

MINNEAPOLIS COLLEGE OF ART AND DESIGN
DEFINED CONTRIBUTION RETIREMENT PLAN

January 1, 2009

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ARTICLE I

ESTABLISHMENT OF PLAN

- 1.1 **Adoption of Plan.** Effective July 1, 1988, Minneapolis College of Art and Design (the “College”) adopted the Minneapolis College of Art and Design Defined Contribution Retirement Plan (the “Plan”). The Plan has been amended and/or restated from time to time thereafter in order to comply with applicable changes in the law and to reflect other changes in the Plan.
- 1.2 **Amendment and Restatement of Plan.** This plan document sets forth the provisions of the Plan restated and amended effective January 1, 2009.

ARTICLE II

DEFINITIONS

- 2.1 **Accumulation Account.** “Accumulation Account” means the separate account(s) established for each Participant. The current value of a Participant’s Accumulation Account includes all Contributions, less expense charges, adjusted for credited investment experience.
- 2.2 **Annual Additions.** “Annual Additions” means the sum of: (i) Salary Reduction Contributions and Employer Contributions to this Plan; and (ii) contributions by the College or a Participant to another plan required to be aggregated with this Plan for purposes of Section 415 of the Code.
- 2.3 **Annuity Starting Date.** “Annuity Starting Date” means the first day of the first period for which an amount is payable as an annuity under this Plan, or if a benefit is not payable as an annuity, the first day on which all events have occurred entitling a Participant to such benefit. (Payment is not considered to occur after the applicable Annuity Starting Date merely because actual payment is reasonably delayed to allow for calculation of the benefit amount, as long as all payments are actually made.)
- 2.4 **Beneficiary.** “Beneficiary” means the person, trust, estate or organization designated by a Participant to receive the Participant’s benefits in the event of his or her death.
- 2.5 **Break in Service.** A “Break in Service” shall be deemed to have occurred if an Employee fails to complete more than Five Hundred (500) Hours of Service during any Eligibility Computation Period; provided, however, an Employee who is on a College-approved leave of absence, regardless of whether he or she is paid or entitled to payment by the College during such absence, shall not be deemed to have suffered a Break in Service during such absence.

- 2.6 **Code.** “Code” means the Internal Revenue Code of 1986, as amended.
- 2.7 **Code Section 403(b) Defined Contribution Retirement Plan.** “Code Section 403(b) Defined Contribution Retirement Plan” means a plan that: (i) provides for a separate account(s) for each Participant; (ii) provides for benefits based solely on the amounts of contributions to the Participant’s Accumulation Account(s) and earnings thereon; and (iii) meets the requirements of Section 403(b) of the Code.
- 2.8 **College.** “College” means Minneapolis College of Art and Design.
- 2.9 **Compensation.** “Compensation” means the total compensation received by a Participant which is includable in the Participant’s gross income and reported as “wages, tips, other compensation” on the Participant’s Form W-2 for the most recent period (ending not later than the close of the taxable year) that may be counted as a year of service under Section 403(b)(4) of the Code, but including: (i) any and all amounts which would otherwise be included in the Participant’s gross income were it not for the application of Section 125 of the Code; (ii) any amount contributed by the College to an arrangement described in Section 403(b) of the Code pursuant to a salary reduction agreement and (iii) payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment if, absent a severance from employment, such payments would have been paid to the Participant while the Participant continued in employment with the College and are regular compensation for services during the Participant’s regular working hours, compensation for services outside the Participant’s regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation. In addition, the definition of Compensation includes payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment for unused accrued bona fide vacation, sabbatical or other leave, if the Participant would have been able to use the leave if employment had continued. This definition also includes compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.

The annual compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed the limit set forth in Section 401(a)(17) of the Code, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

- 2.10 **Contribution.** “Contribution” includes a Salary Reduction Contribution, an Employer Contribution and an Eligible Rollover Contribution.

- 2.11 ***Direct Rollover Distribution.*** A “Direct Rollover Distribution” is a payment by this Plan of an Eligible Rollover Distribution to the Eligible Retirement Plan specified by a Distributee.
- 2.12 ***Distributee.*** A “Distributee” includes a Participant or former Participant. In addition, the term “Distributee” includes the Surviving Spouse of a Participant or former Participant, the Spouse or former Spouse of a Participant or former Participant who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, and a Nonspouse Beneficiary.
- 2.13 ***Eligibility Computation Period.*** “Eligibility Computation Period” means the twelve (12) consecutive-month period commencing on an Employee’s Employment Commencement Date, or Reemployment Commencement Date, whichever is applicable, and anniversaries thereof.
- 2.14 ***Eligible Employee.*** “Eligible Employee” means each Employee of the College, who has completed one (1) Year of Eligibility Service and attained age 21, and who is scheduled to complete at least 1,000 Hours of Service during each Eligibility Computation Period, except:
- (i) Employees who are students performing services under Section 3121(b)(10) of the Code (however, those Employees of the College who are students on an incidental basis only, who are eligible to participate in the Plan under other eligibility criteria of the Plan are not excluded from participation on the basis of their coursework at the College);
 - (ii) Employees whose retirement benefits were the subject of good faith bargaining between a representative of such Employees and the College and such bargaining has resulted in no inclusion in the Plan for Employees; and
 - (iii) adjunct faculty who are scheduled to teach twelve (12) credits or less per Plan Year.
- 2.15 ***Eligible Employer.*** An “Eligible Employer” is any institution of higher education described in Section 170(b)(1)(A)(ii) of the Code, the United States government or any agency thereof, any state or political subdivision of a state or any agency or instrumentality thereof, or any nonprofit organization described under Section 501(c)(3) of the Code.
- 2.16 ***Eligible Retirement Plan.*** An “Eligible Retirement Plan” is:
- (i) an “individual retirement account” described in Section 408(a) of the Code;
 - (ii) an “individual retirement annuity” described in Section 408(b) of the Code;
 - (iii) a “qualified trust” described in Section 402(c)(8)(a) of the Code;
 - (iv) an “annuity plan” described in Section 403(a) of the Code;
 - (v) an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which

agrees to separately account for amounts transferred into such plan from this Plan;
or

(vi) an “annuity contract” described in Section 403(b) of the Code that accepts the Distributee’s Eligible Rollover Distribution. These provisions shall also apply in the case of an Eligible Rollover Distribution to the Surviving Spouse of a Participant or to a Spouse or former Spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. However, for any Nonspouse Beneficiary, an “Eligible Retirement Plan” only includes an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code (other than an endowment contract).

2.17 ***Eligible Rollover Contribution.*** An “Eligible Rollover Contribution” is a contribution to this Plan by an Employee of all or any portion of the amounts distributed to such Employee under a Code Section 403(b) Defined Contribution Plan, excluding after-tax employee contributions, distributions from an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state, or political subdivision of a state, or qualified plan under Section 401(a) of the Code. An “Eligible Rollover Contribution” also includes a contribution to this Plan by an Employee of all or any portion of the amounts distributed to such Employee under an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. “Eligible Rollover Contribution” does not include any contribution of:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Employee or the joint lives (or joint life expectancies) of the Employee and the Employee’s designated beneficiary, or for a specified period of ten (10) years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or

(iii) the portion of any distribution that is not includable in the Employee’s gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

2.18 ***Eligible Rollover Distribution.*** An “Eligible Rollover Distribution” is any distribution made on or after January 1, 1993 of all or any portion of the balance to the credit of a Distributee of a Participant’s Accumulation Account, except that an “Eligible Rollover Distribution” does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated Beneficiary, or for a specified period of ten (10) years or more;

- (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; or
- (iii) the portion of any distribution that is not includable in the Distributee's gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- 2.19 **Employee.** "Employee" means any natural person employed in the service of the College and shall not include a "leased employee" within the meaning of Section 414(n)(2) of the Code.
- 2.20 **Employer Contributions.** "Employer Contributions" means contributions to this Plan on behalf of an Eligible Employee by the College on account of Salary Reduction Contributions.
- 2.21 **Employment Commencement Date.** "Employment Commencement Date" means the date on which an Employee first performs an Hour of Service.
- 2.22 **Entry Date.** "Entry Date" means the first day of any payroll period.
- 2.23 **Fund Sponsor.** "Fund Sponsor" means the insurance, variable annuity, or investment company that provides Funding Vehicles available to Participants under this Plan.
- 2.24 **Funding Vehicles.** "Funding Vehicles" means the financial instruments issued by a Fund Sponsor for the purpose of funding accrued benefits under this Plan and specifically approved by the College for use under this Plan. The College shall take reasonable steps to notify Participants of the Funding Vehicles which are approved for use with this Plan.
- 2.25 **Highly Compensated Employee.** "Highly Compensated Employee" means an Employee described in Section 414(q) of the Code. In determining which Employees are Highly Compensated Employees as defined in Section 414(q) of the Code, the College hereby makes the calendar year calculation election as described in the regulations under Section 414(q) of the Code.
- 2.26 **Hours of Service.** "Hours of Service" means:
- 2.26.1 (1) each hour for which an Employee is directly or indirectly paid, or entitled to payment, for the performance of duties for the College or a Related Organization; (2) the number of hours credited by the Employer for any single, continuous period during which an Employee performs no duties but is directly or indirectly paid or entitled to payment by the College or a Related Organization (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including short-term disability), layoff, jury duty, military duty, paid leave of absence, or maternity or paternity leave (whether paid or unpaid); (3) each hour for

which an employee is on an approved unpaid professional leave; and (4) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the College or a Related Organization; without duplication of hours provided above. However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is "directly or indirectly paid, or entitled to payment by the College or a Related Organization" regardless of whether payment is made by or due from College directly or made indirectly through a trust fund, insurer or other entity to which the College or a Related Organization contributes or pays premiums.

2.26.2 Hours of Service will also be credited for any person considered to be an Employee of the College for purposes of this Plan under Sections 414(n) or 414(o) of the Code and the regulations thereunder.

2.26.3 Special Rule for determining Hours of Service for reasons other than the performance of duties:

(1) For Employees whose compensation is based upon an hourly rate:

(a) If the payment for a period of time not involving performance of duties is made for a specific unit of time, the number of hours credited will be the number of hours regularly scheduled for performance of duties for such unit of time. If a specific number of hours is not regularly scheduled for specific units of time for an Employee, the determination will be based upon thirty-five (35) hours per week; or

(b) If the payment for a period of time not involving performance of duties is determined on a basis other than a specific unit of time, Hours of Service will be determined by dividing the payment by the Employee's most recent hourly rate of compensation.

(2) For Employees whose compensation is based on a rate for units of time other than an hour:

(a) If the payment for a period of time not involving performance of duties is made for a specific unit of time, the number of hours credited will be the number of hours regularly scheduled for performance of duties for such unit of time. If a specific number of hours is not regularly

scheduled for specific units of time for an employee, the determination will be based upon thirty-five (35) hours per week as applied to such unit of time; or

- (b) If the payment for a period of time not involving performance of duties is determined on a basis other than a specific unit of time, Hours of Service will be determined by dividing the payment by the Employee's hourly rate determined in the following manner. If the Employee has a regularly scheduled number of hours for the unit of time upon which compensation is based, Hours of Service will be determined by dividing the employee's most recent rate of compensation for such unit of time by the number of hours so scheduled. If the Employee has no regularly scheduled number of hours, Hours of Service will be determined by dividing on the basis of thirty-seven and one-half (37-1/2) hours per week.

- 2.27 ***Nonspouse Beneficiary.*** A "Nonspouse Beneficiary" is any Beneficiary other than the Surviving Spouse.
- 2.28 ***Normal Retirement Date.*** "Normal Retirement Date" is the last day of the Plan Year in which a Participant attains age sixty-five (65).
- 2.29 ***Participant.*** "Participant" is any Employee or former Employee of the College who is participating in this Plan in the manner provided in Article IV.
- 2.30 ***Plan.*** "Plan" means the Minneapolis College of Art and Design Defined Contribution Retirement Plan, as stated by this document.
- 2.31 ***Plan Year.*** "Plan Year" is the twelve (12) month period which begins on January 1st and ends on December 31st.
- 2.32 ***Qualified Joint and Survivor Annuity.*** "Qualified Joint and Survivor Annuity" means an annuity for the life of the Participant with a survivor annuity for the life of his or her Spouse which is at least one-half (1/2) of the amount of the annuity payable during the joint lives of the Participant and his or her Spouse.
- 2.33 ***Qualified Optional Survivor Annuity.*** "Qualified Optional Survivor Annuity" means an annuity for the life of the Participant with a survivor annuity for the lifetime of the Spouse, which is equal to seventy-five percent (75%) of the annuity which is payable during the joint lives of the Participant and the Spouse, and which is the actuarial equivalent of a single annuity for the life of the Participant.

- 2.34 ***Qualified Pre-Retirement Survivor Annuity.*** “Qualified Pre-Retirement Survivor Annuity” means a survivor annuity for the life of the Surviving Spouse (if any) of a Participant to the extent provided in Article VIII hereof.
- 2.35 ***Reemployment Commencement Date.*** “Reemployment Commencement Date” means the first date on which an Employee completes an Hour of Service following a Break in Service.
- 2.36 ***Related Organization*** means:
- 2.36.1 any member of an “affiliated service group” (within the meaning of Section 414(m) of the Code), which includes the College;
- 2.36.2 any member of a “controlled group of corporations” (within the meaning of Section 1563(a) of the Code determined without regard to Sections 1563(a)(4) and 1563(e)(3)(C)), which includes the College; and
- 2.36.3 any trade or business (whether or not incorporated) which is under “common control” (within the meaning of Section 414(c) of the Code) with the College.
- 2.37 ***Salary Reduction Contribution.*** A Salary Reduction Contribution is a contribution made to this Plan by the College on behalf of a Participant as a condition of employment, as set forth in Section 5.1.1.
- 2.38 ***Spouse (Surviving Spouse).*** “Spouse (Surviving Spouse)” means the spouse or surviving spouse of a Participant provided that the term “Spouse” (“Surviving Spouse”) shall include a former spouse of a Participant to the extent provided under a Qualified Domestic Relations Order as described in Section 414(p) of the Code.
- 2.39 ***Year of Eligibility Service.*** “Year of Eligibility Service” means the completion by an Employee of One Thousand (1,000) Hours of Service during an Eligibility Computation Period; provided, however, that an Employee who is otherwise eligible to participate in the Plan who has completed One Thousand (1,000) Hours of Service with an Eligible Employer during the twelve (12) month period immediately preceding his or her Employment Commencement Date will be deemed to have completed one (1) Year of Eligibility Service as his or her Employment Commencement Date. In the case of a person who is a member of the College’s faculty and who is not an “adjunct faculty” employee, as designated by the College, such person will be deemed to have completed One Thousand (1,000) Hours of Service if such person teaches at least thirteen (13) credits per Plan Year.

ARTICLE III

THE PLAN ADMINISTRATOR

- 3.1 ***Designation of the College as the Plan Administrator and as a Named Fiduciary.*** The College is hereby designated as the Plan Administrator of and a Named Fiduciary under the Plan.
- 3.2 ***Powers and Duties of the Plan Administrator.*** Except as otherwise provided herein, the Plan Administrator shall have full power and authority to administer the Plan, to control and manage the assets of the Plan, and to do each and every act and thing which the Plan Administrator is required or permitted to do under the provisions of the Plan or applicable law including, but not limited to, the power and authority to:
- 3.2.1 Adopt rules and regulations not inconsistent with the purposes and specific provisions of applicable law or the Plan for administration of the Plan;
 - 3.2.2 Interpret and construe the provisions of the Plan;
 - 3.2.3 Determine from time to time the status of all parties for the purposes of the Plan;
 - 3.2.4 Determine whether and when Employees become Participants;
 - 3.2.5 Determine the Years of Service of Employees and Participants;
 - 3.2.6 Determine the rights of Participants to benefits under the Plan, the amounts thereof and the method and time or times of payment of the same;
 - 3.2.7 Employ counsel (who may be counsel for the College) and agents, and such clerical, medical, actuarial and accounting services as may be required in carrying out the provisions of the Plan and applicable law;
 - 3.2.8 Direct the payment of benefits to a Participant or for his or her benefit as provided by the provisions of the Plan;
 - 3.2.9 Direct the payment of all reasonable expenses of the Plan Administrator and all other expenses of administration of the Plan not otherwise paid or provided for;
 - 3.2.10 Determine all questions that shall arise under the Plan;
 - 3.2.11 Employ one or more persons to render advice with regard to any responsibility the Plan Administrator has under the Plan;

- 3.2.12 Designate one or more persons who are not Named Fiduciaries to carry out the responsibilities (including fiduciary responsibilities) of the Plan Administrator;
- 3.2.13 Select the Fund Sponsor and the Funding Vehicles; and
- 3.2.14 Amend or terminate the Plan.
- 3.3 ***Decisions of the Plan Administrator.*** All decisions and actions of the Plan Administrator shall be recorded in writing and, except as otherwise provided by the provisions of this Agreement or by applicable law, shall be final.
- 3.4 ***Compensation and Indemnification of the Plan Administrator.*** The Plan Administrator shall not be entitled to any compensation out of Plan assets for its services hereunder. The cost of bonding if required of the Plan Administrator shall be paid by the College.
- 3.5 ***Instructions to the Fund Sponsor by the Plan Administrator.*** Except as otherwise provided by applicable law, the Plan Administrator may, but shall not be required to, instruct the Fund Sponsor with respect to the management and control of the assets of the Plan.
- 3.6 ***Service of Legal Process.*** The College is hereby designated as an agent of the Plan for the service of legal process.

ARTICLE IV

PARTICIPATION

- 4.1 ***Commencement of Participation.*** An Eligible Employee begins participation in this Plan on any Entry Date following such Employee's completion of the eligibility requirements set forth in Section 2.14 of this Plan, provided such Employee is employed by the College on such Entry Date.
- 4.2 ***Notification.*** The Plan Administrator will notify an Employee when he or she has completed the requirements necessary to become a Participant. An Employee who complies with the requirements of Section 4.4 and becomes a Participant is entitled to the benefits and is bound by all of the terms, provisions, and conditions of this Plan, including any and all amendments which from time to time may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Contributions for the Participant have been applied.
- 4.3 ***Reemployment.*** An Employee who satisfied the participation requirements set forth in Section 4.1 and then separates from the service of the College, will be

eligible to participate in this Plan as of the Entry Date next following the Employee's Date of Reemployment.

- 4.4 ***Enrollment in Plan.*** To participate in this Plan, an Employee must complete the necessary enrollment form(s) and return them to the Plan Administrator prior to the applicable Entry Date.
- 4.5 ***Termination of Participation.*** A Participant will continue to participate in this Plan for so long as an Accumulation Account is maintained under this Plan for his or her benefit.

ARTICLE V

PLAN CONTRIBUTIONS

- 5.1 ***Plan Contributions.***
 - 5.1.1 ***Mandatory Salary Reduction Contributions.*** As a condition of employment, all Eligible Employees of the College are required to contribute an amount equal to three and one-half percent (3.5%) of Employee's Compensation as a Salary Reduction Contribution to the Plan each Plan Year. An Eligible Employee who is receiving in-service distributions continues to make Salary Reduction Contributions.
 - 5.1.2 ***Employer Contribution.*** The College shall contribute to the Plan as of each payroll period, and within the time permitted by law, on behalf of each Participant who is an Eligible Employee of the College, an amount equal to eight and one-half percent (8.5%) of the Participant's Compensation on behalf of such Participant for such Plan Year while such Participant was an Eligible Employee. An Eligible Employee who is receiving in-service distributions continues to have Employer Contributions made on his/her behalf.
 - 5.1.3 ***Eligible Rollover Contributions.*** To the extent permitted by law and by the Funding Vehicle(s) selected by the Participant, each Employee may elect to make an Eligible Rollover Contribution to this Plan.
- 5.2 ***Section 415 Limitations.*** The total Annual Additions made on behalf of a Participant for any Plan Year may not exceed the limits imposed by Section 415 of the Code. The limits of Section 415 of the Code are herein incorporated by reference. For purposes of calculating the limitations for any Plan Year, the following amounts shall be included in compensation: (i) payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment if, absent a severance from employment, such payments would have been paid to the Participant while the Participant continued in employment with the College and are regular

compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation and (ii) payments made by the later of 2 1/2 months after severance from employment or the end of the limitation year that includes the date of severance from employment for unused accrued bona fide sick, vacation, or other leave, if the Participant would have been able to use the leave if employment had continued. In general, the Annual Additions that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

- a. the limit under Code Section 415(c)(1)(A), which is \$49,000 for 2009 and is subject to a cost of living adjustment for Plan Years after 2009, or
- b. 100 percent of the Participant's compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419(f)(2) of the Code), if any, otherwise treated as an Annual Addition.

If the Annual Additions exceed the limitations set forth in Section 415 of the Code, but the Funding Vehicle otherwise satisfies Code Section 403(b), then the portion of the Funding Vehicle that includes the excess will fail to be a Section 403(b) Funding Vehicle and will instead be a contract to which Section 403(c) applies. The portion of the Funding Vehicle that includes the contribution that is not in excess of the Section 415 limitations will remain a 403(b) Funding Vehicle. For the year of the excess and each year thereafter, the issuer of the Funding Vehicle must maintain separate accounts for the portion that includes the excess and the Section 403(b) portion. If the limitations under Section 415 are exceeded because a Participant is also participating in another plan required to be aggregated with this Plan for the purposes of Section 415 of the Code, then the extent to which Contributions under this Plan (other than Eligible Rollover Contributions) will be reduced, as compared with the extent to which benefits or contributions under any other plans will be reduced will be determined by the College in a manner as to maximize the aggregate benefits payable to the Participant from all plans.

The Administrator shall monitor compliance for purposes of the Section 415 limits on contributions.

- 5.3 ***When Salary Reduction Contributions Are Made.*** Salary Reduction Contributions will begin each Plan Year after the Plan Administrator has determined that an Employee has completed the necessary enrollment form(s) and

- returned them to the Plan Administrator as required by Section 4.4. Contributions will be forwarded to the Funding Vehicles in accordance with the procedures established by the Plan Administrator and as required by Department of Labor Regulations Section 2510.3-102 (not more than fifteen (15) days after the date on which the compensation to which such Salary Reduction Contribution applies is paid).
- 5.4 **Limitations.** Notwithstanding anything to the contrary contained in this Plan, the obligation of the College to make Salary Reduction Contributions and Employer Contributions is subject to the provisions relating to the amendment and termination of this Plan; provided that no amendment or termination will affect any obligation of the College to make Salary Reduction Contributions and Employer Contributions with respect to Compensation earned by a Participant prior to the date of amendment or termination.
- 5.5 **No Reversion.** Under no circumstances or conditions will any Contributions revert to, be paid to, or inure to the benefit of directly or indirectly, the College. However, in the event that Contributions are made by the College by mistake of fact, these amounts may be returned to the College within one year of the date that they were made.
- 5.6 **Paid Leave of Absence.** During a Participant's paid leave of absence, the College will continue to make Salary Reduction Contributions and Employer Contributions on behalf of a Participant on the basis of the Compensation then being paid by the College to such Participant.

ARTICLE VI

FUND SPONSOR/FUNDING VEHICLES

- 6.1 **Fund Sponsor.** The Plan Administrator from time to time shall designate Fund Sponsors from which Funding Vehicles may be selected under the Plan, and shall maintain a list of all Fund Sponsors under the Plan. Such list is hereby incorporated as part of the Plan. The Plan Administrator's current selection of a Fund Sponsor is not intended to limit future changes in the Fund Sponsor.
- 6.2 **Funding Vehicles.** The Plan Administrator shall be solely responsible for approving the Funding Vehicles for use under this Plan. In making such determination, the Plan Administrator may limit the Funding Vehicles to a number and selection which is designed to afford Participants a reasonable choice in light of all relevant circumstances. Relevant circumstances may include, but would not necessarily be limited to, the following types of factors:
- 6.2.1 The number of Fund Sponsors.
- 6.2.2 The number and variety of Funding Vehicles.

6.2.3 The administrative burdens and costs to the College with respect to a Funding Vehicle.

The Plan Administrator's current selection of Funding Vehicles is not intended to limit future additions or deletions of Funding Vehicles.

6.3 ***Investment of Contributions.*** Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under this Plan. A Participant may allocate contributions made on his or her behalf to Funding Vehicles in any whole-number percentages that equal one hundred percent (100%). A Participant may change his or her allocation of future contributions to the Funding Vehicles as permitted by the Fund Sponsor.

6.4 ***Fund Transfers.*** The following rules govern fund transfers.

6.4.1 For purposes of this section, a "contract exchange" takes place when a Participant exchanges one Funding Vehicle under the Plan for another Funding Vehicle under the Plan. For a Participant who has terminated employment with the College, this Plan's transferability rules will continue to govern funds accumulated under this Plan.

6.4.2 At any time before benefits begin, and subject to a Fund Sponsor's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the accumulation account(s), a Participant may transfer funds accumulated in such Participant's accumulation account(s) between and among the Funding Vehicles included in the Plan, provided that the conditions in paragraphs 6.4.3 and 6.4.4 of this section 6.4 are satisfied. A Participant may transfer funds between two Funding Vehicles by contacting the Fund Sponsor(s).

6.4.3 The Participant must have an accumulation account balance immediately after the exchange that is at least equal to the accumulation account balance of that Participant immediately before the exchange (taking into account the accumulation account balance of that Participant under both Funding Vehicles immediately before the exchange).

6.4.4 The Funding Vehicle with the receiving Fund Sponsor must have distribution restrictions with respect to the Participant that are not less stringent than those imposed on the Funding Vehicle being exchanged.

6.4.5 A Participant who has a Funding Vehicle under the Plan with a vendor which is not a Fund Sponsor may transfer his accumulation account balance from that vendor to the Fund Sponsor provided that the conditions in paragraphs 6.4.3 and 6.4.4 of this section 6.4 are satisfied. The Fund Sponsor is responsible for verifying that the conditions have been

satisfied. A Participant may not transfer his accumulation account balance to a Funding Vehicle with a vendor other than a Fund Sponsor.

- 6.5 ***Plan-to-Plan Transfers.*** Plan-to-plan transfers to or from this Plan are not permitted.
- 6.6 ***Non-Alienation of Rights or Benefits.*** To the fullest extent permitted by law, no benefit under the Plan may at any time be subject in any manner to alienation, encumbrance, the claims of creditors or legal process. No person will have the power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "Qualified Domestic Relations Order" under Section 414(p) of the Code.
- 6.7 ***Uniform Services.*** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.
- 6.8 ***ERISA Section 404(c) Compliance.*** The College intends to operate this Plan in conformance with ERISA Section 404(c). When all of the requirements of ERISA Section 404(c)(1) are satisfied, the Employer, the Plan Administrator, and all other Fiduciaries are relieved of fiduciary liability under ERISA Section 404(c) to the extent that any loss results from the Participant's (or Beneficiary's) exercise of control over assets in his or her account.

ARTICLE VII

VESTING

A Participant is fully and immediately vested in and has a nonforfeitable right to Salary Reduction Contributions and Employer Contributions when such Contributions are made.

ARTICLE VIII

DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES

- 8.1 ***Application for Disbursement.*** Except as otherwise provided herein, benefits will be distributed to Participants (and Beneficiaries) at such time or times and in such permitted form of benefit as selected by the Participant (or Beneficiary). Any person entitled to the disbursement of a benefit shall, if requested by the Plan Administrator, make and file with the Plan Administrator an application therefor upon a form to be provided by the Fund Sponsor or the Plan Administrator, and shall furnish such documents, evidence, data, and information in support of the

application as the Plan Administrator may require for the due administration of the Plan. Each Participant shall from time to time furnish the Plan Administrator with his or her change of address, any change of name, and his or her Social Security account number. The Plan Administrator shall monitor regular distributions for compliance with requirements of Code Section 403(b) and all other tax requirements.

8.2 ***Designation of Beneficiary.*** Each Participant shall sign and file with the Fund Sponsor or the Plan Administrator on a form to be provided by the Fund Sponsor, a designation of a Beneficiary to whom shall be paid any sum which may become payable on account of the Participant's death. The Fund Sponsor shall maintain designation of Beneficiary forms. If a Participant has designated the Participant's Spouse as the Participant's Beneficiary, such designation shall be automatically revoked as of the date of the dissolution or annulment of the Participant's marriage. However, this shall not preclude the Participant from re-designating the Participant's former spouse as a Beneficiary subsequent to the date of the automatic revocation, if the Participant so desires. If a Participant fails to make a full effectual designation of Beneficiary, or if full distribution of a Participant's benefits cannot be made pursuant to a Participant's designation of Beneficiary, then the Participant will be deemed to have designated the following person or persons as his or her Beneficiary or Beneficiaries, with priority in the following order:

8.2.1 His or her Surviving Spouse;

8.2.2 His or her children and children of deceased children per stirpes and not per capita;

8.2.3 His or her parents;

8.2.4 His or her brothers and sisters and nephews and nieces who are children of deceased brothers and sisters per stirpes and not per capita;

8.2.5 His or her estate.

8.3 ***Optional Forms of Benefit.*** Upon qualifying for a distribution, a Participant may elect to receive benefits under any of the optional forms of benefit (including cash withdrawal) set forth in the applicable Funding Vehicles in which such Participant's benefits are invested.

8.4 ***Survivor Benefits.*** If a Participant dies prior to the commencement of benefits, the full current value of his or her Accumulation Account(s) is payable to the Beneficiary or Beneficiaries named by the Participant subject to a Spouse's rights described in Section 8.7. Distribution of Survivor Benefits is also subject to the required distribution rules set forth in Section 8.5.

8.5 *Distribution Requirements.*

8.5.1 Required Beginning Date. The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

8.5.2 Required Minimum Distributions During Participant's Lifetime.

(1) **Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
- b) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse and such Spouse is more than ten (10) years younger than the Participant, then the distribution period is determined by the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distribution Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection 8.5.2 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

8.5.3 Required Minimum Distributions After Participant's Death.

(1) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:

- a) If the Participant's Surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the Surviving Spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70 1/2), if later.

- b) If the Participant's Surviving Spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died. If a Nonspouse Beneficiary elects a Direct Rollover Distribution, the rules relating to required minimum distributions from inherited IRA's under Section 401(a)(9)(B) (without regard to Section 401(a)(9)(B)(iv)) shall apply.
- c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- d) If the Participant's Surviving Spouse is the Participant's sole designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, this subsection 8.5.3(1), other than subsection 8.5.3(1)(a), will apply as if the Surviving Spouse were the Participant.

For purposes of this subsection 8.5.3, unless subsection 8.5.3(1)(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection 8.5.3(1)(d) applies, distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under subsection 8.5.3(1)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under subsection 8.5.3(1)(a)), the date distributions are considered to begin is the date distributions actually commence.

(2) Death On or After Date Distributions Begin.

- a) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's Surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the Surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the Surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the Surviving Spouse's death, the remaining life expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's Surviving Spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- b) No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (3) Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections 8.5.2 and 8.5.3 of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

8.5.4 Definitions.

- (1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.
- (2) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection 8.5.3(1). The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (3) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.
- (4) **Participant's Account Balance.** The Participant's account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (5) **Required Beginning Date.** The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age seventy and one-half (70 1/2) or if later, April 1 following the calendar year in which the Participant retires.

8.6 *Commencement of Benefits.*

Except as required by the terms of Section 401(a)(9) of the Code, benefits shall not commence prior to the Participant's separation from the service of the College, attainment of age fifty-nine and one-half (59 1/2), death or disability (within the meaning of Section 72(m)(7) of the Code, or later than sixty (60) days

after the last day of the Plan Year in which the latest of the following events occurs:

- (1) The attainment by the Participant of age sixty-five (65);
- (2) The tenth (10th) anniversary of the Plan Year in which the Participant commenced participation in the Plan; or
- (3) The termination of the Participant's service with the College,

unless the Participant elects to defer all or part of his benefits until a later date. If the amount of the payment required to commence on the date set forth above cannot be ascertained by such date, or if it is not possible to make such payment on such date because the Plan Administrator has been unable to locate the Participant after making reasonable efforts to do so, or if the Participant does not make an application for benefits, a payment retroactive to such date may be made no later than sixty (60) days after the earliest date on which the amount of such payment can be ascertained under the Plan or the date on which the Participant is located, or the date the Participant makes an application for benefits, whichever is applicable. Except in the case of a Participant who has attained age fifty-nine and one-half (59 ½), or to the extent required by law, payment of benefits may not commence while a Participant is employed by the College.

8.7 *Qualified Joint and Survivor Annuity and Qualified Pre-Retirement Survivor Annuity Requirements.*

8.7.1 The provisions of this Section, unless otherwise stated in this Section or elsewhere in the Plan, shall take precedence over any conflicting provision in this Plan or any Funding Vehicle. The provisions of this Section shall apply to any Participant who is credited under this Plan with at least One (1) Hour of Service with the College on or after August 23, 1984.

8.7.2 Unless a permissible optional form of benefit is selected pursuant to a Qualified Election within the Election Period, a Participant's benefits will be paid in the form of a Qualified Joint and Survivor Annuity. If the Participant waives the Qualified Joint and Survivor Annuity, he or she must have the opportunity to elect a Qualified Optional Survivor Annuity. Within a reasonable period of time prior to the annuity starting date, the Plan must provide the Participant with a written notice explaining the terms and conditions of the Qualified Joint and Survivor Annuity and the Qualified Optional Survivor Annuity. The notice must also explain the participant's right to waive the Qualified Joint and Survivor Annuity, the spouse's rights with respect to such a waiver, and the participant's right to revoke such a waiver.

8.7.3 Unless another permitted form of benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant dies after the Earliest Retirement Age, the Participant's Surviving Spouse (if any) will receive the same benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death. If a Participant dies on or before the Earliest Retirement Age, the Participant's Surviving Spouse (if any) will receive the same benefit that would be payable if the Participant had:

- (1) Separated from service on the date of death;
- (2) Survived to the Earliest Retirement Age;
- (3) Retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age; and
- (4) died on the day after the Earliest Retirement Age.

A Surviving Spouse will begin to receive payments at the Earliest Retirement Age unless such Surviving Spouse elects a later date.

8.7.4 For purposes of this Section, the following definitions shall apply:

- (1) The term "Election Period" means, (a) with respect to a waiver of a Qualified Joint and Survivor Annuity, the ninety (90) day period ending on the Participant's Annuity Starting Date; and (b) with respect to a waiver of a Qualified Pre-Retirement Survivor Annuity, the period beginning with the first day of the Plan Year in which the Participant attains age thirty-five (35) and ending with the death of the Participant.
- (2) The term "Earliest Retirement Age" means the earliest date on which, under this Plan, the Participant could elect to receive retirement benefits.
- (3) The term "Qualified Election" means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity. Such waiver must be in writing and must be consented to by the Participant's Spouse and must acknowledge the specific non-spouse beneficiary and the effect of such election. The Spouse's consent to a waiver must be witnessed by a Plan representative or notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent

necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed Qualified Election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

- 8.7.5 The Plan Administrator shall provide each Participant, within the applicable period for such Participant, a written explanation of the terms and conditions of the right of such Participant's Spouse to a pre-retirement survivor benefit and the Participant's right to waive these benefits with the written consent of his or her Spouse.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35); (ii) a reasonable period after an Eligible Employee becomes a Participant; or (iii) a reasonable period ending after this Section first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events in (i), (ii) and (iii) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which he or she attains age thirty-five (35), notice should be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the College, the applicable period for such Participant shall be redetermined.

- 8.8 ***Minnesota Statutes, Chapter 268.*** Any benefits or payments received hereunder by a Participant in the event of his or her retirement, disability or separation from service shall be deemed conclusively to have been received by him or her as benefit payments from a fund, annuity or insurance provided by or through his or her employer within the meaning and for the purpose of Section 268.085, Subdivision 3 of the Minnesota Statutes with respect to each of the weeks falling within the period during which benefits are received (in the case of benefits payable in the form of an annuity) or with respect to such number of weeks as would be produced by dividing the lump sum payment received (in the case of payment of a Participant's entire benefit in one sum) by the maximum benefit to which a Participant might otherwise be entitled under Chapter 268 of the Minnesota Statutes.

- 8.9 ***Disposition of Unclaimed Benefits.*** If it should be impossible, as a practical matter, to determine the identity of a person entitled to the disbursement of a benefit under this Plan, or if it should not be reasonably possible to determine the address of a person entitled to a benefit under this Plan within a period of five (5) years after the date the benefit became subject to disbursement (except for the filing of any required application for benefits), the amount of the unclaimed benefit may be treated as a forfeiture; provided, however, if a claim for benefits is made by or on behalf of such person, then the amount of such benefit which was treated as a forfeiture shall be reinstated.
- 8.10 ***Qualified Domestic Relations Orders.*** Nothing contained in this Plan shall prevent the Plan Administrator from complying with the provisions of a Qualified Domestic Relations Order (QDRO) as defined in Section 414(p) of the Code.

The Plan Administrator shall establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Plan Administrator promptly shall notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Plan Administrator shall determine the qualified status of the order and shall notify the Participant and each alternate payee, in writing, of its determination. The Plan Administrator shall provide notice under this section by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with Department of Labor regulations. The Plan Administrator may treat as "qualified" any domestic relations order entered prior to January 1, 1985, irrespective of whether it satisfies all the requirements described in Section 414(p) of the Code.

If any portion of the Participant's nonforfeitable benefits is payable during the period the Plan Administrator is making its determination of the qualified status of the domestic relations order, the Plan Administrator shall segregate the amounts payable in a separate account and to invest the segregated account solely in fixed income investments. If the Plan Administrator determines the order is a Qualified Domestic Relations Order within eighteen (18) months of receiving the order, the Plan Administrator shall distribute the segregated account in accordance with the order. If the Plan Administrator does not make its determination of the qualified status of the order within eighteen (18) months after receiving the order, the Plan Administrator shall distribute the segregated account in the manner the Plan would distribute if the order did not exist and shall apply the order prospectively if the Plan Administrator later determines the order is a Qualified Domestic Relations Order.

To the extent it is not inconsistent with the provisions of the Qualified Domestic Relations Order, the Plan Administrator may invest any partitioned amount in a

segregated subaccount or separate account and to invest the account in federally insured, interest-bearing savings account(s) or time deposit(s) (or a combination of both), or in other fixed income investments. A segregated subaccount shall remain a part of the Plan, but it alone shall share in any income it earns, and it alone shall bear any expenses or loss it incurs.

The Plan Administrator shall make any payments or distributions required under this Section by separate benefit checks or other separate distribution to the alternate payee(s).

8.11 **Repurchase.** A Participant's accumulations in his or her Accumulation Account may be received in a single sum through "repurchase," if the Funding Vehicle so permits. Such repurchase rights shall be subject to any conditions or limitations prescribed by the applicable Funding Vehicle.

8.12 **Optional Direct Transfer of Eligible Rollover Distributions.** Subject to such reasonable procedures and limitations as the Plan Administrator may prescribe, if the Distributee of any Eligible Rollover Distribution:

8.12.1 elects to have such distribution paid directly to an Eligible Retirement Plan, and

8.12.2 specifies the Eligible Retirement Plan to which such distribution is to be paid (in such form and at such time as the Plan Administrator may prescribe),

such distribution shall be paid in the form of a Direct Rollover Distribution to trustee transfer to the Eligible Retirement Plan so specified, but only to the extent that the Eligible Rollover Distribution would be includable in gross income of the Distributee if not so paid in the form of a Direct Rollover Distribution (determined without regard to Sections 402(c) and 403(a)(4) of the Code).

8.13 **Loans.** Loans are not permitted under the Plan.

8.14 **Hardship Withdrawals.** Withdrawals from a Participant's Accumulation Account on account of hardship are not permitted under the Plan.

ARTICLE IX

CLAIMS AND REVIEW PROCEDURES

9.1 **Claims Provisions With Respect to Funding Vehicles.** If any person believes he or she is being denied any rights or benefits with respect to the terms of any Funding Vehicle, such person shall contact the appropriate Fund Sponsor, and shall proceed with such claim under the applicable claim provisions of the Funding Vehicle.

9.2 *Claims With Respect to Contributions and Plan Provisions.*

- 9.2.1 If any person believes he or she is being denied any rights or benefits relating to the amount of contributions, or any other Plan provision, such person may file a claim in writing with the Plan Administrator. If any such claim is wholly or partially denied, the Plan Administrator will notify such person of its decision in writing, giving the specific reasons for the decision, specific reference to pertinent Plan provisions, a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and information as to the steps to be taken if the person wishes to submit a request for review. Notification of the decision on the claim shall be made within ninety (90) days after the claim is received by the Plan Administrator (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial ninety (90)-day period). The Plan Administrator shall provide the claimant with written or electronic notification of any adverse benefit determination, setting forth the reason or reasons for the adverse determination, reference to the specific Plan provisions on which the determination is based, describing any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary, and describing the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of the Employee Retirement Security Act of 1974 (ERISA) following an adverse benefit determination on review.
- 9.2.2 A request for review must be made in writing to the Plan Administrator within sixty (60) days after the Plan Administrator's notice of denial. A person (or his or her authorized representative) may file a written request with the Plan Administrator for a review of his or her denied claim and of pertinent documents, submit written issues and comments to the Plan Administrator and request a hearing. The decision on review will be given within sixty (60) days (or one hundred twenty (120) days if a hearing is held) after the request for review is received by the Plan Administrator. The decision on review will be in writing or sent to the claimant electronically, and, in the case of an adverse benefit determination shall set forth the specific reason or reasons for the adverse determination, reference to the specific Plan provisions on which the benefit determination is based, a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to pertinent documents, and a statement describing

any voluntary appeal procedures offered by the Plan and a statement of the claimant's right to bring an action under Section 502(a) of ERISA.

ARTICLE X

AMENDMENT AND TERMINATION

- 10.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the College reserves the right at any time to amend, otherwise modify, or terminate this Plan, or to discontinue any further Salary Reduction Contributions or Employer Contributions, by resolution of its Board. In the event of a termination of the Plan or discontinuance of contributions, the Plan Administrator will notify all Participants of the termination or discontinuance.
- 10.2 ***Limitation.*** Notwithstanding the provisions of Section 10.1, the following conditions and limitations apply:
- 10.2.1 No amendment will be made which will operate to recapture for the College any contributions previously made under this Plan. However, Contributions which were made based on a mistake of fact may be returned to the College within one year of the date on which the contribution was made; and
- 10.2.2 No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Contributions previously made under this Plan are concerned.

ARTICLE XI

MISCELLANEOUS

- 11.1 ***Plan Non-Contractual.*** Nothing contained in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the College, and nothing contained in this Plan will be construed as a commitment on the part of the College to continue the employment or the rate of compensation of any person for any period, and all employees of the College will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 11.2 ***Claims of Other Persons.*** The provisions of this Plan will in no event be construed as giving any Participant or any other person, firm, or corporation, any legal or equitable right as against the College, its officers, employees, or directors, except the rights as are specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.

- 11.3 ***Merger, Consolidation, or Transfer of Plan Assets.*** This Plan will not be merged or consolidated with any other plan, unless, immediately after a merger or consolidation, each Participant would receive a benefit under the Plan which is at least equal to the benefit he or she would have received immediately prior to a merger or consolidation (assuming in each instance that this Plan had then terminated).

- 11.4 ***Finality of Determination.*** All determinations under the Plan are made on the basis of the records of the Plan Administrator, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan.

- 11.5 ***Incorporation of Funding Vehicles.*** The Plan, together with the individual Funding Vehicles, is intended to satisfy the requirements of Section 403(b) of the Code and the Treasury Regulations thereunder. Terms and conditions of the Funding Vehicles are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or Section 403(b) of the Code. The terms of this Plan control in any case where there is inconsistency or ambiguity between the terms of the Funding Vehicle and the terms of this Plan.

IN WITNESS WHEREOF, the College has caused its name to be hereunto subscribed this ____ day of _____, 2009.

MINNEAPOLIS COLLEGE OF ART AND DESIGN

By _____

Its _____