insured levels from time to time.

The Company's accounts receivable consist principally of receivables from trade or "house" accounts representing corporate customers, as well as amounts due from certain landlords for tenant improvement reimbursements. The Company has established credit procedures, whereby analyses are performed to control the granting of credit to customers.

INVENTORY

Inventory is stated at the lower of cost (first in, first out method) or market, and consists principally of whole bean coffee, liquor, sandwich ingredients and packaging and related food supplies.

PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

Property, equipment and leasehold improvements are stated at cost and include improvements and costs incurred in the development and construction of new restaurants and remodels, equipment and leasehold improvements. Depreciation is computed using the straight-line method over estimated useful lives, which range from two to fifteen years. Leasehold improvements are amortized using the straight-line method over the shorter of their estimated useful lives or the term of the related leases.

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RESTAURANT IMPAIRMENT CHARGES

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." SFAS 144 supercedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be disposed of", and APB Opinion No. 30, "Reporting Results of Operations Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions." SFAS 144 retains the fundamental provisions of SFAS 121 for recognition and measurement of impairment, but amends the accounting and reporting standards for segments of a business to be disposed of. The Company adopted the provisions of this statement beginning in fiscal 2002. The adoption of SFAS 144 did not have a material impact on the Company's financial position or results of operations. In accordance with SFAS. 144 and previously under SFAS 121, impairment losses are recorded on long-lived assets on a restaurant by restaurant basis whenever impairment factors are determined to be present. The Company considers a history of restaurant operating losses to be the primary indicator of potential impairment for individual restaurant locations. The Company has identified certain units that have been impaired, and recorded charges of approximately \$5.8 million (related to ten restaurants), \$7.2 million (related to fourteen restaurants, including \$0.3 million for one restaurant damaged in the events of September 11, 2001 -- See Note 15) and \$1.1 million (related to two restaurants)

in the statements of operations for fiscal years 2000, 2001 and 2002, respectively. The Company determines whether a restaurant location is impaired based on expected undiscounted cash flows, generally for the remainder of the lease term, and then determines the impairment charge based on discounted cash flows for the same period.

INTANGIBLES, SECURITY DEPOSITS AND OTHER ASSETS

Intangibles and other assets consist of expenditures associated with obtaining liquor licenses, trademarks and logos. Liquor licenses are stated at cost which, in the aggregate, is not in excess of market. Security deposits primarily consist of deposits placed on leased locations. Amortization expense related to intangibles and other assets amounted to approximately \$8,400 and \$9,400 for fiscal years 2000 and 2001, respectively. Due to the adoption of SFAS No. 142, "Goodwill and Other Intangible Assets" (see note 5) no amortization expense was recorded in fiscal 2002.

The Company reviews intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amounts of those assets may not be recoverable in accordance with SFAS 142. Management believes that there is no impairment with respect to such intangible assets at December 30, 2002 or December 31, 2001.

OTHER LIABILITIES

Other liabilities consist of deferred rent and accrued lease termination costs (see Note 14).

INCOME TAXES

The Company accounts for income taxes in accordance with the provisions of SFAS No. 109, "Accounting for Income Taxes". Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the year in which those temporary differences are expected to be recovered or settled.

REVENUE RECOGNITION

The Company records revenue at the time of the purchase of its products by its customers.

FAIR VALUE OF FINANCIAL INSTRUMENTS

The Company accounts for financial instruments in accordance with SFAS No. 107, "Disclosures about Fair Value of Financial Instruments". The carrying value of all financial instruments reflected in the accompanying balance sheet approximates fair value at December 30, 2002 and December 31, 2001.

STOCK-BASED COMPENSATION

The Company complies with the disclosure-only provisions of SFAS No. 123, "Accounting for Stock-Based Compensation". This statement establishes financial accounting and reporting standards for stock-based employee compensation plans. The provisions of SFAS 123 encourage entities to adopt a fair value based method of accounting for stock compensation plans; however, these provisions also permit the Company to continue to measure compensation costs under pre-existing accounting pronouncements. Pursuant to SFAS 123, the Company has elected to continue the accounting set forth in Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees" and to provide the necessary pro forma disclosures (Note 12).

The following table illustrates the effect on net loss attributable to common stock and net loss per common share as if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation.

| | 2002 | 2001 | 2000 |
|-------------------------------------|----------------|-----------------|----------------|
| | ----- | ----- | ----- |
| Net loss attributable to common | | | |
| stock - as reported | \$(29,064,691) | \$ (42,101,428) | \$(27,449,711) |
| Stock based compensation determined | | | |
| under SFAS 123 | (1,952,266) | (1,377,415) | (570,972) |
| Net loss attributable to common | | | |
| stock - Pro forma | (31,016,957) | (43,478,843) | (28,020,683) |
| Net loss per common share -- | | | |
| Basic and Diluted: | | | |
| As reported | \$ (5.04) | \$ (9.34) | \$ (6.09) |
| | ===== | ===== | ===== |
| Pro forma | \$ (5.38) | \$ (9.64) | \$ (6.23) |
| | ===== | ===== | ===== |

The fair value of each option grant was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

| FISCAL YEAR ENDED | 2002 | 2001 | 2000 |
|--------------------------------------|---------|---------|---------|
| ----- | ----- | ----- | ----- |
| Expected volatility..... | 40% (a) | -- | -- |
| Average expected option life..... | 5 years | 5 years | 5 years |
| Average risk-free interest rate..... | 4.11% | 4.57% | 6.37% |
| Dividend yield..... | 0% | 0% | 0% |

(a) For options issued subsequent to the Company's initial public offering.

NET LOSS PER SHARE

The Company follows the provisions of SFAS No. 128, "Earnings Per Share". In accordance with this statement, basic net loss per share is computed by dividing the net loss attributable to common shareholders (after deducting preferred stock dividends) by the weighted-average number of common shares outstanding. Diluted net loss per share is computed by dividing the net loss attributable to common shareholders by the weighted-average number of common shares and dilutive common share equivalents, if any, outstanding. For all periods presented, the impact of all common share equivalents has not been included, as their inclusion would be anti-dilutive.

SEGMENT DISCLOSURES

The Company has adopted the provisions of SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information". Pursuant to this pronouncement, operating segments are defined as components of an enterprise about which separate financial information is available and is evaluated regularly by the chief operating decision maker in deciding how to allocate resources in assessing performance. Management of the Company considers its operations to be in the food service industry and, as a result, the Company has one single reporting operating unit with all sales historically generated in the United States.

PRE-OPENING COSTS

All costs incurred prior to the opening of a location, which consist primarily of salaries and other direct expenses incurred with the initial setup of restaurants and certain costs related to remodels, employee training and general restaurant management, are expensed as incurred.

ADVERTISING COSTS

Advertising costs are expensed as incurred and approximated \$110,000, \$141,000 and \$177,000 for fiscal years 2002, 2001 and 2000, respectively.

COMPREHENSIVE INCOME

The Company's operations did not give rise to items includable in comprehensive income that were not already in its net loss for fiscal years 2002, 2001 and 2000. Accordingly, the Company's comprehensive loss is the same as its net loss for all periods presented.

RECLASSIFICATIONS

Certain items in the financial statements presented have been reclassified to conform to the fiscal 2002 presentation.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In April 2002, the FASB approved SFAS 145, "Rescission of FASB Statements No. 4, 44 and 54, Amendment of SFAS 13, and Technical Corrections." SFAS 145 rescinds previous accounting guidance, which required all gains and losses from extinguishment of debt be classified as an extraordinary item. Under SFAS 145 classification of debt extinguishment depends on the facts and circumstances of the transaction. SFAS 145 is effective for fiscal years beginning after May 15, 2002. The Company does not expect SFAS 145 to have a material impact on our financial statements.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," which addresses accounting for restructuring, discontinued operation, plant closing, or other exit or disposal activity. SFAS 146 requires companies to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. SFAS 146 is to be applied prospectively to exit or disposal activities initiated after December 31, 2002. The adoption of SFAS 146 is not expected to have a significant impact on the Company's financial position and results of operations.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure." SFAS 148 amends SFAS 123 "Accounting for Stock-Based Compensation" to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require more prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The additional disclosure requirements of SFAS 148 have been incorporated into the accompanying financial statements and footnotes. The Company has elected to continue to follow the intrinsic value method of accounting as prescribed by APB 25 to account for employee stock options.

USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results may differ from those estimates.

3. ACCOUNTS RECEIVABLE, NET

Accounts receivable, net, consists of the following:

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|---------------------------------------|----------------------|----------------------|
| | ----- | ----- |
| Accounts receivable, trade | \$ 616,411 | \$ 657,102 |
| Reimbursements due from landlords ... | 823,100 | 482,548 |
| Other | 304,144 | 278,981 |
| | ----- | ----- |
| | 1,743,655 | 1,418,631 |
| Less: allowance for doubtful accounts | (232,129) | (219,845) |
| | ----- | ----- |
| Accounts receivable | \$ 1,511,526 | \$ 1,198,786 |
| | ===== | ===== |

At December 30, 2002 one landlord reimbursement represented 27% of total reimbursements due from landlords.

4. PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

Property, equipment and leasehold improvements consist of the following:

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|--|----------------------|----------------------|
| | ----- | ----- |
| Leasehold improvements | \$ 36,297,351 | \$ 23,216,827 |
| Furniture and fixtures | 9,499,929 | 6,279,777 |
| Restaurant equipment | 13,000,904 | 6,455,154 |
| Computer and telephone equipment . | 7,962,204 | 5,600,702 |
| Construction in progress | 1,063,823 | 181,252 |
| | ----- | ----- |
| | 67,824,211 | 41,733,712 |
| Less: accumulated depreciation and amortization | (22,068,892) | (16,226,517) |
| | ----- | ----- |
| | \$ 45,755,319 | \$ 25,507,195 |
| | ===== | ===== |

Depreciation and amortization expense for fiscal years 2002, 2001 and 2000 was \$5,851,207, \$6,680,585 and \$6,131,888, respectively.

5. INTANGIBLE ASSETS

Effective January 1, 2002, the Company adopted SFAS No. 141, "Business Combinations", and SFAS No. 142, "Goodwill and Other Intangible Assets". These statements established financial accounting and reporting standards for acquired goodwill and other intangible assets. Specifically, the standards address how intangible assets should be accounted for both at the time of acquisition and after they have been recognized in the financial statements. The provisions of SFAS 141 apply to all business combinations initiated after June 30, 2001. In accordance with SFAS 142, intangible assets, included purchased goodwill, must be evaluated for impairment. Those intangible assets that will continue to be classified as goodwill or as other intangibles with indefinite lives are no longer amortized. Finite lived intangibles will continue to be amortized over their estimated useful lives. The adoption of these standards did not have a material impact on the Company's financial statements, principally because the Company's significant business combination, which took place in fiscal 1999, was accounted for under the pooling-of-interests method of accounting in which no goodwill was recorded. The Company's intangibles consist of expenditures associated with obtaining liquor licenses, trademarks and logos. These identifiable intangibles have indefinite lives and, accordingly, are no longer being amortized effective January 1, 2002 upon adoption of this Statement.

In accordance with SFAS 142, the effect of this change is reflected prospectively. The following table reflects consolidated results of operations adjusted as though the adoption of SFAS 141 and 142 occurred as of January 2, 2001:

| | YEAR ENDED | | |
|---|----------------------|----------------------|--------------------|
| | DECEMBER 30, 2002 | DECEMBER 31, 2001 | JANUARY 1, 2001 |
| | ----- | ----- | ----- |
| Net loss: | | | |
| As reported | \$(20,871,051) | \$(35,423,343) | \$(23,230,027) |
| Indefinite-lived intangibles amortization | -- | 9,400 | 8,400 |
| | ----- | ----- | ----- |
| As adjusted | \$(20,871,051) | \$(35,413,943) | \$(23,238,427) |
| | ===== | ===== | ===== |

Intangible assets consist of the following:

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|-----------------|----------------------|----------------------|
| | ----- | ----- |
| Liquor Licenses | \$ 903,806 | \$ 527,679 |
| Trademarks | 459,339 | 443,941 |
| | ----- | ----- |
| | \$1,363,145 | \$ 971,620 |
| | ===== | ===== |

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6. ACCRUED LIABILITIES

Accrued liabilities consist of the following:

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|--|----------------------|----------------------|
| | ----- | ----- |
| Payroll and related benefits and taxes | \$1,521,208 | \$2,043,941 |
| Professional and legal costs | 436,993 | 188,581 |
| Taxes payable | 825,331 | 473,022 |
| Other | 3,138,876 | 2,246,265 |
| | ----- | ----- |
| | \$5,922,408 | \$4,951,809 |
| | ===== | ===== |

7. LONG-TERM DEBT

NOTES PAYABLE

The Company maintains a credit facility in the original amount of \$3 million under a Master Loan and Security Agreement dated October 28, 1999 (the "Equipment Loan Credit Facility"). The proceeds are required to be used for the purchases of equipment. Borrowings are secured by the equipment purchased. Each borrowing under the Equipment Loan Credit Facility is payable over 36 months and the interest rate is determined at the time of the borrowing. Warrants to purchase shares of common stock were issued in connection with the Credit Facility. The warrants entitle the holder to acquire 8,068 shares of the Company's common stock for \$14.875 per share. As of December 30, 2002, there were two notes payable outstanding under the Equipment Loan Credit Facility. The note payable due September 1, 2003 requires monthly payments of \$35,949, which commenced in October 2000, and accrues interest at a rate of 9.10% per annum. The note payable due December 1, 2003 requires monthly payments of \$58,361, which commenced in December 2001, and accrues interest at a rate of 8.50% per annum.

In addition to the monthly payments, the Company is required to pay loan fees of \$113,738 and \$186,158, respectively, which are due September 1, 2003 and December 1, 2003, respectively. The Company is amortizing these loan fees as additional interest expense over the term of the notes.

In addition to the credit facility, the Company has an outstanding note payable of approximately \$130,000. The note is due March 2007 and requires monthly payments of \$3,097, which commenced in May 1998, and accrues interest at a rate of 10% per year.

In 2001 the Company entered into a settlement agreement involving a trademark dispute. Under that agreement, the Company is obligated to make annual payments of \$25,000 per year through 2011. The present value of those future payments is included in Notes Payable on the accompanying balance sheets.

SENIOR SUBORDINATED DEBT

In November 2001, the Company issued approximately \$9 million of senior subordinated notes along with detachable warrants. The notes bore interest at

13% per annum, compounded quarterly and payable in arrears, and were subject to a mandatory prepayment at the election of the Company or the holders at any time after the earliest of (i) a material change in ownership, as defined, (ii) a merger or sale of substantially all of the Company's assets, (iii) a substantial change in corporate structure, as defined, or (iv) a default by the Company, as defined. The notes were repaid in December 2002 in connection with the Company's initial public offering of its common stock. (see note 11) The warrants are exercisable at \$.01 per common share and are exercisable for a period of 5 years from the date of issuance. The fair value ascribed to the warrants was \$1,079,808. The value assigned to the warrants was being recognized as interest expense over the term of the notes. Upon the repayment of the notes in December 2002 the Company recorded a charge of approximately \$0.5 million to write off the unamortized portion of the fair value ascribed to the warrants. This amount is classified as loss on early extinguishment of debt in the accompanying Consolidated Statement of Operations.

SENIOR SECURED DEBT

In August and November 2002, the Company entered into Senior Secured Note and Warrant Purchase Agreements with certain of our existing shareholders and members of our board of directors. These agreements provided the Company with a credit facility of up to \$25.0 million available for general corporate purposes. The facility allowed the Company to draw down funds from time to time until August 12, 2003. Each draw down was evidenced by a senior secured note bearing interest at 12% per annum. During 2002 the Company issued \$9.5 million of 12% senior secured notes pursuant to this credit facility. These notes ranked senior to all of the Company's other funded indebtedness and were secured by all of the Company's tangible and intangible property, other than equipment pledged to secure the Company's equipment loan credit facility and its capitalized lease obligations. (see Note 8). Interest on the notes accrues and was payable together with principal upon maturity. All notes issued pursuant to these agreements matured, and the credit facility terminated, upon the consummation of the Company's Initial Public Offering. (see Note 11).

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In connection with the Senior Secured Note and Warrant Purchase Agreements, the Company issued warrants to purchase an aggregate of 2,070,004 shares of its common stock, at an exercise price of \$6.00 per share, pro rata to the parties to the agreement. Each warrant issued pursuant to the Senior Secured Note and Warrant Purchase Agreements has a five year term and may not be exercised until after one year from the date of issuance. The fair value ascribed to the warrants was \$4,840,465. The value assigned to the warrants was being recognized as interest expense over the term of the notes. Upon the repayment of the notes in December 2002 the Company recorded a charge of approximately \$4.5 million to write off the unamortized portion of the fair value ascribed to the warrants. This amount is classified as loss on early extinguishments of debt in the accompanying Consolidated Statement of Operations.

Maturities of long-term debt during the next five fiscal years and thereafter are as follows (As of December 30, 2002)

| | |
|--------------------------|--------------|
| 2003 | \$ 1,280,432 |
| 2004 | 41,434 |
| 2005 | 45,438 |
| 2006 | 49,836 |
| 2007 | 29,139 |
| Thereafter | 82,803 |
| | ----- |
| | \$ 1,529,082 |
| Less: Current maturities | (1,280,432) |
| | ----- |
| Long-term debt, net | \$ 248,650 |

8. CAPITAL LEASE OBLIGATIONS

At December 30, 2002, the Company is obligated under capital leases for certain restaurant equipment with an original cost of \$2,019,144. The leases expire at various dates through 2004. The following is a schedule of future minimum lease payments for capital leases as of December 30, 2002:

| | |
|---|-----------|
| 2003 | 122,563 |
| 2004 | 2,917 |
| Total lease payments | 125,480 |
| Less: amount representing interest | (6,055) |
| | ----- |
| Present value of net capital lease payments | 119,425 |
| Less: current portion | (116,940) |
| | ----- |
| Long-term portion | 2,485 |

9. INCOME TAXES

Significant components of the Company's deferred tax assets are as follows:

| | DECEMBER 30, 2002 | DECEMBER 31, 2001 |
|---|----------------------|----------------------|
| | ----- | ----- |
| Deferred tax assets: | | |
| Net operating loss carryforward | \$ 30,851,620 | \$ 21,239,769 |
| Deferred compensation | 1,669,651 | 1,669,651 |
| Depreciation expense and Impairment of Long-Lived Assets | 8,837,192 | 10,139,945 |
| Lease termination accrual | 2,451,461 | 3,034,619 |
| Allowance for doubtful accounts | 85,888 | 81,343 |
| Contractual lease increases | 1,403,914 | 1,113,171 |
| Accrued expenses | 492,299 | 238,190 |
| Other assets | 6,973 | 6,973 |
| | ----- | ----- |
| Total deferred tax assets | 45,798,998 | 37,523,661 |
| Valuation allowance | (45,798,998) | (37,523,661) |
| | ----- | ----- |
| Net deferred taxes | \$ -- | \$ -- |
| | ===== | ===== |

As of December 30, 2002, the Company has Federal net operating tax loss carryforwards of approximately \$83.4 million, which if not used, will expire through 2022. Utilization of the net operating losses may be subject to an annual limitation due to the change in ownership provisions of the Internal Revenue Code and similar state provisions. These annual limitations may result in the expiration of these net operating losses before their utilization. The Company has recorded a valuation allowance to offset the benefit associated with the deferred tax assets noted above due to the uncertainty of realizing the related benefits.

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10. CAPITALIZATION

CHANGE IN AUTHORIZED NUMBER OF SHARES

On November 22, 2002, the Company amended its Certificate of Incorporation to increase its authorized capital stock from 45,673,947 shares to 140,000,000, of which 100,000,000 shares will be Common Stock and 40,000,000 shares will be Preferred Stock.

REDEEMABLE SECURITIES

Series A Convertible Preferred Stock

In connection with the Series A Convertible Preferred Stock Purchase Agreement (the "Series A Purchase Agreement") dated April 28, 1998, the Company issued 1,142,124 shares of Series A Convertible Preferred Stock (the "Series A") for approximately \$14 million. The proceeds were reduced by \$351,800 for closing costs. The Series A Purchase Agreement provides for the issuance of one warrant to purchase one share of the Company's Common Stock at an exercise price of \$.01 (the "Warrants") for each 13 shares of Series A issued. The Warrants are exercisable for a period of ten years from the date of issuance and will expire on the earlier of (i) if required by the Company, the completion of a qualified public offering, as defined or (ii) the redemption of all of the Series A. The

Company allocated \$997,818 of the proceeds to the warrants to recognize their fair value. In November 1999, the Company issued an additional 4,082 shares of Series A for \$50,000, based on the same terms and conditions. No additional warrants were issued.

Series B Convertible Preferred Stock

Contemporaneously with the Series A Purchase Agreement, the Company issued 261,521 shares of Series B Convertible Preferred Stock (the "Series B Executive Stock") to certain officers of the Company in exchange for promissory notes aggregating \$2,974,804 pursuant to the terms of an Executive Stock Agreement the "Executive Agreement". The promissory notes accrue interest at an annual rate of 5.75% and mature in April 2003. These notes are included in stockholders' equity as notes receivable from stockholders. The Executive Agreement provided that shares of Series B vest at the rate of 25% per year or immediately upon a qualified public offering. During 1999, the officers converted the Series B Executive Stock into an equal number of shares of common stock subject to the same vesting provisions. In the event that the Company no longer employs the stockholders, the Executive Agreement provides for certain Company stock repurchases and/or stockholder put options.

Series C Convertible Preferred Stock

On March 1, 1999, the Company entered into a bridge financing arrangement (the "Agreement") pursuant to which it issued Subordinated Promissory Notes (the "Promissory Notes") aggregating \$1.5 million maturing on July 28, 1999. The Promissory Notes bear interest at an escalating rate (ranging from 12% to 18%) based on the number of days from the issuance of the Promissory Notes. Warrants (the "Bridge Warrants") to purchase shares of Series A Convertible Preferred Stock were issued in connection with the Promissory Notes. The Bridge Warrants entitle the holder to acquire a certain amount of the Company's Series A Convertible Preferred Stock for a price to be determined at the time of the Company's next financing. The amount of preferred stock to be issued would be based upon a price per share based on certain provisions in the Agreement. At the time of the Company's March 30, 1999 financing, the terms of the Bridge Warrants were specified to be for the purchase of 25,208 shares of Series A Convertible Preferred Stock at \$14.875 per share. The fair value of the Bridge Warrants was determined using the Black-Scholes option-pricing model and totaled \$88,230. On March 30, 1999, the Promissory Notes were exchanged for 100,840 shares of Series C Convertible Preferred Stock. The value assigned to the Bridge Warrants was recognized as interest expense and the carrying amount of the Promissory Notes were converted to Series C Convertible Preferred Stock upon conversion of the Promissory Notes.

On March 30, 1999, in connection with the 1999 Series C Preferred Stock Purchase Agreement (the "1999 Series C Purchase Agreement"), the Company issued 1,343,668 shares of Series C convertible preferred stock ("1999 Series C"), par value \$0.01 per share and received proceeds of approximately \$20 million (including the exchange for the Company's Promissory Notes aggregating \$1.5 million; described above). The proceeds were reduced by \$128,411 for closing costs. During 1999, 74,687 shares of Series C were converted to an equal number of shares of Common Stock.

During fiscal 2000, the Company issued an aggregate of 1,426,936 shares of Series C, par value \$.01 at \$15.75 per share, ("2000 Series C"). The Company received aggregate proceeds of approximately \$22.4 million in April 2000, June 2000, and September 2000. The terms of the issuance of 2000 Series C are the same as the March 1999 issuance of 1999 Series C, with the exception that the liquidation preference of the 2000 Series C is \$15.75 per share.

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During fiscal 2001, the Company issued 1,465,672 shares of Series C convertible preferred stock, par value \$.01. ("2001 Series C"). The Company received proceeds of approximately \$23.9 million, net of issuance costs. The terms of the issuance of 2001 Series C are the same as the previous issuances of Series C convertible preferred stock, with the exception that the liquidation preference is \$16.625 per share.

During fiscal 2002, the Company issued 1,159,956 shares of Series C

convertible preferred stock, par value \$.01. ("2002 Series C"). The Company received proceeds of approximately \$19.2 million, net of issuance costs. The terms of the issuance of 2002 Series C are the same as the previous issuances of Series C convertible preferred stock, with the exception that the liquidation preference is \$16.625 per share.

In connection with the Company's initial public offering of its common stock in November 2002, (see note 11) all outstanding shares of Series A and Series C Convertible Preferred Stock were converted to common stock, on a one for one basis. Upon the conversion any unamortized issuance costs were charged to Additional Paid in Capital.

COMMON STOCK PURCHASE RIGHTS

On November 18, 2002, the Board of Directors resolved to adopt a Shareholders' Rights Plan "Rights Plan". At that time the Board declared a dividend distribution of one right ("Right") for each share of common stock, \$.01 par value per share of the Corporation on November 25, 2002, to shareholders of record on November 25, 2002. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share of preferred stock of the Company designated as Series D Preferred Stock at a price of \$100 per one one-hundredth of a share. The Board of Directors also resolved to amend its certificate of incorporation, to designate 1,000,000 shares of Series D Preferred Stock for such issuance.

Each holder of a share of the Company's common stock has the right to purchase from the Company one one-hundredth (1/100) of a share of the Company's Series D preferred stock, \$.01 par value per share, at a price of \$100 per one one-hundredth of a Series D preferred share. The exercise price and the number of Series D preferred shares issuable upon exercise are subject to adjustments from time to time to prevent dilution. The share purchase rights are not exercisable until the earlier to occur of (1) 10 days following a public announcement that a person or group of affiliated or associated persons, referred to as an acquiring person, have acquired beneficial ownership of 15% or more of the Company's outstanding voting common stock or (2) 10 business days following the commencement of, or announcement of an intention to make, a tender offer or exchange offer which would result in an acquiring person beneficially owning 15% or more of the Company's outstanding voting shares of common stock.

If the Company is acquired in a merger or other business combination, or if more than 50% of the Company's consolidated assets or earning power is sold after a person or group has become an acquiring person, proper provision will be made so that each holder of a share purchase right -- other than share purchase rights beneficially owned by the acquiring person, which will thereafter be void -- will have the right to receive, upon exercise of the share purchase right at the then current exercise price, the number of shares of common stock of the acquiring company which at the time of the transaction have a market value of two times the exercise price. If any person or group becomes an acquiring person, proper provision shall be made so that each holder of a share purchase right -- other than share purchase rights beneficially owned by the acquiring person, which will thereafter be void -- will have the right to receive upon exercise of the share purchase right at the then current exercise price, the number of shares of Series D preferred stock with a market value at the time of the transaction equal to two times the exercise price.

Series D preferred shares issuable upon exercise of the share purchase rights will not be redeemable. Each Series D preferred share will be entitled to a minimum preferential dividend payment of \$.10 per share and will be entitled to an aggregate dividend of 100 times the cash dividend declared per share of common stock. In the event the Company is liquidated, the holders of the Series D preferred shares will be entitled to receive a payment in an amount equal to the greater of \$100 per one one-hundredth share or 100 times the payment made per share of common stock. Each Series D preferred share will have 100 votes, voting together with the shares of common stock. Finally, in the event of any merger, consolidation or other transaction in which shares of common stock are exchanged, each Series D preferred share will be entitled to receive 100 times the amount received per share of common stock. These rights are protected by customary antidilution provisions.

Before the date the share purchase rights are exercisable, the share purchase Rights may not be detached or transferred separately from the common stock. The share purchase Rights will expire in 2012, or, if the share purchase Rights become exercisable before 2012, at the close of business on the 90th day following such date the share purchase Right become exercisable, provided that the Company's board of directors does not extend or otherwise modify the Right.

At any time on or prior to 10 business days following the time an acquiring person acquires beneficial ownership of 15% or more of the Company's outstanding voting common stock, the Company's board of directors may redeem the share purchase Rights in whole, but not in part, at a price of \$.01 per share purchase Right. Immediately upon any share purchase Rights redemption, the exercise Rights terminate, and the holders will only be entitled to receive the redemption price.

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STOCK PURCHASE WARRANTS

Warrants to purchase 2,212,636 shares of the Company's common stock were outstanding as of December 30, 2002; 106,827 of which have an exercise price of \$.01 per share and expire from November 2006 to April 2008; 2,070,004 of which have an exercise price of \$6.00 per share, become exercisable after August 16, 2003 and expire from August 2007 to November 2007; 33,279 of which have an exercise price of \$14.88 per share and expire in November 2007; and 2,526 of which have an exercise price of \$16.63 per share and expire in December 2006. All of these warrants provide for anti-dilution adjustments in the event of stock splits, stock dividends, sales by the Company of its stock at, or issuance of options or warrants containing an exercise price of, less than fair market value or merger, consolidation, recapitalization or similar transactions. All of the holders of these warrants are entitled to participate in any dividends declared upon shares of the Company's common stock (other than dividends payable solely in shares of common stock) as if these holders had fully exercised such warrants.

11. INITIAL PUBLIC OFFERING

On November 22, 2002, the Company completed an initial public offering of its common stock, issuing 5,555,556 shares at \$7.00 per share. Concurrently, all outstanding shares of Series A and Series C preferred stock were converted to common stock, and all of the Company's outstanding obligations under its Senior Subordinated and Senior Secured Debt agreements were repaid, and the Company's Senior Secured Credit Facility was terminated (See Note 7). In connection with the repayment of the Senior Subordinated and Senior Secured debt, and the termination of the Senior Secured credit facility, all unaccreted debt discount, and unamortized deferred financing charges were written off, and a loss on early extinguishment of debt of approximately \$4.9 million was recorded. The total net proceeds of the offering, net of offering expenses of approximately \$6.1 million including underwriter's discount were approximately \$32.8 million.

12. STOCK OPTION PLANS

The Company has several stock option plans that provide for the granting of incentive and nonqualified stock options to participants, employees and non-employee directors, to acquire Common Stock.

There are 6,350,126 shares of Common Stock reserved for issuance under the Plans. Grants have been made at fair market value (as determined by the Board of Directors prior to the Company's initial public offering) and generally vest over a period of five years and expire ten years from the date of the grant. The Board of Directors approves vesting terms on an individual basis. The Company accounts for stock option grants in accordance with APB Opinion No. 25, "Accounting for Stock Issued to Employees."

Activity with respect to the Company's stock option plans for the years ended January 1, 2001, December 31, 2001 and December 30, 2002 was as follows:

| | NUMBER OF OPTIONS | RANGE OF EXERCISE PRICE | WEIGHTED AVERAGE EXERCISE PRICE |
|---------------------------------|----------------------|----------------------------|------------------------------------|
| | ----- | ----- | ----- |
| Balance as of January 3, 2000 . | 1,428,609 | \$1.56 - 18.81 | \$ 8.18 |
| Granted | 818,803 | \$ 12.25 | \$ 12.25 |
| Exercised | (55) | \$ 10.94 | \$ 10.94 |
| Canceled/Expired | (143,192) | \$8.93 - 12.25 | \$ 11.00 |
| | ----- | | |
| Balance as of January 1, 2001 . | 2,104,165 | \$1.56 - 18.81 | \$ 9.62 |

| | | | | |
|---------------------------------|-----------|----------|----------|----------|
| Granted | 1,377,234 | | \$ 12.25 | \$ 12.25 |
| Exercised | (5,349) | \$5.30 - | \$ 12.25 | \$ 7.31 |
| Canceled/Expired | (210,445) | \$8.93 - | \$ 12.25 | \$ 11.93 |
| ----- | | | | |
| Balance as of December 31, 2001 | 3,265,605 | \$1.56 - | \$ 18.81 | \$ 10.59 |
| Granted | 501,518 | \$6.00 - | \$ 12.25 | \$ 10.40 |
| Exercised | (32,142) | | \$ 10.94 | \$ 10.94 |
| Canceled/Expired | (328,649) | \$6.11 - | \$ 12.25 | \$ 12.09 |
| ----- | | | | |
| Balance as of December 30, 2002 | 3,406,332 | \$1.56 - | \$ 18.81 | \$ 10.41 |
| ===== | | | | |

There were approximately 1.8 million, 1.5 million and 1.1 million options exercisable under the Plans as of December 30, 2002, December 31, 2001 and January 1, 2001, respectively.

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Summarized information about the Company's stock options outstanding and exercisable at December 30, 2002 is as follows:

| EXERCISE PRICE RANGE | OUTSTANDING | | | EXERCISABLE | |
|-------------------------|-------------|------------------------------|------------------|-------------|------------------|
| | OPTIONS | REMAINING AVERAGE LIFE | AVERAGE PRICE | OPTIONS | AVERAGE PRICE |
| \$1.56 | 171,234 | 3.6 years | \$ 1.56 | 171,234 | \$ 1.56 |
| \$5.30 - \$6.11 | 475,518 | 5.8 years | \$ 5.55 | 336,409 | \$ 5.33 |
| \$8.93 - \$12.25 | 2,702,436 | 7.4 years | \$ 11.71 | 1,251,116 | \$ 11.10 |
| \$14.88 - \$18.81 | 57,144 | 0.1 years | \$ 15.86 | 57,144 | \$ 15.86 |

13. DEFINED CONTRIBUTION PLAN

The Company has a 401(k) Plan (the "Plan") for all qualified employees. The Plan provides for a matching employer contribution of twenty-five percent of up to four percent of the employees' deferred savings. The employer contributions vest over five years. The deferred amount cannot exceed fifteen percent of an individual participant's compensation in any calendar year. The Company's contribution to the Plan was \$35,380, \$26,115 and \$21,635 for fiscal years 2002, 2001 and 2000, respectively.

14. COMMITMENTS AND CONTINGENCIES

COMMITMENTS

As of December 30, 2002 the Company is committed under lease agreements expiring through 2014 for occupancy of its retail restaurants (excluding leases for retail restaurants not yet opened as of December 30, 2002, which are disclosed separately below) and for office space at the following minimum annual rentals:

| | |
|------------|--------------|
| 2003 | \$12,082,924 |
| 2004 | 12,352,035 |
| 2005 | 12,520,043 |
| 2006 | 12,404,946 |
| 2007 | 12,260,853 |
| Thereafter | 44,154,542 |

Amounts shown are net of approximately \$2.5 million of sublease rental income under non-cancellable subleases. Rental expense for the fiscal years ended 2002, 2001 and 2000 totaled \$10,434,766, \$9,096,207 and \$6,184,680, respectively. Certain lease agreements have renewal options ranging from 3 years to 15 years. In addition, certain leases obligate the Company to pay additional rent if restaurant sales reach certain minimum levels (percentage rent). Amounts incurred under these additional rent provisions were \$217,075, \$168,451 and \$174,402 for fiscal years 2002, 2001 and 2000, respectively.

As of December 30, 2002, future minimum rental payments required under

non-cancelable operating leases for retail restaurants, which were not yet opened as of December 30, 2002, are as follows:

| | |
|------------|--------------|
| 2003 | \$ 1,660,839 |
| 2004 | 2,209,670 |
| 2005 | 2,322,144 |
| 2006 | 2,350,189 |
| 2007 | 2,405,282 |
| Thereafter | 13,521,350 |

Certain of the Company's lease agreements provide for scheduled rent increases during the lease term, or for rental payments commencing at a date other than the date of initial occupancy. In accordance with SFAS No. 13, "Accounting for Leases," rent expense is recognized on a straight-line basis over the term of the respective leases. The Company's obligation with respect to these scheduled rent increases has been presented as a long-term liability in other liabilities in the accompanying consolidated balance sheets.

As of December 30, 2002, the Company had outstanding approximately \$368,000 in standby letters of credit, which were given as security deposits for certain of the lease obligations. The letters of credit are fully secured by cash deposits or marketable securities held in accounts at the issuing banks. Such deposits are not available for withdrawal, amounted to approximately \$368,000 at December 30, 2002 and are included as a component of Intangible, Security Deposits and Other Assets in the accompanying consolidated balance sheet.

In fiscal 2000 and 2001, the Company recorded a provision of approximately \$477,000 and \$6,411,000 respectively, and in 2002 the Company recorded a credit of approximately \$1,165,000, relating to lease commitments for restaurants the Company has closed or is committed to close. During fiscal 2002, the Company made cash payments totaling approximately \$411,000 for those restaurants' leases.

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As of December 30, 2002, future minimum lease payments related to restaurants that have been closed or are committed to be closed is approximately \$12.6 million, with remaining lease terms ranging from 6 to 12 years.

Other liabilities in the accompanying consolidated balance sheet as of December 30, 2002 include \$6,625,570 in accrued lease termination costs (including a current portion of \$671,601) and \$3,794,354 in accrued contractual lease increases. Other liabilities as of December 31, 2001 include \$8,201,674 in accrued lease termination costs (including a current portion of \$1,678,880) and \$3,008,570 in accrued contractual lease increases.

PURCHASE COMMITMENT

During fiscal year 1999, the Company entered into an exclusive coffee supply agreement with an unrelated third party ("Supplier"). The agreement calls for minimum purchases, in terms of both quantity and price, to be made by the Company of coffee beans and related products. The agreement is in effect through December 2003 but may be terminated by the Company or the Supplier provided 180 days notice is given in advance of such termination. The Company is obligated to purchase approximately \$1.1 million of roasted coffee between now and fiscal year end 2003 under the terms of that agreement.

During fiscal year 2002, the Company entered into a beverage marketing agreement with the Coca-Cola Company. Under the agreement, the Company is obligated to purchase approximately 2.0 million gallons of fountain syrups at the then-current annually published national chain account prices.

During 2002, the Company received \$600,000 in allowances from food and beverage suppliers, which is being recognized ratably based on actual product purchased. The Company may receive additional amounts if certain purchase levels are achieved.

SELF-INSURANCE

The Company has a self-insured group health insurance plan. The Company is responsible for all covered claims to a maximum liability of \$50,000 per participant during a plan year. Benefits paid in excess of \$50,000 are reimbursed to the plan under the Company's stop loss policy. In addition, the Company also has an aggregate stop loss policy whereby the Company's liability for total claims submitted cannot exceed a pre-determined dollar factor based upon, among other things, past years' claims experience, actual claims paid, the number of plan participants and monthly accumulated aggregate deductibles. Group health insurance expense for the fiscal years 2002, 2001 and 2000 was approximately \$1,108,000, \$968,000 and \$800,000, respectively.

LITIGATION

From time to time, the Company is a party to litigation arising in the normal course of its business operations. In the opinion of management and counsel, it is not anticipated that the settlement or resolution of any such matters will have a material adverse impact on the Company's financial condition, liquidity or results of operations.

The Company has been named as a defendant in several purported class action complaints (see Note 17).

EMPLOYMENT AGREEMENTS

During fiscal 2002, the Company entered into employment agreements with certain officers and employees. The term of each agreement is for three years with each agreement expiring in 2005. The Company's aggregate remaining obligations under these employment agreements was approximately \$3.4 million as of December 30, 2002.

15. RELATED PARTY TRANSACTIONS

The Company incurs fees with a legal firm, a partner of which is an owner of less than 0.5% of the Company's equity securities, and is also the father of the Company's Chief Executive Officer. This firm provides legal services on behalf of the Company, which amounted to approximately \$575,000, \$71,000 and \$41,000 for the fiscal years 2002, 2001 and 2000. Furthermore, the Company engages a public relations firm that is partially owned by a family member of a founding shareholder of the Company. This firm provides public relations services to the Company, which amounted to approximately \$235,000, \$146,000 and \$67,000 for fiscal years 2002, 2001 and 2000, respectively. Management of the Company believes that these related party transactions were effected on a basis that approximates fair market value. Subsequent to December 30, 2002 the relationship with the public relations firm has been terminated.

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16. EFFECT OF THE EVENTS OF SEPTEMBER 11, 2001

As a result of the events of September 11, 2001, a Company owned restaurant location and a kiosk that had operated in the World Trade Center in New York City were destroyed. Additionally, due to its proximity to the World Trade Center, another restaurant in the World Financial Center was closed after the attacks and was reopened in September 2002. The Company and its insurer, and its insurance broker are in disagreement over the amount of insurance coverage for these locations. Consequently, approximately \$1.3 million has been included in the 2001 provisions for asset impairments and disposals. The loss is net of approximately \$1.0 million received or recoverable by the Company from property and casualty insurance. During fiscal 2002 the Company received \$320,000 for business interruption insurance claims which has been recorded as other income in the accompanying statement of operations. Any future amounts received will be recognized in income when received, or earlier, if the Company is notified of the amount of claims approved by its insurers.

17. SUBSEQUENT EVENTS

During the first quarter of Fiscal 2003, The Company announced its intention to create a franchising and area development program. While management expects that Company owned stores will always be an important part of our new

store growth, it believes that incorporating a franchising and area developer model into the Company's strategy will position the Company to maximize the market potential for the Cosi brand and concept consistent with our available capital and thus maximize shareholder value. The Company also announced that its Chairman and CEO had resigned, and that it was slowing the growth of its company owned stores, and that it expected to record a one-time charge of approximately \$1.7 million in the first quarter of 2003 to provide for severance costs related to the executive and general and administrative staff reductions.

Subsequent to making that announcement on February 3, 2003, the board determined that additional changes to executive management are appropriate, and now expect that the charge in the first quarter of 2003 to provide for severance costs related to the executive and general and administrative staff reductions will be approximately \$3.7 million.

In addition, during the first quarter of 2003, the Company expects to record additional charges of \$2.1 million to write down assets at three restaurant locations that were closed during the first quarter of 2003, and on 25 locations which were in our development pipeline, but which have been cancelled.

During the first quarter of 2003, the Company obtained a \$3 million line of credit (the "Loan") from a bank to be used for general corporate purposes. The Loan bears interest at 75 basis points over the bank's prime lending rate and is secured by all of our tangible and intangible property, other than equipment pledged to secure our equipment loan credit facility (see page F-12). The Loan matures in May 2004. We have agreed to pay the bank fees and expenses of approximately \$22,000 upon funding of the Loan. The Loan is guaranteed, jointly and severally, by Eric J. Gleacher, one of our Directors; Charles G. Phillips, one of our shareholders an entity related to ZAM Holdings, LP, our largest shareholder (together, "the Guarantors"). At any time during the term of the Loan, the Guarantors have the right to require the bank to assign the Loan to the Guarantors. If the Loan has not been assigned by the bank to the Guarantors, and has not been paid in full by August 15, 2003, then the bank is required to assign the Loan to the Guarantors. If approved by our shareholders, upon assignment of the loan to the Guarantors, the loan will be convertible into shares of our common stock, under certain circumstances, at the option of the Guarantors, at a conversion price equal to the lesser of \$1.50 or 85% of the weighted average price per share of our common stock for the fifteen trading day period ending three trading days before the conversion date.

The Company currently anticipate making a rights offering (the "Offering") to existing shareholders to raise approximately \$12 million. The Company currently anticipates that the Offering will give existing shareholders the right to purchase shares of common stock at a purchase price per share equal to the lesser of \$1.50 or 85% of the weighted average price per share of common stock for the fifteen trading day period ending three trading days before the expiration date of the Offering. A group of shareholders, including the Guarantors, have indicated that they will commit to purchase shares in the offering, or provide other funding support, in the amount of \$8.5 million of the \$12 million offering. This shareholder group's commitment to purchase shares in the Offering will be subject to shareholder approval of the equity conversion feature of the Loan.

The terms of the Loan and the Offering were reviewed and approved by a committee of our board comprised of disinterested directors.

The Company intends to file a registration statement with the Securities and Exchange Commission relating to the Offering. The timing and completion of the Offering is subject to market conditions and other contingencies. There can be no assurance that the Company will be able to complete the Offering on terms acceptable to the Company or at all. The Offering will only be made pursuant to a prospectus filed with the Securities and Exchange Commission.

On March 31, 2003 Mr. William D. Forrest joined our Board of Directors, and was elected Chairman of the Board. Mr. Forrest is a Managing Director at Gleacher Partners, L.L.C. Eric Gleacher, who was previously Chairman of the Board, will remain a Director. The Company also announced that Jay Wainwright will as interim Chief Executive Officer until a successor is hired, and Nick Marsh will be stepping down as Chief Operating Officer, and will be leaving the Company.

On February 5, 2003, a purported shareholder class action complaint was filed in the United States District Court for the Southern District of New York (the "Court"), alleging that the Company and various of its officers and

directors and the Underwriter violated Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 by misstating, and by failing to disclose, certain financial and other business information (Sheel Mohnot v. Cosi, Inc., et al., No. 03 CV 812). At least six additional class action complaints with similar allegations were later filed (collectively, the "Securities Act Litigation"). The Securities Act Litigation is brought on behalf of a purported class of purchasers of the Company's stock allegedly traceable to its November 22, 2002 initial public offering ("IPO"). The complaints in the Securities Act Litigation generally claim that at the time of the IPO, the Company's offering materials failed to disclose that the funds raised through the IPO would be insufficient to implement the Company's expansion plan; that it was improbable that the Company would be able to open 53 to 59 new stores in 2003; that at the time of the IPO, Cosi had negative working capital and therefore did not have available working capital to repay certain debts; and that the principal purpose for going forward with the IPO was to repay certain existing shareholders and members of the Board of Directors for certain debts and to operate the Company's existing restaurants.

On February 21, 2003, a purported shareholder class action complaint was filed in the Court alleging that the Company and certain of its officers and directors violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10-b promulgated thereunder, by issuing a series of material misrepresentations to the market between November 22, 2002 and February 4, 2003 (the "Class Period") (Georgette Pacia v. Cosi, Inc. et al., No. 03-CV-1156) (the "Securities Exchange Act Litigation"). The emphasis of the allegations in the complaint in the Securities Exchange Act Litigation is that the defendants knowingly or recklessly caused misrepresentations and omissions to be made regarding the Company's operating condition and future business prospects. Among other things, plaintiffs in the Securities Exchange Act Litigation allege that defendants failed to disclose that the funds raised by the IPO would be insufficient to implement the Company's expansion plan; that at the time of the IPO, defendants should have known that the costs of expansion would be greater than the cash available to the Company, making it improbable that the Company would be able to successfully continue to open new stores at the pace announced by the Company; and that defendants failed to disclose that a reduction in the offering price of the IPO would result in the Company being forced to abandon its growth strategy.

The plaintiffs in the Securities Act Litigation and the Securities Exchange Act Litigation (the "Litigations") generally seek to recover compensatory damages, expert fees, attorneys' fees, costs of Court and pre- and post-judgment interest. The Underwriter is seeking indemnification from the Company for any damages assessed against it in the Securities Act Litigation. The Litigations are at a preliminary stage, and the Company expects that these related lawsuits will be consolidated into a single action. The Company believes that it has meritorious defenses to these claims, and intends to vigorously defend against them.

18. SELECTED QUARTERLY OPERATING DATA (UNAUDITED)

The following table contains selected unaudited statement of operations information for each quarter of fiscal 2002 and 2001. The Company believes that the following information reflects all normal recurring adjustments necessary for a fair presentation of the information for the periods presented. The operating results for any quarter are not necessarily indicative of results for any future period. Unaudited quarterly results were as follows:

| | 2001 | | | | 2002 | | | |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 |
| (IN THOUSANDS, EXCEPT PER SHARE DATA) | | | | | | | | |
| Net sales | \$ 15,855.9 | \$ 18,463.8 | \$ 18,217.0 | \$ 17,647.4 | \$ 18,052.1 | \$ 20,919.9 | \$ 22,085.5 | \$ 23,366.7 |
| Cost of goods sold | 4,205.6 | 4,871.7 | 4,817.3 | 4,897.1 | 4,853.4 | 5,645.6 | 5,861.5 | 6,337.0 |
| Restaurant operating expenses | 9,976.1 | 11,586.2 | 11,984.7 | 11,567.5 | 11,127.0 | 12,366.5 | 13,160.6 | 14,198.6 |
| Total costs of sales | 14,181.7 | 16,457.9 | 16,802.0 | 16,464.6 | 15,980.4 | 18,012.1 | 19,022.1 | 20,535.6 |
| General and administrative expenses | 3,735.2 | 4,534.5 | 4,528.4 | 5,563.4 | 4,620.3 | 4,227.6 | 4,051.7 | 4,912.1 |
| Depreciation and amortization | 2,021.9 | 2,126.9 | 1,243.0 | 1,298.2 | 1,210.3 | 1,335.5 | 1,602.2 | 1,703.2 |
| Restaurant pre-opening expenses | 253.6 | 320.0 | 407.9 | 457.3 | 111.4 | 286.1 | 542.3 | 905.3 |
| Provision for losses on asset impairments and disposals | 90.4 | -- | 1,561.9 | 6,834.0 | -- | 7.3 | -- | 1,049.2 |
| Lease termination costs | 578.3 | -- | 1,647.1 | 4,185.3 | -- | -- | -- | (1,165.0) |
| Operating income (loss) | (5,005.2) | (4,975.5) | (7,973.3) | (17,155.4) | (3,870.3) | (2,948.7) | (3,132.8) | (4,573.7) |
| Interest income | 60.8 | 105.9 | 146.9 | 26.9 | 29.9 | 32.4 | 20.0 | 16.0 |
| Interest expense | (75.5) | (92.1) | (84.0) | (276.0) | (301.4) | (245.6) | (232.5) | (413.1) |
| Amortization of deferred financing cost & debt discount | (22.9) | (22.9) | (22.9) | (58.1) | (86.4) | (62.4) | (230.5) | (169.7) |
| Loss on Early Extinguishment of Debt | -- | -- | -- | -- | -- | -- | -- | (5,083.2) |
| Other income (expense) | -- | -- | -- | -- | -- | -- | 380.4 | .5 |
| Net income (loss) | (5,042.8) | (4,984.6) | (7,933.3) | (17,462.6) | (4,228.2) | (3,224.3) | (3,195.4) | (10,223.2) |
| Preferred stock dividends | (1,312.7) | (1,639.4) | (1,836.0) | (1,890.0) | (1,960.5) | (2,383.4) | (2,432.8) | (1,416.9) |
| Net income (loss) attributable to common stockholders | (6,355.5) | (6,624.0) | (9,769.3) | (19,352.6) | (6,188.7) | (5,607.7) | (5,628.2) | (11,640.1) |
| Net income (loss) per common share | (1.41) | (1.47) | (2.17) | (4.29) | (1.37) | (1.23) | (1.24) | (1.23) |
| Shares used in computing net loss per common share (in thousands) | 4,504 | 4,505 | 4,508 | 4,511 | 4,527 | 4,544 | 4,545 | 9,434 |

REPORT OF INDEPENDENT AUDITORS ON SCHEDULE

To the Board of Directors
Cosi, Inc.

We have audited the consolidated financial statements of Cosi, Inc. as of December 30, 2002 and December 31, 2001, and for each of the three years in the period ended December 30, 2002, and have issued our report thereon dated February 19, 2003, except for Note 17 as to which the date is March 31, 2003. (included elsewhere in this Annual Report on Form 10K) Our audits also included the financial statement Schedule II -- Valuation and Qualifying Accounts included in this Annual Report on Form 10K. This schedule is the responsibility of the Company's management. Our responsibility is to express an opinion based

on our audits.

In our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

/s/ ERNST & YOUNG LLP

New York, New York
February 19, 2003

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SCHEDULE II

COSI, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
FOR THE THREE YEARS ENDING DECEMBER 30, 2002

| DESCRIPTION | BALANCE AT BEGINNING OF PERIOD | CHARGED TO COSTS AND EXPENSES | CHARGED TO OTHER ACCOUNTS (DESCRIBE) | DEDUCTIONS (DESCRIBE) | BALANCE AT END OF PERIOD |
|---------------------------------|--------------------------------------|-------------------------------------|--|--------------------------|-----------------------------|
| ----- | ----- | ----- | ----- | ----- | ----- |
| | | | | (IN \$000S) | |
| JANUARY 1, 2001 | | | | | |
| Allowance for doubtful accounts | | | | | |
| receivable | 306.9 | 88.1 | -- | (28.0) (a) | 367.0 |
| Lease termination reserve | 3,437.1 | 477.3 | -- | (914.4) (b) | 3,000.0 |
| Accrued merger and integration | | | | | |
| costs | 639.3 | 55.7 | -- | (695.0) (c) | -- |
| DECEMBER 31, 2001 | | | | | |
| Allowance for doubtful accounts | | | | | |
| receivable | 367.0 | 3.6 | -- | (150.8) (a) | 219.8 |
| Lease termination reserve | 3,000.0 | 6,410.8 | -- | (1,209.1) (b) | 8,201.7 |
| DECEMBER 30, 2002 | | | | | |
| Allowance for doubtful accounts | | | | | |
| receivable | 219.8 | 27.0 | -- | (14.7) (a) | 232.1 |
| Lease termination reserve | 8,201.7 | (1,165.0) | -- | (411.1) (b) | 6,625.6 |

NOTES:

- (a) Write-off of uncollectable accounts.
- (b) Payments to landlords and others for leases on closed stores.
- (c) Payments of merger and integration costs.

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ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

a. Exhibits

| EXHIBIT NUMBER | DESCRIPTION OF EXHIBIT |
|-------------------|---|
| ----- | ----- |
| 2.1# -- | Merger Agreement by and among Xando, Incorporated, Xando Merger Corp. and Cosi Sandwich Bar, Inc., dated as of October 4, 1999. (Filed as exhibit 2.1 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 3.1 -- | Amended and Restated Certificate of Incorporation of Cosi, Inc. |
| 3.2 -- | Amended and Restated By-Laws of Cosi, Inc. |
| 4.1# -- | Form of Certificate of Common Stock. (Filed as exhibit 4.1 to the Company's Registration Statement on Form S-1, file #333-86390) |
| 4.2 -- | Rights Agreement between Cosi, Inc. and American |

- 4.3# -- Stock Transfer and Trust Company as Rights Agent.
Amended and Restated Registration Agreement, dated as of
March 30, 1999. (Filed as exhibit 4.3 to the Company's
Registration Statement on Form S-1, file #333-86390)
- 10.1# -- Amended and Restated Cosi Stock Incentive Plan.
(Filed as exhibit 10.1 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.2# -- Cosi Employee Stock Purchase Plan. (Filed as exhibit 10.2 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.3# -- Cosi Non-Employee Director Stock Incentive Plan.
(Filed as exhibit 10.3 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.4# -- Cosi Sandwich Bar, Inc. Incentive Stock Option Plan
(Filed as exhibit 10.4 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.5.1# -- Employment Agreement between Cosi and Jay Wainwright,
effective as of January 1, 2002.. (Filed as exhibit 10.5.2 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.5.2# -- Employment Agreement between Cosi and Nick Marsh, effective
as of January 1, 2002..(Filed as exhibit 10.5.3 to the Company's
Registration Statement on Form S-1, file #333-86390)
- 10.5.3# -- Employment Agreement between Cosi and David Orwasher,
effective as of January 1, 2002.. (Filed as exhibit 10.5.4 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 10.6# -- Amended and Restated Distributor Service Agreement between
Cosi and Maines Paper & Food Service, Inc., dated as of
June 18, 2002.(1) . (Filed as exhibit 10.6 to the Company's
Registration Statement on Form S-1, file #333-86390)
- 10.7# -- Form of Senior Secured Note and Warrant Purchase Agreement
(Filed as exhibit 10.7 to
the Company's Registration Statement on Form S-1,
file #333-86390)
- 21.1# -- Subsidiaries of Cosi, Inc.. (Filed as exhibit 21.1 to the
Company's Registration Statement on Form S-1, file #333-86390)
- 99.1 --- Certification of the Chief Executive Officer pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002.
- 99.2 --- Certification of the Chief Financial Officer pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002.

previously filed

- (1) Portions of Exhibit 10.6 have been omitted and filed separately with the
Securities and Exchange Commission pursuant to a request for confidential
treatment.

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
COSI, INC.

Cosi, Inc. (hereinafter called the "corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: The present name of the corporation is Cosi, Inc; and, the name under which the corporation was originally incorporated is Xando Incorporated, and the date of filing the original certificate of incorporation of the corporation with the Secretary of State of the State of Delaware is May 15, 1998 and amendments to the Certificate of Incorporation were subsequently duly filed and recorded.

SECOND: The amendments and the restatement of the certificate of incorporation herein certified have been duly adopted by the stockholders in accordance with the provisions of Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware. Prompt written notice of the adoption of the amendments and of the restatement of the certificate of incorporation herein certified has been given to those stockholders who have not consented in writing thereto, as provided in Section 228 of the General Corporation Law of the State of Delaware.

THIRD: The certificate of incorporation of the corporation, as amended and restated herein, shall at the effective time of this Restated Certificate of Incorporation, read as follows:

ARTICLE I
NAME

The name of the corporation is Cosi, Inc.

ARTICLE II
ADDRESS OF REGISTERED OFFICE;
NAME OF REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at that address in the State of Delaware is The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors.

ARTICLE III
PURPOSE AND POWERS

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may now or hereafter be organized under the Delaware General Corporation Law ("Delaware Law"). It shall have all powers that may now or hereafter be lawful for a corporation to exercise under Delaware Law.

ARTICLE IV
CAPITAL STOCK

Section 4.1. TOTAL NUMBER OF SHARES OF STOCK. The total number of shares of capital stock of all classes that the Corporation shall have authority to issue is 140,000,000 (One Hundred and Forty Million) shares. The authorized capital stock is divided into 40,000,000 (Forty Million) shares of preferred stock, of the par value of \$.01 each (the "Preferred Stock"), and 100,000,000 (One Hundred Million) shares of common stock, of the par value of \$.01 each (the "Common Stock"). For the purposes of this article IV, references to the "Board of Directors" shall refer to the Board of Directors of the Corporation as established in accordance with Article V of the Certificate of Incorporation and references to "The Certificate of Incorporation" shall refer to this Restated Certificate of Incorporation as the same may be amended from time to time.

Section 4.2. PREFERRED STOCK. (a) The shares of Preferred Stock of the Corporation may be issued from time to time in one or more series thereof,

the shares of each series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as are stated and expressed herein or in the resolution or resolutions providing for the issue of such series, adopted by the board of directors of the Corporation (the "Board of Directors") as hereinafter provided.

(b) Except as provided by Section 4.3 with respect to the Series D Preferred Stock (as hereinafter defined), authority is hereby expressly granted to the Board of Directors, subject to the provisions of this Article IV and to the limitations prescribed by Delaware Law, to authorize the issue of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issue of each series the voting powers, full or limited, if any, of the shares of such Series and the designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(i) the maximum number of shares to constitute such series (which may subsequently be increased or decreased by resolutions of the Board of Directors unless otherwise provided in the resolution providing for the issue of such series), the distinctive designation thereof and the stated value thereof if different than the par value thereof;

(ii) the dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation that such dividends shall bear to the dividends payable on any other class or classes of stock or any other series of any class of stock of the Corporation, and whether such dividends shall be cumulative or noncumulative;

(iii) whether the shares of such series shall be subject to redemption, in whole or in part, and if made subject to such redemption the times, prices and other terms and conditions of such redemption, including whether or not such redemption may occur at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event;

(iv) the terms and amount of any sinking fund established for the purchase or redemption of the shares of such series;

(v) whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes of any stock or any other series of any class of stock of the Corporation, and, if provision is made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;

(vi) the extent, if any, to which the holders of shares of such series shall be entitled to vote with respect to the election of directors or otherwise;

(vii) the restrictions, if any, on the issue or reissue of any additional Preferred Stock;

(viii) the rights of the holders of the shares of such series upon the dissolution of, or upon the subsequent distribution of assets of, the Corporation; and

(ix) the manner in which any facts ascertainable outside the resolution or resolutions providing for the issue of such series shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such series.

4.2.2. SERIES D PREFERRED STOCK. There is hereby created a series of Preferred Stock, designated Series D Preferred Stock having the terms, rights and privileges set forth in Exhibit A, attached hereto.

4.2.3. COMMON STOCK. The shares of Common Stock of the Corporation shall be of one and the same class. The holders of Common Stock shall have one vote per share of Common Stock on all matters on which holders of Common Stock are entitled to vote.

BOARD OF DIRECTORS

Section 5.1. POWERS OF BOARD OF DIRECTORS. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors, which shall consist of not fewer than three nor more than fifteen members. In furtherance, and not in limitation, of the powers conferred by Delaware Law, the Board of Directors is expressly authorized to:

(a) adopt, amend, alter, change or repeal the By-Laws of the Corporation; provided, however, that no By-Laws hereafter adopted shall invalidate any prior act of the directors that would have been valid if such new By-Laws had not been adopted;

(b) determine the rights, powers, duties, rules and procedures that affect the power of the Board of Directors to manage and direct the business and affairs of the Corporation, including the power to designate and empower committees of the Board of Directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for, Board meetings, as well as the quorum and voting requirements for, and the manner of taking, Board action; and

(c) exercise all such powers and do all such acts as may be exercised or done by the Corporation, subject to the provisions of Delaware Law, this Certificate of Incorporation, and the By-Laws of the Corporation.

Section 5.2. NUMBER OF DIRECTORS. Except as may be provided in a resolution or resolutions providing for any series of Preferred Stock pursuant to Article IV hereof with respect to any directors elected by the holders of such series, and subject to Section 5.1 of this Certificate of Incorporation, the number of directors constituting the Board of Directors shall be determined from time to time exclusively by a vote of a majority of the Board of Directors in office at the time of such vote.

Section 5.3. CLASSIFIED BOARD OF DIRECTORS. The directors, other than those who may be elected solely by the holders of shares of any class or series of stock having a preference over the Common Stock of the Corporation as to dividends or to distributions upon liquidation or dissolution and winding-up of the Corporation pursuant to the terms of Article IV of the Certificate of Incorporation of the Corporation, shall be divided into three classes, Class I, Class II and Class III, with each class to be as nearly equal in number as reasonably possible, and with the initial term of office of the Class I directors to expire at the 2003 annual meeting of stockholders, the initial term of office of the Class II directors to expire at the 2004 annual meeting of stockholders and the initial term of office of the Class III directors to expire at the 2005 annual meeting of stockholders, in each case upon the election and qualification of their successors. Subject to the rights of the holders of any class or series of stock having a preference over the Common Stock of the Corporation as to dividends or to distributions upon liquidation or dissolution and winding-up of the Corporation, commencing with the 2003 annual meeting of stockholders, directors elected to succeed those directors whose terms have thereupon expired shall be elected to a term of office to expire at the third succeeding annual meeting of stockholders after their election, and upon the election and qualification of their successors. Notwithstanding the foregoing, for any director who is an employee of the Corporation or any of its affiliates at the time of his or her election to the Board, it is a qualification for service as a director that such director remain so employed, so that the term of such director will automatically terminate upon termination of such director's employment with the Corporation or such affiliate, for any reason, unless the Board, by majority of the members of the Board of Directors, otherwise determines. If the number of directors is changed, any increase or decrease shall be apportioned among the classes in such manner as the Board of Directors of the Corporation shall determine, but in no case will a decrease in the number of directors shorten the term of any incumbent director.

Section 5.4. VACANCIES. Except as may be provided in a resolution or resolutions providing for any series of Preferred Stock pursuant to Article IV hereof with respect to any directors elected by the holders of such series, any vacancies in the Board of Directors for any reason and any newly created directorship resulting by reason of any increase in the number of directors may be filled only by the Board of Directors (and not by the Stockholders), acting by a majority of the remaining directors then in office, although less than a quorum, or by a sole remaining director, and any directors so appointed shall hold office until the next election of the class of which such directors have been chosen and until their successors are elected and qualified.

Section 5.5. REMOVAL OF DIRECTORS. Except as may be provided in a resolution or resolutions providing for any series of Preferred Stock pursuant to Article IV hereof with respect to any directors elected by the holders of such series, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause, and only by the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class. For the purposes of this Section 5.5, "cause" shall mean the wilful and continuous failure of a director to substantially perform such director's duties to the Corporation (other than any such failure resulting from incapacity due to physical or mental illness) or the wilful engaging by a director in gross misconduct materially and demonstrably injurious to the Corporation.

ARTICLE VI

STOCKHOLDER ACTIONS AND MEETINGS OF STOCKHOLDERS

Except as may be provided in a resolution or resolutions providing for any class or series of Preferred Stock pursuant to Article IV hereof, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any written consent in lieu of a meeting by such holders. Subject to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or by the Secretary upon direction of the Board of Directors pursuant to a resolution adopted by a majority of the members of the Board of Directors then in office. Elections of directors need not be by written ballot, unless otherwise provided in the By-Laws. For purposes of all meetings of stockholders, a quorum shall consist of a majority of the shares entitled to vote at such meeting of stockholders, unless otherwise required by law.

ARTICLE VII

LIMITATION ON LIABILITY OF DIRECTORS

No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, including without limitation directors serving on committees of the Board of Directors; provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware Law, or (iv) for any transaction from which the director derived an improper personal benefit. If Delaware Law is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by Delaware Law, as so amended. Any amendment, repeal or modification of this Article VII shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, repeal or modification.

ARTICLE VIII

INDEMNIFICATION

The Corporation shall indemnify any director or officer and may indemnify any employee or agent to the fullest extent authorized or permitted by Section 145 of the Delaware General Corporation Law, as now or hereafter in effect.

ARTICLE IX

CERTAIN BUSINESS COMBINATIONS

Section 9.1. VOTE REQUIRED FOR CERTAIN BUSINESS COMBINATIONS. Except as otherwise expressly provided in Section 9.2, in addition to any affirmative vote required by law or by any other provision of the Certificate of Incorporation of the Corporation, the affirmative vote of the holders of not less than 80% of the outstanding shares of "Voting Stock" (as hereinafter defined) of the Corporation voting together as a single class shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) of the Corporation with any "Related Person" (as hereinafter defined).

For the purpose of this Article:

(A) The term "Business Combination" shall mean (1) any merger or consolidation of the Corporation or a "Subsidiary" (as hereinafter defined) of the Corporation with or into a Related Person or of a Related Person with or into the Corporation or a Subsidiary of the Corporation; (2) any sale, lease, exchange, transfer, or other disposition, including, without limitation, a mortgage or any other hypothecation or transfer as collateral, of all or any "Substantial Part" (as hereinafter defined) of the assets either of the Corporation (including, without limitation, any voting securities of a Subsidiary) or of a Subsidiary of the Corporation to a Related Person; (3) the issuance of any securities (other than by way of a distribution to stockholders made pro rata to all holders of the class of stock to receive the distribution) of the Corporation or a Subsidiary of the Corporation to a Related Person; (4) the acquisition by the Corporation or a Subsidiary of the Corporation of any securities of a Related Person; (5) any recapitalization that would have the effect, directly or indirectly, of increasing the voting power of a Related Person; (6) any merger of the Corporation into a Subsidiary of the Corporation; or (7) any agreement, contract, or other arrangement providing for any of the transactions described in this definition of "Business Combination."

(B) The term "Related Person" shall mean and include any individual, corporation, partnership, or other person or entity which, together with its "Affiliates" and "Associates," "Beneficially Owns" (as hereinafter defined), in the aggregate ten percent (10%) or more of the outstanding Voting Stock of the Corporation, and any Affiliate or Associate of any such individual, corporation, partnership, or other person or entity.

(C) The term "Substantial Part" shall mean more than 80% of the book value of the total consolidated assets of the Corporation as reported in the consolidated financial statements of the Corporation and its subsidiaries as of the end of its most recent fiscal year ending prior to the time as of which a "Substantial Part" is to be determined.

(D) The term "Voting Stock" shall mean all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors of the Corporation and each reference to a percentage of shares of Voting Stock shall refer to such percentage of the votes entitled to be cast by such shares.

(E) The terms "Affiliate" and "Associate" shall have the meanings set forth in Rule 12b-2 under the Securities Exchange Act of 1934, as amended.

(F) The term "Beneficially Owns" shall have the meaning set forth in Rule 13d-3 under the Securities Exchange Act of 1934, as amended, provided, however, that, any shares of Voting Stock of the Corporation that any Related Person has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, shall be deemed Beneficially Owned by the Related Person whether immediately exercisable or exercisable within ten years of the date as of which Beneficial Ownership is to be determined.

(G) The term "Subsidiary" with respect to the Corporation shall mean any corporation, partnership, limited liability company, business trust or similar entity of which a majority of any class of any equity security is owned directly or indirectly by the Corporation.

Section 9.2. WHEN HIGHER VOTE IS NOT REQUIRED. The provisions of Section 9.1 shall not be applicable to any particular Business Combination and such Business Combination shall require only such affirmative vote as may be required by law or by any other provision of the Certificate of Incorporation of the Corporation, if all of the conditions specified in either of the following paragraphs (A) or (B) are met:

(A) the Business Combination shall have been approved by a vote of not less than two-thirds of the Directors, or

(B) all of the following conditions shall have been met:

(1) the aggregate amount of cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of the consideration, other than cash, to be

received per share by holders of Common Stock in such Business Combination shall be at least equal to the highest of the following:

(a) if applicable, the highest price per share (including any brokerage commissions, transfer taxes, and soliciting dealers' fees) paid by the Related Person for any shares of Common Stock acquired by it (i) within the two year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (ii) in the transaction in which it became a Related Person; or

(b) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Related Person became a Related Person (such latter date is referred to in this Article as the "Determination Date"), whichever is higher; and

(2) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of the consideration, other than cash, to be received per share by holders of shares of any class or series of outstanding Voting Stock, other than Common Stock, shall be at least equal to the highest of the following (it being intended that the requirements of this subparagraph (B)(2) shall be required to be met with respect to every class or series of outstanding capital stock of the Corporation other than Common Stock, whether or not the Related Person has previously acquired any shares of such class or series of Voting Stock):

(a) if applicable, the highest per share price (including any brokerage commission, transfer taxes, and soliciting dealers' fees) paid by the Related Person for any shares of such class or series of Voting Stock acquired by it (i) within the two year period immediately prior to the Announcement Date or (ii) in the transaction in which it became a Related Person, whichever is higher; or

(b) if applicable, the Redemption Price (as hereinafter defined) of the shares of such class or series, or if such shares have no Redemption Price, the highest amount per share which such class or series would be entitled to receive upon liquidation of the Corporation on the Announcement Date or the Determination Date, whichever is higher; or

(c) the Fair Market Value per share of such class or series of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher; and

(3) the consideration to be received in such Business Combination by holders of each class or series of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Related Person has previously paid for shares of such class or series of Voting Stock; provided, however, that if the Related Person has paid for shares of any class or series of Voting Stock with varying forms of consideration, the form of consideration for such class or series of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class or series of Voting Stock previously acquired by it; and

(4) a proxy statement responsive to the requirements of the Securities Exchange Act of 1934, as amended, shall have been mailed to public stockholders of the Corporation for the purpose of soliciting stockholder approval of the Business Combination and shall have contained at the front thereof, in a prominent place, any recommendations as to the advisability (or inadvisability) of the Business Combination that the Directors, or any of them, may choose to state and, if deemed advisable by a majority of the Directors, an opinion of a reputable investment banking firm as to the fairness (or not) of the terms of the Business Combination, from the point of view of the remaining public stockholders of the Corporation (such investment banking firm to be selected by a majority of the Directors and to be paid a reasonable fee for their services by the Corporation upon receipt of the opinion).

Section 9.3. CERTAIN DEFINITIONS AND ADDITIONAL PROVISIONS. For the purposes of this Article:

(A) "Fair Market Value" shall mean:

(1) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the Nasdaq Stock Market or any quotations system then generally in use, or, if no such quotations are available, the Fair Market Value on the date in question of a share of such stock as determined by the Directors in good faith, which determination shall be final; and

(2) in the case of property other than cash or stock, the Fair Market Value of such property on the date in question as determined by the Directors in good faith, which determination shall be final.

(B) The Board of Directors, with the approval of a majority of the total number of Directors, shall have the power and duty to determine, on the basis of information known to it after reasonable inquiry, all facts necessary to determine compliance with this Article, including, without limitation, (i) whether a person is a Related Person, (ii) the number of shares of Voting Stock Beneficially Owned by any person, (iii) whether a person is an Affiliate or Associate of another person, (iv) whether the applicable conditions set forth in paragraph (B) of Section 2 have been met with respect to any Business Combination, and (v) whether the proposed transaction is a Business Combination. Any such determinations shall be final.

Section 9.4. AMENDMENT OF THIS ARTICLE. This Article may be amended, altered, changed, or repealed only by the affirmative vote of the holders of at least 80% of the outstanding shares of Voting Stock voting together as a single class unless the proposed amendment, alteration, change, or repeal has been recommended to the stockholders by the Board of Directors with the approval of at least two-thirds of the Directors, in which event the proposed amendment, alteration, change, or repeal shall require for approval the affirmative vote of the holders of at least 66 2/3% of the outstanding shares of Voting Stock, voting as a single class.

ARTICLE X

AMENDMENT OF BY-LAWS

The Board of Directors shall have the power to adopt, amend, alter, change or repeal any By-Laws of the Corporation. In addition, the stockholders of the Corporation may adopt, amend, alter, change or repeal any By-Laws of the Corporation by the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the shares of capital stock of the Corporation then entitled to vote generally in the election of directors, voting together as a single class (notwithstanding the fact that a lesser percentage may be specified by Delaware Law).

ARTICLE XI

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation hereby reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in any manner permitted by Delaware Law and all rights and powers conferred upon stockholders, directors, and officers herein are granted subject to this reservation. Except as may be provided in a resolution or resolutions providing for any series of Preferred Stock pursuant to Article IV hereof and that relate to such series of Preferred Stock, any such amendment, alteration, change or repeal shall require the affirmative vote of both (a) a majority of the members of the Board of Directors then in office and (b) a majority of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class; except that any proposal to amend, alter, change or repeal the provisions of

Sections 5.3 and 5.5 of Article V, Article VI, Article X and this Article XI shall require the affirmative vote of 66 2/3% of the voting power of all of the shares of capital stock entitled to vote generally in the election of directors, voting together as a single class; and except that any proposal to amend, alter, change or repeal the provisions of Article IX shall require the affirmative vote set forth therein.

ARTICLE XII

SEVERABILITY

In the event that any provision of this Certificate of Incorporation (including any provision within a single Section, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the full extent permitted by law.

THE UNDERSIGNED, being the Chief Executive Officer, for the purpose of amending and restating the Certificate of Incorporation of the Corporation pursuant to Delaware Law, does make this Certificate, hereby declaring and certifying that this is the act and deed of the Corporation and that the facts herein stated are true, and accordingly have hereunto set my hand as of November 21, 2002.

/s/ Andrew Stenzler

Name: Andrew Stenzler
Title: Chief Executive Officer

EXHIBIT A
TO AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

COSI, INC.
SERIES D PREFERRED STOCK

One million (1,000,000) shares of the Corporation's Preferred Stock shall be designated as "Series D Preferred Stock", One Cent (\$01) par value per share (the "Series D Preferred Stock") and the number of shares constituting such series shall be 1,000,000.

SECTION 1. DIVIDENDS AND DISTRIBUTIONS.

1A. Subject to the provisions for adjustment hereinafter set forth, the holders of shares of Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, (i) cash dividends in an amount per share (rounded to the nearest cent) equal to 100 times the aggregate per share amount of all cash dividends declared or paid on the common stock of the Corporation, \$0.01 par value per share, of the Corporation (collectively, the "Common Stock") and (ii) a preferential cash dividend (the "Preferential Dividends"), if any, in preference to the holders of Common Stock, on the first day of February, May, August and November of each year (each a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series D Preferred Stock, payable in an amount (except in the case of the first Quarterly Dividend Payment if the date of the first issuance of Series D Preferred Stock is a date other than a Quarterly Dividend Payment date, in which case such payment shall be a prorated amount of such amount) equal to \$0.10 per share of Series D Preferred Stock less the per share amount of all cash dividends declared on the Series D Preferred Stock pursuant to clause (i) of this sentence since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series D Preferred Stock. In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series D Preferred Stock, make any distribution on the shares of Common Stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, which is payable in cash or any debt security, debt instrument, real or personal property or any other property (other than cash dividends subject to the immediately preceding sentence, a distribution of shares of Common Stock or other capital stock of the Corporation or a distribution of rights or warrants to acquire any

such share, including any debt security convertible into or exchangeable for any such share, at a price less than the Fair Market Value (as hereinafter defined) of such share), then, and in each such event, the Corporation shall simultaneously pay (and not be permitted to accrue) on each then outstanding share of Series D Preferred Stock of the Corporation a distribution, in like kind, of 100 times such distribution paid on a share of Common Stock (subject to the provisions for adjustment hereinafter set forth). The dividends and distributions on the Series D Preferred Stock to which holders thereof are entitled pursuant to clause (i) of the first sentence of this paragraph and pursuant to the second sentence of this paragraph are hereinafter referred to as "Dividends" and the multiple of such cash and non-cash dividends on the Common Stock applicable to the determination of the Dividends, which shall be 100 initially but shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall at any time after November 21, 2002 (the "Rights Declaration Date"), (i) declare or pay any dividend or make any distribution on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of Dividends which holders of shares of Series D Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

1B. The Corporation shall declare each Dividend at the same time it declares any cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid. No cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid shall be paid or set aside for payment on the Common Stock unless a Dividend in respect of such dividend or distribution on the Common Stock shall be simultaneously paid, or set aside for payment, on the Series D Preferred Stock.

1C. Preferential Dividends shall begin to accrue on outstanding shares of Series D Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of any shares of Series D Preferred Stock. Accrued but unpaid Preferential Dividends shall cumulate but shall not bear interest. Preferential Dividends paid on the shares of Series D Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

SECTION 2. VOTING RIGHTS. The holders of shares of Series D Preferred Stock shall have the following voting rights:

2A. Subject to the provisions for adjustment hereinafter set forth, each share of Series D Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the holders of the Common Stock. The number of votes which a holder of Series D Preferred Stock is entitled to cast, as the same may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall at any time after the Rights Declaration Date, (i) declare or pay any dividend on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series D Preferred Stock shall be entitled after such event shall be the Vote Multiple immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

2B. Except as otherwise provided herein, in the Amended and Restated Certificate of Incorporation or By-laws, the holders of shares of Series D

Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

2C. In the event that the Preferred Dividends accrued on the Series D Preferred Stock for four or more quarterly dividend periods, whether consecutive or not, shall not have been declared and paid or irrevocably set aside for payment, the holders of record of Junior Preferred Stock of the Corporation of all series (including the Series D Preferred Stock), other than any series in respect of which such right is expressly withheld by the Amended and Restated Certificate of Incorporation or the authorizing resolutions included in any Certificate of Designations therefor, shall have the right, at the next meeting of shareholders called for the election of directors, to elect two members to the Board of Directors, which directors shall be in addition to the number required by the By-laws prior to such event, to serve until the next Annual Meeting and until their successors are elected and qualified or their earlier resignation, removal or incapacity or until such earlier time as all accrued and unpaid Preferential Dividends upon the outstanding shares of Series D Preferred Stock shall have been paid (or irrevocably set aside for payment) in full. The holders of shares of Series D Preferred Stock shall continue to have the right to elect directors as provided by the immediately preceding sentence until all accrued and unpaid Preferential Dividends upon the outstanding shares of Series D Preferred Stock shall have been paid (or irrevocably set aside for payment) in full. Such directors may be removed and replaced by such shareholders, and vacancies in such directorships may be filled only by such shareholders (or by the remaining director elected by such shareholders, if there be one) in the manner permitted by law; provided, however, that any such action by shareholders shall be taken at a meeting of shareholders and shall not be taken by written consent thereto.

2C. Except as otherwise required by the Amended and Restated Certificate of Incorporation or By-laws or set forth herein, holders of Series D Preferred Stock shall have no other special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for the taking of any corporate action.

SECTION 3. CERTAIN RESTRICTIONS.

3A. Whenever Preferential Dividends or Dividends are in arrears or the Corporation shall be in default of payment thereof, thereafter and until all accrued and unpaid Preferential Dividends and Dividends, whether or not declared, on shares of Series D Preferred Stock outstanding shall have been paid or set irrevocably aside for payment in full, and in addition to any and all other rights which any holder of shares of Series D Preferred Stock may have in such circumstances, the Corporation shall not

- i. declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock;
- ii. declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity as to dividends with the Series D Preferred Stock, unless dividends are paid ratably on the Series D Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled if the full dividends accrued thereon were to be paid;
- iii. except as permitted by subparagraph (iv) of this paragraph 3A., redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series D Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon liquidation, dissolution or winding up) to the Series D Preferred Stock; or
- iv. purchase or otherwise acquire for consideration any shares of Series D Preferred Stock, or any shares of stock ranking on a parity with the Series D Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up), except in accordance with a purchase offer made to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual

dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

3B. The Corporation shall not permit any Subsidiary (as hereinafter defined) of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 3, purchase or otherwise acquire such shares at such time and in such manner. A "Subsidiary" of the Corporation shall mean any Corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors of such Corporation or other entity or other persons performing similar functions are beneficially owned, directly or indirectly, by the Corporation or by any Corporation or other entity that is otherwise controlled by the Corporation.

3C. The Corporation shall not issue any shares of Series D Preferred Stock except upon exercise of Rights issued pursuant to that certain Rights Agreement dated as of November 21, 2002, between the Corporation and American Stock Transfer and Trust Corporation, as Rights Agent, a copy of which is on file with the Secretary of the Corporation at its principal executive office and shall be made available to shareholders of record without charge upon written request therefor addressed to said Secretary. Notwithstanding the foregoing sentence, nothing contained in the provisions shall prohibit or restrict the Corporation from issuing for any purpose any series of Preferred Stock with rights and privileges similar to, different from, or greater than, those of the Series D Preferred Stock.

SECTION 4. REACQUIRED SHARES. Any shares of Series D Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares upon their retirement and cancellation shall become authorized but unissued shares of Preferred Stock, without designation as to series, and such shares may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

SECTION 5. LIQUIDATION, DISSOLUTION OR WINDING UP. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock unless the holders of shares of Series D Preferred Stock shall have received, subject to adjustment as hereinafter provided, (A) \$100 per one one-hundredth (1/100) share plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or, (B) if greater than the amount specified in clause (i) (A) of this sentence, an amount equal to 100 times the aggregate amount to be distributed per share to holders of Common Stock, as the same may be adjusted as hereinafter provided and (ii) to the holders of stock ranking on a parity upon liquidation, dissolution or winding up with the Series D Preferred Stock, unless simultaneously therewith distributions are made ratably on the Series D Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of shares of Series D Preferred Stock are entitled under clause (i) (A) of this sentence and to which the holders of such parity shares are entitled, in each case upon such liquidation, dissolution or winding up. The amount to which holders of Series D Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant to clause (i) (B) of the foregoing sentence is hereinafter referred to as the "Participating Liquidation Amount" and the multiple of the amount to be distributed to holders of shares of Common Stock upon the liquidation, dissolution or winding up of the Corporation applicable pursuant to said clause to the determination of the Participating Liquidation Amount, as said multiple may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Liquidation Multiple." In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is continuing or surviving Corporation), then, in each such case, the Liquidation Multiple thereafter applicable to the determination of the Participating Liquidation Amount to which holders of Series D Preferred Stock shall be entitled after such event shall be the Liquidation Multiple applicable immediately prior to such event multiplied by a fraction the

numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

SECTION 6. CERTAIN RECLASSIFICATION AND OTHER EVENTS.

6A. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date, in respect of their shares of Common Stock any share of capital stock of the Corporation (other than any share of Common Stock of the Corporation), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Transaction"), then, and in each such event, the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall be adjusted so that after such event the holders of Series D Preferred Stock shall be entitled, in respect of each share of Series D Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, to (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such Transaction multiplied by the additional dividends which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock, (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such Transaction multiplied by the additional voting rights which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such Transaction multiplied by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation by virtue of the receipt in the Transaction of such capital stock, as the case may be, all as provided by the terms of such capital stock.

6B. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date, in respect of their shares of Common Stock any right or warrant to purchase Common Stock (including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for Common Stock) at a purchase price per share less than the Fair Market Value of a share of Common Stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall each be adjusted so that after such event the Dividend Multiple, the Vote Multiple and the Liquidation Multiple shall each be the product of the Dividend Multiple, the Vote Multiple and the Liquidation Multiple, as the case may be, in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased, at the Fair Market Value of the Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

6C. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date in respect of their shares of Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Common Stock), including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for capital stock of the Corporation (other than Common Stock), at a purchase price per share less than the Fair Market Value of such shares of capital stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall each be adjusted so that after such event each holder of a share of Series D Preferred Stock shall be entitled, in respect of each share of Series D Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such event multiplied, first, by the additional dividends to which the holder of a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction (as hereinafter defined) and (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such event multiplied, first, by the additional voting rights to which the holder of

a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such event multiplied, first, by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction. For purposes of this paragraph, the "Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Common Stock of the Corporation as contemplated by this paragraph immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

6D. For purposes of this Exhibit A, the "Fair Market Value" of a share of capital stock of the Corporation (including a share of Common Stock) on any date shall be deemed to be the average of the daily closing price per share thereof over the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that, in the event that such Fair Market Value of any such share of capital stock is determined during a period which includes any date that is within 30 Trading Days after (i) the ex-dividend date for a dividend or distribution on stock payable in shares of such stock or securities convertible into shares of such stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account ex-dividend or post-effective date trading. The closing price for any day shall be the last sale price, regular way, or, in case, no such sale takes place on such day, the average of the closing bid and asked prices, regular way, as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares are listed or admitted to trading or, if the shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or such other system then in use, or if on any such date the shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the shares selected by the Board of Directors of the Corporation. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares are listed or admitted to trading is open for the transaction of business or, if the shares are not listed or admitted to trading on any national securities exchange, on which the New York Stock Exchange or such other national securities exchange as may be selected by the Board of Directors of the Corporation is open. If the shares are not publicly held or not so listed or traded on any day within the period of 30 Trading Days applicable to the determination of Fair Market Value thereof as aforesaid, "Fair Market Value" shall mean the fair market value thereof per share as determined in good faith by the Board of Directors of the Corporation. In either case referred to in the foregoing sentence, the determination of Fair Market Value shall be described in a statement filed with the Secretary of the Corporation.

SECTION 7. CONSOLIDATION, MERGER, ETC. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each outstanding share of Series D Preferred Stock shall at the same time be similarly exchanged for or changed into the aggregate amount of stock, securities, cash and/or other property (payable in like kind), as the case may be, for which or into which each share of Common Stock is changed or exchanged multiplied by the highest of the Vote Multiple, the Dividend Multiple or the Liquidation Multiple in effect immediately prior to such event.

SECTION 8. EFFECTIVE TIME OF ADJUSTMENTS.

a. Adjustments to the Series D Preferred Stock required by the provisions shall be effective as of the time at which the event requiring such adjustments occurs.

b. The Corporation shall give prompt written notice to each holder of a share of Series D Preferred Stock of the effect of any adjustment to the voting rights, dividend rights or rights upon liquidation, dissolution or winding up of the Corporation of such shares required by the provisions. Notwithstanding the foregoing sentence, the failure of the Corporation to give such notice shall not affect the validity of or the force or effect of or the requirement for such adjustment.

SECTION 9. NO REDEMPTION. The shares of Series D Preferred Stock shall not be redeemable at the option of the Corporation or any holder thereof. Notwithstanding the foregoing sentence of this Section, the Corporation may acquire shares of Series D Preferred Stock in any other manner permitted by law, the provisions and the Amended and Restated Certificate of Incorporation of the Corporation.

SECTION 10. RANKING. Unless otherwise provided in the Amended and Restated Certificate of Incorporation of the Corporation or a Certificate of Designations relating to a subsequent series of preferred stock of the Corporation, the Series D Preferred Stock shall rank junior to all other series of the Corporation's preferred stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up and senior to the Common Stock.

SECTION 11. AMENDMENT. The hereof and the Amended and Restated Certificate of Incorporation of the Corporation shall not be amended in any manner which would adversely affect the rights, privileges or powers of the Series D Preferred Stock without, in addition to any other vote of shareholders required by law, the affirmative vote of the holders of 67% or more of the outstanding shares of Series D Preferred Stock, voting together as a single class. This Section 11 shall not be amended in any manner without the affirmative vote of the holders of 67% or more of the outstanding shares of Series D Preferred Stock, voting together a size class.

AMENDED AND RESTATED

BY-LAWS

OF

COSI, INC.

ARTICLE I

OFFICES

Section 1.1. REGISTERED OFFICE. The registered office of COSI, INC. (the "Corporation") in the State of Delaware shall be at 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801 and its registered agent at such address shall be The Corporation Trust Company, or such other office or agent as the Board of Directors of the Corporation (the "Board") shall from time to time select.

Section 1.2. OTHER OFFICES. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as may otherwise be required by law, at such other place or places, either within or without the State of Delaware, as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1. PLACE OF MEETING. All meetings of the stockholders of the Corporation shall be held at the office of the Corporation or at such other places, within or without the State of Delaware, as may from time to time be fixed by the Board and set forth in the notice or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in a manner consistent with Delaware law.

Section 2.2. ANNUAL MEETINGS. The annual meeting of the stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held on such date and at such hour as shall from time to time be fixed by the Board. Any previously scheduled annual meeting of the stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of stockholders.

Section 2.3. SPECIAL MEETINGS. Except as otherwise required by applicable law or the Certificate of Incorporation of the Corporation (the "Certificate"), special meetings of the stockholders for any purpose or purposes may be called only by the Chairman of the Board or by the Secretary upon direction of the Board of Directors pursuant to a resolution adopted by a majority of the members of the Board of Directors then in office. Only such business as is specified in the notice of any special meeting of the stockholders shall come before such meeting.

Section 2.4. NOTICE OF MEETINGS. Except as otherwise provided by applicable law, written notice of each meeting of the stockholders, whether annual or special, shall be given, either by personal delivery or by mail or by electronic communication to the extent permitted by Delaware law, not less than 10 nor more than 60 days before the date of the meeting to each stockholder of record entitled to notice of the meeting. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Each such notice shall state the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy without protesting, prior to or at the commencement of the meeting, the lack of proper notice to such stockholder, or who shall sign a written waiver of notice thereof, whether before or after such meeting. Notice of adjournment of a meeting of stockholders need not be given if the time and place to which it is adjourned are announced at such meeting,

unless the adjournment is for more than 30 days or, after adjournment, a new record date is fixed for the adjourned meeting.

Section 2.5. QUORUM. Except as otherwise provided by Delaware law or by the Certificate, the holders of a majority of the votes entitled to be cast by the stockholders entitled to vote generally, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the stockholders; provided, however, that in the case of any vote to be taken by classes, the holders of a majority of the votes entitled to be cast by the stockholders of a particular class shall constitute a quorum for the transaction of business by such class.

Section 2.6. ADJOURNMENTS. The chairman of the meeting or the holders of a majority of the votes entitled to be cast by the stockholders who are present in person or by proxy may adjourn the meeting from time to time without notice other than announcement at the meeting, whether or not a quorum is present.

In the event that a quorum does not exist with respect to any vote to be taken by a particular class, the chairman of the meeting or the holders of a majority of the votes entitled to be cast by the stockholders of such class who are present in person or by proxy may adjourn the meeting with respect to the vote(s) to be taken by such class. At such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.7. ORDER OF BUSINESS. (a) At each meeting of the stockholders, the Chairman of the Board or, in the absence of the Chairman of the Board, such person as shall be selected by the Board shall act as chairman of the meeting. The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof, and the opening and closing of the voting polls.

(b) To be properly brought before the annual meeting of stockholders, business must be either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (ii) otherwise properly brought before the meeting by or at the direction of the Board (or any duly authorized committee thereof) or (iii) otherwise properly brought before the meeting by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.7 and on the record date for the determination of stockholders entitled to vote at such meeting and (B) who complies with the notice procedures set forth in Section 2.7(c). In addition to any other applicable requirements, including but not limited to the requirements of Rule 14a-8 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), for business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of this Section 2.7(b), such stockholder must have given timely notice thereof in proper written form to a Secretary of the Corporation.

(c) To be timely, a stockholder's notice to the Secretary pursuant to clause (iii) of Section 2.7(b) must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than 120 days nor more than 150 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder in order to be timely must be so received no later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting is mailed or such public disclosure of the date of the annual meeting is made, whichever first occurs.

(d) To be in proper written form, a stockholder's notice to the Secretary pursuant to clause (iii) of Section 2.7(b) must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and record address of such stockholder and all persons or entities acting in concert with

the stockholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, together with evidence reasonably satisfactory to the Secretary of such beneficial ownership, (iv) a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder in such business and (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting. If such stockholder does not appear or send a qualified representative to present such proposal at such annual meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(e) Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at the annual meeting of stockholders except business brought before such meeting in accordance with the procedures set forth in this Section 2.7; provided, however, that, once business has been properly brought before such meeting in accordance with such procedures, nothing in this Section 2.7 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of such meeting determines that business was not properly brought before the meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Section 2.8. LIST OF STOCKHOLDERS. It shall be the duty of the Secretary or other officer who has charge of the stock ledger to prepare and make, at least 10 days before each meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in such stockholder's name. Such list shall be produced and kept available at the times and places required by Delaware law.

Section 2.9. VOTING. (a) Except as otherwise provided by Delaware law or by the Certificate, each stockholder of record of any class or series of capital stock of the Corporation shall be entitled at each meeting of stockholders to such number of votes for each share of such stock as may be fixed in the Certificate or in the resolution or resolutions adopted by the Board providing for the issuance of such stock, registered in such stockholder's name on the books of the Corporation:

(1) on the date fixed pursuant to Section 8.7 of Article VIII of these By-laws as the record date for the determination of stockholders entitled to notice of and to vote at such meeting; or

(2) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice of such meeting is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) Each stockholder entitled to vote at any meeting of stockholders may execute a writing, cablegram, telegram, or other electronic communication authorizing not in excess of three persons to act for such stockholder by proxy. Any such proxy shall be delivered to the secretary of such meeting at or prior to the time designated for holding such meeting. No such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(c) At each meeting of the stockholders, all corporate actions to be taken by vote of the stockholders (except as otherwise required by applicable law and except as otherwise provided in the Certificate or these By-laws) shall be authorized by a majority of the votes cast by the stockholders entitled to vote thereon who are present in person or represented by proxy, and where a separate vote by class is required, a majority of the votes cast by the stockholders of such class who are present in person or represented by proxy shall be the act of such class.

(d) Unless required by applicable law or determined by the chairman of the meeting to be advisable, the vote on any matter, including the election of directors, need not be by written ballot. In the case of a vote by written ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy.

Section 2.10. INSPECTORS. The Board of Directors, in advance of any meeting, may appoint one or more inspectors of election to act at the meeting or

any adjournment thereof. If an inspector or inspectors are not so appointed, the chairman of the meeting may appoint one or more inspectors to act at any meeting of stockholders. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the directors in advance of the meeting or at the meeting by the chairman of the meeting. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of the stock outstanding and the voting power of each, the shares of stock represents at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all Stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors. Inspectors need not be stockholders. No director or nominee for the office of director shall be appointed such inspector.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1. GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate directed or required to be exercised or done by the stockholders.

Section 3.2. NUMBER, QUALIFICATION AND ELECTION. (a) Except as otherwise fixed by or pursuant to the provisions of Article IV of the Certificate relating to the rights of the holders of any class or series of stock having preference over the common stock of the corporation as to dividends or upon liquidation, the number of directors of the Corporation shall be determined from time to time by the Board by the affirmative vote of directors constituting at least a majority of the entire Board; provided that the number thereof may not be less than three.

(b) The directors, other than those who may be elected by the holders of shares of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation pursuant to the terms of Article IV of the Certificate or any resolution or resolutions providing for the issuance of such stock adopted by the Board, shall be classified, with respect to the time for which they severally hold office, into three classes as nearly equal in number as possible, with each class to hold office until its successors are elected and qualified. Subject to the rights of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation, at each such annual meeting of the stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

(c) Each director shall be at least 21 years of age. Directors need not be stockholders of the Corporation.

(d) In any election of directors held at a meeting of stockholders, the persons receiving a plurality of the votes cast by the stockholders entitled to vote thereon at such meeting who are present or represented by proxy, up to the number of directors to be elected in such election, shall be deemed elected.

Section 3.3. NOTIFICATION OF NOMINATION. (a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (i) by or at the direction of the board (or any duly authorized committee thereof) or (ii) by any stockholder of the Corporation (A) who is a stockholder of record on the date of the giving of the notice provided for in this Section 3.3 and on the

record date for the determination of stockholders entitled to vote at such meeting and (B) who complies with the notice procedures set forth in Section 3.3(c). In addition to any other applicable requirements, for a nomination to be made by a stockholder pursuant to clause (ii) of this Section 3.3(a), such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

(b) To be timely, a stockholder's notice to the Secretary pursuant to clause (ii) of Section 3.3(a) must be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 120 days nor more than 150 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting is mailed or such public disclosure of the date of the annual meeting is made, whichever first occurs, or (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the special meeting is mailed or public disclosure of the date of the special meeting is made, whichever first occurs.

(c) To be in proper written form, a stockholder's notice to the Secretary pursuant to clause (ii) of Section 3.3(a) must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director, (A) the name, age, business address and residence address of the person, (B) the business experience during the past five years of such nominee, including his or her principal occupation or employment during such period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on, and such other information as to the nature of his or her responsibilities and level of professional competence as may be sufficient to permit assessment of his or her prior business experience, (C) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (D) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice, (A) the name and address of such stockholder and of all persons or entities acting in concert with the stockholder, (B) the name and address of such person as they appear on the Corporation's books (if they so appear), (C) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder, together with evidence reasonably satisfactory to the Secretary of such beneficial ownership, (D) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (E) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (F) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(d) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 3.3. If the chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman of the meeting shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 3.4. QUORUM AND MANNER OF ACTING. Except as otherwise provided by Delaware law, the Certificate or these By-laws, a majority of the entire Board shall constitute a quorum for the transaction of business at any meeting of the Board, and, except as so provided, the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. Notice need not be given of the adjourned meeting if announced at the meeting in which the adjournment is taken. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been

transacted at the meeting as originally called.

Section 3.5. PLACE OF MEETING. The Board may hold its meetings at such place or places within or without the State of Delaware as the Board may from time to time determine or as shall be specified or fixed in the respective notice or waivers of notice thereof.

Section 3.6. REGULAR MEETINGS. Regular meetings of the Board shall be held at such times and places as the Chairman of the Board or the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday under the laws of the place where the meeting is to be held, the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day.

Section 3.7. SPECIAL MEETINGS. Special meetings of the Board shall be held whenever called by the Chairman of the Board or by a majority of the directors.

Section 3.8. NOTICE OF MEETINGS. Notice of regular meetings of the Board or of any adjourned meeting thereof need not be given. Notice of each special meeting of the Board shall be given by overnight delivery service or mailed to each director, in either case addressed to such director at such director's residence or usual place of business, at least two days before the day on which the meeting is to be held or shall be sent to such director at such place by telegraph or telecopy or be given personally or by telephone, not later than the day before the meeting is to be held, but notice need not be given to any director who shall, either before or after the meeting, submit a signed waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to such director. Every such notice shall state the time and place but need not state the purpose of the meeting.

Section 3.9. RULES AND REGULATIONS. The Board may adopt such rules and regulations not inconsistent with the provisions of Delaware law, the Certificate or these By-laws for the conduct of its meetings and management of the affairs of the Corporation as the Board may deem proper.

Section 3.10. PARTICIPATION IN MEETING BY MEANS OF COMMUNICATION EQUIPMENT. Any one or more members of the Board or any committee thereof may participate in any meeting of the Board or of any such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 3.11. ORGANIZATION. At all meetings of the Board of Directors, the Chairman or in the Chairman's absence or inability to act, the President, or in the President's absence, a chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all the meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as Secretary.

Section 3.12. ACTION WITHOUT MEETING. Any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all of the members of the Board or of any such committee consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board or of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.13. RESIGNATIONS. Any director of the Corporation may at any time resign by giving written notice to the Board, the Chairman of the Board, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time be not specified therein, upon receipt thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.14. REMOVAL OF DIRECTORS. Directors may be removed only as provided in Section 5.5 of Article V of the Certificate.

Section 3.15. VACANCIES. Subject to the rights of the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation, any vacancies on the Board resulting from death, resignation, removal or other cause, and newly created directorships resulting from any increase in the number of directors may be

filled only by the Board of Directors (and not by the shareholders), acting by a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director, and any directors so appointed shall hold office until the next annual meeting thereof or at a special meeting called for that purpose in accordance with Section 2.3 of Article II of these By-laws. Any director elected in accordance with the preceding sentence of this Section 3.15 of this Article III shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified.

Section 3.16. COMPENSATION. Each director, in consideration of such person serving as a director, shall be entitled to receive from the Corporation such amount per annum and such fees for attendance at meetings of the Board or of committees of the Board, or both, as the Board shall from time to time determine. In addition, each director shall be entitled to receive from the Corporation reimbursement for the reasonable expenses incurred by such person in connection with the performance of such person's duties as a director. Nothing contained in this Section 3.16 of this Article III shall preclude any director from serving the Corporation or any of its subsidiaries in any other capacity and receiving proper compensation therefor.

ARTICLE IV

COMMITTEES OF THE BOARD OF DIRECTORS

Section 4.1. ESTABLISHMENT OF COMMITTEES OF THE BOARD OF DIRECTORS; ELECTION OF MEMBERS OF COMMITTEES OF THE BOARD OF DIRECTORS; FUNCTIONS OF COMMITTEES OF THE BOARD OF DIRECTORS. The Board of Directors may, in accordance with and subject to the General Corporation Law of the State of Delaware, from time to time establish one or more committees, each Committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any Committee, who may replace any absent or disqualified member at any meeting of the Committee. Any member of any committee of the Board may be removed with or without cause by action taken by a majority of the whole board. In the absence or disqualification of a member of a Committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such Committee, to the extent provided in the resolution of the Board, shall have and may exercise, to the extent permitted under Delaware law, the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such Committee shall have the power or authority to: (i) approve or adopt, or recommend to the stockholders, any action or matter required to be submitted to the stockholders for approval, (ii) adopt, amend or repeal any By-law or (iii) take any action that it is not permitted to take pursuant to Delaware law. Such Committee or Committees shall have such name or names as may be determined from time to time by the Board of Directors.

Section 4.2. PROCEDURE; MEETINGS; QUORUM. Regular meetings of committees of the Board, of which no notice shall be necessary, may be held at such times and places as shall be fixed by resolution adopted by a majority of the members thereof. Special meetings of any committee of the Board shall be called at the request of a majority of the members thereof. Notice of each special meeting of any committee of the Board shall be given by overnight delivery service or mailed to each member, in either case addressed to such member at such member's residence or normal place of business, at least two days before the day on which the meeting is to be held or shall be sent to such members at such place by telegraph or telecopy or be given personally or by telephone, not later than the day before the meeting is to be held, but notice need not be given to any member who shall, either before or after the meeting, submit a signed waiver of such notice or who shall attend such meeting without protesting, prior to it or at its commencement, the lack of such notice to such member. Any special meeting of any committee of the Board shall be a legal meeting without any notice thereof having been given, if all the members thereof shall be present thereat. Notice of any adjourned meeting of any committee of the Board need not be given. Any committee of the Board may adopt such rules and regulations not inconsistent with the provisions of Delaware law, the Certificate or these By-laws for the conduct of its meetings as such committee of the Board may deem proper. A majority of the members of any committee of the Board shall constitute a quorum for the transaction of business at any meeting,

and the vote of a majority of the members thereof present at any meeting at which a quorum is present shall be the act of such committee. Each committee of the Board shall keep written minutes of its proceedings and shall report on such proceedings to the Board.

Section 4.3. TERMINATION. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any Committee appointed by the Board of Directors.

ARTICLE V

OFFICERS

Section 5.1. NUMBER; TERM OF OFFICE. The officers of the Corporation shall be such officers, which may include a Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, General Counsel and one or more Vice Presidents (including, without limitation, Assistant, Executive and Senior Vice Presidents) and a Treasurer, Secretary and Controller and such other officers or agents with such titles and such duties as the Board may from time to time determine, each to have such authority, functions or duties as provided in these By-laws or as the Board may from time to time determine, and each to hold office for such term as may be prescribed by the Board and until such person's successor shall have been chosen and shall qualify, or until such person's death or resignation, or until such person's removal in the manner hereinafter provided. One person may hold the offices and perform the duties of any two or more of said officers; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate or these By-laws to be executed, acknowledged or verified by two or more officers. The Board may from time to time authorize any officer to appoint and remove any such other officers and agents and to prescribe their powers and duties. The Board may require any officer or agent to give security for the faithful performance of such person's duties.

Section 5.2. REMOVAL. Any officer may be removed, either with or without cause, by the Board at any meeting thereof or, except in the case of any officer elected by the Board, by any superior officer upon whom such power may be conferred by the Board.

Section 5.3. RESIGNATION. Any officer may resign at any time by giving notice to the Board, the Chairman of the Board or the Secretary. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5.4. VACANCIES. A vacancy in any office because of death, resignation, removal or any other cause may be filled for the unexpired portion of the term in the manner prescribed in these By-laws for election to such office.

Section 5.5. CHAIRMAN OF THE BOARD; POWERS AND DUTIES. The Chairman of the Board shall be the chief executive officer of the Corporation. Subject to the control of the Board, the Chairman of the Board shall supervise and direct generally all the business and affairs of the Corporation. The Chairman of the Board shall preside at all meetings of the stockholders and the Board. Any document may be signed by the Chairman of the Board or any other person who may be thereunto authorized by the Board or the Chairman of the Board. The Chairman of the Board may appoint such assistant officers as are deemed necessary.

Section 5.6. PRESIDENT, EXECUTIVE VICE PRESIDENTS, SENIOR VICE PRESIDENTS AND VICE PRESIDENTS; POWERS AND DUTIES. The President shall be the chief operating officer of the Corporation. The President and each Executive Vice President, each Senior Vice President, and each Vice President shall have such powers and perform such duties as may be assigned by the Board of Directors or the Chairman of the Board. In case of the absence or disability of the Chairman of the Board or a vacancy in the office, the President, an Executive Vice President, a Senior Vice President, or a Vice President designated by the Chairman of the Board or the Board shall exercise all the powers and perform all the duties of the Chairman of the Board.

Section 5.7. SECRETARY AND ASSISTANT SECRETARIES; POWERS AND DUTIES. The Secretary shall attend all meetings of the stockholders and the Board and shall keep the minutes for such meetings in one or more books provided for that purpose. The Secretary shall be custodian of the corporate records, except those

required to be in the custody of the Treasurer or the Controller, shall keep the seal of the Corporation, and shall execute and affix the seal of the Corporation to all documents duly authorized for execution under seal on behalf of the Corporation, and shall perform all of the duties incident to the office of Secretary, as well as such other duties as may be assigned by the Chairman of the Board or the Board.

The Assistant Secretaries shall perform such of the Secretary's duties as the Secretary shall from time to time direct. In case of the absence or disability of the Secretary or a vacancy in the office, an Assistant Secretary designated by the Chairman of the Board or by the Secretary, if the office is not vacant, shall perform the duties of the Secretary.

Section 5.8. CHIEF FINANCIAL OFFICER; POWERS AND DUTIES. The Chief Financial Officer shall be responsible for maintaining the financial integrity of the Corporation, shall prepare the financial plans for the Corporation, and shall monitor the financial performance of the Corporation and its subsidiaries, as well as performing such other duties as may be assigned by the Chairman of the Board or the Board.

Section 5.9. TREASURER AND ASSISTANT TREASURERS; POWERS AND DUTIES. The Treasurer shall have care and custody of the funds and securities of the Corporation, shall deposit such funds in the name and to the credit of the Corporation with such depositories as the Treasurer shall approve, shall disburse the funds of the Corporation for proper expenses and dividends, and as may be ordered by the Board, taking proper vouchers for such disbursements. The Treasurer shall perform all of the duties incident to the office of Treasurer, as well as such other duties as may be assigned by the Chairman of the Board or the Board.

The Assistant Treasurers shall perform such of the Treasurer's duties as the Treasurer shall from time to time direct. In case of the absence or disability of the Treasurer or a vacancy in the office, an Assistant Treasurer designated by the Chairman of the Board or by the Treasurer, if the office is not vacant, shall perform the duties of the Treasurer.

Section 5.10. GENERAL COUNSEL; POWERS AND DUTIES. The General Counsel shall be a licensed attorney at law and shall be the chief legal officer of the Corporation. The General Counsel shall have such power and exercise such authority and provide such counsel to the Corporation as deemed necessary or desirable to enforce the rights and protect the property and integrity of the Corporation. The General Counsel shall also have the power, authority, and responsibility for securing for the Corporation all legal advice, service, and counseling, and shall perform all of the duties incident to the office of General Counsel, as well as such other duties as may be assigned by the Chairman of the Board or the Board.

Section 5.11. CONTROLLER AND ASSISTANT CONTROLLERS; POWERS AND DUTIES. The Controller shall be the chief accounting officer of the Corporation and shall keep and maintain in good and lawful order all accounts required by law and shall have sole control over, and ultimate responsibility for, the accounts and accounting methods of the Corporation and the compliance of the Corporation with all systems of accounts and accounting regulations prescribed by law. The Controller shall audit, to such extent and at such times as may be required by law or as the Controller may think necessary, all accounts and records of corporate funds or property, by whomsoever kept, and for such purposes shall have access to all such accounts and records. The Controller shall make and sign all necessary and proper accounting statements and financial reports of the Corporation, and shall perform all of the duties incident to the office of Controller, as well as such other duties as may be assigned by the Chairman of the Board or the Board.

The Assistant Controllers shall perform such of the Controller's duties as the Controller shall from time to time direct. In case of the absence or disability of the Controller or a vacancy in the office, an Assistant Controller designated by the Chairman of the Board or the Controller, if the office is not vacant, shall perform the duties of the Controller.

Section 5.12. SALARIES. The salaries of all officers of the Corporation shall be fixed by or in the manner provided by the Board. If authorized by a resolution of the Board, the salary of any officer other than the Chairman of the Board may be fixed by the Chairman of the Board or a Committee of the Board. No officer shall be disqualified from receiving a salary by reason of also being a director of the Corporation.

ARTICLE VI

CONTRACTS, ETC.

Section 6.1. CONTRACTS. The Board of Directors may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances. In addition, the officers may enter into, execute and deliver such undertakings in the ordinary course of business, and authorize other persons to enter into, execute and deliver such undertakings in the ordinary course of business, in connection with the officer's exercise of their powers enumerated in these By-laws.

Section 6.2. PROXIES; POWERS OF ATTORNEY; OTHER INSTRUMENTS. (a) The Chairman, the President, any Vice President, the Treasurer or any other person designated by any of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the execution of contracts, the purchase of real or personal property, the rights and powers incident to the ownership of stock in the Corporation and such other situations as the Chairman, the President, such Vice President or the Treasurer shall approve (to the extent in the ordinary course of business, or in other instances, as may be authorized by the Board of Directors), such approval conclusively evidenced by the execution of such proxy, power of attorney or other instrument on behalf of the Corporation.

(b) The Chairman, the President, any Vice President, the Treasurer or any other person authorized by proxy or power of attorney executed and delivered by any of them on behalf of the Corporation may attend and vote at any meeting of the stockholders of any company in which the Corporation may hold stock, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

ARTICLE VII

INDEMNIFICATION

Section 7.1. RIGHT TO INDEMNIFICATION. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact (a) that he or she is or was a director or officer of the Corporation, or (b) that he or she, being at the time a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, member, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (collectively, "another enterprise" or "other enterprise"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law as the same exists or may hereafter be amended (but, in the case of any such amendment, with respect to alleged action or inaction occurring prior to such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior thereto), against all expense, liability and loss (including, without limitation, attorneys' and other professionals' fees and expenses, claims, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such person in connection therewith ("Losses"). Without diminishing the scope of indemnification provided by this Section 7.1, such persons shall also be entitled to the further rights set forth below.

Section 7.2. ACTIONS, SUITS OR PROCEEDINGS OTHER THAN THOSE BY OR IN THE RIGHT OF THE CORPORATION. (a) Subject to the terms and conditions of this Article, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any Proceeding (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer or employee of the Corporation, or, being at the time a director, officer or employee of the Corporation, is or was serving at the request of the Corporation as a director, officer, member, employee, fiduciary or agent of another enterprise, against all Losses, actually and reasonably incurred or suffered by such person in connection with such Proceeding if such

person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of NOLO CONTENDERE or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 7.3. ACTIONS, SUITS OR PROCEEDINGS BY OR IN THE RIGHT OF THE CORPORATION. Subject to the terms and conditions of this Article, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer or employee of the Corporation, or being at the time a director, officer or employee of the Corporation, is or was serving at the request of the Corporation as a director, officer, member, employee, fiduciary or agent of another enterprise against all Losses actually and reasonably incurred or suffered by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Corporation except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 7.4. CONDITIONS TO INDEMNIFICATION. To the extent permitted by applicable law, the payment of indemnification provided for by this Article, including the advancement of losses pursuant to Section 7.9 of this Article VI, shall be subject to the following conditions: (i) that the Corporation be given prompt notice of any proceeding, (ii) that the Corporation shall have complete charge of the defense of such proceeding, (iii) the right to select counsel for the indemnified party, and (iv) that the indemnified party shall assist and cooperate fully in all matters respecting the proceeding and its defense or settlement. The Corporation may waive any or all of the conditions set forth in the preceding sentence. Any such waiver shall be applicable only to the specific payment for which the waiver is made and shall not in any way obligate the Corporation to grant such waiver at any future time. In the event of a conflict of interest between the indemnified party and the Corporation that would disqualify the Corporation's counsel from representing the indemnified party under the rules of professional conduct applicable to attorneys, it shall be the policy of the Corporation to waive any or all of the foregoing conditions subject to such limitations or conditions as the Corporation shall deem to be reasonable in the circumstances.

Section 7.5. AUTHORIZATION OF INDEMNIFICATION. Any indemnification under this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of a person is proper in the circumstances because such person has met the applicable standard of conduct required by Section 7.1 or set forth in Section 7.2 or 7.3 of this Article, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, in a reasonably prompt manner (i) by the Board of Directors by a majority vote of directors who were not parties to such action, suit or proceeding, whether or not they constitute a quorum of the Board of Directors, (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, (iv) by the stockholders or (v) as Delaware law may otherwise permit. To the extent, however, that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' and other professionals' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 7.6. GOOD FAITH DEFINED. For purposes of any determination under Section 7.4 of this Article, a person shall be deemed to have acted in good faith if the action is based on (a) the records or books of account of the

Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties or on (b) the advice of legal counsel for the Corporation or another enterprise, or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant, independent financial adviser, appraiser or other expert selected with reasonable care by the Corporation or the other enterprise. The provisions of this Section 7.5 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct.

Section 7.7. PROCEEDINGS INITIATED BY INDEMNIFIED PERSONS.

Notwithstanding any provisions of this Article to the contrary, the Corporation shall not indemnify any person or make advance payments in respect of Losses to any person pursuant to this Article in connection with any Proceeding (or portion thereof) initiated against the Corporation by such person unless such Proceeding (or portion thereof) is authorized by the Board of Directors or its designee; provided, however, that this prohibition shall not apply to a counterclaim, cross-claim or third-party claim brought in any Proceeding or in connection with suits seeking to enforce rights to indemnification or advancement of Losses as otherwise ordered by a court of competent jurisdiction.

Section 7.8. INDEMNIFICATION BY A COURT. Notwithstanding any contrary determination in the specific case under Section 7.4 of this Article, and notwithstanding the absence of any determination thereunder, any director, officer or employee may apply to any court of competent jurisdiction for indemnification to the extent otherwise permissible under 7.1, 7.2 or 7.3 of this Article. Notice of any application for indemnification pursuant to this Section 7.7 shall be given to the Corporation promptly upon the filing of such application.

Section 7.9. LOSSES PAYABLE IN ADVANCE. Losses reasonably incurred by an officer or director in defending any threatened or pending Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII. Losses shall be reasonably documented by the officer or director and required payments shall be made promptly by the Corporation. Losses incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 7.10. NON-EXCLUSIVITY AND SURVIVAL OF INDEMNIFICATION. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, any By-law, agreement, contract, vote of Stockholders or of disinterested directors, or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise. The provisions of this Article shall not be deemed to preclude the indemnification of any person who is not specified in Section 7.1, 7.2 or 7.3 of this Article but whom the Corporation has the power or obligation to indemnify under the provisions of Delaware law, or otherwise. The rights conferred by this Article shall continue as to a person who has ceased to be a director, officer or employee and shall inure to the benefit of such person and the heirs, executors, administrators and other comparable legal representatives of such person. The rights conferred in this Article shall be enforceable as contract rights, and shall continue to exist after any rescission or restrictive modification hereof with respect to events occurring prior thereto. No rights are conferred in this Article for the benefit of any person (including, without limitation, officers, directors and employees of subsidiaries of the Corporation) in any capacity other than as explicitly set forth herein.

Section 7.11. MEANING OF CERTAIN TERMS IN CONNECTION WITH EMPLOYEE BENEFIT PLANS, ETC. For purposes of this Article VI, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; references to "serving at the request of the Corporation" shall include any service as a director, officer or employee of the Corporation which imposes duties on, or involves services by, such director, officer or employee, with respect to an employee benefit plan, its participants or beneficiaries; and a person who has acted in good faith and in a manner reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VI.

Section 7.12. INSURANCE. The Corporation may, but shall not be required to, purchase and maintain insurance on behalf of any person who is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer, member, employee, fiduciary or agent of another against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article.

ARTICLE VIII

CAPITAL STOCK

Section 8.1. SHARE OWNERSHIP. (a) Ownership of shares of stock of each class of the Corporation shall be evidenced by an uncertificated electronic book entry on the records of the Corporation, or a certificate, or other form as shall be approved by the Board. Certificates representing shares of stock of each class shall be signed by, or in the name of, the Corporation by the Chairman of the Board or the President, any Vice President and by the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Corporation, and sealed with the seal of the Corporation, which may be a facsimile thereof. Any or all such signatures may be facsimiles if countersigned by a transfer agent or registrar. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

(b) The stock ledger and blank share certificates shall be kept by the Secretary or by a transfer agent or by a registrar or by any other officer or agent designated by the Board.

Section 8.2. TRANSFER OF SHARES. Transfers of shares of stock of each class of the Corporation shall be made only on the books of the Corporation by the holder thereof, or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary or a transfer agent for such stock, if any, and on surrender of the certificate or certificates, if any, for such shares properly endorsed or accompanied by a duly executed stock transfer power (or by proper evidence of succession, assignment or authority to transfer) and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. The person in whose name shares are registered on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation; provided, however, that whenever any transfer of shares shall be made for collateral security and not absolutely, and written notice thereof shall be given to the Secretary or to such transfer agent, such fact shall be stated in the entry of the transfer. No transfer of shares shall be valid as against the Corporation, its stockholders and creditors for any purpose, except to render the transferee liable for the debts of the Corporation to the extent provided by law, until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 8.3. LOCATION OF BOOKS AND RECORDS. The books and records of the Corporation may be kept at such place or places as the Board of Directors or the respective officers in charge thereof may from time to time determine. The record books containing the names and addresses of all Stockholders, the number and class of shares of stock held by each and he dates when they respectively became the owners of record thereof shall be kept by the Secretary as prescribed in the By-laws or by such officer or agent as shall be designated by the Board of Directors.

Section 8.4. REGISTERED STOCKHOLDERS AND ADDRESSES OF STOCKHOLDERS. (a) The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

(b) Each stockholder shall designate to the Secretary or transfer agent of the Corporation an address at which notices of meetings and all other corporate notices may be delivered or mailed to such person, and, if any stockholder shall fail to designate such address, corporate notices may be delivered to such person by mail directed to such person at such person's post office address, if any, as the same appears on the stock record books of the Corporation or at such person's last known post office address.

Section 8.5. LOST, DESTROYED AND MUTILATED CERTIFICATES. The Corporation may issue to any holder of shares of stock the certificate for which has been lost, stolen, destroyed or mutilated a new certificate or certificates for shares, upon the surrender of the mutilated certificate or, in the case of loss, theft or destruction of the certificate, upon satisfactory proof of such loss, theft or destruction. The Board, or a committee designated thereby, or the transfer agents and registrars for the stock, may, in their discretion, require the owner of the lost, stolen or destroyed certificate, or such person's legal representative, to give the Corporation a bond in such sum and with such surety or sureties as they may direct to indemnify the Corporation and said transfer agents and registrars against any claim that may be made on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 8.6. REGULATIONS. The Board may make such additional rules and regulations as it may deem expedient concerning the issue and transfer of certificates representing shares of stock of each class of the Corporation and may make such rules and take such action as it may deem expedient concerning the issue of certificates in lieu of certificates claimed to have been lost, destroyed, stolen or mutilated.

Section 8.7. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment or any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 8.8. TRANSFER AGENTS AND REGISTRARS. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

ARTICLE IX

DIVIDENDS

Subject to the provisions of Delaware Law and the Certificate of Incorporation, the Board of Directors shall have full power to declare and pay dividends on the capital stock of the Corporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, may determine for any proper purpose, and the Board of Directors may modify or abolish such reserve.

ARTICLE X

SEAL

The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation and the words and figures of "Corporate Seal Delaware", or such other words or figures as the Board may approve and adopt. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE XI

FISCAL YEAR

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors. Unless otherwise fixed by the Board of Directors, the fiscal year of the Corporation shall end on December 31.

ARTICLE XII

AMENDMENT

Any By-law may be adopted, repealed, altered or amended by two-thirds of the entire Board at any meeting thereof. The stockholders of the Corporation shall have the power to amend, alter or repeal any provision of these By-laws only to the extent and in the manner provided in the Certificate.

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COSI, INC.

and

AMERICAN TRANSFER AND TRUST COMPANY

as Rights Agent

Rights Agreement

Dated as of November 21, 2002

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RIGHTS AGREEMENT

Agreement, dated as of November 21, 2002, between Cosi, Inc., a Delaware corporation (the "Corporation"), and American Stock Transfer and Trust Company, as Rights Agent (the "Rights Agent").

RECITALS

WHEREAS, the Board of Directors of the Corporation has authorized the issuance of, and declared a dividend of one right for each share of common has stock (as defined below), \$0.01 par value per share, of the Corporation outstanding as of the close of business on the date of the Corporation's initial public offering, each such right representing the right to purchase one one-hundredth of a share of Preferred Stock of the Corporation having the rights and preferences set forth in the form of Exhibit A to the Amended and Restated Certificate of Incorporation of the Corporation attached as Exhibit A to this Agreement; and

WHEREAS, the Board of Directors of the Corporation further authorized the issuance of one right (subject to adjustment) with respect to each share of common stock which may be issued between the November 21, 2002 and the date the rights expire;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

SECTION 1. CERTAIN DEFINITIONS.

(a) For purposes of this Agreement, the following terms have the meanings indicated:

"Acquiring Person" means any Person (as such term is hereinafter defined) who or which, together with all Affiliates (as such term is hereinafter defined) and Associates (as such term is hereinafter defined) of such Person, is the Beneficial Owner (as such term is hereinafter defined) of 15% or more of the Voting Stock (as such term is hereinafter defined) of the Corporation then outstanding; provided that, an Acquiring Person shall not include (i) an Exempt Person (as such term is hereinafter defined) or (ii) any Person, together with all Affiliates and Associates of such Person, who or which would be an Acquiring Person solely by reason of (A) being the Beneficial Owner of shares of Voting Stock of the Corporation, the Beneficial Ownership of which was acquired by such Person pursuant to any action or transaction or series of related actions or transactions approved by the Board of Directors before such Person otherwise became an Acquiring Person or (B) a reduction in the number of issued and outstanding shares of Voting Stock of the Corporation pursuant to a transaction or a series of related transactions approved by the Board of Directors of the Corporation; provided further, that in the event such Person described in this clause (ii) does not become an Acquiring Person by reason of subclause (A) or (B) of this clause (ii), such Person nonetheless shall become an Acquiring Person in the event such Person thereafter acquires Beneficial Ownership of an additional 2% or more of the Voting Stock of the Corporation then outstanding, unless the acquisition of such additional Voting Stock would not result in such Person becoming an Acquiring Person by reason of subclause (A) or (B) of this clause (ii). Notwithstanding the foregoing, if the Board of Directors of the Corporation determines in good faith that a Person who would otherwise be an "Acquiring Person" as defined pursuant to the foregoing provisions of this paragraph (a) has become such inadvertently, and such Person divests as promptly as practicable (as determined in good faith by the Board of Directors) a sufficient number of shares of Common Stock so that such Person would no longer be an "Acquiring Person" as defined pursuant to the foregoing provisions of this definition, then such Person shall not be deemed an "Acquiring Person" for any purposes of this Rights Agreement. In determining what is "as promptly as practicable" the Board may take into account such factors as the impact of the

divestment on the market price of the Corporation's Common Stock, the average volume of trading in its shares, and other factors that may affect its stockholders or the price of its common stock.

"Affiliate" has the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Associate" of a Person means (i) with respect to a Corporation, any officer or director thereof or of any Subsidiary (as such term is hereinafter defined) thereof, or any Beneficial Owner (as such term is hereinafter defined) of 10% or more of any class of equity security thereof, (ii) with respect to an association, any officer or director thereof or of a Subsidiary thereof, (iii) with respect to a partnership, any general partner thereof or any limited partner thereof who is, directly or indirectly, the Beneficial Owner of a 10% ownership interest therein, (iv) with respect to a limited liability Corporation, any officer, director or manager thereof or of a Subsidiary thereof or any member thereof who is, directly or indirectly, the Beneficial Owner of a 10% or greater ownership interest therein, with respect to a business trust, any officer or trustee thereof or of any Subsidiary thereof, (v) with respect to any other trust or an estate, any trustee, executor or similar fiduciary or any Person who has a 10% or greater interest as a beneficiary in the income from or principal of such trust or estate, (vi) with respect to a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person, and (vii) any Affiliate of such Person.

A person is deemed the "Beneficial Owner" of, or to "Beneficially Own," any securities (and correlative terms shall have correlative meanings):

(i) which such Person or any of such Person's Affiliates or Associates beneficially owns, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder (or any comparable or successor law or regulation), in each case as in effect on the date; or

(ii) which such Person or any of such Person's Affiliates or Associates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both) pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, other rights (other than these Rights), warrants or options, or otherwise; provided, however, that a Person shall not be deemed the "Beneficial Owner" of, or to "Beneficially Own," securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange or (B) the right to vote, alone or in concert with others, pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person shall not be deemed the "Beneficial Owner" of, or to "Beneficially Own," any securities if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Exchange Act and (2) is not at the time reportable by such Person on a Schedule 13D report under the Exchange Act (or any comparable or successor report), other than by reference to a proxy or consent solicitation being conducted by such Person; or

(iii) which are Beneficially Owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except as described in clause (B) of subparagraph (ii) of this definition) or disposing of any securities of the Corporation; provided, however, that for purposes of determining Beneficial Ownership of securities under this Rights Agreement, officers and directors of the Corporation solely by reason of their status as such shall not constitute a group (notwithstanding that they may be Associates of one another or may be deemed to constitute a group for purposes of Section 13(d) of the Exchange Act) and shall not be deemed to own shares owned by another officer or director of the Corporation.

Notwithstanding anything in this definition to the contrary, a Person engaged in the business of underwriting securities shall not be deemed the "Beneficial Owner" of, or to "Beneficially Own," any securities acquired

in good faith in a firm commitment underwriting until the expiration of forty days after the date of such acquisition.

"Book Entry" means an uncertificated book entry for the Corporation's Common Stock.

"Business Day" means any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Close of Business" on any given date means 5:00 P.M., New York time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., New York time, on the next succeeding Business Day.

"Common Stock" when used with reference to the Corporation, means the common stock, \$0.01 par value per share, of the Corporation. Collectively "Common Stock" when used with reference to any Person other than the Corporation which shall be organized in corporate form shall mean the capital stock or other equity security with the greatest per share voting power of such Person or, if such other Person is a subsidiary of another Person, the Person or Persons which ultimately control such first mentioned Person. "Common Stock" when used with reference to any Person other than the Corporation which shall not be organized in corporate form shall mean units of beneficial interest which shall represent the right to participate in profits, losses, deductions and credits of such Person and which shall be entitled to exercise the greatest voting power of such Person per unit of such Person.

"Corporation" is defined in the introductory paragraph.

"Distribution Date" has the meaning set forth in Section 3(b)(ii).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Ratio" has the meaning set forth in Section 23(d).

"Exempt Person" means (i) the Corporation, (ii) any Subsidiary of the Corporation, (iii) any employee benefit plan or employee stock plan of the Corporation or any Subsidiary of the Corporation, or any trust or other entity organized, appointed, established or holding Common Stock for or pursuant to the terms of any such plan and (iv) any existing shareholder of the Corporation as of the day immediately preceding the Record Date.

"Exercise Price" has the meaning set forth in Sections 4(a) and 7(b).

"Expiration Date" has the meaning set forth in Section 7(a).

"Fair Market Value" of any property means the fair market value of such property as determined in accordance with Section 11(b).

"Invalidation Time" is defined in Section 7(e).

"NASDAQ" means the National Association of Securities Dealers Automated Quotation System or any successor thereto or other comparable quotation system.

"Person" means any individual, firm, Corporation or other entity.

"Principal Party" has the meaning set forth in Section 13(b).

"Qualifying Tender Offer" means a tender or exchange offer for all outstanding shares of Common Stock of the Corporation approved by a majority of the Board of Directors, after taking into account the potential long-term value of the Corporation and all other factors that they consider relevant.

"Record Date" means November 21, 2002.

"Redemption Price" has the meaning set forth in Section 23(a).

"Right" is defined in Section 3(d).

"Right Certificate" has the meaning set forth in Section 3(d).

"Rights Agent" is defined in the introductory paragraph.

"Securities Act" means the Securities Act of 1933, as amended.

"Preferred Stock" means Series D Preferred Stock, par value \$.01 per share, of the Corporation having the terms set forth in Exhibit A to the Amended and Restated Certificate of Incorporation of the Corporation.

"Stock Acquisition Date" means the first date on which there shall be a public announcement by the Corporation or an Acquiring Person that an Acquiring Person has become such (which, for purposes of this definition, shall include, without limitation, a report filed pursuant to Section 13(d) of the Exchange Act) or such earlier date as a majority of the Board of Directors shall become aware of the existence of an Acquiring Person.

"Subsidiary" of a Person means any corporation or other entity of which securities or other ownership interests having voting power sufficient to elect a majority of the Board of Directors or other persons performing similar functions are Beneficially Owned, directly or indirectly, by such Person or by any corporation or other entity that is otherwise controlled by such Person.

"Summary of Rights" has the meaning set forth in Section 3(a).

"Trading Day" has the meaning set forth in Section 11(b).

"Transfer Tax" means any tax or charge, including any documentary stamp tax, imposed or collected by any governmental or regulatory authority in respect of any transfer of any security, instrument or right, including Rights, shares of Common Stock and shares of Preferred Stock.

"Voting Stock" means (i) the Common Stock of the Corporation and (ii) any other shares of capital stock of the Corporation entitled to vote generally in the election of directors or entitled to vote together with the Common Stock in respect of any merger, consolidation, sale of all or substantially all of the Corporation's assets, liquidation, dissolution or winding up. For purposes of this Agreement, Voting Stock shall include securities of the type referred to in clauses (i) and (ii) above that trade on a "when issued" basis on a national securities exchange or on the NASDAQ. For purposes of this Agreement, a stated percentage of the Voting Stock shall mean a number of shares of the Voting Stock as shall equal in voting power that stated percentage of the total voting power of the then outstanding shares of Voting Stock in the election of a majority of the Board of Directors or in respect of any merger, consolidation, sale of all or substantially all of the Corporation's assets, liquidation, dissolution or winding up.

(b) Section, Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Any determination required to be made by the Board of Directors of the Corporation for purposes of applying the definitions contained in this Section 1 shall be made by the Board of Directors in its good faith judgment, which determination shall be binding on the Rights Agent and the holders of the Rights.

SECTION 2. APPOINTMENT OF RIGHTS AGENT. The Corporation hereby appoints the Rights Agent to act as agent for the Corporation and the holders of the Rights in accordance with the terms and conditions, and the Rights Agent hereby accepts such appointment. The Corporation may from time to time appoint such co-Rights Agents as it may deem necessary or desirable. If the Corporation appoints one or more co-Rights Agents, then the respective duties of the Rights Agent and any co-Rights Agents shall be as the Corporation shall determine.

SECTION 3. ISSUANCE OF RIGHT CERTIFICATES.

(a) On the Record Date (or as soon as practicable thereafter), the Corporation or the Rights Agent shall send a copy of a Summary of Rights, in substantially the form attached hereto as Exhibit B (the "Summary of Rights"), by first class mail, postage prepaid, to each record holder of the Common Stock, as of the Close of Business on the Record Date, at the address of such holder shown on the records of the Corporation.

(b) (i) Until the Close of Business on the Distribution Date

(defined below), then (A) the Rights shall be evidenced by the certificates for Common Stock registered in the name of the holders of Common Stock, (together with, in the case of certificates for Common Stock, outstanding as of the Record Date, the Summary of Rights) and not by separate Right certificates and the record holders of such certificates for Common Stock, shall be the record holders of the Rights represented thereby and (B) each Right shall be transferable only simultaneously and together with the transfer of a share of Common Stock, (subject to adjustment as hereinafter provided). Until the Distribution Date (or, if earlier, the Expiration Date), transfer on the Corporation's Direct Registration System of any Common Stock, represented by a Book Entry or the surrender for transfer of any certificate for Common Stock, shall constitute the surrender for transfer of the Right or Rights associated with the Common Stock, evidenced thereby, whether or not accompanied by a copy of the Summary of Rights.

(ii) The "Distribution Date" is the day which is the earlier of:

(A) the tenth day after the Stock Acquisition Date or such earlier or later date (not beyond the thirtieth day after the Stock Acquisition Date) as the Board of Directors may from time to time fix by resolution adopted prior to the Distribution Date that otherwise would have occurred or

(B) the tenth Business Day (or such later date as may be determined by action of the Board of Directors prior to such time as any Person becomes an Acquiring Person) after the date of the commencement by any Person (other than an Exempt Person) of, or the first public announcement (by public filing or otherwise) of the intent of any Person (other than an Exempt Person) to commence or engage in, a tender or exchange offer upon the successful consummation of which such Person, together with its Affiliates and Associates, would be the Beneficial Owner of 15% or more of the then outstanding shares of Voting Stock of the Corporation (irrespective of whether any shares are actually purchased pursuant to any such offer).

(c) Rights shall be issued in respect of all shares of Common Stock that become outstanding after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date and, in certain circumstances provided in Section 3(e) and Section 22, may be issued in respect of shares of Common Stock that become outstanding after the Distribution Date. Certificates for Common Stock (including, without limitation, certificates issued upon original issuance, disposition from the Corporation's treasury or transfer or exchange of Common Stock) after the Record Date but prior to the earlier of the Distribution Date and the Expiration Date (or, in certain circumstances as provided in Section 3(e) and Section 22, after the Distribution Date) shall have impressed, printed, written or stamped thereon or otherwise affixed thereto the following legend:

This certificate also evidences and entitles the holder to the same number of Rights (subject to adjustment) as the number of shares of Common Stock represented by this certificate, such Rights being on the terms provided under the Rights Agreement between Cosi, Inc. and American Stock Transfer and Trust Company (the "Rights Agent"), dated as of November 21, 2002, as it may be amended from time to time (the "Rights Agreement"), the terms of which are incorporated herein by reference and a copy of which is on file at the principal executive offices of Cosi, Inc. Under certain circumstances, as set forth in the Rights Agreement, such Rights shall be evidenced by separate certificates and shall no longer be evidenced by this certificate. Cosi, Inc. shall mail to the registered holder of this certificate a copy of the Rights Agreement without charge within five days after receipt of a written request therefor. Under certain circumstances as provided in Section 7(e) of the Rights Agreement, Rights issued to or Beneficially Owned by Acquiring Persons or their Affiliates or Associates (as such terms are defined in the Rights Agreement) or any subsequent holder of such Rights shall be null and void and may not be transferred to any Person.

(d) As soon as practicable after the Distribution Date, the Corporation will prepare and execute, the Rights Agent will countersign, and the Corporation will send or cause to be sent (and the Rights Agent will, if requested, send), by first class mail, postage prepaid, to each record holder of the Common Stock as of the close of business on the Distribution Date, as shown by the records of the Corporation, at the address of such holder shown on such records, a certificate in the form provided by Section 4 (a "Right"), evidencing one Right (subject to adjustment as provided herein) for each share of Common Stock so held. As of and after the Distribution Date, the Rights shall be

evidenced solely by Right Certificates and may be transferred by the transfer of the Right Certificate as permitted hereby, separately and apart from any transfer of one or more shares of Common Stock.

(e) In addition, in connection with the issuance or sale of shares of Common Stock following the Distribution Date and prior to the Expiration Date, the Corporation (i) shall, with respect to shares of Common Stock so issued or sold (i) pursuant to the exercise of stock options or under any employee plan or arrangement or (ii) upon the exercise, conversion or exchange of other securities issued by the Corporation prior to the Distribution Date and (ii) may, in any other case, if deemed necessary or appropriate by the Board of Directors of the Corporation, issue Right Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided that no such Right Certificate shall be issued if, and to the extent that, (A) the Corporation shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Corporation or the Person to whom such Right Certificate would be issued or (B) appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

SECTION 4. FORM OF RIGHT CERTIFICATES.

(a) The Right Certificates (and the forms of election to purchase shares, certificate and assignment to be printed on the reverse thereof), when, as and if issued, shall be substantially in the form set forth in Exhibit C hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Common Stock or the Rights may from time to time be listed or as the Corporation may deem appropriate to conform to usage or otherwise and as are not inconsistent with the provisions of this Rights Agreement. Subject to the provisions of Section 22, Right Certificates evidencing Rights whenever issued, (i) shall be dated as of the date of issuance of the Rights they represent and (ii) subject to adjustment from time to time as provided herein, on their face shall entitle the holders thereof to purchase such number of shares (including fractional shares which are integral multiples of one one-hundredths of a share) of Preferred Stock as shall be set forth therein at the price payable upon exercise of a Right provided by Section 7(b) as the same may from time to time be adjusted as provided herein (the "Exercise Price").

(b) Notwithstanding any other provision of this Rights Agreement, any Rights Certificate that represents Rights Beneficially Owned by an Acquiring Person or any Affiliate or Associate thereof or any other Person whose Rights shall become void pursuant to Section 7(e) shall have impressed on, printed on, written on or otherwise affixed to it (if the Corporation or the Rights Agent has knowledge that such Person is an Acquiring Person or an Associate or Affiliate or a nominee of any of the foregoing) the following legend;

The Beneficial Owner of the Rights represented by this Rights Certificate is an Acquiring Person or an Affiliate or an Associate of an Acquiring Person. Accordingly, this Rights Certificate and the Rights represented hereby shall become void in the circumstances specified in Section 7(e) of the Rights Agreement.

SECTION 5. COUNTERSIGNATURE AND REGISTRATION.

(a) Each Right Certificate shall be executed on behalf of the Corporation by its President or any Vice President, either manually or by facsimile signature, and have affixed thereto the Corporation's seal or a facsimile thereof which shall be attested by the Secretary or an Assistant Secretary of the Corporation, either manually or by facsimile signature. Each Right Certificate shall be countersigned by the Rights Agent either manually or by facsimile signature and shall not be valid for any purpose unless so countersigned. In case any officer of the Corporation who shall have signed any Right Certificate shall cease to be such officer of the Corporation before countersignature by the Rights Agent and issuance and delivery of the certificate by the Corporation, such Right Certificate, nevertheless, may be countersigned by the Rights Agent and issued and delivered with the same force and effect as though the person who signed such Right Certificates had not ceased to be such officer of the Corporation. Any Right Certificate may be signed on behalf of the Corporation by any person who, on the date of the execution of such Right Certificate, shall be a proper officer of the Corporation to sign such Right Certificate, although at the date of the execution of this Rights Agreement any such person was not such an officer.

(a) Following the Distribution Date, the Rights Agent will keep or cause to be kept, at its principal office or one or more offices designated as the appropriate place for surrender of Right Certificates upon exercise or transfer, and in such other locations as may be required by law, books for registration and transfer of the Right Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Right Certificates, the number of Rights evidenced on its face by each of the Right Certificates and the date of each of the Right Certificates.

SECTION 6. TRANSFER, SPLIT UP, COMBINATION AND EXCHANGE OF RIGHT CERTIFICATES; MUTILATED, DESTROYED, LOST OR STOLEN RIGHT CERTIFICATES.

(a) Subject to the provisions of Section 7(e), 7(f) and 14, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the Expiration Date, any Right Certificate, may be (i) transferred or (ii) split up, combined or exchanged for one or more other Right Certificates, entitling the registered holder to purchase a like number of shares of Preferred Stock as the Right Certificate or Right Certificates surrendered then entitled such holder to purchase. Any registered holder desiring to transfer any Right Certificate shall surrender the Right Certificate at the office of the Rights Agent designated for the surrender of Right Certificates with the form of certificate and assignment on the reverse side thereof duly endorsed (or enclosed with such Right Certificate a written instrument of transfer in form satisfactory to the Corporation and the Rights Agent), duly executed by the registered holder thereof or his attorney duly authorized in writing, and with such signature duly guaranteed. Any registered holder desiring to split up, combine or exchange any Right Certificate shall make such request in writing delivered to the Rights Agent, and shall surrender the Right Certificate to be split up, combined or exchanged at the office of the Rights Agent designated therefor. Thereupon, the Rights Agent shall countersign and deliver to the Person entitled thereto a Right Certificate or Right Certificates, as the case may be, as so requested. The Corporation may require payment of a sum sufficient to cover any Transfer Tax that may be imposed in connection with any transfer, split up, combination or exchange of any Right Certificates.

(b) Subject to the provisions of Section 7(e), 7(f) and 14, upon receipt by the Corporation and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Right Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them and, if requested by the Corporation, reimbursement to the Corporation and the Rights Agent of all reasonable expenses incidental thereto, or upon surrender to the Rights Agent and cancellation of the Right Certificate if mutilated, the Corporation shall issue and deliver a new Right Certificate of like tenor to the Rights Agent for delivery to the registered owner in lieu of the Right Certificate so lost, stolen, destroyed or mutilated.

SECTION 7. EXERCISE OF RIGHTS; EXERCISE PRICE; EXPIRATION DATE OF RIGHTS.

(a) The Rights shall not be exercisable until, and shall become exercisable on, the Distribution Date (unless otherwise provided herein, including, without limitation, the restrictions on exercisability set forth in Sections 7(e) and 23(a)). Except as otherwise provided in this Agreement, the Rights may be exercised, in whole or in part, at any time commencing with the Distribution Date upon surrender of the Right Certificate, with the form of election to purchase and certificate on the reverse side thereof duly executed (with signatures duly guaranteed), to the Rights Agent at the principal office of the Rights Agent designated for such purpose, together with payment of the Exercise Price for each Right exercised, subject to adjustment as hereinafter provided, at or prior to the Close of Business on the earlier of: (i) November 21, 2012 (or if the Distribution Date shall have occurred before November 21, 2012, at the close of business on the 90th day following the Distribution Date) and (ii) the date on which the rights are redeemed or exchanged as provided in Section 23 (the "Expiration Date").

(b) The Exercise Price shall initially be \$100.00 for each one-hundredth (1/100) of a share of Preferred Stock issued pursuant to the exercise of a Right. The Exercise Price and the number of shares of Preferred Stock or other securities to be acquired upon exercise of a Right shall be subject to adjustment from time to time as provided in Sections 11 and 13. The Exercise Price shall be payable in lawful money of the United States of America, in accordance with Section 7(c) below.

(c) Except as otherwise provided herein, upon receipt of a Right Certificate representing exercisable Rights with the form of election to purchase duly executed, accompanied by payment by certified check, cashier's check, bank draft or money order payable to the Corporation or the Rights Agent of the Exercise Price for the shares to be purchased and an amount equal to any applicable Transfer Tax required to be paid by the holder of the Right Certificate in accordance with Section 9(e), the Rights Agent thereupon promptly:

(i) shall requisition from any transfer agent of the Preferred Stock of the Corporation one or more certificates representing the number of shares of Preferred Stock to be so purchased, and the Corporation hereby authorizes and directs such transfer agent to comply with all such requests,

(ii) as provided in Section 14(b), at the election of the Corporation, shall cause depositary receipts to be issued in lieu of fractional shares of Preferred Stock,

(iii) if the election provided for in the immediately preceding clause (ii) has not been made, shall requisition from the Corporation the amount of cash to be paid in lieu of the issuance of fractional shares in accordance with Section 14(b),

(iv) after receipt of such Preferred Stock certificates and, if applicable, depositary receipts, shall cause the same to be delivered to or upon the order of the registered holder of such Right Certificate, registered in such name or names as may be designated by such holder; and

(v) when appropriate, after receipt, shall promptly deliver such cash to or upon the order of the registered holder of such Right Certificate; provided, however, that in the case of a purchase of securities, other than Preferred Stock, pursuant to Section 13, the Rights Agent shall promptly take the appropriate actions corresponding in such case to that referred to in the foregoing clauses (i) through (v) of this Section 7(c).

Notwithstanding the foregoing provisions of this Section 7(c), the Corporation may suspend the issuance of shares of Preferred Stock upon exercise of a Right for a reasonable period, not in excess of 90 days, during which the Corporation seeks to register under the Securities Act, and any applicable securities law of any other jurisdiction, the shares of Preferred Stock to be issued pursuant to the Rights; provided, however, that nothing contained in this Section 7(c) shall relieve the Corporation of its obligations under Section 9(c).

(d) In case the registered holder of any Right Certificate shall exercise less than all the Rights evidenced thereby, a new Right Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent to the registered holder of such Right Certificate or his assign, subject to the provisions of Section 14(b).

(e) Notwithstanding any provision of this Rights Agreement to the contrary, from and after the time (the "Invalidation Time") when any Person first becomes an Acquiring Person, other than pursuant to a Qualifying Tender Offer, any Rights that are beneficially owned by (x) such Acquiring Person (or any Associate or Affiliate of such Acquiring Person), (y) a transferee of such Acquiring Person (or any such Associate or Affiliate) who becomes a transferee after the invalidation time or (z) a transferee of such Acquiring Person (or any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Invalidation Time pursuant to either (I) a transfer from the Acquiring Person to holders of its equity securities or to any Person with whom it has any continuing agreement, arrangement or understanding regarding the transferred Rights or (II) a transfer which the Board of Directors has determined is part of a plan, arrangement or understanding which has the purpose or effect of avoiding the provisions of this Section 7(e), and subsequent transferees of such Persons referred to in clause (y) and (z) above, shall be void without any further action and any holder of such Rights shall thereafter have no rights whatsoever with respect to such Rights under any provision of this Rights Agreement. The Corporation shall use all reasonable efforts to ensure that the provisions of this Section 7(e) are complied with, but shall have no liability to any holder of Right Certificates or any other Person as a result of its failure to make any determination with respect to an Acquiring Person or its Affiliates, Associates or transferees hereunder. No Right Certificate shall be issued pursuant to Section 3 that represents Rights Beneficially Owned by an Acquiring Person whose Rights would be void pursuant to the provisions of this Section 7(e) or any

Associate or Affiliate thereof; no Right Certificate shall be issued at any time upon the transfer of any Rights to an Acquiring Person whose Rights would be void pursuant to the provisions of this Section 7(e) or any Associate or Affiliate thereof or to any nominee of such Acquiring Person, Associate or Affiliate; and any Right Certificate delivered to the Rights Agent for transfer to an Acquiring Person whose Rights would be void pursuant to the provisions of this Section 7(e) shall be cancelled. The Corporation shall use all reasonable efforts to insure that the provisions of this Section 7(e) are complied with, but shall have no liability to any holder of Right Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or its Affiliates and Associates or any transferee of any of them hereunder.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Corporation shall be obligated to undertake any action with respect to a registered holder upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) completed and signed the certificate following the form of election to purchase set forth on the reverse side of the Right Certificate surrendered for such exercise and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Corporation shall reasonably request.

SECTION 8. CANCELLATION AND DESTRUCTION OF RIGHT CERTIFICATES. All Right Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Corporation or to any of its agents, be delivered to the Rights Agent for cancellation or in cancelled form, or, if surrendered to the Rights Agent, shall be cancelled by it, and no Right Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Rights Agreement. The Corporation shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall cancel and retire, any Right Certificate purchased or acquired by the Corporation otherwise than upon the exercise thereof. The Rights Agent shall deliver all cancelled Right Certificates to the Corporation, or shall, at the written request of the Corporation, destroy such cancelled Right Certificates, and in such case shall deliver a certificate of destruction thereof to the Corporation.

SECTION 9. RESERVATION AND AVAILABILITY OF SHARES OF PREFERRED STOCK.

(a) The Corporation covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock or out of authorized and issued shares of Preferred Stock held in its treasury, such number of shares of Preferred Stock as will from time to time be sufficient to permit the exercise in full of all outstanding Rights.

(b) The Corporation shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares of Preferred Stock issued or reserved for issuance in accordance with this Rights Agreement to be listed, upon official notice of issuance, upon the principal national securities exchange, if any, upon which the Common Stock is listed or, if the principal market for the Common Stock is not on any national securities exchange, to be eligible for quotation in the NASDAQ.

(c) The Corporation covenants and agrees that it will take all such action as may be necessary to insure that all shares of Preferred Stock delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Exercise Price in respect thereof), be duly and validly authorized and issued and fully paid and nonassessable shares.

(d) The Corporation shall use its best efforts:

(i) to file, as soon as practicable following the occurrence of the event described in Section 11(a)(ii), or as soon as is required by law following the Distribution Date, as the case may be, a registration statement under the Act, with respect to the shares of Preferred Stock purchasable upon exercise of the Rights on an appropriate form;

(ii) to cause such registration statement to become effective as soon as practicable after such filing; and

(iii) to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the

earlier of (A) the date as of which the Rights are no longer exercisable for Preferred Stock, or (B) the Expiration Date.

(e) The Corporation may temporarily suspend, for a period of time not to exceed ninety days, the issuance of shares of Preferred Stock upon exercise of a Right in order to prepare and file a registration statement under the Act and permit it to become effective. The Corporation will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction unless the requisite qualification in such jurisdiction shall have been obtained and until a registration statement under the Act (if required) shall have been declared effective.

(f) The Corporation covenants and agrees that it will pay when due and payable any and all Transfer Taxes which may be payable in respect of the issuance or delivery of the Right Certificates or of any shares of Preferred Stock issued or delivered upon the exercise of Rights. The Corporation shall not, however, be required to pay any Transfer Tax which may be payable in respect of any transfer or delivery of a Right Certificate to a Person other than, or the issuance or delivery of certificates for Preferred Stock upon exercise of Rights in a name other than that of, the registered holder of the Right Certificate, and the Corporation shall not be required to issue or deliver a Right Certificate or certificate for Preferred Stock to a Person other than such registered holder until any such Transfer Tax shall have been paid (any such Transfer Tax being payable by the holder of such Right Certificate at the time of surrender) or until it has been established to the Corporation's satisfaction that no such Transfer Tax is due.

SECTION 10. PREFERRED STOCK RECORD DATE. Each Person in whose name any certificate for shares of Preferred Stock is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of the Preferred Stock represented thereby on, and such certificate shall be dated as of, the date upon which the Right Certificate evidencing such Rights was duly surrendered and payment of the Exercise Price (and any applicable Transfer Taxes) was made; provided, however, that, if the date of such surrender and payment is a date upon which the Preferred Stock transfer books of the Corporation are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated as of, the next succeeding Business Day on which the Preferred Stock transfer books of the Corporation are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Right Certificate, as such, shall not be entitled to any rights of a stockholder of the Corporation with respect to shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Corporation, except as provided herein.

SECTION 11. ADJUSTMENT OF EXERCISE PRICE OR NUMBER OF SHARES. The Exercise Price and the number of shares of Preferred Stock which may be purchased upon exercise of a Right are subject to adjustment from time to time as provided in this Section 11.

(a) (i) In the event the Corporation shall at any time after the date of this Rights Agreement (A) declare or pay any dividend on Common Stock payable in shares of Common Stock (or other capital stock), (B) subdivide or split the outstanding shares of Common Stock into a greater number of shares or (C) combine or consolidate the outstanding shares of Common Stock into a smaller number of shares or effect a reverse split of the outstanding shares of Common Stock or (D) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then and in each such event the number of shares of Preferred Stock issuable upon the exercise of a Right after the record date for such event (if one shall have been established or, if not, after the date of such event) shall be the number of shares of Preferred Stock issuable immediately prior to such event multiplied by a fraction the numerator of which is the number of Rights outstanding immediately prior to such event and the denominator of which is the number of Rights outstanding immediately after such event and the Exercise Price after such event shall be the Exercise Price in effect immediately prior to such event multiplied by such fraction. If an event occurs which would require an adjustment under both this Section 11(a) (i) and Section 11(a) (ii), the adjustment provided for in this Section 11(a) (i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to

Section 11(a)(ii).

(ii) In the event that any Person (other than an Exempt Person), alone or together with its Affiliates and Associates, shall become an Acquiring Person, except pursuant to a Qualifying Tender Offer, then, subject to the last sentence of Section 23(a) and except as otherwise provided in this Section 11, each holder of a Right, except as provided in Section 7(e), shall thereafter have the right to receive upon exercise of such Right in accordance with the terms of this Rights Agreement and payment of the Exercise Price, the greater of (1) the number of 1/100 of a share of Preferred Stock for which such Right was exercisable immediately prior to the first occurrence of the event described in this Section 11(a)(ii) or (2) such number of one one-hundredths of a share of Preferred Stock, based on the per share Fair Market Value of the Preferred Stock (determined pursuant to Section 11(b)) on the date of such first occurrence, having a value equal to twice the Exercise Price; provided, however, that if the transaction that would otherwise give rise to the foregoing adjustment is also subject to the provisions of Section 13, then only the provisions of Section 13 shall apply and no adjustment shall be made pursuant to this Section 11(a)(ii).

(iii) In the event that the Corporation does not have available sufficient authorized but unissued Preferred Stock to permit the adjustments required pursuant to the foregoing subparagraph (i) or the exercise in full of the Rights in accordance with the foregoing subparagraph (ii), the Corporation shall take all such actions as may be necessary to authorize and reserve for issuance such number of additional shares of Preferred Stock as may from time to time be required to be issued upon the exercise in full of all Rights from time to time outstanding and, if necessary, shall use its best efforts to obtain stockholder approval thereof. In lieu of issuing shares of Preferred Stock in accordance with the foregoing subparagraphs (i) and (ii), the Corporation may, if the Board of Directors determines that such action is necessary or appropriate and not contrary to the interests of holders of Rights, elect to issue or pay, upon the exercise of the Rights, cash, property, shares of Preferred or Common Stock, debt or other equity securities or any combination thereof, having an aggregate Fair Market Value equal to the Fair Market Value of the shares of Preferred Stock which otherwise would have been issuable pursuant to Section 11(a)(ii), which Fair Market Value shall be determined by an investment banking firm selected by the Board of Directors. For purposes of the preceding sentence, the Fair Market Value of the Preferred Stock shall be as determined pursuant to Section 11(b). Subject to Section 23, any such election by the Board of Directors of the Corporation must be made and publicly announced within thirty days after the date on which the event described in Section 11(a)(ii) occurs.

(b) For the purpose of this Rights Agreement, the "Fair Market Value" of any share of Preferred Stock, Common Stock or any other stock or any Right or other security or any other property on any date shall be determined as provided in this Section 11(b). In the case of a publicly-traded stock or other security, the Fair Market Value on any date shall be deemed to be the average of the daily closing prices per share of such stock or per unit of such other security for the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that in the event that the Fair Market Value per share of any share of Common Stock is determined during a period which includes any date that is within 30 Trading Days after (i) the ex-dividend date for a dividend or distribution on such stock payable in shares of Common Stock or securities convertible into shares of Common Stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account ex-dividend or post-effective date trading. The closing price for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way (in either case, as reported in the applicable transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange), or, if the securities are not listed or admitted to trading on the New York Stock Exchange, as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which such security is listed or admitted to trading; or, if not listed or admitted to trading on any national securities exchange, the last quoted price (or, if not so quoted, the average of the high bid and low asked prices) in the over-the-counter market, as reported by the NASDAQ or such other system then in use; or, if no bids for such security are quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such security selected by the Board of Directors of the Corporation. The term

"Trading Day" shall mean a day on which the principal national securities exchange on which such security is listed or admitted to trading is open for the transaction of business or, if such security is not listed or admitted to trading on any national securities exchange, a Business Day. If a security is not publicly held or not so listed or traded, "Fair Market Value" shall mean the fair value per share of stock or per other unit of such other security, as determined by an independent investment banking firm experienced in the valuation of securities selected in good faith by the Board of Directors of the Corporation, or, if no such investment banking firm is, in the good faith judgment of the Board of Directors, available to make such determination, in good faith by the Board of Directors of the Corporation; provided, however, that for purposes of making the adjustment provided for by Section 11(a)(ii), the Fair Market Value of a share of Preferred Stock shall not be less than 100% of the product of the Fair Market Value of a share of Common Stock multiplied by the higher of the then Dividend Multiple or Vote Multiple applicable to the Preferred Stock (as defined in the Certificate of Designations relating to the Preferred Stock) and shall not exceed 105% of the product of the then Fair Market Value of a share of Common Stock multiplied by the higher of the then Dividend Multiple or Vote Multiple applicable to the Preferred Stock. In the case of property other than securities, the "Fair Market Value" thereof shall be determined in good faith by the Board of Directors of the Corporation based upon such appraisals or valuation reports of such independent experts as the Board of Directors of the Corporation shall in good faith determine to be appropriate in accordance with good business practices and the interests of the holders of Rights. Any such determination of Fair Market Value shall be described in a statement filed with the Rights Agent and shall be binding upon the Rights Agent.

(c) All calculations under this Section 11 shall be made to the nearest cent or to the nearest one one-hundredth of a share, as the case may be.

(d) Irrespective of any adjustment or change in the Exercise Price or the number of shares of Preferred Stock issuable upon the exercise of the Rights, the Right Certificates theretofore and thereafter issued may continue to express the Exercise Price and the number of shares to be issued upon exercise of the Rights as in the initial Right Certificates issued hereunder but, nevertheless, shall represent the Rights as so adjusted.

(e) Before taking any action that would cause an adjustment reducing the purchase price per whole share of Preferred Stock upon exercise of the Rights below the then par value, if any, of the shares of Preferred Stock, the Corporation shall use its best efforts to take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of such Preferred Stock at such adjusted purchase price per share.

(f) Anything in this Section 11 to the contrary notwithstanding, in the event of any reclassification of stock of the Corporation or any recapitalization, reorganization or partial liquidation of the Corporation or similar transaction, the Corporation shall be entitled to make such further adjustments in the number of shares of Preferred Stock which may be acquired upon exercise of the Rights, and such adjustments in the Exercise Price therefor, in addition to those adjustments expressly required by the other paragraphs of this Section 11, as the Board of Directors of the Corporation shall determine to be necessary or appropriate in order for the holders of the Rights in such event to be treated equitably and in accordance with the purpose and intent of this Rights Agreement or in order that any such event shall not, but for such adjustment, in the opinion of counsel to the Corporation, result in the stockholders of the Corporation being subject to any United States federal income tax liability by reason thereof.

(g) In the event the Corporation shall at any time after the Record Date make any distribution on the shares of Common Stock or other capital stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, in cash or any debt security, debt instrument, real or personal property or any other property (other than any shares of Common Stock or other capital stock of the Corporation and other than any right or warrant to acquire any such shares, including any debt security convertible into or exchangeable for any such share, at less than the Fair Market Value of such shares) and the amount of such cash dividend or the Fair Market Value of such debt security, debt instrument or property exceeds 150% of the aggregate amount of the cash dividends declared or paid on the Common Stock of the Corporation in the 15-month period immediately preceding such distribution, then and in each such event, unless such distribution is part of or is made in connection with a

transaction to which Section 11(a)(ii) or Section 13 applies, the Exercise Price shall be reduced by an amount equal to the cash or the Fair Market Value of such distribution, as the case may be, per share of Common Stock of the Corporation. For purposes, the Fair Market Value of any property distributed to the holders of shares of Common Stock of the Corporation shall be the Fair Market Value of such property as determined by an independent investment banking firm experienced in the valuation of securities or the other property so distributed, as the case may be, selected in good faith by the Board of Directors of the Corporation, or, if no such investment banking firm is in the good faith judgment of the Board of Directors available to make such determination, in good faith by the Board of Directors of the Corporation, whose determination shall be final and binding on the Corporation, the Rights Agent and the holders of Rights.

SECTION 12. CERTIFICATION OF ADJUSTED EXERCISE PRICE OR NUMBER OF SHARES. Whenever an adjustment is made as provided in Section 11, 13 or 23(c), the Corporation shall (a) promptly prepare a certificate setting forth such adjustment, and a brief statement of the facts giving rise to such adjustment, (b) promptly file with the Rights Agent and with each transfer agent for the Preferred Stock a copy of such certificate and (c) mail a brief summary thereof to each holder of a Right Certificate in accordance with Section 24. Notwithstanding the foregoing sentence, the failure of the Corporation to make such certification or give such notice shall not affect the validity of or the force or effect of the requirement for such adjustment. Any adjustment to be made pursuant to Section 11, 13 or 23(c) of this Rights Agreement shall be effective as of the date of the event giving rise to such adjustment. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained and shall not be deemed to have knowledge of any adjustment unless and until it shall have received such certificate.

SECTION 13. CONSOLIDATION, MERGER OR SALE OR TRANSFER OF ASSETS OR EARNING POWER.

(a) Except for any transaction approved by the Board of Directors, in the event that, at any time on or after any Person becomes an Acquiring Person:

(x) the Corporation shall, directly or indirectly, consolidate with, or merge with and into, any other Person or Persons (other than an Exempt Person) and the Corporation shall not be the surviving or continuing Corporation of such consolidation or merger; or

(y) any Person or Persons (other than an Exempt Person) shall, directly or indirectly, consolidate with, or merge with and into, the Corporation, and the Corporation shall be the continuing or surviving Corporation of such consolidation or merger and, in connection with such consolidation or merger, all or part of the outstanding shares of Common Stock shall be changed into or exchanged for stock or other securities of any other Person (other than an Exempt Person) or of the Corporation or cash or any other property; or

(z) the Corporation or one or more of its Subsidiaries shall, directly or indirectly, sell or otherwise transfer to any other Person or any Affiliate or Associate of such Person, in one or more transactions, or the Corporation or one or more of its Subsidiaries shall sell or otherwise transfer to any Persons in one or a series of related transactions, assets or earning power aggregating more than 50% of the assets or earning power of the Corporation and its Subsidiaries (taken as a whole),

then, on the first occurrence of any such event, proper provision shall be made so that

(i) each holder of record of a Right, except as provided in Section 7(e), shall thereafter have the right to receive, upon the exercise thereof and payment of the Exercise Price in accordance with the terms of this Rights Agreement, such number of shares of validly issued, fully paid, non-assessable and freely tradable Common Stock of the Principal Party (as defined herein), not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall, based on the Fair Market Value of the Common Stock of the Principal Party on the date of the Consummation of such consolidation, merger, sale or transfer, equal twice the Exercise Price;

(ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such consolidation, merger, sale or transfer, all the obligations and duties of the Corporation pursuant to this Rights Agreement;

(iii) the term "Corporation" for all purposes of this Rights Agreement shall thereafter be deemed to refer to such Principal Party;

(iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock in accordance with the provisions of Section 9 applicable to the reservation of Preferred Stock) in connection with such consummation as may be necessary to assure that the provisions shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights; provided, however, that, upon the subsequent occurrence of any merger, consolidation, sale of all or substantially all of the assets, recapitalization, reclassification of shares, reorganization or other extraordinary transaction in respect of such Principal Party, each holder of a Right shall thereupon be entitled to receive, upon exercise of a Right and payment of the Exercise Price, such cash, shares, rights, warrants and other property which such holder would have been entitled to receive had it, at the time of such transaction, owned the shares of Common Stock of the Principal Party purchasable upon the exercise of a Right, and such Principal Party shall take such steps (including, but not limited to, reservation of shares of stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms for such cash, shares, rights, warrants and other property and (v) the provisions of Section 11(a)(ii) shall be of no effect following the occurrence of any event described in clause (x), (y) or (z) above of this Section 13(a).

(b) "Principal Party" means:

(i) in the case of any transaction described in (x) or (y) of the first sentence of Section 13(a): (A) the Person that is the issuer of the securities into which shares of Common Stock of the Corporation are changed or otherwise exchanged or converted in such merger or consolidation, or, if there is more than one such issuer, the issuer of the Common Stock of which has the greatest market value or (B) if no securities are so issued, (x) the Person that is the other party to the merger or consolidation and that survives such merger or consolidation, or, if there is more than one such Person, the Person the Common Stock of which has the greatest market value or (y) if the Person that is the other party to the merger or consolidation does not survive the merger or consolidation, the Person that does survive the merger or consolidation (including the Corporation if it survives); and

(ii) in the case of any transaction described in (z) of the first sentence in Section 13(a), the Person that is the party receiving the greatest portion of the assets or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest market value of shares outstanding; provided, however, that in any such case, if the Common Stock of such Person is not at such time and has not been continuously over the preceding 12-month period registered under Section 12 of the Exchange Act, and such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, the term "Principal Party" shall refer to such other Person, or if such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stocks of all of which are and have been so registered, the term "Principal Party" shall refer to whichever of such Persons is the issuer of the Common Stock having the greatest market value of shares outstanding.

(c) The Corporation shall not consummate any consolidation, merger or sale or transfer of assets or earning power referred to in Section 13(a) unless the Principal Party shall have a sufficient number of authorized shares of its Common Stock that have not been issued or reserved for issuance to permit exercise in full of all Rights in accordance with this Section 13 and unless prior thereto the Corporation and the Principal Party involved therein shall have executed and delivered to the Rights Agent an agreement confirming that the Principal Party shall, upon consummation of such consolidation, merger or sale or transfer of assets or earning power, assume this Rights Agreement in accordance with Section 13(a) and that all rights of first refusal or preemptive rights in respect of the issuance of shares of Common Stock of the Principal Party upon exercise of outstanding Rights have been waived and that such transaction shall not result in a default by the Principal Party under this Rights Agreement, and further providing that, as soon as practicable after the date of any consolidation, merger or sale or transfer of assets or earning power

referred to in Section 13(a), the Principal Party will:

(i) prepare and file a registration statement under the Act with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, use its best efforts to cause such registration statement to become effective as soon as practicable after such filing and use its best efforts to cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the date of expiration of the Rights, and similarly comply with applicable state securities laws;

(ii) use its best efforts to list (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on a national securities exchange or to meet the eligibility requirements for quotation on NASDAQ; and

(iii) deliver to holders of the Rights historical financial statements for the Principal Party which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act. In the event that any of the transactions described in Section 13(a) shall occur at any time after the occurrence of a transaction described in Section 11(a)(ii), the Rights which have not theretofore been exercised shall, subject to the provisions of Section 7(e), thereafter be exercisable in the manner described in Section 13(a).

(d) In case the Principal Party which is to be a party to a transaction referred to in this Section 13 has a provision in any of its authorized securities or in its Certificate of the Corporation or By-laws or other instrument governing its corporate affairs, which provision would have the effect of (i) causing such Principal Party to issue, in connection with, or as a consequence of, the consummation of a transaction referred to in this Section 13, shares of Common Stock of such Principal Party at less than the then Fair Market Value per share (determined pursuant to Section 11(b)) or securities exercisable for, or convertible into, Common Stock of such Principal Party at less than such then Fair Market Value (other than to holders of Rights pursuant to this Section 13) or (ii) providing for any special tax or similar payment in connection with the issuance to any holder of a Right of Common Stock of such Principal Party pursuant to the provisions of this Section 13, then, in such event, the Corporation shall not consummate any such transaction unless prior thereto the Corporation and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing that the provision in question of such Principal Party shall have been cancelled, waived or amended, or that the authorized securities shall be redeemed, so that the applicable provision will have no effect in connection with, or as a consequence of, the consummation of the proposed transaction.

SECTION 14. FRACTIONAL RIGHTS AND FRACTIONAL SHARES.

(a) The Corporation shall not be required to issue fractions of Rights or to distribute Right Certificates which evidence fractional Rights (i.e., Rights to acquire less than one one-hundredth of a share of Preferred Stock), unless such fractional Rights result from a transaction referred to in Section 11(a)(i). If the Corporation shall determine not to issue such fractional Rights, then, in lieu of such fractional Rights, there shall be paid to the holders of record of the Right Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the Fair Market Value of a whole Right.

(b) The Corporation shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-hundredth of a share) upon exercise of the Rights or to distribute certificates which evidence fractional shares (other than fractions which are integral multiples of one one-hundredth of a share). In lieu of issuing fractions of shares of Preferred Stock, the Corporation may, at its election, issue depositary receipts evidencing fractions of shares pursuant to an appropriate agreement between the Corporation and a depositary selected by it, provided that such agreement shall provide that the holders of such depositary receipts shall have all of the rights, privileges and preferences to which they would be entitled as owners of the Preferred Stock. With respect to fractional shares that are not integral multiples of one one-hundredth of a share, if the Corporation does not issue such fractional shares or depositary receipts in lieu thereof, there shall be paid to the holders of record of Right Certificates at the time such Right Certificates are exercised as herein provided an amount in cash equal to the same fraction of the Fair Market Value of a share of Preferred Stock.

(c) The holder of a Right by the acceptance of a Right expressly waives his right to receive any fractional Right or any fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-hundredth of a share) upon exercise of a Right.

SECTION 15. RIGHTS OF ACTION. All rights of action in respect of this Rights Agreement, except the rights of action given to the Rights Agent in Section 18, are vested in the respective registered holders of the Right Certificates (and, prior to the Distribution Date, the holders of record of the Common Stock; and any holder of record of any Right Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Right Certificate (or, prior to the Distribution Date, of the Common Stock), may, in his own behalf and for his own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Corporation to enforce, or otherwise act in respect of, his right to exercise the Rights evidenced by such Right Certificate in the manner provided in such Right Certificate and in this Rights Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Rights Agreement and will be entitled to specific performance of the obligations under, and injunctive relief against actual or threatened violations of, the obligations of any Person subject to this Rights Agreement.

SECTION 16. AGREEMENT OF RIGHT HOLDERS. Each holder of a Right, by accepting the same, consents and agrees with the Corporation and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights shall be evidenced by the certificates for Common Stock registered in the name of the holders of Common Stock together, as applicable, with the Summary of Rights), which certificates for Common Stock shall also constitute certificates for Rights, and not by separate Right Certificates, and each Right shall be transferable only simultaneously and together with the transfer of shares of Common Stock;

(b) after the Distribution Date, the Right Certificates are transferable only on the registry books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer; and

(c) the Corporation and the Rights Agent may deem and treat the Person in whose name the Right Certificate (or, prior to the Distribution Date, the associated Book Entry representing, or certificate for, Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Right Certificates or the associated Common Stock certificate made by anyone other than the Corporation or the Rights Agent) for all purposes whatsoever, and neither the Corporation nor the Rights Agent shall be affected by any notice to the contrary; and

(d) Notwithstanding anything in this Agreement to the contrary, neither the Corporation nor the Rights Agent shall have any liability to any holder of a Right or a beneficial interest in a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, the Corporation must use its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible; and

(e) Rights Beneficially Owned by certain Persons will under certain circumstances set forth in this Agreement become null and void pursuant to Section 7(e); and

(f) this Agreement may be supplemented or amended from time to time pursuant to Section 25.

SECTION 17. RIGHT CERTIFICATE HOLDER NOT DEEMED A STOCKHOLDER. No holder, as such, of any Right Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of Preferred Stock or any other securities which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Right

Certificate be construed to confer upon the holder of any Right Certificate, as such, any of the rights of a stockholder of the Corporation or any right to vote for the election of directors or upon any matter submitted to shareholders at any meeting thereof (except as provided in Section 7(f)), or to give or withhold consent to any corporate action (except as provided in Section 7(f)) or to receive notice of meetings or other actions affecting shareholders (except as provided in Section 24), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Right Certificate shall have been exercised in accordance with the provisions.

SECTION 18. CONCERNING THE RIGHTS AGENT.

(a) The Corporation agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the administration and execution of this Rights Agreement and the exercise and performance of its duties hereunder. The Corporation also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or failed to be done by the Rights Agent in connection with the acceptance and administration of this Rights Agreement, including the cost and expenses of defending against any claim of liability relating to the Rights or this Rights Agreement.

(b) The Rights Agent shall be protected against, and shall incur no liability for or in respect of, any action taken, suffered or omitted by it in connection with its administration of this Rights Agreement in reliance upon any Right Certificate or certificate for Preferred Stock or for other securities of the Corporation, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper person or persons. In addition, anything in this Rights Agreement to the contrary notwithstanding, in no event shall the Rights Agent be liable for special, indirect or consequential damages of any kind whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

SECTION 19. MERGER OR CONSOLIDATION OF, OR CHANGE IN NAME OF, THE RIGHTS AGENT.

(a) Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Rights Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21. In case at the time such successor Rights Agent shall succeed to the agency created by this Rights Agreement any of the Right Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of the predecessor Rights Agent and deliver such Right Certificates so countersigned; and in case at that time any of the Right Certificates shall not have been countersigned, any successor Rights Agent may countersign such Right Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent; and in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Rights Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Right Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Right Certificates so countersigned; in case at that time any of the Right Certificates shall not have been countersigned, the Rights Agent may countersign such Right Certificates either in its prior name or in its changed name; in all such cases such Right Certificates shall have the full force provided in the Right Certificates and in this Rights Agreement.

SECTION 20. DUTIES OF THE RIGHTS AGENT. The Rights Agent undertakes the duties and obligations imposed by this Rights Agreement upon the following terms and conditions, by all of which the Corporation and the holders of Right Certificates by their acceptance thereof shall be bound:

(a) The Rights Agent may consult with legal counsel (who may also be legal counsel for the Corporation), and the opinion of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Rights Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Corporation prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chairman of the Board, the President or any Vice President and by the Treasurer or the Secretary of the Corporation and delivered to the Rights Agent. Any such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Rights Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder only for its own negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Rights Agreement or in the Right Certificates (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Corporation only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Rights Agreement or the execution and delivery (except the due execution by the Rights Agent) or in respect of the validity or execution of any Right Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Corporation of any covenant or condition contained in this Rights Agreement or in any Right Certificate; nor shall it be responsible for any adjustment required under the provisions of Section 11 or 13 or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Right Certificates after receipt of a certificate describing any such adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Preferred Stock to be issued pursuant to this Rights Agreement or any Right Certificate or as to whether any shares of Preferred Stock will, when issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Corporation agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of the Rights Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chairman of the Board, the President or any Vice President or the Secretary or the Treasurer of the Corporation, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer.

(h) The Rights Agent and any shareholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Corporation or become pecuniarily interested in any transaction in which the Corporation may be interested, or contract with or lend money to the Corporation or otherwise act as fully and freely as though it were not the Rights Agent under this Rights Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Corporation or for any other Person.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Corporation resulting from any such act, default, neglect or misconduct, provided reasonable care was exercised in the selection and continued employment thereof.

SECTION 21. CHANGE OF RIGHTS AGENT. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Rights Agreement upon 30 days notice in writing mailed to the Corporation and to each transfer agent of the Common Stock and the Preferred Stock by registered or certified mail. The Corporation may remove the Rights Agent or any successor Rights Agent (with or without cause) upon 30 days notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and the Preferred Stock by registered or certified mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Corporation shall appoint a successor to the Rights Agent. Notwithstanding the foregoing provisions of this Section 21, in no event shall the resignation or removal of a Rights Agent be effective until a successor Rights Agent shall have been appointed and have accepted such appointment. If the Corporation shall fail to make such appointment within a period of 30 days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Right Certificate (who shall, with such notice, submit his Right Certificate for inspection by the Corporation), then the incumbent Rights Agent or the holder of record of any Right Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Corporation or by such a court, shall be (a) a Person organized and doing business under the laws of the United States or of any state thereof, in good standing, which is authorized under such laws to exercise corporate trust or stock transfer powers and is subject to supervision or examination in the conduct of its corporate trust or stock transfer business by federal or state authorities and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$5,000,000 or (b) an Affiliate controlled by a Person described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed, but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Corporation shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and Preferred Stock, and mail a notice thereof in writing to the registered holders of the Right Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be. Notwithstanding the foregoing provisions, in the event of resignation, removal or incapacity of the Rights Agent, the Corporation shall have the authority to act as the Rights Agent until a successor Rights Agent shall have assumed the duties of the Rights Agent hereunder.

SECTION 22. ISSUANCE OF NEW RIGHT CERTIFICATES. Notwithstanding any of the provisions of this Rights Agreement or of the Rights to the contrary, the Corporation may, at its option, issue new Right Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price per share and the number or kind or class of shares of stock or other securities or property purchasable under the Right Certificates made in accordance with the provisions of this Rights Agreement.

SECTION 23. REDEMPTION OR EXCHANGE.

(a) The Corporation may, at its option, but only by the vote of a majority of the Board of Directors, redeem all but not less than all of the then outstanding Rights, at any time prior to the Close of Business on the tenth day following the Stock Acquisition Date (subject to extension by the Corporation as provided in Section 25) at a redemption price of \$0.01 per Right, subject to adjustments as provided in subsection (c) below (the "Redemption Price"). Notwithstanding anything contained in this Agreement to the contrary, the Rights shall not be exercisable pursuant to Section 11(a)(ii) prior to the expiration of the Corporation's right of redemption hereunder.

(b) Without any further action and without any notice, the right to exercise the Rights will terminate effective at the time of the action of the Board of Directors ordering the redemption of the Rights and the only right thereafter of the holders of Rights shall be to receive the Redemption Price. Within ten days after the effective time of the action of the Board of Directors ordering the redemption of the Rights, the Corporation shall give notice of such redemption to the holders of the then outstanding Rights by mailing such notice to all such holders at their last addresses as they appear upon the registry

books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each notice of redemption will state the method by which the payment of the Redemption Price will be made. At the option of the Board of Directors, the Redemption Price may be paid in cash to each Rights holder or by the issuance of shares (and, at the Corporation's election pursuant to Section 14(b), cash or depositary receipts in lieu of fractions of shares other than fractions which are integral multiples of one one-thousandth (1/100) of a share) of Preferred Stock having a Fair Market Value equal to such cash payment.

(c) In the event the Corporation shall at any time after the date of this Rights Agreement (A) pay any dividend on Common Stock in shares of Common Stock, (B) subdivide or split the outstanding shares of Common Stock into a greater number of shares, (C) combine or consolidate the outstanding shares of Common Stock into a smaller number of shares or effect a reverse split of the outstanding shares of Common Stock or (D) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then, and in each such event, the Redemption Price shall be adjusted so that the Redemption Price after such event shall equal the Redemption Price immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock outstanding immediately prior to such event; provided, however, that in each case such adjustment to the Redemption Price shall be made only if the amount of the Redemption Price shall be reduced or increased by at least more or less than \$0.01 per Right.

(d) The Board of Directors of the Corporation may, at its option, at any time after the tenth day following a Stock Acquisition Date and prior to the time that an Acquiring Person becomes the Beneficial Owner of more than 50% of the outstanding Voting Stock of the Corporation, elect to exchange all (but not less than all) of the then outstanding Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e)) for shares of Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted in order to protect the interests of holders of Rights generally in the event that an event of a type analogous to any of the events described in Section 11 shall have occurred with respect to the Common Stock (such exchange ratio, as adjusted from time to time, being hereinafter referred to as the "Exchange Ratio").

(e) Immediately upon the action of the Board of Directors of the Corporation electing to exchange the Rights, without any further action and without any notice, the right to exercise the Rights will terminate and each Right will thereafter represent only the right to receive a number of shares of Common Stock equal to the Exchange Ratio. Promptly after the action of the Board of Directors electing to exchange the Rights, the Corporation shall give notice thereof (specifying the steps to be taken to receive shares of Common Stock in exchange for Rights) to the Rights Agent and the holders of the then outstanding Rights by mailing such notice in accordance with Section 28(a).

SECTION 24. NOTICE OF PROPOSED ACTIONS.

(a) In case the Corporation, after the Distribution Date, shall propose (i) to effect any of the transactions referred to in Section 11(a)(i) or 11(g) or (ii) to offer to the holders of record of its Common Stock options, warrants, or other rights to subscribe for or to purchase shares of Common Stock (including any security convertible into or exchangeable for Common Stock) or shares of stock of any class or any other securities, options, warrants, convertible or exchangeable securities or other rights, or (iii) to effect any reclassification of its Preferred Stock or Common Stock or any recapitalization or reorganization of the Corporation, or (iv) to effect any consolidation or merger with or into, or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one or more transactions, of more than 50% of the assets or earning power of the Corporation and its Subsidiaries (taken as a whole) to, any other Person or Persons, or (v) to effect the liquidation, dissolution or winding up of the Corporation, then, in each such case, the Corporation shall give to each holder of record of a Right Certificate, in accordance with Section 28(a), notice of such proposed action, which shall specify the record date for the purposes of such transaction referred to in Section 11(a)(i) or such dividend or distribution, or the date on which such reclassification, recapitalization, reorganization, consolidation, merger, sale or transfer of assets, liquidation, dissolution, or winding up is to take place and the record date for determining

participation therein by the holders of record of Common Stock or Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least ten days prior to the record date for determining holders of record of the Preferred Stock for purposes of such action, and in the case of any such other action, at least ten days prior to the date of the taking of such proposed action or the date of participation therein by the holders of record of Common Stock or Preferred Stock, whichever shall be the earlier. The failure to give notice required by this Section 24 or any defect therein shall not affect the legality or validity of the action taken by the Corporation or the vote upon any such action.

(b) In case any of the transactions referred to in Section 11(a) (i), 11(g) or 13 of this Rights Agreement are proposed, then, in any such case, the Corporation shall give to each holder of Rights, in accordance with Section 28(a), notice of the proposal of such transaction at least ten days prior to consummating such transaction, which notice shall specify the proposed event and the consequences of the event to holders of Rights under Section 11(a) (i), 11(g) or 13, as the case may be, and, upon consummating such transaction, shall similarly give notice thereof to each holder of Rights.

SECTION 25. SUPPLEMENTS AND AMENDMENTS. For as long as the Rights are then redeemable, the Corporation may in its sole and absolute discretion, and the Rights Agent shall if the Corporation so directs, supplement or amend any provision of this Agreement without the approval of any holders of the Rights. At any time when the Rights are not then redeemable, the Corporation may, and the Rights Agent shall if the Corporation so directs, supplement or amend this Rights Agreement without the approval of any holders of Right Certificates (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein or (iii) to change or supplement the provisions hereunder in any manner which the Corporation may deem necessary or desirable, provided that no such supplement or amendment pursuant to this clause (iii) shall materially adversely affect the interest of the holders of Right Certificates. Upon the delivery of a certificate from an appropriate officer of the Corporation which states that the proposed supplement or amendment is in compliance with the terms of this Section 25, the Rights Agent shall execute such supplement or amendment.

SECTION 26. DETERMINATION AND ACTIONS BY THE BOARD OF DIRECTORS OF THE CORPORATION, ETC. The Board of Directors of the Corporation shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board, or the Corporation, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including, without limitation, a determination to redeem or not redeem the Rights or to amend the Agreement and whether any proposed amendment materially adversely affects the interests of the holders of Right Certificates). For all purposes of this Agreement, any calculation of the number of shares of Common Stock or other securities outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock or any other securities of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement. All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) which are done or made by the Board in good faith, shall (x) be final, conclusive and binding on the Corporation, the Rights Agent, the holders of the Rights and all other parties, and (y) not subject the Board to any liability to the holders of the Rights.

SECTION 27. BENEFITS OF THIS RIGHTS AGREEMENT. Nothing in this Rights Agreement shall be construed to give to any Person other than the Corporation, the Rights Agent and the registered holders of the Right Certificates (and, prior to the Distribution Date, the holders of Common Stock in their capacity as holders of the Rights) any legal or equitable right, remedy or claim under this Rights Agreement; but this Rights Agreement shall be for the sole and exclusive benefit of the Corporation, the Rights Agent and the holders of record of the Right Certificates (and, prior to the Distribution Date, the holders of Common Stock in their capacity as holders of the Rights).

SECTION 28. MISCELLANEOUS.

(a) NOTICES. Notices or demands authorized by this Rights Agreement to be given or made by the Rights Agent or by the holder of record of any Right

Certificate or Right to or on the Corporation shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Cosi, Inc.
242 West 36th Street
New York, NY 10018
Attention: Pam Palladino

Subject to the provisions of Section 21, any notice or demand authorized by this Rights Agreement to be given or made by the Corporation or by the holder of record of any Right Certificate or Right to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Corporation) as follows:

59 Maiden Lane
New York, NY 10038
Attention: Corporate Trust Dept.
Re: Cosi, Inc.

Notices or demands authorized by this Rights Agreement to be given or made by the Corporation or the Rights Agent to the holder of record of any Right Certificate or Right shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Corporation.

(b) SUCCESSORS. All of the covenants and provisions of this Rights Agreement by or for the benefit of the Corporation or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

(c) DELAWARE CONTRACT. This Rights Agreement and each Right Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed and enforced in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state.

(d) COUNTERPARTS. This Rights Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

(e) DESCRIPTIVE HEADINGS. Descriptive headings of the several Sections of this Rights Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions.

(f) SEVERABILITY. If any term, provision, covenant or restriction of this Rights Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Rights Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the parties hereto have caused this Rights Agreement to be duly executed, all as of the day and year first above written.

COSI, INC.

By _____
Name:
Title:

AMERICAN STOCK TRANSFER AND TRUST

By _____
Name:
Title:

FORM OF
Exhibit A
to Amended and Restated Certificate of Incorporation
of COSI, INC.
SERIES D PREFERRED STOCK

One million (1,000,000) shares of the Corporation's Preferred Stock shall be designated as "Series D Preferred Stock", One Cent (\$01) par value per share (the "Series D Preferred Stock") and the number of shares constituting such series shall be 1,000,000.

SECTION 1. DIVIDENDS AND DISTRIBUTIONS.

1A Subject to the provisions for adjustment hereinafter set forth, the holders of shares of Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, (i) cash dividends in an amount per share (rounded to the nearest cent) equal to 100 times the aggregate per share amount of all cash dividends declared or paid on the common stock of the Corporation, \$0.01 par value per share, of the Corporation (collectively, the "Common Stock") and (ii) a preferential cash dividend (the "Preferential Dividends"), if any, in preference to the holders of Common Stock, on the first day of February, May, August and November of each year (each a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series D Preferred Stock, payable in an amount (except in the case of the first Quarterly Dividend Payment if the date of the first issuance of Series D Preferred Stock is a date other than a Quarterly Dividend Payment date, in which case such payment shall be a prorated amount of such amount) equal to \$0.10 per share of Series D Preferred Stock less the per share amount of all cash dividends declared on the Series D Preferred Stock pursuant to clause (i) of this sentence since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series D Preferred Stock. In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series D Preferred Stock, make any distribution on the shares of Common Stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, which is payable in cash or any debt security, debt instrument, real or personal property or any other property (other than cash dividends subject to the immediately preceding sentence, a distribution of shares of Common Stock or other capital stock of the Corporation or a distribution of rights or warrants to acquire any such share, including any debt security convertible into or exchangeable for any such share, at a price less than the Fair Market Value (as hereinafter defined) of such share), then, and in each such event, the Corporation shall simultaneously pay (and not be permitted to accrue) on each then outstanding share of Series D Preferred Stock of the Corporation a distribution, in like kind, of 100 times such distribution paid on a share of Common Stock (subject to the provisions for adjustment hereinafter set forth). The dividends and distributions on the Series D Preferred Stock to which holders thereof are entitled pursuant to clause (i) of the first sentence of this paragraph and pursuant to the second sentence of this paragraph are hereinafter referred to as "Dividends" and the multiple of such cash and non-cash dividends on the Common Stock applicable to the determination of the Dividends, which shall be 100 initially but shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple." In the event the Corporation shall at any time after November 21, 2002 (the "Rights Declaration Date"), (i) declare or pay any dividend or make any distribution on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of Dividends which holders of shares of Series D Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

1B. The Corporation shall declare each Dividend at the same time it declares any cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid. No cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid shall be paid or set aside for payment on the Common Stock unless a Dividend in respect of such dividend or distribution on the Common Stock shall be simultaneously paid, or set aside for payment, on the Series D Preferred Stock.

1C. Preferential Dividends shall begin to accrue on outstanding shares of Series D Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of any shares of Series D Preferred Stock. Accrued but unpaid Preferential Dividends shall cumulate but shall not bear interest. Preferential Dividends paid on the shares of Series D Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding.

SECTION 2. VOTING RIGHTS. The holders of shares of Series D Preferred Stock shall have the following voting rights:

2A. Subject to the provisions for adjustment hereinafter set forth, each share of Series D Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the holders of the Common Stock. The number of votes which a holder of Series D Preferred Stock is entitled to cast, as the same may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall at any time after the Rights Declaration Date, (i) declare or pay any dividend on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is the continuing or surviving Corporation), then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series D Preferred Stock shall be entitled after such event shall be the Vote Multiple immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

2B. Except as otherwise provided herein, in the Amended and Restated Certificate of Incorporation or By-laws, the holders of shares of Series D Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of shareholders of the Corporation.

2C. In the event that the Preferred Dividends accrued on the Series D Preferred Stock for four or more quarterly dividend periods, whether consecutive or not, shall not have been declared and paid or irrevocably set aside for payment, the holders of record of Junior Preferred Stock of the Corporation of all series (including the Series D Preferred Stock), other than any series in respect of which such right is expressly withheld by the Amended and Restated Certificate of Incorporation or the authorizing resolutions included in any Certificate of Designations therefor, shall have the right, at the next meeting of shareholders called for the election of directors, to elect two members to the Board of Directors, which directors shall be in addition to the number required by the By-laws prior to such event, to serve until the next Annual Meeting and until their successors are elected and qualified or their earlier resignation, removal or incapacity or until such earlier time as all accrued and unpaid Preferential Dividends upon the outstanding shares of Series D Preferred Stock shall have been paid (or irrevocably set aside for payment) in full. The holders of shares of Series D Preferred Stock shall continue to have the right to elect directors as provided by the immediately preceding sentence until all accrued and unpaid Preferential Dividends upon the outstanding shares of Series D Preferred Stock shall have been paid (or irrevocably set aside for payment) in full. Such directors may be removed and replaced by such shareholders, and vacancies in such directorships may be filled only by such shareholders (or by the remaining director elected by such shareholders, if there be one) in the manner permitted by law; provided, however, that any such action by shareholders shall be taken at a meeting of shareholders and shall not be taken by written consent thereto.

2C. Except as otherwise required by the Amended and Restated Certificate of Incorporation or By-laws or set forth herein, holders of Series D Preferred Stock shall have no other special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for the taking of any corporate action.

SECTION 3. CERTAIN RESTRICTIONS.

3A. Whenever Preferential Dividends or Dividends are in arrears or the Corporation shall be in default of payment thereof, thereafter and until all accrued and unpaid Preferential Dividends and Dividends, whether or not declared, on shares of Series D Preferred Stock outstanding shall have been paid or set irrevocably aside for payment in full, and in addition to any and all other rights which any holder of shares of Series D Preferred Stock may have in such circumstances, the Corporation shall not

- (i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock;
- (ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity as to dividends with the Series D Preferred Stock, unless dividends are paid ratably on the Series D Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled if the full dividends accrued thereon were to be paid;
- (iii) except as permitted by subparagraph (iv) of this paragraph 3A., redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series D Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon liquidation, dissolution or winding up) to the Series D Preferred Stock; or
- (iv) purchase or otherwise acquire for consideration any shares of Series D Preferred Stock, or any shares of stock ranking on a parity with the Series D Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up), except in accordance with a purchase offer made to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

3B. The Corporation shall not permit any Subsidiary (as hereinafter defined) of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 3, purchase or otherwise acquire such shares at such time and in such manner. A "Subsidiary" of the Corporation shall mean any Corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors of such Corporation or other entity or other persons performing similar functions are beneficially owned, directly or indirectly, by the Corporation or by any Corporation or other entity that is otherwise controlled by the Corporation.

3C. The Corporation shall not issue any shares of Series D Preferred Stock except upon exercise of Rights issued pursuant to that certain Rights Agreement dated as of November 21, 2002, between the Corporation and American Stock transfer and Trust Company, as Rights Agent, a copy of which is on file with the Secretary of the Corporation at its principal executive office and shall be made available to shareholders of record without charge upon written request therefor addressed to said Secretary. Notwithstanding the foregoing sentence, nothing contained in the provisions shall prohibit or restrict the Corporation from issuing for any purpose any series of Preferred Stock with

rights and privileges similar to, different from, or greater than, those of the Series D Preferred Stock.

SECTION 4. REACQUIRED SHARES. Any shares of Series D Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares upon their retirement and cancellation shall become authorized but unissued shares of Preferred Stock, without designation as to series, and such shares may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

SECTION 5. LIQUIDATION, DISSOLUTION OR WINDING UP. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series D Preferred Stock unless the holders of shares of Series D Preferred Stock shall have received, subject to adjustment as hereinafter provided, (A) \$100 per one one-hundredth (1/100) share plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or, (B) if greater than the amount specified in clause (i)(A) of this sentence, an amount equal to 100 times the aggregate amount to be distributed per share to holders of Common Stock, as the same may be adjusted as hereinafter provided and (ii) to the holders of stock ranking on a parity upon liquidation, dissolution or winding up with the Series D Preferred Stock, unless simultaneously therewith distributions are made ratably on the Series D Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of shares of Series D Preferred Stock are entitled under clause (i)(A) of this sentence and to which the holders of such parity shares are entitled, in each case upon such liquidation, dissolution or winding up. The amount to which holders of Series D Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant to clause (i)(B) of the foregoing sentence is hereinafter referred to as the "Participating Liquidation Amount" and the multiple of the amount to be distributed to holders of shares of Common Stock upon the liquidation, dissolution or winding up of the Corporation applicable pursuant to said clause to the determination of the Participating Liquidation Amount, as said multiple may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Liquidation Multiple." In the event the Corporation shall at any time after the Rights Declaration Date (i) declare or pay any dividend on Common Stock payable in shares of Common Stock, (ii) effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, or (iii) issue any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a consolidation or merger in which the Corporation is continuing or surviving Corporation), then, in each such case, the Liquidation Multiple thereafter applicable to the determination of the Participating Liquidation Amount to which holders of Series D Preferred Stock shall be entitled after such event shall be the Liquidation Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

SECTION 6. CERTAIN RECLASSIFICATION AND OTHER EVENTS.

6A. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date, in respect of their shares of Common Stock any share of capital stock of the Corporation (other than any share of Common Stock of the Corporation), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Transaction"), then, and in each such event, the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall be adjusted so that after such event the holders of Series D Preferred Stock shall be entitled, in respect of each share of Series D Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, to (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such Transaction multiplied by the additional dividends which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock, (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such Transaction multiplied by the additional voting rights which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock and (iii) such additional distributions upon liquidation, dissolution or winding up of the

Corporation as equal the Liquidation Multiple in effect immediately prior to such Transaction multiplied by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation by virtue of the receipt in the Transaction of such capital stock, as the case may be, all as provided by the terms of such capital stock.

6B. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date, in respect of their shares of Common Stock any right or warrant to purchase Common Stock (including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for Common Stock) at a purchase price per share less than the Fair Market Value of a share of Common Stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall each be adjusted so that after such event the Dividend Multiple, the Vote Multiple and the Liquidation Multiple shall each be the product of the Dividend Multiple, the Vote Multiple and the Liquidation Multiple, as the case may be, in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased, at the Fair Market Value of the Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

6C. In the event that holders of shares of Common Stock of the Corporation receive after the Rights Declaration Date, in respect of their shares of Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Common Stock), including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for capital stock of the Corporation (other than Common Stock), at a purchase price per share less than the Fair Market Value of such shares of capital stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon liquidation, dissolution or winding up of the Corporation of the shares of Series D Preferred Stock shall each be adjusted so that after such event each holder of a share of Series D Preferred Stock shall be entitled, in respect of each share of Series D Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such event multiplied, first, by the additional dividends to which the holder of a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction (as hereinafter defined) and (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such event multiplied, first, by the additional voting rights to which the holder of a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such event multiplied, first, by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction. For purposes of this paragraph, the "Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Common Stock of the Corporation as contemplated by this paragraph immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

6D. For purposes of this Exhibit A, the "Fair Market Value" of a share of capital stock of the Corporation (including a share of Common Stock) on any date shall be deemed to be the average of the daily closing price per share thereof over the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that, in the event that such Fair Market Value of any such share of capital stock is determined during a

period which includes any date that is within 30 Trading Days after (i) the ex-dividend date for a dividend or distribution on stock payable in shares of such stock or securities convertible into shares of such stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account ex-dividend or post-effective date trading. The closing price for any day shall be the last sale price, regular way, or, in case, no such sale takes place on such day, the average of the closing bid and asked prices, regular way as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares are listed or admitted to trading or, if the shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or such other system then in use, or if on any such date the shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the shares selected by the Board of Directors of the Corporation. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares are listed or admitted to trading is open for the transaction of business or, if the shares are not listed or admitted to trading on any national securities exchange, on which the New York Stock Exchange or such other national securities exchange as may be selected by the Board of Directors of the Corporation is open. If the shares are not publicly held or not so listed or traded on any day within the period of 30 Trading Days applicable to the determination of Fair Market Value thereof as aforesaid, "Fair Market Value" shall mean the fair market value thereof per share as determined in good faith by the Board of Directors of the Corporation. In either case referred to in the foregoing sentence, the determination of Fair Market Value shall be described in a statement filed with the Secretary of the Corporation.

SECTION 7. CONSOLIDATION, MERGER, ETC. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each outstanding share of Series D Preferred Stock shall at the same time be similarly exchanged for or changed into the aggregate amount of stock, securities, cash and/or other property (payable in like kind), as the case may be, for which or into which each share of Common Stock is changed or exchanged multiplied by the highest of the Vote Multiple, the Dividend Multiple or the Liquidation Multiple in effect immediately prior to such event.

SECTION 8. EFFECTIVE TIME OF ADJUSTMENTS.

a. Adjustments to the Series D Preferred Stock required by the provisions shall be effective as of the time at which the event requiring such adjustments occurs.

(B) The Corporation shall give prompt written notice to each holder of a share of Series D Preferred Stock of the effect of any adjustment to the voting rights, dividend rights or rights upon liquidation, dissolution or winding up of the Corporation of such shares required by the provisions. Notwithstanding the foregoing sentence, the failure of the Corporation to give such notice shall not affect the validity of or the force or effect of or the requirement for such adjustment.

SECTION 9. NO REDEMPTION. The shares of Series D Preferred Stock shall not be redeemable at the option of the Corporation or any holder thereof. Notwithstanding the foregoing sentence of this Section, the Corporation may acquire shares of Series D Preferred Stock in any other manner permitted by law, the provisions and the Amended and Restated Certificate of Incorporation of the Corporation.

SECTION 10. RANKING. Unless otherwise provided in the Amended and Restated Certificate of Incorporation of the Corporation or a Certificate of Designations relating to a subsequent series of preferred stock of the Corporation, the Series D Preferred Stock shall rank junior to all other series of the Corporation's preferred stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up and senior to the Common Stock.

SECTION 11. AMENDMENT. The hereof and the Amended and Restated Certificate of Incorporation of the Corporation shall not be amended in any manner which would

adversely affect the rights, privileges or powers of the Series D Preferred Stock without, in addition to any other vote of shareholders required by law, the affirmative vote of the holders of 67% or more of the outstanding shares of Series D Preferred Stock, voting together as a single class. This Section 11 shall not be amended in any manner without the affirmative vote of the holders of 67% or more of the outstanding shares of Series D Preferred Stock, voting together a size class.

EXHIBIT B

UNDER CERTAIN CIRCUMSTANCES AS PROVIDED IN THE RIGHTS AGREEMENT (AS REFERRED TO BELOW), RIGHTS ISSUED TO OR BENEFICIALLY OWNED BY ACQUIRING PERSONS OR THEIR AFFILIATES OR ASSOCIATES (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) OR ANY SUBSEQUENT HOLDER OF SUCH RIGHTS SHALL BE NULL AND VOID AND MAY NOT BE TRANSFERRED TO ANY PERSON.

COSI, INC.

SUMMARY OF RIGHTS TO PURCHASE
SERIES D PREFERRED STOCK

- o On the Board of Directors of Cosi, Inc. (the "Corporation") has declared a dividend distribution of one Preferred Stock Purchase Right (a "Right") for each outstanding share of common stock, par value \$0.01 per share (collectively, the "Common Stock"), of the Corporation held by stockholders of record on the date of the Corporation's initial public offering.
- o Each Right entitles the registered holder to purchase from the Corporation one one-hundredth (1/100) of a share of preferred stock of the Corporation, designated as Series D Preferred Stock (the "The Series D Preferred Stock") at a price of \$100 per one one-hundredth (1/100) of a share (the "Exercise Price").
- o The description and terms of the Rights are set forth in a Rights Agreement (the "Rights Agreement") between the Corporation and American Stock transfer and Trust Company as Rights Agent (the "Rights Agent").

As discussed below, initially the Rights will not be exercisable, certificates will not be sent to shareholders and the Rights will automatically trade with the Common Stock.

1. Initially Rights are not Exercisable; Rights Initially Not Represented by a Certificate. Initially, the Rights will not be exercisable, will not be represented by a separate certificate, and will not be transferable apart from the Common Stock. Instead, Rights will be evidenced, (i) with respect to any of the shares of Common Stock held in uncertificated book entry form (a "Book Entry") outstanding as of the Record Date, by such Book Entry and (ii) with respect to the shares of Common Stock evidenced by Common Stock certificates outstanding as of the Record Date, by such Common Stock certificate, together with a copy of this Summary of Rights.

The Rights Agreement provides that until the Rights Distribution Date, the Rights will be transferred with and only with the Common Stock. Until the Rights Distribution Date (or earlier redemption or expiration of the Rights), Common Stock certificates will contain a legend incorporating the Rights Agreement by reference. Until the Rights Distribution Date (or earlier redemption or expiration of the Rights), the surrender for transfer of any of the Common Stock certificates will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate.

2. When Rights Become Exercisable; Rights Distribution Date - The Rights become exercisable (unless earlier redeemed) by each record holder of Rights, other than the Acquiring Person (as defined below), upon the close of business on the day (the "Rights Distribution Date") which is the earlier of:

(i) the tenth day following the first date (the "Stock Acquisition Date") on which there is a public announcement that a person or group of affiliated or associated persons, with certain exceptions set forth below, has

acquired beneficial ownership of 15% or more of the outstanding voting stock of the Corporation (an "Acquiring Person") or such earlier or later date (not beyond the thirtieth day after the Stock Acquisition Date) as the Board of Directors may determine; and

(ii) the tenth business day (or such later date as may be determined by the Corporation's Board of Directors prior to such time as any person or group of affiliated or associated persons becomes an Acquiring Person) after the date of the commencement or announcement of a person's or group's intention to commence or engage in a tender or exchange offer the consummation of which would result in the ownership of 15% or more of the Corporation's outstanding voting stock (even if no shares are actually purchased pursuant to such offer);

An Acquiring Person does not include (A) the Corporation, (B) any subsidiary of the Corporation, (C) any employee benefit plan or employee stock plan of the Corporation or of any subsidiary of the Corporation, or any trust or other entity organized, appointed, established or holding Common Stock for or pursuant to the terms of any such plan, (D) any existing shareholder of the Corporation as of the Record Date, or (E) any person or group whose ownership of 15% or more of the shares of voting stock of the Corporation then outstanding results solely from (i) any action or transaction or transactions approved by the Corporation's Board of Directors before such person or group became an Acquiring Person or (ii) a reduction in the number of issued and outstanding shares of voting stock of the Corporation pursuant to a transaction or transactions approved by the Corporation's Board of Directors (provided that any person or group that does not become an Acquiring Person by reason of clause (i) or (ii). For purposes of the foregoing, outstanding voting stock of the Corporation includes voting stock that trades on a "when issued" basis on a national securities exchange (such as the NYSE), on the National Association of Securities Dealers Automated Quotation System or otherwise.

The Rights Agreement provides that when a person or group of affiliated or associated persons becomes an Acquiring Person (other than pursuant to a Qualifying Tender Offer (as defined below)), such Acquiring Person's Rights will thereupon become null and void.

As soon as practicable following the Rights Distribution Date, separate certificates evidencing the Rights ("Right Certificates") will be mailed to holders of record of the Common Stock as of the close of business on the Rights Distribution Date and such separate certificates alone will evidence the Rights from and after the Rights Distribution Date.

3. Characteristics of Preferred Stock Issuable upon Exercise of Rights.

- o The Series D Preferred Stock is nonredeemable and, unless otherwise provided in connection with the creation of a subsequent series of preferred stock, subordinate to any other series of the Corporation's preferred stock.
- o The Series D Preferred Stock may not be issued except upon exercise of Rights.
- o Each share of Series D Preferred Stock will be entitled to receive when, as and if declared, a quarterly dividend in an amount equal to the greater of \$0.10 per share or 100 times the cash dividends declared on the Common Stock.
- o In addition, Series D Preferred Stock is entitled to 100 times any non-cash dividends (other than dividends payable in equity securities) declared on the Common Stock, in like kind.
- o In the event of the liquidation of the Corporation, the holders of Series D Preferred Stock will be entitled to receive a payment in an amount equal to the greater of \$100 per one one-hundredth share or 100 times the payment made per share of Common Stock. Each share of Series D Preferred Stock will have 100 votes, voting together with the Common Stock.
- o In the event of any merger, consolidation or other transaction in which Common Stock is changed, exchanged or converted, each share of Series D Preferred Stock will be entitled to receive 100 times the amount received per share of Common Stock.
- o The rights of Series D Preferred Stock as to dividends,

liquidation and voting are protected by anti-dilution provisions.

- o If the dividends accrued on the Preferred Stock for four or more quarterly dividend periods, whether consecutive or not, shall not have been declared and paid or irrevocably set aside for payment, the holders of record of Preferred Stock of the Corporation of all series (including the Series D Preferred Stock) will have the right to elect two members to the Corporation's Board of Directors.
- o Fractions of shares of Series D Preferred Stock (other than fractions which are integral multiples of one one-hundredth of a share) may, at the election of the Corporation, be evidenced by depositary receipts.
- o The Corporation may also issue cash in lieu of fractional shares which are not integral multiples of one one-hundredth of a share.

4. Merger or Other Business Combination following Rights Distribution Date.

- o In the event that, at any time on or after the Rights Distribution Date:

(i) the Corporation were to be acquired in a merger or other business combination (in which any shares of Common Stock are changed or converted into or exchanged for other securities or assets); or

(ii) more than 50% of the assets or earning power of the Corporation and its subsidiaries (taken as a whole) were to be sold or transferred in one or a series of related transactions, the Rights Agreement provides that (unless the Rights have been redeemed) proper provision will be made so that each holder of record of a Right, other than the Acquiring Person, will from and after such date have the right to receive, upon payment of the Exercise Price, that number of shares of common stock of the acquiring Corporation having a market value at the time of such transaction equal to two times the Exercise Price.

- o In addition, unless the Rights are earlier redeemed, in the event that a person or group becomes the beneficial owner of 15% or more of the Corporation's voting stock (other than pursuant to a tender or exchange offer (a "Qualifying Tender Offer") for all outstanding shares of Common Stock that is approved by the Board of Directors, after taking into account the long-term value of the Corporation and all other factors they consider relevant), the Rights Agreement provides that proper provision will be made so that each holder of record of a Right, other than the Acquiring Person, will thereafter have the right to receive, upon payment of the Exercise Price, that number of shares of the Series D Preferred Stock having a market value at the time of the transaction equal to two times the Exercise Price (such market value to be determined with reference to the market value of the Common Stock as provided in the Rights Agreement).

5. Redemption or Exchange of Rights. At any time on or prior to the close of business on the tenth day after the time that a person has become an Acquiring Person (or such later date as may be determined by a majority of the Board of Directors), the Corporation may redeem the Rights in whole, but not in part, at a price of \$0.01 per Right, subject to adjustment (the "Redemption Price"). Immediately upon the effective time of the action of the Board of Directors of the Corporation authorizing redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

In addition, the Board of Directors of the Corporation may, at its option, at any time after the tenth day following a Stock Acquisition Date and prior to the time that an Acquiring Person becomes the Beneficial Owner of more than 50% of the outstanding shares of the voting stock of the Corporation, elect to exchange all (but not less than all) of the then outstanding Rights (other than Rights owned by the Acquiring Person or any affiliate or associate thereof, which Rights become void) for shares of Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date of the

Distribution Date (the "Exchange Ratio"). Immediately upon such action by the Board of Directors (the "Exchange Time"), the right to exercise the Rights will terminate and each Right will thereafter represent only the right to receive a number of shares of Common Stock equal to the Exchange Ratio.

6. Adjustment of Shares of Preferred Stock Issuable upon Exercise of Rights. The number of shares of Series D Preferred Stock issuable upon exercise of the Rights is subject to certain adjustments from time to time in the event of a stock dividend on, or a subdivision, combination or issuance of capital stock in a reclassification of, the Common Stock. The Exercise Price for the Rights is subject to adjustment in certain circumstances, including certain distributions of cash or other property to holders of Common Stock.

7. Amendment of Rights. For as long as the Rights are then redeemable, the Corporation may amend the Rights in any manner, including an amendment to extend the time period in which the Rights may be redeemed. At any time when the Rights are not then redeemable, the Corporation may amend the Rights in any manner that does not materially adversely affect the interests of holders of the Rights as such.

8. No Rights as Stockholder until a Right is Exercised. Until a Right is exercised, the holder, as such, will have no rights as a stockholder of the Corporation, including, without limitation, the right to vote or to receive dividends. Holders of Common Stock may, depending upon the circumstances, recognize taxable income should the Rights become exercisable or upon the occurrence of certain events thereafter.

9. Expiration of Rights - The Rights will expire (the "Expiration Time") (unless earlier redeemed):

(i) at the close of business on November 21, 2012 or

(ii) if the Rights Distribution Date (as defined below) shall have occurred before November 21, 2012, at the close of business on the 90th day following the Rights Distribution Date, provided that the Board of Directors of the Corporation does not extend or otherwise modify the Rights. There can be no assurance, however, as to whether or not the Board of Directors will so extend, modify or redeem the Rights.

10. Copy of Rights Agreement. This summary description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement which is incorporated in this summary description herein by reference and any differences between this summary description and the Rights Agreement shall in all cases be interpreted by the Rights Agreement.

EXHIBIT C

Form of Right Certificate

Certificate No. W- _____ Rights

NOT EXERCISABLE AFTER (I) November 21, 2012, OR (II) IF THE DISTRIBUTION DATE (AS DEFINED BELOW) SHALL HAVE OCCURRED BEFORE THE DATE SPECIFIED IN CLAUSE (I), THE DATE WHICH IS NINETY (90) DAYS AFTER THE DISTRIBUTION DATE, OR EARLIER IF REDEEMED. THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE CORPORATION AND UNDER CERTAIN OTHER CIRCUMSTANCES, AT \$0.01 PER RIGHT (SUBJECT TO ADJUSTMENT), ON THE TERMS SET FORTH OR REFERRED TO IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES AS PROVIDED IN THE RIGHTS AGREEMENT (AS REFERRED TO BELOW), RIGHTS ISSUED TO OR BENEFICIALLY OWNED BY ACQUIRING PERSONS OR THEIR AFFILIATES OR ASSOCIATES (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) OR ANY SUBSEQUENT HOLDER OF SUCH RIGHTS SHALL BE NULL AND VOID AND MAY NOT BE TRANSFERRED TO ANY PERSON.

Right Certificate

COSI, INC.

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement dated as of 2002 (the "Rights Agreement") between Cosi, Inc., a

Delaware corporation (the "Corporation"), and American Stock transfer and Trust Company as Rights Agent (the "Rights Agent"), to purchase from the Corporation at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to 5:00 P.M. (New York City time) on (i) November 21, 2012 (or if the Distribution Date shall have occurred before November 21, 2012, the date which is 90 days after the Distribution Date) at the office of the Rights Agent designated in the Rights Agreement for such purpose, or its successor as Rights Agent, in New York City, one one-hundredth (1/100) of a fully paid nonassessable share of Series D Preferred Stock (the "Preferred Stock") of the Corporation at a purchase price of \$100 as the same may from time to time be adjusted in accordance with the Rights Agreement (the "Exercise Price"), upon presentation and surrender of this Right Certificate with the Form of Election to Purchase attached hereto duly executed.

As provided in the Rights Agreement, the Exercise Price and the number of shares of Preferred Stock which may be purchased upon the exercise of the Rights evidenced by this Right Certificate are subject to modification and adjustment upon the happening of certain events and, upon the happening of certain events, securities other than shares of Preferred Stock, or other property, may be acquired upon exercise of the Rights evidenced by this Right Certificate, as provided in the Rights Agreement.

This Right Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are incorporated herein by reference and made a part and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities of the Rights Agent, the Corporation and the holders of record of Right Certificates. Copies of the Rights Agreement are on file at the principal executive office of the Corporation.

This Right Certificate, with or without other Right Certificates, upon surrender at the office of the Rights Agent designated in the Rights Agreement for such purpose, may be exchanged for another Right Certificate or Right Certificates of like tenor and date evidencing Rights entitling the holder of record to purchase a like aggregate number of shares of Preferred Stock as the Rights evidenced by the Right Certificate or Right Certificates surrendered shall have entitled such holder to purchase. If this Right Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender, another Right Certificate or Right Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate may be redeemed by the Corporation at its option or under certain other circumstances at a redemption price of \$0.01 per Right.

No fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-hundredth (1/100) of a share) are required to be issued upon the exercise of any Right or Rights evidenced hereby, and in lieu thereof the Corporation may cause depository receipts to be issued and/or a cash payment may be made, as provided in the Rights Agreement.

No holder of this Right Certificate, as such, shall be entitled to vote or receive dividends or be deemed for any purpose the holder of Preferred Stock or of any other securities of the Corporation which may at any time be issuable on the exercise, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder, as such, any of the rights of a stockholder of the Corporation or any right to vote for the election of directors or upon any matter submitted to shareholders at a meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings or other actions affecting shareholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Right Certificate shall have been exercised as provided in the Rights Agreement.

This Right Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Corporation and its corporate seal. Dated as of _____,
_____.

ATTEST:

COSI, INC.

Secretary _____ By: _____
Title: _____

Countersigned:

By: _____
Authorized Signature

Form of Reverse Side of Right Certificate

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Right Certificates.)

FOR VALUE RECEIVED _____ hereby
sells, assigns and transfers unto _____

(Please print name and address of transferee)

Rights evidenced by this Right Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint [_____] Attorney to transfer the within Right Certificate on the books of the within-named Corporation, with full power of substitution.

Dated: _____, _____

Signature

Signature Guaranteed:

Certificate

The undersigned hereby certifies by checking the appropriate boxes that:

(1) this Right Certificate [] is [] is not being sold, assigned or transferred by or on behalf of a Person who is or was an Acquiring Person or an Associate or an Affiliate thereof (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, it [] did [] did not acquire the Rights evidenced by this Right Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate thereof (as such terms are defined in the Rights Agreement).

Dated: _____, _____

Signature

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Right Certificate in every particular, without alteration or enlargement or any change whatsoever.

FORM OF ELECTION TO PURCHASE

(To be executed if registered holder

desires to exercise the Right Certificate.)

TO COSI, INC.:

The undersigned hereby irrevocably elects to exercise _____ Rights represented by this Right Certificate to purchase the shares of Preferred Stock issuable upon the exercise of such Rights and requests that certificates for such share(s) be issued in the following:

name :

Please insert social security or other identifying number: _____

(Please print name and address)

If such number of Rights shall not be all the Rights evidenced by this Right Certificate, a new Right Certificate for the balance remaining of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying number: _____

(Please print name and address)

Dated: _____, _____

Signature

(Signature must conform in all respects to name of holder as specified on the fact of this Right Certificate)

Signature Guaranteed:

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Cosi, Inc. (the "Company") on Form 10-K for the fiscal year ended December 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jay Wainwright, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 31, 2003

/s/ Jay Wainwright

Jay Wainwright
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Cosi, Inc. (the "Company") on Form 10-K for the fiscal year ended December 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth S. Betuker, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 31, 2003

/s/ Kenneth S. Betuker

Kenneth S. Betuker
Chief Financial Officer