

RESOLUTION NO. 66-12-08

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AMENDING THE TOWN PENSION PLAN TO ADOPT THE FINAL 415 REGULATIONS , AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park's Commission has the authority pursuant to the Florida Constitution and Chapter 166, Florida Statutes to establish such pension plans as it deems appropriate for its eligible employees; and

WHEREAS, on November 4, 1998, the Town Commission of the Town of Lake Park (Commission) adopted Resolution 66, 1998 establishing a pension plan administered by the Variable Annuity Life Insurance company (herein referred to as VALIC) for Town employees; and;

WHEREAS, on September 7, 2005 the Commission adopted Resolution No. 30-09-05 amending the Plan to include the eligibility of the Town Manager for participation in the Plan ; and

WHEREAS, in April of 2007, the Internal Revenue Service and the Department of Treasury issued final regulations under Code Section 415 clarifying the definition of "compensation" for purposes of the "100% of compensation" limit, and the definition of "annual addition" and providing guidance regarding the correction of excess annual additions.; and

WHEREAS, the Commission upon the recommendation of the Town's Finance Director has determined that it is appropriate to amend the Plan to conform to changes in the law or regulations affecting qualification requirements;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:

Section 1. The Commission hereby adopts the Amendment for the Final 415 Regulations

Section 2. The Commission hereby authorizes the Plan Administrator to sign the "Certificate of Adopting Resolution".

Section 3. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner Carey, who moved its adoption. The motion was seconded by Commissioner Osterman and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	—
VICE-MAYOR ED DALY	<u>/</u>	—
COMMISSIONER CHUCK BALIUS	<u>/</u>	—
COMMISSIONER JEFF CAREY	<u>/</u>	—
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	—

The Town Commission thereupon declared the foregoing Resolution NO. 66-12-08 duly passed and adopted this 17 day of December, 2008.

TOWN OF LAKE PARK, FLORIDA

BY: Desca Dubois
DESCA DUBOIS
MAYOR

ATTEST:

Vivian M. Lemley
VIVIAN MENDEZ LEMLEY
TOWN CLERK



FLORIDA

Approved as to form and legal sufficiency:

BY: Thomas J. Baird
THOMAS J. BAIRD
TOWN ATTORNEY

AMENDMENT FOR THE FINAL 415 REGULATIONS

**ARTICLE I
PREAMBLE**

- 1.1 **Effective date of Amendment.** This Amendment is effective for limitation years and plan years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, except as otherwise provided herein.
- 1.2 **Superseding of Inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all Articles of this Amendment, except those Articles that the Employer specifically elects not to adopt.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates the final Code §415 Regulation provisions).

**ARTICLE II
EMPLOYER ELECTIONS**

The Employer only needs to complete the questions in Section 2.2 in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped.

- 2.1 **Default provisions.** Unless the Employer elects otherwise in Section 2.2, the following defaults will apply:
- The provisions of the Plan setting forth the definition of compensation for purposes of Code § 415 (hereinafter referred to as "415 Compensation"), shall be modified by (1) including payments for unused sick, vacation or other leave and payments from nonqualified unfunded deferred compensation plans (Section 3.2(b)), (2) excluding salary continuation payments for participants on military service (Section 3.2(c)), and (3) excluding salary continuation payments for disabled participants (Section 3.2(d)).
 - The "first few weeks rule" does not apply for purposes of 415 Compensation (Section 3.3).
 - The provision of the Plan setting forth the definition of compensation for allocation purposes (hereinafter referred to as "Plan Compensation") shall be modified to provide for the same adjustments to Plan Compensation (for all contribution types) that are made to 415 Compensation pursuant to this Amendment.
- 2.2 **In lieu of default provisions.** In lieu of the default provisions above, the following apply: (select all that apply; if no selections are made, then the defaults apply)

415 Compensation. (select all that apply):

- Exclude leave cashouts and deferred compensation (Section 3.2(b))
- Include military continuation payments (Section 3.2(c))
- Include disability continuation payments (Section 3.2(d)) for all participants, and the salary continuation will continue for the following fixed or determinable period: _____
- Apply the administrative delay ("first few weeks") rule (Section 3.3)

Plan Compensation. (select all that apply):

- No change from existing Plan provisions
- Exclude all post-severance compensation
- Exclude post-severance regular pay
- Exclude leave cashouts and deferred compensation

- j. Include post-severance military continuation payments
 k. Include post-severance disability continuation payments for all participants, and the salary continuation will continue for the following fixed or determinable period: _____
 l. Other (describe) _____

Plan Compensation Special Effective Date. The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:
 m. _____ (enter the effective date)

**ARTICLE III
 FINAL SECTION 415 REGULATIONS**

- 3.1 **Effective date.** The provisions of this Article III shall apply to limitation years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with the authority to amend the Plan) that begins on or after July 1, 2007.
- 3.2 **415 Compensation paid after severance from employment.** 415 Compensation shall be adjusted, as set forth herein and as otherwise elected in Article II, for the following types of compensation paid after a Participant's severance from employment with the Employer maintaining the Plan (or any other entity that is treated as the Employer pursuant to Code § 414(b), (c), (m) or (o)). However, amounts described in subsections (a) and (b) below may only be included in 415 Compensation to the extent such amounts are paid by the later of 2 1/2 months after severance from employment or by the end of the limitation year that includes the date of such severance from employment. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered 415 Compensation within the meaning of Code § 415(c)(3), even if payment is made within the time period specified above.
- (a) **Regular pay.** 415 Compensation shall include regular pay after severance of employment if:
- (1) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
 - (2) The payment would have been paid to the participant prior to a severance from employment if the participant had continued in employment with the Employer.
- (b) **Leave cashouts and deferred compensation.** Leave cashouts shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if those amounts would have been included in the definition of 415 Compensation if they were paid prior to the participant's severance from employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the participant would have been able to use the leave if employment had continued. In addition, deferred compensation shall be included in 415 Compensation, unless otherwise elected in Section 2.2 of this Amendment, if the compensation would have been included in the definition of 415 Compensation if it had been paid prior to the participant's severance from employment, and the compensation is received pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid at the same time if the participant had continued in employment with the Employer and only to the extent that the payment is includible in the participant's gross income.
- (c) **Salary continuation payments for military service participants.** 415 Compensation does not include, unless otherwise elected in Section 2.2 of this Amendment, payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code § 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.
- (d) **Salary continuation payments for disabled Participants.** Unless otherwise elected in Section 2.2 of this Amendment, 415 Compensation does not include compensation paid to a participant who is permanently and totally disabled (as defined in Code § 22(e)(3)). If elected, this provision shall apply to all participants for the period specified in Section 2.2 of this Amendment.
- 3.3 **Administrative delay ("the first few weeks") rule.** 415 Compensation for a limitation year shall not include, unless otherwise elected in Section 2.2 of this Amendment, amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates. However, if elected in Section 2.2 of this

Amendment, 415 Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated participants, and no compensation is included in more than one limitation year.

- 3.4 Inclusion of certain nonqualified deferred compensation amounts.** If the Plan's definition of Compensation for purposes of Code § 415 is the definition in Regulation Section 1.415(c)-2(b) (Regulation Section 1.415-2(d)(2) under the Regulations in effect for limitation years beginning prior to July 1, 2007) and the simplified compensation definition of Regulation 1.415(c)-2(d)(2) (Regulation Section 1.415-2(d)(10) under the Regulations in effect for limitation years prior to July 1, 2007) is not used, then 415 Compensation shall include amounts that are includible in the gross income of a Participant under the rules of Code § 409A or Code § 457(f)(1)(A) or because the amounts are constructively received by the Participant. [Note if the Plan's definition of Compensation is W-2 wages or wages for withholding purposes, then these amounts are already include in Compensation.]
- 3.5 Definition of annual additions.** The Plan's definition of "annual additions" is modified as follows:
- (a) **Restorative payments.** Annual additions for purposes of Code § 415 shall not include restorative payments. A restorative payment is a payment made to restore losses to a Plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where participants who are similarly situated are treated similarly with respect to the payments. Generally, payments are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the Plan). Payments made to the Plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that are considered annual additions.
- (b) **Other Amounts.** Annual additions for purposes of Code § 415 shall not include: (1) The direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (2) Rollover contributions (as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (3) Repayments of loans made to a participant from the Plan; and (4) Repayments of amounts described in Code § 411(a)(7)(B) (in accordance with Code § 411(a)(7)(C)) and Code § 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code § 414(d)) as described in Code § 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments.
- (c) **Date of tax-exempt Employer contributions.** Notwithstanding anything in the Plan to the contrary, in the case of an Employer that is exempt from Federal income tax (including a governmental employer), Employer contributions are treated as credited to a participant's account for a particular limitation year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends.
- 3.6 Change of limitation year.** The limitation year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's limitation year, then the Plan is treated as if the Plan had been amended to change its limitation year.
- 3.7 Excess Annual Additions.** Notwithstanding any provision of the Plan to the contrary, if the annual additions (within the meaning of Code § 415) are exceeded for any participant, then the Plan may only correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final §415 regulations.
- 3.8 Aggregation and Disaggregation of Plans.**
- (a) For purposes of applying the limitations of Code § 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the participant receives annual additions are treated as one defined contribution plan. The "Employer"

means the Employer that adopts this Plan and all members of a controlled group or an affiliated service group that includes the Employer (within the meaning of Code §§ 414(b), (c), (m) or (o)), except that for purposes of this Section, the determination shall be made by applying Code § 415(h), and shall take into account tax-exempt organizations under Regulation Section 1.414(c)-5, as modified by Regulation Section 1.415(a)-1(f)(1). For purposes of this Section:

(1) A former Employer is a "predecessor employer" with respect to a participant in a plan maintained by an Employer if the Employer maintains a plan under which the participant had accrued a benefit while performing services for the former Employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Regulation Section 1.415(f)-1(b)(2) apply as if the Employer and predecessor Employer constituted a single employer under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Regulation Section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) With respect to an Employer of a participant, a former entity that antedates the Employer is a "predecessor employer" with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(b) **Break-up of an affiliate employer or an affiliated service group.** For purposes of aggregating plans for Code § 415, a "formerly affiliated plan" of an employer is taken into account for purposes of applying the Code § 415 limitations to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the "cessation of affiliation." For purposes of this paragraph, a "formerly affiliated plan" of an employer is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph, a "cessation of affiliation" means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in Regulation Section 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of Regulation Section 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) **Midyear Aggregation.** Two or more defined contribution plans that are not required to be aggregated pursuant to Code § 415(f) and the Regulations thereunder as of the first day of a limitation year do not fail to satisfy the requirements of Code § 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

ARTICLE IV PLAN COMPENSATION

- 4.1 **Compensation limit.** Notwithstanding Amendment Section 4.2 or any election in Amendment Section 2.2., if the Plan is a 401(k) plan, then participants may not make elective deferrals with respect to amounts that are not 415 Compensation. However, for this purpose, 415 Compensation is not limited to the annual compensation limit of Code § 401(a)(17).
- 4.2 **Compensation paid after severance from employment.** Compensation for purposes of allocations (hereinafter referred to as Plan Compensation) shall be adjusted, unless otherwise elected in Amendment Section 2.2, in the same manner as 415 Compensation pursuant to Article III of this Amendment, except in applying Article III, the term "limitation year" shall be replaced with the term "plan year" and the term "415 Compensation" shall be replaced with the term "Plan Compensation."

4.3 **Option to apply Plan Compensation provisions early.** The provisions of this Article shall apply for Plan Years beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless an earlier effective date is specified in Section 2.2. of this Amendment.

This amendment has been executed this 17 day of December, 2008.

Name of Plan: _____

Name of Employer: Desca DuBois
Town of Lake Park

By: _____

Name: Desca DuBois

Title: Mayor



**FINAL 415 REGULATIONS AMENDMENT
EXPLANATION**

ARTICLE I -- PREAMBLE

Effective date of amendment.

This section indicates that the Amendment is effective for limitation years (i.e., plan years) beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007, unless you elect, in Section 2.2, to change your Plan's definition of Compensation (for allocation purposes) as of a different date (such as an earlier date, as allowed under the proposed regulations, or a later date, to avoid a possible cutback in benefits). Therefore, if your Plan Year is the calendar year, and if your governing body met during the third quarter of 2007, the Amendment applies to the 2008 plan year.

Superseding of inconsistent provisions.

This section is a reminder that the Amendment will supersede any provisions of your Plan (such as the Plan's definition of "Compensation") to the extent those provisions are inconsistent with the Amendment.

Employer's election.

This section clarifies that, unless the Employer elects otherwise in Section 2.2, the Employer is adopting all of the default provisions of the Amendment.

Construction.

This section clarifies that all references to a "Section" number are references to the sections of the Amendment, not sections of the Plan.

Effect of restatement of Plan.

This section provides that this Amendment will survive any subsequent restatement of the Plan (i.e., if the plan is restated, the Employer does not need to re-adopt this Amendment).

ARTICLE II -- EMPLOYER ELECTIONS

Default Provisions.

This section sets forth the "default" provisions of the Amendment (i.e., the provisions that will apply unless the Employer elects, in Section 2.2, to have different provisions apply). Therefore, unless the Employer elects otherwise, the compensation taken into account under the Plan for purposes of the limit on annual additions (hereinafter referred to as "415 Compensation") will be modified to include certain post-termination pay-outs of unused sick, vacation or other leave and certain post-termination distributions from nonqualified deferred compensation plans, and to exclude salary continuation payments to participants on military leave and salary continuation payments for disabled participants. In addition, unless the Employer elects otherwise, 415 Compensation for a given Plan Year will not include amounts paid in the first few weeks after the end of the Plan Year that were earned during the Plan Year (such as a paycheck on January 2, 2009, for the pay period that ended on December 28, 2008). Finally, unless the Employer elects otherwise, the Plan's definition of "Plan Compensation" (the compensation taken into account for purposes of making or allocating employer contributions) will also be modified to include and exclude the amounts described above (i.e., it will track the Plan's definition of "415 Compensation").

In lieu of default provisions.

In this section, the adopting Employer may change (i.e., override) any of the "default" provisions of the Amendment. The Employer may make separate elections for the Plan's definition of "415 Compensation" (which is used to limit annual additions) and the Plan's definition of "Compensation" (which is used to make and/or allocate employer contributions).

With respect to "415 Compensation," the Employer may separately elect to (a) exclude leave cash outs and distributions from nonqualified plans, (b) include salary continuation for participants in the military, (c) include salary continuation payments for all disabled participants for a fixed period, or (d) include amounts paid in the first few weeks after the end of the plan year that were earned during the plan year.

With respect to "Plan Compensation," the Employer may separately elect to either (f) keep the Plan's existing definition of Compensation, (g) exclude all post-severance pay (including regular pay, which is now required to be included in 415 Compensation), (h) exclude only post-severance regular pay, (i) exclude leave cash outs and distributions of deferred compensation, (j) include post-severance salary continuation for participants in the military, (k) include post-severance disability continuation payments for all employees for a fixed period, or (l) include or exclude other types of pay. These elections will apply to all types of contributions (Elective Deferrals, Matching Contributions and Non-matching Employer Contributions).

Finally, the Employer may elect to apply the new definition of Plan Compensation as of a special effective date. This may apply, for example, if the employer has already been taking into account certain post-severance compensation, as specifically permitted by the proposed regulations under Section 415, and now wishes to apply the new definition of compensation as of that earlier effective date.

ARTICLE III- FINAL SECTION 415 REGULATIONS

Effective date.

This section reiterates that the changes required by the final regulations under Section 415 apply to limitation years (which are generally the same as the plan year) beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan) that begins on or after July 1, 2007 (i.e., 2008 for calendar year plans, if the legislative body met during the third quarter of 2007).

415 Compensation paid after severance from employment.

This section sets forth the new rules under the final 415 regulations that require (or in some cases, allow) the inclusion in "415 Compensation" of certain amounts paid after severance from employment, so long as such amounts are paid by the later of 2 1/2 months after severance from employment, or the last day of the limitation year that includes the date of such severance from employment. There is one type of post-severance pay ("regular pay") that is now required to be included in 415 Compensation, and four other types of post-severance pay (leave cash outs, deferred compensation, military pay and pay for disabled participants) that are allowed to be included in 415 Compensation, if the plan so provides.

"Regular pay" means amounts that are paid for services performed during the participant's regular working hours (such as commissions or bonuses) or for services performed after the participant's regular working hours (such as overtime or shift differential) or other similar payments, so long as the amounts would have been paid to the participant even if the participant had not terminated employment. Leave cash outs may be included in 415 Compensation (and will be included unless the Employer elects otherwise in Section 2.2) so long as they would have been included in compensation if they were paid prior to termination of employment, and only if the participant would have been able to use the leave if employment had continued. Similarly, amounts that are distributed to a participant from an unfunded nonqualified deferred compensation plan (e.g., a Section 457(f) plan or a for-profit employer's nonqualified deferred compensation plan) may be included in 415 Compensation (and will be included unless the Employer elects otherwise in Section 2.2) so long as such payment would have been paid at the same time if the participant had not terminated employment (i.e., it is not a payment that is triggered by termination of employment). Salary continuation payments for military service participants and salary continuation payments for participants who are permanently and totally disabled may be included in 415 Compensation, but only if the Employer affirmatively elects, in Section 2.2, to include such amounts.

Administrative delay ("the first few weeks") rule.

This section describes the "first few weeks rule," whereby 415 Compensation may include (but only if the Employer affirmatively elects, in Section 2.2, to do so) amounts that are earned during the plan year, but paid in the following plan year, because of the timing of pay periods and/or pay dates. In order to include such amounts, they must be paid in the first few weeks of the next plan year, they must be included uniformly and consistently for all participants, and they must not be included in compensation in more than one plan year.

Inclusion of certain nonqualified deferred compensation amounts.

This section describes one specific type of compensation (amounts that become taxable during the plan year under nonqualified deferred compensation plans because of Section 409A, Section 457(f), or the doctrine of constructive receipt) that must be included in 415 Compensation if the Plan uses the "long-form" definition of compensation under the Section 415 regulations (and not the "safe-harbor" or "simplified" definition of compensation described in the Section 415 regulations). This section includes a reminder that, if the Plan uses either the "W-2 Income" or the "Section 3401 wages" definition of 415 Compensation (or Plan Compensation), then these amounts are already included in the Plan's definition of "compensation."

Definition of annual additions.

This section sets forth the definition of "annual addition" for purposes of the limitation on annual additions to defined contribution plans under Section 415(c). It clarifies that annual additions do not include (1) "restorative payments" (amounts paid to restore losses to the Plan that result from actions by a plan fiduciary which may constitute a breach of fiduciary duty), (2) direct transfers into the Plan from other qualified plans, (3) rollover contributions, (4) repayments of loans to plan participants, or (5) repayments of previously forfeited amounts on behalf of rehired participants. It also clarifies that, in the case of a tax-exempt employer (including a governmental employer), employer contributions may be credited to a

participant's account for a particular plan year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year (or fiscal year) with or within which the plan year ends.

Change of limitation year.

This section provides that the limitation year may only be changed by amending the Plan, and that if the Plan is terminated, it will be treated as if it had been amended to change the limitation year to end on the date of termination.

Excess Annual Additions.

This section is a reminder that excess annual additions may no longer be corrected by distributing elective deferrals and/or employee after-tax contributions in accordance with plan provisions providing for such distribution. Instead, excess annual additions must be corrected under the Employee Plans Compliance Resolution System procedures, as (currently) set forth in Revenue Procedure 2006-27.

Aggregation and Disaggregation of Plans.

This section sets forth the special rules for determining which employers must be treated as a "controlled group" of companies (i.e., as a single employer) for purposes of the limitation on annual additions under Section 415, and how mid-year changes in such "controlled group" of employers must be treated.

ARTICLE IV -- PLAN COMPENSATION

Compensation limit.

This section clarifies what compensation may be taken into account, in a Section 401(k) plan, for purposes of making elective deferrals. It provides that elective deferrals may only be made from compensation that is "415 Compensation." However, for purposes of this restriction, 415 Compensation does not have to be limited to the annual compensation limit under Section 401(a)(17) (which is \$230,000 for plan years beginning in 2008). Thus, the plan administrator need not cut-off deferrals when a highly compensated participant reaches the annual compensation limit. However, the plan administrator may not allow participants to make elective deferrals from compensation (such as certain amounts paid after severance of employment) that is not 415 Compensation.

Compensation paid after severance from employment.

This section reiterates that the Plan's definition of Compensation (for allocation purposes) will be the same as the Plan's definition of "415 Compensation" unless the Employer elects otherwise in Section 2.2 of the Amendment.

Option to apply Plan Compensation provisions early.

This section provides that the amendments to the Plan's definition of Compensation (for allocation purposes) will also be effective for plan years beginning more than ninety (90) days after the close of the first regular legislative session (of the body with authority to amend the Plan) that begins on or after July 1, 2007 (i.e., 2008 for calendar year plans, if the Employer's legislative body met during the third quarter of 2007) unless the Employer elects a different effective date in Section 2.2.

EMPLOYER SIGNATURE

The Employer must sign the amendment regardless of whether the Employer has chosen to apply the default provisions in Section 2.1 or whether the Employer has elected one or more of the optional provisions in Section 2.2 of the Amendment.

**OVERVIEW OF FINAL SECTION 415 REGULATION CHANGES
AND TIMING OF PLAN AMENDMENT**

Background

Section 415 of the Internal Revenue Code ("Code") limits the annual additions (i.e., contributions and/or forfeitures) that may be made to qualified defined contribution plans on behalf of a given participant to the lesser of (i) \$46,000 (2008 figure), or (ii) 100% of the participant's compensation for the plan year. In April of 2007, the IRS and the Department of Treasury issued final regulations under Code Section 415 clarifying the definition of "compensation" for purposes of the 100% of compensation limit, clarifying the definition of "annual addition," and providing guidance regarding the correction of excess annual additions.

The Section 415 limit is a key provision in qualified plans, as plans are required by statute to include provisions in the written plan document expressly prohibiting contributions to the plan in excess of the Section 415 limit. In addition, many plans define "compensation" for allocation purposes using a Section 415 definition of compensation.

The final 415 regulations have changed the definition of "compensation" for purposes of the limitation on annual additions. Under the final regulations, "415 Compensation" is now required to include certain amounts (such as bonuses, commissions, overtime or shift differential) that are paid after severance of employment, so long as they are paid by the later of 2 1/2 months after severance of employment or the last day of the limitation year which includes the date the participant terminates employment, and they are not paid "on account of" termination of employment. There are also four types of post-severance compensation that may be included in 415 Compensation, if the plan so provides (including certain cash-outs of unused sick or vacation leave, certain distributions from nonqualified plans, salary continuation to participants on military leave, and salary continuation for participants who are permanently disabled) so long as they are paid within the time frame described above, and they satisfy certain additional restrictions. However, the final regulations clarify that 415 Compensation does not include amounts that are paid on account of termination of employment (i.e., "severance pay") if such amounts are paid after severance of employment. Plans that use the "long-form" definition of 415 Compensation are also required to include amounts deferred under nonqualified plans that become taxable during the plan year on account of Section 409A, Section 457(f), or the doctrine of constructive receipt.

Under the Code, qualified plans are required to be amended for changes in the law or the regulations that affect the qualification requirements under Section 401(a) of the Code (including the final 415 regulations). For governmental employers, such "interim" amendments must generally be adopted by the 15th day of the tenth month after the close of the calendar year that includes the effective date of the new law or regulation.

Effective Date

For governmental plans, the final Section 415 regulations are effective for limitation years (which are generally the same as the plan year) beginning more than ninety (90) days after the close of the first regular legislative session (of the legislative body with authority to amend the plan) that begins on or after July 1, 2007. Thus, for calendar year plans, if the legislative body with authority to amend the plan met during the third quarter of 2007, the regulations are effective January 1, 2008. Such plans must be amended by October 15, 2009. However, plans whose plan year ends between September 30 and December 30 may have to be amended earlier. For example, if an employer's plan year/limitation year ends on November 30, and if the legislative body with authority to amend the plan met between July 1, 2007 and August 31, 2007, the final 415 regulations became effective on December 1, 2007, meaning the amendment may need to be executed by as early as October 15, 2008.

Thus, calendar year plans should adopt the Amendment (to comply with the final 415 regulations) no later than October 15, 2009. Non-calendar year plans should adopt the Amendment as soon as possible (as the deadline could be as soon as October 15, 2008).

Execution of Amendment

Enclosed you will find an "Amendment for the Final 415 Regulations," a sample resolution for proper authorization of the amendment by your governing body, and a section-by-section explanation of the Amendment. As explained in the enclosed materials, the amendment has certain "default" provisions (which are described in Section 2.1 of the Amendment), and a section (Section 2.2) in which you may elect to have different provisions apply. **You must execute the amendment, regardless of whether you choose to apply the default provisions in Section 2.1 or whether you elect one or more of the optional provisions in Section 2.2.**

The following chart indicates the deadline for adoption of the enclosed Amendment:

Plan/Limitation Year End	AND	Governing Body Met*	THEN	Effective Date of Regulations	AND	Amendment Deadline
January 31		July 1 and November 2, 2007		February 1, 2008		October 15, 2009
February 28		July 1 and December 1, 2007		March 1, 2008		October 15, 2009
March 31		July 1, 2007 and January 1, 2008		April 1, 2008		October 15, 2009
April 30		July 1, 2007 and January 31, 2008		May 1, 2008		October 15, 2009
May 31		July 1, 2007 and March 2, 2008		June 1, 2008		October 15, 2009
June 30		July 1, 2007 and April 1, 2008		July 1, 2008		October 15, 2009
July 31		July 1, 2007 and May 2, 2008		August 1, 2008		October 15, 2009
August 31		July 1, 2007 and June 2, 2008		September 1, 2008		October 15, 2009
December 31		July 1, 2007 and October 2, 2007		January 1, 2008		October 15, 2009

*If your governing body with the authority to amend the plan did not meet during the dates indicated in the above chart, then the effective dates and amendment deadlines noted above are extended by at least one year.

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of The Town of Lake Park
 (the Employer) hereby certifies that the following resolutions were duly adopted by the governing
 body of the Employer on 17th December, 2008, and that such resolutions have not been
 modified or rescinded as of the date hereof;

RESOLVED, the Amendment to the _____
 (the Amendment) generally effective for limitation years beginning more than ninety (90)
 days after the close of the first regular legislative session (of the legislative body with authority to amend the Plan)
 that begins on or after July 1, 2007, is hereby approved and adopted and that an authorized representative of the
 Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more
 counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in
 the foregoing resolution.

Date: December 17, 2008

Signed: Vivian Mendez Lemley

Vivian Mendez Lemley - Town Clerk
 [print name/title]