

MINNEAPOLIS COLLEGE OF ART AND DESIGN

TAX-DEFERRED ANNUITY PLAN

January 1, 2009

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ARTICLE I

ESTABLISHMENT OF PLAN

- 1.1 ***Establishment of Plan.*** The Minneapolis College of Art and Design (the “College”) established the “Minneapolis College of Art and Design Tax-Deferred Annuity Plan” as of July 1, 1988, as a Code Section 403(b) Defined Contribution Retirement Plan for certain eligible employees of the College (the “Plan”) within the Department of Labor “safe harbor” regulation at 29 C.F.R. § 2510.3-2(f). 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. This plan document is effective January 1, 2009, and sets forth provisions of the Plan, including the coordination of administrative responsibilities, and incorporates contracts and related documents under the Plan.
- 1.2 ***Amendment and Restatement of Plan.*** This plan document sets forth the provisions of the Plan restated and amended as of 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 made to this Plan, less expense charges, adjusted for credited investment experience.
- 2.2 ***Annual Additions.*** “Annual Additions” means the sum of: (i) Salary Reduction 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 ***Board.*** “Board” means the Minneapolis College of Art and Design Board of Trustees.

- 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 **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, 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 an election made by the employee 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. In no event will the amount of a Participant’s Compensation taken into account under the Plan exceed the limits of Code Section 401(a)(17).
- 2.9 **Date of Employment.** “Date of Employment” means the effective date of the appointment for an Eligible Employee who is a member of the College’s faculty. For all other Eligible Employees, the “Date of Employment” is the first day upon which an Eligible Employee completes an Hour of Service.
- 2.10 **Date of Reemployment.** In the case of an Eligible Employee who is reemployed by the College after having separated from the service of the College, the term “Date of Reemployment” means: (i) the effective date of the appointment (following such separation from service) for an Eligible Employee who is a member of the College’s faculty; and (ii) the first day upon which an Eligible Employee completes an Hour of Service (following such separation from service) for all other Eligible Employees.

- 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 **Eligible Employee.** “Eligible Employee” means any person who is employed by the College except employees who are students performing services described in 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).
- 2.14 **Eligible Employer.** “Eligible Employer” means any organization, other than Minneapolis College of Art and Design, described in Sections 501(c)(3) or 170(b)(1)(A)(ii) of the Code.
- 2.15 **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).
- 2.16 **Eligible Rollover Contribution.** An “Eligible Rollover Contribution” is a contribution to this Plan by an Eligible Employee of all or any portion of the amounts distributed to such Eligible Employee under a Code Section 403(b) Defined Contribution Plan maintained by an Eligible Employer excluding after-tax employee contributions, 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, except that “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 Eligible Employee or the joint lives (or joint life expectancies) of the Eligible Employee and the Eligible 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 Eligible Employee’s gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or (iv) for any distributions after December 31, 1998, any hardship distributions described in Code Section 401(K)(2)(B)(i)(IV). 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 includable in gross income.

- 2.17 ***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; (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); or (iv) for any distributions after December 31, 1998, any hardship distributions described in Code Section 401(k)(2)(B)(i)(IV).
- 2.18 ***Fund Sponsor.*** “Fund Sponsor” means an insurance, variable annuity, or investment company listed on Exhibit “A” that provides Funding Vehicles available to Participants under this Plan.
- 2.19 ***Funding Vehicles.*** “Funding Vehicles” means the financial instruments issued by Fund Sponsors for the purpose of funding accrued benefits under this Plan and specifically approved by the Administrator for use under this Plan. The Administrator shall take reasonable steps to notify Participants of the Funding Vehicles, which are then approved for use with this Plan.
- 2.20 ***Highly Compensated Employee.*** “Highly Compensated Employee” means an employee described in Section 414(q) of the Code.

- 2.21 ***Nonspouse Beneficiary.*** A “Nonspouse Beneficiary” is any Beneficiary other than the Surviving Spouse.
- 2.22 ***Normal Retirement Date.*** “Normal Retirement Date” is the last day of the Plan Year in which a Participant attains age sixty-five (65).
- 2.23 ***Participant.*** “Participant” is any Eligible Employee of the College who is participating in this Plan in the manner provided in Article III.
- 2.24 ***Plan.*** “Plan” means the Minneapolis College of Art and Design Tax-Deferred Annuity Plan, as restated by this document.
- 2.25 ***Plan Entry Date.*** “Plan Entry Date” means the first day of any payroll period.
- 2.26 ***Plan Year.*** “Plan Year” is the same as the calendar year.
- 2.27 ***Salary Reduction Contribution.*** A Salary Reduction Contribution is a contribution made to this Plan by the College on behalf of a Participant pursuant to an election made by such Participant. The minimum Salary Reduction Contribution on behalf of a Participant for any Plan Year is Two Hundred Dollars (\$200.00).
- 2.28 ***Spouse (Surviving Spouse).*** 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.

ARTICLE III

PARTICIPATION

- 3.1 ***Commencement of Participation.*** An Eligible Employee may begin participation in this Plan on any Plan Entry Date following his or her Date of Employment; provided such Eligible Employee is employed by the College on such Plan Entry Date, and has completed and returned to the College on or before such Plan Entry Date the enrollment forms in accordance with Section 3.4.
- 3.2 ***Subject to Plan.*** An Eligible Employee who complies with the requirements of Section 3.4 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 Plan Contributions for the Participant have been applied, to the extent such terms and conditions are not inconsistent with this Plan.

- 3.3 **Reemployment.** An Eligible Employee who separates from the service of the College, will be eligible to participate in this Plan as of any Plan Entry Date following such Eligible Employee's Date of Reemployment.
- 3.4 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete and return to the Plan Administrator a salary reduction agreement with the College and complete and return the necessary enrollment form(s) to the Fund Sponsor.
- 3.5 **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, or until this Plan is terminated, whichever occurs first.

ARTICLE IV

PLAN CONTRIBUTIONS

- 4.1 **Plan Contributions.**
- 4.1.1 **Salary Reduction Contribution.** The College shall contribute to the Plan, each Plan Year, on behalf of each Participant, the amount of Salary Reduction Contributions designated by the employee. Such designation shall not be made retroactively, and shall remain in effect until modified or terminated. An Eligible Employee who is receiving in-service distributions under Section 7.1 may continue to make Salary Reduction Contributions.
- 4.1.2 **Eligible Rollover Contributions.** To the extent permitted by law and by the Funding Vehicle(s) selected by the Participant, each Eligible Employee may elect to make an Eligible Rollover Contribution to this Plan.
- 4.1.3 **Catch-up Contributions.** All employees who are eligible to make elective deferrals under this Plan and who have attained age fifty (50) before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code.
- 4.2 **Maximum Plan Contributions.** Notwithstanding anything to the contrary contained in this Plan, contributions to this Plan will be subject to the following limitations:

- 4.2.1 **Section 402(g) Limitation.** The Salary Reduction Contribution for a Participant may not exceed the limits set forth in Section 402(g) of the Code. The limits of Section 402(g) are herein incorporated by reference.

In the event a Participant has Salary Reduction Contributions for a calendar year that exceed the dollar limits in effect under Code Section 402(g), the Administrator or the Participant may designate the Contributions made during the calendar year to this Plan as excess Salary Reduction Contribution by notifying the Administrator on or before March 1 of the calendar year following the calendar year of the excess Salary Reduction Contribution of the amount of the excess. Notwithstanding any other provision of this Plan, excess Salary Reduction Contributions, adjusted to reflect any credited investment experience through the end of the taxable year in which they were made, will be distributed no later than April 15 of the calendar year following the calendar year of the excess Salary Reduction Contribution to any Participant who made excess Salary Reduction Contributions for such taxable year.

- 4.2.2 **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 Addition 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 § 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.

This section shall be applied in accordance with final regulations under Code Section 415 that were issued by the Department of Treasury and Internal Revenue Service on April 5, 2007, which are hereby incorporated by reference.

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

- 4.3 ***When Contributions Are Made.*** Salary Reduction Contributions will begin each Plan Year after the Eligible Employee has completed the necessary enrollment form(s) and returned them to the College as required by Section 3.4. Salary Reduction Contributions will be forwarded to the Funding Vehicles within 15 business days following the month in which the amounts would otherwise have been paid to the participant, in accordance with Treas. Reg. § 1.403(b)-8(b).
- 4.4 ***Limitations.*** Notwithstanding anything to the contrary contained in this Plan, the right of a Participant to make Salary Reduction Contributions to this Plan 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 with respect to services performed by a Participant prior to the date of amendment or termination.

- 4.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions revert to, be paid to, or inure to the benefit of directly or indirectly, the College. However, in the event that the College by mistake of fact makes Plan Contributions, these amounts may be returned to the College within one year of the date that they were made.
- 4.6 **Paid Leave of Absence.** During a Participant's paid leave of absence, the College will continue to make Salary Reduction Contributions on behalf of a Participant pursuant to a Participant election then in effect.

ARTICLE V

FUND SPONSORS/FUNDING VEHICLES

- 5.1 **Fund Sponsors.** The Plan Administrator maintains a list of Fund Sponsors approved to receive salary reduction contributions under this Plan. Such list is hereby incorporated as part of the Plan. The College's current selection of Fund Sponsors is not intended to limit future additions or deletions of Fund Sponsor.
- 5.2 **Funding Vehicles.** The Administrator shall be solely responsible for approving the Funding Vehicles for use under this Plan. In making such determination, the 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:
- 5.2.1 The number of potential Fund Sponsors who have indicated interest in approaching employees.
 - 5.2.2 The variety of available Funding Vehicles.
 - 5.2.3 The administrative burdens and costs to the College with respect to a Funding Vehicle.
 - 5.2.4 The number of employees affected.
 - 5.2.5 The terms of the available arrangements.
 - 5.2.6 The possible interference with employee performance resulting from direct solicitation by Fund Sponsors.
- The Administrator's current selection of Funding Vehicles is not intended to limit future additions or deletions of Funding Vehicles.
- 5.3 **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 Plan 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.

5.4 ***Fund Transfers.*** The following rules shall govern fund transfers.

- 5.4.1 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.
- 5.4.2 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 5.4.3 and 5.4.4 of this section 5.4 are satisfied. The Administrator shall maintain a list of Fund Sponsors approved to receive contract exchanges. The receiving Fund Sponsor shall make the determination as to whether the transfer is permissible. The Administrator shall not make such determination.
- 5.4.3 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).
- 5.4.4 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.
- 5.4.5 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 5.4.3 and 5.4.4 of this section 5.4 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.
- 5.4.6 A Participant may transfer funds between two Funding Vehicles of the same Fund Sponsor at any time by executing a properly completed request form identifying the Funding Vehicles from and to which the funds are to be transferred.

- 5.4.7 A Participant may transfer between two Funding Vehicles of different Fund Sponsors by executing a properly completed request form identifying the Fund Sponsors and Funding Vehicles from and to which the funds are to be transferred.
- 5.4.8 For a Participant who has terminated employment with the College, this Plan's transferability rules will continue to govern funds accumulated under this Plan.
- 5.5 ***Plan-to-Plan Transfers.*** Plan-to-plan transfers to or from this Plan are not permitted.

ARTICLE VI

VESTING

- 6.1 ***Vesting.*** A Participant is fully and immediately vested in amounts attributable to Plan Contributions when such Plan Contributions are made.

ARTICLE VII

BENEFITS

- 7.1 ***Commencement of Benefits.*** The payment of benefits may begin upon hardship, separation from service, attainment of age 59 ½, death, or disability. The Fund Sponsor shall determine whether a Participant is eligible to begin receiving benefits. The Plan Administrator shall not make the determination. Except in the case of a Participant who has attained age fifty-nine and one-half (59½), or in the event of a hardship withdrawal as defined in Treas. Reg. § 1.401(k)-1(d)(3), or to the extent required by law, payment of benefits may not commence while a Participant is employed by the College. Procedures for receipt of benefits are initiated by contacting the Fund Sponsor. Benefits will be payable upon receipt of a satisfactorily completed application for benefits and supporting documents, including waiver of spousal rights to benefits and death benefits, if necessary. The Fund Sponsor will provide the necessary forms to the Participant, the Surviving Spouse, or the Beneficiary. The Fund Sponsor shall monitor regular distributions for compliance with requirements of Code Section 403(b) and all other tax requirements.
- 7.2 ***Hardship Distributions.***
- 7.2.1 To the extent provided by a Funding Vehicle, a Participant may make a hardship withdrawal from his/her account in the Plan, provided that the conditions in Treas. Reg. § 1.401(k)-1(d)(3) are satisfied. The Fund Sponsor shall determine whether a Participant is eligible to receive a hardship distribution. The Plan Administrator shall not make the

determination. The Participant shall not be permitted to make Salary Reduction Contributions under the Plan during the six (6)-month period beginning on the date the Participant received a distribution on account of hardship.

- 7.2.2 The maximum distributable amount on account of hardship is equal to the Participant's total elective contributions as of the date of distribution, reduced by the amount of previous distributions of elective contributions. Thus the maximum distributable amount does not include earnings.
- 7.3 **Direct Rollover of Eligible Rollover Distributions.** Notwithstanding any provision of this Plan to the contrary that would otherwise limit a Distributee's election under this Section, a "Distributee" may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an "Eligible Rollover Distribution" paid directly to an "Eligible Retirement Plan" specified by the Distributee in a "Direct Rollover Distribution."
- 7.4 **Optional Forms of Benefit.** A Participant may elect to receive benefits under any of the optional forms of benefit set forth in the applicable Funding Vehicles in which such Participant's benefits are invested.
- 7.5 **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. Distribution of Survivor Benefits is also subject to the required distribution rules set forth in Section 401(a)(9) of the Code.
- 7.6 **Minimum Distribution Requirements.**
- 7.6.1 **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. The Fund Sponsor shall determine the Participant's Required Beginning Date.
- 7.6.2 **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 7.6.2 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

7.6.3 **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 require 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 7.6.3(1), other than subsection 7.6.3(1)(a), will apply as if the Surviving Spouse were the Participant.

For purposes of this subsection 7.6.3, unless subsection 7.6.3(1)(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection 7.6.3(1)(d) applies, distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under subsection 7.6.3(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 7.6.3(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 7.6.2 and 7.6.3 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.

7.6.4 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 7.6.3(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.

7.7 **Designation of Beneficiary.** Each Participant may sign and file with the Plan Administrator or with 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. 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:

- 7.7.1 His or her Surviving Spouse;
- 7.7.2 His or her children and children of deceased children per stirpes and not per capita;
- 7.7.3 His or her parents;
- 7.7.4 His or her brothers and sisters and nephews and nieces who are children of deceased brothers and sisters per stirpes and not per capita;
- 7.7.5 His or her estate.

7.8 **Loans.** To the extent provided by a Funding Vehicle, and subject to the requirements of Code Section 72(p) and the regulations promulgated under Code

Section 72(p), a Participant may borrow against his or her vested interest in the Accumulation Account. The Fund Sponsor shall determine whether a Participant is eligible for such loans and shall be responsible for enforcing such loans. The Plan Administrator shall not make the determination nor shall it enforce such loans.

The Fund Sponsor shall promulgate such rules and procedures, not inconsistent with the express provisions of this Section, as it deems necessary to carry out the purpose of this Section. In addition, the Funding Vehicle from which a loan is made may contain additional rules and procedures. All such rules and procedures shall be deemed a part of the Plan.

- 7.9 ***Qualified Domestic Relations Order.*** Nothing contained in this Plan shall prevent the Fund Sponsor from complying with the provisions of a Qualified Domestic Relations Order as defined in Section 414(p) of the Code.

The Fund Sponsor shall establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Fund Sponsor 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 Fund Sponsor 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 not make such determination.

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

- 7.10 ***Withdrawals of Rollover Contributions.*** To the extent permitted by the Funding Vehicle, a Participant may receive a cash withdrawal of any rollover contribution made on or after January 1, 2002. Withdrawals may be received while the Participant is employed by the Institution.

ARTICLE VIII

GENERAL PROVISIONS AND LIMITATIONS REGARDING BENEFITS

- 8.1 ***Non-Alienation of Retirement 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.

ARTICLE IX

ADMINISTRATION

- 9.1 ***Plan Administrator.*** Minneapolis College of Art and Design, located at 2501 Stevens Avenue South, Minneapolis, Minnesota 55404, (612)874-3798, is the Administrator of this Plan, and has designated its Vice President of Administration to be responsible for enrolling Participants, sending Plan Contributions for each Participant to the Fund Sponsors, approving Funding Vehicles and for performing other duties required for the administration of the Plan. The Plan Administrator shall not have responsibility for, or make, discretionary determinations in administering the program. Examples of such discretionary determinations are the authorization of fund transfers, the processing of distributions, and the making of determinations regarding hardship distributions, Qualified Domestic Relations Orders, and eligibility for or enforcement of loans.
- 9.2 ***Authority of the College.*** The College, as Administrator of this Plan, has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under this Plan, to interpret and construe all terms of this Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of this Plan. Any determination made by the College shall be given deference, in the event it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the College will at all times exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The College may employ attorneys, agents, and accountants as it finds necessary or advisable to assist it in carrying out its duties. The College, by action of its Board, may designate a person or persons other than the College to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 9.3 ***Action of the College.*** Any act authorized, permitted, or required to be taken by the College under this Plan, which has not been delegated in accordance with Section 9.2, may be taken by a majority of the members the Board in accordance with the Bylaws of the College, provided that the College shall not make any discretionary determinations in administering the Plan. Examples of such discretionary determinations are the authorization of fund transfers, the processing of distributions, and the making of determinations regarding hardship distributions, Qualified Domestic Relations Orders, and eligibility for or enforcement of loans. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the College under this Plan

will be in writing and signed by a person who becomes authorized to act for the College in accordance with the provisions of Section 9.2. Any action taken by the College which is authorized, permitted or required under the Plan and is in accordance with contractual obligations between the College and the provider of any Funding Vehicles is final and binding upon the College, and all persons who have or who claim an interest under this Plan, and all third parties dealing with the College.

- 9.4 ***Indemnification.*** In addition to whatever rights of indemnification the members of the Board, or any other person or persons (other than the provider of any Funding Vehicles) to whom any power, authority, or responsibility of the College is delegated pursuant to Section 9.2, may be entitled under the articles of incorporation, regulations, or Bylaws of the College, under any provision of law, or under any other agreement, the College will satisfy any liability actually and reasonably incurred by any member or other person or persons, including expenses, attorneys' fees, judgment, fines, and amounts paid in settlement, in connection with any threatened, pending, or completed action, suit, or proceeding which is related to the exercise or failure to exercise by the member or other person or persons any of the powers, authority, responsibilities, or discretion of the College as provided under this Plan, or reasonably believed by the member or other person or persons to be provided thereunder, or any action taken by the member or other person or persons in connection with it.

ARTICLE X

CLAIMS AND REVIEW PROCEDURES

- 10.1 ***Claims 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 Fund Sponsor, and shall proceed with such claim under the applicable claim provisions of the Funding Vehicle. All rights under the Funding Vehicle are enforceable solely by the Participant or the Beneficiary of the Participant, and the College shall have no right to enforce the terms of the Funding Vehicle on behalf of any Participant.
- 10.2 ***Claims With Respect to Contributions and Plan Provisions.***

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 for which the Plan Administrator has discretion, 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 the Plan Administrator's decision, 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.

ARTICLE XI

AMENDMENT AND TERMINATION

- 11.1 ***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, by resolution of its Board. In the event of a termination of the Plan or discontinuance of contributions, the College will notify all Participants of the termination or discontinuance.
- 11.2 ***Limitation.*** Notwithstanding the provisions of Section 11.1, the following conditions and limitations apply:
- 11.2.1 No amendment will be made which will operate to recapture for the College any Contributions previously made under this Plan. However, Plan 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
- 11.2.2 No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions previously made under this Plan are concerned.

ARTICLE XII

MISCELLANEOUS

- 12.1 ***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.

- 12.2 ***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.

- 12.3 ***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).

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

- 12.5 ***Funding Vehicles - Incorporation by Reference.*** The terms of each annuity or other Funding Vehicle issued by a Fund Sponsor to a Participant in accordance with the provisions of this Plan are a part of this Plan as if fully set forth in this plan document and the provisions of each are incorporated by reference into this Plan. The terms of this Plan control in any case where there is any inconsistency or ambiguity between the terms of this Plan and the terms of such Funding Vehicle.

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 _____