

# ADMINISTRATIVE MEMORANDUM

---

**SUBJECT** Revision to the Optional Retirement Program

**NUMBER** 228

**DATE** November 15, 1985

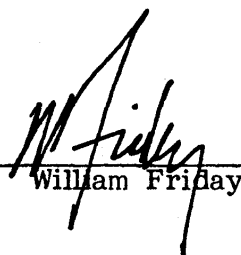
Attached to this Administrative Memorandum is a copy of the restated Plan of the Optional Retirement Program of The University of North Carolina as adopted by the Board of Governors on October 11, 1985, to be effective July 1, 1985. The Plan embodies those changes to the Optional Retirement Program (ORP) made appropriate by amendments to State statutes impinging on the ORP. Specifically the Plan (1) insures that the ORP accommodates legislative action by which those contributions from the employee to the ORP are to be "picked up" and paid by the State through salary reduction, thereby diminishing the employee's taxable compensation at the time of initial accrual; and (2) reflects the changes to the governance structure of The University effected at the time of reorganization. These changes are reflected in Plan text formed in a manner to be compatible with requirements of the Internal Revenue Code (and regulations issued thereunder) for rendering the ORP a "qualified" money-purchase plan. Specifically, the restated ORP is intended to qualify as a pension plan under Section 403(a) of the IRC, rather than as a tax-sheltered annuity under the formerly pertinent Section 403(b). The benefits of this qualification include both (1) determination of the maximum compensation that may be tax-sheltered (tax-deferred) under a formula more liberal than would be available for a 403(b) plan, as well as (2) availability under the IRC of tax treatment of retirement account accumulations at the time of payout more advantageous than is permissible under the 403(b) provisions.

The ORP as amended by law and the Plan was framed with the purpose of implementing the intended statutory changes and assuring the benefits of the more advantageous IRC provisions by means of the least possible substantive ORP revision. This is reflected in the following measures, already accomplished:

- (1) All ORP participants under the ORP immediately prior to the effective date of the restated Plan have been made to continue under the revised Plan without the necessity of any action by the participants.
- (2) Any agreement between an ORP participant and the contracting insurer under the ORP (TIAA-CREF, by reason of prior action of all the institutional Boards of Trustees in 1972) has been preserved viable and unchanged under the ORP as amended.
- (3) TIAA-CREF has agreed that the new (403[a]) basis of the ORP can be fiscally instituted simply by changing the TIAA-CREF remittance number for an individual's ORP contributions made by the constituent institutions with respect to earnings accrued on or after July 1, 1985. For those

contributions remitted by the institutions with respect to earnings accrued after July 1, 1985, but prior to the changing of the remittance numbers, TIAA-CREF will redesignate the remittance number of those contributions in conformity with the remittance number for prospective contributions, in behalf of each ORP participant.

There will be further communication, from TIAA-CREF, to the institutions as followup to the process announced in this Administrative Memorandum. Questions concerning these matters may be addressed to Mr. David Edwards of this office.



---

William Friday

Attachment

cc: Campus administrators for employee benefits  
Ms. Gayle Davis

**OPTIONAL RETIREMENT PROGRAM  
OF  
THE UNIVERSITY OF NORTH CAROLINA**

**Effective Date  
July 1, 1985**

## TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
	INTRODUCTION	1
I.	DEFINITIONS	
1.01	Adjustment	2
1.02	Affiliate	2
1.03	Annual Additions	2
1.04	Beneficiary	2
1.05	Board	2
1.06	Compensation	2
1.07	Contract	3
1.08	Contributions	3
1.09	Defined Benefit Plan	3
1.10	Defined Contribution Plan	3
1.11	Effective Date	3
1.12	Employee	3
1.13	Employee Account	4
1.14	Employee Contribution	4
1.15	Employing Institution	4
1.16	Fiduciary	4
1.17	Forfeiture	4
1.18	Former Participant	4
1.19	Individual Account	4
1.20	Insurance Company	4
1.21	Investment Fund	4
1.22	IRC or Code	5
1.23	Limitation Year	5
1.24	Participant	5
1.25	Plan	5
1.26	Plan Administrator	5
1.27	Plan Year	5
1.28	Retirement System	5
1.29	Trust Agreement	5
1.30	Trustee	5
1.31	University	5
1.32	University Account	6
1.33	University Contribution	6
1.34	Valuation Date	6
II.	ELIGIBILITY AND PARTICIPATION	
2.01	Eligibility	7
2.02	Participation	8
2.03	Beneficiary Designation	8
2.04	Notification of Individual Account Balance	8
III.	CONTRIBUTIONS AND ALLOCATIONS	
3.01	Individual Accounts	9
3.02	University Contributions	9
3.03	Employee Contributions	10
3.04	Voluntary TSA Contributions	10

<u>ARTICLE</u>		<u>PAGE</u>
	3.05 Allocation of Adjustment	10
	3.06 Equitable Allocations	11
	3.07 Maximum Additions	11
	3.08 Multiple Plan Participation	13
IV.	DISTRIBUTIONS	
	4.01 Vesting	16
	4.02 Normal Retirement	16
	4.03 Delayed Retirement	17
	4.04 Death Before Retirement or Termination of Employment	17
	4.05 Death After Retirement or Termination of Employment	17
	4.06 Method of Payment	18
	4.07 Maximum Option Payable	18
	4.08 Benefits to Minors and Incompetents	19
	4.09 Payment of Benefits	19
V.	FUNDING	
	5.01 Contributions	23
	5.02 Investment Fund	23
VI.	AMENDMENT AND TERMINATION OF THE PLAN	
	6.01 Amendment of the Plan	25
	6.02 Termination of the Plan	25
VII.	MISCELLANEOUS	
	7.01 Governing Law	27
	7.02 Construction	27
	7.03 Administrative Expenses	27
	7.04 Participation in Other Plans	27
	7.05 Other Benefits	27
	7.06 Participant's Rights; Acquittance	28
	7.07 Spendthrift Clause	28
	7.08 Mistake of Fact	29
	7.09 Counterparts	29
VIII.	ADOPTION OF THE PLAN	30

## INTRODUCTION

The University of North Carolina adopted an Optional Retirement Program effective January 14, 1972. That Program was implemented pursuant to Internal Revenue Code (IRC) Section 403(b), requiring both employer and participant contributions.

Effective July 1, 1985, the Optional Retirement Program will substantially remain the same except for the operative provisions of the Internal Revenue Code under which it shall be qualified. As of said July 1, which shall be the effective date for this document, the plan shall be maintained pursuant to IRC Sections 403(a) and 414(h).

ARTICLE I  
DEFINITIONS

As used herein, unless otherwise required by the context, the following words and phrases shall have the meanings indicated:

- 1.01 Adjustment means the net increases and decreases in the market value of the Fund during a Plan Year or other period exclusive of any Contribution during such year or other period. Such increases and decreases shall include such items as realized or unrealized investment gains and losses, investment income, and may include expenses of administering the Investment Fund and the Plan.
- 1.02 Affiliate means an instrumentality of the State of North Carolina which has not adopted the Plan.
- 1.03 Annual Additions means for any Employee in any Limitation Year, the sum of (a) Employer Contributions and (b) the lesser of the amount of Employee Contributions in excess of six percent (6%) of his compensation (as defined in IRC Section 415) or one-half (1/2) of the Employee Contributions.
- 1.04 Beneficiary means any person designated by a Participant or otherwise entitled to receive such benefits as may become payable hereunder after the death of such Participant.
- 1.05 Board means the Board of Governors of The University of North Carolina.
- 1.06 Compensation means, for any Employee, total earnings, prior to withholding, as reported on Form W-2, paid to him by the Employing Institution of The University and any portion of said Employee's pay which would be due and payable had he not signed a salary

reduction agreement in order to participate in a tax sheltered annuity program pursuant to IRC Section 403(b). Compensation shall exclude extraordinary compensation such as the imputed value of group life insurance and any University Contributions to this or any other employee benefit program.

- 1.07 Contract means any type of annuity contract issued by the Insurance Company to effect the purposes of the Plan.
- 1.08 Contributions means payments as provided herein by The University and/or the Participants to the insurance carrier or Trustee for the purpose of providing the benefits under this Plan.
- 1.09 Defined Benefit Plan means a plan established and qualified under IRC Section 401 or 403(a), except to the extent it is, or is treated as, a Defined Contribution Plan.
- 1.10 Defined Contribution Plan means a plan which is established and qualified under IRC Section 401 or 403(a), which provides for an individual account for each participant therein and for benefits based solely on the amount contributed to each participant's account and any income and expenses or gains or losses (both realized and unrealized) which may be allocated to such accounts.
- 1.11 Effective Date means July 1, 1985, or such later date as of which an Employing Institution shall have adopted the Plan for its Employees.
- 1.12 Employee means any of the administrators or faculty of The University with the rank of instructor or above who (i) had been Participants of the Optional Retirement Program under the provisions of Chapter 338, Session Laws of 1971, immediately prior to July 1, 1985, or (ii) have sought participation under Article II.



- 1.13 Employee Account means that portion of an individual's Individual Account attributable to (a) the Employee's Contribution allocated to such Participant pursuant to Section 3.03 and (b) the Participant's proportionate share of the adjustments attributable to his Employee Account.
- 1.14 Employee Contributions means Contributions made by an Employee pursuant to Section 3.03.
- 1.15 Employing Institution means, collectively or individually, as the context may indicate, The University or any of its constituent institutions.
- 1.16 Fiduciary means The University, the Insurance Company, the Board and any individual, corporation, firm or other entity which has responsibility for the management of the Plan or the disposition of its assets.
- 1.17 Forfeiture means any amount held upon the termination of participation of a Participant which he is not entitled to receive as a distribution in accordance with the terms of Section 4.01.
- 1.18 Former Participant means a Participant whose participation in the Plan terminated but who has not received payment in full of the balance in his Individual Account to which he is entitled.
- 1.19 Individual Account means the detailed record kept of the amounts credited or charged to each Participant in accordance with the terms hereof. Such Individual Account is comprised of a University Account and an Employee Account.
- 1.20 Insurance Company means the Teachers Insurance and Annuity Association-College Retirement Equities Fund.
- 1.21 Investment Fund means an Investment Fund as described in Article V.

- 1.22 IRC or Code means the Internal Revenue Code of 1954, as amended.
- 1.23 Limitation Year means the twelve (12) month period commencing July 1 and ending June 30.
- 1.24 Participant means any Employee who becomes a Participant as provided in Article II.
- 1.25 Plan or Program means the Optional Retirement Program of The University of North Carolina, as contained herein or as duly amended.
- 1.26 Plan Administrator means that person at each Employing Institution who has been named by the President of The University to administer the Plan with respect to the Employees of the Employing Institution. If a Plan Administrator is not so appointed, The University shall be deemed the Plan Administrator with respect to the pertinent Employing Institution.
- 1.27 Plan Year means the twelve (12) month period beginning on July 1 and ending on June 30.
- 1.28 Retirement System means The Teachers' and State Employees' Retirement System of North Carolina.
- 1.29 Trust Agreement means the agreement entered into between the Employing Institution and the Trustee.
- 1.30 Trustee means such individual, individuals or financial institution, or a combination of them as shall be designated in the Trust Agreement to hold in trust any assets of the Plan for the purpose of providing benefits under the Plan, and shall include any successor trustee to the trustee initially designated thereunder.
- 1.31 University means The University of North Carolina.

- 1.32 University Account means that portion of a Participant's Individual Account attributable to (a) the University Contribution allocated to such Participant pursuant to Section 3.02 and (b) the Participant's proportionate share of the Adjustments attributable to his University Account.
- 1.33 University Contributions means Contributions made by the Employing Institution of The University pursuant to Section 3.02.
- 1.34 Valuation Date means the last day of each Plan Year subsequent to the Effective Date, as of which date the Fund shall be valued at fair market value. The Plan Administrator may from time to time value the Fund as of any other date as it deems desirable.

ARTICLE II  
ELIGIBILITY AND PARTICIPATION

2.01 Eligibility -

- 2.01(a) Those participating in the Optional Retirement Program immediately prior to July 1, 1985, under the provisions of Chapter 338, Session Laws of 1971, are deemed automatically enrolled in the Program as provided hereunder.
- 2.01(b) Eligible Employees initially appointed on or after July 1, 1985, shall at the same time of entering upon eligible employment elect (i) to join the Retirement System in accordance with the provisions of law applicable thereto or (ii) to participate in this Optional Retirement Program. This election shall be in writing and filed with the Retirement System and with the Employing Institution and shall be effective as of the date of entry into eligible service.
- 2.01(c) An election to participate in the Optional Retirement Program shall be irrevocable. An eligible Employee failing to elect to participate in the Optional Retirement Program at the time of entry into eligible service shall automatically be enrolled as a member of the Retirement System.
- 2.01(d) No election by an eligible Employee of the Optional Retirement Program shall be effective unless it is accompanied by an appropriate application for the

issuance of a Contract or Contracts or trust participation under the Program.

2.02 Participation - Each person who becomes a Participant shall remain a Participant as long as he remains an Employee, or is entitled to future benefits under the terms of the Plan.

2.03 Beneficiary Designation - Upon commencing participation, each Participant shall designate a Beneficiary on forms furnished by the Plan Administrator, and such forms shall be maintained in files held by the Plan Administrator. The Participant may from time to time change his Beneficiary by written notice to the Plan Administrator, and, upon such change, the rights of all previously designated Beneficiaries to receive any benefits under this Plan shall cease.

If, at the date of death of the Participant, no duly designated Beneficiary exists, or if the Beneficiary designated shall have died prior to the death of the Participant, or if the Participant has revoked a prior designation by a writing filed with the Plan Administrator without having filed a new designation, then any death benefits which would have been payable to the Beneficiary shall be payable to the Participant's spouse, if living; if not living, to the Participant's children, equally; or if none survive, then to the Participant's estate.

2.04 Notification of Individual Account Balance - After the close of each Plan Year or more frequently as determined by the Plan Administrator, the Plan Administrator shall notify each Participant of the amount of his share in the Adjustments and Contributions for the Plan Year (or other period) just completed, and the new balance of his Individual Account.

ARTICLE III  
CONTRIBUTIONS AND ALLOCATIONS

3.01 Individual Accounts - The Plan Administrator shall establish and maintain an Individual Account comprised of a University Account and an Employee Account in the name of each Participant to which the Plan Administrator shall credit all amounts allocated to each such Participant pursuant to the following Sections of this Article III.

Under the Optional Retirement Program, the State of North Carolina and the Participant shall contribute, to the extent authorized or required, toward the purchase of Contracts or deposited in a trust (if applicable) on the Participant's behalf.

Separate accounts shall be maintained for all inactive Participants who have an interest in the Plan. Such separate accounts shall not require a segregation to the Fund assets and no Participant shall acquire any right to or interest in any specific asset of the Fund as a result of the allocations provided for in the Plan. All allocations shall be made as of the Valuation Date referred to in this Article III.

3.02 University Contributions - Each Employing Institution of The University shall contribute on behalf of each Participant in the Optional Retirement Program an amount equal to the amount which the Employee would be required to contribute to the Retirement System as a member of the Retirement System as specified in G.S. 135-8(b)(1).

accounting to ensure that each Participant's allocation is properly credited or debited, as the case may be, to his University Account or Employee Account.

3.06 Equitable Allocations - The Plan Administrator shall establish accounting procedures for the purpose of making the allocations, valuations and adjustments to Participants' accounts provided for in this Article III. Should the Plan Administrator determine that the strict application of its accounting procedures will not result in an equitable and non-discriminatory allocation among the accounts of Participants, it may modify its procedures for the purpose of achieving an equitable and non-discriminatory allocation in accordance with the general concepts of the Plan and the provisions of this Article.

3.07 Maximum Additions - Anything herein to the contrary notwithstanding, the total Annual Additions made to the Individual Account of a Participant for any Limitation Year commencing on or after July 1, 1985, when combined with any similar Annual Additions credited the Participant for the same period from another qualified Defined Contribution Plan maintained by the Employing Institution, shall not exceed the lesser of Section 3.07(a) or Section 3.07(b) following:

3.07(a) Thirty thousand dollars (\$30,000) or such larger amount as may be allowed under regulations issued pursuant to IRC Section 415(d); or

3.07(b) Twenty-five percent (25%) of the Participant's total non-deferred compensation received from the Employing Institution for such Plan Year. For purposes of this

paragraph, "compensation" shall mean a Participant's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with an Employing Institution maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and excluding the following:

- (i) Employer contributions to a plan of a deferred compensation to the extent contributions are not included in gross income of the Employee for the taxable year in which contributed, or on behalf of an Employee to a Simplified Employee Pension plan to the extent such contributions are deductible under IRC Section 219(b)(7), and any distributions from a plan of deferred compensation whether or not includable in the gross income of the Employee when distributed;
- (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by an Employee becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and



(iv) Other amounts which receive special tax benefits, or contributions made by an Employing Institution (whether or not under a salary reduction agreement) towards the purchase of a 403(b) annuity contract (whether or not the contributions are excludable from the gross income of the Employee).

Compensation for any Limitation Year is the compensation actually paid or includible in gross income during such year.

In the event a Participant is covered by one or more Defined Contribution Plans maintained by the Employing Institution, the maximum Annual Additions as noted above shall be decreased as determined necessary by the Employing Institution, prior to the reduction of such other Defined Contribution Plans, to ensure that all such plans will remain qualified under the IRC.

In the event that as of any Valuation Date corrective adjustments in the Annual Addition to any Individual Account is required pursuant to this Section 3.07, the Employee Account shall be first reduced by the amount required to ensure compliance with this Section 3.07, and then the University Account.

Any amounts withheld or taken from a Participant's Individual Account pursuant to the above shall be segregated in the Fund in a separate account and applied toward the Contribution of the University for the next Limitation Year.

**3.08 Multiple Plan Participation** - If a Participant is a participant of a Defined Benefit Plan maintained by The University, the sum of

his defined benefit plan fraction and his defined contribution plan fraction for any Limitation Year may not exceed 1.0.

For purposes of maximum Annual Additions to Defined Contribution Plans and maximum annual benefits payable from Defined Benefit Plans, all Defined Contribution Plans and all Defined Benefit Plans, whether or not terminated, shall be combined and treated as one (1) plan.

For purposes of this Section 3.08, the term "defined contribution plan fraction" shall mean a fraction the numerator of which is the sum of all of the Annual Additions to the Participant's Individual Account under this Plan as of the close of the Limitation Year and the denominator of which is the sum of the lesser of the following amounts determined for such Limitation Year and for each prior Limitation Year of employment with the Employing Institution:

- 3.08(a) the product of 1.25 multiplied by the dollar limitation in effect in Section 3.07(a) for such year determined without regard to IRC Section 415(c)(6); or
- 3.08(b) the product of 1.4 multiplied by an amount determined pursuant to Section 3.07(b) with respect to each individual under the Plan for such Limitation Year.

For purposes of this Section 3.08, the term, "defined benefit plan fraction" shall mean a fraction the numerator of which is the Participant's projected annual benefit (as defined in the said defined benefit plan) determined as of the close of the Limitation Year and the denominator of which is the lesser of:

ARTICLE IV  
DISTRIBUTIONS

4.01 Vesting - If any Participant having less than five (5) years coverage under the Optional Retirement Program leaves the employ of an Employing Institution and either retires or commences employment with an employer not having a retirement program with the same company underwriting the Participant's annuity contract, regardless of whether the annuity contract is held by the Participant, a trust, or the Retirement System, the Participant's interest in the Optional Retirement Program attributable to contributions of the Employing Institution shall be forfeited and shall either (i) be refunded through the Employing Institution to The University of North Carolina and forthwith paid by it to the Retirement System and credited to the pension accumulation fund or (ii) be paid directly to the Retirement System and credited to the pension accumulation fund.

4.02 Normal Retirement - The normal retirement date of a Participant shall be the first day of that July coinciding with or next following the date on which the Participant attains age seventy (70).

Upon the retirement of a Participant in accordance with the provisions of this Section 4.02, the vested balance of his Individual Account shall become payable, and the Plan Administrator shall thereupon direct the Insurance Company to distribute to such Participant such amount in accordance with Section 4.06.

- 3.08(c) the product of 1.25 multiplied by the dollar limitation in effect pursuant to IRC Section 415(b)(1)(A) for such Limitation Year; or
- 3.08(d) the product of 1.4 multiplied by the amount which may be taken into account pursuant to IRC Section 415(b)(1)(B) with respect to each individual under the Plan for such Limitation Year.

The limitation on aggregate benefits from a Defined Benefit Plan and a Defined Contribution Plan which is contained in Section 2004 of ERISA, as amended, shall be complied with by a reduction (if necessary) in the Participant's benefits under the Defined Benefit Plan(s) (in accordance with the provisions of the said plan(s)) before a reduction of any Defined Contribution Plan.

**4.03 Delayed Retirement** - In the event a Participant remains in the employ of the Employing Institution beyond his normal retirement date, he shall thereafter retire on his delayed retirement date. The delayed retirement date of a Participant shall be the first day of the month coinciding with or next following the actual date the Participant retires from the employment of the Employing Institution.

Upon the retirement of a Participant in accordance with the provisions of this Section 4.03, the vested balance of his Individual Account shall become payable and the Plan Administrator shall thereupon direct the Trustee to distribute to such Participant such amount in accordance with Section 4.06.

**4.04 Death Before Retirement or Termination of Employment** - Upon the death of a Participant before retirement or termination of employment, the value of such Participant's Individual Account as of the date of death of the Participant, shall become payable and the Plan Administrator shall direct the Insurance Company to distribute to such Participant's Beneficiary such amount in accordance with Section 4.06(b) with the Beneficiary being substituted for the Participant in such Section.

**4.05 Death After Retirement or Termination of Employment** - Upon the death of a Former Participant who has elected to receive benefit payments in accordance with Section 4.06(c), the Plan Administrator shall direct the Insurance Company to distribute to such Former Participant's Beneficiary the value of the Participant's Individual Account as of the date of death in accordance with Section 4.06(c). For any Former Participant who

is receiving benefit payments in accordance with Section 4.06(b), the provisions of said Section shall control concerning any payments upon the death of such Former Participant.

**4.06 Method of Payment**

**4.06(a) Application for Benefits** - In order to receive a benefit under the Plan, a Participant, Former Participant, his Beneficiary, committee, or next of kin, must make written application therefor on a form or forms provided by the Plan Administrator. The Plan Administrator may require that there be furnished to it in connection with such application all information pertinent to any question of eligibility and the amount of any benefit.

**4.06(b) Normal Form** - The normal form of payment of benefits to a Participant shall be a life only annuity unless the Participant elects payment in accordance with Section 4.06(c).

**4.06(c) Optional Form** - In lieu of receiving payment in accordance with Section 4.06(b), a Participant, Former Participant or Beneficiary may elect in writing to receive his distribution in any optional form of payment provided by the Contract.

**4.07 Maximum Option Payable** - In the event a Participant, with the approval of the Plan Administrator, elects to have his benefit paid under Section 4.06(c) and the designated Beneficiary is not the Spouse of the Participant, the option elected shall be restricted so that the present value of the payments expected to be made to the Participant is more than fifty percent (50%) of the

present value of the total payment expected to be made to the Participant and his Beneficiary.

**4.08 Benefits to Minors and Incompetents** - In case any person entitled to receive payment under the Plan shall be a minor, the Plan Administrator, in its discretion, may dispose of such amount in any one or more of the following ways:

- 4.08(a) By payment thereof directly to such minor;
- 4.08(b) By application thereof for benefit of such minor;
- 4.08(c) By payment thereof to either parent of such minor or to any adult person with whom such minor may at the time be living or to any person who shall be legally qualified and shall be acting as guardian of the person or the property of such minor; provided only that the parent or adult person to whom any amount shall be paid shall have advised the Plan Administrator in writing that he will hold or use such amount for the benefit of such minor.

In the event that it shall be found that a person entitled to receive payment under the Plan is physically or mentally incapable of personally receiving and giving a valid receipt for any payment due (unless prior claim therefor shall have been made by a duly qualified committee or other legal representative), such payment may be made to the spouse, son, daughter, parent, brother, sister or other person deemed by the Plan Administrator to have incurred expense for such person otherwise entitled to payment.

**4.09 Payment of Benefits** - In the event that there shall be a portion of a Participant's Individual Account which shall be due and payable, and the Participant or Former Participant has not elected

otherwise in accordance with the provisions of the Plan, any payment of benefits or commencement thereof to the Participant or Former Participant shall begin not later than sixty (60) days after the close of the Plan Year in which occurs the latest of:

4.09(a) the Participant's having attained his Normal Retirement Age; and

4.09(b) termination of service of the Participant.

Notwithstanding anything contained herein to the contrary, the entire interest of each Participant or Former Participant either:

4.09(c) will be distributed to him not later than the April 1 following the calendar year in which he attains age seventy and one-half (70 1/2), or in the calendar year in which he retires, whichever is later, or

4.09(d) will be distributed, commencing no later than such April 1

(i) in accordance with regulations prescribed by the Secretary of Treasury, over the life of such Employee or over the lives of such Employee and his Beneficiary, or

(ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such Employee or the life expectancies of such Employee and his Beneficiary.

Further, except as provided in Section 4.09(e) following, if an Employee dies before the distribution of the Employee's interest begins pursuant to Section 4.09(d) above, the entire



interest of the Employee will be distributed within five (5) years after the death of such Employee.

4.09(e) The immediately preceding sentence shall not be applicable provided:

- (i) any portion of the Employee's interest is payable to (or for the benefit of) a designated Beneficiary;
- (ii) such portion will be distributed (in accordance with regulations) over the life of such designated Beneficiary (or over a period not extending beyond the life expectancy of such Beneficiary);
- (iii) such distributions begin not later than one (1) year after the date of the Employee's death or such later date as the Secretary of Treasury may by regulation prescribe; or
- (iv) the designated Beneficiary is the surviving spouse of the Employee and distributions commence on or before the date on which the Employee would have attained age seventy and one-half (70 1/2).

If the surviving spouse dies before the distribution to such spouse, this Section 4.09(e) shall be applied as if the surviving spouse were the Employee.

4.09(f) For purposes of this Section, the life expectancy of an Employee and the Employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

**4.09(g) Under regulations prescribed by the Secretary of Treasury for purposes of this Section, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted by regulation).**

## **ARTICLE V**

### **FUNDING**

**5.01 Contributions - Contributions by the Employing Institution and by the Participants as provided for in Article III shall be paid over to the Insurance Company and/or Trustee. All Contributions by the Employing Institution shall be irrevocable, except as herein provided, and may be used only for the exclusive benefit of the Participants, Former Participants and their Beneficiaries.**

**5.02 Investment Fund - The Board of Governors of The University of North Carolina shall designate the Insurance Companies from which Contracts are to be purchased or the Trustee responsible for the investment of contributions under the Optional Retirement Program, and shall approve the form and contents of such contracts or Trust Agreement. In making this designation and giving such approval, the Board shall give due consideration to the following:**

- (1) The nature and extent of the rights and benefits to be provided by these contracts or trust agreement for Participants and their Beneficiaries;**
- (2) The relation of these rights and benefits to the amount of contributions to be made;**
- (3) The suitability of these rights and benefits to the needs of the Participants and the interest of the institutions of The University of North Carolina in recruiting and retaining faculty in a national market; and**
- (4) The ability of the designated Insurance Company or Companies underwriting the annuity contracts or Trust Agreement to**

provide these suitable rights and benefits under such contracts or trust agreement for these purposes.

Notwithstanding the provisions of this Section, no contractual relationship established under the Optional Retirement Program pursuant to the authority granted by Chapter 338, Session Laws of 1971, is deemed terminated by the provisions of this Plan.

## ARTICLE VI

### AMENDMENT AND TERMINATION OF THE PLAN

6.01 Amendment of the Plan - The Board shall have the right at any time by action of the Board to modify, alter or amend the Plan in whole or in part; provided, however, that the duties, powers and liability of the Insurance Company or Trustee hereunder shall not be increased without its written consent; and provided, further, that the amount of benefits which at the time of any such modification, alteration or amendment shall have accrued for any Participant, Former Participant or Beneficiary hereunder shall not be adversely affected thereby; and provided, further, that no such amendment shall have the effect of revesting in The University any part of the principal or income of the Fund.

6.02 Termination of the Plan - The University expects to continue the Plan indefinitely, but continuance is not assumed as a contractual obligation and The University reserves the right at any time by action of the Board of Governors to terminate the Plan. If The University terminates or partially terminates the Plan or discontinues authorization of Contributions at any time, each Participant affected thereby shall be then vested with the amount to his credit in his Individual Account.

In the event of termination of the Plan by The University, the Plan Administrator shall value the Investment Fund as of the date of termination. That portion of the Investment Fund applicable to any Employing Institution of The University for which the Plan has not been terminated shall be unaffected. The

Individual Accounts of the Participants, Former Participants and Beneficiaries affected by the termination, as determined by the Plan Administrator, shall continue to be administered as a part of the Investment Fund or distributed to such Participants, Former Participants or Beneficiaries pursuant to Section 4.06.

ARTICLE VII  
MISCELLANEOUS

- 7.01 Governing Law - The Plan shall be construed, regulated and administered according to the laws of the State of North Carolina except in those areas preempted by the laws of the United States of America.
- 7.02 Construction - The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not affect the construction of the provisions hereof. In any necessary construction the masculine shall include the feminine and the singular, the plural and vice versa.
- 7.03 Administrative Expenses - The Board of Governors of The University of North Carolina may provide for the administration of the Optional Retirement Program and may perform or authorize the performance of all functions necessary for its administration. The expenses of administering the Investment Fund and the Plan may be paid either by The University or from the Investment Fund.
- 7.04 Participation in Other Plans - Any eligible Employee electing to participate in the Optional Retirement Program is ineligible for membership in the Retirement System so long as he or she remains employed in any eligible position within The University of North Carolina, and, in this event, he or she shall continue to participate in the Optional Retirement Program.
- 7.05 Other Benefits - No retirement benefit, death benefit or other benefit under the Optional Retirement Program shall be paid by the State of North Carolina, or The University of North Carolina, or

the Board of Trustees of the Retirement System with respect to any Employee selecting and participating in the Optional Retirement Program or with respect to any Beneficiary of that Employee. Benefits shall be payable to Participants or their Beneficiaries only by the designated company in accordance with the terms of the Contracts or Trust Agreement.

- 7.06 Participant's Rights; Acquittance - No Participant in the Plan shall acquire any right to be retained in the employ of an Employing Institution of The University by virtue of the Plan; nor, upon his dismissal, or upon his voluntary termination of employment, shall he have any right or interest in and to the Investment Fund other than as specifically provided herein. The Employing Institution shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Investment Fund.
- 7.07 Spendthrift Clause - Except as may be required by IRC Section 401(a)(13)(B) relating to Qualified Domestic Relations Orders, and except for the applications of the provisions of G.S. 110-136 (garnishment to enforce child support) and in connection with a court-ordered equitable distribution under G.S. 50-20, none of the benefits, payments, proceeds, or distributions under this Plan shall be subject to the claims of any creditor of the Participant, Former Participant or to the claim of any creditor of any Beneficiary hereunder or to any legal process by any creditor of such Participant, Former Participant or of any such Beneficiary; and neither such Participant, Former Participant or any such Beneficiary shall have any right to alienate, commute, anticipate,



or assign any of the benefits, payments, proceeds or distributions under this Plan.

7.08 Mistake of Fact - Notwithstanding anything herein to the contrary, upon the Employing Institution's request, a Contribution which was made by a mistake of fact, or conditioned upon initial qualification of the Plan or upon the deductibility of the Contribution under IRC Section 404, may be returned to the Employing Institution by the Trustee within one (1) year after the payment of the Contribution, the denial of the qualification or the disallowance of the deduction (to the extent disallowed), whichever is applicable.

7.09 Counterparts - The Plan, the Contract and the Trust Agreement (if applicable) may be executed in any number of counterparts, each of which shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

ARTICLE VIII  
ADOPTION OF THE PLAN

Anything herein to the contrary notwithstanding, this Plan is created under the condition that it shall be approved and qualified by the Internal Revenue Service under IRC Section 401(a) and/or IRC Section 403(a) and that the Trust (if applicable) is exempt under IRC Section 501(a), or under any comparable Sections of any future legislation which amends, supplements or supersedes such Sections. In the event that it should be found by the Internal Revenue Service that the Plan as herein created is not qualified, The University may modify the Plan to meet Internal Revenue Service requirements.

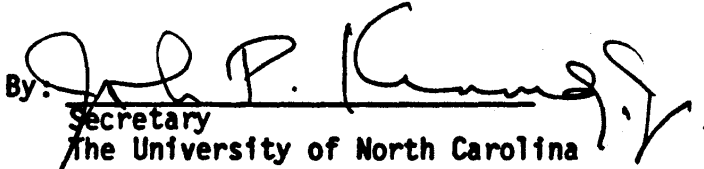
As evidence of its adoption of the Plan, the Board of Governors of The University of North Carolina has caused this instrument to be signed by its chairman thereunder duly authorized, and its corporate seal to be affixed hereto this 11th day of October , 1985.

THE BOARD OF GOVERNORS OF  
THE UNIVERSITY OF NORTH CAROLINA

By: 

Chairman

ATTEST:

By:   
Secretary  
The University of North Carolina