

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of report (Date of the earliest event reported)      November 20, 2008

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**FARO TECHNOLOGIES, INC.**  
(Exact Name of Registrant as Specified in Its Charter)

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Florida  
(State or Other Jurisdiction  
of Incorporation)

0-20381  
(Commission File  
Number)

59-3157093  
(IRS Employer  
Identification No.)

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125 Technology Park, Lake Mary, Florida  
(Address of Principal Executive Offices)

32746  
(Zip Code)

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(407) 333-9911  
(Registrant's Telephone Number, Including Area Code)

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(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02(e). Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On November 20, 2008 the Company amended and restated the Company's 2004 Equity Incentive Plan (the "Plan"). The Plan now provides that (i) upon a change of control (as defined in the Plan), all unvested options, unvested restricted stock, unvested restricted stock units, and other unvested awards (as defined in the Plan) under the Plan that are held by non-employee directors (as defined in the Plan) and covered executives (as defined in the Plan) shall vest and, if applicable, become immediately exercisable, (ii) upon the retirement from the Board of Directors of the Company (the "Board") of a non-employee director following at least five years of continuous service on the Board, all unvested options, unvested restricted stock, unvested restricted stock units, and other unvested awards under the Plan held by such non-employee director shall vest and, if applicable, become immediately exercisable, and (iii) the committee (as defined in the Plan) may from time to time amend the terms of any outstanding award under the Plan in its discretion in any manner that it deems appropriate provided that no such amendment shall adversely affect in a material manner any right of a participant under the award without his or her consent. The other material provisions of the Plan remain unchanged.

The foregoing description of the Plan does not purport to be complete and is qualified in its entirety by reference to the Plan, a copy of which is filed as Exhibit 10.2 hereto and is incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(a) *Financial Statements of Businesses Acquired.*

Not applicable.

(b) *Pro Forma Financial Information.*

Not applicable.

(c) *Shell Company Transactions.*

Not applicable.

(d) *Exhibits.*

See the Exhibit Index set forth below for a list of exhibits included with this Current Report on Form 8-K.

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**Signature**

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

**FARO Technologies, Inc.**

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(Registrant)

Date: **November 24, 2008**

**By: /s/ Jay W. Freeland**

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Jay W. Freeland

President and Chief Executive Officer

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**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Description</u>
10.1	FARO Technologies, Inc. 2004 Equity Incentive Plan, Amended and Restated November 20, 2008

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**FARO TECHNOLOGIES, INC.  
2004 EQUITY INCENTIVE PLAN**

**AMENDED AND RESTATED  
NOVEMBER 20, 2008**

**Section 1. Purpose**

The purpose of the FARO Technologies, Inc. 2004 Equity Incentive Plan (the "Plan") is to promote the best interests of FARO Technologies, Inc. (together with any successor thereto, the "Company") and its shareholders by providing Employees and non-employee directors of the Company and its Affiliates (as defined below) with an opportunity to acquire a proprietary interest in the Company. It is intended that the Plan will promote continuity of management and increased incentive and personal interest in the welfare of the Company by those Employees who are primarily responsible for shaping and carrying out the long-range plans of the Company and securing the Company's continued growth and financial success. In addition, by encouraging stock ownership by directors who are not employees of the Company or its Affiliates, the Company seeks to attract and retain on its Board of Directors persons of exceptional competence and to provide a further incentive to serve as a director of the Company.

**Section 2. Definitions**

As used in the Plan, the following terms shall have the respective meanings set forth below:

(a) "Affiliate" shall mean any entity that, directly or through one or more intermediaries, is controlled by, controls, or is under common control with, the Company.

(b) "Award" shall mean any Option, Stock Appreciation Right, Restricted Stock, Restricted Stock Unit, Performance Share or Performance Unit granted under the Plan.

(c) "Award Agreement" shall mean any written agreement, contract, or other instrument or document evidencing any Award granted under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means the occurrence of any one of the following events:

(i) individuals who, as of November 20, 2008, constitute the Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board or other governing body or entity of the Company, its successor or survivor, provided that any person becoming a director subsequent to November 20, 2008 but prior to any Change in Control, whose election or nomination for election was approved or recommended by a vote of a majority of the Incumbent Directors then on the Board (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination), shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall be deemed to be an Incumbent Director;

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(ii) any person is or becomes an owner or beneficial owner, directly or indirectly, of securities of the Company representing 40% or more of the combined voting power of the Company's then outstanding securities eligible to vote generally in the election of directors (the "Company Voting Securities"); provided, however, that the event described in this subsection (ii) shall not be deemed to be a Change in Control by virtue of any of the following acquisitions: (A) by the Company or any Subsidiary, (B) by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, (C) by any underwriter temporarily holding securities pursuant to an offering of such securities, (D) pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below), (E) pursuant to any acquisition by the Participant or any group of persons including the Participant (or any entity controlled by the Participant or any group of persons including the Participant), or (F) through a transaction (other than one described in subsection (iii) below) in which Company Voting Securities are acquired from the Company, if a majority of the Incumbent Directors approve a resolution providing expressly that the acquisition pursuant to this clause (F) does not constitute a Change in Control under this subsection (ii);

(iii) the consummation of a merger, consolidation, statutory share exchange, reorganization, sale of all or substantially all the Company's assets or similar form of corporate transaction involving the Company or any of its Subsidiaries that requires the approval of the Company's shareholders, whether for such transaction or the issuance of securities in the transaction (a "Business Combination"), unless immediately following such Business Combination: (A) at least 50% of the total voting power of the corporation or other entity resulting from, or succeeding to the interests of the Company in, such Business Combination (or, if applicable, the ultimate parent entity that has the power to elect a majority of the directors of such corporation or other entity) (the "Surviving Corporation") is represented by Company Voting Securities that were outstanding immediately prior to such Business Combination (or, if applicable, is represented by shares into which such Company Voting Securities were converted pursuant to such Business Combination), and such voting power among the holders thereof is in substantially the same proportion as the voting power of such Company Voting Securities among the holders thereof immediately prior to the Business Combination, (B) no person (other than any employee benefit plan (or related trust) sponsored or maintained by the Surviving Corporation) is or becomes the owner or beneficial owner, directly or indirectly, of 40% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation following the consummation of the Business Combination were Incumbent Directors at the time of the Board's approval of the execution of the initial agreement providing for such Business Combination; any Business Combination which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-Qualifying Transaction"; or

(iv) the shareholders of the Company approve a plan of complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, (A) a Change in Control shall not be deemed to occur solely because any person acquires beneficial ownership of more than 40% of the Company Voting Securities as a result of the acquisition of Company Voting Securities by the Company or its affiliates which reduces the number of Company Voting Securities outstanding; provided, that if after the consummation of such acquisition by the Company such person becomes the beneficial owner of additional Company Voting Securities that increases the percentage of outstanding Company Voting Securities beneficially owned by such person, a Change in Control of the Company shall then occur and (B) with respect to an Award that is considered deferred compensation subject to Code Section 409A, if the definition of Change in Control results in the payment of such Award, then such definition shall be amended to the minimum extent necessary, if at all, so that the definition satisfies the requirements of a change of control under Code Section 409A.

For purposes of this Change in Control definition, “corporation” shall include any limited liability company, partnership, association, business trust and similar organization, and “board of directors” shall refer to the ultimate governing body of such organization and “director” shall refer to any member of such governing body.

(f) “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time. Any reference to a specific provision of the Code shall also be deemed a reference to any successor provision thereto.

(g) “Commission” shall mean the United States Securities and Exchange Commission or any successor agency.

(h) “Committee” shall mean a committee of the Board designated by such Board to administer the Plan and comprised solely of not less than two directors, each of whom will be a “non-employee director” within the meaning of Rule 16b-3 and each of whom will be an “outside director” within the meaning of Section 162(m)(4)(C) of the Code; *provided* that the mere fact that the Committee shall fail to qualify under the foregoing requirements shall not invalidate any Award made by the Committee that is otherwise validly made under the Plan, unless the Committee is aware at the time of the Award’s grant of the Committee’s failure to so qualify.

(i) “Covered Executive” shall mean each employee of the Company or any Subsidiary who, on the date a Change in Control occurs, is covered by the Company’s Change in Control Severance Policy (as identified in the Company’s Change in Control Severance Policy) or any successor policy thereto.

(j) “Dividend Equivalent” shall mean a right, granted to a Participating Employee or a Non-Employee Director under the Plan, to receive cash equal to the cash dividends paid with respect to a specified number of Shares. Dividend Equivalents shall not be deemed to be Awards under the Plan.

(k) “Employee” shall mean any employee of the Company or any Subsidiary.

(l) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time.

(m) “Excluded Items” shall mean any items which the Committee determines shall be excluded in fixing Performance Goals, including, without limitation, any gains or losses from discontinued operations, any extraordinary gains or losses and the effects of accounting changes.

(n) “Fair Market Value” shall mean, with respect to any property (including, without limitation, any Shares or other securities), the fair market value of such property determined by such methods or procedures as shall be established from time to time by the Committee.

(o) “Incentive Stock Option” shall mean an option granted under Section 6(a) of the Plan that is intended to meet the requirements of Section 422 of the Code.

(p) “Non-Employee Director” shall mean a member of the Board of Directors of the Company who is not an employee of the Company or any Affiliate.

(q) “Non-Qualified Stock Option” shall mean an option granted under Section 6(a) of the Plan that is not intended to be an Incentive Stock Option.

(r) “Option” shall mean an Incentive Stock Option or a Non-Qualified Stock Option.

(s) “Participant” shall mean each of the Non-Employee Directors and Covered Executives designated by the Committee to be granted an Award under the Plan.

(t) “Participating Employee” shall mean a Employee designated by the Committee to be granted an Award under the Plan.

(u) “Performance Goals” shall mean each of, or a combination of one or more of, the following (in all cases after excluding the impact of applicable Excluded Items):

- (i) Return on equity;
- (ii) Return on investment;
- (iii) Return on net assets;
- (iv) Return on revenues;
- (v) Operating income;
- (vi) Performance value added (as defined by the Committee at the time of selection);
- (vii) Pre-tax profits;
- (viii) Net income;
- (ix) Net income per Share;
- (x) Working capital as a percent of net revenues;
- (xi) Net cash provided by operating activities;
- (xii) Market price per Share;



- (xiii) Total shareholder return;
- (xiv) Key operational measures, which shall be deemed to include new customer origination, customer penetration, customer satisfaction, employee safety, market share, plant utilization, cost containment, and cost structure reduction.
- (xv) Cash flow or cash flow per share;
- (xvi) Reserve value or reserve value per share;
- (xvii) Net asset value or net asset value per share;
- (xviii) Production volumes; and
- (xix) Product and technology developments and improvements.

measured in each case for the Performance Period (aa) for the Company on a consolidated basis, (bb) for any one or more Affiliates or divisions of the Company, where appropriate, and/or (cc) for any other business unit or units of the Company or any Affiliate, where appropriate, as defined by the Committee at the time of selection; provided that it shall only be appropriate to measure net earnings per Share and market price per Share on a consolidated basis.

(v) “Performance Period” shall mean, in relation to Performance Shares or Performance Units, any period for which a Performance Goal or Goals have been established; *provided, however*, that such period shall not be less than one year.

(w) “Performance Share” shall mean any right granted under Section 6(e) of the Plan that will be paid out in cash, as a Share (which, in specified circumstances, may be a Share of Restricted Stock) or as a Restricted Stock Unit, which right is contingent on the achievement of one or more Performance Goals during a specified Performance Period.

(x) “Performance Unit” shall mean any right granted under Section 6(e) of the Plan to receive a designated dollar value amount in cash, Shares (which, in specified circumstances, may be a designated dollar value amount of Shares of Restricted Stock) or Restricted Stock Units, which right is contingent on the achievement of one or more Performance Goals during a specified Performance Period.

(y) “Person” shall mean any individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, or government or political subdivision thereof.

(z) “Released Securities” shall mean Shares of Restricted Stock with respect to which all applicable restrictions have expired, lapsed, or been waived.

(aa) “Restricted Securities” shall mean Awards of Restricted Stock or other Awards under which issued and outstanding Shares are held subject to certain restrictions.

(bb) “Restricted Stock” shall mean any Share granted under Section 6(c) of the Plan or, in specified circumstances, a Share paid in connection with another Award, with such Share subject to risk of forfeiture and restrictions on transfer or other restrictions that will lapse upon the achievement of one or more goals relating to completion of service by the Employee or Non-Employee Director or the achievement of performance or other objectives, as determined by the Committee.

(cc) “Restricted Stock Unit” shall mean any right to receive Shares in the future granted under Section 6(d) of the Plan or paid in connection with another Award, with such right subject to risk of forfeiture and restrictions on transfer or other restrictions that will lapse upon the achievement of one or more goals relating to completion of service by the Employee or Non-Employee Director or the achievement of performance or other objectives, as determined by the Committee.

(dd) “Rule 16b-3” shall mean Rule 16b-3 as promulgated by the Commission under the Exchange Act, or any successor rule or regulation thereto.

(ee) “Shares” shall mean shares of common stock of the Company, \$.001 par value, and such other securities or property as may become subject to Awards pursuant to an adjustment made under Section 4(b) of the Plan.

(ff) “Stock Appreciation Right” shall mean any right granted under Section 6(b) of the Plan.

(gg) “Subsidiary” shall mean any corporation or other entity in which the Company has a direct or indirect ownership interest of 50% or more of the total combined voting power of the then-outstanding securities or interests of such corporation or other entity entitled to vote generally in the election of directors (or members of any similar governing body) or in which the Company has the right to receive 50% or more of the distribution of profits or 50% of the assets or liquidation or dissolution.

### **Section 3. Administration**

The Plan shall be administered by the Committee; *provided, however*, that if at any time the Committee shall not be in existence, the functions of the Committee as specified in the Plan shall be exercised by a committee consisting of those members of the Board who qualify as “non-employee directors” under Rule 16b-3 and as “outside directors” under Section 162(m)(4)(C) of the Code. To the extent permitted by applicable law, the Committee may delegate to one or more executive officers of the Company any or all of the authority and responsibility of the Committee with respect to the Plan, other than with respect to Persons who are subject to Section 16 of the Exchange Act. To the extent the Committee has so delegated to one or more executive officers the authority and responsibility of the Committee, all references to the Committee herein shall include such officer or officers.

Subject to the terms of the Plan and without limitation by reason of enumeration, the Committee shall have full discretionary power and authority to: (i) designate Participating Employees and select Non-Employee Directors to be participants under the Plan; (ii) determine the type or types of Awards to be granted to each Participating Employee and Non-Employee Director under the Plan; (iii) determine the number of Shares to be covered by (or with respect to which payments, rights, or other matters are to be calculated in connection with) Awards granted to Participating Employees or Non-Employee Directors; (iv) determine the terms and conditions of any Award granted to a Participating Employee or Non-Employee Director (*provided, however*, that the exercise price of any Option shall not be less than 100% of the Fair Market Value of a Share on the date of grant of such Option); (v) determine whether, to what extent, and under what circumstances Awards granted to Participating Employees or Non-Employee Directors may be settled or exercised in cash, Shares, other securities, other Awards, or other property, and the method or methods by which Awards may be settled, exercised, cancelled, forfeited, or suspended; (vi) determine whether, to what extent, and under what circumstances cash, Shares, other Awards, and other amounts payable with respect to an Award granted to Participating Employees or Non-Employee Directors under the Plan shall be deferred either automatically or at the election of the holder thereof or of the Committee; (vii) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan (including, without limitation, any Award Agreement); (viii) establish, amend, suspend, or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (ix) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations, and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time, and shall be final, conclusive, and binding upon all Persons, including the Company, any Affiliate, any Participating Employee, any Non-Employee Director, any holder or beneficiary of any Award, any shareholder, and any employee of the Company or of any Affiliate.

#### **Section 4. Shares Available for Award**

(a) **Shares Available.** Subject to adjustment as provided in Section 4(b):

(i) **Number of Shares Available.** The number of Shares with respect to which Awards may be granted under the Plan shall be 1,750,000 Shares. If, after the effective date of the Plan, any Shares covered by an Award granted under the Plan, or to which any Award relates, are forfeited or if an Award otherwise terminates, expires or is cancelled prior to the delivery of all of the Shares or of other consideration issuable or payable pursuant to such Award, then the number of Shares counted against the number of Shares available under the Plan in connection with the grant of such Award, to the extent of any such forfeiture, termination, expiration or cancellation, shall again be available for granting of additional Awards under the Plan.

(ii) **Limitations on Awards to Individual Participants.** No Participating Employee shall be granted, during any calendar year, Options for more than 150,000 Shares, Stock Appreciation Rights with respect to more than 150,000 Shares, more than 105,000 Shares of Restricted Stock, more than 105,000 Restricted Stock Units, more than 105,000 Performance Shares nor more than 105,000 Performance Units under the Plan. In all cases, determinations under this Section 4(a)(ii) shall be made in a manner that is consistent with the exemption for performance-based compensation provided by Section 162(m) of the Code and any regulations promulgated thereunder.

(iii) **Accounting for Awards.** The number of Shares covered by an Award under the Plan, or to which such Award relates, shall be counted on the date of grant of such Award against the number of Shares available for granting Awards under the Plan.

(iv) **Sources of Shares Deliverable Under Awards.** Any Shares delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares or of treasury Shares.

(b) **Adjustments.** In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event affects the Shares such that an adjustment is determined by the Committee to be appropriate, then the Committee may, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares subject to the Plan and which thereafter may be made the subject of Awards under the Plan, (ii) the number and type of Shares subject to the individual participant limits of Section 4(a)(ii), (iii) the number and type of Shares subject to outstanding Awards, and (iv) the grant, purchase, or exercise price with respect to any Award to reflect such transaction or event; or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award in exchange for cancellation of such Award or in lieu of any or all of the foregoing adjustments; *provided, however*, in each case, that with respect to Awards of Incentive Stock Options no such adjustment shall be authorized to the extent that such authority would cause the Plan to violate Section 422(b) of the Code; and *provided further* that the number of Shares subject to any Award payable or denominated in Shares shall always be a whole number.

#### **Section 5. Eligibility**

The Committee may designate any Employee as a Participating Employee. All Non-Employee Directors shall be eligible to receive, at the discretion of the Committee, Awards of Non-Qualified Stock Options pursuant to Section 6(a), Restricted Stock pursuant to Section 6(c) and Restricted Stock Units pursuant to Section 6(d).

#### **Section 6. Awards**

(a) **Option Awards.** The Committee may grant Options to Employees and Non-Employee Directors with the terms and conditions as set forth below and with such additional terms and conditions, in either case not inconsistent with the provisions of the Plan, as the Committee shall determine.

(i) **Type of Option.** The Committee shall determine whether an Option granted to a Participating Employee is to be an Incentive Stock Option or Non-Qualified Stock Option; *provided, however*, that Incentive Stock Options may be granted only to Employees of the Company, a parent corporation (within the meaning of Code Section 424(e)) or a subsidiary corporation (within the meaning of Code Section 424(f)). All Options granted to Non-Employee Directors shall be Non-Qualified Stock Options.

(ii) **Exercise Price.** The exercise price per Share of an Option granted pursuant to this Section 6(a) shall be determined by the Committee; *provided, however*, that such exercise price shall not be less than 100% of the Fair Market Value of a Share on the date of grant of such Option.

(iii) **Option Term.** The term of each Option shall be fixed by the Committee; *provided, however,* that in no event shall the term of any Option exceed a period of ten years from the date of its grant.

(iv) **Exercisability and Method of Exercise.** An Option shall become exercisable in such manner and within such period or periods and in such installments or otherwise as shall be determined by the Committee; *provided, however,* that except as provided in Section 6(f) below, no Option may vest and become exercisable within a period that is less than one year from the date of grant of such Option. The Committee also shall determine the method or methods by which, and the form or forms, including, without limitation, cash, Shares, other securities, other Awards, or other property, or any combination thereof, having a Fair Market Value on the exercise date equal to the relevant exercise price, in which payment of the exercise price with respect to any Option may be made or deemed to have been made.

(v) **Incentive Stock Options.** The terms of any Incentive Stock Option granted to a Employee under the Plan shall comply in all respects with the provisions of Section 422 of the Code and any regulations promulgated thereunder. Notwithstanding any provision in the Plan to the contrary, no Incentive Stock Option may be granted hereunder after the tenth anniversary of the adoption of the Plan by the Board.

(b) **Stock Appreciation Rights.** The Committee may grant Stock Appreciation Rights to Employees. Non-Employee Directors are not eligible to be granted Stock Appreciation Rights under the Plan. Subject to the terms of the Plan and any applicable Award Agreement, a Stock Appreciation Right granted under the Plan shall confer on the holder thereof a right to receive, upon exercise thereof, the excess of (i) the Fair Market Value of one Share on the date of exercise over (ii) the grant price of the Stock Appreciation Right as specified by the Committee, which shall not be less than 100% of the Fair Market Value of one Share on the date of grant of the Stock Appreciation Right. Subject to the terms of the Plan, the grant price, term, methods of exercise, methods of settlement (including whether the Participating Employee will be paid in cash, Shares, other securities, other Awards, or other property, or any combination thereof), and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee. The Committee may impose such conditions or restrictions on the exercise of any Stock Appreciation Right as it may deem appropriate.

(c) **Restricted Stock Awards.**

(i) **Issuance.** The Committee may grant Awards of Restricted Stock to Employees and Non-Employee Directors.

(ii) **Restrictions.** Shares of Restricted Stock granted to Participating Employees and Non-Employee Directors shall be subject to such restrictions as the Committee may impose (including, without limitation, any limitation on the right to vote a Share of Restricted Stock or the right to receive any dividend or other right or property), which restrictions may lapse separately or in combination at such time or times, in such installments or otherwise, as the Committee may deem appropriate.

(iii) **Registration.** Any Restricted Stock granted under the Plan to a Participating Employee or Non-Employee Director may be evidenced in such manner as the Committee may deem appropriate, including, without limitation, book-entry registration or issuance of a stock certificate or certificates. In the event any stock certificate is issued in respect of Shares of Restricted Stock granted under the Plan to a Participating Employee or Non-Employee Director, such certificate shall be registered in the name of the Participating Employee or Non-Employee Director and shall bear an appropriate legend (as determined by the Committee) referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

(iv) **Payment of Restricted Stock.** At the end of the applicable restriction period relating to Restricted Stock granted to a Participating Employee or Non-Employee Director, one or more stock certificates for the appropriate number of Shares, free of restrictions imposed under the Plan, shall be delivered to the Participating Employee or Non-Employee Director, or, if the Participating Employee or Non-Employee Director received stock certificates representing the Restricted Stock at the time of grant, the legends placed on such certificates shall be removed.

(v) **Forfeiture.** Except as otherwise determined by the Committee, upon termination of employment of a Participating Employee or service as a director of a Non-Employee Director (as determined under criteria established by the Committee) for any reason during the applicable restriction period, all Shares of Restricted Stock still subject to restriction shall be forfeited by the Participating Employee or Non-Employee Director; *provided, however*, that the Committee may, when it finds that a waiver would be in the best interests of the Company, waive in whole or in part any or all remaining restrictions with respect to Shares of Restricted Stock held by a Participating Employee or Non-Employee Director.

(vi) **Minimum Period of Service.** If the right to become vested in a Restricted Stock Award granted under this Section 6(c) is conditioned on the completion of a specified period of service with the Company or its Affiliates, without achievement of Performance Goals or other performance objectives being required as a condition of vesting, and without it being granted in lieu of other compensation, then the required period of service for vesting shall be not less than three years (subject to acceleration of vesting, to the extent permitted by the Committee, in the event of the Participating Employee's or Non-Employee Director's death, disability, retirement or involuntary termination or in the event of a change in control (as defined by the Committee or a Change in Control as defined herein).

(d) **Restricted Stock Units.**

(i) **Issuance.** The Committee may grant Awards of Restricted Stock Units to Employees or Non-Employee Directors.

(ii) **Restrictions.** Restricted Stock Units granted to Participating Employees or Non-Employee Directors shall be subject to such restrictions as the Committee may impose, which restrictions may lapse separately or in combination at such time or times, in such installments or otherwise, as the Committee may deem appropriate.

(iii) **Payment of Shares.** At the end of the applicable restriction period relating to Restricted Stock Units granted to a Participating Employee or Non-Employee Director, one or more stock certificates for the number of Shares equal to the corresponding number of Restricted Stock Units, free of restrictions imposed under the Plan, shall be delivered to the Participating Employee or Non-Employee Director.

(iv) **Forfeiture.** Except as otherwise determined by the Committee, upon termination of employment of a Participating Employee or service as a director of a Non-Employee Director (as determined under criteria established by the Committee) for any reason during the applicable restriction period, all unvested Restricted Stock Units shall be forfeited by the Participating Employee or Non-Employee Director; *provided, however*, that the Committee may, when it finds that a waiver would be in the best interests of the Company, waive in whole or in part any or all remaining restrictions with respect to Restricted Stock Units held by a Participating Employee or Non-Employee Director.

(v) **Minimum Period of Service.** If the right to become vested in a Restricted Stock Unit Award granted under this Section 6(d) is conditioned on the completion of a specified period of service with the Company or its Affiliates, without achievement of Performance Goals or other performance objectives being required as a condition of vesting, and without it being granted in lieu of other compensation, then the required period of service for vesting shall be not less than three years (subject to acceleration of vesting, to the extent permitted by the Committee, in the event of the Participating Employee's or Non-Employee Director's death, disability, retirement or involuntary termination or in the event of a change in control (as defined by the Committee or a Change in Control as defined herein).

(e) **Performance Shares and Performance Units.**

(i) **Issuance.** The Committee may grant Awards of Performance Shares and/or Performance Units to Employees. Non-Employee Directors are not eligible to be granted Performance Shares or Performance Units under the Plan.

(ii) **Performance Goals and Other Terms.** The Committee shall determine the Performance Period, the Performance Goal or Goals (and the performance level or levels related thereto) to be achieved during any Performance Period, the proportion of payments, if any, to be made for performance between the minimum and full performance levels for any Performance Goal and, if applicable, the relative percentage weighting given to each of the selected Performance Goals. The Committee shall also determine the restrictions applicable to Shares of Restricted Stock or Restricted Stock Units received upon payment of Performance Shares or Performance Units if Performance Shares or Performance Units are paid in such manner, and any other terms, conditions and rights relating to a grant of Performance Shares or Performance Units. The Committee shall have sole discretion to choose among the selected Performance Goals set forth in Section 2(u). Subject to shareholder approval to the extent required to qualify the Award for the performance-based exemption provided by Section 162(m) of the Code, the Committee shall have sole discretion to choose Performance Goals in addition to those set forth in Section 2(u), or alter such Performance Goals. Notwithstanding the foregoing, in the event the Committee determines it is advisable to grant Performance Shares or Performance Units which do not qualify for the performance-based exemption under Section 162(m) of the Code, the Committee may make such grants without satisfying the requirements thereof.

(iii) **No Voting Rights.** Participating Employees shall have no voting rights with respect to Performance Shares or Shares underlying Performance Units held by them during the applicable Performance Period.

(iv) **Payment.** As soon as is reasonably practicable following the end of the applicable Performance Period, and subject to the Committee certifying in writing as to the satisfaction of the requisite Performance Goal or Goals if such certification is required in order to qualify the Award for the performance-based exemption provided by Section 162(m) of the Code, payment of earned Performance Shares and/or Performance Units shall be made. The Committee, in its sole discretion, may pay earned Performance Shares and Performance Units in the form of cash, Shares (which may be Shares of Restricted Stock), Restricted Stock Units or a combination of cash, Shares (which may be Shares of Restricted Stock) and/or Restricted Stock Units, which have an aggregate Fair Market Value equal to the value of the earned Performance Shares and Shares underlying earned Performance Units at the close of the applicable Performance Period. Any Shares of Restricted Stock payable in connection with Performance Shares or Performance Units shall, pending the expiration, lapse, or waiver of the applicable restrictions, be evidenced in the manner as set forth in Section 6(c)(iii) hereof.

(f) **Accelerated Vesting of Awards.**

(i) Upon a Change in Control, all unvested Options, unvested Restricted Stock, unvested Restricted Stock Units, and other unvested Awards held by any Participant shall vest and, with respect to Options and other Awards that are to be exercised, become immediately exercisable and shall be exercisable for a period ending on the later of (A) the fifth anniversary of the date the Change in Control occurs or (B) the last date that such Option or other Award would otherwise be exercisable under the terms of the applicable Award Agreement or the Plan; provided, that in no event shall any Option or other Award be exercisable after the expiration of the original term of the Option or other Award;

(ii) Upon the retirement from the Board of a Non-Employee Director following at least five years of continuous service on the Board, all unvested Options, unvested Restricted Stock, unvested Restricted Stock Units, and other unvested Awards held by such Non-Employee Director shall vest and, with respect to Options and other Awards that are to be exercised, become immediately exercisable and shall be exercisable for a period ending on the last date that such Option or other Award would be exercisable under the terms of the applicable Award Agreement or the Plan; and

(iii) The Committee and the Board shall have the authority to provide that any Award will become fully vested and exercisable automatically upon the Participating Employee's or Non-Employee Director's death, disability, retirement or involuntary termination or in the event of a change in control (as defined by the Committee or a Change in Control as defined herein), and the acceleration of vesting and exercisability of such Award shall be governed by the terms of the applicable Award Agreement or, if applicable, any employment agreement or other agreement with such Participating Employee or Non-Employee Director.



(g) **General.**

(i) **No Consideration for Awards.** Awards shall be granted to Participating Employees and Non-Employee Directors for no cash consideration unless otherwise determined by the Committee.

(ii) **Award Agreements.** Each Award granted under the Plan shall be evidenced by an Award Agreement in such form (consistent with the terms of the Plan) as shall have been approved by the Committee.

(iii) **Awards May Be Granted Separately or Together.** Awards to Participating Employees under the Plan may be granted either alone or in addition to, in tandem with, or in substitution for any other Award or any award granted under any other plan of the Company or any Affiliate. Awards granted in addition to or in tandem with other Awards, or in addition to or in tandem with awards granted under any other plan of the Company or any Affiliate, may be granted either at the same time as or at a different time from the grant of such other Awards or awards.

(iv) **Forms of Payment Under Awards.** Subject to the terms of the Plan and of any applicable Award Agreement, payments or transfers to be made by the Company or an Affiliate upon the grant, exercise, or payment of an Award to a Participating Employee or Non-Employee Director may be made in such form or forms as the Committee shall determine, and may be made in a single payment or transfer, in installments, or on a deferred basis, in each case in accordance with rules and procedures established by the Committee. Such rules and procedures may include, without limitation, provisions for the payment or crediting of interest on installment or deferred payments.

(v) **Limits on Transfer of Awards.** Except as otherwise provided by the Committee, no Award (other than Released Securities), and no right under any such Award, shall be assignable, alienable, saleable, or transferable by a Participating Employee or Non-Employee Director otherwise than by will or by the laws of descent and distribution (or, in the case of an Award of Restricted Securities, to the Company); *provided, however*, that a Participating Employee or Non-Employee Director at the discretion of the Committee may be entitled, in the manner established by the Committee, to designate a beneficiary or beneficiaries to exercise his or her rights, and to receive any property distributable, with respect to any Award upon the death of the Participating Employee or Non-Employee Director, as the case may be. Each Award, and each right under any Award, shall be exercisable, during the lifetime of the Participating Employee or Non-Employee Director, only by such individual or, if permissible under applicable law, by such individual's guardian or legal representative. Except as otherwise provided by the Committee, no Award (other than Released Securities), and no right under any such Award, may be pledged, alienated, attached, or otherwise encumbered, and any purported pledge, alienation, attachment, or encumbrance thereof shall be void and unenforceable against the Company or any Affiliate.

(vi) **Term of Awards.** Except as otherwise provided in the Plan, the term of each Award shall be for such period as may be determined by the Committee.

(vii) **Share Certificates; Representation.** In addition to the restrictions imposed pursuant to Section 6(c) and Section 6(e) hereof, all certificates for Shares delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations, and other requirements of the Commission, any stock exchange or other market upon which such Shares are then listed or traded, and any applicable federal or state securities laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. The Committee may require each Participating Employee, Non-Employee Director or other Person who acquires Shares under the Plan by means of an Award originally made to a Participating Employee or Non-Employee Director to represent to the Company in writing that such Participating Employee, Non-Employee Director or other Person is acquiring the Shares without a view to the distribution thereof.

(h) **Dividend Equivalents.** In addition to Awards granted under the Plan, the Committee may grant Dividend Equivalents to Participating Employees and Non-Employee Directors, entitling the Participating Employees and Non-Employee Directors to receive cash equal to cash dividends paid with respect to a specified number of Shares. Dividend Equivalents may only be granted in connection with an Award granted to the Participating Employee or Non-Employee Director under the Plan. The Committee may provide that Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in such investment vehicles as determined by the Committee, subject to such restrictions and risks of forfeiture as the Committee may impose.

(i) **No Repricing of Options.** Except adjustments made pursuant to Section 4(b) or adjustments made with prior approval of the Company's shareholders, the Committee shall not have the authority to effect (i) the repricing of any outstanding Options under the Plan or (ii) the modification of an Option or entering into a transaction or series of transactions which modification or transaction(s) would be deemed to constitute a repricing of an Option pursuant to Financial Accounting Standards Board Interpretation No. 44, Accounting for Certain Transactions Involving Stock Compensation, March 2000, as amended or supplemented from time to time. The provisions of this Section 6(i) cannot be amended unless the amendment is approved by the Company's shareholders.

#### **Section 7. Amendment and Termination of the Plan; Correction of Defects and Omissions**

(a) **Amendments to and Termination of the Plan.** Except as otherwise provided herein, the Board may at any time amend, alter, suspend, discontinue, or terminate the Plan; *provided, however*, that shareholder approval of any amendment of the Plan shall also be obtained (i) if such amendment (A) increases the number of Shares with respect to which Awards may be granted under the Plan (other than increases related to adjustments made as provided in Section 4(b) hereof), (B) expands the class of persons eligible to participate under the Plan or (C) otherwise increases in any material respect the benefits payable under the Plan; or (ii) if otherwise required by (A) the Code or any rules promulgated thereunder (in order to allow for Incentive Stock Options to be granted under the Plan), or (B) the listing requirements of the NASDAQ Global Select Market or any principal securities exchange or market on which the Shares are then traded (in order to maintain the listing of the Shares thereon). Termination of the Plan shall not affect the rights of Participating Employees or Non-Employee Directors with respect to Awards previously granted to them, and all unexpired Awards shall continue in force and effect after termination of the Plan except as they may lapse or be terminated by their own terms and conditions.

(b) **Amendment or Substitution of Awards under the Plan.** Subject to Section 6(i), the terms of any outstanding Award under the Plan may be amended from time to time by the Committee in its discretion in any manner that it deems appropriate, including, but not limited to, acceleration of the date of exercise of any award and/or payments thereunder or of the date of lapse of restrictions on Shares (but only to the extent permitted by regulations issued under Section 409A(a)(3) of the Code); provided that, except as otherwise provided in Section 4(b), no such amendment shall adversely affect in a material manner any right of a participant under the award without his or her consent, and provided further that in the event of any reduction in the exercise price of any options awarded under the Plan, the reduced price may not be less than the Fair Market Value of a Share on the effective date of the price reduction as required by Code Section 409A. The Committee may, in its discretion, permit holders of awards under the Plan to surrender outstanding Awards in order to exercise or realize rights under other Awards, or in exchange for the grant of new Awards, or require holders of Awards to surrender outstanding awards as a condition precedent to the grant of new awards under the Plan, but only if such surrender, exercise, realization, exchange, or grant (a) would not constitute a distribution of deferred compensation for purposes of Section 409A(a)(3) of the Code or (b) constitutes a distribution of deferred compensation that is permitted under regulations issued pursuant to Section 409A(a)(3) of the Code.

(c) **Correction of Defects, Omissions and Inconsistencies.** The Committee may correct any defect, supply any omission, or reconcile any inconsistency in the Plan, any Award or any Award Agreement in the manner and to the extent it shall deem desirable to carry the Plan into effect.

## **Section 8. General Provisions**

(a) **No Rights to Awards.** No Employee, Participating Employee, Non-Employee Director or other Person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Employees, Participating Employees, Non-Employee Directors or holders or beneficiaries of Awards under the Plan. The terms and conditions of Awards need not be the same with respect to each Participating Employee or Non-Employee Director.

(b) **Withholding.** No later than the date as of which tax withholding is first required with respect to any Award under the Plan, the Participating Employee shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, state, local or foreign taxes of any kind required by law to be withheld with respect to such amount. Unless otherwise determined by the Committee, withholding obligations arising with respect to Awards to Participating Employees under the Plan may be settled with Shares (other than Restricted Securities), including Shares that are part of, or are received upon exercise of, the Award that gives rise to the withholding requirement. The obligations of the Company under the Plan shall be conditional on such payment or arrangements, and the Company and any Affiliate shall, to the extent permitted by law, have the right to deduct any such taxes from any payment otherwise due to the Participating Employee. The Committee may establish such procedures as it deems appropriate for the settling of withholding obligations with Shares, including, without limitation, the establishment of such procedures as may be necessary to satisfy the requirements of Rule 16b-3.

(c) **No Limit on Other Compensation Arrangements.** Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements, and such arrangements may be either generally applicable or applicable only in specific cases.

(d) **Rights and Status of Recipients of Awards.** The grant of an Award shall not be construed as giving a Participating Employee the right to be retained in the employ of the Company or any Affiliate. Further, the Company or any Affiliate may at any time dismiss a Participating Employee from employment, free from any liability, or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Award Agreement. The grant of an Award to a Non-Employee Director pursuant to Section 6(a) of the Plan shall confer no right on such Non-Employee Director to continue as a director of the Company or any Affiliate. Except for rights accorded under the Plan and under any applicable Award Agreement, Participating Employees and Non-Employee Directors shall have no rights as holders of Shares as a result of the granting of Awards hereunder.

(e) **No Compensation for Benefit Plans.** No Award payable under this Plan shall be deemed salary or compensation for the purpose of computing benefits under any benefit plan or other arrangement of the Company or any Affiliate for the benefit of its employees or directors unless the Company or appropriate Affiliate shall determine otherwise.

(f) **Approval of Material Terms of Performance Goals.** Notwithstanding anything herein to the contrary, if so determined by the Board, the Plan provisions specifying the material terms of the Plan's performance goals (within the meaning of Code Section 162(m)) shall be submitted to the shareholders of the Company for re-approval no later than the first shareholder meeting that occurs in the fifth year following the year in which shareholders previously approved such Plan provisions.

(g) **Unfunded Status of the Plan.** Unless otherwise determined by the Committee, the Plan shall be unfunded and shall not create (or be construed to create) a trust or a separate fund or funds. The Plan shall not establish any fiduciary relationship between the Company and any Participating Employee, Non-Employee Director or other Person. To the extent any Person holds any right by virtue of a grant under the Plan, such right (unless otherwise determined by the Committee) shall be no greater than the right of a general unsecured creditor of the Company.

(h) **Governing Law.** The validity, construction, and effect of the Plan and any rules and regulations relating to the Plan shall be determined in accordance with the internal laws of the State of Florida, without reference to conflict of law principles thereof, and applicable federal law.

(i) **Severability.** If any provision of the Plan or any Award Agreement or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction, or as to any Person or Award, or would disqualify the Plan, any Award Agreement or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan, any Award Agreement or the Award, such provision shall be stricken as to such jurisdiction, Person, or Award, and the remainder of the Plan, any such Award Agreement and any such Award shall remain in full force and effect.

(j) **No Fractional Shares.** No fractional Shares or other securities shall be issued or delivered pursuant to the Plan, any Award Agreement or any Award, and the Committee shall determine (except as otherwise provided in the Plan) whether cash, other securities, or other property shall be paid or transferred in lieu of any fractional Shares or other securities, or whether such fractional Shares or other securities or any rights thereto shall be canceled, terminated, or otherwise eliminated.

(k) **Headings.** Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

**Section 9. Effective Date of the Plan**

The effective date of the Plan is March 8, 2004, and the shareholders of the Company approved the Plan within twelve months following the effective date. The Plan was amended and restated by the Board of Directors as of November 20, 2008.