EXHIBIT 2.1  
  
  
 AGREEMENT AND PLAN OF DISTRIBUTION  
  
 BY AND BETWEEN  
  
 F.N.B. CORPORATION  
  
 AND  
  
 FIRST NATIONAL BANKSHARES OF FLORIDA, INC.  
  
 DATED AS OF DECEMBER \_\_, 2003  
  
  
  
  
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 AGREEMENT AND PLAN OF DISTRIBUTION  
  
 This AGREEMENT AND PLAN OF DISTRIBUTION (this "Agreement"), dated as of  
December \_\_\_, 2003, by and between F.N.B. Corporation, a Florida corporation  
("Parent"), and First National Bankshares of Florida, Inc., a Florida  
corporation ("SpinCo");  
  
 WHEREAS, the Board of Directors of Parent has determined that it is in  
the best interests of Parent and its stockholders to separate Parent's existing  
businesses into two independent businesses;  
  
 WHEREAS, in furtherance of the foregoing, on August 12, 2003, SpinCo  
was formed and became a wholly owned subsidiary of Parent, and on or before the  
Effective Date Parent shall transfer or cause its Subsidiaries to transfer the  
SpinCo Assets to the SpinCo Group and shall cause the SpinCo Group to assume the  
SpinCo Liabilities, all as more fully described in this Agreement and the  
Ancillary Agreements;  
  
 WHEREAS, the Board of Directors of Parent has further determined that  
it is appropriate and desirable, on the terms and conditions contemplated  
hereby, for Parent to distribute to holders of shares of Parent Common Stock all  
of the outstanding shares of SpinCo Common Stock (the "Distribution");  
  
 WHEREAS, the Distribution is intended to qualify as a tax-free spin-off  
under Sections 355 and 368 of the Code; and  
  
 WHEREAS, the parties hereto have determined to set forth the principal  
corporate and other transactions required to effect the Distribution and to set  
forth other agreements that will govern certain other matters prior to and  
following the Distribution.  
  
 NOW, THEREFORE, in consideration of the mutual covenants contained in  
this Agreement, the parties hereby agree as follows:  
  
 ARTICLE I  
 DEFINITIONS  
  
 SECTION 1.1. General. Unless otherwise defined herein or unless the  
context otherwise requires, as used in this Agreement, the following terms shall  
have the following meanings:  
  
 (a) "Action" shall mean any demand, action, suit, countersuit,  
arbitration, inquiry, proceeding or investigation by or before any Governmental  
Authority or any arbitration or mediation tribunal.  
  
 (b) "Affiliate" shall mean, when used with respect to any specified  
Person, a Person that directly or indirectly controls, is controlled by, or is  
under common control with such specified Person; provided, however, that for  
purposes of this Agreement, any Person who was a member of both Groups prior to  
the Distribution shall be deemed to be an Affiliate only of the Group of which  
such Person is a member following the Distribution. As used herein, "control"  
means the possession, directly or indirectly, of the power to direct or cause  
the direction of the management and policies of such Person, whether through the  
ownership of voting securities or other interests, by contract or otherwise. Any  
contrary provision of this Agreement notwithstanding, neither Parent nor any  
Parent Subsidiary shall be deemed to be an Affiliate of SpinCo, and neither  
SpinCo nor any SpinCo Subsidiary shall be deemed to be an Affiliate of Parent.  
  
 (c) "Agent" shall have the meaning set forth in Section 2.1(b) of this  
Agreement.  
  
 (d) "Agreement" shall mean this Agreement.  
  
  
  
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 (e) "Agreement Disputes" shall have the meaning set forth in Section  
5.1 of this Agreement.  
  
 (f) "Ancillary Agreements" shall mean all of the written agreements,  
instruments, understandings, assignments or other arrangements (other than this  
Agreement) entered into by the parties hereto or any other member of their  
respective Groups in connection with the transactions contemplated hereby,  
including the Conveyancing and Assumption Instruments, the Employee Benefits  
Agreement, the Tax Disaffiliation Agreement, and the Leases and Subleases.  
  
 (g) "Applicable Rate" shall mean the "prime rate" of interest per  
annum, as published from time to time in The Wall Street Journal, Eastern  
Edition, plus four percent (4%).  
  
 (h) "Assets" shall mean assets, properties and rights, wherever located  
(including in the possession of vendors or other third parties or elsewhere),  
whether real, personal or mixed, tangible, intangible or contingent, in each  
case whether or not recorded or reflected or required to be recorded or  
reflected on the books and records or financial statements of any Person,  
including, but not limited to, the following:  
  
 (i) tangible personal property (such as equipment and  
 furniture, including, but not limited to, office machinery, automated  
 teller machines, shelving, office supplies and artwork, automobiles and  
 trucks);  
  
 (ii) real property, leaseholds and subleaseholds therein,  
 improvements, fixtures, and fittings thereon, including, but not  
 limited to, any banking houses, drive-in banking facilities, teller  
 facilities and administrative offices together with appurtenant  
 parking, storage and service facilities, and easements, rights-of-way,  
 and other appurtenants thereto (such as appurtenant rights in and to  
 public streets);  
  
 (iii) intellectual property, goodwill associated therewith,  
 licenses and sublicenses granted and obtained with respect thereto, and  
 rights thereunder, remedies against infringements thereof, and rights  
 to protection of interests therein under the laws of all jurisdictions;  
  
 (iv) agreements, contracts, indentures, mortgages,  
 instruments, guaranties, other similar arrangements, and rights  
 thereunder (collectively, "Contracts");  
  
 (v) all rights under insurance policies and all rights in the  
 nature of insurance, indemnification or contribution;  
  
 (vi) accounts, notes, and other receivables;  
  
 (vii) securities,  
  
 (viii) claims, prepayments, refunds, loans, causes of action,  
 choses in action, rights of recovery, rights of set off, and rights of  
 recoupment;  
  
 (ix) franchises, approvals, Permits, licenses, orders,  
 registrations, certificates, variances, and similar rights obtained  
 from any Governmental Authority;  
  
 (x) books, records, ledgers, files, documents, correspondence,  
 lists, plats, architectural plans, drawings, and specifications,  
 creative materials, advertising and promotional materials, studies,  
 reports, and other printed or written materials; and  
  
 (xi) cash.  
  
  
  
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 (i) "Book Value" shall mean, with respect to Parent or SpinCo, the  
stockholders' equity of such party, determined in accordance with generally  
acceptable accounting principles in the United States, as of the close of  
business on the Distribution Date.  
  
 (j) "Business Day" shall mean any day other than a Saturday, Sunday or  
a day on which national banking associations are authorized or obligated by law  
or executive order to close.  
  
 (k) "Claims Administration" shall mean the processing of claims made  
under the Parent Shared Policies, including the reporting of claims to the  
insurance carriers, management and defense of claims and providing for  
appropriate releases upon settlement of claims.  
  
 (l) "Code" shall mean the Internal Revenue Code of 1986, as amended,  
and the Treasury regulations promulgated thereunder, including any successor  
legislation.  
  
 (m) "Commission" shall mean the Securities and Exchange Commission.  
  
 (n) "Consent" shall mean any consent, approval, authorization,  
clearance, exemption, waiver, or similar affirmation by any Person.  
  
 (o) "Contracts" shall have the meaning set forth in the definition of  
Assets.  
  
 (p) "Conveyancing and Assumption Instruments" shall mean, collectively,  
the various agreements, instruments and other documents to be or heretofore  
entered into to effect the Corporate Transactions or otherwise to effect the  
transfer of Assets and the assumption of Liabilities in the manner contemplated  
by this Agreement, the Ancillary Agreements and the Corporate Transactions.  
  
 (q) "Corporate Transactions" shall mean, collectively, (a) each of the  
mergers, transfers, conveyances, contributions, assignments, dividends,  
dissolutions, assumptions, redemptions, purchases and other transactions  
described and set forth on Schedule 1.1(q) attached hereto, and (b) such other  
mergers, transfers, conveyances, contributions, assignments, dividends,  
dissolutions, assumptions, redemptions, purchases and other transactions that  
may be appropriate or required to be accomplished, effected or consummated by  
Parent or SpinCo or any of their respective Subsidiaries and Affiliates so that:  
(i) the SpinCo Assets, SpinCo Liabilities and SpinCo Business shall be owned,  
directly or indirectly, by SpinCo after giving effect to the Distribution; and  
(ii) the Parent Assets, Parent Liabilities and Parent Business shall be owned,  
directly or indirectly, by Parent after giving effect to the Distribution.  
  
 (r) "Distribution" shall have the meaning set forth in the recitals to  
this Agreement.  
  
 (s) "Distribution Date" shall mean such date as may be determined by  
the Board of Directors of Parent as the date as of which the Distribution shall  
be effected.  
  
 (t) "Distribution Record Date" shall mean such date as may be  
determined by the Board of Directors of Parent, or such committee of such Board  
of Directors as shall be designated by the Board of Directors of Parent, as the  
record date for the Distribution.  
  
 (u) "Effective Time" shall mean 12:01 a.m., Naples, Florida time, on  
the Distribution Date.  
  
 (v) "Employee Benefits Agreement" shall mean the Employee Benefits  
Agreement by and between Parent and SpinCo, which agreement shall be entered  
into effective as of the Distribution Date in the form attached hereto as  
Exhibit A.  
  
 (w) "Environmental Laws" shall mean any and all federal, state, local  
and foreign statutes, laws, regulations, ordinances, rules, principles of common  
law, judgments, orders, decrees, Permits,  
  
  
  
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concessions, grants, franchises, licenses, agreements or other governmental  
restrictions (including the Comprehensive Environmental Response, Compensation  
and Liability Act, 42 U.S.C. 9601, et seq.), whether now or hereafter in  
existence, relating to the environment, natural resources, human health or  
safety, endangered or threatened species of fish, wildlife and plants, or to  
emissions, discharges or releases of pollutants, contaminants, petroleum or  
petroleum products, chemicals or industrial, toxic or hazardous substances or  
wastes into the environment (including indoor or outdoor air, surface water,  
groundwater and surface or subsurface soils), or otherwise relating to the  
manufacture, processing, distribution, use, treatment, storage, disposal,  
transport or handling of pollutants, contaminants, petroleum or petroleum  
products, chemicals or industrial, toxic or hazardous substances or wastes or  
the investigation, cleanup or other remediation thereof.  
  
 (x) "Exchange Act" shall mean the Securities Exchange Act of 1934, as  
amended, together with the rules and regulations promulgated thereunder.  
  
 (y) "Governmental Authority" shall mean any federal, state, local,  
foreign or international court, government, department, commission, board,  
bureau, agency, official, the NYSE, the Nasdaq Stock Market, or other  
regulatory, administrative or governmental authority.  
  
 (z) "Group" shall mean with respect to Parent, the Parent Group and,  
with respect to SpinCo, the SpinCo Group.  
  
 (aa) "Indemnifying Party" shall have the meaning set forth in Section  
3.3(a) of this Agreement.  
  
 (bb) "Indemnitee" shall have the meaning set forth in Section 3.3(a) of  
this Agreement.  
  
 (cc) "Information Statement" shall mean the Information Statement filed  
with the Commission as part of the Registration Statement and mailed to the  
holders of shares of Parent Common Stock in connection with the Distribution,  
including any amendments or supplements thereto.  
  
 (dd) "Insurance Administration" shall mean, with respect to each Parent  
Shared Policy, (i) the accounting for premiums, retrospectively rated premiums,  
defense costs, indemnity payments, deductibles and retentions, as appropriate,  
under the terms and conditions of each of the Parent Shared Policies; (ii) the  
reporting to excess insurance carriers of any losses or claims which may cause  
the applicable limits of any Parent Shared Policy to be exceeded; (iii) the  
distribution of Insurance Proceeds as contemplated by this Agreement; and (iv)  
any and all other actions reasonably necessary for the administration of the  
Parent Shared Policies.  
  
 (ee) "Insurance Proceeds" shall mean those monies (i) received by an  
insured from an insurance carrier or (ii) paid by an insurance carrier on behalf  
of an insured.  
  
 (ff) "Insured Claims" shall mean those Liabilities that, individually  
or in the aggregate, are covered within the terms and conditions of any of the  
Parent Shared Policies, whether or not subject to deductibles, self-insured  
retentions, co-insurance, uncollectibility or retrospectively rated premium  
adjustments.  
  
 (gg) "IRS" shall mean the Internal Revenue Service.  
  
 (hh) "Law" shall mean any code, law, ordinance, regulation, reporting  
or licensing requirement, rule, or statute applicable to a Person or its Assets,  
liabilities, or business, including those promulgated, interpreted, or enforced  
by any Governmental Authority.  
  
  
  
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 (ii) "Leases" shall mean the leases by and between members of the  
Parent Group and members of the SpinCo Group, which leases shall be entered into  
effective as of the Distribution Date in such form as is agreed to by Parent and  
SpinCo.  
  
 (jj) "Liabilities" shall mean any and all debts, liabilities,  
obligations, responsibilities, response actions, losses, deposits as defined in  
Section 3(l) of the Federal Deposit Insurance Act, damages (whether  
compensatory, punitive or treble), fines, penalties and sanctions, absolute or  
contingent, matured or unmatured, liquidated or unliquidated, foreseen or  
unforeseen, joint, several or individual, asserted or unasserted, accrued or  
unaccrued, known or unknown, whenever arising, including those arising under or  
in connection with any Law (including any Environmental Law), Action, threatened  
Action, order or consent decree of any Governmental Authority, or any award of  
any arbitration tribunal, and those arising under any contract, guarantee,  
commitment or undertaking, whether sought to be imposed by a Governmental  
Authority, private party, or party to this Agreement, whether based in contract,  
tort, implied or express warranty, strict liability, criminal or civil statute,  
or otherwise, and including any costs, expenses, interest, attorneys' fees,  
disbursements and expenses of counsel, expert and consulting fees and costs  
related thereto or to the investigation or defense thereof.  
  
 (kk) "Loss" shall mean any loss, Liability, damages, claim, demand,  
judgment or settlement of any nature or kind, known or unknown, fixed, accrued,  
absolute or contingent, liquidated or unliquidated, including all reasonable  
costs and expenses (legal, accounting or otherwise as such costs are incurred)  
relating thereto. The amount of any indemnifiable Loss shall be reduced by the  
net amount of the Tax or insurance benefit actually realized by an indemnified  
party by reason of such Loss.  
  
 (ll) "Notices" shall have the meaning set forth in Section 7.6 of this  
Agreement.  
  
 (mm) "NYSE" shall mean the New York Stock Exchange, Inc.  
  
 (nn) "Parent" shall have the meaning set forth in the preamble to this  
Agreement.  
  
 (oo) "Parent Assets" shall mean, collectively, all the Assets owned or  
held by Parent or any Parent Subsidiary immediately after giving effect to the  
Corporate Transactions, except the SpinCo Assets.  
  
 (pp) "Parent Business" shall mean each and every business conducted at  
any time by Parent Group prior to the Effective Time (including those businesses  
set forth on Schedule 1.1(pp)), including each and every business of the Parent  
Group which has been discontinued, sold or transferred, but excluding the SpinCo  
Business.  
  
 (qq) "Parent Common Stock" shall mean the Common Stock, par value $0.01  
per share, of Parent.  
  
 (rr) "Parent Group" shall mean Parent and the Parent Subsidiaries.  
  
 (ss) "Parent Indemnitee" shall mean:  
  
 (i) Parent and each Affiliate thereof after giving effect to  
 the Corporate Transactions and the Distribution; and  
  
 (ii) each of the respective past, present and future  
 Representatives of any of the entities described in the immediately  
 preceding clause (i) and each of the heirs, executors, successors and  
 assigns of any of such Representatives; provided, however, that in no  
 event shall the term "Parent Indemnitee" include SpinCo or any  
 Affiliate of SpinCo.  
  
  
  
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 (tt) "Parent Liabilities" shall mean:  
  
 (i) any and all Liabilities that are expressly contemplated by  
 this Agreement or any Ancillary Agreement (or the Schedules hereto or  
 thereto) as Liabilities to be retained or assumed by Parent or any  
 member of the Parent Group, and all agreements, obligations and  
 Liabilities of any member of the Parent Group under this Agreement or  
 any of the Ancillary Agreements;  
  
 (ii) all Liabilities set forth on Schedule 1.1(tt); and  
  
 (iii) all Liabilities (other than Taxes and any  
 employee-related Liabilities which are specifically covered by the Tax  
 Disaffiliation Agreement and the Employee Benefits Agreement,  
 respectively) primarily relating to, arising out of or resulting from:  
  
 (A) the operation of the Parent Business, as  
 conducted at any time prior to, on or after the Distribution  
 Date (including any Liability relating to, arising out of or  
 resulting from any act or failure to act by any Representative  
 (whether or not such act or failure to act is or was within  
 such Person's authority));  
  
 (B) the operation of any business conducted by Parent  
 or any Parent Subsidiary at any time after the Effective Time  
 (including any Liability relating to, arising out of or  
 resulting from any act or failure to act by any Representative  
 (whether or not such act or failure to act is or was within  
 such Person's authority)); or  
  
 (C) any Parent Assets, whether arising before, on or  
 after the Distribution Date; and  
  
 (iv) the Parent's Share of all Shared Liabilities.  
  
 Notwithstanding the foregoing, the Parent Liabilities shall  
not include: (y) any Liabilities that are expressly contemplated by this  
Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as  
Liabilities to be retained or assumed by SpinCo or any member of the SpinCo  
Group; or (z) all agreements and obligations of any member of the SpinCo Group  
under this Agreement or any of the Ancillary Agreements. Any contrary provision  
of this Agreement notwithstanding, any Liabilities or Losses in respect of any  
Action relating to the Parent Business, including those described on Schedule  
1.1(tt), shall constitute Parent Liabilities.  
  
 (uu) "Parent Policies" shall mean all Policies owned or maintained by  
or on behalf of Parent or any Parent Subsidiary that do not provide coverage to  
or with respect to the SpinCo Assets or the SpinCo Business, or any part  
thereof, including those Policies set forth on Schedule 1.1(uu).  
  
 (vv) "Parent Shared Policies" shall mean the Parent Shared Carryover  
Policies and the Parent Shared Non-Carryover Policies, collectively.  
  
 (ww) "Parent Shared Carryover Policies" shall mean those Policies owned  
or maintained by or on behalf of Parent or a Parent Subsidiary set forth on  
Schedule 1.1(ww).  
  
 (xx) "Parent Shared Non-Carryover Policies" shall mean all Policies  
owned or maintained by or on behalf of Parent or any Parent Subsidiary which  
provide coverage to or with respect to the SpinCo Group, the SpinCo Assets or  
the SpinCo Business, or any part thereof, other than SpinCo Policies and Parent  
Shared Carryover Policies, including those Policies set forth on Schedule  
1.1(xx).  
  
 (yy) "Parent's Share" shall mean the percentage obtained by dividing  
(x) the Book Value of Parent by (y) the sum of the Book Value of Parent and the  
Book Value of SpinCo.  
  
  
  
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 (zz) "Parent Subsidiaries" shall mean all of the Subsidiaries of Parent  
other than SpinCo and the SpinCo Subsidiaries. The Parent Subsidiaries shall  
consist of the entities set forth on Schedule 1.1(zz).  
  
 (aaa) "Permit" shall mean any federal, state, local, and foreign  
governmental approval, authorization, certificate, easement, filing, franchise,  
license, notice, permit, or right to which any Person is a party or that is or  
may be binding upon or inure to the benefit of any Person.  
  
 (bbb) "Person" shall mean any natural person, corporation, business  
trust, limited liability company, joint venture, association, company,  
partnership or government, or any agency or political subdivision thereof.  
  
 (ccc) "Policies" shall mean insurance policies and insurance contracts  
of any kind (other than life and benefits policies or contracts), including  
primary, excess and umbrella policies, master comprehensive general liability  
policies, director and officer liability, fiduciary liability, automobile,  
aircraft, property and casualty, workers' compensation and employee dishonesty  
insurance policies, bonds and self insurance and captive insurance company  
arrangements, together with the rights, benefits and privileges thereunder.  
  
 (ddd) "Records" shall have the meaning set forth in Section 4.1 of this  
Agreement.  
  
 (eee) "Registration Statement" shall mean the registration statement on  
Form 10 to effect the registration of the SpinCo Common Stock pursuant to the  
Exchange Act.  
  
 (fff) "Representative" shall mean, with respect to any Person, any of  
such Person's directors, officers, members, employees, agents, consultants,  
advisors, accountants, attorneys and representatives.  
  
 (ggg) "Rules" shall have the meaning set forth in Section 5.3 of this  
Agreement.  
  
 (hhh) "Securities Act" shall mean the Securities Act of 1933, as  
amended, together with the rules and regulations promulgated thereunder.  
  
 (iii) "Shared Liabilities" shall mean all Liabilities that are neither  
Parent Liabilities (as defined without giving effect to clause (iv) of the  
definition of "Parent Liabilities") nor SpinCo Liabilities (as defined without  
giving effect to clause (v) of the definition of "SpinCo Liabilities"),  
including the Liabilities described on Schedule 1.1(iii).  
  
 (jjj) "SpinCo" shall have the meaning set forth in the preamble to this  
Agreement.  
  
 (kkk) "SpinCo Assets" shall mean collectively, all the Assets that will  
be owned by the SpinCo Group as of the Effective Time and after giving effect to  
the Corporate Transactions, including:  
  
 (i) the capital stock of the SpinCo Subsidiaries;  
  
 (ii) all of the Assets reflected on the SpinCo Balance Sheet  
 or the accounting records supporting such balance sheet;  
  
 (iii) all of the Assets expressly allocated to SpinCo or any  
 of the SpinCo Subsidiaries under this Agreement or any of the Ancillary  
 Agreements; and  
  
 (iv) any other Asset acquired by the Parent Group or the  
 SpinCo Group from the date of the SpinCo Balance Sheet to the Effective  
 Time that is owned by the Parent Group or the SpinCo Group as of the  
 Effective Time and that is of a nature or type that would have resulted  
 in such Asset being included as an Asset on the SpinCo Balance Sheet  
 had it been acquired on or  
  
  
  
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 prior to the date of the SpinCo Balance Sheet, determined on a basis  
 consistent with the determination of the Assets included on the SpinCo  
 Balance Sheet.  
  
 (lll) "SpinCo Balance Sheet" shall mean the combined balance sheet of  
the SpinCo Group, including the notes thereto, as of June 30, 2003, as set forth  
on Schedule 1.1(lll).  
  
 (mmm) "SpinCo Business" shall mean each and every business to be  
conducted after the Effective Time by the SpinCo Group (including those  
businesses set forth on Schedule 1.1(mmm)).  
  
 (nnn) "SpinCo Common Stock" shall mean the Common Stock, par value  
$0.01 per share, of SpinCo.  
  
 (ooo) "SpinCo Group" shall mean SpinCo and the SpinCo Subsidiaries.  
  
 (ppp) "SpinCo Indemnitees" shall mean:  
  
 (i) SpinCo and each Affiliate thereof after giving effect to  
 the Corporate Transactions and the Distribution; and  
  
 (ii) each of the respective past, present and future  
 Representatives of any of the entities described in the immediately  
 preceding clause (i) and each of the heirs, executors, successors and  
 assigns of any of such Representatives; provided, however, that in no  
 event shall the term "SpinCo Indemnitee" include Parent or any  
 Affiliate of Parent.  
  
 (qqq) "SpinCo Liabilities" shall mean  
  
 (i) any and all Liabilities that are expressly contemplated by  
 this Agreement or any Ancillary Agreement (or the Schedules hereto or  
 thereto) as Liabilities to be retained or assumed by SpinCo or any  
 member of the SpinCo Group, and all agreements, obligations and  
 Liabilities of any member of the SpinCo Group under this Agreement or  
 any of the Ancillary Agreements;  
  
 (ii) all Liabilities set forth on Schedule 1.1(qqq);  
  
 (iii) all Liabilities (other than Taxes and any  
 employee-related Liabilities which are specifically covered by the Tax  
 Disaffiliation Agreement and the Employee Benefits Agreement,  
 respectively), primarily relating to, arising out of or resulting from:  
  
 (A) the operation of the SpinCo Business, as  
 conducted at any time prior to, on or after the Distribution  
 Date (including any Liability relating to, arising out of or  
 resulting from any act or failure to act by any Representative  
 with respect to the SpinCo Business (whether or not such act  
 or failure to act is or was within such Person's authority));  
  
 (B) the operation of any business conducted by SpinCo  
 or any SpinCo Subsidiary at any time after the Effective Time  
 (including any Liability relating to, arising out of or  
 resulting from any act or failure to act by any Representative  
 (whether or not such act or failure to act is or was within  
 such Person's authority)); or  
  
 (C) any SpinCo Assets, whether arising before, on or  
 after the Distribution Date;  
  
 (iv) all Liabilities reflected as liabilities or obligations  
 on the SpinCo Balance Sheet or the accounting records supporting such  
 balance sheet, and all Liabilities arising or assumed  
  
  
  
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 after the date of such balance sheet which, had they arisen or been  
 assumed on or before such date and been retained as of such date, would  
 have been reflected on such balance sheet, determined on a basis  
 consistent with the determination of the Liabilities included on the  
 SpinCo Balance Sheet, subject to any discharge of such Liabilities  
 subsequent to the date of the SpinCo Balance Sheet, including those  
 liabilities set forth on Schedule 1.1(qqq); and  
  
 (v) SpinCo's Share of all Shared Liabilities.  
  
 Notwithstanding the foregoing, the SpinCo Liabilities shall  
not include: (y) any Liabilities that are expressly contemplated by this  
Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as  
Liabilities to be retained or assumed by any member of the Parent Group; or (z)  
all agreements and obligations of any member of the Parent Group under this  
Agreement or any of the Ancillary Agreements. Any contrary provision of this  
Agreement notwithstanding, any Liabilities or Losses in respect of any Action  
relating to the SpinCo Business, including the matters set forth on Schedule  
1.1(qqq), shall constitute SpinCo Liabilities.  
  
 (rrr) "SpinCo Policies" shall mean all Policies owned or maintained by  
or on behalf of any member of the Parent Group or the SpinCo Group, which relate  
specifically to the SpinCo Assets or the SpinCo Business but do not relate to  
the Parent Business or the Parent Assets, including those Policies set forth on  
Schedule 1.1(rrr).  
  
 (sss) "SpinCo's Share" shall mean the percentage obtained by  
subtracting the Parent's Share from 100%.  
  
 (ttt) "SpinCo Shares" shall mean all of the issued and outstanding  
shares of SpinCo Common Stock immediately prior to the Effective Time.  
  
 (uuu) "SpinCo Subsidiaries" shall mean the Subsidiaries of SpinCo  
identified on Schedule 1.1(uuu).  
  
 (vvv) "Subleases" shall mean the subleases, if any, by and between  
members of the Parent Group and members of the SpinCo Group, which subleases  
shall be entered into effective as of the Distribution Date in such form as is  
agreed to by Parent and SpinCo.  
  
 (www) "Subsidiary" shall mean with respect to any specified Person, any  
corporation or other legal entity of which such Person or any of its  
Subsidiaries controls or owns, directly or indirectly, more than 50% of the  
stock or other equity interest entitled to vote on the election of members to  
the board of directors or similar governing body.  
  
 (xxx) "Tax" shall have the meaning set forth in the Tax Disaffiliation  
Agreement.  
  
 (yyy) "Tax Disaffiliation Agreement" shall mean the Tax Disaffiliation  
Agreement by and between Parent and SpinCo, which agreement shall be entered  
into effective as of the Distribution Date in the form attached hereto as  
Exhibit B.  
  
 (zzz) "Third Party" shall mean a Person who is not a party hereto or a  
Subsidiary thereof.  
  
 (aaaa) "Third-Party Claim" shall have the meaning set forth in Section  
3.3(a) of this Agreement.  
  
 SECTION 1.2. Reference; Interpretation. References in this Agreement to  
any gender include references to all genders, and references to the singular  
include references to the plural and vice versa. The words "include", "includes"  
and "including" when used in this Agreement shall be deemed to be followed by  
the phrase "without limitation." Unless the context otherwise requires,  
references in this  
  
  
  
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Agreement to Articles, Sections, Exhibits and Schedules shall be deemed  
references to Articles and Sections of, and Exhibits and Schedules to, this  
Agreement. Unless the context otherwise requires, the words "hereof", "hereby"  
and "herein" and words of similar meaning when used in this Agreement refer to  
this Agreement in its entirety and not to any particular Article, Section or  
provision of this Agreement. Neither this Agreement nor any Ancillary Agreement  
shall be construed against either party as the principal draftsperson hereof or  
thereof.  
  
 ARTICLE II  
 DISTRIBUTION AND OTHER TRANSACTIONS; CERTAIN COVENANTS  
  
 SECTION 2.1. The Distribution And Other Transactions.  
  
 (a) Certain Transactions. On the Distribution Date, or such earlier  
date as Parent deems necessary or appropriate to permit the Distribution to  
occur on the Distribution Date,:  
  
 (i) Pursuant to the Corporate Transactions, Parent Group shall  
 contribute, assign, transfer, convey and deliver all of its right,  
 title and interest in the SpinCo Assets to SpinCo Group, and SpinCo  
 Group shall accept, assume and agree faithfully to perform and fulfill  
 all the SpinCo Liabilities, in accordance with their respective terms.  
  
 (ii) Pursuant to the Corporate Transactions, SpinCo Group  
 shall contribute, assign, transfer, convey and deliver all of its  
 right, title and interest in the Parent Assets to Parent Group, and  
 Parent Group shall accept, assume and agree faithfully to perform and  
 fulfill all the Parent Liabilities, in accordance with their respective  
 terms.  
  
 (b) Distribution of Shares by Parent. Prior to the Effective Time,  
Parent shall deliver to Parent's stock transfer agent (the "Agent") a  
certificate or certificates representing the SpinCo Shares, endorsed by Parent  
in blank, for the benefit of the holders of Parent Common Stock, and Parent  
shall authorize the Agent to distribute, as soon as practicable following the  
Effective Time, the SpinCo Shares to holders of record of shares of Parent  
Common Stock on the Distribution Record Date as further contemplated by the  
Information Statement and hereby either by crediting the holder's brokerage  
account or by delivering a certificate or certificates representing such shares.  
SpinCo shall provide any share certificates that the Agent shall require in  
order to effect the Distribution.  
  
 (c) Applications. Parent shall use its reasonable best efforts to  
prepare and file applications with all Governmental Authorities having  
jurisdiction over the transactions contemplated by this Agreement seeking the  
requisite Consents necessary to consummate the transactions contemplated, and  
SpinCo shall cooperate in the preparation and, where appropriate, filing of such  
applications.  
  
 (d) Consents. Parent and SpinCo shall each use, and shall cause each of  
its respective Subsidiaries to use, its reasonable best efforts to obtain all  
Permits and Consents of all third parties and Governmental Authorities necessary  
or desirable for the consummation of the transactions contemplated by this  
Agreement, including those Consents to transfer and/or assign Contracts from  
Third Parties set forth in Schedule 2.1(d). Whether or not each such Permit and  
Consent is obtained, nothing in this Section 2.1(d) shall in any way limit the  
obligations of the parties under Article III.  
  
 (e) State Securities Laws. Prior to the Distribution Date, Parent and  
SpinCo shall take all such action as may be necessary or appropriate under the  
securities or blue sky laws of states or other political subdivisions of the  
United States in order to effect the Distribution.  
  
  
  
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 (f) Listing Application; Notice to NYSE.  
  
 (i) Prior to the Distribution Date, Parent and SpinCo shall  
 prepare and file with the NYSE a listing application and related  
 documents and shall take all such other actions with respect thereto as  
 shall be necessary or desirable in order to cause the NYSE to list on  
 or prior to the Distribution Date, subject to official notice of  
 issuance, the SpinCo Shares.  
  
 (ii) Prior to the Distribution, Parent shall, to the extent  
 possible, give the NYSE not less than ten days advance notice of the  
 Distribution Record Date in compliance with Rule 10b-17 under the  
 Exchange Act.  
  
 (g) Other Transactions. Prior to the Effective Time, the parties hereto  
shall have consummated those other transactions in connection with the Corporate  
Transactions and the Distribution that are contemplated by the Information  
Statement and not specifically referred to in this Section 2.1.  
  
 SECTION 2.2. Assumption and Satisfaction of Liabilities. Except as  
otherwise specifically set forth in any Ancillary Agreement, after the Effective  
Time, (i) Parent shall, or shall cause the applicable member of the Parent Group  
to, assume, pay, perform and discharge all Parent Liabilities in the ordinary  
course of business, consistent with past practice, and (ii) SpinCo shall, or  
shall cause the applicable member of the SpinCo Group to, assume, pay, perform  
and discharge all SpinCo Liabilities in the ordinary course of business,  
consistent with past practice. To the extent reasonably requested to do so by  
another party hereto, each party hereto agrees to execute and deliver such  
documents, in a form reasonably satisfactory to such party, as may be reasonably  
necessary to evidence the assumption of any Liabilities hereunder.  
  
 SECTION 2.3. [Intentionally Removed].  
  
 SECTION 2.4. Limited Representations or Warranties. Each of the parties  
hereto agrees that no party hereto is, in this Agreement or in any other  
agreement or document contemplated by this Agreement or otherwise, making any  
representation or warranty whatsoever, as to title or value of Assets being  
transferred. It is also agreed that all Assets either transferred to or retained  
by the parties, as the case may be, shall be "as is, where is" and that (subject  
to Section 2.13) the party to which such Assets are to be transferred hereunder  
shall bear the economic and legal risk that such party's or any of the  
Subsidiaries' title to any such Assets shall be other than good and marketable  
and free from encumbrances. Similarly, each party hereto agrees that no party  
hereto is representing or warranting in any way that the obtaining of any  
Consents, the execution and delivery of any agreements and the making of any  
filings or applications contemplated by this Agreement will satisfy the  
provisions of any or all applicable Contracts or other agreements or the  
requirements of any or all applicable Laws or judgments, it being agreed that  
the party to which any Assets are transferred shall bear the economic and legal  
risk that any necessary consents or approvals are not obtained or that any  
requirements of Laws or judgments are not complied with. Notwithstanding the  
foregoing, however, except as otherwise provided in Section 2.5 or Section 2.6  
hereof, after the Effective Time, the Parent Group shall be solely responsible  
for Parent Liabilities, and the SpinCo Group shall be solely responsible for  
SpinCo Liabilities.  
  
 SECTION 2.5. Removal of Parent Group from Certain Guarantees; Releases  
of Parent Group from Liabilities.  
  
 (a) Except as otherwise specified in any Ancillary Agreement, SpinCo  
shall use its commercially reasonable efforts to have, prior to the Effective  
Time, or as soon as practicable thereafter, any member of the Parent Group  
removed as guarantor of or obligor for any SpinCo Liability, including in  
respect of those guarantees set forth on Schedule 2.5(a) of this Agreement.  
  
  
  
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 (b) If SpinCo is unable to obtain, or to cause to be obtained, any such  
required removal as set forth in clause (a) of this Section 2.5, the applicable  
guarantor or obligor shall continue to be bound as such and, unless not  
permitted by law or the terms thereof, SpinCo shall or shall cause one of its  
Subsidiaries, as agent or subcontractor for such guarantor or obligor to pay,  
perform and discharge fully all the obligations or other liabilities of such  
guarantor or obligor thereunder from and after the date hereof.  
  
 (c) If (i) SpinCo is unable to obtain, or to cause to be obtained, any  
such required removal as set forth in clause (a) of this Section 2.5, or (ii)  
SpinCo Liabilities arise after the Effective Time but before a member of the  
Parent Group which is a guarantor or obligor with reference to any such SpinCo  
Liability is removed pursuant to clause (a) of this Section 2.5, then such  
guarantor or obligor shall be indemnified by SpinCo for all Liabilities incurred  
by it in its capacity as guarantor or obligor in accordance with Article III  
hereof. Without limiting the foregoing, SpinCo shall, or shall cause a member of  
the SpinCo Group to, reimburse any such member of the Parent Group which is a  
guarantor or obligor as soon as practicable (but in no event later than thirty  
days) following delivery by Parent to SpinCo of notice of a payment made  
pursuant to this Section 2.5 in respect of SpinCo Liabilities.  
  
 (d) In the event that, at any time before or after the Effective Time,  
Parent identifies any letters of credit, interest rate or foreign exchange  
contracts, surety bonds or other Contracts (excluding guarantees) that relate  
primarily to the SpinCo Business but for which a member of the Parent Group has  
contingent, secondary, joint, several or other Liability of any nature  
whatsoever, SpinCo shall, at its expense, take such actions and enter into such  
agreements and arrangements as Parent may reasonably request to effect Parent's  
(or a member of the Parent Group's ) release or substitution.  
  
 SECTION 2.6. Removal of SpinCo from Certain Guarantees; Releases of  
SpinCo from Liabilities.  
  
 (a) Except as otherwise specified in any Ancillary Agreement, Parent  
shall use its commercially reasonable efforts to have, prior to the Effective  
Time, or as soon as practicable thereafter, any member of the SpinCo Group  
removed as guarantor of or obligor for any Parent Liability, including in  
respect of those guarantees set forth on Schedule 2.6(a) of this Agreement.  
  
 (b) If Parent is unable to obtain, or to cause to be obtained, any such  
required removal as set forth in clause (a) of this Section 2.6, the applicable  
guarantor or obligor shall continue to be bound as such and, unless not  
permitted by law or the terms thereof, Parent shall or shall cause one of its  
Subsidiaries, as agent or subcontractor for such guarantor or obligor to pay,  
perform and discharge fully all the obligations or other liabilities of such  
guarantor or obligor thereunder from and after the date hereof.  
  
 (c) If (i) Parent is unable to obtain, or to cause to be obtained, any  
such required removal as set forth in clause (a) of this Section 2.6, or (ii)  
Parent Liabilities arise after the Effective Time but before a member of the  
SpinCo Group which is a guarantor or obligor with reference to any such Parent  
Liability is removed pursuant to clause (a) of this Section 2.6, then such  
guarantor or obligor shall be indemnified by Parent for all Liabilities incurred  
by it in its capacity as guarantor or obligor in accordance with Article III  
hereof. Without limiting the foregoing, Parent shall, or shall cause a member of  
the Parent Group to, reimburse any such member of the SpinCo Group which is a  
guarantor or obligor as soon as practicable (but in no event later than thirty  
days) following delivery by SpinCo to Parent of notice of a payment made  
pursuant to this Section 2.6 in respect of Parent Liabilities.  
  
 (d) In the event that, at any time before or after the Effective Time,  
SpinCo identifies any letters of credit, interest rate or foreign exchange  
contracts, surety bonds or other Contracts (excluding guarantees) that relate  
primarily to the Parent Business but for which a member of the SpinCo Group has  
contingent, secondary, joint, several or other Liability of any nature  
whatsoever, Parent shall, at its  
  
  
  
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expense, take such actions and enter into such agreements and arrangements as  
SpinCo may reasonably request to effect SpinCo's (or a member of the SpinCo  
Group's ) release or substitution.  
  
 SECTION 2.7. Witness Services. At all times after the Effective Time,  
each of Parent and SpinCo shall use its commercially reasonable efforts to make  
available to the other, upon reasonable request, its and its Subsidiaries'  
Representatives as witnesses to the extent that such Persons may reasonably be  
required in connection with the prosecution or defense of any Action in which  
the requesting party or any member of its Group from time to time is involved,  
provided that there is no conflict in the Action between the requesting party or  
any member of its Group, as applicable, and the other party or any member of its  
Group, as applicable. A party providing witness services to the other party  
under this Section shall be entitled to receive from the recipient of such  
services, upon the presentation of invoices therefor, reimbursement for payments  
made for any out-of-pocket expenses (which shall exclude the costs of salaries  
and benefits of employees who are witnesses) as may be reasonably incurred in  
providing such witness services. In addition, to the extent the provision of  
witness services requires an employee of a party to be away from his or her  
normal office location for more than four hours on any day, the party receiving  
the witness services shall pay the party providing the witness services at a per  
diem rate equal to such employee's then current base salary divided by 250.  
Witness services in connection with indemnification claims under Article III  
shall be handled as provided in Article III.  
  
 SECTION 2.8. Conveyancing and Assumption Instruments. In connection  
with the transfers of Assets and the assumptions of Liabilities contemplated by  
this Agreement, on the Distribution Date, or such earlier date as Parent deems  
necessary or appropriate to permit the Distribution to occur on the Distribution  
Date, the parties shall execute or cause to be executed by the appropriate  
entities the Conveyancing and Assumption Instruments contemplated hereby for  
transfers to be effected pursuant to Florida law or the Laws of one of the other  
states of the United States or the laws of the United States, in such other form  
as the parties shall reasonably agree. The transfer of capital stock shall be  
effected by means of delivery of stock certificates and executed stock powers  
and notation on the stock record books of the corporation or other legal  
entities involved, and, to the extent required by applicable Law, by notation on  
public registries.  
  
 SECTION 2.9. Ancillary Agreements. On the Distribution Date, or such  
earlier date as Parent deems necessary or appropriate to permit the Distribution  
to occur on the Distribution Date, each of Parent and SpinCo shall enter into,  
and/or (where applicable) shall cause members of its respective Group to enter  
into, the Ancillary Agreements and any other agreements in respect of the  
Distribution reasonably necessary or appropriate in connection with the  
transactions contemplated hereby and thereby.  
  
 SECTION 2.10. Corporate Names; Trademarks. Except as otherwise  
specifically provided in the Intellectual Property License Agreement:  
  
 (a) As soon as reasonably practicable after the Effective Time, but in  
any event within six months thereafter, SpinCo will, and will cause the SpinCo  
Subsidiaries to, each at its own expense, remove (or, if necessary, on an  
interim basis, cover up) any and all exterior signs and other identifiers  
located on any of its real property or premises or on the real property or  
premises used by SpinCo or the SpinCo Subsidiaries which refer or pertain to  
Parent or which include the Parent or any Parent Subsidiary name, logo or other  
trademark or service xxxx or any similar xxxx or any derivative thereof or other  
intellectual property included in the Parent Assets.  
  
 (b) As soon as is reasonably practicable after the Effective Time, but  
in any event within six months thereafter, SpinCo will, and will cause the  
SpinCo Subsidiaries to, remove from all letterhead, envelopes, invoices,  
products, product labels, product literature, brochures and other communications  
media of any kind, all references to Parent, logo and any other trademark or  
service xxxx or other intellectual property included in the Parent Assets  
(except that SpinCo shall not be required to take any  
  
  
  
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such action with respect to the SpinCo Group's corporate records or any  
materials in the possession of Third Parties).  
  
 (c) As soon as reasonably practicable after the Effective Time, but in  
any event within six months thereafter, Parent will, and will cause the Parent  
Subsidiaries to, each at its own expense, remove (or, if necessary, on an  
interim basis, cover up) any and all exterior signs and other identifiers  
located on any of its real property or premises or on the real property or  
premises used by Parent or the Parent Subsidiaries which refer or pertain to  
SpinCo or which include the SpinCo or any SpinCo Subsidiary name, logo or other  
trademark or any similar xxxx or any derivative thereof or other intellectual  
property included in the SpinCo Assets.  
  
 (d) As soon as is reasonably practicable after the Effective Time, but  
in any event within six months thereafter, Parent will, and will cause the  
Parent Subsidiaries to, remove from all letterhead, envelopes, invoices,  
products, product labels, product literature, brochures and other communications  
media of any kind, all references to SpinCo and its Subsidiaries, logo and any  
other trademark or service xxxx or other intellectual property included in the  
SpinCo Assets (except that Parent shall not be required to take any such action  
with respect to the Parent Group's corporate records or any materials in the  
possession of Third Parties).  
  
 SECTION 2.11. Post-Distribution Remittances.  
  
 (a) Following the Effective Time, Parent will promptly remit to SpinCo,  
or reimburse SpinCo for, all amounts, and endorse or remit to SpinCo the  
proceeds of all checks, drafts, notes or other documents, received by Parent or  
a Parent Subsidiary, that should have otherwise been paid to SpinCo or a SpinCo  
Subsidiary.  
  
 (b) Following the Effective Time, SpinCo will promptly remit to Parent,  
or reimburse Parent for, all amounts, and endorse or remit to Parent the  
proceeds of all checks, drafts, notes or other documents, received by SpinCo or  
a SpinCo Subsidiary, that should have otherwise been paid to Parent or a Parent  
Subsidiary.  
  
 SECTION 2.12. Non-Solicitation.  
  
 (a) For the period beginning on the Distribution Date and ending on the  
second anniversary of the Distribution Date, SpinCo will not and will not permit  
any SpinCo Subsidiary to, directly or indirectly, solicit or recruit for its  
employment any employee of the Parent Group as of the Distribution Date without  
the prior written consent of Parent; provided, however, that nothing in this  
Section 2.12(a) shall (i) prohibit the hiring of any natural person who applied  
for employment with the SpinCo Group solely in response to any public medium  
advertising, (ii) prohibit the hiring of any natural person referred by any  
Person whose principal business is the recruiting of prospective employees, or  
(iii) prohibit the hiring of any natural person whose employment with a member  
of the Parent Group terminated at least three months prior to the date of such  
solicitation or recruitment for a bona fide reason not designed or intended to  
circumvent the provisions of this Section 2.12(a) and so long as such natural  
person was not solicited or recruited by SpinCo or any member of the SpinCo  
Group prior to the expiration of such three-month period.  
  
 (b) For the period beginning on the Distribution Date and ending on the  
second anniversary of the Distribution Date, Parent will not and will not permit  
any Parent Subsidiary to, directly or indirectly, solicit or recruit for its  
employment any employee of the SpinCo Group as of the Distribution Date without  
the prior written consent of SpinCo; provided, however, that nothing in this  
Section 2.12(b) shall (i) prohibit the hiring of any natural person who applied  
for employment with the Parent Group solely in response to any public medium  
advertising, (ii) prohibit the hiring of any natural person referred by any  
Person whose principal business is the recruiting of prospective employees, or  
(iii) prohibit the  
  
  
  
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hiring of any natural person whose employment with a member of the SpinCo Group  
terminated at least three months prior to the date of such solicitation or  
recruitment for a bona fide reason not designed or intended to circumvent the  
provisions of this Section 2.12(b) and so long as such natural person was not  
solicited or recruited by Parent or any member of the Parent Group prior to the  
expiration of such three-month period.  
  
 SECTION 2.13. Further Assurances.  
  
 (a) In addition to the actions specifically provided for elsewhere in  
this Agreement, each of the parties hereto shall use commercially reasonable  
efforts to take, or cause to be taken, all actions, and to do, or cause to be  
done, all things reasonably necessary, proper or advisable under applicable  
laws, regulations and agreements to consummate and make effective the  
transactions contemplated by this Agreement. Without limiting the foregoing,  
each party hereto shall cooperate with the other party, and execute and deliver,  
or use commercially reasonable efforts to cause to be executed and delivered,  
all instruments, including instruments of conveyance, assignment and transfer,  
and to make all filings with, and to obtain all Consents and Permits of any  
Governmental Authority or any other Person, and take all such other actions as  
such party may reasonably be requested to take by the other party hereto from  
time to time, consistent with the terms of this Agreement, the Corporate  
Transactions, and the Ancillary Agreements, in order to effectuate the  
provisions and purposes of this Agreement and the transfers of Assets and  
assumptions of Liabilities and the other transactions contemplated hereby.  
  
 (b) If any such transfer of Assets or assumption of Liabilities is not  
consummated prior to or at the Effective Time, then the parties hereto shall  
continue to take the actions required by Section 2.13(a) to consummate and make  
effective such transfer or assumption as soon as practicable after the Effective  
Time and, in the case of Assets, shall use their commercially reasonable efforts  
to preserve the value of such Assets until the time of transfer. If and when any  
such Asset becomes transferable or Liability becomes assumable, such transfer or  
assumption shall be effected forthwith. The parties hereto agree that, no later  
than the Effective Time, each party hereto shall be deemed to have acquired  
complete and sole beneficial ownership to all of the Assets, together with all  
rights, powers and privileges incident thereto, and shall be deemed to have  
assumed in accordance with the terms of this Agreement and the Ancillary  
Agreements all of the Liabilities, and all duties, obligations and  
responsibilities incident thereto, that such party is entitled or required to  
hold or assume pursuant to this Agreement.  
  
 (c) Any disagreement regarding whether any Asset or Liability was or  
should have been transferred to, retained by or assumed by the Parent Group or  
the SpinCo Group shall be resolved in accordance with the provisions of Article  
V.  
  
 ARTICLE III  
 INDEMNIFICATION  
  
 SECTION 3.1. Indemnification by Parent. Parent shall, and shall cause  
each member of the Parent Group to, indemnify, defend and hold harmless the  
SpinCo Indemnitees from and against any and all Losses of the SpinCo Indemnitees  
arising out of, by reason of or otherwise in connection with the Parent  
Liabilities or alleged Parent Liabilities, including any breach by Parent of any  
provision of this Section 3.1. Each member of the Parent Group shall be jointly  
and severally liable for the indemnification obligations imposed by this Section  
3.1. Subject to the last sentence of Section 7.1, this Agreement is not intended  
to address, and should not be interpreted to address, the matters specifically  
and expressly covered by the Ancillary Agreements.  
  
 SECTION 3.2. Indemnification by SpinCo. SpinCo shall, and shall cause  
each member of the SpinCo Group to, indemnify, defend and hold harmless the  
Parent Indemnitees from and against any and all Losses of the Parent Indemnitees  
arising out of, by reason of or otherwise in connection with the SpinCo  
Liabilities or alleged SpinCo Liabilities, including any breach by SpinCo of any  
provision of this  
  
  
  
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Section 3.2. Each member of the SpinCo Group shall be jointly and severally  
liable for the indemnification obligations imposed by this Section 3.2. Subject  
to the last sentence of Section 7.1, this Agreement is not intended to address,  
and should not be interpreted to address, the matters specifically and expressly  
covered by the Ancillary Agreements.  
  
 SECTION 3.3. Procedures for Indemnification.  
  
 (a) If a claim or demand is made against a SpinCo Indemnitee or a  
Parent Indemnitee (each, an "Indemnitee") by any Third Party (a "Third-Party  
Claim") as to which such Indemnitee is entitled to indemnification pursuant to  
this Agreement, such Indemnitee shall notify the party which is or may be  
required pursuant to Section 3.1 or Section 3.2 hereof to make such  
indemnification (the "Indemnifying Party") in writing, and in reasonable detail,  
of the Third-Party Claim promptly (and in any event within seven Business Days)  
after receipt by such Indemnitee of written notice of the Third-Party Claim;  
provided, however, that failure to give such notification shall not affect the  
indemnification provided hereunder except to the extent the Indemnifying Party  
shall have been actually prejudiced as a result of such failure. Thereafter, the  
Indemnitee shall deliver to the Indemnifying Party, promptly (and in any event  
within five Business Days) after the Indemnitee's receipt thereof, copies of all  
notices and documents (including court papers) received by the Indemnitee  
relating to the Third-Party Claim.  
  
 If a Third-Party Claim is made against an Indemnitee, the Indemnifying  
Party shall be entitled to participate in the defense thereof and, if it so  
elects in accordance with this Section 3.3(a), to assume the defense thereof  
with counsel selected by the Indemnifying Party; provided, however, that such  
counsel is not reasonably objected to by the Indemnitee. Should the Indemnifying  
Party so elect to assume the defense of a Third-Party Claim, the Indemnifying  
Party shall, within thirty days (or sooner if the nature of the Third-Party  
Claim so requires), notify the Indemnitee in writing of its intent to do so, and  
the Indemnifying Party shall thereafter not be liable to the Indemnitee for  
legal or other expenses subsequently incurred by the Indemnitee in connection  
with the defense thereof; provided, however, that such Indemnitee shall have the  
right to employ counsel to represent such Indemnitee if, in such Indemnitee's  
reasonable judgment, a conflict of interest between such Indemnitee and such  
Indemnifying Party exists in respect of such claim that would make  
representation of both such parties by one counsel inappropriate, and in such  
event the fees and expenses of such separate counsel shall be paid by the  
Indemnifying Party. If the Indemnifying Party elects to assume such defense, the  
Indemnitee shall have the right to participate in the defense thereof and to  
employ counsel, subject to the proviso of the preceding sentence, at its own  
expense, separate from the counsel employed by the Indemnifying Party, it being  
understood that the Indemnifying Party shall control such defense. The  
Indemnifying Party shall be liable for the fees and expenses of counsel employed  
by the Indemnitee for any period during which the Indemnifying Party has failed  
to assume the defense thereof (other than during the period prior to the time  
the Indemnitee shall have given notice of the Third-Party Claim as provided  
above). If the Indemnifying Party so elects to assume the defense of any  
Third-Party Claim, all of the Indemnitees shall cooperate with the Indemnifying  
Party in the defense or prosecution thereof, including by providing or causing  
to be provided, Records and witnesses as soon as reasonably practicable after  
receiving any request therefor from or on behalf of the Indemnifying Party.  
  
 If an Indemnifying Party elects to assume the defense of a Third-Party  
Claim as provided above, in no event will the Indemnitee admit any liability  
with respect to, or settle, compromise or discharge, any Third-Party Claim  
without the Indemnifying Party's prior written consent; provided, however, that  
the Indemnitee shall have the right to settle, compromise or discharge such  
Third-Party Claim without the consent of the Indemnifying Party if the  
Indemnitee releases the Indemnifying Party from its indemnification obligation  
hereunder with respect to such Third-Party Claim and such settlement, compromise  
or discharge would not otherwise adversely affect the Indemnifying Party. If an  
Indemnifying Party elects to assume the defense of a Third-Party Claim as  
provided above, the Indemnitee will agree to any settlement, compromise or  
discharge of a Third-Party Claim that the Indemnifying Party may recommend and  
that by its terms obligates the Indemnifying Party to pay the full  
  
  
  
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amount of the liability in connection with such Third-Party Claim and releases  
the Indemnitee completely in connection with such Third-Party Claim; provided,  
however, that, notwithstanding the foregoing, the Indemnitee shall not be  
required hereunder to agree to any such settlement, compromise or discharge  
involving the stipulation of facts or the adjudication of any question that the  
Indemnitee determines in its discretion would have an adverse effect on the  
Indemnitee in any other proceeding or otherwise would affect adversely the  
Indemnitee. If an Indemnifying Party elects not to assume the defense of a  
Third-Party Claim, or fails to notify an Indemnitee of its election to do so as  
provided herein, such Indemnitee may compromise, settle or defend such  
Third-Party Claim, and such Indemnitee may recover the Losses in connection with  
such compromise, settlement or defense from the Indemnifying Party.  
  
 Notwithstanding the foregoing, the Indemnifying Party shall not be  
entitled to assume the defense of any Third-Party Claim (and shall be liable for  
the fees and expenses of counsel incurred by the Indemnitee in defending such  
Third-Party Claim) if the Third-Party Claim seeks an order, injunction or other  
equitable relief or relief for other than money damages against the Indemnitee  
which the Indemnitee reasonably determines, after conferring with its counsel,  
cannot be separated from any related claim for money damages. If such equitable  
relief or other relief portion of the Third-Party Claim can be so separated from  
that for money damages, the Indemnifying Party shall be entitled to assume the  
defense of the portion relating to money damages.  
  
 (b) In the event of payment by an Indemnifying Party to any Indemnitee  
in connection with any Third-Party Claim, such Indemnifying Party shall be  
subrogated to and shall stand in the place of such Indemnitee as to any events  
or circumstances in respect of which such Indemnitee may have any right or claim  
relating to such Third-Party Claim against any claimant or plaintiff asserting  
such Third-Party Claim. Such Indemnitee shall cooperate with such Indemnifying  
Party in a reasonable manner, and at the cost and expense of such Indemnifying  
Party, in prosecuting any subrogated right or claim.  
  
 (c) The remedies provided in this Article III shall be cumulative and  
shall not preclude assertion by any Indemnitee of any other rights or the  
seeking of any and all other remedies against any Indemnifying Party.  
  
 SECTION 3.4. Indemnification Payments. Unless otherwise agreed to in  
writing, indemnification required by this Article III shall be made by periodic  
payments of the amount thereof during the course of the investigation or  
defense, as and when bills are received or Losses are incurred. If the  
Indemnifying Party fails to make an indemnification payment required by this  
Article III within thirty days after receipt of a xxxx therefor or notice that a  
Loss has been incurred, the Indemnifying Party shall also be required to pay  
interest on the amount of such indemnification payment, from the date of receipt  
of the xxxx or notice of the Loss to, but not including the date of payment, at  
the Applicable Rate.  
  
 ARTICLE IV  
 ACCESS TO INFORMATION  
  
 SECTION 4.1. Provision of Corporate Records.  
  
 (a) Except as otherwise provided in Article III, after the Effective  
Time, upon the prior written request by SpinCo for specific and identified  
agreements, documents, books, records or files (collectively, "Records") which  
relate to (x) SpinCo, the conduct of the SpinCo Business up to the Effective  
Time or the ownership of the SpinCo Assets up to the Effective Time, or (y) any  
Ancillary Agreement (other than the Tax Disaffiliation Agreement), Parent shall  
arrange, as soon as reasonably practicable following the receipt of such  
request, to provide such Records (or appropriate copies thereof if Parent has a  
reasonable need to retain the originals) in the possession or control of Parent  
or any of the Parent Subsidiaries, but only to the extent such items are not  
already in the possession or control of SpinCo.  
  
  
  
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 (b) Except as otherwise provided in Article III, after the Effective  
Time, upon the prior written request by Parent for specific and identified  
Records which relate to (x) Parent, the conduct of the Parent Business up to the  
Effective Time or the ownership of the Parent Assets up to the Effective Time,  
or (y) any Ancillary Agreement (other than the Tax Disaffiliation Agreement),  
SpinCo shall arrange, as soon as reasonably practicable following the receipt of  
such request, to provide such Records (or appropriate copies thereof if SpinCo  
has a reasonable need to retain the originals) in the possession or control of  
SpinCo or any of the SpinCo Subsidiaries, but only to the extent such items are  
not already in the possession or control of Parent.  
  
 SECTION 4.2. Access to Information. Except as otherwise provided in  
Article III, after the Effective Time, each of Parent and SpinCo shall afford to  
the other and its authorized Representatives reasonable access during normal  
business hours, subject to appropriate restrictions for classified, privileged  
or confidential information, to the personnel, properties, and Records of such  
party and its Subsidiaries insofar as such access is reasonably required by the  
other party and relates to (x) such other party or the conduct of its business  
or ownership of its Assets prior to the Effective Time, (y) any Ancillary  
Agreement, or (z) litigation or threatened litigation against such party.  
  
 SECTION 4.3. Reimbursement; Other Matters. Except to the extent  
otherwise contemplated by any Ancillary Agreement, a party providing Records or  
access to personnel, properties or Records to the other party under this Article  
IV shall be entitled to receive from the recipient, upon the presentation of  
invoices therefor, reimbursement for payments made for supplies, disbursements  
and other out-of-pocket expenses (including attorneys' fees and disbursements),  
as may be reasonably incurred in providing such Records or access to personnel,  
properties or Records.  
  
 SECTION 4.4. Confidentiality. Neither (i) Parent nor the Parent  
Subsidiaries nor (ii) SpinCo nor the SpinCo Subsidiaries shall use or permit the  
use of (without the prior written consent of the other) and each such entity  
shall keep, and shall cause its Representatives to keep, confidential all  
information concerning the other party in its possession, its custody or under  
its control (except to the extent that (A) such information has been in the  
public domain through no fault of such party or (B) such information has been  
later lawfully acquired from other sources by such party or (C) this Agreement  
or any other Ancillary Agreement or any other agreement entered into pursuant  
hereto permits the use or disclosure of such information) to the extent such  
information, (w) relates to or was acquired during the period up to the  
Effective Time, (x) relates to any Ancillary Agreement, (y) is obtained in the  
course of performing services for the other party pursuant to any Ancillary  
Agreement, or (z) is based upon or is derived from information described in the  
preceding clauses (w), (x) or (y), and each party shall not (without the prior  
written consent of the other) otherwise release or disclose such information to  
any other Person, except such party's Representatives, unless compelled to  
disclose such information by judicial or administrative process or unless such  
disclosure is required by Law and such party has provided the other party with  
prompt notice of such requirement in order to afford the other party the  
opportunity to seek an appropriate protective order or other remedy. In the  
event that such protective order or other remedy is not obtained or that the  
other party does not waive compliance with the provisions of this Section 4.4,  
the first party will furnish only that portion of such information that it is  
advised by opinion of counsel, which counsel shall be reasonably acceptable to  
the other party, is legally required and will endeavor to obtain assurance that  
confidential treatment will be accorded the information so furnished.  
  
 Notwithstanding anything herein to the contrary, except as reasonably  
necessary to comply with applicable securities laws, Parent, SpinCo and their  
respective Representatives may (i) consult any tax advisor regarding U.S.  
federal income tax treatment or tax structure of the transactions contemplated  
by this Agreement, and (ii) disclose to any and all persons, without limitation  
of any kind, the U.S. federal income tax treatment and tax structure of the  
transactions contemplated by this Agreement and all materials of any kind  
(including opinions or other tax analyses) that are provided to either Parent or  
SpinCo relating to such tax treatment or tax structure.  
  
  
  
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 SECTION 4.5. Privileged Matters. The parties hereto recognize that  
legal and other professional services that have been and will be provided prior  
to the Effective Time have been and will be rendered for the benefit of each of  
the members of the Parent Group, and each of the members of the SpinCo Group,  
and that each of the members of the Parent Group, and each of the members of the  
SpinCo Group, should be deemed to be the client for the purposes of asserting  
all privileges which may be asserted under applicable Law. Except as otherwise  
specifically provided in the Tax Disaffiliation Agreement with respect to tax  
matters, to allocate the interests of each party in the information as to which  
any party is entitled to assert a privilege, the parties agree as follows:  
  
 (a) Parent shall be entitled, in perpetuity, to control the assertion  
or waiver of all privileges in connection with privileged information which  
relates solely to the Parent Business, whether or not the privileged information  
is in the possession of or under the control of Parent or SpinCo. Parent shall  
also be entitled, in perpetuity, to control the assertion or waiver of all  
privileges in connection with privileged information that relates solely to the  
subject matter of any claims constituting Parent Liabilities, now pending or  
which may be asserted in the future, in any Action initiated against or by  
Parent, whether or not the privileged information is in the possession of or  
under the control of Parent or SpinCo.  
  
 (b) SpinCo shall be entitled, in perpetuity, to control the assertion  
or waiver of all privileges in connection with privileged information which  
relates solely to the SpinCo Business, whether or not the privileged information  
is in the possession of or under the control of Parent or SpinCo. SpinCo shall  
also be entitled, in perpetuity, to control the assertion or waiver of all  
privileges in connection with privileged information which relates solely to the  
subject matter of any claims constituting SpinCo Liabilities, now pending or  
which may be asserted in the future, in any Action initiated against or by  
SpinCo, whether or not the privileged information is in the possession of SpinCo  
or under the control of Parent or SpinCo.  
  
 (c) The parties hereto agree that they shall have a shared privilege,  
with equal right to assert or waive, subject to the restrictions in this Section  
4.5, with respect to all privileges not allocated pursuant to the terms of  
Sections 4.5(a) and (b). All privileges relating to any Action, disputes or  
other matters which involve Parent and SpinCo in respect of which such parties  
retain any responsibility or liability under this Agreement, shall be subject to  
a shared privilege among them.  
  
 (d) No party hereto may waive any privilege which could be asserted  
under any applicable Law, and in which any other party hereto has a shared  
privilege, without the consent of the other party, which consent shall not be  
unreasonably withheld or delayed, except to the extent reasonably required in  
connection with any Action with Third Parties or as provided in subsection (e)  
below. Consent shall be in writing, or shall be deemed to be granted unless  
written objection is made within twenty days after notice upon the other party  
requesting such consent.  
  
 (e) In the event of any Action or dispute between any of the parties  
hereto, any party and a Subsidiary of another party hereto, or a Subsidiary of  
one party hereto and a Subsidiary of another party hereto, either such party, to  
the extent necessary in connection with such Action or dispute, may waive a  
privilege in which the other party has a shared privilege, without obtaining the  
consent of the other party, provided that such waiver of a shared privilege  
shall be effective only as to the use of information with respect to such Action  
or dispute between the relevant parties and/or their Subsidiaries, and shall not  
operate as a waiver of the shared privilege with respect to Third Parties.  
  
 (f) If a dispute arises between or among the parties hereto or their  
respective Subsidiaries regarding whether a privilege should be waived to  
protect or advance the interest of any party, each party agrees that it shall  
negotiate in good faith, shall endeavor to minimize any prejudice to the rights  
of the other parties, and shall not unreasonably withhold consent to any request  
for waiver by another party. Each party hereto specifically agrees that it will  
not withhold consent to waiver for any purpose except to protect its own  
legitimate interests.  
  
  
  
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 (g) Upon receipt by any party hereto or by any Subsidiary thereof of  
any subpoena, discovery or other request which arguably calls for the production  
or disclosure of information subject to a shared privilege or as to which  
another party has the sole right hereunder to assert a privilege, or if any  
party obtains knowledge that any of its or any of its Subsidiaries' current or  
former Representatives has received any subpoena, discovery or other requests  
which arguably calls for the production or disclosure of such privileged  
information, such party shall promptly notify the other party of the existence  
of the request and shall provide the other party a reasonable opportunity to  
review the information (to the extent such information is available to such  
party) and to assert any rights it or they may have under this Section 4.5 or  
otherwise to prevent the production or disclosure of such privileged  
information.  
  
 (h) The transfer of all Records and other information pursuant to this  
Agreement is made in reliance on the agreement of Parent and SpinCo, as set  
forth in Section 4.4 and this Section 4.5, to maintain the confidentiality of  
privileged information and to assert and maintain all applicable privileges. The  
access to information being granted pursuant to Sections 4.1 and 4.2 hereof, the  
agreement to provide witnesses and individuals pursuant to Sections 2.7 and 3.3  
hereof, the furnishing of notices and documents and other cooperative efforts  
contemplated by Section 3.3 hereof, and the transfer of privileged information  
between and among the parties and their respective Subsidiaries pursuant to this  
Agreement shall not be deemed a waiver of any privilege that has been or may be  
asserted under this Agreement or otherwise.  
  
 SECTION 4.6. Ownership of Information. Any information owned by one  
party or any of its Subsidiaries that is provided to a requesting party pursuant  
to Article III or this Article IV shall be deemed to remain the property of the  
providing party. Unless specifically set forth herein, nothing contained in this  
Agreement shall be construed as granting or conferring rights of license or  
otherwise in any such information.  
  
 SECTION 4.7. Retention of Records.  
  
 (a) Parent shall deliver to SpinCo upon SpinCo's request all Records  
that are specifically identified by SpinCo and known by Parent, after reasonable  
inquiry, to be in its control or possession relating to SpinCo Assets, SpinCo  
Liabilities or the SpinCo Business. Except (a) as provided in the Tax  
Disaffiliation Agreement or (b) when a longer retention period is otherwise  
required by Law or agreed to in writing, the Parent Group and the SpinCo Group  
shall retain in a reasonably retrievable format, for a period of at least six  
years, all Records relating to the SpinCo Business as of the Effective Time.  
Notwithstanding the foregoing, in lieu of retaining any specific Records, Parent  
may offer in writing to deliver such Records to SpinCo and, if such offer is not  
accepted within ninety days, the offered Records may be destroyed or otherwise  
disposed of at any time. If SpinCo shall request in writing prior to the  
expiration of such ninety-day period that any of Records proposed to be  
destroyed or disposed of be delivered to SpinCo, Parent shall promptly arrange  
for delivery of such requested Records (at SpinCo's cost).  
  
 (b) SpinCo shall deliver to Parent upon Parent's request all Records  
that are specifically identified by Parent and known by SpinCo, after reasonable  
inquiry, to be in its control or possession relating to Parent Assets, Parent  
Liabilities or the Parent Business. Except (i) as provided in the Tax  
Disaffiliation Agreement or (ii) when a longer retention period is otherwise  
required by Law or agreed to in writing, the Parent Group and the SpinCo Group  
shall retain in a reasonably retrievable format, for a period of at least six  
years, all Records relating to the Parent Business as of the Effective Time.  
Notwithstanding the foregoing, in lieu of retaining any specific Records, SpinCo  
may offer in writing to deliver such Records to Parent and, if such offer is not  
accepted within ninety days, the offered Records may be destroyed or otherwise  
disposed of at any time. If Parent shall request in writing prior to the  
expiration of such ninety-day period that any of Records proposed to be  
destroyed or disposed of be delivered to Parent, SpinCo shall promptly arrange  
for delivery of such requested Records (at Parent's cost).  
  
  
  
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 SECTION 4.8. Limitation of Liability; Release.  
  
 (a) No party shall have any liability to any other party in the event  
that any information exchanged or provided pursuant to this Agreement which is  
an estimate or forecast, or which is based on an estimate or forecast, is found  
to be inaccurate.  
  
 (b) Effective upon the Distribution and except as otherwise  
specifically set forth in this Agreement, each of Parent and SpinCo releases and  
forever discharges the other and its Representatives and Subsidiaries, of and  
from all Liabilities against such other party, its Representatives and  
Subsidiaries or any of its successors or assigns, which the releasing party has  
or ever had, which arise out of or relate to events, circumstances or actions  
taken by such other party prior to the Distribution; provided, however, that the  
foregoing general release shall not apply to this Agreement, the Ancillary  
Agreements or the transactions contemplated hereby or thereby and shall not  
affect either party's right to enforce this Agreement or any of the Ancillary  
Agreements in accordance with their terms.  
  
 SECTION 4.9. Other Agreements Providing for Exchange of Information.  
The rights and obligations granted under this Article IV are subject to any  
specific limitations, qualifications or additional provisions on the sharing,  
exchange or confidential treatment of information set forth in any Ancillary  
Agreement.  
  
 ARTICLE V  
 DISPUTE RESOLUTION  
  
 SECTION 5.1. Negotiation. Subject to Section 5.6, in the event of a  
controversy, dispute or claim arising out of, in connection with, or in relation  
to the interpretation, performance, nonperformance, validity or breach of this  
Agreement or otherwise arising out of, or in any way related to this Agreement  
or the transactions contemplated hereby, including any claim based on contract,  
tort, statute or constitution (but excluding any controversy, dispute or claim  
arising out of any agreement relating to the use or lease of real property if  
any Third Party is a party to such controversy, dispute or claim) (collectively,  
"Agreement Disputes"), the management of the parties shall negotiate in good  
faith for a reasonable period of time to settle such Agreement Dispute;  
provided, however, such reasonable period shall not, unless otherwise agreed by  
the parties in writing, exceed sixty days from the time a party has first given  
written notice of such Agreement Dispute to the other party.  
  
 SECTION 5.2. Mediation. If after such reasonable period of negotiation  
the parties are unable to settle such Agreement Dispute (and in any event,  
unless otherwise agreed in writing by the parties, after ninety days have  
elapsed from the time the parties began such negotiations) and the Agreement  
Dispute involves a controversy, dispute or claim of less than $500,000, such  
Agreement Dispute shall be determined, at the request of any party, by mediation  
conducted in a location selected by the non-requesting party and acceptable to  
the requesting party, before a retired judge sitting on the panel of Judicial  
Arbitration & Mediation Services, Inc. The mediation process shall continue as  
the exclusive method of resolving the Agreement Dispute (other than negotiation  
between the parties) until the earlier of the Agreement Dispute being resolved  
or the mediator finding in good faith that all settlement possibilities have  
been exhausted and that the matter is not resolvable through mediation.  
  
 SECTION 5.3. Continuity of Service and Performance. Unless otherwise  
agreed in writing, the parties will continue to provide services and honor all  
other commitments under this Agreement and each Ancillary Agreement during the  
course of dispute resolution pursuant to the provisions of this Article V with  
respect to all matters not subject to such dispute, controversy or claim.  
  
 SECTION 5.4. Other Remedies. Nothing in this Article V shall limit the  
right that any party may otherwise have to seek to obtain from any court of  
competent jurisdiction (i) preliminary injunctive relief in order to preserve  
the status quo pending the resolution of a dispute or (ii) temporary or  
permanent  
  
  
  
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injunctive relief from any breach of any provisions of this Agreement. By  
seeking such relief, a party in no way waives its arbitration rights under this  
Agreement.  
  
 SECTION 5.5. Tolling. The parties acknowledge and agree that any  
statute of limitations or any other defense that could be raised by a party  
based upon the passage or expiration of time with respect to any Agreement  
Dispute shall be suspended and tolled during the period in which the parties are  
negotiating in good faith pursuant to Section 5.1 hereof and during the period  
in which any mediation is pending or conducted pursuant to Section 5.2 hereof.  
The parties' time to commence any action in connection with any Agreement  
Dispute will not be extended by the number of days encompassed in the tolled  
period, and no party will be prejudiced in any way by the passage of time during  
the tolled period.  
  
 SECTION 5.6. Determination of Book Value. As soon as practicable  
following the Distribution Date, each party (the "first party") shall submit to  
the other such first party's calculation of its Book Value. In the event either  
party disputes the other party's calculation of such other party's Book Value,  
the parties agree that either party may submit such disagreement at any time to  
Ernst & Young LLP, and that each party shall be bound by the determination of  
such disputed Book Value made by Ernst & Young LLP.  
  
 ARTICLE VI  
 INSURANCE  
  
 SECTION 6.1. Allocation of Policies.  
  
 (a) Policies and Rights Included Within Assets. The SpinCo Assets shall  
include (i) the SpinCo Policies, (ii) any and all rights of an insured party  
under each of the Parent Shared Non-Carryover Policies, subject to the terms of  
such Parent Shared Non-Carryover Policies and any limitations or obligations of  
SpinCo contemplated by this Article VI, specifically including rights of  
indemnity and the right to be defended by or at the expense of the insurer, with  
respect to all claims, suits, actions, proceedings, injuries, losses,  
liabilities, damages and expenses incurred or claimed to have been incurred  
prior to the Effective Time by any party in or in connection with the conduct of  
the SpinCo Business or the ownership of the SpinCo Assets or, to the extent any  
claim is made against SpinCo or any of the SpinCo Subsidiaries, the conduct of  
the Parent Business or the ownership of the Parent Assets, and which claims,  
suits, actions, proceedings, injuries, losses, liabilities, damages and expenses  
may arise out of an insured or insurable occurrence under one or more of such  
Parent Shared Non-Carryover Policies, and (iii) any and all rights of an insured  
party under each of the Parent Shared Carryover Policies, subject to the terms  
of such Parent Shared Carryover Policies and any limitations or obligations of  
SpinCo contemplated by this Article VI, with respect to all claims, suits,  
actions, proceedings, injuries, losses, liabilities, damages and expenses  
incurred or claimed to have been incurred prior to April 1, 2004 by any party in  
or in connection with the conduct of the SpinCo Business or the ownership of the  
SpinCo Assets, and which claims, suits, actions, proceedings, injuries, losses,  
liabilities, damages and expenses may arise out of an insured or insurable  
occurrence under one or more of such Parent Shared Carryover Policies.  
  
 (b) Parent Shared Non-Carryover Policies. Prior to the Distribution  
Date, (i) Parent shall cause SpinCo to be named as an additional named insured  
under each of the Parent Shared Non-Carryover Policies, and (ii) Parent shall  
purchase extended reporting period coverage for a period of \_\_\_\_\_\_\_ years  
following the Distribution Date under each Parent Shared Non-Carryover Policy.  
  
 (c) Parent Shared Carryover Policies. Parent shall maintain the  
effectiveness of each Parent Shared Carryover Policy, with coverages equal to or  
greater than the coverages in effect under such Policies as of the date hereof,  
and shall cause SpinCo to be an additional named insured under each such Policy,  
until April 1, 2004.  
  
  
  
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 SECTION 6.2. Post-Effective Time Claims. If, subsequent to the  
Effective Time, any Person shall assert a claim against SpinCo or any of the  
SpinCo Subsidiaries (including where SpinCo or the SpinCo Subsidiaries are joint  
defendants with other Persons) with respect to any claim, suit, action,  
proceeding, injury, loss, liability, damage or expense incurred or claimed to  
have been incurred prior to the Effective Time in or in connection with the  
conduct of the SpinCo Business or the ownership of the SpinCo Assets or, to the  
extent any claim is made against SpinCo or any of the SpinCo Subsidiaries  
(including where SpinCo or the SpinCo Subsidiaries are joint defendants with  
other Persons), the conduct of the Parent Business or the ownership of the  
Parent Assets, and which claim, suit, action, proceeding, injury, loss,  
liability, damage or expense may arise out of an insured or insurable occurrence  
under one or more of the Parent Shared Non-Carryover Policies, Parent shall  
assert and collect any related Insurance Proceeds under such Parent Shared  
Non-Carryover Policy on behalf of SpinCo and remit promptly to SpinCo any  
Insurance Proceeds so collected, and Parent shall further on behalf of SpinCo  
assert any and all rights of an insured party under such Parent Shared  
Non-Carryover Policy with respect to such asserted claim, specifically including  
rights of indemnity and the right to be defended by or at the expense of the  
insurer and the right to any applicable Insurance Proceeds thereunder. The  
parties hereby acknowledge and agree that nothing herein shall limit SpinCo's  
right to assert directly and collect any related Insurance Proceeds under any  
Parent Shared Policy and that, should SpinCo become liable for any Parent  
Liabilities covered by any Parent Shared Policy or any Parent Policy, SpinCo  
shall have the right to assert directly and collect any related Insurance  
Proceeds under any such Parent Shared Policy or Parent Policy.  
  
 SECTION 6.3. Administration; Other Matters.  
  
 (a) Administration. Subject to Section 6.3(c) and Section 6.3(d), after  
the Effective Time, (i) Parent shall be responsible for (A) Insurance  
Administration of the Parent Shared Policies with respect to all Liabilities  
except SpinCo Liabilities and (B) Claims Administration (except as provided  
below) under such Parent Shared Policies with respect to all Liabilities except  
SpinCo Liabilities, and (ii) SpinCo shall be responsible for (A) Insurance  
Administration of the Parent Shared Policies with respect to all SpinCo  
Liabilities and (B) Claims Administration (except as provided below) under such  
Parent Shared Policies with respect to all SpinCo Liabilities; provided,  
however, that the retention of such responsibilities by Parent or SpinCo, as the  
case may be, is in no way intended to limit, inhibit or preclude (i) any right  
to insurance coverage for any Insured Claim of a named insured under such  
Policies as contemplated by the terms of this Agreement or (ii) the sharing  
between Parent and SpinCo of information relating to the matters addressed in  
this Article VI; and provided further that Parent's retention or SpinCo's  
retention, as the case may be, of the administrative responsibilities for the  
Parent Shared Policies shall not relieve the party submitting any Insured Claim  
of the primary responsibility for reporting such Insured Claim accurately,  
completely and in a timely manner or of such party's authority to settle any  
such Insured Claim within any period permitted or required by the relevant  
Policy. Parent or SpinCo, as the case may be, may discharge its administrative  
responsibilities under this Section 6.3 by contracting for the provision of  
services by independent parties. Each of the parties hereto shall administer and  
pay any costs relating to defending its respective Insured Claims under Parent  
Shared Policies to the extent such defense costs are not covered under such  
Policies and shall be responsible for obtaining or reviewing the appropriateness  
of releases upon settlement of its respective Insured Claims under Parent Shared  
Policies. SpinCo shall reimburse Parent promptly for all disbursements,  
out-of-pocket expenses and direct and indirect costs of employees or agents of  
Parent relating to Claims Administration and Insurance Administration  
contemplated by this Section 6.3(a) on behalf of SpinCo. Likewise, Parent shall  
reimburse SpinCo promptly for all disbursements, out-of-pocket expenses and  
direct and indirect costs of employees or agents of SpinCo relating to Claims  
Administration and Insurance Administration contemplated by this Section 6.3(a)  
on behalf of Parent.  
  
 (b) Claims. SpinCo may, subject to Section 6.3(c) and Section 6.3(d),  
claim coverage for Insured Claims under a Parent Shared Policy in accordance  
with the terms of Section 6.1 as and to the extent that such insurance is  
available up to the full extent of the applicable limits of liability of such  
  
  
  
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Parent Shared Policy (and may receive any Insurance Proceeds with respect  
thereto as contemplated by Section 6.2 or Section 6.3(c) hereof), subject to the  
terms of this Section 6.3.  
  
 (c) Allocation of Insurance Proceeds. Insurance Proceeds received with  
respect to claims, costs and expenses under the Parent Shared Policies shall be  
paid directly to the appropriate Person or to Parent, which shall thereafter  
administer the Parent Shared Policies by paying the Insurance Proceeds, as  
appropriate, to Parent with respect to Parent Liabilities and to SpinCo with  
respect to the SpinCo Liabilities. Payment of the allocable portions of  
indemnity costs of Insurance Proceeds resulting from such Policies will be made  
by Parent to the appropriate Person upon receipt from the insurance carrier. In  
the event that the applicable limits on any particular Parent Shared Policy are  
exceeded by the amount of outstanding Insured Claims by the relevant parties  
hereto, such parties agree to allocate the Insurance Proceeds received  
thereunder based upon their respective percentage of the total of their bona  
fide claims (measured as of the date costs related to such bona fide claims were  
incurred, such incurrence to be measured, (i) in the case of fees and expenses  
incurred for services performed that are attributable to the defense or  
disposition of Insured Claims, as of the date such fees and expenses are billed  
to an insurance carrier, and (ii) in the case of sums payable in settlement or  
satisfaction of a judgment attributable to Insured Claims, as of the date of any  
such judgment) which were covered under such Parent Shared Policy (their  
"allocable portion of Insurance Proceeds"), and any party who has received  
Insurance Proceeds in excess of such party's allocable portion of Insurance  
Proceeds shall pay to the other party the appropriate amount so that each party  
will have received its allocable portion of Insurance Proceeds pursuant hereto.  
Each of the parties agrees to use commercially reasonable efforts to maximize  
available coverage under those Parent Shared Policies applicable to it, and to  
take all commercially reasonable steps to recover from all other responsible  
parties in respect of an Insured Claim to the extent coverage limits under a  
particular Parent Shared Policy have been exceeded or would be exceeded as a  
result of such Insured Claim.  
  
 (d) Allocation of Deductibles, Etc. In the event that the parties have  
bona fide claims under any Parent Shared Policy for which a deductible or a  
retrospectively rated premium adjustment is payable or for which a  
self-insurance retention amount has been applied, the parties agree that the  
aggregate amount of the deductible or retrospectively rated premium adjustment  
paid or retention amount applied shall be borne by the parties in the same  
proportion which the Insurance Proceeds received by each such party bears to the  
total Insurance Proceeds received under the applicable Parent Shared Policy  
(their "allocable share of the deductible, premium adjustment or retention  
amount"), and any party who has paid more than its allocable share of the  
deductible, premium adjustment or retention amount shall be entitled to receive  
from the other party an appropriate amount so that each party has borne its  
allocable share of the deductible, premium adjustment or retention amount  
pursuant hereto. Further, if a party receives no Insurance Proceeds under that  
applicable Parent Shared Policy, that party shall have no allocable share of the  
deductible, premium adjustment or retention amount under that applicable Parent  
Shared Policy, and the other party shall bear all of the allocable share of the  
deductible, premium adjustment or retention amount under that applicable Parent  
Shared Policy.  
  
 (e) Continued Responsibility. Notwithstanding anything in this Article  
VI to the contrary, the Parent Group shall remain liable to the SpinCo  
Indemnitees for the indemnification obligations contemplated by Section 3.1, and  
the SpinCo Group shall remain liable to the Parent Indemnitees for the  
indemnification obligations contemplated by Section 3.2, in each case, to the  
extent any Loss or Liability is not fully paid to or on behalf of the applicable  
party by Insurance Proceeds.  
  
 SECTION 6.4. Agreement for Waiver of Conflict and Shared Defense. In  
the event that Insured Claims of more than one of the parties hereto exist  
relating to the same occurrence, the parties shall jointly defend and waive any  
conflict of interest necessary to the conduct of the joint defense. Nothing in  
this Article VI shall be construed to limit or otherwise alter in any way the  
obligations of the parties to this Agreement, including those created by this  
Agreement, by operation of Law or otherwise.  
  
  
  
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 SECTION 6.5. Cooperation. The parties agree to use their commercially  
reasonable efforts to cooperate with respect to the various insurance matters  
contemplated by this Agreement.  
  
 ARTICLE VII  
 MISCELLANEOUS  
  
 SECTION 7.1. Complete Agreement; Construction. This Agreement,  
including the Exhibits and Schedules, and the Ancillary Agreements shall  
constitute the entire agreement between the parties with respect to the subject  
matter hereof and shall supersede all previous negotiations, commitments and  
writings with respect to such subject matter. In the event of any inconsistency  
between this Agreement and any Schedule hereto, the Schedule shall prevail.  
Other than Section 2.4, Section 4.5 and Article V, which shall prevail over any  
inconsistent or conflicting provisions in any Ancillary Agreement,  
notwithstanding any other provisions in this Agreement to the contrary, in the  
event and to the extent that there shall be a conflict between the provisions of  
this Agreement and the provisions of any Ancillary Agreement, such Ancillary  
Agreement shall control.  
  
 SECTION 7.2. Ancillary Agreements. Subject to the last sentence of  
Section 7.1, this Agreement is not intended to address, and should not be  
interpreted to address, the matters specifically and expressly covered by the  
Ancillary Agreements.  
  
 SECTION 7.3. Counterparts. This Agreement may be executed in one or  
more counterparts, all of which shall be considered one and the same agreement,  
and shall become effective when one or more such counterparts have been signed  
by each of the parties and delivered to the other parties.  
  
 SECTION 7.4. Survival of Agreements. Except as otherwise contemplated  
by this Agreement, all covenants and agreements of the parties contained in this  
Agreement shall survive the Effective Time.  
  
 SECTION 7.5. Distribution Expenses. Except as otherwise set forth in  
this Agreement or any Ancillary Agreement, all costs and expenses incurred prior  
to the Effective Time which are outstanding as of the Effective Time or arise  
after the Effective Time in connection with the preparation, execution,  
delivery, printing and implementation of this Agreement and any Ancillary  
Agreement, the Registration Statement (including the Information Statement) and  
the Distribution and the consummation of the transactions contemplated thereby  
(including any transfer taxes imposed on the transfer of real or personal  
property in the Corporate Transactions) shall be charged to and paid by Parent,  
and such costs and expenses shall be deemed to be Parent Liabilities. Further,  
except as otherwise set forth in this Agreement or any Ancillary Agreement  
(including the retention and assumption by the Parent Group of the Parent  
Liabilities and the retention and assumption by the SpinCo Group of the SpinCo  
Liabilities in accordance with Section 2.2 hereof), all other Liabilities (to  
the extent not otherwise satisfied prior to the Effective Time) directly  
resulting from actions taken prior to the Effective Time in connection with the  
preparation, execution, delivery, printing and implementation of this Agreement  
and any Ancillary Agreement, the Information Statement (including the  
Registration Statement) and the Distribution and the consummation of the  
transactions contemplated thereby shall be deemed to be Parent Liabilities.  
Except as otherwise set forth in this Agreement or any Ancillary Agreement, each  
party shall bear its own costs and expenses incurred after the Effective Time,  
and any amount or expense to be paid or reimbursed by any party hereto to any  
other party hereto shall be so paid or reimbursed promptly after the existence  
and amount of such obligation is determined and written demand therefor is made.  
  
 SECTION 7.6. Notices. All notices and other communications hereunder  
shall be in writing, shall reference this Agreement and shall be hand delivered  
or mailed by registered or certified mail (return receipt requested) or sent by  
any means of electronic message transmission with delivery confirmed (by voice  
or otherwise) to the parties at the following addresses (or at such other  
addresses for  
  
  
  
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a party as shall be specified by like notice) and will be deemed given on the  
date on which such notice is received ("Notices"):  
  
 To Parent:  
  
 F.N.B. Corporation  
 Xxx X.X.X. Xxxxxxxxx  
 Xxxxxxxxx, Xxxxxxxxxxxx 00000  
 Attention: Xxxxxxx X. Xxxxxxxxx  
 Telephone: (000) 000-0000  
 Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 To SpinCo:  
  
 First National Bankshares of Florida, Inc.  
 0000 Xxxxxxxxx Xxxx Xxxxx  
 Xxxxxx, Xxxxxxx 00000  
 Attention: Xxxx X. Xxxx  
 Telephone: (000) 000-0000  
 Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
 SECTION 7.7. Waivers. The failure of any party to require strict  
performance by any other party of any provision in this Agreement will not waive  
or diminish that party's right to demand strict performance thereafter of that  
or any other provision hereof.  
  
 SECTION 7.8. Amendments. Subject to the terms of Section 7.10 hereof,  
this Agreement may not be modified or amended except by an agreement in writing  
signed by each of the parties hereto.  
  
 SECTION 7.9. Successors and Assigns. The provisions to this Agreement  
shall be binding upon, inure to the benefit of and be enforceable by the parties  
and their respective successors and assigns.  
  
 SECTION 7.10. Termination. This Agreement (including Article III  
hereof) may be terminated and the Distribution may be amended, modified or  
abandoned at any time prior to the Effective Time by and in the sole discretion  
of Parent without the approval of SpinCo or the stockholders of Parent. In the  
event of such termination, no party shall have any liability of any kind to any  
other party or any other Person. After the Distribution, this Agreement may not  
be terminated except by an agreement in writing signed by the parties; provided,  
however, that Article III shall not be terminated or amended after the  
Distribution in respect of any Indemnitees not a party to this Agreement without  
the consent of such Persons.  
  
 SECTION 7.11. Subsidiaries. Parent shall cause to be performed, and  
hereby guarantees the performance of, all actions, agreements and obligations  
set forth herein to be performed by any Parent Subsidiary. SpinCo shall cause to  
be performed, and hereby guarantees the performance of, all actions, agreements  
and obligations set forth herein to be performed by any SpinCo Subsidiary.  
  
 SECTION 7.12. Third-Party Beneficiaries. Except for the right of  
Indemnitees to enforce the provisions of Article III hereof, this Agreement is  
solely for the benefit of the parties hereto and their respective Subsidiaries  
and Affiliates and should not be deemed to confer upon Third Parties any remedy,  
claim, liability, reimbursement, cause of action or other right in excess of  
those existing without reference to this Agreement.  
  
  
  
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 SECTION 7.13. Title and Headings. Titles and headings to Sections  
herein are inserted for convenience of reference only and are not intended to be  
a part of or to affect the meaning or interpretation of this Agreement.  
  
 SECTION 7.14. Exhibits and Schedules. The Exhibits and Schedules shall  
be construed with and as an integral part of this Agreement to the same extent  
as if the same had been set forth verbatim herein.  
  
 SECTION 7.15. Governing Law. This Agreement shall be governed by and  
construed in accordance with the Laws of the State of Florida, without regard to  
any conflicts of Laws principles.  
  
 SECTION 7.16. Severability. In the event any one or more of the  
provisions contained in this Agreement should be held invalid, illegal or  
unenforceable in any respect, the validity, legality and enforceability of the  
remaining provisions contained herein and therein shall not in any way be  
affected or impaired thereby. The parties shall endeavor in good faith  
negotiations to replace the invalid, illegal or unenforceable provisions with  
valid provisions, the economic or operational effect of which comes as close as  
possible to that of the invalid, illegal or unenforceable provisions.  
  
 SECTION 7.17. Consolidation, Merger, Etc.  
  
 (a) Involving SpinCo. SpinCo shall not consolidate with or merge into  
any other Person or convey, transfer or lease all or any substantial portion of  
its properties and assets to any Person, unless, in each case such Person is a  
corporation, partnership, limited liability company or trust and expressly  
assumes, by a written agreement, executed and delivered to Parent, in form  
reasonably satisfactory to Parent, all of the liabilities, obligations and  
expenses to be assumed by SpinCo under this Agreement and the due and punctual  
performance or observance of every agreement and covenant of this Agreement and  
the Ancillary Agreements on the part of SpinCo to be performed or observed.  
  
 (b) Involving Parent. Parent shall not consolidate with or merge into  
any other Person or convey, transfer or lease all or any substantial portion of  
its properties and assets to any Person, unless, in each case such Person is a  
corporation, partnership, limited liability company or trust and expressly  
assumes, by a written agreement, executed and delivered to SpinCo, in form  
reasonably satisfactory to SpinCo, all of the liabilities, obligations and  
expenses to be assumed by Parent under this Agreement and the due and punctual  
performance or observance of every agreement and covenant of this Agreement and  
the Ancillary Agreements on the part of Parent to be performed or observed.  
  
  
  
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 IN WITNESS WHEREOF, the parties have caused this Agreement to be duly  
executed as of the day and year first above written.  
  
  
 F.N.B. CORPORATION  
  
  
 By:  
 -----------------------------------  
 Xxxxxxx X. Xxxxxxxxx, Vice Chairman  
  
  
  
  
 FIRST NATIONAL BANKSHARES OF FLORIDA,  
 INC.  
  
  
 By:  
 -----------------------------------  
 Xxxx X. Xxxx, Chairman and Chief  
 Executive Officer  
  
  
  
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