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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C. 20549**

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**FORM 8-K**

**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): September 28, 2017

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**Applied Optoelectronics, Inc.**  
(Exact name of Registrant as specified in its charter)

**Delaware**  
(State of incorporation)

**001-36083**  
(Commission File Number)

**76-0533927**  
(I.R.S. Employer Identification No.)

**13139 Jess Pirtle Blvd.**  
**Sugar Land, TX 77478**  
(address of principal executive offices and zip code)

**(281) 295-1800**  
(Registrant's telephone number, including area code)

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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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01 Entry into a Material Definitive Agreement.**

On September 28, 2017, Applied Optoelectronics, Inc. (the "Company") entered into a Loan Agreement, a Promissory Note, an Addendum to the Promissory Note, a BB&T Security Agreement, a Trademark Security Agreement, and a Patent Security Agreement (together the "Credit Facility") with Branch Banking and Trust Company (the "Bank"). The Credit Facility provides the Company with a three year, \$50 million, revolving line of credit. Borrowings under the Credit Facility will be used for general corporate purposes.

The Company will make monthly payments of accrued interest with the final monthly payment being for all principal and all accrued interest not yet paid.

The Company's obligations under the Credit Facility will be secured by the Company's accounts receivable, inventory, intellectual property, all business assets with the exception of real estate and equipment. Borrowings under the Credit Facility will bear interest at a rate equal to the one-month London Interbank Offered Rate (LIBOR) plus 1.50%.

The Credit Facility requires the Company to maintain certain financial covenants and also contains representations and warranties, and events of default applicable to the Company that are customary for agreements of this type.

The foregoing description of the Credit Facility does not purport to be a complete statement of the parties' rights and obligations under the Credit Facility and is qualified in its entirety by reference to the full text of the Loan Agreement, the Promissory Note, the Addendum to the Promissory Note, the BB&T Security Agreement, the Trademark Security Agreement, and the Patent Security Agreement, all dated September 28, 2017, copies of which are attached as Exhibit 10.1 through 10.6 to this Current Report on Form 8-K and incorporated by reference herein.

**Item 1.02 Termination of a Material Definitive Agreement.**

On September 28, 2017, the Company terminated its First Amendment to Credit Agreement and Limited Consent, with East West Bank and Comerica Bank (individually referred to as the "Lender" and collectively as the "Lenders"); the Company also terminated, with each Lender, its \$17.5 million Amended and Restated Revolving Credit Note, its \$2.5 million Amended and Restated Revolving Credit Note, its \$5 million Term Note, and First Modification to Promissory Note, all dated June 24, 2016, (the "Revolving Credit Notes"). The Revolving Credit Notes amends and restates in-part the Company's existing credit facility with the Lenders that were originally entered into on June 30, 2015.

The Company also repaid the outstanding balance and terminated its Change in Terms Agreement and Notice of Final Agreement and Second Modification to the Construction Loan Agreement with East West Bank, dated October 5, 2016, (the "Construction Loan"). The Construction Loan amended and restated the Company's Promissory Note and Construction Loan Agreement executed with East West Bank on January 26, 2015, with a subsequent amendment occurring on June 14, 2016.

Termination of the Construction Loan and Revolving Credit Notes results in the termination of (i) a \$17.5 million revolving credit note with East West Bank, (ii) a \$2.5 million revolving credit note with East West Bank, (iii) a \$5 million term note with East West Bank, (iv) a \$17.5 million revolving credit note with Comerica Bank, (v) a \$2.5 million revolving credit note with Comerica Bank, (vi) a \$5 million term note with Comerica Bank, and (vii) a \$22 million construction loan with East West Bank.

Upon repayment and/or termination of the Revolving Credit Notes and Construction Loan the Company has no further obligations with either Lender.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information contained in Item 1.01 of this Current Report on Form 8-K with respect to the Credit Facility is incorporated by reference herein and made a part hereof.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	<a href="#"><u>Loan Agreement, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>
10.2	<a href="#"><u>Promissory Note, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>
10.3	<a href="#"><u>Addendum to the Promissory Note, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>
10.4	<a href="#"><u>BB&amp;T Security Agreement, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>
10.5	<a href="#"><u>Trademark Security Agreement, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>
10.6	<a href="#"><u>Patent Security Agreement, dated September 28, 2017, between Applied Optoelectronics, Inc. and Branch Banking and Trust Company.</u></a>

**SIGNATURES**

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 hereunto duly authorized.

Date: October 4, 2017

**Applied Optoelectronics, Inc.**

By: /s/ David C. Kuo

Name: David C. Kuo,

Title: General Counsel and Secretary

**BB&T**  
**LOAN AGREEMENT**

XXXXXXXXXX  
Account Number

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This Loan Agreement (the "Agreement") is made this 28<sup>th</sup> day of September, 2017 by and between **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation ("Bank"), and:

**APPLIED OPTOELECTRONICS, INC.**, a Delaware corporation ("Borrower"), having its chief executive office at 13139 Jess Pirtle Blvd, Sugar Land, TX 77478.

The Borrower has applied to Bank for and the Bank has agreed to make, subject to the terms of and upon the reliance of Borrower's representations, warranties and agreements made in this Agreement, the following loan and/or line of credit (hereinafter sometimes referred to, singularly or collectively, if more than one, as "Loan(s)"):

**Line of Credit** ("Line of Credit") in the maximum principal amount not to exceed \$50,000,000 at any one time outstanding for the purpose of financing working capital needs and other business purposes which shall be evidenced by the Borrower's Promissory Note dated on or after the date hereof which shall bear interest at the rate set forth in such note, the terms of which are incorporated herein by reference (the "Line Note"). The Line of Credit shall mature on September 28, 2020, when the entire unpaid principal balance then outstanding plus accrued interest thereon shall be paid in full. Prior to maturity or the occurrence of any Event of Default hereunder and subject to Availability, as applicable, the Borrower may borrow, repay, and reborrow under the Line of Credit through the Maturity Date. The principal balance from time to time outstanding under the Line of Credit shall bear interest at the rate set forth in the Line Note. Bank shall make advances under the Line of Credit into the Borrower's designated operating account or other designated deposit account maintained with Bank upon receipt of the written or oral request (thereafter confirmed in writing) of Borrower provided that Bank shall not be required to make any advance which would cause Borrower to exceed Availability (as defined in section 10 hereof), if applicable. If at any time the aggregate principal balance outstanding under the Line of Credit shall exceed Availability, Borrower shall immediately upon demand pay the amount necessary to bring the outstanding balance thereunder within Availability. The Line of Credit shall be secured by a first and prior lien and security interest in the Borrower's or other owner's existing and hereafter acquired personal property pursuant to the terms of applicable security instruments listed below. Unused Line Fee: Borrower shall pay the Bank, quarterly in arrears on the last day of each calendar quarter, an unused fee equal to 0.15 % per annum on the average daily unused amount of the Line of Credit for such calendar quarter calculated on the basis of a year of 360 days for the actual number of days elapsed.

**Yield Protection.** If at any time a change in any law or regulation (including without limitation the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, guidelines, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision or other U.S. or foreign regulatory authorities pursuant to Basel III) or in the interpretation thereof by any governmental authority having the authority to interpret or enforce the same shall make it unlawful for Bank to make or maintain the Loan(s) under the terms of this Agreement, Bank shall have the right to convert the applicable interest rate on the Loan(s) to (a) if no Event of Default then exists, a rate based on the Prime Rate Equivalent (as hereinafter defined), to be adjusted as Bank's Prime Rate changes and to be increased by an interest rate margin determined by Bank, or (b) if an Event of Default exists, the Default Rate. As used herein, as of any date of determination, "Prime Rate Equivalent" means a per annum interest rate equal to the greater of (a) the Prime Rate as of such date of determination, minus the amount (if any) by which (i) the Prime Rate as of the conversion described in the preceding sentence exceeded (ii) the One Month LIBOR (as defined in the Addendum to Promissory Note with respect to the Line Note) as of (or, if not then determinable, as of the most recent determination prior to) the conversion described in the preceding sentence and (b) 0.00%. As of the date hereof, the Prime Rate Equivalent is equal to the Prime Rate minus 1.25%. Similarly, should Bank incur increased costs or a reduction in the amounts received or receivable on the Loan(s) because of any change in any applicable law, regulation, rule, guideline or order, including without limitation the imposition, modification or applicability of any reserves, deposits or capital adequacy then Borrower shall pay to Bank within ten (10) business days of demand, which demand shall contain the basis and calculations supporting such demand, as may be required to compensate Bank for such increased costs or reductions in amounts to be received hereunder. Each determination and calculation made by Bank shall, absent manifest error, be binding and conclusive on the parties hereto. All payments made by Borrower hereunder or the other Loan Documents shall be made free and clear and without deduction of any present or future taxes, levies, imposts, charges or withholdings other than taxes based on net income and franchise taxes imposed on Bank by the law of the jurisdiction in which the Bank is organized or transacting business.

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## LOAN AGREEMENT

Additional terms, conditions and covenants of this Agreement are described in Schedule DD, Schedule EE, or any other schedule attached hereto, the terms of which are incorporated herein by reference. The Line Note is collectively referred to herein as the "Note(s)" and shall include all extensions, renewals, modifications and substitutions thereof. Bank may, at its sole discretion, effect payment of any sums past due under the Note(s) and any fees or reimbursable expenses due by debiting Borrower's operating or other deposit account maintained with Bank.

### Section 1 Conditions Precedent

The Bank shall not be obligated to make any disbursement of loan proceeds until all of the following conditions have been satisfied by proper evidence, execution, and/or delivery to the Bank of the following documents and items in addition to this Agreement, all in form and substance satisfactory to the Bank and the Bank's counsel in their sole discretion:

**USA Patriot Act Verification Information:** Information or documentation, including but not limited to the legal name, address, and employer identification number of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act. Borrower shall notify Bank promptly of any change in such information.

**Loan Agreement:** This Agreement duly executed by Borrower.

**Note(s):** The Note(s) duly executed by the Borrower.

**Security Agreement(s):** Security Agreement(s) in which Borrower (a "Debtor") shall grant to Bank a first priority security interest in the personal property specified therein. (If Bank has or will have a security interest in any collateral which is inferior to the security interest of another creditor, Borrower must fully disclose to Bank any and all prior security interests, and Bank must specifically approve any such security interest which will continue during the term of the Loan(s))

**UCC Financing Statements:** Copies of UCC Financing Statements duly filed in Borrower's state of incorporation, organization or residence, and in all jurisdictions necessary, or in the opinion of the Bank desirable, to perfect the security interests granted in the Security Agreement(s), and certified copies of Information Requests identifying all previous financing statements on record for the Borrower, as appropriate from all jurisdictions indicating that no security interest has previously been granted in any of the collateral described in the Security Agreement(s), unless prior approval has been given by the Bank.

**Corporate Resolution:** A Certificate of Corporate Resolutions signed by the corporate secretary or certified officer containing resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution, delivery, and performance of the Loan Documents on or in a form provided by or acceptable to Bank.

**Articles of Incorporation:** A copy of the Articles of Incorporation and all other charter documents of Borrower, all filed with and certified by the Secretary of State of the state of the Borrower's incorporation.

**By-Laws:** A copy of the By-Laws of the Borrower, certified by the Secretary of the Borrower as to their completeness and accuracy.

**Certificate of Incumbency:** A certificate of the Secretary of the Borrower certifying the names and true signatures of the officers of the Borrower authorized to sign the Loan Documents.

**Certificate of Existence:** A certification of the Secretary of State (or other government authority) of the state of the Borrower's incorporation or organization as to the existence or good standing of the Borrower and its charter documents on file.

**Opinion of Counsel:** An opinion of counsel for the Borrower satisfactory to the Bank and the Bank's counsel.

**Insurance:** Copies of policies or certificates of insurance for the insurance policies of Borrower for the replacement cost of the insurable items of Collateral, naming Bank as lender's loss payee.

**Trademark Security Agreement:** A Trademark Security Agreement signed by Borrower in a form satisfactory to Bank.

**Patent Security Agreement:** A Patent Security Agreement signed by Borrower in a form satisfactory to Bank.

**Additional Documents:** Receipt by the Bank of other approvals, opinions, or documents as the Bank may reasonably request.

**Demand Deposit Accounts:** Borrower shall have established with Bank (a) its primary operating accounts and (b) the Collateral Reserve Account into which all proceeds received from Accounts will be deposited.

**Pre-Closing Examination:** A pre-closing examination of Borrower's accounts, inventory, equipment and procedures shall have been performed by Bank or its authorized agent, and Bank shall have found the results thereof satisfactory.

**Payment in Full of Existing Debt:** All existing term debt in favor of East West Bank and Comerica Bank owed by Borrower or secured by any of its assets shall have been repaid in full by Borrower.

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## LOAN AGREEMENT

### Section 2 Representations and Warranties

The Borrower represents and warrants to Bank that:

2.01. **Financial Statements.** The balance sheet of the Borrower and its subsidiaries, if any, and the related Statements of Income and Retained Earnings of the Borrower and its subsidiaries, the accompanying footnotes together with the accountant's opinion thereon, and all other financial information previously furnished to the Bank, accurately, completely and fairly reflect the financial condition of the Borrower and its subsidiaries as of the dates thereof, including all contingent liabilities of every type, and the financial condition of the Borrower and its subsidiaries as stated therein has not changed materially and adversely since the date thereof.

2.02. **Name, Capacity and Standing.** The Borrower's exact legal name is correctly stated in the initial paragraph of the Agreement. If the Borrower and any of its subsidiaries, if any, is a corporation, general partnership, limited partnership, limited liability partnership, or limited liability company, it is duly organized and validly existing under the laws of its respective state of incorporation or organization; that it and/or its subsidiaries, if any, are duly qualified and in good standing in every other state in which the nature of their business shall require such qualification, Borrower is duly authorized by its board of directors to enter into and perform the obligations under the Loan Documents.

2.03. **No Violation of Other Agreements.** The execution and delivery of the Loan Documents, and the performance by the Borrower thereunder will not violate any provision, as applicable, of its articles of incorporation or by-laws, or of any law, other agreement, indenture, note, or other instrument binding upon Borrower, or give cause for the acceleration of any of the respective obligations of Borrower.

2.04. **Authority.** The execution, delivery and performance of this Agreement, the Note(s) and the other Loan Documents have been duly authorized by all necessary and proper corporate or equivalent action. All authority from and approval by any federal, state, or local governmental body, commission or agency necessary to the making, validity, or enforceability of this Agreement and the other Loan Documents has been obtained.

2.05. **Asset Ownership.** The Borrower has good and marketable title to all of the properties and assets reflected on the balance sheets and financial statements furnished to the Bank, and all such properties and assets are free and clear of mortgages, deeds of trust, pledges, liens, security interests, and all other encumbrances except as otherwise disclosed by such financial statements or otherwise in writing.

2.06. **Discharge of Liens and Taxes.** The Borrower and its subsidiaries, if any, have filed, paid, and/or discharged all taxes or other claims which may become a lien on any of their respective properties or assets, excepting to the extent that such items are being appropriately contested in good faith and for which an adequate reserve (in an amount acceptable to Bank) for the payment thereof is being maintained.

2.07. **Regulations U and X.** None of the Loan(s) proceeds shall be used directly or indirectly for the purpose of purchasing or carrying any margin stock in violation of the provisions of Regulation U and Regulation X of the Board of Governors of the Federal Reserve System.

2.08. **ERISA.** Each employee benefit plan, as defined by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), maintained by the Borrower or by any subsidiary of the Borrower meets, as of the date hereof, the minimum funding standards of Section 302 of ERISA, all applicable requirements of ERISA and of the Internal Revenue Code of 1986, as amended, and no "Reportable Event" nor "Prohibited Transaction" (as defined by ERISA) has occurred with respect to any such plan.

2.09. **Litigation.** There is no claim, action, suit or proceeding pending, or to Borrower's knowledge threatened or reasonably anticipated before any court, commission, administrative agency, whether State or Federal, or arbitration which will materially adversely affect the financial condition, operations, properties, or business of the Borrower, its subsidiaries, if any, or affect the ability of the Borrower to perform its obligations under the Loan Documents.

2.10. **Other Agreements.** The representations and warranties made by Borrower to Bank in the other Loan Documents are true and correct in all respects on the date hereof.

2.11. **Binding and Enforceable.** The Loan Documents, when executed, shall constitute valid and binding obligations of the Borrower, and are enforceable in accordance with their terms, except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors' rights generally.

2.12. **Commercial Purpose.** The Loan(s) are not "consumer transactions", as defined in the Texas Uniform Commercial Code, and none of the collateral was or will be purchased or held primarily for personal, family or household purposes.

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## LOAN AGREEMENT

2.13. **Foreign Assets Control Regulations.** It is not in violation of (i) the Trading with the Enemy Act (50 U.S.C. App. Sec. 1 et seq), as amended, (ii) any of the foreign assets control regulations issued by the Office of Foreign Assets Control of the United States Treasury Department ("OFAC") and any executive order related thereto, or (iii) the U.S. Patriot Act, and further that it (a) is not subject to sanctions administered by OFAC or the U.S. Department of State or (b) has not engaged in any dealing or transactions with, or is otherwise associated with, any person subject to such sanctions.

2.14. **Survival of Representations and Warranties.** Borrower agrees that in extending loan advances, Bank is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Bank under this Agreement or the other Loan Documents. Borrower further agrees that regardless of any investigation made by Bank, all such representations, warranties and covenants will survive the making of each advance under the Loan(s) and delivery to Bank of the Loan Documents, shall be continuing in nature, shall be deemed made and reaffirmed by Borrower at the time each advance is made, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided herein, whichever is the last to occur.

### Section 3 Affirmative Covenants

The Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Borrower shall:

3.01. **Maintain Existence and Current Legal Form of Business.** (a) Maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business indicated above, and, (c) qualify and remain qualified as a foreign corporation in each jurisdiction in which such qualification is required.

3.02. **Maintain Records.** Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of Borrower. If Borrower now or hereafter maintains any business records in the possession of a third party, at the request of Bank, Borrower shall notify such third party to permit Bank free access to such records at all reasonable times and to provide Bank with copies of any records it may request, all at Borrower's expense.

3.03. **Maintain Properties.** Maintain, keep, and preserve all of its properties (tangible and intangible) including the collateral necessary or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

3.04. **Conduct of Business.** Continue to engage in an efficient, prudent, and economical manner in a business of the same general type as now conducted.

3.05. **Maintain Insurance.** Maintain fire and other risk insurance, public liability insurance, and such other insurance as Bank may reasonably require with respect to Borrower's properties and operations, in form, amounts, and coverages and with insurance companies reasonably acceptable to Bank. Borrower, upon request of Bank, will deliver to Bank from time to time the policies or certificates of insurance in form satisfactory to Bank, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Bank. Each insurance policy also shall include an endorsement (NY long form) providing that coverage in favor of Bank will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering the Collateral, Borrower shall provide Bank with such Bank's loss payable or other endorsements as Bank may require, and shall furnish to Bank upon request, reports on each existing insurance policy showing such information as Bank may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties and assets insured; (5) the current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Bank (however not more often than annually), Bank may require that an independent appraiser satisfactory to Bank determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower. Should any or all of the Collateral become uninsured for any reason, Borrower shall have ten (10) days after receipt of notice from Bank to obtain replacement insurance on the Collateral satisfactory to Bank and, should Borrower fail to obtain such insurance, Bank may purchase insurance covering the Collateral, the cost of which shall be paid by Borrower on demand.

3.06. **Comply With Laws.** Comply in all respects with all applicable laws, rules, regulations, ordinances and orders applicable to each Borrower's business, operations and properties including without limitation, the Americans with Disabilities Act, paying before the delinquency thereof all taxes, assessments, and governmental charges imposed upon it or upon its income, profits or property, and all Environmental Laws.



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## LOAN AGREEMENT

3.07. **Right of Inspection.** Permit the officers and authorized agents of the Bank, at any reasonable time or times in the Bank's sole discretion, to examine and make copies of the records and books of account of Borrower, to visit the properties of any Borrower, and to discuss such matters with any officers, directors, managers, members or partners, limited or general, of such Borrower, and with the Borrower's independent accountant as Bank deems necessary and proper.

3.08. **Reporting Requirements.** Furnish to Bank:

**Quarterly Financial Statements:** As soon as available and not more than forty-five (45) days after the end of each quarter, balance sheets, statements of income, cash flow, and retained earnings for the period ended and a statement of changes in the financial position, all in reasonable detail, and all prepared in accordance with GAAP consistently applied and certified as true and correct by an officer of the Borrower.

**Annual Financial Statements:** As soon as available and not more than one hundred twenty (120) days after the end of each fiscal year, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in the financial position, all in reasonable detail, and all prepared in accordance with GAAP consistently applied. The financial statements must be of the following quality or better: Audited.

**Loan Base Report:** On or before the twentieth (20th) day of each quarter, or as provided and/or required in accordance with Schedule DD or more frequently as Bank may require in its sole discretion, a Loan Base Report for the immediately preceding quarter in form acceptable to Bank signed by the President or chief financial officer of the Borrower.

**Officer Compliance Certificate:** An Officer's Compliance Certificate ("OCC") with respect to Borrower's compliance with the Affirmative, Financial and Negative Covenants set forth in Sections 3, 5, and 6 of this Agreement. The OCC will be in the form of Schedule EE or other form acceptable to Bank, properly executed by an authorized officer of Borrower, including calculations to support all Financial Covenants, and set forth any corrective action taken or proposed to be taken with respect to any default or Event of Default under such covenants. The OCC is due within the same number of days required for the delivery of Financial Statements for each fiscal quarter's end and for the fiscal year end. The OCC furnished by Borrower for the fiscal year end shall include a reconciliation of all adjustments, if any, by Borrower to the fourth quarter's certification.

**Notice of Litigation:** Promptly after the receipt by the Borrower, notice of any complaint, action, suit or proceeding before any court or administrative agency or body of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of the Borrower.

**Notice of Default:** Promptly upon discovery or knowledge thereof, notice of the existence of any event of default under this Agreement or any other Loan Documents.

**USA Patriot Act Verification Information:** Information or documentation, including but not limited to the legal name, address, and employer identification number of the Borrower sufficient for the Bank to verify the identity of the Borrower in accordance with the USA Patriot Act. Borrower shall notify Bank promptly of any change in such information.

**Other Information:** Such other information as the Bank may from time to time reasonably request.

3.09. **Deposit Accounts.** Maintain substantially all of its demand deposit/operating accounts with the Bank. Bank will make available to Borrower an interest bearing deposit account which will earn 1.25% interest per annum for a period of 12 months from the date hereof. Deposits into this account earning the 1.25% per annum interest rate will be capped at \$100,000,000.

3.10. **Appraisal(s).** If required by Bank, furnish, not more than one time per twelve (12) fiscal month period, at Borrower's expense an independent appraisal or update by an appraiser satisfactory to Bank of the market value of any personal property collateral securing the Loan(s); provided, that if an Event of Default exists, Bank shall have the right to conduct such additional appraisals as it shall require.

3.11. **Affirmative Covenants from other Loan Documents.** All affirmative covenants contained in any other Loan Documents are hereby incorporated by reference herein.

3.12. **Management.** Maintain a principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions with substantially the same qualifications and experience as the current principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions and promptly provide written notice to Bank of any change in such principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions; provided, that if Borrower's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions shall cease to hold such office for any reason, such cessation shall not constitute a failure to maintain such office if Borrower shall replace such officer (in a temporary or permanent capacity) within one hundred twenty (120) days thereafter by a person selected by Borrower but reasonably acceptable to Bank.

# BB&T

## LOAN AGREEMENT

3.13 **Reimbursement by Borrower.** Upon Bank's demand, promptly reimburse Bank for (a) (i) 50% of attorneys' fees of Bank's outside counsel, appraisal fees and the cost of the pre-closing examination described in Section 1 and (ii) all recording fees, documentary stamp and intangible taxes and all other costs, in each case incurred by Bank prior to the date hereof in connection with the preparation and negotiation of the Loan Documents, and the closing of any of the transactions contemplated thereby, which reimbursement may be debited by Bank from Borrower's bank account number \*\*\*\*\*3818, and (b) all costs and fees (including, without limitation, recording fees, appraisal fees and attorneys' fees) incurred by Bank after the date hereof in connection with (i) the amendment and administration of any of the Loan Documents and (ii) the enforcement or collection of the indebtedness of Borrower to Bank or enforcement by Bank of the terms and provisions of the Loan Documents.

3.14 **Post-Closing Covenant.** On or before October 5, 2017 (or such later date as Bank shall expressly agree to in writing), Borrower shall provide to Bank each of the following, in each case in form and substance satisfactory to Bank: (a) a lender's loss payable endorsement with respect to each insurance policy covering insurable items of Collateral, and (b) an acknowledgment to the Collateral Assignment of Rights Under Business Interruption Insurance Policy between Borrower and Bank dated the date of this Agreement, duly executed by Charter Oak Fire Insurance Company.

### Section 4 Intentionally Omitted

### Section 5 Financial Covenants

The Borrower covenants and agrees that from the date hereof until payment in full of the Loan(s) and the performance of all obligations under the Loan Documents, it shall at all times maintain the following financial covenants and ratios all in accordance with GAAP unless otherwise specified:

**Fixed Charge Coverage Ratio:** A Fixed Charge Coverage Ratio of not less than 1.5 to 1.0, measured quarterly as of the last day of each fiscal quarter. Fixed Charge Coverage Ratio means a ratio of (i) (a) EBITDA as of the last day of the applicable fiscal quarter minus (b) dividends and distributions to, and withdrawals by, owners during the twelve fiscal month period ending on the last day of the applicable fiscal quarter minus (c) Unfinanced Capital Expenditures as of the last day of the applicable fiscal quarter to (ii) the sum of interest expense and the current portion of long-term debt for the twelve fiscal month period ending on the last day of the applicable fiscal quarter. EBITDA means the sum of net income, interest expense, taxes, depreciation and amortization for the twelve fiscal month period ending on the last day of the applicable fiscal quarter (and, for the avoidance of doubt, EBITDA does not include any cash equity contributions to the capital of Borrower). Unfinanced Capital Expenditures means, as of any date of determination, equal to the greater of (I) (A) liabilities incurred or expenditures made by Borrower for the purchase of property, plant and equipment and comparable items reported in Borrower's 10Q or 10K report, as applicable, during the twelve (12) fiscal month period ending on such date of determination less (B) proceeds from the issuance of notes payable and long-term debt paid during the twelve (12) fiscal month period ending on such date of determination, in each case as determined by Bank based on Borrower's 10Q or 10K reports, as applicable, filed with the Securities and Exchange Commission pertaining to such twelve (12) fiscal month period, less (C) cash equity contributions made to the capital of Borrower during the twelve (12) fiscal month period ending on such date of determination, and (II) \$0.00.

**Total Liabilities to Tangible Net Worth:** A ratio of Total Liabilities to Tangible Net Worth not greater than 2.0 to 1.0, measured quarterly as of the last day of each fiscal quarter. Total Liabilities means all funded debt, notes and trade accounts payable. Tangible Net Worth means net worth minus net intangibles (good will, contract rights and distribution rights) and assets representing claims on shareholders, Affiliates and subsidiaries that are not Borrowers.

### Section 6 Negative Covenants

Each Borrower covenants and agrees that from the date hereof and until payment in full of all indebtedness and performance of all obligations under the Loan Documents, such Borrower shall not, without the prior written consent of the Bank:

6.02. **Liens.** Create, incur, assume, or suffer to exist any lien or security interest upon or in Collateral, or any of Borrower's other properties, whether now owned or hereafter acquired, except Permitted Liens.

6.03. **Intentionally Omitted.**

6.04. **Intentionally Omitted.**

6.05. **Change of Legal Form of Business; Purchase of Assets.** Change Borrower's name or the legal form of Borrower's business as shown above, whether by merger, consolidation, conversion or otherwise. In addition, Borrower shall not purchase all or substantially all of the assets or business of any Person, unless such purchase (a) constitutes a Permitted Specified Transaction, and (b) is consensual and has been approved by the board of directors of such Person.

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- 6.06. **Leases.** Create, incur, assume, or suffer to exist any leases, except:
- (a) Leases outstanding on the date hereof and showing on the most recent financial statement submitted to the Bank;
  - (b) Operating Leases for facilities, machinery and/or equipment which do not in the aggregate require payments in excess of (i) \$3,600,000 during the period from October 1, 2017 through September 30th, 2018, (ii) \$6,100,000 during the period from October 1, 2018 through September 30th, 2019, and (iii) \$8,600,000 during the period from October 1, 2019 through September 30th, 2020.
- 6.07. **Acquisition of Capital Stock or Other Ownership Interests.** Purchase or redeem, retire, or otherwise acquire any of Borrower's capital stock or other ownership interests, now or hereafter outstanding, unless such purchase, redemption, retirement or other acquisition constitutes a Permitted Specified Transaction.
- 6.08. **Intentionally Omitted.**
- 6.09. **Guaranties.** Assume, guarantee, endorse, or otherwise be or become directly or contingently liable for obligations of any Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- 6.10. **Loans to Insiders and Affiliates.** Make any loans to directors, officers, partners, members, shareholders, subsidiaries or Affiliates (unless such loans are subordinated to the Line of Credit pursuant to one or more subordination agreements, in each case in form and substance satisfactory to Bank), other than (a) unsubordinated loans in existence on the date of this Agreement that do not in the aggregate exceed \$47,700,000, and are extended by Borrower to one or more of its subsidiaries, and (b) unsubordinated loans that constitute Permitted Specified Transactions.
- 6.11. **Disposition of Assets.** Sell, lease, or otherwise dispose of any of its assets or properties (unless such sale, lease or other disposition of assets or properties is in the ordinary and usual course of its business), unless such sale, lease or other disposition constitutes a Permitted Specified Transaction.
- 6.12. **Intentionally Omitted.**
- 6.13. **Negative Covenants from Loan Documents.** All negative covenants contained in any Loan Document are hereby incorporated by reference herein.
- 6.14. **Transactions with Affiliates.** Directly or indirectly, sell, lease, transfer, or otherwise dispose of any of its property to, or purchase any property from, or enter into any contract, agreement, understanding, loan, advance, guarantee or transaction (including the rendering of services) with or for the benefit of, any Affiliate (each of the foregoing, an "Affiliate Transaction"), unless (a) such Affiliate Transaction or series of Affiliate Transactions is (i) in the best interest of Borrower and (ii) on terms that are no less favorable to Borrower than those what would have been obtained in a comparable arm's-length transaction by Borrower with a person that is not an Affiliate, or (b) such Affiliate Transaction constitutes a Permitted Specified Transaction.

### Section 7 Hazardous Substances and Compliance with Environmental Laws

- 7.01. **Investigation.** Borrower hereby certifies that it has exercised due diligence to ascertain whether its real property is or has been affected by the presence of asbestos, oil, petroleum or other hydrocarbons, urea formaldehyde, PCBs, hazardous or nuclear waste, toxic chemicals and substances, or other hazardous materials, as defined in applicable Environmental Laws (collectively, "Hazardous Substances"). Borrower represents and warrants that there are no Hazardous Substances contaminating its real property, nor have any such materials been released on or stored on or improperly disposed of on its real property during its ownership, occupancy or operation thereof except in strict compliance with Environmental Laws and any applicable permits. Borrower hereby agrees that, except in strict compliance with applicable Environmental Laws, it shall not knowingly permit any release, storage or contamination of its properties as long as any indebtedness or obligations to Bank under the Loan Documents remains unpaid or unfulfilled. In addition, Borrower does not have or use any underground storage tanks on any of its real property which are not registered with the appropriate Federal and/or State agencies and which are not properly equipped and maintained in accordance with all Environmental Laws. If requested by Bank, Borrower shall provide Bank with all necessary and reasonable assistance required for purposes of determining the existence of Hazardous Substances on any of its real property, including allowing Bank access to any of its real property, to Borrower's employees having knowledge of, and to its files and records within Borrower's control relating to the existence, storage, or release of Hazardous Substances on any of its real property.
- 7.02. **Compliance.** Borrower agrees to comply with all applicable Environmental Laws, including, without limitation, all those relating to Hazardous Substances. Borrower further agrees to provide Bank, and all appropriate Federal and State authorities, with immediate notice in writing of any release of Hazardous Substances on any of its real property and to pursue diligently to completion all appropriate and/or required remedial action in the event of such release. In addition, Borrower shall within fifteen (15) days after receipt thereof, a complete copy of any notice, summons, lien, citation, letter or other communication from any governmental agency concerning any action or omission of Borrower in connection with any environmental activity or issue.

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7.03. **Remedial Action; Indemnity:** Bank shall have the right, but not the obligation, to undertake all or any part of such remedial action in the event of a release of Hazardous Substances on any of Borrower's real property and to add any expenditures so made to the principal indebtedness secured by the Deed(s) of Trust or other security instruments. Borrower agrees to indemnify and hold Bank harmless from any and all loss or liability arising out of any violation of the representations, covenants, and obligations contained in this Section 7, or resulting from the recording of the Deed(s) of Trust or other security instruments. In addition, Bank shall have all rights and remedies provided in other Loan Documents with respect to Hazardous Substances and violations of Environmental Laws.

### Section 8 Events of Default

The following shall be "Events of Default" by Borrower:

- 8.01. Should Borrower fail to make payment of any installment of principal or interest on any of the Note(s) when due.
- 8.02. Should any representation or warranty made in the Loan Documents prove to be false or misleading in any material respect when made.
- 8.03. Should any report, certificate, financial statement, or other document furnished prior to the execution of or pursuant to the terms of this Agreement prove to be false, incomplete or misleading in any material respect when delivered or made.
- 8.04. Should Borrower default in the payment or performance of any other loan, line of credit, indenture, mortgage instrument, security agreement or other agreement with Bank or with another creditor or Person that may materially affect any Borrower's property or ability to perform their respective obligations under this Agreement or the other Loan Documents.
- 8.05. Should any Borrower breach any covenant, condition, or agreement made under any of the Loan Documents to which it is a party (other than Sections 3.01(c) and 3.08 (solely with respect to the Quarterly Financial Statements, Annual Financial Statements, Loan Base Report and Officer Compliance Certificate subsections contained therein), each of which is subject to Section 8.06 below).
- 8.06. Should any Borrower breach any covenant, condition, or agreement made under (a) Section 3.01(c), and such breach shall not have been cured to Bank's satisfaction on or before the thirtieth (30<sup>th</sup>) day following the occurrence of such breach, (b) the Loan Base Report subsection of Section 3.08, and such breach shall not have been cured to Bank's satisfaction on or before the fifth (5<sup>th</sup>) day following the occurrence of such breach, or (c) the Quarterly Financial Statements, Annual Financial Statements, or Officer Compliance Certificate subsection of Section 3.08, and such breach shall not have been cured to Bank's satisfaction on or before the earlier of (i) the thirtieth (30<sup>th</sup>) day following the occurrence of such breach, and (ii) the date on which the Borrower files the financial statements corresponding to such breach with the Securities and Exchange Commission.
- 8.07. Should a custodian be appointed for or take possession of any or all of the assets of any Borrower; should any Borrower either voluntarily or involuntarily become subject to any insolvency proceeding, including becoming a debtor under the United States Bankruptcy Code, any proceeding to dissolve any Borrower, any proceeding to have a receiver appointed, or should any Borrower make an assignment for the benefit of creditors; or should there be an attachment, execution, or other judicial seizure of all or any portion of any Borrower's assets, including an action or proceeding to seize any Collateral or any funds on deposit with the Bank, and such seizure is not discharged within 30 days.
- 8.08. Should final judgment for the payment of money be rendered against the Borrower which is not covered by insurance and shall remain undischarged for a period of 30 days unless such judgment or execution thereon is effectively stayed.
- 8.09. Upon the termination of existence of, or dissolution of, the Borrower.
- 8.10. Should any lien or security interest in the Collateral terminate, fail for any reason to have the priority agreed to by Bank on the date granted, or become unenforceable, unperfected or invalid for any reason, should the Collateral fail to be insured as required herein, or should the market value of the Collateral decline below the value anticipated or required in connection with the Loan(s).
- 8.11. Should Borrower commit a default under any Hedge Agreement, as defined in Section 10.01, and such default shall not have been cured to Bank's satisfaction on or before the fifth (5<sup>th</sup>) business day following the occurrence of such default.
- 8.12. Should Borrower assert for any reason that this Agreement or any provision hereof or any other Loan Document is invalid or unenforceable.
- 8.13. (a) Should Borrower, or any officer or director of Borrower, be indicted for a felony offense under state or federal law, including without limitation any violation of any anti-money laundering, bribery, OFAC or bank fraud (in each case except for any felony described in clause (c)), and such officer or director is not replaced by an officer or director selected by Borrower but reasonably acceptable to Bank within ten (10) days of such indictment, (b) should Borrower employ an executive officer, or elect a director, who, to the knowledge of Borrower, has been convicted of any such felony offense, and (c) should Borrower, or any officer or director of Borrower, be indicted for or convicted of (i) a felony committed in the conduct of a Borrower's business, or (ii) violating any state or federal criminal law that could lead to forfeiture of any material property of Borrower or any Collateral.

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### Section 9 Remedies Upon Default

Upon the occurrence of any of the above Events of Default, and subject to any applicable notice and cure periods, if any, Bank may at any time thereafter, at its option, take any or all of the following actions, at the same or at different times:

- 9.01. Declare the outstanding balance(s) of the Note(s) to be immediately due and payable, both as to principal and interest, late fees, and all other amounts/expenditures without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower, and such balance(s) shall accrue interest at the Default Rate as provided herein until paid in full;
- 9.02. Require any Borrower to pledge additional collateral to Bank from such Borrower's assets and properties to secure the Loan(s), the acceptability and sufficiency of such collateral to be determined in Bank's sole discretion;
- 9.03. Take immediate possession of and/or foreclose upon any or all Collateral which may be granted to Bank as security for the indebtedness and obligations of any Borrower under the Loan Documents;
- 9.04. Exercise any and all other rights and remedies available to Bank under the terms of the Loan Documents and applicable law, including the Texas Uniform Commercial Code;
- 9.05. Any obligation of Bank to advance funds to a Borrower or any other Person under the terms of under the Loan Documents and all other obligations, if any, of Bank under the Loan Documents shall immediately cease and terminate unless and until Bank shall reinstate such obligation in writing.

### Section 10 Miscellaneous Provisions

#### 10.01. Definitions.

**"Affiliate"** shall mean any Borrower, any relative of any Borrower, or of an entity which is a parent, subsidiary or any person or entity controlled by, or under the common control of, any Borrower or Borrower's parent or subsidiary.

**"Availability"** shall mean the lesser of (i) \$50,000,000 or (ii) the Collateral Loan Value shown on the Loan Base Report furnished by Borrower to Bank on or before the twentieth (20th) day of each quarter as long as this Agreement shall remain in force, as provided in connection with a Permitted Specified Transaction, or as provided and/or determined in accordance with Schedule DD or more frequently as Bank may require in its sole discretion, as applicable. The percentages of acceptable collateral which will be used to determine the Collateral Loan Value, shall be the following (unless otherwise set forth in the applicable Schedule hereto): Eligible Inventory – 50%; Eligible Investment Grade Accounts – 90%; Eligible non-Investment Grade Accounts – 85%.

**"Collateral"** shall mean all personal property and assets granted as collateral security for the Loan(s), whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, assignment, pledge, crop pledge, chattel mortgage, chattel trust, factor's lien, conditional sale, trust receipt, lien, charge, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**"Default Rate"** shall mean a rate of interest equal to fifteen percent (15.0%) per annum (not to exceed the legal maximum rate) from and after the date of an Event of Default hereunder which shall apply, in the Bank's sole discretion, to all amounts owing, on such date, calculated on the basis of the actual number of days elapsed over a year consisting of 360 days.

**"Environmental Laws"** shall mean all federal and state laws and regulations which affect or may affect any of Borrower's real property, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), and all applicable environmental laws and regulations of the State of Texas, as such laws or regulations have been amended or may be amended.

**"Hedge Agreement"** shall mean an agreement between Borrower and Bank, now existing or hereafter entered into, which provides for an interest rate, credit, commodity, equity swap or other Swap Obligation, cap floor, collar, spot or forward foreign exchange transaction, currency swap, cross-currency rate swap, currency option or any similar transaction or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging Borrower's exposure to fluctuations in interest or exchange rates, loan, credit, exchange, security or currency valuations or currency prices.

**"Loan Documents"** shall mean this Agreement including any Schedule attached hereto, the Note(s), the Security Agreement(s), all UCC Financing Statements, the Trademark Security Agreement, the Patent Security Agreement, and all other documents, certificates, and instruments executed in connection therewith, and all renewals, extensions, modifications, substitutions, and restatements thereof and therefore.

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**“Permitted Specified Transaction”** shall mean a Specified Transaction that satisfies each of the following conditions: (a) at the time of such Specified Transaction, no Event of Default exists or would be caused upon the consummation thereof, (b) Availability on the date of any such Specified Transaction and after giving effect to such Specified Transaction shall equal or exceed 50% of the lesser of (i) the Line of Credit on such date and (ii) the Collateral Loan Value (as defined in Schedule DD) on such date, and (c) not less than five (5) days prior to the effectiveness of such Specified Transaction, Bank shall have received from Borrower a copy of the most recent Loan Base Report delivered on or before the date of such Specified Transaction, with updates to reflect the pro forma effect of such Specified Transaction (or, if required by Bank in its sole discretion, a Loan Base Report prepared as of the date of such Specified Transaction that gives pro forma effect to such Specified Transaction), unless (i) the value of such Specified Transaction is less than \$5,000,000 individually, and (ii) the value of such Specified Transaction, when combined with all other Specified Transactions during the same fiscal quarter, is less than \$20,000,000.

**“Permitted Liens”** shall mean (1) liens and security interest securing any indebtedness owed by any Borrower to Bank; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith and for which appropriate reserves are maintained; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under Section 6.02; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by Bank in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower’s assets.

**“Person”** shall mean an individual, partnership, corporation, trust, unincorporated organization, limited liability company, limited liability partnership, association, joint venture, or a government agency or political subdivision thereof.

**“GAAP”** shall mean generally accepted accounting principles as established by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants, as amended and supplemented from time to time.

**“Prime Rate”** shall mean the rate of interest per annum announced by Bank from time to time and adopted as its Prime Rate, which is one of several rate indexes employed by Bank when extending credit, and may not necessarily be Bank’s lowest lending rate.

**“Specified Transaction”** shall mean (a) a purchase of part or all of the assets of a business or any Person, (b) a purchase, redemption, retirement or other acquisition of any of Borrower’s capital stock or other ownership interests, (c) an unsubordinated loan to directors, officers, partners, members, shareholders, subsidiaries or Affiliates, (d) a sale, lease or other disposition of asset or properties, or (e) an Affiliate Transaction.

10.02. **Non-impairment.** If any one or more provisions contained in the Loan Documents shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby and shall otherwise remain in full force and effect.

10.03. **Applicable Law.** The Loan Documents shall be construed in accordance with and governed by the laws of the State of Texas, and shall bind each Borrower’s heirs, personal representatives, successors and assigns and inure to the benefit of Bank’s successors and assigns.

10.04. **Waiver.** Neither the failure nor any delay on the part of Bank in exercising any right, power or privilege granted in the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power, or privilege which may be provided by law. A waiver by Bank of a provision of this Agreement shall not prejudice or constitute a waiver of Bank’s right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Bank, nor any course of dealing between Bank and Borrower shall constitute a waiver of any of Bank’s rights or of any of Borrower’s obligations as to any future transaction. Whenever the consent of Bank is required under this Agreement, the granting of such consent by Bank in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Bank.

10.05. **Modification.** No modification, amendment, or waiver of any provision of any of the Loan Documents shall be effective unless in writing and signed by the Borrower and Bank.

10.06. **Payment Amount Adjustment.** In the event that any Loan(s) referenced herein has a fixed payment with a variable (floating) interest rate and, as a result of an increase in such interest rate, accruals of interest are not fully paid, Bank, in its sole discretion, may at any time adjust the Borrower’s fixed payment amount(s) to prevent the amount of interest accrued in a given period exceeding the periodic payment amount or to cause the affected Loan(s) to be repaid within the same period of time as originally agreed upon.

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10.07. **Stamps and Other Fees.** The Borrower shall pay all federal or state stamp and recording taxes, or other fees or charges, if any are payable or are determined to be payable by reason of the execution, delivery, or issuance of the Loan Documents or any security granted to the Bank; and the Borrower agrees to indemnify and hold harmless Bank against any and all liability in respect thereof. Borrower shall pay all fees incurred by Bank for any appraisal of the Collateral obtained at any time after the date of this Agreement which Bank requires pursuant to federal or state regulations, in connection with any event of default under the Loan Documents or restructure of the Loan(s), any material damage to or condemnation of the Collateral, or in connection with any foreclosure or forbearance. Such appraisal fees shall be payable on demand, shall accrue interest at the default rate set forth in the Note(s) following demand and shall be secured by the security documents executed by Borrower.

10.08. **Attorneys' Fees.** In the event Borrower shall default in any of its obligations hereunder and the Bank finds it necessary to employ an attorney to assist in the enforcement or collection of the indebtedness of Borrower to Bank, to enforce the terms and provisions of the Loan Documents, to modify the Loan Documents, or in the event Bank voluntarily or otherwise should become a party to any suit or legal proceeding (including a proceeding conducted under the Bankruptcy Code), the Borrower agrees to pay all reasonable attorneys' fees incurred by Bank and all related costs of collection or enforcement that may be incurred by Bank. Borrower shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is actually commenced.

10.09. **Bank Making Required Payments.** In the event Borrower shall fail to maintain insurance, pay taxes or assessments, costs and expenses which Borrower is, under any of the terms hereof or of any Loan Documents, required to pay, or fail to keep any of the properties and assets constituting collateral free from new security interests, liens, or encumbrances, except as permitted herein, Bank may at its election make expenditures for any or all such purposes and the amounts expended together with interest thereon at the Default Rate, shall become immediately due and payable to Bank, and shall have benefit of and be secured by the collateral; provided, however, the Bank shall be under no duty or obligation to make any such payments or expenditures.

10.10. **Right of Offset.** Any indebtedness owing from Bank to Borrower may be set off and applied by Bank on any indebtedness or liability of Borrower to Bank at any time and from time to time after maturity, whether by acceleration or otherwise, and without demand or notice to Borrower.

10.11. **UCC Authorization.** Borrower authorizes Bank to file such UCC Financing Statements describing the collateral in any location deemed necessary and appropriate by Bank.

10.12. **Modification and Renewal Fees.** Bank may, at its option, charge any fees for modification, renewal, extension, or restatement of any terms of the Note(s) and the other Loan Documents not prohibited by applicable law.

10.13. **Conflicting Provisions.** If provisions of this Agreement shall conflict with any terms or provisions of any of the Note(s), security document(s) or any schedule attached hereto, the provisions of such Note(s), security document(s) or any Schedule attached hereto, as appropriate, shall take priority over any provisions in this Agreement.

10.14. **Notices.** Any notice permitted or required by the provisions of this Agreement shall be deemed to have been given when delivered in writing to the Market President or any Vice President of Bank at its offices at 1401 N. Collins, Arlington, Texas 76011 and 333 Clay Street, Suite 3800, Houston, Texas 77002, and to the Chief Financial Officer of the Borrower at its offices in Sugar Land, Texas when sent by certified mail and return receipt requested or by recognized courier. Unless otherwise required by law, if there is more than one Borrower, any notice given by Bank to any Borrower shall be deemed to be notice given to all Borrowers.

10.15. **Consent to Jurisdiction.** Borrower hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement may be instituted in the District Court in Harris County, Texas, or the United States District Court for the Southern District of Texas. Borrower consents to the jurisdiction of such courts and waives any objection relating to the basis for personal or in rem jurisdiction or to venue which Borrower may now or hereafter have in any such legal action or proceedings.

10.16. **Counterparts.** This Agreement may be executed by one or more parties on any number of separate counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

10.17. **Entire Agreement.** The Loan Documents embody the entire agreement between Borrower and Bank with respect to the Loan(s), and there are no oral or parole agreements existing between Bank and Borrower with respect to the Loan(s) which are not expressly set forth in the Loan Documents.

10.18. **Indemnity.** Borrower hereby agrees to indemnify and hold Bank, its affiliates, their successors and assigns and their respective directors, officers, employees and shareholders harmless from and against, any loss, damage, lawsuit, proceeding, judgment, cost, penalty, expense (including all reasonable in-house and outside attorneys' fees, whether or not suit is brought, accountants' fees and/or consultants' fees) or liability whatsoever arising from or otherwise relating to the closing, disbursement, administration or repayment of the Loan(s), including without limitation: (i) Borrower's failure to comply with the terms of this Agreement and the other Loan Documents (ii) the breach of any representation or warranty made to Bank in this Agreement or in any other Loan Documents now or hereafter executed in connection with the Loan(s); (iii) the violation of any covenant or agreement contained in this Agreement or any of the other Loan Documents; provided, however, that the foregoing indemnification shall not be deemed to cover any such loss, damage, lawsuit, proceeding, cost, expense or liability which is finally determined by a court of competent jurisdiction to result solely from the Bank's gross negligence or willful misconduct. This indemnity obligation shall survive the payment of the Loan(s) and the termination of this Agreement.

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10.19. **WAIVER OF JURY TRIAL.** UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, THE UNDERSIGNED HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND BANK, IN EACH CASE WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. BORROWER AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT BANK MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN(S) AND ENTER INTO THIS AGREEMENT. FURTHER, THE UNDERSIGNED HEREBY CERTIFY THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION. BORROWER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THIS PARAGRAPH, THAT IT FULLY UNDERSTANDS ITS TERMS, CONTENT AND EFFECT, AND THAT IT VOLUNTARILY AND KNOWINGLY AGREES TO THE TERMS OF THIS PARAGRAPH.

10.20. **Required Information for a New Loan.** To help the government fight the funding of terrorism and money laundering activities, federal law requires Bank to obtain, verify and record information that identifies each person or entity obtaining a loan including the Borrower's legal name, address, employer identification number, organizational documents or other identifying documents. Failure to provide the required information will result in a violation of the U.S. Patriot Act and will constitute a default under this instrument or agreement. In addition, no Borrower, any of its affiliates, or any of their respective directors, officers, managers, partners, or any other authorized representatives is named as a "Specially Designated National and Blocked Person", on the list published by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) at its official website.

10.21. **Correction of Errors; Further Assurances.** Borrower will cooperate with Bank to correct any errors in this Agreement, the Note or other Loan Documents and shall execute such documentation as is necessary to do so. In addition, Borrower shall cooperate fully with Bank and execute such further instruments, documents and agreements, and shall do any and all such further acts, as may be reasonably requested by Bank to better evidence and reflect the transactions described herein and contemplated hereby and to carry into effect the intent purposes of this Agreement, the Note and the other Loan Documents, including without limitation the granting and/or perfecting of a security interest in the Collateral.

10.22. **Consent to Loan Participation.** Borrower agrees and consents to Bank's sale or transfer, whether now or later, of one or more participation interests in the Loan(s) to one or more purchasers, whether related or unrelated to Bank, as to which Borrower has received sixty (60) days' prior notice from Bank. Bank may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Bank may have about Borrower or about any other matter relating to the Loan(s), and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower hereby waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan(s) and will have all the rights granted under the participation agreement(s) governing the sale of such participation interests. Borrower waives all rights of offset or counterclaim, whether now existing or hereafter arising, against Bank or against any purchaser of such a participation interest and unconditionally agrees that either Bank or such purchaser may enforce Borrower's obligation under the Loan(s) irrespective of the failure or insolvency of any holder of any interest in the Loan(s). Borrower agrees that the purchaser of any such participation interest may enforce its interest irrespective of any personal claims or defenses that Borrower may have against Bank. Any purchaser of a participation interest in the Loan(s) may exercise a right of setoff against Borrower to the same extent as Bank has such right.

10.23. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, such finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.



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10.24. **Construction.** Each party hereto hereby acknowledges that all parties hereto participated equally in the drafting and/or negotiation of this Agreement and that, accordingly, no court when interpreting this Agreement shall construe it more stringently against one party than the other.

10.25. **Time of the Essence.** Time is of the essence in the performance of this Agreement and the other Loan Documents.

10.26. **Non-Applicability of Chapter 346; Selection of Optional Interest Rate Ceilings.** Each of Borrower and Bank hereby agrees that except for Section 346.004 thereof, the provisions of Chapter 346 of the Texas Finance Code (Vernon's Texas Code Annotated), as amended from time to time (regulating certain revolving credit loans and revolving tri-party accounts) shall not apply to this Agreement or any of the other Loan Documents. To the extent that any of the optional interest rate ceilings provided in Chapter 303 of the Texas Finance Code may be available for application to any loan(s) or extension(s) of credit under this Agreement for the purpose of determining the maximum allowable interest hereunder pursuant to the Texas Finance Code, the applicable "monthly ceiling" (as such term is defined in Chapter 303 of the Texas Finance Code) from time to time in effect shall be used to the extent that it is so available, and if such "monthly ceiling" at any time is not so available then the applicable "weekly ceiling" (as such term is defined in Chapter 303 of the Texas Finance Code) from time to time in effect shall be used to the extent that it is so available.

10.27. **Reimbursement by Bank.** Upon Borrower's demand, Bank shall promptly reimburse Borrower for 50% of Borrower's attorney's fees of Borrower's outside counsel incurred by Borrower prior to the date hereof in connection with the preparation and negotiation of the Loan Documents, and the closing of any of the transactions contemplated thereby; provided, that Borrower shall provide to Bank satisfactory documentation evidencing such attorney's fees prior to any such reimbursement by Bank and, in any event, no later than thirty (30) days after the date hereof.

10.28. **Waiver of Rights under Texas Deceptive Trade Practices Act.** BORROWER HEREBY WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT, SECTION § 17.41 ET SEQ. TEXAS BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF THE BORROWER'S OWN SELECTION, BORROWER VOLUNTARILY CONSENTS TO THIS WAIVER. BORROWER EXPRESSLY WARRANTS AND REPRESENTS THAT IT (A) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION RELATIVE TO BANK, AND (B) HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Bank and Borrower have caused this Agreement to be duly executed all as of the date first above written.

WITNESS:

**APPLIED OPTOELECTRONICS, INC.**

Name of Corporation

By:

Stefan Murry

Title:

Chief Financial Officer

By:

David Kuo

Title:

Vice President, General Counsel and Secretary

WITNESS:

**BRANCH BANKING AND TRUST COMPANY**

By:

Bannon S Fitch

Name:

Bannon E Fitch

Title:

SVP

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**SCHEDULE DD TO BB&T LOAN AGREEMENT**

This Schedule DD is an attachment to and a part of the Loan Agreement (the "Loan Agreement") dated September 28, 2017, among **BRANCH BANKING AND TRUST COMPANY** ("Bank"), **APPLIED OPTOELECTRONICS, INC.** ("Borrower", whether one or more).

DD.01. **Definitions.** In addition to the words and terms defined elsewhere in this Schedule DD, the Loan Agreement and the Uniform Commercial Code of Texas, as amended from time to time, (the "UCC") the following terms shall have the following specified meanings:

- (a) **Account Debtor.** Any Person obligated to Borrower on an Account.
- (b) **Account(s).** Accounts shall have the meaning attributed to such term in the UCC, and shall also include any right to payment of a monetary obligation, whether or not earned by performance, including without limitation any receivable, contract right, note, draft, instrument, acceptance, chattel paper, lease, or other writing or open account resulting from the sale, lease, license, assignment or other disposal of property by Borrower, or from services rendered or to be rendered by Borrower.
- (c) **Advance Rate.** The percentage of the total value of Eligible Investment Grade Accounts, Eligible non-Investment Grade Accounts, Eligible Inventory, or Other Collateral that Bank will lend to Borrower, as set forth in Section DD.02.
- (d) **Asset Based Lending Credit Line Sweep Services Agreement.** If applicable, that agreement between Bank and Borrower whereby Borrower agrees that all remittances in payment of Accounts shall be deposited in its designated Collateral Reserve Account, Operating Account, or Medicare Receivables Account, as applicable, and shall be administered and applied in accordance with the ABL Credit Line Sweep Services Agreement. This agreement is to be read in conjunction with, and is a part of, the Treasury Management Agreement, the Loan Agreement and this Schedule DD.
- (e) **Asset Based Sweep Services Attachment.** If applicable, that agreement between Bank and Borrower whereby Borrower agrees that all remittances in payment of Accounts which are deposited to the Collateral Reserve Account will be applied to the outstanding Line of Credit, as well as other provisions of the Loan Documents. This agreement is to be read in conjunction with, and is a part of, the Treasury Management Agreement, the Loan Agreement, and this Schedule DD.
- (f) **Availability.** The lesser of the Line of Credit Commitment Amount or Collateral Loan Value reduced by the sum of (i) the principal balance outstanding under the Line of Credit, (ii) the Letter of Credit Exposure Reserve, and (iii) the Availability Reserve as determined by Bank from the most recent Loan Base Report and otherwise in the sole discretion of Bank after consideration of Collections.
- (g) **Availability Reserve.** A reserve against Availability determined from time to time by Bank, in its sole discretion, to reflect events, conditions, contingencies or risks or other loans of Bank which without limitation do or may affect the Collateral Loan Value, the business prospects of Borrower or any Account Debtor, or the security interest of Bank, including enforceability, perfection and the priority thereof.
- (h) **Bill and Hold.** An Account generated by the sale of goods for which an invoice has been issued to the buyer, but the goods represented by such Account remain undelivered to the buyer and/or under the control of Borrower or Borrower's representative.
- (i) **Collateral.** Collateral shall mean the assets and property described in the Security Agreement and/or any other Loan Document, including, without limitation, Borrower's Accounts, Inventory and Other Collateral.
- (j) **Collections.** Collections shall be deemed to include Proceeds of Collateral, in any form received by Bank pursuant to a Lockbox Agreement, or deposited in a Collateral Reserve Account or an Operating Account or a Medicare Receivables Account or other account maintained with Bank, or any other account maintained for the benefit of Bank, such as a blocked account, which Collections shall be the exclusive and sole property of Bank to the extent applied to the outstanding balance of the Line of Credit.

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- (k) Collateral Loan Value. The aggregate value of the Advance Rate as applied to the Eligible Accounts, the Advance Rate as applied to the Eligible Inventory and the Advance Rate applied to the value of Other Collateral, if any.
- (l) Collateral Reserve Account. The demand deposit account maintained with Bank by Borrower into which all proceeds of the Collateral shall be deposited and to which only Bank will have access. On the date hereof, the Collateral Reserve Account number with respect to the Line of Credit (domestic and/or foreign) is XXXXXXX (domestic) and N/A (foreign) and shall be deemed to include any substitute or replacement account at Bank.
- (m) Contra Account. An Account subject to offset, in the sole discretion of Bank, by an Account Debtor of Borrower.
- (n) Credit Insurance. A policy of credit insurance, satisfactory to, and approved by, Bank, in its sole discretion, insuring Accounts collaterally assigned to Bank naming Bank as a "loss payee."
- (o) Cross Aging Rule. Should any Account due Borrower from an Account Debtor have 50% (upon notice, such other percentage as Bank in its discretion shall determine) or more of their total aggregate Accounts aged in excess of the Eligibility Period, then all Accounts from such Account Debtor shall be deemed ineligible.
- (p) Eligible Account and/or Eligible Inventory. An Eligible Account is an Eligible Investment Grade Account or an Eligible non-Investment Grade Account, as applicable, and Eligible Accounts are, collectively, Eligible Investment Grade Accounts and Eligible non-Investment Grade Accounts; and Eligible Inventory is Inventory which is not Ineligible Inventory, as defined in Section DD.04 hereof.
- (q) Eligible Investment Grade Account. An Account which is not an Ineligible Account, as defined in Section DD.03 hereof, and which is owing from any Person that has a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P, or if the Person is not then rated by Moody's or S&P, an equivalent rating by any other rating agency; provided, that Borrower shall identify in each Loan Base Report each Account that constitutes an Eligible Investment Grade Account at the time of delivery of such Loan Base Report.
- (r) Eligible non-Investment Grade Account. An Account which is not an Ineligible Account, as defined in Section DD.03 hereof, and which is not an Eligible Investment Grade Account.
- (s) Eligibility Period. The Eligibility Period for any Account shall mean not more than 90 days from the original invoice date.
- (t) Exam. Those inspections, testings and examinations on the premises of Borrower or wherever books, records or Collateral may from time to time be located, including, but not limited to, the inspection of Inventory, and standard testing of such books and records by Bank's representatives, at any time during normal business hours, and with or without prior notice to Borrower from Bank, as provided in Section DD.06(b).
- (u) Excess Inventory. That level of Inventory on hand determined by Bank to be in excess of a twelve (12) months supply of Borrower's requirements therefor unless, upon written notice by Bank, Bank in its discretion shall determine a greater or lesser level of Inventory.
- (v) Fees. Those fees which Borrower will pay to Bank in conjunction with Bank's asset based lending services as set forth in Section DD.07 hereof and the Schedule of Charges attached hereto, or any other fees associated with the Line of Credit, whether or not actual loan obligations exist, while the Loan Agreement is in force.
- (w) Foreign Accounts. Any Account due from any Person located outside the fifty states comprising the United States of America and the District of Columbia unless the Account is due from a Person located in a country, commonwealth and/or possession identified in Section DD.02(e) hereof; provided, that, for the avoidance of doubt, any Account due from XXXXXX or its subsidiary, XXXXXX, shall not be deemed a Foreign Account hereunder.
- (x) Government. The United States of America or any state or political subdivision thereof, or any department, agency, authority, board or instrumentality thereof.

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- (y) Government Account. Any Account owed by the Government.
- (z) Ineligible Accounts and/or Ineligible Inventory. See the meanings given in Sections DD.03 and DD.04 hereof.
- (aa) Intellectual Property. Property of any Person constituting under any applicable federal or state law a patent, copyright, trademark, service mark, trade name, trade secret, or license or other right to use any of the foregoing.
- (bb) Inter-Company Account. Any Account owing from any affiliate of Borrower, including, without limitation, any owner, member, partner, joint venturer, shareholder, officer, director, employee, agent, or other Person affiliated with or related to Borrower.
- (cc) Inventory. Inventory shall have the meaning attributed to such term under the UCC, and shall also include goods which are leased or held by Borrower for sale or lease as lessor or furnished under a contract of service, as well as goods, finished goods, raw materials, work-in-process, and materials to be used and/or consumed in a business and proceeds thereof including Accounts and Chattel Paper.
- (dd) Inventory Caps. The maximum loan amount Bank may lend against the Eligible Inventory, as set forth in Section DD.02(c).
- (ee) Letter of Credit. Any Letter of Credit issued by Bank on behalf of Borrower, as applicant; provided, however, inclusion of this definition shall not imply, or be construed as, a commitment by Bank to issue any Letters of Credit.
- (ff) Letter of Credit Exposure Reserve. At any given date, the aggregate face amount of outstanding Letters of Credit on such date (as such amount may be reduced from time to time by Bank, in its sole discretion, to account for partial draws), plus the aggregate amount of drafts drawn under or purporting to be drawn under Letters of Credit that have been paid by Bank and for which Bank has not been reimbursed.
- (gg) License Agreement. An agreement between Borrower and Licensor pursuant to which Borrower is authorized to use such Licensor's Intellectual Property in connection with the manufacturing, sale or other transfer or distribution of Inventory.
- (hh) Licensor. Any Person from whom Borrower obtains a License Agreement.
- (ii) Licensor/Bank Agreement. An agreement satisfactory to Bank among Borrower, Bank and Licensor pursuant to which Licensor consents and authorizes Bank to enforce its security interests and liens against Inventory with the benefit of the Intellectual Property regardless of whether Borrower has defaulted under a License Agreement therefor.
- (jj) Line of Credit. The line of credit made available to Borrower by Bank pursuant to the Loan Agreement.
- (kk) Line of Credit Commitment Amount. The maximum amount of the Line of Credit which Bank has agreed to make available to Borrower pursuant to the Loan Agreement.
- (ll) Loan Base Report. That report on Bank's standard form, or in a form otherwise acceptable to Bank, to be prepared, signed, dated and delivered by Borrower in accordance with Bank's instructions, and submitted to Bank by Borrower at specified intervals and/or occasions, and detailing pertinent information as regards Accounts and/or Inventory and/or Other Collateral, Reserves, Collateral Loan Value, outstanding Line of Credit balance, and Availability.
- (mm) Lockbox Agreement. That agreement on Bank's standard form, or in a form otherwise acceptable to Bank, to be executed by Borrower relating to the provision for lockbox services and requirements.
- (nn) Medicare Receivable. A Government Account arising from the provision of Medicare products and services by Borrower as an eligible provider and/or supplier of Medicare products or services.

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(oo) Medicare Receivables Account. A deposit account in Borrower's name only maintained at Bank into which proceeds/payments of Medicare Receivables shall be deposited; and, notwithstanding any provision in the Loan Agreement, this Schedule or other agreements between Borrower and Bank, Bank shall not have a right of offset, and by execution hereof does hereby waive, such right of offset to the proceeds/payments of Medicare Receivables deposited to such account.

(pp) Moody's. Moody's Investors Service, Inc., and its successors.

(qq) Operating Account. Borrower's demand deposit account at any time maintained with Bank, currently account number XXXXXX or any substitute or replacement account at Bank.

(rr) Other Collateral. Collateral that shall be included in Collateral Loan Value, other than Accounts or Inventory, as specifically approved and determined by Bank in its sole discretion.

(ss) Person. Any individual, corporation, general or limited partnership, limited liability company or partnership, limited liability limited partnership, trust, unincorporated organization, association, joint venture, or the federal government, or any state, or political subdivision, or any department, agency, authority, board or instrumentality thereof.

(tt) Proceeds. Proceeds shall have the meaning given to it under the UCC and shall include without limitation the collections and distributions of Collateral, cash or non-cash.

(uu) Reserves. Aggregate deductions from the Collateral Loan Value and/or Availability, including, but not limited to, Letter of Credit Exposure Reserve and the Availability Reserve, in each case as determined by Bank from time to time in its sole discretion.

(vv) S&P. Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, and its successors.

(ww) Schedule of Charges. The Schedule of Charges attached hereto and incorporated herein, as identified in Section DD.07(g).

**DD.02. Advance Rates/Advances/ Prepayment and Other Provisions.**

Bank agrees that the Advance Rates to be used to calculate the Collateral Loan Value shall be:

- (a) 90% against the Eligible Investment Grade Accounts.
- (b) 85% against the Eligible non-Investment Grade Accounts.
- (c)

Against the Eligible Inventory as follows:	Inventory Sublimits:
50% Finished Inventory	\$
50% Raw Materials Inventory	\$
50% Work in Process Inventory	\$
___% In Transit Inventory	\$
___% Other Eligible Inventory {Describe}	\$
Subtotal:	\$ _____

Inventory values will not exceed the lower of cost or market and, if required by Bank, will be reduced by the LIFO reserve. The aggregate loan advances against Eligible Inventory shall not exceed at any time the foregoing Inventory Sublimits or Subtotals or an Aggregate Inventory Sublimit of the lesser of (i) \$7,500,000 and (ii) 50% of Availability derived from the then outstanding Eligible Accounts (the "Inventory Caps").

(d) Other Collateral may be included in the Collateral Loan Value as approved from time to time by Bank, together with an Advance Rate determined from time to time by Bank.

(e) Any Account due from a Person located in the following identified countries, commonwealths, and/or possessions shall not be deemed a Foreign Account: (list) \_\_\_\_\_.

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(f) Notwithstanding that the following Account Debtor(s) are ineligible pursuant to the terms hereof, such Account Debtor(s) shall nonetheless be deemed eligible by Bank, subject to any limitations and/or advance provisions set forth below, until Bank, upon written notice, in its sole discretion, shall provide otherwise:

<u>Account Debtor /Address</u>	<u>Limitations/Advance Provisions</u>
_____	_____
_____	_____
_____	_____
_____	_____

Bank reserves the right, upon notice, in its sole discretion, to amend the Eligibility Period, Inventory Caps, Advance Rates, Reserves, or the provisions of Section DD.02(e) and (f) at any time; and, the Loan Base Report, upon receipt by Bank, shall be subject to Bank’s satisfactory review, acceptance or correction.

Borrower hereby authorizes Bank, and Bank hereby agrees to (i) make advances under the Line of Credit automatically, without any request by Borrower upon the presentment of items drawn against the Operating Account, provided that the Availability, as shown on a current acceptable Loan Base Report as required herein, and otherwise determined by Bank in its sole discretion after consideration of Collections, is sufficient to cover such advances, and/or (ii) fund the Operating Account based on request(s) for advances from Borrower to Bank made orally or in writing, provided that the Availability is sufficient to cover such advances. Borrower shall submit a completed Loan Base Report to Bank as required, so long as the Line of Credit shall exist, irrespective of the amount of the Line of Credit remaining unpaid and outstanding. Borrower hereby releases Bank from any liability or obligation for and agrees to indemnify and hold Bank harmless from and against any loss, cost, damage or expense (including, without limitation, Bank's reasonable attorneys' fees) incurred or suffered as a result of the payment by Bank of any item drawn against Borrower's checking account that is subsequently determined to have been improperly paid for any reason, except for the gross negligence or willful misconduct of Bank, as finally determined by a court of competent jurisdiction. Bank also reserves the right, upon notice, in its sole discretion, to discontinue the automatic payment of items presented to Bank, and to require written or oral advance requests to be made by Borrower, and should Bank decide to fund any such advances (“Manual Funding”) Bank shall be authorized upon written notice to Borrower to assess Borrower a Manual Funding fee in an amount to be set forth on the Schedule of Charges.

Bank is authorized (without any further request from Borrower) to advance on behalf of Borrower as a borrowing under the Line of Credit all sums required to be paid by Borrower to Bank in respect of any Letter of Credit pursuant to the terms of any Application for Letter of Credit (including, without limitation, all fees associated therewith), but Bank shall have no obligation to make such an advance.

Bank may debit the amount of any payment due pursuant to the Loan Agreement, this Schedule DD or any other Loan Document from the Operating Account, any deposit account or other account of Borrower maintained with Bank, but Bank shall have no obligation to do so If, at any time during any reporting period and pursuant to the most recent Loan Base Report received by Bank, the principal balance outstanding under the Line of Credit exceeds the lesser of the approved maximum amount of the Line of Credit Commitment Amount or the Collateral Loan Value reduced by the Reserves (herein an “Overadvance”), Borrower shall immediately prepay the Line of Credit to the extent necessary to eliminate such excess. For so long as the Overadvance shall exist, and without prejudice to any other rights Bank may have hereunder, Bank is hereby authorized upon written notice to Borrower to assess an Overadvance fee determined by Bank in its discretion in an amount to be set forth on the Schedule of Charges.

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**DD.03. Ineligible Accounts.**

Ineligible Accounts shall include the following:

- (a) The amount of any Account remaining unpaid after the expiration of the applicable Eligibility Period.
- (b) Any Account which is a Contra Account.
- (c) Any Account subject to the Cross Aging Rule.
- (d) Any Account which is evidenced by a promissory note, trade acceptance draft or similar instrument, or which has been bonded, arises from a bonded contract or becomes subject to the claims of a surety under a suretyship or other similar arrangements, including performance and payment bonds.
- (e) Any Inter-Company Account.
- (f) Any Foreign Account, unless such Account shall be insured by Credit Insurance, or such Account shall be supported by a letter of credit for the benefit of and acceptable to Bank, or such Account shall be eligible pursuant to a duly executed Loan Authorization Agreement issued by the Small Business Administration of the United States Government in favor of Bank, or such Account is eligible pursuant to a duly executed Borrower Agreement issued by the Export-Import Bank of the United States in favor of Bank, or such Account is otherwise expressly approved in writing by Bank.
- (g) Any Account representing a Bill and Hold or similar arrangement.
- (h) Any Government Account due from the Government for which the proper Assignment of Claims form, governmental consents, approvals, or Notice of Assignment form have not been fully executed or warrant issued for payment thereof within the time period required by Bank if such assignments, consents, approvals or warrants for payment shall be required by Bank in writing.
- (i) Any Account due from the Government which, by contract or law, precludes and/or prohibits the collateral assignment of such Account, unless such prohibition is unenforceable pursuant to Sections 9-406, 9-407, 9-408 or 9-409 (or any successor provision or provisions) of the UCC, other applicable law or principles of equity.
- (j) Any Account including a Government Account, which, at the discretion of Bank, is deemed doubtful for collection for any reason or unenforceable, including, but not limited to, any Account which is subject to any defense, claim, counterclaim, escrow arrangement, prior assignment, dispute, return, credit worthiness concern, legal proceeding (whether in process, pending or threatened), or other condition, consent or requirement for the payment thereof, or any Account which is not free of all liens, claims, encumbrances, charges, rights and interest, except those in favor of Bank; or any Account which represents deposits or progress billings (unless expressly approved by Bank in writing), or any Account which is not payable in U.S. Dollars.
- (k) That portion of Accounts due from an Account Debtor which is in excess of a concentration limit of fifteen percent (15%) (or, in the case of Accounts due from (i) XXXXXX and its subsidiary, XXXXXX, collectively, fifty percent (50%), (ii) each of XXXXXX, XXXXXX and XXXXXX, and their respective affiliates, forty percent (40%), and (iii) each of XXXXXX and XXXXXX, and their respective affiliates, thirty percent (30%)) of Borrower's aggregate dollar amount of all outstanding Accounts.
- (l) That portion of Accounts which represent a credit balance on any Account outside of the Eligibility Period.
- (m) Any Chattel Paper unless expressly made an Eligible Account in writing by Bank.
- (n) Accounts that Bank does not consider to be trade Accounts (such as lease payments or notes receivable from Account Debtors given in satisfaction of prior Accounts); or that portion of any Account constituting retainage that has been withheld by the Account Debtor pending completion of the contract; or that portion of any Account constituting a service charge or similar charge imposed by Borrower for the extension of credit to the Account Debtor.



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- (o) Any Account that has been improperly billed, or owing from any Account Debtor who is the subject of any bankruptcy, insolvency or a similar process or proceeding.
- (p) Any Account that is subject to additional approval prior to payment or otherwise subject to set-off.
- (q) Any At-Risk” Accounts (i.e., Accounts arising from work for which payment from an Account Debtor is not certain and which requires approval), unless prior written approval of such work is received from Bank.
- (r) Any Account from an Account Debtor who has been allowed to convert any existing Account to terms beyond the original invoice due date howsoever evidenced or documented.
- (s) Any Account representing or arising from a debt obligation or a loan (other than normal and customary trade payables to the extent constituting indebtedness).
- (t) Any Account otherwise deemed ineligible by Bank in its reasonable discretion from the perspective of a secured, asset-based lender.

Bank reserves the right, upon notice, in its sole discretion, to amend the terms of the Ineligible Accounts at any time.

**DD.04. Ineligible Inventory.**

Ineligible Inventory shall include the following:

- (a) Inventory not legally owned by Borrower, including but not be limited to, goods on consignment from any supplier, vendor, and/or individual, or goods on demonstration and/or for trial, and not subject to the first lien priority security interest in favor of Bank.
- (b) Inventory not in new and/or salable condition, including but not limited to, damaged goods, goods used by Borrower and/or potential buyers, goods with missing components/parts and goods not in a whole condition.
- (c) Inventory which has been held by Borrower more than 360 days without being sold and/or leased.
- (d) Inventory representing work-in-process unless authorized by Bank pursuant to DD.02(c).
- (e) Inventory deemed by Bank, at its sole discretion, to cause and/or represent unusual danger to the health and/or safety of individual(s) and/or the environment.
- (f) Inventory which violates any federal law and/or laws of the city, county, or state where the goods are stored.
- (g) Inventory of which Borrower is the legal owner but which is being stored and/or housed at a location other than the place of business of Borrower or in transit (unless otherwise approved by Bank in writing including conditions thereof) or is otherwise authorized as set forth hereinabove in Section DD.02(c).
- (h) Inventory deemed otherwise ineligible by Bank in its reasonable discretion from the perspective of a secured, asset-based lender.
- (i) Inventory subject to a security interest, lien or other encumbrance in favor of any other Person other than Bank.
- (j) Inventory, unless such Inventory is eligible pursuant to a duly executed Loan Authorization Agreement issued by the Small Business Administration of the United States Government in favor of Bank, or such Inventory is eligible pursuant to a duly executed Borrower Agreement issued by the Export-Import Bank of the United States in favor of Bank, or such Inventory is otherwise expressly approved in writing by Bank.
- (k) Inventory determined by Bank to be Excess Inventory.

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- (l) Inventory subject to a License Agreement for which Bank shall have required in writing a Licensor/Bank Agreement and such agreement shall not have been obtained.
- (m) Inventory held at 13139 Jess Pirtle Blvd, Sugar Land, Texas 77478 having a value in excess of \$15,000,000.
- (n) Inventory held at a location other than 13139 Jess Pirtle Blvd, Sugar Land, Texas 77478.

Bank reserves the right, upon notice, in its sole discretion, to amend the terms of the Ineligible Inventory at any time.

**DD.05. Proceeds of Collateral and Application of Proceeds.** (Check either (b) or (c); and (a) if applicable.)

- (a) If, during any period of two (2) consecutive calendar months, less than 80% of proceeds of Eligible Accounts deposited into the Collateral Reserve Account are Non-Electronic Deposits (as hereinafter defined) (any such occurrence, a "Lockbox Trigger Event"), Borrower shall promptly execute a Lockbox Agreement with Bank and shall notify, or cause to be notified, all Account Debtors to forward all Non-Electronic Deposits to the lockbox in accordance with such Lockbox Agreement, in each case unless (i) within thirty (30) Business Days after the last day of such two (2) calendar month period, Borrower notifies Bank that all Accounts owed by one or more Account Debtors should be deemed to be Ineligible Accounts (Borrower acknowledging that all such Accounts shall thereafter constitute Ineligible Accounts), and (ii) the Lockbox Trigger Event would not have occurred if all Accounts owing by such Account Debtor or Account Debtors (as applicable) had been Ineligible Accounts at all times during such two (2) calendar month period. Borrower shall pay on demand all fees, costs and expenses of such lockbox, including set up and administration thereof. As used herein, Non-Electronic Deposits shall mean proceeds of Eligible Accounts received by Borrower by means other than wire transfer or automated clearing house transfer deposited into the Collateral Reserve Account.
- (b) Borrower agrees to deposit all Proceeds of the Collateral in the Collateral Reserve Account, except that Medicare Receivables proceeds shall be deposited to the Medicare Receivables Account. Promptly after the date hereof, Borrower shall notify, or cause to be notified, all Account Debtors to forward Electronic Deposits to the Collateral Reserve Account, and shall cause substantially all of such Account Debtors to comply with such notification on or before the sixtieth (60<sup>th</sup>) day following the date hereof. As used herein, Electronic Deposits shall mean proceeds of Accounts received by Borrower by wire transfer or automated clearing house transfer.
- (c) Borrower agrees to deposit all Proceeds of the Collateral in the Operating Account.

Borrower agrees that all Proceeds shall be applied as described in the Loan Documents (including, without limitation, the Asset-Based Sweep Services Attachment or the ABL Credit Line Sweep Services Agreement, if applicable). Bank reserves the right, in its sole discretion, to require Borrower to implement DD.05 (b) and/or DD.05 (a) immediately upon written notification from Bank.

**BB&T**  
**SCHEDULE DD TO BB&T LOAN AGREEMENT**

**DD.06. Reporting / Exam.**

(a) Reporting. (Check all that apply)

Borrower shall provide the following reports, financial statements, list of Account Debtors and addresses and other reports to Bank upon execution hereof and thereafter as indicated below (herein the "Required Information"). Unless and until Bank shall agree otherwise, such Required Information shall be submitted to Bank electronically in non-scanned PDF format acceptable to Bank via the internet as an electronic record thereof or in such other format acceptable to Bank.

Daily	Weekly	Quarterly	Annually	Month-End	
		<input checked="" type="checkbox"/>		<input type="checkbox"/>	Quarterly/Monthly Loan Base Reports. Quarterly Loan Base Reports, prepared as of the end of each reporting period, provided, that (i) if at any time the outstanding balance of the Loan(s) is greater than twenty five percent (25%) of the Collateral Loan Value, Borrower shall deliver a monthly Loan Base Report, and (ii) Bank may require additional Loan Base Reports at any time, as determined in its sole discretion. Except as set forth below, Loan Base Reports are required for all loans covered by this Agreement no later than 20 days following each reporting period end. Additionally, all other required reports indicated below will also be due on the twentieth (20 <sup>th</sup> ) day of each reporting period.
<input type="checkbox"/>	<input type="checkbox"/>				Weekly/Daily Loan Base Reports. Weekly Loan Base Reports, based on information with an "as of" date no more than three (3) business days old when received by Bank, unless Daily Loan Base Reports, then no more than one (1) business day old when received by Bank. Sales and cash receipts journals shall accompany each report. The last Loan Base Report provided for any reporting period shall have an "as of" date consistent with Borrower's fiscal month end, subject to reconciling adjustments, if any, in the monthly reports hereinafter required.
		<input checked="" type="checkbox"/>		<input type="checkbox"/>	Accounts Aging based upon invoice date by the twentieth (20 <sup>th</sup> ) day of each reporting period; <u>provided</u> , that at any time Borrower is required to deliver a monthly Loan Base Report as described above, Borrower shall deliver a monthly Accounts Aging.
		<input checked="" type="checkbox"/>		<input type="checkbox"/>	Inventory Report by the twentieth (20 <sup>th</sup> ) day of each reporting period; <u>provided</u> , that at any time Borrower is required to deliver a monthly Loan Base Report as described above, Borrower shall deliver a monthly Inventory Report.
		<input checked="" type="checkbox"/>		<input type="checkbox"/>	Accounts Payable Aging by the twentieth (20 <sup>th</sup> ) day of each reporting period; <u>provided</u> , that at any time Borrower is required to deliver a monthly Loan Base Report as described above, Borrower shall deliver a monthly Accounts Payable Aging.
		<input checked="" type="checkbox"/>		<input type="checkbox"/>	Financial Statements, which shall be due on the forty-fifth (45 <sup>th</sup> ) day of each month/quarter as indicated.
			<input checked="" type="checkbox"/>		A list of Account Debtors with current addresses.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other: _____

**BB&T**  
**SCHEDULE DD TO BB&T LOAN AGREEMENT**

Borrower shall forward to Bank any of these reports at such other times as Bank may require them, upon notice to Borrower, and/or any other reports deemed necessary by Bank in its discretion to monitor the Collateral. Notwithstanding any provision to the contrary, if any, set forth in the Loan Agreement or any other Loan Document, the foregoing reporting requirements shall not be subject to notice of default by Bank, or right to cure by Borrower, it being expressly understood and agreed that timely receipt of same are material and fundamental to Bank's administration and funding of the Line of Credit. Upon written notice, Bank shall be authorized to impose a late reporting fee as determined by Bank for failure of Borrower to timely comply with the reporting requirements of this section.

(b) Exam. From time to time, but, unless an Event of Default or a material adverse change in Borrower's business, property, operations, financial condition or prospects has occurred and is continuing, not more frequently than once in any twelve (12) month period, as deemed necessary by Bank in its sole discretion to monitor Collateral, Borrower hereby authorizes Bank or any agent, employee or representative thereof to inspect, examine, and verify the Accounts, Inventory, and Other Collateral, examine and make copies of and make abstracts from all the records and books of account of, and visit the properties of, Borrower, and to discuss or communicate the affairs, finances, and Collateral generally of Borrower with any of Borrower's owners, officers, managerial employees, directors, shareholders, members or partners, as well as Borrower's independent accountants and consultants or with respect to any Collateral, any of its Account Debtors. Without expense to Bank, Bank may use any of Borrower's managerial personnel, premises and equipment (including, without limitation, computer equipment, programs and computer readable media) as deemed necessary by Bank to conduct such Exam. If an Event of Default or such a material adverse change has occurred and is continuing, Bank shall have the right to conduct such additional exams as it deems necessary in its sole discretion.

**DD.07. Fees.**

- (a) (Check either (i) or (ii), as applicable)
- (i) Borrower shall pay to Bank the sum of \$0.00 per N/A as a fee for the use of Bank's asset based lending services, which shall be in addition to any fees or other charges for the treasury services of Bank. This fee may be changed by written notice to Borrower.
  - (ii) Borrower shall pay to Bank in advance each year during the term hereof a non refundable fee of \$0.00 for the use of Bank's standard asset based lending services and standard treasury management services, including an operating and sweep account, online access, collateral control account and lockbox services. In addition, Borrower will pay to Bank each month per item fees and for any additional products provided to Borrower by Bank. The fees provided for herein may be changed by Bank upon written notice to Borrower.
- (b) Borrower shall pay to Bank for each Exam of Borrower conducted after the date of the Loan Agreement an examination fee plus expenses such as, but not limited to, travel time, specialized equipment needed to count and/or value goods pledged as Collateral, the use of outside firms to perform any Exam as deemed necessary by Bank in its sole discretion to monitor Collateral, with said reimbursement being represented by receipts and/or listing of expense(s) submitted to Borrower by Bank along with Bank's invoice for reimbursement. Such examination fee shall be in an amount to be set forth on the Schedule of Charges.
- (c) Borrower shall pay to Bank the actual cost of any appraisal of Inventory and/or Other Collateral performed by an independent appraiser as required by Bank together with any fee assessed by Bank for the review thereof.
- (d) Borrower shall pay to Bank the actual costs and fees incurred or imposed by Bank associated with Bank's protection of the Collateral.
- (e) Bank in its discretion upon written notice to Borrower may charge a late reporting fee for Borrower's failure to provide timely reports required under Section DD.06 in an amount to be set forth on the Schedule of Charges.
- (f) Bank in its discretion upon written notice to Borrower may charge an interim reporting fee in an amount to be set forth on the Schedule of Charges in the event that Bank agrees, at the request of Borrower, to analyze a Loan Base Report for Availability purposes more than once during any applicable reporting period as set forth in Section DD.06(a).
- (g) The amounts of certain Fees generally authorized by this Schedule DD are set forth in the Schedule of Charges attached hereto. The Fees set forth in the Schedule of Charges shall be in addition to other fees specifically set forth in this Schedule DD or in the Loan Documents and not included in the Schedule of Charges. Bank reserves the right to change the Fees set forth in the Schedule of Charges upon written notice to Borrower.
- (h) Bank reserves the right to debit all Fees from the Operating Account of Borrower.

DD.08. **Events of Default.** In addition to those Events of Default appearing elsewhere in the Loan Agreement, each of the following shall constitute an additional Event of Default under the Loan Agreement:

- (a) The refusal by Borrower to permit Bank to inspect, examine or verify the books and records in accordance with the Exam provisions of set forth in Section DD.06(b).
- (b) Failure to (i) execute a Lockbox Agreement and notify Account Debtors to remit payments to the Lockbox, if and when required by Section DD.05(a), (ii) deposit checks or other remittances received in payment of Accounts into the Operating Account, or Medicare Receivables Account or Collateral Reserve Account at Bank, if and when required by Bank, or (iii) comply with the reporting requirements set forth in DD.06(a) hereof.
- (c) If an Overadvance shall exist, and Borrower fails immediately to prepay the Line of Credit by an amount sufficient to bring Borrower in compliance with this Schedule DD.
- (d) If the representations and warranties contained herein shall not be true and correct as of the date made or remade.
- (e) If Borrower fails to otherwise comply with any of the provisions of this Schedule "DD" or the Loan Agreement.

DD.09. **Other Provisions.**

- (a) **Notice.** Any notice required to be given herein shall be effective when made and, notwithstanding any provisions in the Loan Agreement to the contrary, may be made by hand delivery, confirmed facsimile or email transmissions, overnight courier, first class or certified mail return receipt requested.
- (b) **Operating Account.** Notwithstanding any provision in the Loan Agreement to the contrary, Borrower shall establish and maintain its Operating Account and Medicare Receivables Account with Bank during the term hereof.
- (c) **Certain Events.** Upon execution hereof and with each borrowing made hereunder pursuant to the Loan Base Report, Borrower shall be deemed to certify to Bank that (i) no Event of Default shall have occurred and be continuing, and no act, event or condition shall have occurred and be continuing that, with the giving of notice or passage of time or both, would be an Event of Default; (ii) no material adverse change shall have occurred in the financial or operating condition or prospects of Borrower since the date of the Loan Agreement; (iii) all Loan Documents shall have remained in full force and effect; and (iv) the representations and warranties contained in the Loan Agreement and the other Loan Documents shall be true and correct as of such date as if remade and redated as of such date (except for any representation or warranty that specifically relates to an earlier date, in which event such representation or warranty shall be true and correct as of such earlier date).
- (d) **Electronic Transactions.** Borrower and Bank agree that the electronic reporting of Required Information authorized herein shall constitute an agreement under the Uniform Electronic Transactions Act (the "Act"), in effect in the State of North Carolina; and any dispute or controversy relating to such reporting shall be interpreted in accordance with the provisions of the Act. With respect to such reporting, Borrower acknowledges that Bank shall not be responsible (i) for any failure, interruption, or delay in the performance of the internet; (ii) for any unauthorized, inadvertent, or fraudulent access, use or disclosure to third parties of the Required Information should it occur by error of transmission of Customer or reply thereto by Bank or otherwise; (iii) for Bank's failure to maintain security measures at the time of transmission or reply thereto to prevent unauthorized access, misappropriation and use of Required Information by third parties. Borrower expressly assumes the risk of unauthorized access, use or misappropriation by third parties of the Required Information transmitted to Bank via the internet and will hold harmless and indemnify Bank from any claim or expense, including reasonable attorneys fees associated therewith. Until Bank shall receive written notice otherwise from Borrower, the following persons may be contacted by Bank with any questions or issues about the Required Information:

**BB&T**  
**SCHEDULE DD TO BB&T LOAN AGREEMENT**

<u>Primary Contact Person</u>	<u>Secondary Contact Person</u>
<u>Stefan Murry</u> <i>Name</i>	<u>Jessica Hung</u> <i>Name</i>
<u>Chief Financial Officer</u> <i>Title</i>	<u>VP Finance and Controller</u> <i>Title</i>
<u>(281) 295-1806</u> <i>Telephone Number</i>	<u>(281) 295-1804</u> <i>Telephone Number</i>
<u>smurry@ao-inc.com</u> <i>E-mail Address</i>	<u>jhung@ao-inc.com</u> <i>E-mail Address</i>

- (e) **Signatures.** This Schedule “DD” may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Signature pages may be exchanged by facsimile or electronic mail and each party hereto agrees to be bound by its facsimile or PDF signature.
- (f) **Tombstone Advertisement.** Before Bank releases any “tombstone” or similar advertisement describing the type or amount of the Line of Credit and any related credit facility, Bank will provide a draft to Borrower, and Bank and Borrower will use commercially reasonable efforts to agree to an acceptable form of such “tombstone” or similar advertisement. So long as Bank and Borrower agree to such acceptable form of such “tombstone” or similar advertisement, Bank may, in such “tombstone” or similar advertisement, describe the type and amount of the Line of Credit and any related credit facility and Bank may use Borrower’s name and logo and any of its affiliate’s and/or subsidiaries’ names and logos in any business or marketing publications or campaigns for both internal and external purposes.
- (g) **Indemnification.** In any suit, proceeding or action brought by or against Bank relating to the Accounts, Borrower will save and hold Bank harmless from and against all expense (including, without limitation, reasonable attorneys’ fees), loss, damage or liability suffered by reason of any defense, set-off, counterclaim, recoupment or reduction of liability whatsoever of any Account Debtor thereunder, arising out of a breach by Borrower of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such Account Debtor or its successors from Borrower, and all such obligations of Borrower shall be and remain enforceable against and only against Borrower and shall not be enforceable against Bank. The foregoing obligation of Borrower to indemnify Bank shall survive the satisfaction of Borrower’s obligations to Bank and the termination of the Loan Agreement but shall not extend to any suit, proceeding or action arising out of Bank’s gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.
- (h) **Account Representations and Warranties.** Borrower represents and warrants as to each and every Account, whether now existing or hereafter arising, that: (i) it is a bona fide existing obligation, valid and enforceable against the applicable Account Debtor in accordance with its terms, for goods sold or leased, or services rendered, in the ordinary course of Borrower’s business; (ii) to Borrower’s knowledge, it is subject to no dispute, defense, claim or offset, except as disclosed in writing to Bank; (iii) the supporting obligations, documents, instruments, chattel paper and other evidences of indebtedness and security, if any, delivered to Bank are genuine, complete, valid and enforceable in accordance with their terms; and (iv) it is not subject to any discount, allowance or special terms of payment, except as disclosed in writing to Bank.
- (i) **Account Covenant.** Borrower shall immediately notify Bank in writing of: (i) any dispute with an Account Debtor relating to any Account(s), and (ii) any bankruptcy, insolvency, receivership, assignment for the benefit of creditors or suspension of business of any Account Debtor of which Borrower has knowledge. Borrower shall not compromise or discount any Account without the prior written consent of Bank, except for (A) ordinary trade discounts or allowances for prompt payment and (B) while no Event of Default exists, compromises or discounts that, after giving effect thereto, will not trigger a mandatory prepayment of borrowings pursuant to Section DD.02 hereof.

**BB&T**  
**SCHEDULE DD TO BB&T LOAN AGREEMENT**


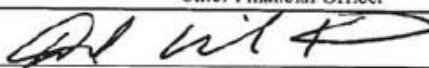
This agreement is made and entered into for the sole protection and benefit of Bank and Borrower, their successors and assigns, and no third person or persons shall have any right(s) to action hereon.

IN WITNESS WHEREOF, Borrower and Bank have executed this Schedule "DD" as of this date and have adopted as their respective seal the "seal" appearing beside or near their signatures below.

WITNESS:

  
\_\_\_\_\_  
  
\_\_\_\_\_

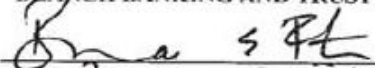
**APPLIED OPTOELECTRONICS, INC.**

By:   
\_\_\_\_\_  
Stefan Murry  
Title: Chief Financial Officer  
\_\_\_\_\_  
By:   
\_\_\_\_\_  
David Kuo  
Title: Vice President, General Counsel and Secretary  
\_\_\_\_\_

WITNESS:

  
\_\_\_\_\_

**BRANCH BANKING AND TRUST COMPANY**

By:   
\_\_\_\_\_  
Branham E. Fitch  
Title: SVP  
\_\_\_\_\_

## SCHEDULE OF CHARGES

This Schedule of Charges ("Schedule") is a part of the Loan Agreement ("Loan Agreement") and is an attachment to Schedule DD to the Loan Agreement ("Schedule DD"), among **BRANCH BANKING AND TRUST COMPANY** ("Bank"), **APPLIED OPTOELECTRONICS, INC.** ("Borrower", whether one or more) and the named Guarantor(s), if any:

THIS SCHEDULE SHALL CONSTITUTE A PART OF THE LOAN AGREEMENT CONSISTENT WITH THE TERMS THEREOF. UNLESS OTHERWISE DEFINED HEREIN, CAPITALIZED TERMS USED HEREIN SHALL HAVE THE MEANINGS GIVEN THEM IN THE LOAN AGREEMENT.

1. **Manual Funding Fee.** As authorized by Section DD.02 of Schedule DD, for each occurrence of Manual Funding, Bank shall assess a Manual Funding fee of \$100.00.
2. **Overadvance Fee.** As authorized by Section DD.02 of Schedule DD, Bank shall assess an Overadvance fee as determined by Bank in its discretion in an amount up to 1% of the Overadvance but not less than \$1,000.00 per reporting period.
3. **Examination Fee.** As authorized by Section DD.07(b) of Schedule DD, Bank shall assess an examination fee of \$1,150.00 per diem per examiner plus travel time, plus out-of-pocket expenses such as, but not limited to, the cost of specialized equipment needed to count and/or value goods pledged as Collateral, the use of outside firms to perform any Exam as deemed necessary by Bank in its sole discretion to monitor Collateral, with reimbursement evidenced by receipts and/or listing of expenses submitted to Borrower by Bank along with Bank's invoice for reimbursement, if such invoice is requested by Borrower.
4. **Late Reporting Fee.** As authorized by Section DD.07(e) of Schedule DD, Bank shall assess a fee in the amount of \$100.00 upon each occurrence of Borrower's failure to provide timely reports required under Section DD.06.
5. **Interim Reporting Fee.** As authorized by Section DD.07(f) of Schedule DD, Bank shall assess a fee in the amount of \$500.00 for each time that Bank, upon Borrower's request, analyzes a Loan Base Report for Availability purposes more than once during any applicable reporting period as set forth in Section DD.06(a).

ALL FEES SET FORTH IN THIS SCHEDULE SHALL BE IN ADDITION TO OTHER FEES SPECIFICALLY SET FORTH IN SCHEDULE DD OR IN THE LOAN DOCUMENTS AND NOT INCLUDED IN THE SCHEDULE OF CHARGES. BANK RESERVES THE RIGHT TO CHANGE ALL FEES SET FORTH IN THIS SCHEDULE OF CHARGES UPON WRITTEN NOTICE TO BORROWER.

This Schedule and its provisions shall be effective as of the 28<sup>th</sup> day of September, 2017.

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# SCHEDULE "EE" TO BB&T LOAN AGREEMENT

## OFFICER COMPLIANCE CERTIFICATE

This certificate (the "Certificate") is delivered pursuant to Section 3.08 of the Loan Agreement dated September \_\_, 2017, between **APPLIED OPTOELECTRONICS, INC.** (the "Borrower") and **BRANCH BANKING AND TRUST COMPANY** (the "Bank"), as the same may be amended or supplemented from time to time, being herein referred to as the Loan Agreement. All capitalized terms used in this Certificate which are defined in the Loan Agreement are used in this Certificate with the same meanings given such terms in the Loan Agreement.

I hereby certify, to the best of my knowledge and belief and in my representative capacity on behalf of the Borrower, to the Bank as follows:

1. I am the duly elected or appointed and acting \_\_\_\_\_ (Title) of the Borrower.
2. I have reviewed the financial statements of the Borrower as of and for the period ending \_\_\_\_\_ attached hereto as Exhibit I, which were prepared in accordance with GAAP, consistently applied, and are true and correct in all material aspects and fairly present the financial position and results and operations of the Borrower.
3. The Representations and Warranties set forth in Section 2 of the Loan Agreement are true and correct as of the date hereof.
4. I further certify that the Borrower is in compliance (unless otherwise specified) with all covenants set forth in Sections 3, 5 and 6 of the Loan Agreement and any Schedules thereto, and specifically the covenants listed below.

Required by Loan Agreement	Actual	In Compliance? Yes/No
Minimum Fixed Charge Coverage Ratio	1.50 To 1.00	_____ <input type="checkbox"/> Yes <input type="checkbox"/> No
Maximum Total Liabilities to Tangible Net Worth ratio	2.00 To 1.00	_____ <input type="checkbox"/> Yes <input type="checkbox"/> No

5. I further certify that during the fiscal quarter ending \_\_\_\_\_, 20\_\_, (a) the Borrower consummated no Specified Transactions other than Permitted Specified Transactions, and (b) the aggregate amounts of Specified Transactions consummated by Borrower are as follows.

Type of Specified Transaction	Aggregate Amount Consummated During Fiscal Quarter
Purchases of all or substantially all of the assets or business of any Person	\$ _____
Purchases, redemptions, retirements or other acquisitions of any of Borrower's capital stock or other ownership interests	\$ _____
Unsubordinated loans to directors, officers, partners, members, shareholders, subsidiaries or Affiliates	\$ _____
Sales, leases and other dispositions of asset or properties	\$ _____
Affiliate Transactions	\$ _____
<b>Total:</b>	<b>\$ _____</b>

6. As of the date hereof, no default or Event of Default under Section 8 of the Loan Agreement and any Schedules thereto has occurred (except as specified on Exhibit II, attached hereto, which Exhibit II also sets forth any corrective action taken or proposed to be taken with respect to such default or Event of Default).

In Witness Whereof, I have caused this Certificate to be executed and delivered to the Bank this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness

---

Signature of Officer, Manager, General Partner

---

Print Name

---

Print Name

---

Title

**Attach Exhibit I and II, if applicable.**

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**NOTICE OF INVALIDITY OF ORAL AGREEMENTS**

The following notice is being provided by Branch Banking and Trust Company ("Lender") in compliance with §26.02 of the Texas Business and Commerce Code, which provides that certain "loan agreements" must be in writing to be enforceable.

**DEBTOR(S) OR OBLIGOR(S):**

Borrower: Applied Optoelectronics, Inc.

The term "Debtor or Obligor" means any individual or entity which: (i) is primarily obligated to pay the Note; or (ii) otherwise is or becomes obligated to pay the loan (for example, as cosigner or guarantor); or (iii) has pledged any property as security for the loan.

**LOAN AGREEMENT:**

Promissory Note No: 00001  
Amount of Note: \$50,000,000.00  
Date: September 28, 2017

As used in this notice, the term "Loan Agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust, or other documents, or commitments, or any combination of these actions or documents, executed in connection with the loan from Lender.

**NOTICE**

**THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

This notice shall be deemed to be a part of each document which is executed by any Debtor or Obligor and which comprises a part of the Loan Agreement.

The undersigned Debtor or Obligor acknowledges receipt of a copy of this notice and agrees that all documents comprising the Loan Agreement are subject to the provisions of §26.02 of the Texas Business and Commerce Code.

[SIGNATURE PAGE FOLLOWS]

Executed this 28 day of September 2017.

**Borrower:**

**Applied Optoelectronics, Inc.**

By: /s/ Stefan Murry

Name: Stefan Murry

Title: Chief Financial Officer

**Lender:**

**Branch Banking and Trust Company**

By /s/ Brannon F. Fitch

Name: Brannon F. Fitch

Title: SVP

Notice of Invalidity of Oral Agreements

Borrower:	<u>Applied Optoelectronics, Inc.</u>		
Account Number:	<u>XXXXXX</u>	<b>BB&amp;T</b>	Note Number: <u>00001</u>
Address:	<u>13139 Jess Pirtle Blvd</u>	<b>PROMISSORY NOTE</b>	<u>Sugar Land</u> , Texas
	<u>Sugar Land, Texas 77478</u>		Date: <u>September 28, 2017</u>

**APPLIED OPTOELECTRONICS, INC.** (whether one or more, the "Borrower") HEREBY REPRESENTS THAT THE LOAN EVIDENCED BY THIS PROMISSORY NOTE ("Note") IS BEING OBTAINED FOR BUSINESS/COMMERCIAL OR AGRICULTURAL PURPOSES AND NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES. For value received, Borrower, jointly and severally if more than one, promises to pay to **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation (including its successors and assigns, hereinafter referred to as "Bank"), or order, at any of Bank's offices in the above referenced city (or such other place or places that may be hereafter designated by Bank), the sum of Fifty Million and no/100 Dollars (\$50,000,000.00), or such lesser amount outstanding at maturity, in immediately available currency of the United States of America.

Borrower shall pay a prepayment fee as set forth in the Prepayment Fee Addendum attached to this Note.

**Interest shall accrue from the date hereof on the unpaid balance outstanding from time to time at the:**

Fixed rate of \_\_\_% per annum.

Variable rate of Bank's Prime Rate plus \_\_\_% per annum to be adjusted \_\_\_ as Bank's Prime Rate changes. If checked here , the interest rate will not exceed a(n)  fixed  average maximum rate of \_\_\_% or a  floating maximum rate of the greater of \_\_\_% or Bank's Prime Rate; and the interest rate will not decrease below a fixed minimum rate of \_\_\_%. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made:  when the Note is repaid in full by Borrower  annually beginning on \_\_\_.

Fixed rate of \_\_\_% per annum through \_\_\_ which automatically converts on \_\_\_ to a variable rate equal to Bank's Prime Rate plus \_\_\_% per annum which shall be adjusted \_\_\_ as such Prime Rate changes.

Adjusted LIBOR Rate as more specifically described in the Addendum to Note attached hereto.

**Principal and interest are payable as follows:**

Principal (plus any accrued interest not otherwise scheduled herein) is due in full at maturity on September 28, 2020.

Payable in consecutive \_\_\_ installments of  Principal  Principal and Interest commencing on \_\_\_ and continued on the same day of each calendar period thereafter, in \_\_\_ equal payments of \$\_\_\_, with one final payment of all remaining principal and accrued interest due on \_\_\_.

Accrued interest is payable monthly commencing on October 5, 2017, and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on September 28, 2020.

Bank reserves the right in its sole discretion to adjust the fixed payment due hereunder [monthly/quarterly/annually] on \_\_\_ and continuing on the same day of each calendar period thereafter, in order to maintain an amortization period of no more than \_\_\_ months from the date of this Note. Borrower understands the payment may increase if interest rates increase.

This Note evidences a revolving line of credit and advances under this Note, as well as directions for payment from Borrower's accounts, may be requested orally or in writing by Borrower. Bank may, but need not, require that all oral requests be confirmed in writing. Borrower agrees to be liable for all sums either (i) advanced in accordance with the instructions of an authorized person or (ii) credited to any of Borrower's accounts maintained with Bank. Prior to an event of default, Borrower may borrow, repay, and reborrow hereunder pursuant to the terms of the Loan Agreement, if any, as hereinafter defined.

Borrower hereby authorizes Bank to automatically draft from its demand, deposit, or savings account(s) maintained with Bank or another bank, any payment(s) including late fees and other fees and charges due under this Note on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) at Bank or another bank.

Borrower shall pay to Bank, or order, a late fee in the amount of five percent (5.0%) of any installment past due for ten (10) or more days after written notice is received by Borrower regarding same. When any installment payment is past due for ten (10) or more days, subsequent payments shall first be applied to the past due balance. In addition, Borrower shall pay to Bank a returned payment fee (currently \$25.00) if Borrower or any other obligor hereon makes any payment at any time by check or other instrument, or by any electronic means, which is returned to Bank because of nonpayment due to nonsufficient funds. **Bank shall not be obligated to accept any check, money order, or other payment instrument marked "payment in full" on any disputed amount due hereunder, and Bank expressly reserves the right to reject all such payment instruments. Borrower agrees that tender of its check or other payment instrument so marked will not satisfy or discharge its obligation under this Note, disputed or otherwise, even if such check or payment instrument is inadvertently processed by Bank unless such payment is in fact sufficient to pay the amount due hereunder.**

All interest shall be computed and charged for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. In the event periodic accruals of interest shall exceed any periodic fixed payment amount described above, the fixed payment amount shall be immediately increased, or additional supplemental interest payments required on the same periodic basis as specified above (increased fixed payments or supplemental payments to be determined in Bank's sole discretion), in such amounts and at such times as shall be necessary to pay all accruals of interest for the period and all accruals of unpaid interest from previous periods. Such adjustments to the fixed payment amount or supplemental payments shall remain in effect for so long as any interest accruals shall exceed the original fixed payment amount and shall be further adjusted upward or downward to reflect changes in any variable interest rate based on an index such as Bank's Prime Rate or the One Month LIBOR; provided that unless elected otherwise above, the fixed payment amount shall not be reduced below the original fixed payment amount. However, Bank shall have the right, in its sole discretion, to lower the fixed payment amount below the original payment amount.

The term "Prime Rate," if used herein, means the rate of interest per annum announced by Bank from time to time and adopted as its Prime Rate at its executive offices in Winston-Salem, North Carolina. The Prime Rate is one of several rate indexes employed by Bank when extending credit, and not necessarily the lowest rate. Any change in the interest rate resulting from a change in Bank's Prime Rate shall become effective as of the opening of business on the effective date of the change.

This Note is executed and delivered by Borrower in connection with the following agreements (if any) between Borrower or other parties owning collateral and Bank:

Deed(s) of Trust / Mortgage(s)/Security Deed(s) granted in favor of Bank as beneficiary / grantee / mortgagee:

- dated \_\_\_ in the maximum principal amount of \$ \_\_\_, executed by \_\_\_
- dated \_\_\_ in the maximum principal amount of \$ \_\_\_, executed by \_\_\_
- Assignment of Leases and Rents granted in favor of Bank as assignee:
  - dated \_\_\_, executed by \_\_\_
  - Security Agreement(s) granting a security interest to Bank:
    - dated September 28, 2017, given by Borrower.
    - dated \_\_\_, given by \_\_\_
    - Securities Account Pledge and Security Agreement dated \_\_\_, executed by \_\_\_.
    - Control Agreement(s) dated \_\_\_, 2017, covering  Deposit Account(s)  Investment Property  Letter of Credit Rights  Electronic Chattel Paper
- Assignment of Certificate of Deposit, Security Agreement, and Power of Attorney (for Certificated Certificates of Deposit) dated \_\_\_, executed by \_\_\_.
- Assignment of Deposit Account dated \_\_\_, executed by \_\_\_.
- Assignment of Life Insurance Policy as Collateral dated \_\_\_, executed by \_\_\_.
- Loan Agreement and Schedules, if any, dated September 28, 2017, executed by  Borrower and  Guarantor(s).
- Trademark Security Agreement dated September 28, 2017, executed by Borrower.
- Patent Security Agreement dated September 28, 2017, executed by Borrower.

All of the terms, conditions and covenants of the above described agreements (the "Agreements") are expressly made a part of this Note by reference in the same manner and with the same effect as if set forth herein at length, and Bank is entitled to the benefits of and remedies provided in the Agreements and any other related document given by Borrower, any guarantor or any pledgor in favor of Bank. In addition to Bank's right of setoff and to any liens and security interests granted to Bank in the Agreements, Borrower hereby grants to Bank a security interest in all of its deposit accounts maintained with Bank, which shall serve as collateral for the indebtedness and obligations evidenced by this Note.

Borrower agrees that the only interest charge is the interest actually stated in this Note, and that any loan or origination fee shall be deemed charges rather than interest, which charges are fully earned and non-refundable. It is further agreed that any late charges are not a charge for the use of money but are imposed to compensate Bank for some of the administrative services, costs and losses associated with any delinquency or default under this Note, and such charges shall be fully earned and non-refundable when accrued. All other charges imposed by Bank upon Borrower in connection with this Note and the loan including, without limitation, any commitment fees, loan fees, facility fees, origination fees, discount points, default and late charges, prepayment fees, reasonable attorneys' fees and reimbursements for costs and expenses paid by Bank to third parties or for damages incurred by Bank are and shall be deemed to be charges made to compensate Bank for underwriting and administrative services and costs, other services, and costs or losses incurred or to be incurred by Bank in connection with this Note and the loan and shall under no circumstances be deemed to be charges for the use of money. All such charges shall be fully earned and non-refundable when due. Time is of the essence of this Note.

No delay or omission on the part of Bank or other holder hereof in exercising any right hereunder shall operate as a waiver of such right or of any other right of such holder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or of any other right on any future occasion. Each Borrower regardless of the time, order or place of signing waives presentment, demand, protest and notices of every kind and assents to any one or more extensions or postponements of the time of payment or any other indulgences, to any substitutions, exchanges or releases of collateral by Bank, and to the additions or releases of any other parties or persons primarily or secondarily liable herefor.

Subject to applicable notice periods set forth below, the following shall constitute events of default hereunder: Borrower's failure to pay any part of the principal or interest when due or to fully perform any covenant or obligation under this Note, the Agreements or on any other liability to Bank by any one or more of Borrower, by any affiliate of Borrower (as defined in 11 USC Section (101)(2)), or by any guarantor of this Note (said affiliate or guarantor herein called "Obligor"); or should any financial statement, representation or warranty made to Bank by any Borrower or any Obligor be found to be incorrect or incomplete in any material respect when made; or should any Borrower fail to furnish information and documentation to Bank sufficient to verify the identity of Borrower as required under the USA Patriot Act; or should Borrower commit an event of a default under any of the Agreements or under any other obligation of any Borrower or of any Obligor, to Bank; or should any Borrower or any Obligor die, terminate its existence, allow the appointment of a receiver for any part of its property, make an assignment for the benefit of creditors; or should a proceeding under bankruptcy or insolvency laws be initiated by or against any Borrower or any Obligor which are not discharged within sixty (60) days; or (a) should any Borrower, any Obligor or any officer or director be indicted for a felony offense under state or federal law (in each case except for any felony described in clause (c)), and such officer or director is not replaced by an officer or director acceptable to Bank within ten (10) days of such indictment, (b) should any Borrower or any Obligor employ an executive officer, manager or general partner, or elect a director, who has been convicted of any such felony offense, or (c) should any Borrower, any Obligor or any officer or director be indicted for or convicted of (i) a felony committed in the conduct of Borrower's business, or (ii) violating any state or federal law that could lead to forfeiture of any material property of any Borrower or any collateral; or should Bank determine that any Borrower or any Obligor has suffered a material adverse change in its financial condition or business operations; or should there occur an attachment, execution, or other judicial seizure of all or any portion of any Borrower's or any Obligor's assets, including an action or proceeding to seize any funds on deposit with Bank, and such seizure is not discharged within 30 days; or should a final judgment for the payment of money be rendered against any Borrower or any Obligor which is not covered by insurance or debt cancellation contract and such final judgment remains undischarged for a period of 30 days unless such judgment or execution thereon is effectively stayed; or should any guarantor terminate any guaranty agreement given in connection with this Note, then any one of the same shall be a material default hereunder and this Note and other debts due Bank by any Borrower shall immediately become due and payable at the option of Bank without notice or demand of any kind, which is hereby waived.

Notwithstanding any provision contained in this Note or any other Agreements to the contrary, in the event of a payment default, Bank's right to accelerate the indebtedness evidenced by this Note shall be immediate at such time and without notice to Borrower of such event of default. For the avoidance of doubt, in no event shall any notice be required or given for any event of default arising from: any representation, financial statement, report, certificate or other document furnished prior or pursuant to the Agreements which proves to be false or misleading in any material respect when made; should Borrower or any Obligor voluntarily become a debtor under the Bankruptcy Code, become subject to any insolvency proceeding, make an assignment for the benefit of creditors or become subject to any attachment, execution, or judicial seizure of its assets (including any funds on deposit with Bank); any indictment of any Borrower, any Obligor or any manager, executive officer or general partner thereof for any felony offense; any failure to repay this Note at maturity; any commencement of the process of liquidation or dissolution; any proceeding commenced against it seeking the forfeiture of all or any part of the collateral securing this Note or other assets as a result of any criminal activity; the sale, conveyance, transfer or encumbrance of any real property subject to a Deed of Trust granted to Bank or a bulk sale transfer of any personal collateral without the prior consent of Bank; or upon the termination of any guaranty agreement by any guarantor or the death of any guarantor.

Upon an Event of Default, in addition to Bank's rights set forth above, Bank may, at its option and subject to any applicable notice period (i) cease making advances or disbursements; (ii) advance funds necessary to remedy any default or pay any lien filed against any of the collateral; (iii) take possession of the collateral or any part thereof; (iv) foreclose Bank's security interest and/or lien on any collateral in accordance with applicable law; (v) make demand upon any or all guarantors; and (vi) exercise any other right or remedy which Bank has under this Note or any related documents or which is otherwise available at law or in equity. All of Bank's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Any election by Bank to pursue any remedy shall not exclude the right to pursue any other remedy unless expressly prohibited by law, and any election by Bank to make expenditures or to take action to perform an obligation of Borrower, or of any Obligor, shall not affect Bank's right to declare a default and exercise its rights and remedies. In addition, upon default, Bank may pursue its full legal remedies under the Agreements and other remedies at law or equity, and the balance due hereunder may be charged against any obligation of Bank to any party including any Obligor.

From and after any event of default hereunder, interest shall accrue on the sum of the principal balance then outstanding at the rate of fifteen percent (15.0%) per annum (“Default Rate”) until such principal and interest have been paid in full, provided that such rate shall not exceed at any time the highest rate of interest permitted by the laws of the State of Texas; and further provided that such rate shall apply after judgment. If this Note is placed with an attorney for collection, Borrower agrees to pay, in addition to principal, interest, and late fees, if any, all costs of collection, including but not limited to all reasonable attorneys’ fees incurred by Bank, whether or not there is a lawsuit, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any court costs.

Unless otherwise required under a Loan Agreement, if applicable, and as long as any indebtedness evidenced by this Note remains outstanding or as long as Bank remains obligated to make advances, each Borrower shall furnish annually an updated financial statement in a form satisfactory to Bank, which, when delivered shall be the property of Bank.

All obligations of Borrower shall bind his heirs, executors, administrators, successors, and/or assigns. Use of the masculine pronoun herein shall include the feminine and the neuter, and also the plural. If more than one party shall execute this Note, the term “Borrower” as used herein shall mean all the parties signing this Note and each of them, and all such parties shall be jointly and severally obligated hereunder. Wherever possible, each provision of this Note shall be interpreted in such a manner to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. Each Borrower hereby waives all exemptions and homestead laws. The proceeds of the loan evidenced by this Note may be paid to any Borrower. This Note may be executed in any number of counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

From time to time the maturity date of this Note may be extended, or this Note may be renewed in whole or in part, or a new note of different form may be substituted for this Note, or the rate of interest may be modified, or changes may be made in consideration of loan extensions, and Bank may, from time to time, waive or surrender, either in whole or in part any rights, guaranties, security interests or liens, given for the benefit of Bank in connection with the payment and the securing of payment of this Note; but no such occurrence shall in any manner affect, limit, modify, or otherwise impair any rights, guaranties or security of Bank not specifically waived, released, or surrendered in writing, nor shall Borrower or any Obligor be released from liability by reason of the occurrence of any such event. Bank, from time to time, shall have the unlimited right to release any person who might be liable hereunder, and such release shall not affect or discharge the liability of any other person who is or might be liable hereunder. No waivers and modifications shall be valid unless in writing and signed by Bank. Bank may, at its option, charge any reasonable fees for the modification, renewal, extension, or amendment of any of the terms of this Note not prohibited by applicable law. In case of a conflict between the terms of this Note and any Loan Agreement executed in connection herewith, the priority of controlling terms shall be first this Note, then the Loan Agreement. This Note shall be governed by and construed in accordance with the laws of the State of Texas.

Any legal action with respect to the indebtedness evidenced by this Note may be brought in the courts of the State of Texas and County of Harris or in the appropriate United States District Court situated in Texas, and Borrower hereby accepts and unconditionally submits to the jurisdiction of such courts. Borrower hereby waives any objection to the laying of venue based on the grounds of forum non conveniens with respect thereto.

**REQUIRED INFORMATION FOR A NEW LOAN.** To help the government fight the funding of terrorism and money laundering activities, federal law requires Bank to obtain, verify and record information that identifies each person or entity obtaining a loan including Borrower’s legal name, address, tax identification number, date of birth, driver’s license, organizational documents or other identifying documents. Failure to provide the required information will result in a violation of the U.S. Patriot Act and will constitute a default under this instrument. In addition, no Borrower, any of its affiliates, or any of their respective directors, officers, managers, partners, or any other authorized representatives is named as a “Specially Designated National and Blocked Person”, on the list published by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) at its official website.



**UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, BORROWER AND BANK HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS NOTE, ANY OF THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN BORROWER AND BANK, IN EACH CASE WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. BORROWER AND BANK AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT BORROWER OR BANK MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BANK AND BORROWER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BANK TO MAKE THE LOAN AND BORROWER TO ENTER INTO THIS AGREEMENT. FURTHER, BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT BANK WOULD NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF BANK, NOR BANK'S COUNSEL, HAS THE AUTHORITY TO WAIVE, CONDITION OR MODIFY THIS PROVISION. BORROWER AND BANK EACH ACKNOWLEDGE THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THIS PARAGRAPH, THAT IT FULLY UNDERSTANDS ITS TERMS, CONTENT AND EFFECT, AND THAT IT VOLUNTARILY AND KNOWINGLY AGREES TO THE TERMS OF THIS PARAGRAPH.**

(SIGNATURES ON FOLLOWING PAGE)

# BB&T

## PROMISSORY NOTE SIGNATURE PAGE

Borrower: Applied Optoelectronics, Inc.  
Account Number: XXXXXX Note Number: 00001  
Note Amount: \$50,000,000.00 Date: \_\_\_\_\_, 2017

IN WITNESS WHEREOF, Borrower, on the day and year first written above, has executed, or caused this Note to be executed by its authorized officer or representative. Borrower acknowledges receipt of a completed copy of this Note.

WITNESS:

/s/ Jerry K. Hu  
Print Name: Jerry K. Hu

/s/ Jerry K. Hu  
Print Name: Jerry K. Hu

APPLIED OPTOELECTRONICS, INC.  
Name of Corporation

By: /s/ Stefan Murry  
Name: Stefan Murry  
Title: Chief Financial Officer

By: /s/ David Kuo  
Name: David Kuo  
Title: Vice President, General Counsel and Secretary

# BB&T

## ADDENDUM TO PROMISSORY NOTE BB&T Account No. XXXXXX

THIS ADDENDUM TO PROMISSORY NOTE ("Addendum") is hereby made a part of the Promissory Note dated September 28, 2017, from **APPLIED OPTOELECTRONICS, INC.** ("Borrower") payable to the order of **BRANCH BANKING AND TRUST COMPANY** ("Bank") in the principal amount of \$50,000,000.00 (including all renewals, extensions, modifications and substitutions thereof, the "Note").

### I. DEFINITIONS.

1.1 **Adjusted LIBOR Rate** means a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/16<sup>th</sup> of 1.0%) by adding (i) the One Month LIBOR plus (ii) one and one-half percent (1.50%) per annum, which shall be adjusted monthly on the first day of each LIBOR Interest Period. The Adjusted LIBOR Rate shall be adjusted for any change in the LIBOR Reserve Percentage so that Bank shall receive the same yield. The interest rate will in no instance exceed the maximum rate permitted by applicable law and if checked here  the interest rate will not decrease below a fixed minimum rate of \_\_\_\_%. If checked here  the interest rate will not exceed  a fixed maximum rate of \_\_\_\_% or  an average maximum rate of \_\_\_\_%. If an average maximum rate is specified, a determination of any required reimbursement of interest by Bank will be made:  when the Note is repaid in full by Borrower or  annually beginning on \_\_\_\_\_. If the loan has been repaid prior to this date, no reimbursement will be made.

1.2 **Business Day** means a day other than a Saturday, Sunday, legal holiday or any other day when the Bank is authorized or required by applicable law to be closed.

1.3 **LIBOR Advance** means the advances made by Bank to Borrower evidenced by this Note upon which the Adjusted LIBOR Rate of interest shall apply.

1.4 **LIBOR Interest Period** means the period, as may be elected by the Borrower applicable to any LIBOR Advance, commencing on the date the Note is first made (or the date of any subsequent LIBOR addendum to the Note) and (i) if adjusted monthly, ending on the day that is immediately prior to the numerically corresponding day of each month thereafter or (ii) if adjusted quarterly, ending on the day that is immediately prior to the numerically corresponding day of each quarter thereafter; provided that:

(a) any LIBOR Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such LIBOR Interest Period shall end on the next preceding Business Day; and

(b) any LIBOR Interest Period which begins on a day for which there is no numerically corresponding day in a subsequent month if adjusted monthly or in a subsequent quarter if adjusted quarterly, shall end on the last Business Day of each subsequent month if adjusted monthly or on the last Business Day of each subsequent quarter if adjusted quarterly.

1.5 **LIBOR Reserve Percentage** means the maximum aggregate rate at which reserves (including, without limitation, any marginal supplemental or emergency reserves) are required to be maintained under Regulation D by member banks of the Federal Reserve System with respect to dollar funding in the London interbank market. Without limiting the effect of the foregoing, the LIBOR Reserve Percentage shall reflect any other reserves required to be maintained by such member banks by reason of any applicable regulatory change against (i) any category of liability which includes deposits by reference to which the Adjusted LIBOR Rate is to be determined or (ii) any category of extensions of credit or other assets related to LIBOR.

1.6 **One Month LIBOR** means the average rate quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by the Bank, on the determination date for deposits in U. S. Dollars offered in the London interbank market for one month determined at approximately 11:00 am London time two (2) Business Days prior to the commencement of the applicable LIBOR Interest Period; provided that if the above method for determining one month LIBOR shall not be available, the rate quoted in *The Wall Street Journal*, or a rate determined by a substitute method of determination agreed on by Borrower and Bank; provided, if such agreement is not reached within a reasonable period of time (in Bank's reasonable judgment), a rate reasonably determined by Bank in its sole discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by Bank) in the London interbank market for U. S. Dollar deposits; and provided further that if One Month LIBOR determined as provided above would be less than zero percent (0%), then One Month LIBOR shall be deemed to be zero percent (0%).

1.7 **Standard Rate** means, for any day, a rate per annum equal to the Prime Rate Equivalent (as defined in that certain Loan Agreement dated the date hereof between Borrower and Bank), and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

**II. LOAN BEARING ADJUSTED LIBOR RATE**

2.1 Application of Adjusted LIBOR Rate. The Adjusted LIBOR Rate shall apply to the entire principal balance outstanding of a LIBOR Advance for any LIBOR Interest Period.

2.2 Adjusted LIBOR Based Rate Protections.

(a) Inability to Determine Rate. In the event that Bank shall have determined, which determination shall be final, conclusive and binding, that by reason of circumstances occurring after the date of this Note affecting the London interbank market, adequate and fair means do not exist for ascertaining the One Month LIBOR on the basis provided for in this Note, Bank shall give notice (by telephone confirmed in writing (which may be delivered by electronic means)) to Borrower of such determination, whereupon (i) no LIBOR Advance shall be made until Bank notifies Borrower that the circumstances giving rise to such notice no longer exist, and (ii) any request by Borrower for a LIBOR Advance shall be deemed to be a request for an advance at the Standard Rate.

(b) Illegality; Impracticability. In the event that Bank shall determine, which determination shall be final, conclusive and binding, that the making, maintaining or continuance of any portion of a LIBOR Advance (i) has become unlawful as a result of compliance by Bank with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any of the same not having the force of law even though the failure to comply therewith would not be unlawful) or (ii) has become impracticable, or would cause Bank material hardship, as a result of contingencies occurring after the date of this Note materially and adversely affect the London interbank market or Bank's ability to make LIBOR Advances generally, then, and in any such event, Bank shall give notice (by telephone confirmed in writing (which may be delivered by electronic means)) to Borrower of such determination. Thereafter, (x) the obligation of Bank to make any LIBOR Advances or to convert any portion of the loan to a LIBOR Advance shall be suspended until such notice shall be withdrawn by Bank, and (y) any request by Borrower for a LIBOR Advance shall be deemed to be a request for an advance at the Standard Rate.

**WITNESS:**

/s/ Jerry K. Hu  
**Print Name: Jerry K. Hu**

/s/ Jerry K. Hu  
**Print Name: Jerry K. Hu**

**APPLIED OPTOELECTRONICS, INC.**  
\_\_\_\_\_  
Name of Corporation

**By:** /s/ Stefan Murry  
**Name:** Stefan Murry  
**Title:** Chief Financial Officer

**By:** /s/ David Kuo  
**Name:** David Kuo  
**Title:** Vice President, General Counsel and Secretary

**BB&T SECURITY AGREEMENT**  
**BB&T Account No. XXXXXX**

This Security Agreement ("Security Agreement") is made September 28, 2017, between **Applied Optoelectronics, Inc.**, a Delaware corporation ("Debtor"), and **Branch Banking and Trust Company**, a North Carolina banking corporation ("Secured Party").

This Security Agreement is entered into in connection with (check applicable items):

- (i) a Loan Agreement ("Loan Agreement") dated on or before the date of this Security Agreement under which the Secured Party has agreed to make a loan(s) and/or establish a line(s) of credit (the "Loan");
- (ii) a Promissory Note dated September 28, 2017 (including all extensions, renewals, modifications and substitutions thereof, the "Note"), of the Debtor (the "Borrower"), in the principal amount of \$50,000,000;
- (iii) a guaranty agreement or agreements (whether one or more, the "Guaranty") executed by the guarantors named therein (whether one or more, the "Guarantors") dated on or about the same date as this Security Agreement;
- (iv) a control agreement covering the Debtor's or Borrower's Deposit Account(s), Investment Property, Letter-of-Credit Rights, or Electronic Chattel Paper dated on or about the same date as this Security Agreement executed by the Debtor and the Borrower;
- (v) the sale by Debtor and purchase by Secured Party of Accounts, Chattel Paper, Payment Intangibles and/or Promissory Notes; and/or
- (vi) all obligations of Debtor under a BB&T Bankcard Agreement to repay indebtedness incurred under Business Visa Credit Cards issued to authorized officers and employees of Debtor.

Secured Party and Debtor agree as follows:

**I. DEFINITIONS.**

**1.1 Collateral.** Unless specific items of personal property are described below, the Collateral shall consist of all now owned and hereafter acquired and wherever located personal property of Debtor identified below, each capitalized term as defined in Article 9 of the Texas Uniform Commercial Code ("UCC")(check applicable items):

- (i) Accounts, including all contract rights and health-care-insurance receivables.
- (i-a) The Account(s), contract right(s) and/or Health-Care-Insurance Receivables specifically described as follows: N/A.
- (ii) Inventory, including all returned inventory.
- (ii-a) The Inventory specifically described as follows: N/A.
- (iii) Equipment, including all Accessions thereto, and all manufacturers' warranties, parts and tools therefore.
- (iii-a) The Equipment, including all Accessions thereto, all manufacturer's warranties therefore, and all parts and tools therefore, specifically described as follows: N/A.
- (iv) Investment Property, including the following certificated securities and/or securities account(s) specifically described as follows: N/A.
- (v) Instruments, including all promissory notes and certificated certificates of deposit specifically described as follows: N/A.
- (vi) Deposit Accounts, including Deposit Accounts with Secured Party.
- (vi-a) The Deposit Accounts with other financial institutions specifically described as follows (list financial institution and account number(s)): N/A.

- (vii) Chattel Paper (whether tangible or electronic).
- (vii-a) The Chattel Paper specifically described as follows: N/A.
- (viii) Goods, including all Fixtures and timber to be cut, located or situated on the real property specifically described as follows (list legal description as shown on deed including county and state): N/A.
- (ix) Farm Products, including all crops grown, growing or to be grown, livestock (born and unborn), supplies used or produced in a farming operation, and products of crops and livestock.
- (ix-a) The Farm Products specifically described as follows: N/A.
- (x) As-Extracted Collateral, including As-Extracted Collateral from the following location(s) (list legal description including county and state): N/A.
- (xi) Letter-of-Credit Rights, including the Letter-of-Credit Rights under the following letter(s) of credit (list issuer, number and amount): N/A.
- (xii) Documents, including all warehouse receipts and bills of lading specifically described as follows: N/A.
- (xiii) Commercial Tort Claim(s), including the Commercial Tort Claims more specifically described as follows: N/A.
- (xiv) Money, including currency and/or rare coins delivered to and in possession of the Secured Party specifically described as follows: N/A.
- (xv) Software, including the Software specifically described as follows: N/A.
- (xvi) Manufactured Home(s):

Model	Year	Serial Number 1	Doublewide Serial Number 2
1. N/A			
2. N/A			

- (xvii) Vehicles, including recreational vehicles and watercraft described below:

New/Used	Year/Make	Model/Body Type	VIN Number/Serial Number
1. N/A			
2. N/A			
3. N/A			
4. N/A			
5. N/A			

- (xviii) General intangibles, including all Payment Intangibles, copyrights, trademarks, patents, tradenames, tax refunds, company records (paper and electronic), rights under equipment leases, warranties, software licenses, and the following, if any: N/A.
- (xix) Supporting Obligations that support payment or performance of other Collateral.
- (xx) to the extent not listed above as original collateral, all proceeds (cash and non-cash) and products of the foregoing.

**1.2 Obligations.** This Security Agreement secures the following (collectively, the “Obligations”):

- (i) Debtor’s or Borrower’s obligations under the Note, the Loan Agreement, and this Security Agreement, any Business Credit Card Agreement or Purchase Card Agreement;
- (ii) in addition to the Note, this Security Agreement secures all other obligations, debts and liabilities, plus interest thereon, of Debtor or Borrower to Secured Party, or any one or more of them, as well as all claims by Secured Party against Borrower, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Debtor or Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise;
- (iii) all of Debtor’s or Borrower’s present and future indebtedness to Secured Party howsoever evidenced, including without limitation all promissory notes, whether now existing or hereafter arising, executed by Debtor or Borrower, reimbursement of drafts or drawings paid by Secured Party on any Commercial or Standby Letter of Credit issued on the account of the Debtor or Borrower; all indebtedness and obligations of Debtor or Borrower to Secured Party (or an affiliate of Secured Party) under any interest rate swap transactions, interest rate cap and/or floor transactions, interest rate collar transactions, swap agreements (as defined in 11 U.S.C. § 101) or other similar transactions or agreements, including without limitation any ISDA Master Agreement executed by Debtor or Borrower and all Schedules and Confirmations entered into in connection therewith, (hereinafter collectively referred to as a “Hedge Agreement”); and all amounts advanced to Debtor or Borrower by Secured Party in connection with the issuance of Business Credit Cards to the officers and designated employees of the Debtor or Borrower;
- (iv) all future advances made by Secured Party to Debtor or Borrower regardless of whether the advances are made pursuant to a commitment or for the same purposes;
- (v) the repayment of (a) any amounts that Secured Party may advance or spend for the maintenance or preservation of the Collateral, and (b) any other expenditures that Secured Party may make under the provisions of this Security Agreement or for the benefit of Debtor or Borrower;
- (vi) all amounts owed under any modifications, renewals, extensions or substitutions of any of the foregoing obligations;
- (vii) all Default Costs, as defined in Paragraph VIII of this Security Agreement; and
- (viii) any of the foregoing that may arise after the filing of a petition by or against Debtor or Borrower under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise.

**1.3 UCC.** Any term used in the UCC and not otherwise defined in this Security Agreement has the meaning given to the term in the UCC as adopted in the applicable jurisdiction governing this Security Agreement.

## **II. GRANT OF SECURITY INTEREST.**

Debtor grants a security interest in the Collateral to Secured Party to secure the payment and performance of the Obligations and agrees that Secured Party shall have the rights stated in this Security Agreement with respect to the Collateral, in addition to all other rights which Secured Party may have by law.

### III. PERFECTION OF SECURITY INTERESTS.

#### 3.1 Filing of Security Interests.

- (i) Debtor authorizes Secured Party to file on the Debtor's behalf any financing statement (the "Financing Statement") describing the Collateral in any location deemed necessary and appropriate by Secured Party.
- (ii) Debtor authorizes Secured Party to file a Financing Statement describing any agricultural liens or other statutory liens held by Secured Party.
- (iii) Secured Party shall receive prior to the closing an official report from the Secretary of State of each Place of Business and the Debtor State, each as defined below in Section 5.4 (collectively, the "Filing Reports") indicating that Secured Party's security interest is prior to all other security interests or other interests reflected in the report.

#### 3.2 Possession.

- (i) Until a default, and except as otherwise provided in this Security Agreement or where Secured Party chooses to perfect its security interest through possession, Debtor shall have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Security Agreement or the related loan documents.
- (ii) Where Collateral is in the possession of a third party, Debtor will join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.
- (iii) In connection with any deposit account(s) maintained with Secured Party identified in Section 1.1 above in which the Secured Party has been granted a security interest and which constitutes part of the Collateral, Secured Party shall be deemed to be in possession of such account(s) and, in its sole discretion and during the existence of an Event of Default by Debtor, may at any time during the existence of such Event of Default place a hold upon or freeze any or all funds on deposit in such account(s) and such funds may not be withdrawn without the prior written consent of Secured Party. For the avoidance of doubt, the foregoing shall not impair Secured Party's ability to debit the Collateral Reserve Account (as defined in Schedule DD to the Loan Agreement) in accordance with the Loan Agreement or any other Loan Documents (as defined in the Loan Agreement) or take any action (including holds and freezes with respect to funds) that Secured Party would otherwise be permitted to take in its capacity as a depository bank.

#### 3.3 Control Agreements. Debtor will cooperate with Secured Party in obtaining a control agreement in form and substance satisfactory to Secured Party with respect to Collateral consisting of (check appropriate items):

- Deposit Accounts (for deposit accounts at other financial institutions);
- Investment Property (for securities accounts, mutual funds and other uncertificated securities);
- Letter-of-credit rights; and/or
- Electronic chattel paper.

#### 3.4 Marking of Chattel Paper. If Chattel Paper is part of the Collateral, Debtor will not create any Chattel Paper without placing a legend on the Chattel Paper acceptable to Secured Party indicating that Secured Party has a security interest in the Chattel Paper.



#### IV. POST-CLOSING COVENANTS AND RIGHTS CONCERNING THE COLLATERAL.

- 4.1 **Inspection.** The parties to this Security Agreement may inspect any Collateral in the other party's possession, at any time upon reasonable notice.
- 4.2 **Personal Property.** Except for items specifically identified by Debtor and Secured Party as Fixtures, the Collateral shall remain personal property at all times, and Debtor shall not affix any of the Collateral to any real property in any manner which would change its nature from that of personal property to real property or to a fixture.
- 4.3 **Secured Party's Collection Rights.** During the existence of an Event of Default, Secured Party shall have the right at any time to enforce Debtor's rights against any account debtors and obligors. Until otherwise notified by Secured Party, Debtor may collect any of the Collateral consisting of accounts; provided however, at any time an Event of Default exists, Secured Party may exercise its rights to collect the accounts and to notify the account debtors to make payments directly to Secured Party for application to the Obligations; provided further, that whether or not an Event of Default exists, Secured Party may verify the validity, amount or any other matter relating to the accounts by mail, telephone or otherwise.
- 4.4 **Limitations on Obligations Concerning Maintenance of Collateral.**
- (i) **Risk of Loss.** Debtor has the risk of loss of the Collateral.
- (ii) **No Collection Obligation.** Secured Party has no duty to collect any income accruing on the Collateral or to preserve any rights relating to the Collateral.
- 4.5 **No Disposition of Collateral.** Secured Party does not authorize, and Debtor agrees not to:
- (i) make any transfers, dispositions, sales or leases of any of the Collateral other than in the ordinary course of business;
- (ii) license any of the Collateral; or
- (iii) encumber or permit any kind of encumbrance, or to pledge or grant any other security interest in any of the Collateral.
- 4.6 **Purchase Money Security Interests.** To the extent Debtor uses the Loan to purchase Collateral, Debtor's repayment of the Loan shall apply on a "first-in-first-out" basis so that the portion of the Loan used to purchase a particular item of Collateral shall be paid in the chronological order the Debtor purchased the Collateral.
- 4.7 **Insurance.** Debtor shall obtain and keep in force such insurance on the Collateral as is normal and customary in the Debtor's business or as the Secured Party may require, all in such amounts, under such forms of policies, upon such terms, for such periods and written by such insurance companies as the Secured Party may reasonably approve. All policies of insurance will contain the long-form Lender's Loss Payable clause in favor of the Secured Party, and the Debtor shall deliver the policies or complete copies thereof to the Secured Party. Such policies shall be noncancellable except upon thirty (30) days' prior written notice to the Secured Party. The proceeds of all such insurance, if any loss should occur, may be applied by the Secured Party to the payment of the Obligations or to the replacement of any of the Collateral damaged or destroyed, as the Secured Party may elect or direct in its sole discretion. At Secured Party's request, Debtor shall furnish to Secured Party reports on each existing policy of insurance showing such information as Secured Party may reasonably request. Each insurance policy also shall include an endorsement providing that coverage in favor of Secured Party will not be impaired in any way by any act, omission or default of Debtor or any other person. In connection with all policies covering assets in which Secured Party holds or is offered a security interest, Debtor will provide Secured Party with such loss payable or other endorsements as Secured Party may reasonably require. If Debtor at any time fails to obtain or maintain any insurance as required under this Security Agreement, Secured Party may (but shall not be obligated to) obtain such insurance as Secured Party deems appropriate, including if Secured Party so chooses "single interest insurance," which will cover only Secured Party's interest in the Collateral.

**Application of Insurance Proceeds.** Debtor shall promptly notify Secured Party of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Secured Party may make proof of loss if Debtor fails to do so within thirty (30) days of the casualty. In the event that Debtor should receive any such insurance proceeds, Debtor agrees to immediately turn over and to pay such proceeds directly to Secured Party. All proceeds of any insurance on the Collateral, including accrued proceeds thereto, shall be held by Secured Party as part of the Collateral. If Secured Party consents to repair or replacement of the damaged or destroyed Collateral, Secured Party shall, upon satisfactory proof of expenditure or satisfactory estimate, pay or reimburse Debtor from the proceeds for the reasonable cost of repair or restoration. If Secured Party does not consent to repair or replacement of the Collateral, Secured Party shall retain a sufficient amount of the proceeds to pay all of the Obligations, and shall pay the balance to Debtor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Debtor has not committed to the repair or restoration of the Collateral shall be used to prepay the Obligations.

- 4.8 POWER OF ATTORNEY.** THE DEBTOR HEREBY APPOINTS (WHICH APPOINTMENT CONSTITUTES A POWER COUPLED WITH AN INTEREST AND IS IRREVOCABLE AS LONG AS ANY OF THE OBLIGATIONS REMAIN OUTSTANDING) SECURED PARTY AS ITS LAWFUL ATTORNEY-IN-FACT WITH FULL AUTHORITY TO MAKE, ADJUST, SETTLE CLAIMS UNDER AND/OR CANCEL SUCH INSURANCE AND TO ENDORSE THE DEBTOR'S NAME ON ANY INSTRUMENTS OR DRAFTS ISSUED BY OR UPON ANY INSURANCE COMPANIES.
- 4.9 Taxes, Assessment and Liens.** Debtor shall pay when due all taxes, assessments and liens upon the Collateral, its use or operation.
- 4.10 Repairs and Maintenance.** Debtor shall keep and maintain and shall cause others to keep and maintain the Collateral in good order, repair and merchantable condition. Debtor shall not, nor shall Debtor permit others to abandon, commit waste, or destroy the Collateral or any part or parts thereof.
- 4.11 Compliance with Governmental Requirements.** Debtor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, including without limitation all environmental laws, ordinances, rules and regulations, now or hereafter in effect, applicable to the ownership, production, disposition or use of the Collateral.
- 4.12 Secured Party's Expenditures.** If any action or proceeding is commenced that would materially affect Secured Party's interest in the Collateral or if Debtor fails to comply with any provision of this Security Agreement or any related loan document, Secured Party on Debtor's behalf may (but shall not be obligated to) take any action that Secured Party deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining, and preserving the Collateral. All such expenditures incurred or paid by Secured Party for such purposes shall bear interest at the rate charged under the Note, or the maximum rate permitted by law, whichever is less, from the date incurred or paid by Secured Party to the date of repayment by the Debtor. All such amounts are payable upon demand and this Security Agreement and the security interest granted hereunder shall secure payment of these amounts.

## V. DEBTOR'S REPRESENTATIONS AND WARRANTIES.

Debtor represents and warrants to Secured Party:

- 5.1 Title to and transfer of Collateral.** It has rights in or the power to transfer the Collateral and its title to the Collateral is free of all adverse claims, liens, security interests and restrictions on transfer or pledge except as created by this Security Agreement.
- 5.2 Location of Collateral.** All collateral consisting of goods (inventory, unborn young of animals, manufactured homes; and other tangible, movable personal property) shall be held at the Debtor's Place of Business (defined below) or at such other locations as are acceptable to Secured Party. Except in the ordinary course of Debtor's business, Debtor shall not remove the Collateral from its existing location without Secured Party's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Debtor shall not take or permit any action which would require application for certificates of title for the vehicles outside of the state in which they are currently titled without Secured Party's prior written consent.

- 5.3 **Organization.** If an entity, Debtor is duly organized, validly existing, and in good standing under by virtue of the laws of the state of organization and is duly authorized to transact business in all other states in which Debtor is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Debtor is doing business.
- 5.4 **Authorization.** Debtor's execution, delivery and performance of this Security Agreement and all related loan documents have been duly authorized by all necessary action, do not require the consent or approval of any other person, regulatory authority, or governmental body and do not conflict with or result in a default under any agreement or instrument under which Debtor is bound.

**Location, State of Incorporation and Name of Debtor.** Debtor's:

- (i) chief executive office (if Debtor has more than one place of business), place of business (if Debtor has one place of business), or principal residence (if Debtor is an individual), is located in the following State and address (the "Place of Business"): 13139 Jess Pirtle Blvd, Sugar Land, TX 77478.
- (ii) state of incorporation or organization is Delaware (the "Debtor State").
- (iii) exact legal name is as set forth in the first paragraph of this Security Agreement.

5.5 **Business or Agricultural Purpose.** None of the Obligations is a Consumer Transaction, as defined in the UCC and none of the Collateral has been or will be purchased or held primarily for personal, family or household purposes.

5.6 **Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the UCC, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be or in fact obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. Any account included as Collateral is a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor.

5.7 **Consideration.** Debtor represents to Secured Party that the granting of the loan or other financial accommodations from Secured Party to Borrower will benefit, directly or indirectly, Debtor. Debtor acknowledges that Secured Party is relying upon this representation in extending the loan or other financial accommodations to Borrower.

5.8 **Future Encumbrances.** Debtor shall not, without the prior written consent of Secured Party, grant any lien or security interest that may affect the Collateral, or any part thereof, nor shall Debtor permit or consent to any lien or security interest attaching to or being filed against any of the Collateral in favor of anyone other than Secured Party. Debtor shall further promptly pay when due all statements and charges of mechanics, materialmen, laborers and others incurred in connection with the alteration, improvement, repair and maintenance of the Collateral, or otherwise furnish appropriate security or bond, so that no future lien or security interest may ever attach to or be filed against any Collateral. In the event that the Collateral or any part thereof is and/or may be located in and/or on leased premises, Debtor shall promptly pay the full amount of such rental or lease payments whenever the same shall be due so that no lessor's lien or privilege may ever attach to or affect any of the Collateral with possible preference and priority over the lien of this Security Agreement. In the event that any of the Collateral is purchased or otherwise acquired by Debtor on a credit or deferred payment sales basis, Debtor shall promptly pay the full amount of the purchase or acquisition price of such Collateral so that no vendor's lien or privilege, or purchase money security interest, may ever attach to or be asserted against any of the Collateral with possible preference and priority over the lien of this Security Agreement. Debtor additionally agrees to make good faith efforts to obtain, upon request by Secured Party, and in form and substance as may then be satisfactory to Secured Party, appropriate waivers and/or subordinations of any lessor's liens or privileges, vendor's liens or privileges, purchase money security interest, and any other liens that may affect the Collateral at any time.

As long as this Security Agreement remains in effect, Debtor will not permit any levy, attachment or restraint to be made affecting any of the Collateral, or permit any notice of lien to be filed with respect to the Collateral or any part thereof, or permit any receiver, trustee, custodian or assignee for the benefit of creditors to be appointed to take possession of any of the Collateral. Notwithstanding the foregoing, Debtor may, at its sole expense, contest in good faith by appropriate proceedings the validity or amount of any levy, attachment, restraint or lien filed against or affecting the Collateral, or any part thereof, provided that (1) Debtor notifies Secured Party in advance of Debtor's intent to contest such a levy, attachment, restraint or lien, and (2) Debtor provides additional security to Secured Party, in form and amount reasonably satisfactory to Secured Party.

#### **VI. DEBTOR'S COVENANTS.**

Until the Obligations are paid in full, Debtor agrees that it will:

- 6.1 preserve its legal existence and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets;
- 6.2 not change the Debtor State of its registered organization;
- 6.3 not change its registered name without providing Secured Party with 30 days' prior written notice; and
- 6.4 not change the state of its Place of Business or, if Debtor is an individual, change his/her state of residence without providing Secured Party with 30 days' prior written notice.

#### **VII. EVENTS OF DEFAULT.**

The occurrence of any of the following shall, at the option of Secured Party, be an Event of Default:

- 7.1 Any default or Event of Default by Borrower or Debtor under any Note, Loan Agreement, Hedge Agreement, Business Credit Card Agreement or any of the other related loan documents;
- 7.2 Debtor's failure to comply with any of the provisions of, or the incorrectness of any representation or warranty contained in, this Security Agreement, the Note, the Loan Agreement, or in any other document relating to the Obligations;
- 7.3 Transfer or disposition of any of the Collateral other than in the ordinary course of business, except as expressly permitted by this Security Agreement;
- 7.4 Attachment, execution or levy on any of the Collateral;
- 7.5 The dissolution or termination of Borrower's or Debtor's existence as a going business, if applicable, the insolvency of Borrower or Debtor, the appointment of a receiver for any part of Borrower's or Debtor's property, an assignment for the benefit of creditors of Borrower or Debtor, or Debtor voluntarily or involuntarily becoming subject to any proceeding under (a) the Bankruptcy Code or (b) any similar remedy under state statutory or common law, which are not discharged within sixty (60) days;
- 7.6 Debtor shall fail to comply with, or become subject to any administrative or judicial proceeding under any federal, state or local (a) hazardous waste or environmental law, (b) asset forfeiture or similar law which can result in the forfeiture of property, or (c) other law, where noncompliance may have any significant effect on the Collateral;

- 7.7 Secured Party shall receive at any time following the closing a UCC filing report indicating that Secured Party's security interest is not prior to all other security interests or other interests reflected in the report; or
- 7.8 Borrower or Debtor defaults under any loan, extension of credit, security agreement, purchase or sales agreement or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or Debtor's property or ability to perform their respective obligations under this Security Agreement or any of the loan documents.

#### VIII. DEFAULT COSTS.

- 8.1 Should an Event of Default occur, Debtor will pay to Secured Party all costs incurred by the Secured Party for the purpose of enforcing its rights hereunder, including:
- (i) costs of foreclosure;
  - (ii) costs of obtaining money damages; and
  - (iii) a reasonable fee for the service of attorneys employed by Secured Party for any purpose related to this Security Agreement or the Obligations, including without limitation consultation, drafting documents, sending notices or instituting, prosecuting or defending litigation or arbitration.

#### IX. REMEDIES UPON DEFAULT.

- 9.1 **General.** Upon any Event of Default, Secured Party may pursue any remedy available at law (including those available to a secured party under the provisions of the UCC) or in equity to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise.
- 9.2 **Concurrent Remedies.** Upon any Event of Default, Secured Party shall have the right to pursue any of the following remedies separately, successively or concurrently:
- (i) Declare the Obligations, including any prepayment penalty (if any) which Borrower would be required to pay, immediately due and payable, without notice of any kind to Borrower or Debtor.
  - (ii) File suit and obtain judgment and, in conjunction with any action, Secured Party may seek any ancillary remedies provided by law or at equity, including levy of attachment and garnishment.
  - (iii) Take possession of any Collateral if not already in its possession without demand and without legal process. Upon Secured Party's demand, Debtor will assemble and make the Collateral available to Secured Party as it directs. Debtor grants to Secured Party the right, for this purpose, to enter into or on any premises where Collateral may be located.
  - (iv) Without taking possession, sell, lease or otherwise dispose of the Collateral at public or private sale in accordance with the UCC.
  - (v) Seek appointment of a receiver to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Obligations. The receiver may serve without bond if permitted by law.

- (vi) Collect the payments, rents, income, and revenues from the Collateral.
- (vii) If Secured Party chooses to sell any or all of the Collateral, Secured Party may obtain a judgment against Borrower for any deficiency remaining on the Obligations after application of amounts received from the exercise of the rights provided in this Security Agreement.

**9.3 Indemnification of Secured Party.** Debtor agrees to indemnify, to defend and to save and hold Secured Party harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Secured Party's attorneys' fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Secured Party, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Security Agreement and the exercise of the rights and remedies granted Secured Party under this, as well as by: (1) the ownership, use, operation, construction, renovation, demolition, preservation, management, repair, condition, or maintenance of any part of the Collateral; (2) the exercise of any of Debtor's rights collaterally assigned and pledged to Secured Party hereunder; and/or (3) any failure of Debtor to perform any of its obligations hereunder. The foregoing indemnity provisions shall survive the cancellation of this Security Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Secured Party elects to exercise any of the remedies as provided under this Security Agreement following default hereunder. Debtor's indemnity obligations under this section shall not in any way be affected by the presence or absence of covering insurance, or by the amount of such insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under any insurance policy or policies affecting the Collateral and/or Debtor's business activities. Should any claim, action or proceeding be made or brought against Secured Party by reason of any event as to which Debtor's indemnification obligations apply, then, upon Secured Party's demand, Debtor at its sole cost and expense, shall defend such claim, action or proceeding in Debtor's name, if necessary, by the attorneys for Debtor's insurance carrier (if such claim, action or proceeding is covered by insurance), or otherwise by such attorneys as selected by Debtor and approved by Secured Party. Secured Party shall also engage its own attorneys at its reasonable discretion to defend Debtor and to assist in its defense and Debtor agrees to pay the fees and disbursements of such attorneys.

## X. FORECLOSURE PROCEDURES.

- 10.1 No Waiver.** No delay or omission by Secured Party to exercise any right or remedy accruing upon any Event of Default shall (a) impair any right or remedy, (b) waive any default or operate as an acquiescence to the Event of Default, or (c) affect any subsequent default of the same or of a different nature.
- 10.2 Notices.** Secured Party shall give Debtor such notice of any private or public sale as may be required by the UCC.
- 10.3 Condition of Collateral.** Secured Party has no obligation to repair, clean-up or otherwise prepare the Collateral for sale.
- 10.4 No Obligation to Pursue Others.** Secured Party has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them and Secured Party may release, modify or waive any collateral provided by any other person to secure any of the Obligations, all without affecting Secured Party's rights against Debtor. Debtor waives any right it may have to require Secured Party to pursue any third person for any of the Obligations.
- 10.5 Compliance With Other Laws.** Secured Party may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.
- 10.6 Warranties.** Secured Party may sell the Collateral without giving any warranties as to the Collateral and may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

- 10.7 Sales on Credit.** If Secured Party sells any of the Collateral upon credit, Debtor will be credited only with payments actually made by the purchaser, received by Secured Party and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Secured Party may resell the Collateral and Debtor shall be credited with the proceeds of the sale as and when received, less expenses.
- 10.8 Purchases by Secured Party.** In the event Secured Party purchases any of the Collateral being sold, Secured Party may pay for the Collateral by crediting some or all of the Obligations.
- 10.9 No Marshalling.** Secured Party has no obligation to marshal any assets in favor of Debtor, or against or in payment of:
- (i) the Note;
  - (ii) any of the other Obligations; or
  - (iii) any other obligation owed to Secured Party, Borrower or any other person.

**XI. MISCELLANEOUS.**

- 11.1 Assignment.**
- (i) **Binds Assignees.** This Security Agreement shall bind and shall inure to the benefit of the successors and assigns of Secured Party, and shall bind all successors and permitted assigns of Debtor.
  - (ii) **No Assignments by Debtor.** Secured Party does not consent to any assignment by Debtor except as expressly provided in this Security Agreement.
  - (iii) **Secured Party Assignments.** Secured Party may assign its rights and interests under this Security Agreement. If an assignment is made in writing and delivered to Debtor, Debtor shall render performance under this Security Agreement to the assignee.
- 11.2 Severability.** Should any provision of this Security Agreement be found to be void, invalid or unenforceable by a court or panel of arbitrators of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid or unenforceable and shall not affect the remaining provisions of this Security Agreement.
- 11.3 Notices.** Any notices required by this Security Agreement shall be deemed to be delivered when a record has been (a) deposited in any United States postal box if postage is prepaid, and the notice properly addressed to the intended recipient, (b) received by telecopy, (c) received through the Internet/email, (d) when personally delivered, or (e) sent by a recognized overnight courier.
- 11.4 Headings.** Section headings used in this Security Agreement are for convenience only. They are not a part of this Security Agreement and shall not be used in construing it.
- 11.5 Governing Law.** This Security Agreement is being executed and delivered and is intended to be performed in the State of Texas and shall be construed and enforced in accordance with the laws of the State of Texas except to the extent that the UCC provides for the application of the law of the Debtor State.

**11.6 Rules of Construction.**

- (i) No reference to “proceeds” in this Security Agreement authorizes any sale, transfer, or other disposition of the Collateral by the Debtor except in the ordinary course of business.
- (ii) “Includes” and “including” are not limiting.
- (iii) “Or” is not exclusive.
- (iv) “All” includes “any” and “any” includes “all.”

**11.7 Integration and Modifications.**

- (i) This Security Agreement is the entire agreement of the Debtor and Secured Party concerning its subject matter.
- (ii) Any modification to this Security Agreement must be made in writing and signed by the party adversely affected.

**11.8 Waiver.** Any party to this Security Agreement may waive the enforcement of any provision to the extent the provision is for its benefit.

**11.9 Further Assurances.** Debtor agrees to execute any further documents, and to take any further actions, reasonably requested by Secured Party to evidence or perfect the security interest granted herein or to effectuate the rights granted to Secured Party herein.

**11.10 Choice of Venue.** Any legal action with respect to the Obligations may be brought in the state courts of the State of Texas, in Harris County, or in the appropriate United States District Court situated in the State of Texas, and Debtor hereby accepts and unconditionally submits to the jurisdiction of such courts. Debtor hereby waives any objection to the laying of venue based on the grounds of forum non conveniens with respect thereto.

**11.11 WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY APPLICABLE LAW, DEBTOR AND SECURED PARTY HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS OR CLAIMS ARISING OUT OF THIS SECURITY AGREEMENT OR ANY OF THE LOAN DOCUMENTS EXECUTED BY THE BORROWER OR DEBTOR IN CONNECTION HERewith OR OUT OF THE CONDUCT OF THE RELATIONSHIP BETWEEN THE DEBTOR OR BORROWER AND SECURED PARTY, IN EACH CASE WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. DEBTOR AND SECURED PARTY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT DEBTOR OR SECURED PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF DEBTOR AND SECURED PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. DEBTOR AND SECURED PARTY EACH ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL REGARDING THIS PARAGRAPH, THAT IT FULLY UNDERSTANDS ITS TERMS, CONTENT AND EFFECT, AND THAT IT VOLUNTARILY AND KNOWINGLY AGREES TO THE TERMS OF THIS PARAGRAPH.**

**11.12 Survival of Representations and Warranties.** All representations, warranties, and agreements made by Debtor in this Security Agreement shall survive the execution and delivery of this Security Agreement shall be continuing in nature, and shall remain in full force and effect until such time as the Obligations shall be paid in full.

**11.13 Time is of the Essence.** Time is of the essence in the performance of this Security Agreement.

[SIGNATURES ON FOLLOWING PAGE]



**SIGNATURE PAGE FOR SECURITY AGREEMENT**

The parties have signed this Security Agreement to be effective as of the day and year first above written.

WITNESS:

**APPLIED OPTOELECTRONICS, INC.**

\_\_\_\_\_  
Name of Corporation

/s/ Jerry K. Hu

Print Name: Jerry K. Hu

By:

/s/ Stefan Murry

Name:

Stefan Murry

Title:

Chief Financial Officer

/s/ Jerry K. Hu

Print Name: Jerry K. Hu

By:

/s/ David Kuo

Name:

David Kuo

Title:

Vice President, General Counsel and Secretary

**TRADEMARK SECURITY AGREEMENT**

This **TRADEMARK SECURITY AGREEMENT** (this "Agreement") is made this 28th day of September, 2017, between **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation (together with its successors and assigns, "Lender"), and **APPLIED OPTOELECTRONICS, INC.**, a Delaware corporation ("Company").

Recitals:

Company desires to obtain loans and other financial accommodations from Lender pursuant to that certain Loan Agreement dated the date hereof (as at any time amended, restated, supplemented or otherwise modified, the "Loan Agreement") by and between Company and Lender.

Lender is willing to make loans and other financial accommodations to Company from time to time, pursuant to the terms of the Loan Agreement, provided that, among other things, Company executes this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company hereby agrees with Lender as follows:

1. Capitalized terms used herein (including those used in the Recitals hereto), unless otherwise defined, shall have the meanings ascribed to them in the Loan Agreement. As used herein, the term "Full Payment" shall mean full and final payment of the Obligations (as defined in the Security Agreement) (hereinafter, the "Obligations") and termination of Lender's financing arrangements with Company; and the term "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Texas.

2. To secure the prompt payment and performance of all of the Obligations, Company hereby grants, assigns and pledges to Lender a continuing security interest in and lien upon all of the following property of Company, whether now owned or existing or hereafter created or acquired and wherever located (collectively, the "Trademark Collateral"):

(a) all state (including common law), federal and foreign trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or other business identifiers, domain names, designs and general intangibles of like natures, together with and including all licenses therefor held by company (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor has elected such termination remedy), and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the United States Patent and Trademark Office, any State of the United States or any other country or any political subdivision thereof (but excluding any "intent-to-use" application for registration of the trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. Section 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law), and all extensions or renewals thereof, including any of the foregoing identified on Exhibit A hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in the name of Company or in the name of Lender for past, present or future infringement or uncontroverted use thereof, and all rights arising therefrom throughout the world (collectively, the "Trademarks");

(a) all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto;

(b) all general intangibles (as defined in the UCC) related to or arising out of any of the Trademarks and all the goodwill of Company's business symbolized by the Trademarks or associated therewith; and

(c) all proceeds of any and all of the foregoing Trademark Collateral, including, without limitation, license royalties, rights to payment, accounts receivable, proceeds of infringement suits and all payments under insurance or any indemnity, warranty or guaranty payable by reason nor loss or damage to or otherwise with respect to the foregoing Trademark Collateral.

3. Company represents and warrants to Lender that:

(a) Each of the Trademarks is subsisting and has not been adjudged invalid or unenforceable;

(b) To be best of its knowledge, no claim has been made that the use of any of the Trademarks does or may violate the rights of any Person;

(c) Company has the unqualified right to enter into this Agreement and perform its terms;

(d) To the best of its knowledge, each of the Trademarks is valid and enforceable; and

(e) Company is the sole and exclusive owner of the entire right, title and interest in and to all of the Trademark Collateral, free and clear of any Liens, charges and encumbrances (except licenses permitted pursuant to paragraph 6 below), including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by Company not to sue third Persons.

4. Company covenants and agrees with Lender that:

(a) Company will maintain the quality of the products associated with the Trademarks, at a level consistent with the quality at the time of this Agreement, and will, upon Lender's request, provide Lender with a certificate to that effect executed by an officer of Company;

(b) Company will not intentionally change the quality of the products associated with the Trademarks without Lender's prior written consent; and

(c) Except for Trademarks abandoned by Company in the ordinary course of business (provided such abandonment could not be reasonably expected to have a material adverse effect on Company or its business), Company has used and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the registered Trademarks, including, without limitation, filing an affidavit of use with the United States Patent and Trademark Office and any applicable foreign filing office for each registered Trademark as required by applicable law to maintain the registration thereof without loss of protection therefor.

5. Company hereby grants to Lender and its employees and agents the right to visit Company's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks in accordance with the terms of Section DD.06(b) of Schedule DD to the Loan Agreement.

6. Until Full Payment of all of the Obligations, Company shall not enter into any license agreement relating to any of the Trademarks with any person or entity except non-exclusive licenses to customers, vendors, suppliers, agents or other service providers of Company in the regular and ordinary course of Company's business as presently conducted and for reasonable and customary compensation, and shall not become a party to any agreement with any person or entity that is inconsistent with Company's obligations under this Agreement.

7. If, before Full Payment of all of the Obligations, Company shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark or any renewal of any Trademark, the provisions of paragraph 2 hereof shall automatically apply thereto, and Company shall give to Lender prompt notice thereof in writing.

8. Company irrevocably authorizes and empowers Lender to modify this Agreement by amending Exhibit A to include any future trademarks and trademark applications under paragraph 2 or paragraph 7 hereof.

9. At any time that an Event of Default exists, Lender shall have, in addition to all other rights and remedies given it by this Agreement and the other Loan Documents, all rights and remedies of a secured party under the UCC and all other rights and remedies under applicable law. Without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without notice (except as described in the next sentence, if required by applicable law, or demand whatsoever to Company, each of which Company hereby expressly waives), collect directly any payments due Company in respect of the Trademark Collateral, or sell at public or private sale or otherwise realize upon all or from time to time, any of the Trademark Collateral. Company hereby agrees that ten (10) days written notice to Company of any public or private sale or other disposition of any of the Trademark Collateral shall be reasonable notice; provided, however, that no notice shall be required hereunder if not otherwise required by applicable law. At any such sale or disposition, Lender may, to the extent permitted by law, purchase the whole or any part of the Trademark Collateral sold, free from any right of redemption on the part of Company, which right Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Trademark Collateral all reasonable costs and expenses incurred by Lender in enforcing its rights hereunder (including, without limitation, all reasonable attorneys' fees), Lender shall apply the remainder of such proceeds to the payment of the Obligations in such order and manner as may be authorized or required by the Loan Agreement. Any remainder of the proceeds after Full Payment of all of the Obligations shall be paid over to Company. If any deficiency shall arise, Company shall remain liable therefor.

10. Company hereby makes, constitutes and appoints Lender and any officer or agent of Lender as Lender may reasonably select, as Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall exist: to endorse Company's name on all applications, documents, papers and instruments necessary for Lender to continue the registration of or to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of any Trademark Collateral to any other Person. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until Full Payment of all of the Obligations, upon which time such power of attorney will automatically terminate (unless sooner terminated by the parties).

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature (including, without limitation, reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the preparation of this Agreement and any other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) with the United States Patent and Trademark Office or in any other public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, and Liens or otherwise protecting, maintaining, or preserving the Trademark Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademark Collateral, shall be borne and paid by Company (it being the intent of the Company and Lender that Company shall be responsible for the payment of all sums, fees, costs and expenses incurred, including, without limitation, all renewal fees with respect to the Trademarks) or, if paid by Lender in its sole discretion, shall be reimbursed by Company on demand by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the Default Rate then applicable to the Line of Credit.

12. Company shall use its commercially reasonable efforts to detect any infringers of the Trademarks and shall notify Lender in writing of material infringements detected. Company shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark application for a Trademark pending as of the date of this Agreement or thereafter until Full Payment of all of the Obligations, to make federal application on registrable but unregistered Trademarks (subject to Company's reasonable discretion in the ordinary course of business or, during the existence of an Event of Default or a Default, promptly upon Lender's request), to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to enforce the Trademarks and to do any and all acts which are deemed necessary or desirable by Lender to preserve and maintain all rights in the Trademarks, unless in any such case Company has reasonably determined that such Trademark is no longer material to the conduct of its business. Any expenses incurred in connection with such applications or proceedings shall be borne by Company. Company shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the consent of Lender, unless Company has determined that such trademark application or trademark is no longer necessary or material to the conduct of its business.

13. Notwithstanding anything to the contrary contained in paragraph 12 hereof, at any time that an Event of Default exists, Lender shall have the right, but shall in no way be obligated, to bring suit instead in its own name to enforce the Trademarks and any license hereunder, or to defend any suit or counterclaim in its own name to protect the Trademarks or any license hereunder, in either of which events Company shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender to aid such enforcement, or defense, and Company shall promptly, **upon demand**, reimburse and indemnify Lender for all reasonable costs and expenses incurred in the exercise of Lender's rights under this paragraph 13.

14. If Company fails to comply with any of its obligations hereunder and at the time of such failure or as a result thereof an Event of Default exists, then to the extent permitted by applicable law, Lender may discharge such obligations in Company's name or in Lender's name, in Lender's sole discretion, but at Company's expense, and Company agrees to reimburse Lender in full for all expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in prosecuting, defending or maintaining the Trademarks or Lender's interest therein pursuant to this Agreement.

15. No course of dealing between Company and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under any of the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16. All of Lender's rights and remedies with respect to the Trademark Collateral, whether established hereby or by any of the other Loan Documents, or by any other agreements or by applicable law shall be cumulative and may be exercised singularly or concurrently.

17. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

18. This Agreement, together with the other Loan Documents, constitutes and expresses the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, whether expressed or implied, oral or written. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 8 hereof.

19. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Lender and upon the successors and permitted assigns of Company. Company shall not assign its rights or delegate its duties hereunder without the prior written consent of Lender.

20. Company hereby waives notice of Lender's acceptance hereof.

21. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas.

22. To the fullest extent permitted by applicable law, Company and Lender each waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or related to this Agreement or the Trademark Collateral.

23. Upon Full Payment, Lender shall execute and deliver to Company, at Company's request and at Company's expense, all releases, termination statements, and other instruments as may be necessary or proper to release or reflect the release of Lender's security interest in the Trademark Collateral, including all documentation necessary to reflect such release in the United States Patent and Trademark Office.

[Remainder of page intentionally left blank; signatures appear on following pages.]

WITNESS the execution hereof as of the date first above written.

**APPLIED OPTOELECTRONICS, INC.**  
("Company")

By: /s/ Stefan Murry  
Name: Stefan Murry  
Title: Chief Financial Officer


Accepted:

**BRANCH BANKING AND TRUST  
COMPANY**  
("Lender")

By: /s/ Brannon E. Fitch  
Name: Brannon E. Fitch  
Title: SVP

EXHIBIT A

Trademarks

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Registration/Application Number</u>	<u>Registration/File Date</u>
APPLIED OPTOELECTRONICS, INC.	United States Patent and Trademark Office	3001557	Registered Date: September 27, 2005
	United States Patent and Trademark Office	2832440	Registered Date: April 13, 2004
AOI	United States Patent and Trademark Office	2535730	Registered Date: February 5, 2002



**PATENT SECURITY AGREEMENT**

This **PATENT SECURITY AGREEMENT** (this "Agreement") is made as of this 28<sup>th</sup> day of September, 2017, between **BRANCH BANKING AND TRUST COMPANY**, a North Carolina banking corporation (together with its successors and assigns, "Lender"), and **APPLIED OPTOELECTRONICS, INC.**, a Delaware corporation ("Company").

**Recitals:**

Company desires to obtain loans and other financial accommodations from Lender pursuant to that certain Loan Agreement dated the date hereof (as at any time amended, restated, supplemented or otherwise modified, the "Loan Agreement") by and between Company and Lender.

Lender is willing to make loans and other financial accommodations to Company from time to time pursuant to the terms of the Loan Agreement, provided that, among other things, Company executes this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company hereby agrees with Lender as follows:

1. Capitalized terms used herein (including those used in the Recitals hereto), unless otherwise defined, shall have the meanings ascribed to them in the Loan Agreement. As used herein, the term "Full Payment" shall mean full and final payment of the Obligations (as defined in the Security Agreement) (hereinafter, the "Obligations") and termination of Lender's financing arrangements with Company; and the term "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Texas.

2. To secure the prompt payment and performance of all of the Obligations, Company hereby grants, assigns and pledges to Lender, a continuing security interest in and Lien upon all of the following property of Company, whether now existing or hereafter created or acquired (the "Patent Collateral"):

(a) the entire right, title and interest of Company in and to the patent applications and patents listed in Exhibit A attached hereto (as the same may be amended from time to time), and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof, including, without limitation, the right to sue for past, present and future infringements and rights corresponding thereto throughout the world (all of the foregoing being herein collectively referred to as the "Patents"); and

(b) all proceeds of the foregoing (such as, by way of example, license royalties and proceeds of infringement suits).

3. Company covenants with and warrants to Lender that:

(a) The Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Company is now and shall continue to be the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any Liens;

(c) Company has the unqualified right to enter into this Agreement and perform its terms; and

(d) Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Patents and has made, and will continue to make all appropriate filings with the United States Patent and Trademark Office and any applicable foreign filing offices to maintain the Patents in existence, including, without limitation, filing all necessary documents with the United States Patent and Trademark Office and any applicable foreign filing offices for each Patent to maintain it without loss of protection therefor.

4. Until Full Payment of all of the Obligations, Company shall not enter into any license agreement relating to any of the Patents with any Person except non-exclusive licenses to customers, vendors, suppliers, agents or other service providers of Company in the regular and ordinary course of Company's business as presently conducted and for reasonable and customary compensation, and shall not become a party to any agreement with any Person that is inconsistent with Company's obligations under this Agreement.

5. If, before Full Payment of all of the Obligations, Company shall obtain rights to any new patentable inventions, or become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, the provisions of paragraph 2 shall automatically apply thereto and Company shall give to Lender prompt notice thereof in writing.

6. Company irrevocably authorizes and empowers Lender to modify this Agreement by amending Exhibit A to include any future patents and patent applications under paragraph 2 or paragraph 5 hereof.

7. Company hereby grants to Lender and its employees the visitation, audit, and inspection rights with respect to Company and the Patent Collateral as set forth in Section DD.06(b) of Schedule DD to the Loan Agreement.

8. At any time that an Event of Default exists, Lender shall have, in addition to all other rights and remedies given it by this Agreement and the other Loan Documents, all rights and remedies of a secured party under the UCC and all other rights and remedies under applicable law. Without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without other notice (except as described in the next sentence, if required by applicable law) or demand whatsoever to Company, each of which Company hereby expressly waives, and without advertisement (except as otherwise provided by applicable law), collect directly any payments due Company in respect of the Patent Collateral, or sell at public or private sale or otherwise realize upon the whole or from time to time any of the Patent Collateral, or any interest that Company may have therein. Company hereby agrees that ten (10) days notice to Company of any public or private sale or other disposition of any of the Patent Collateral shall be reasonable notice; provided, however, that no notice shall be required hereunder if not otherwise required by applicable law. At any such sale or disposition, Lender may, to the extent permitted by applicable law, purchase the whole or any part of the Patent Collateral sold, free from any right of redemption on the part of Company, which right Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Patent Collateral all reasonable costs and expenses incurred by Lender in enforcing its rights hereunder (including, without limitation, all reasonable attorneys' fees), Lender shall apply the remainder of such proceeds to the payment of the Obligations, in such order or manner as may be authorized or required by the Loan Agreement. Any remainder of the proceeds after Full Payment of all of the Obligations shall be paid over to Company. If any deficiency shall arise, Company shall remain liable therefor.

9. Company hereby makes, constitutes and appoints Lender, and any officer or agent of Lender as Lender may reasonably select, as Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default with respect to Company shall exist: to endorse Company's name on all applications, documents, papers and instruments necessary for Lender to continue the maintenance of or to use the Patents, or to grant or issue any exclusive or nonexclusive license under the Patents to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of any Patent Collateral to any other Person. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until Full Payment of all of the Obligations, upon which time such power of attorney will automatically terminate (unless sooner terminated by the parties).

10. Any and all reasonable fees, costs and expenses, of whatever kind or nature, (including, without limitation, reasonable attorneys' fees and legal expenses) incurred by Lender in connection with the preparation of this Agreement and any other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) with the United States Patent and Trademark Office or in other public offices, the payment or discharge of any taxes, counsel fees, maintenance fees or Liens, or otherwise, in protecting, maintaining and preserving any Patent Collateral or in defending or prosecuting any actions or proceedings arising out of or related to any Patent Collateral, shall be borne and paid by Company (it being the intent of Company and Lender that Company shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all maintenance fees payable with respect to the Patents) or, if paid by Lender in its sole discretion, shall be reimbursed by Company to Lender **on demand** by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the Default Rate then applicable to the Line of Credit.

11. Company shall use its commercially reasonable efforts to detect any infringers of the Patents and shall notify Lender in writing of material infringements detected. Company shall have the duty, through counsel reasonably acceptable to Lender, to prosecute diligently any patent application for a Patent pending as of the date of this Agreement or thereafter until Full Payment of all of the Obligations, to make application on unpatented but patentable inventions (subject to Company's reasonable discretion in the ordinary course of business, or, during the existence of an Event of Default, promptly upon Lender's request), to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to protect each Patent and to do any and all acts that are reasonably deemed necessary or desirable by Lender to preserve and maintain all rights in patent applications for each Patent, unless in any such case Company has determined that such Patent is no longer material to the conduct of its business.. Any expenses incurred in connection with such an application or proceedings shall be borne by Company. Company shall not abandon any pending patent application or Patent, without the prior written consent of Lender, unless Company has determined that such patent application or Patent is no longer material to the conduct of its business.

12. Notwithstanding anything to the contrary contained in paragraph 11 hereof, Lender shall have the right, at any time that an Event of Default exists, but shall in no way be obligated, to bring suit in its own name to enforce the Patents and any license hereunder, or to defend any suit or counterclaim in its own name to protect any Patents or license hereunder, in either of which events Company shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender in aid of such enforcement or defense and Company shall promptly, upon demand, reimburse and indemnify Lender for all reasonable costs and expenses incurred by Lender in the exercise of its rights under this paragraph 12.

13. If Company fails to comply with any of its obligations hereunder and at the time of such failure or as a result thereof an Event of Default exists, then to the extent permitted by applicable law, Lender may discharge such obligations in Company's name or in Lender's name, in Lender's sole discretion, but at Company's expense, and Company agrees to reimburse Lender in full for all reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in prosecuting, defending or maintaining the Patents or Lender's interest therein pursuant to this Agreement.

14. No course of dealing between Company and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under any of the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

15. All of Lender's rights and remedies with respect to the Patent Collateral, whether established by this Agreement or any of the other Loan Documents, or by any other agreements or by applicable law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable, in whole or in part, in any jurisdiction, the same shall be deemed severed herefrom and shall not in any manner affect such clause or provisions in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

17. This Agreement, together with the other Loan Documents, constitutes and expresses the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, whether express or implied, oral or written. This Agreement is subject to modification only by writing signed by the parties, except as provided in paragraph 6 hereof.

18. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Lender and upon the successors and permitted assigns of Company. Company shall not assign its rights or delegate its rights or assign its duties hereunder without the prior written consent of Lender.

19. Company hereby waives notice of Lender's acceptance hereof.

20. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas.

21. To the fullest extent permitted by applicable law, Company and Lender each waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or related to this Agreement or the Patent Collateral.

22. Upon Full Payment, Lender shall execute and deliver to Company, at Company's request and at Company's expense, all releases, termination statements, and other instruments as may be necessary or proper to release or reflect the release of Lender's security interest in the Patent Collateral, including all documentation necessary to reflect such release in the United States Patent and Trademark Office.

[Remainder of page intentionally left blank; signatures appear on following pages.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above.

**APPLIED OPTOELECTRONICS, INC.**  
("Company")

By: /s/ Stefan Murry  
Name: Stefan Murry  
Title: Chief Financial Officer

Accepted:

**BRANCH BANKING AND TRUST  
COMPANY**  
("Lender")

By: /s/ Brannon E. Fitch  
Name: Brannon E. Fitch  
Title: SVP

**EXHIBIT A**

Patents

<u>Patent Name</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
Aligning and directly optically coupling photodetectors to optical demultiplexer outputs in a multichannel receiver optical subassembly	9,703,054	July 11, 2017
Wavelength-selectable laser device providing spatially-selectable wavelength(S)	9,698,567	July 4, 2017
Multi-channel transmitter optical subassembly (TOSA) with an optical coupling receptacle providing an off-center fiber	9,696,503	July 4, 2017
System, method and fixture for performing both optical power and wavelength measurements of light emitted from a laser diode	9,685,757	June 20, 2017
Techniques for reducing ingress of foreign matter into an optical subassembly	9,684,141	June 20, 2017
Pluggable optical transceiver module	9,671,582	June 6, 2017
Coaxial transmitter optical subassembly (TOSA) with cuboid type to laser package and optical transceiver including same	9,614,620	April 4, 2017
Test fixture with thermoelectric cooler and spring-operated holding pin	9,606,145	March 28, 2017
Pluggable optical transceiver module	9,523,826	December 20, 2016

Aligning and directly optically coupling photodetectors to optical demultiplexer outputs in a multichannel receiver optical subassembly	9,509,433	November 29, 2016
Laser array mux assembly with external reflector for providing a selected wavelength or multiplexed wavelengths	9,502,858	November 22, 2016
Extended cavity fabry-perot laser assembly capable of high speed optical modulation with narrow mode spacing and WDM optical system including same	9,479,280	October 25, 2016
Multi-channel optical transceiver module including thermal arrayed waveguide grating multiplexer and athermal arrayed waveguide grating demultiplexer	9,479,259	October 25, 2016
Monitoring a multiplexed laser array in an optical communication system	9,455,782	September 27, 2016
Optical coupling element and optical module having the same	9,448,372	September 20, 2016
Multi-channel optical transceiver module including dual fiber type direct link adapter for optically coupling optical subassemblies in the transceiver module	9,448,367	September 20, 2016
Optical networking unit (ONU) packaging	9,432,122	August 30, 2016
Scribe etch process for semiconductor laser chip manufacturing	9,356,422	May 31, 2016
Semiconductor laser diode with integrated heating region	9,343,870	May 17, 2016
Optically matched laser array coupling assembly for coupling laser array to arrayed waveguide grating	9,341,774	May 17, 2016

Thermally isolated multi-channel transmitter optical subassembly and optical transceiver module including same	9,306,671	April 5, 2016
Laser transceiver with improved bit error rate	9,236,949	January 12, 2016
Thermally shielded multi-channel transmitter optical subassembly and optical transceiver module including same	9,236,945	January 12, 2016
Method and system for alignment of photodetector array to optical demultiplexer outputs	9,225,428	December 29, 2015
Filtered laser array assembly with external optical modulation and WDM optical system including same	9,214,790	December 15, 2015
Reducing cross-modulation in multichannel modulated optical systems	9,191,111	November 17, 2015
Multi-channel optical transceiver module including dual fiber type direct link adapter for optically coupling optical subassemblies in the transceiver module	9,170,383	October 27, 2015
External cavity laser array system and WDM optical system including same	9,160,455	October 13, 2015
Heated laser package with increased efficiency for optical transmitter systems	9,083,468	July 14, 2015
Compact multi-channel optical transceiver module	9,039,303	May 26, 2015
Wavelength-selectable laser device and apparatus and system including same	9,002,214	April 7, 2015



Temperature controlled multi-channel transmitter optical subassembly and optical transceiver module including same	8,995,484	March 31, 2015
Receptacle diplexer	8,899,846	December 2, 2014
Distortion compensation circuit including tunable phase path	8,891,974	November 18, 2014
Temperature controlled multi-channel transmitter optical subassembly and optical transceiver module including same	8,831,433	September 9, 2014
Laser mux assembly for providing a selected wavelength	8,818,208	August 26, 2014
Optical transceiver including optical fiber coupling assembly to increase usable channel wavelengths	8,805,191	August 12, 2014
Laser package including semiconductor laser and memory device for storing laser parameters	8,787,772	July 22, 2014
Distortion compensation circuit including one or more phase invertible distortion paths	8,718,489	May 6, 2014
System and method for distortion compensation including configureable delay	8,670,675	March 11, 2014
Optical transceiver that maintains a bend diameter of an internal optical fiber and method of assembling same	8,655,183	February 18, 2014
System and method for distortion compensation in response to frequency detection	8,606,116	December 10, 2013
Network timing	8,406,631	March 26, 2013

Systems and methods for reducing clipping in multichannel modulated optical systems	8,358,937	January 22, 2013
Reducing cross-modulation in multichannel modulated optical systems	8,320,773	November 27, 2012
Systems and methods for reducing clipping in multichannel modulated optical systems	8,165,475	April 24, 2012
Reducing cross modulation in multichannel modulated optical systems with anti-clipping	8,165,474	April 24, 2012
Quad-port optical module with pass-through and add/drop configuration	8,126,329	February 28, 2012
Distortion compensation circuit and method based on orders of time dependent series of distortion signal	8,121,493	February 21, 2012
Gain-coupled distributed feedback semiconductor laser including first-order and second-order gratings	8,121,170	February 21, 2012
Fixture for securing optoelectronic packages for wire and/or component bonding	8,091,876	January 10, 2012
Thermoelectric cooler controller	8,079,222	December 20, 2011
Distortion compensation circuit including one or more phase invertible distortion paths	8,073,340	December 6, 2011
Photosensor operating point	8,055,138	November 8, 2011
Position finding system and method for use in aligning laser device with an optical fiber	8,045,164	October 25, 2011

Clipping correction system and method for correcting clipped signals in a receiver	7,978,985	July 12, 2011
Predistortion circuit including distortion generator diodes with adjustable diode bias	7,925,170	April 12, 2011
Pluggable form factor release mechanism	7,766,686	August 3, 2010
Distributed feedback semiconductor laser including wavelength monitoring section	7,627,012	December 1, 2009
Complex-coupled distributed feedback semiconductor laser	7,583,719	September 1, 2009
Laser drive circuit and method providing high limit clipping corresponding to low limit clipping in a laser	7,573,923	August 11, 2009
Distributed feedback laser with improved optical field uniformity and mode stability	7,542,503	June 2, 2009
Coaxial optoelectronic device separation apparatus and method	7,519,260	April 14, 2009
Modular laser package system	7,478,955	January 20, 2009
System and method for securing optoelectronic packages for mounting components at a mounting angle	7,468,286	December 23, 2008
Method and apparatus for coupling a laser to a fiber in a two-lens laser system	7,226,218	June 5, 2007
Method for fabricating a VCSEL with ion-implanted current-confinement structure	7,026,178	April 11, 2006
Assembly with tapered, threaded ferrule housing for improved alignment of fiber with laser	7,010,013	March 7, 2006

Method and apparatus for reducing specular reflections in semiconductor lasers	7,010,012	March 7, 2006
Optically-pumped multiple-quantum well active region with improved distribution of optical pumping power	6,859,481	February 22, 2005
VCSEL with antiguide current confinement layer	6,795,478	September 21, 2004
Multiple reflectivity band reflector	6,788,466	September 7, 2004
VCSEL with heat-spreading layer	6,782,019	August 24, 2004
VCSEL assembly with edge-receiving optical devices	6,765,948	July 20, 2004
Multiple reflectivity band reflector with non-uniform profile and laser system employing same for laser wavelength monitoring	6,765,939	July 20, 2004
Laser having multiple reflectivity band reflector	6,763,053	July 13, 2004
Method and system employing multiple reflectivity band reflector for laser wavelength monitoring	6,763,046	July 13, 2004
Alternative substrates for epitaxial growth	6,746,777	June 8, 2004
Housing for passively aligning an optical fiber with a lens	6,736,550	May 18, 2004
Planar lightwave circuit for conditioning tunable laser output	6,735,224	May 11, 2004
Modified distributed bragg reflector (DBR) for vertical cavity surface-emitting laser (VCSEL) resonant wavelength tuning sensitivity control	6,724,796	April 20, 2004

Tunable vertical-cavity surface-emitting laser with tuning junction	6,697,413	February 24, 2004
Patterned phase shift layers for wavelength-selectable vertical cavity surface-emitting laser (VCSEL) arrays	6,696,307	February 24, 2004
Optical fiber with mirror for semiconductor laser	6,669,367	December 30, 2003
Method and apparatus for demounting workpieces from adhesive film	6,652,707	November 25, 2003
Method for fabricating single-mode DBR laser with improved yield	6,638,773	October 28, 2003
Overlapping wavelength-tunable vertical cavity surface-emitting laser (VCSEL) arrays	6,636,544	October 21, 2003
Vertical-cavity surface-emitting laser with metal mirror and method of fabrication of same	6,611,543	August 26, 2003
Single-mode DBR laser with improved phase-shift section	6,608,855	August 19, 2003
Double heterostructure photodiode with graded minority-carrier blocking structures	6,603,184	August 5, 2003
Method and apparatus for polarizing light in a VCSEL	6,560,265	May 6, 2003
Spatially coherent surface-emitting, grating coupled quantum cascade laser with unstable resonance cavity	6,560,259	May 6, 2003
Vertical-cavity surface-emitting laser with bottom dielectric distributed bragg reflector	6,549,556	April 15, 2003

Multispectral radiation detectors using strain-compensating superlattices	6,455,908	6,455,908 September 24, 2002
Compliant universal substrates for optoelectronic and electronic devices	6,406,795	June 18, 2002
Tunable fiber fabry-perot surface-emitting lasers	6,263,002	June 17, 2001
Modular laser package system and associated methods	7,290,943	November 6, 2007
Tunable laser with multiple in-line section	13/916,652	June 13, 2013
Monitoring and controlling temperature across a laser array in a transmitter optical subassembly (TOSA) package	14/295,459	June 4, 2014
Tunable laser with multiple in-line section including sampled gratings	14/551,353	November 24, 2014
Two-section semiconductor laser with modulation-independent grating section to reduce chirp	14/590,456	January 6, 2015
Tunable laser including parallel lasing cavities with a common output	14/661,772	March 18, 2015
Multichannel receiver optical subassembly with improved sensitivity	14/665,639	March 23, 2015
Multi-channel transmitter optical subassembly (TOSA) with opposing placement of transistor outline (TO) can laser packages	14/837,993	August 27, 2015
Receiver optical subassembly (ROSA) housing with sidewall receptacle to provide electrical isolation between an adjacent transmitter optical subassembly (TOSA) in a transceiver housing	14/838,017	August 27, 2015

Optical filter sub-assembly cartridge for use in a receiver optical subassembly (ROSA) housing	14/974,492	December 18, 2015
Optical transceiver assembly including thermal dual arrayed waveguide grating	14/983,773	December 30, 2015
Techniques for reducing the footprint of a multi-channel transmitter optical subassembly (TOSA) within an optical transceiver housing	15/204,174	July 7, 2016
Optical component assembly having a keyed structure for ensuring proper insertion orientation within an optical subassembly	15/241,979	August 19, 2016