

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

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**FORM 8-K**

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): December 5, 2013

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**THE FEMALE HEALTH COMPANY**

(Exact name of registrant as specified in its charter)

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Wisconsin

(State or other jurisdiction of incorporation)

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1-13602

(Commission File Number)

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39-1144397

(I.R.S. Employer I.D. Number)

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515 North State Street  
Suite 2225  
Chicago, Illinois

(Address of Principal Executive Offices)

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60654

(Zip Code)

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312-595-9123

(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Section 5 – Corporate Governance and Management

### Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

On December 5, 2013, the Board of Directors of The Female Health Company (the "Company") appointed Karen King as President and Chief Executive Officer of the Company effective January 20, 2014. O.B. Parrish will retire from the positions of President and Chief Executive Officer effective January 20, 2014. Mr. Parrish will continue to serve as Chairman of the Board and a director of the Company.

A copy of the press release announcing the appointment of Ms. King is attached as Exhibit 99.1 to this report and is incorporated herein by reference.

Ms. King, age 54, served as President of the Biologics and BioSolutions businesses of Royal DSM, a global provider of biopharmaceutical manufacturing technology and services, from September 2006 to September 2013. Previously, Ms. King served as Executive Vice President of the Company from May 2006 to September 2006 and as Vice President, Global Development from August 2004 to May 2006, where she was responsible for sales, marketing and business development. Prior to August 2004, Ms. King worked at Baxter International since 1981, most recently serving as President of Pulse Nutrition Solutions, Inc., a subsidiary of Baxter that developed a line of nutritional products for consumer use.

On December 5, 2013, the Company entered into a letter agreement with Karen King regarding the terms of her employment with the Company (the "Employment Letter") and the Company entered into a Change of Control Agreement (the "Change of Control Agreement") with Ms. King. A copy of the Employment Letter is attached as Exhibit 99.2 to this report and a copy of the Change of Control Agreement is attached as Exhibit 99.3 to this report, and each is incorporated herein by reference.

Pursuant to the terms of the Employment Letter, Ms. King will serve as the Company's President and Chief Executive Officer effective January 20, 2014. Ms. King will receive an annual base salary of \$350,000. Ms. King will also receive a grant of 50,000 shares of restricted common stock on her start date, which shares will vest as to 16,667 shares on the second anniversary of her start date and as to the remaining 33,333 shares on the third anniversary of her start date. Pursuant to the Employment Letter, Ms. King is entitled to participate in the Company's annual performance award program with a total of 35,000 shares for fiscal 2014, 40,000 shares for fiscal 2015 and 45,000 shares for fiscal 2016. The Employment Letter includes a "clawback" provision which provides for the potential recovery by the Company of annual performance award compensation in the event of fraud or intentional misconduct that materially contributes to a restatement of financial results resulting from any non-compliance with any financial reporting requirements under the federal securities laws. In the event the Dodd-Frank Act of 2010 requires the Company to adopt a clawback policy that is different than the clawback provision in Ms. King's Employment Letter, the Company is authorized to replace the clawback provision in the Employment Letter with such clawback policy. Under the Employment Letter, Ms. King will be eligible to participate in the Company's U.S. health and dental insurance program, or receive reimbursement for participation in a similar plan, and she will be entitled to reimbursement for relocation expenses in an amount not to exceed approximately \$17,650.

The Change of Control Agreement will be effective as of January 20, 2014, the start date of Ms. King's employment. The Change of Control Agreement essentially acts as a springing employment agreement which provides that, upon a change of control, as defined in the agreement, the Company will continue to employ Ms. King for a period of three years in the same capacities as prior to the change of control, with an annual base salary equal to 12 times the highest monthly base salary paid during the 12 months prior to the change of control, an annual bonus equal to the higher of (1) the average of the three highest bonuses paid with respect to the five fiscal years prior to the effective date of the change of control or (2) the bonus paid for the most recent fiscal year prior to the effective date of the change of control, and other benefits substantially equivalent to what the executive was receiving prior to the effective date of the change of control, in each case as specified in the agreement. If the executive is terminated without cause or if she resigns for good reason, in each case as defined in the agreement, after the change of control and during the three year employment period, including a termination by the executive for any reason within 180 days after the change of control, the executive is generally entitled to receive the following benefits:

- a lump sum payment equal to three times the executive's base salary;
- a lump sum payment equal three times the highest of (1) the average of the three highest bonuses paid with respect to the five fiscal years prior to the effective date of the change of control, (2) the bonus paid for the most recent fiscal year prior to the effective date of the change of control or (3) the bonus paid or payable for the most recent fiscal year prior to the date of termination of employment;
- continuation of health and other similar benefits for a period of three years after the termination date; and
- a "gross-up" payment which will, in general, effectively reimburse the executive for any amounts paid under federal excise taxes relating to change of control benefits.

#### **Section 9 - Financial Statements and Exhibits**

##### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

99.1 -- Press Release of The Female Health Company, issued December 11, 2013.

99.2 -- Letter Agreement dated December 5, 2013 between The Female Health Company and Karen King.

99.3 -- Change of Control Agreement effective as of January 20, 2014 between The Female Health Company and Karen King.

SIGNATURES

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

Date: December 11, 2013

THE FEMALE HEALTH COMPANY

BY /s/ Michele Greco  
Michele Greco, Vice President  
and Chief Financial Officer



**Contacts:** William R. Gargiulo, Jr. 231.526.1244  
Michele Greco, CFO 312.595.9123

### **The Female Health Company Names Karen King President and Chief Executive Officer**

**CHICAGO (December 11, 2013)** - Today The Female Health Company (NASDAQ-CM: FHCO), announced that Karen King will become President and CEO effective January 20, 2014. O.B. Parrish, a Company founder and current Chairman and CEO will continue as Chairman of the Board.

Karen King was President of the Biologics and BioSolutions businesses at Royal DSM from 2007 to 2013. DSM Biologics/BioSolutions is a global provider of biopharmaceutical manufacturing technology and services.

Previously Ms. King was an Executive Officer of the Female Health Company from 2004 – 2006, serving most recently as Executive Vice President where she was responsible for sales, marketing and business development.

Prior to joining FHC, Ms. King had an extensive career with Baxter International beginning in 1981. During her Baxter tenure, Ms. King held positions in R&D, Operations, Marketing, Business Development, Corporate Strategy, Innovation and General Management. She was Executive Director of Baxter's Collaboration with Inhale Therapeutics focusing on the development and commercialization of a novel technology for respiratory drug delivery. In her final position at Baxter, Ms. King was the President of Pulse Nutrition Solutions, Inc from 2000 – 2003. Pulse Nutrition Solutions was a subsidiary of Baxter devoted to developing and commercializing a line of nutritional products for consumer use.

Ms. King is a graduate of the University of Illinois with a Bachelor of Science degree in Microbiology.

O.B. Parrish said "I am delighted to have Karen join FHC as President and CEO. She has a remarkable combination of successful global experience including marketing, technology, science and business development in both the private and public sectors. Karen's prior experience with FHC equips her with significant relevant knowledge of the Company's history and development, as well as its potential. This change in leadership comes at a time when the Company's future is bright. Karen will provide excellent leadership for the further development and growth of FHC."

Karen King said, "I am honored to be rejoining FHC in this capacity. O.B. and his team have done a wonderful job building a strong, successful company. I am looking forward to working with O.B. and FHC's customers, employees and shareholders to continue the important work of the company and position it for future growth and success."

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## **About the Female Health Company**

The Female Health Company, based in Chicago, Illinois, manufactures and markets the *FC2 Female Condom® (FC2)*, which is available in the U.S. and approximately 143 other countries globally. The Company owns certain worldwide rights to the *FC2 Female Condom®*, including patents that have been issued in a number of countries around the world. The patents cover the key aspects of FC2, including its overall design and manufacturing process. The *FC2 Female Condom®* is the only currently available female-controlled product approved by the FDA that offers dual protection against sexually transmitted diseases, including HIV/AIDS, and unintended pregnancy. The World Health Organization (WHO) has cleared *FC2* for purchase by U.N. agencies.

### ***Safe Harbor" statement under the Private Securities Litigation Reform Act of 1995:***

*The statements in this release which are not historical facts are forward-looking statements based upon the Company's current plans and strategies, and reflect the Company's current assessment of the risks and uncertainties related to its business, including such things as product demand and market acceptance; the economic and business environment and the impact of government pressures; currency risks; capacity; efficiency and supply constraints; and other risks detailed in the Company's press releases, shareholder communications and Securities and Exchange Commission filings. Actual events affecting the Company and the impact of such events on the Company's operations may vary from those currently anticipated.*

For more information about the Female Health Company visit the Company's website at <http://www.femalehealth.com> and <http://www.femalecondom.org>. If you would like to be added to the Company's e-mail alert list, please send an e-mail to [FHCInvestor@femalehealthcompany.com](mailto:FHCInvestor@femalehealthcompany.com)

## THE FEMALE HEALTH COMPANY



515 North State Street  
Suite 2225  
Chicago, Illinois 60654

312.595.9123 · FAX: 312-595.9122  
www.femalehealth.com

December 5, 2013

Ms. Karen King  
725 Cornelia Street  
Boonton, NJ 07005

Dear Karen:

I am pleased to extend an offer to you to join The Female Health Company (the "Company") as President and Chief Executive Officer. You would join the Company January 20, 2014 as President and Chief Executive Officer (your "start date"). In the position of President and Chief Executive Officer you will be responsible for leading the company in a manner that positively contributes to world healthcare and returns value to the Company's shareholders. As the Chief Executive Officer, you will be responsible for keeping the Company compliant with applicable Securities and Exchange Commission and NASDAQ requirements.

You will report directly to the Board of Directors of The Female Health Company.

The specifics of our offer include the following during the term of your employment commencing on the start date:

Annual Base Salary: \$350,000

Long term incentive: A grant of 50,000 shares of restricted stock under the Company's 2008 Stock Incentive Plan on the start date. The restriction on one-third (16,667) of the shares will lapse and the shares will vest on the second anniversary of the start date. The remaining two-thirds (33,333) of the shares will vest on the third anniversary of the start date. If you terminate your employment for any reason or if the Company terminates your employment for "cause" (as defined in the 2008 Stock Incentive Plan) prior to such vesting dates, any unvested shares would be forfeited. The restricted stock will automatically vest upon the consummation of any transaction that is a "change of control" (as defined in your Change of Control Agreement).

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- Bonus:** You will be eligible to receive a bonus of a certain number of shares of common stock, or at the Company's option, the cash equivalent of such shares, based on the average closing price of the Company's stock over the last ten trading days of each fiscal year, contingent on the Company achieving its unit and operating income targets for each fiscal year. For fiscal year 2014, the bonus award will be based on the value of 35,000 shares of FHC stock pro-rated for the portion of the fiscal year during which you serve as President and C.E.O. For fiscal year 2015, the bonus target will be the equivalent of 40,000 shares of FHC stock. The bonus target for fiscal year 2016 will be the equivalent of 45,000 shares of FHC stock. You agree that you will be subject to the clawback provision set forth on Exhibit A hereto.
- Group Health Insurance:** You will be eligible to participate in the US health and dental insurance program which is paid for by the Company, or receive reimbursement for your participation in a similar plan.
- Vacation:** 4 weeks paid vacation per year; holidays as defined for US employees.
- Expenses:** The Company will reimburse you for all reasonable and documented expenses associated with Company business. Company policy is that we travel economy class without prior approval to travel business class for a particularly lengthy flight.
- Relocation:** The Company will reimburse you for reasonable relocation expense for your move to the Chicago area in an amount not to exceed \$17,651.93.

In addition as a member of the Executive Operating Committee you will be covered by a Change of Control Agreement, which will be executed as of the start date.

The Female Health Company is making a significant contribution to world health. In the position of President and Chief Executive Officer, you will play a major role in expanding this accomplishment. I know that you will be successful in this position and I look forward to having you as a key member of our team.



If the terms and conditions of this offer are acceptable to you, please execute the enclosed copy of this letter in the space provided and return it to me by \_\_\_\_\_, 2013.

Yours truly,

/s/ O.B. Parrish

O. B. Parrish  
Chairman and CEO

Accepted /s/ Karen King

Date December 5, 2013

**Clawback Provision**

In the event of a restatement of all or any part of the Company's financial results (other than due to a change in applicable accounting rules or interpretations) resulting from any non-compliance by the Company with any financial reporting requirement under the federal securities laws, if the result of such restatement is that any bonus paid to you (the "Paid Bonus") by the Company during the three years preceding the date of such restatement would have been lower had it been calculated based on the restated results (such lower amount, the "Adjusted Bonus") and you engaged in any fraud or intentional misconduct which materially contributed to the need for such restatement, then the Company may, in its sole discretion, recover from you an amount equal to the difference between all such Paid Bonuses and all such Adjusted Bonuses (the "Excess Bonuses"). If the Company seeks such recovery of any Excess Bonuses, it shall make written demand to you and if you do not pay the amount of such Excess Bonuses within 90 days after such demand the Company may seek a court order or other appropriate legal action against you. The amount of any Excess Bonuses shall be determined by the Compensation Committee in good faith and in accordance with applicable law, rules and regulations. All good faith determinations by the Compensation Committee with respect to any Excess Bonuses shall be final and binding on you and the Company. The rights of the Company under this paragraph shall terminate following a Change of Control (as defined in your Change of Control Agreement).

Notwithstanding anything herein to the contrary, it is intended that this clawback provision be administered in a manner that complies in all respects with applicable laws, rules and regulations and securities exchange listing requirements, including Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd Frank Act"). Section 954 of the Dodd-Frank Act requires the Securities and Exchange Commission by rule to direct national securities exchanges to adopt listing requirements that require listed companies to implement clawback policies, and it is likely that the final rules under Section 954 of the Dodd-Frank Act will require the Company to adopt a clawback policy that is different than the provisions set forth herein. You hereby authorize the Company to amend this clawback provision (or replace it with a new clawback policy applicable to other executives as well as you) as it may reasonably deem to be necessary or appropriate to comply with the Dodd-Frank Act and other applicable laws, rules and regulations and securities exchange listing requirements, and you agree to execute an acknowledgment of any such amendment or new policy if requested to do so by the Company.

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## CHANGE OF CONTROL AGREEMENT

THIS CHANGE OF CONTROL AGREEMENT is dated effective as of January 20, 2014 by and between THE FEMALE HEALTH COMPANY, a Wisconsin corporation (the "Company"), and KAREN KING (the "Executive").

## RECITALS

A. The Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company.

B. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefit arrangements upon a Change of Control which ensure that the compensation and benefit expectations of the Executive will be satisfied and which are competitive with those of other corporations.

C. In order to accomplish the objectives of the Board summarized in these recitals, the Board has caused the Company to enter into this Agreement.

## AGREEMENTS

In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Definitions. For the sole and exclusive purposes of this Agreement, the following terms have the following meanings:

(a) Effective Date. The "Effective Date" means the first date during the Change of Control Period on which a Change of Control occurs. Notwithstanding anything in this Agreement to the contrary, if a Change of Control occurs and Executive's employment with the Company (or, if applicable, its subsidiary) or this Agreement was terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment or of this Agreement (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment or purported termination of this Agreement.

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(b) Change of Control Period. The "Change of Control Period" means the period commencing on the date of a Change of Control and ending on the third anniversary thereafter.

(c) Change of Control. "Change of Control" means any of the following:

(i) The acquisition by any individual, entity or group (within the meaning of section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either [a] the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or [b] the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that the following acquisitions shall not constitute a Change of Control: [i] any acquisition directly from the Company, [ii] any acquisition by the Company, [iii] any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or [iv] any acquisition by any corporation pursuant to a transaction which complies with clauses [a], [b] and [c] of subsection (iii) of this section 1.

(ii) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (or by the Nominating and Corporate Governance Committee of the Board) shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board.

(iii) Approval by the shareholders of the Company of a reorganization, merger or consolidation (a "Business Combination"), in each case, unless, following such Business Combination, [a] all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation (or other entity) resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, [b] no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation (or other entity) resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation (or other entity) resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and [c] at least a majority of the members of the board of directors of the corporation (or other governing body) resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination.

(iv) Approval by the shareholders of the Company of [a] a complete liquidation or dissolution of the Company or [b] the sale or other disposition of all or substantially all of the assets of the Company, other than to a corporation (or other entity), with respect to which following such sale or other disposition, [i] more than 60% of, respectively, the then outstanding shares of common stock of such corporation (or other equity interests) and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors (or other governing body) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership, immediately prior to such sale or other disposition, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, [ii] less than 20% of, respectively, the then outstanding shares of common stock of such corporation (or other entity) and the combined voting power of the then outstanding voting securities of such corporation (or other entity) entitled to vote generally in the election of directors (or other governing body) is then beneficially owned, directly or indirectly, by any Person (excluding any employee benefit plan (or related trust) of the Company or such corporation), except to the extent that such Person owned substantially the same percent of the Outstanding Company Common Stock or Outstanding Company Voting Securities prior to the sale or disposition, and [iii] at least a majority of the members of the board of directors of such corporation (or other governing body) were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such sale or other disposition of assets of the Company or were elected, appointed or nominated by the Board.

(d) Disability. "Disability" means the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(e) Cause. "Cause" means:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), after a written demand for substantial performance is delivered to the Executive by the Board which specifically identifies the manner in which the Board believes that the Executive has not substantially performed the Executive's duties and after the Executive is given a reasonable period of time to rectify or eliminate such failure, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

Notwithstanding anything herein to the contrary, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of a more senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(f) Good Reason. "Good Reason" means:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by section 3(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of section 3(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in section 3(a)(i)[b] hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(v) any failure by the Company to comply with and satisfy section 10(c) of this Agreement.

(g) Date of Termination. "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination (as defined in section 4(d)) or any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination, and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date (as defined in section 4(a)), as the case may be.

2. Employment Period. The Company agrees to continue the Executive in its employ (or, if applicable, in the employ of its subsidiary or subsidiaries), and the Executive agrees to remain in the employ of the Company (or, if applicable, in the employ of its subsidiary or subsidiaries) subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the third anniversary of such date (the "Employment Period"). Notwithstanding the foregoing, if the Incumbent Board approves the Change of Control transaction before it is consummated and one or more of the nonemployee directors adopt(s) a resolution providing that this Agreement shall not become operative in connection with such Change of Control, this Agreement shall not become operative in connection with that Change of Control.

3. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, [a] the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with those held, exercised or assigned at any time during the 120-day period immediately preceding the Effective Date and [b] the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company (or, if applicable, its subsidiary or subsidiaries) and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to [a] serve on corporate, civic or charitable boards or committees, [b] deliver lectures, fulfill speaking engagements or teach at educational institutions and/or [c] manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company (or, if applicable, its subsidiaries) in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company (or, if applicable, its subsidiaries).

(b) Compensation.

(i) Base Salary. During the Employment Period, the Executive shall receive an annual base salary ("Annual Base Salary"), at least equal to twelve times the highest monthly base salary paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. During the Employment Period, the Annual Base Salary shall be reviewed no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually and shall be first increased no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually by the higher of [a] the average increase (excluding promotional increases) in base salary awarded to the Executive for each of the three full fiscal years (annualized in the case of any fiscal year consisting of less than twelve full months or during which the Executive was employed for less than twelve months) prior to the Effective Date, and [b] the percentage increase (excluding promotional increases) in base salary generally awarded to peer executives of the Company and its affiliated companies for the year of determination. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the higher of [a] the average of the three highest bonuses paid or payable, including any bonus or portion thereof which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the five fiscal years (or such shorter period during which the Executive has been employed by the Company) immediately preceding the fiscal year in which the Effective Date occurs (annualized for any fiscal year during such period consisting of less than twelve full months or with respect to which the Executive has been employed by the Company for less than twelve full months) and [b] the bonus paid or payable (annualized as described above), including any bonus or portion thereof which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the most recently completed fiscal year prior to the Effective Date (such higher amount being referred to as the "Recent Annual Bonus"). Each such Annual Bonus shall be paid no later than two and one-half months following the end of the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.



(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and the affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

#### 4. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Company determines in good faith that a Disability of the Executive has occurred during the Employment Period, it may give to the Executive written notice in accordance with section 11(b) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties.

(b) Cause. The Company may terminate the Executive's employment during the Employment Period for Cause.

(c) Good Reason. The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this section 4(c), any good faith determination of "Good Reason" made by the Executive shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 180-day period immediately following the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with section 11(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated, and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

#### 5. Obligations of the Company upon Termination.

(a) Good Reason; Other Than for Cause, Death or Disability. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause, death or Disability or the Executive shall terminate the Executive's employment for Good Reason:

(i) The Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

[a] the sum of [i] the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, [ii] the product of (x) the higher of [A] the Recent Annual Bonus and [B] the Annual Bonus paid or payable, including any bonus or portion thereof which has been earned but deferred (and annualized for any fiscal year consisting of less than 12 full months or during which the Executive was employed for less than 12 full months), for the most recently completed fiscal year during the Employment Period, if any (such higher amount being referred to as the "Highest Annual Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and [iii] any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses [i], [ii] and [iii] shall be hereinafter referred to as the "Accrued Obligations"); and

[b] The amount equal to the product of [i] three and [ii] the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus.

(ii) For three years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in sections 3(b)(iii) and (iv) (the "Benefit Plans") of this Agreement had the Executive's employment not been terminated, in accordance with the most favorable plans, practices, programs or policies of the Company and its affiliated companies applicable generally to other peer executives and their families during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes re-employed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until three years after the Date of Termination and to have retired on the last day of such period. Notwithstanding anything herein to the contrary, the Company shall have no obligation to continue benefits to the Executive under this section 5(a)(ii) to the extent any such continuation of benefits [a] is contrary to the terms of the applicable Benefit Plan at the time of the Effective Date of the Change of Control, [b] would cause a Benefit Plan or the applicable benefit to lose any tax favored treatment or tax qualification, or [c] would cause a Benefit Plan to violate any requirement of the Employee Retirement Income Security Act of 1974, as amended, or any tax qualification or tax favorable treatment provision of the Code (defined below) that is intended to apply to the Benefit Plan. To the extent the Company is not able to continue the benefits to the Executive under this section 5(a)(ii) because of application of the foregoing sentence, then the Company shall make a lump-sum payment (within 30 days after the Executive's Date of Termination) to the Executive equal to the present value of the health, welfare and retirement benefits unable to be provided hereunder, which is designed to compensate the Executive for lost health, welfare and retirement benefits.

(iii) The Company shall, at its sole expense and as requested, provide the Executive with outplacement services the scope and provider of which shall be selected by the Executive in the Executive's sole discretion.

(iv) To the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this section 5(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and affiliated companies to the estates and beneficiaries of peer executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and its affiliated companies and their beneficiaries.

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this section 5(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families.

(d) Cause: Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive (i) the Executive's Annual Base Salary through the Date of Termination, (ii) the amount of any compensation previously deferred by the Executive, and (iii) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

(e) Compliance with Code section 409A. To the extent any amount payable under this Agreement is considered "nonqualified deferred compensation" under Code section 409A, the Company shall not accelerate or defer the time or schedule of any payment to be made hereunder and such payments may only be made if the Executive has previously "separated from service" with the Company as defined under Code section 409A. To the extent the Executive is a "specified employee" as defined under Treasury Regulation section 1.409A-1(i)(1), any payment of nonqualified deferred compensation following the Executive's separation from service by reason other than death that is not otherwise exempt from Code section 409A shall be paid on the first payroll period of the Company that is at least 6-months after the Executive's separation from service. It is expressly contemplated by the parties that this Agreement will conform to, and be interpreted to comply with, Code section 409A.

6. Nonexclusivity of Rights. Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

7. Full Settlement. The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses which the Executive reasonably incurs as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable federal rate provided for in section 7872(f)(2) (A) of the Internal Revenue Code of 1986, as amended (the "Code").

#### 8. Certain Additional Payments by the Company.

(a) Anything in this Agreement to the contrary notwithstanding, if it is determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this section 8) (a "Payment") would be subject to the excise tax imposed by section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of section 8(c), all determinations required to be made under this section 8, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by such certified public accounting firm as may be designated by the Executive (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. If the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this section 8, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by the Executive, it shall furnish the Executive with a written opinion that failure to report the Excise Tax on the Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. If the Company exhausts its remedies pursuant to section 8(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(i) give the Company any information reasonably requested by the Company relating to such claim,

(ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(iii) cooperate with the Company in good faith in order effectively to contest such claim, and

(iv) permit the Company to participate in any proceedings relating to such claim; provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this section 8(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to whether a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to section 8(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of section 8(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to section 8(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

9. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, for a period of three years following the Executive's termination of employment, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this section 9 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

10. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

11. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.



(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive, to the Executive's address appearing on the records of the Company.

If to the Company:

The Female Health Company  
515 North State Street  
Suite 2225  
Chicago, IL 60654  
Attn: Chief Executive Officer

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision hereof or any other provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to section 4(c) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, prior to the Effective Date, the Executive's employment and this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

Dated as of the date first above written.

EXECUTIVE:

/s/ Karen King  
Karen King

THE FEMALE HEALTH COMPANY

BY /s/ O.B. Parrish  
O.B. Parrish, Chairman and  
Chief Executive Officer