

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): April 5, 2021

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)

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, Par value \$0.001	AAOI	NASDAQ Global Market

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.

Item 1.01 Entry into a Material Definitive Agreement.

On April 5, 2021, Applied Optoelectronics, Inc. (the “Company”) executed a Fifth Amendment to Loan Agreement and a Fourth Amendment to Security Agreement, a Note Modification Agreement, and an Addendum to Promissory Note (together the “Amended Credit Facility”) with Truist Bank (the “Lender”), formerly Branch Banking and Trust Company. The Amended Credit Facility renews the \$20 million line of credit with Lender originally entered into on September 28, 2017 (the “Credit Line”). Under the terms of the Amended Credit Facility the maturity date of the Credit Line is extended from April 2, 2021 to October 15, 2022.

Borrowings under the Amended Credit Facility will be used for general corporate purposes and will bear interest at a rate equal to the London Interbank Offered Rate (LIBOR) plus 1.50%, with a LIBOR floor of 0.75%. The Company will make monthly payments of accrued interest with the final monthly payment being for all principal and any accrued interest not yet paid.

The Company’s obligations under the Credit Line is secured by the Company’s accounts receivable, inventory, intellectual property, all business assets with the exception of real estate and equipment. The Credit Line 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 Amended Credit Facility does not purport to be a complete statement of the parties’ rights and obligations under such documents and is qualified in its entirety by reference to the full text of the Fifth Amendment to Loan Agreement and Fourth Amendment to Security Agreement, the Note modification Agreement, and the Addendum to Promissory Note, dated April 5, 2021, copies of which are attached as Exhibit 10.1 through 10.3 to this Current Report on Form 8-K and incorporated by reference herein.

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 Amended Credit Facility is incorporated by reference herein and made a part hereof.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

- 10.1 [Fifth Amendment to Loan Agreement and Fourth Amendment to Security Agreement, dated April 5, 2021, between Applied Optoelectronics, Inc. and Truist Bank.](#)
- 10.2 [Note Modification Agreement, dated April 5, 2021, between Applied Optoelectronics, Inc. and Truist Bank.](#)
- 10.3 [Addendum to Promissory Note, dated April 5, 2021, between Applied Optoelectronics, Inc. and Truist Bank.](#)
- 104 Cover Page Interactive File (the cover page tags are embedded within the Inline XBRL document).

SIGNATURES

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

Date: April 9, 2021

APPLIED OPTOELECTRONICS, INC.

By: /s/ DAVID C. KUO
DAVID C. KUO
General Counsel and Secretary

**FIFTH AMENDMENT TO LOAN AGREEMENT AND
FOURTH AMENDMENT TO SECURITY AGREEMENT**

THIS FIFTH AMENDMENT TO LOAN AGREEMENT AND FOURTH AMENDMENT TO SECURITY AGREEMENT (this "Amendment") is made and entered into this 5th day of April, 2021, by and between **APPLIED OPTOELECTRONICS, INC.**, a Delaware corporation (hereinafter referred to as "Borrower") with its chief executive office and principal place of business at 13139 Jess Pirtle Blvd., Sugar Land, Texas 77478, and **TRUIST BANK**, a North Carolina banking corporation f/k/a Branch Banking and Trust Company, a North Carolina banking corporation (including its successors and assigns, hereinafter referred to as "Bank") with an office at 333 Clay Street, Suite 3800, Houston, Texas 77002.

Recitals:

Bank and Borrower are parties to a certain Loan Agreement dated September 28, 2017 (as at any time amended, restated, supplemented or otherwise modified, the "Loan Agreement"), pursuant to which Bank has made loans and other financial accommodations to Borrower.

Bank and Borrower are also parties to that certain Security Agreement dated September 28, 2017 (as at any time amended, restated, supplemented or otherwise modified, the "Security Agreement"), pursuant to which Borrower granted a security interest in certain of its personal property in favor of Bank to secure Borrower's obligations under the Loan Agreement, the Security Agreement, and the Note (as defined in the Security Agreement).

Borrower has requested that Bank amend the Loan Agreement and the Security Agreement to extend the term of the credit facility thereunder and in certain other respects, and Bank is willing to do so on the terms and subject to the conditions of this Amendment.

NOW, THEREFORE, for TEN DOLLARS (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby severally acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1) **Definitions.** Capitalized terms used in this Amendment, unless otherwise defined herein, shall have the respective meanings ascribed to such terms in the Loan Agreement.

2) **Amendments to Loan Agreement.** The Loan Agreement is hereby amended as follows:

(a) Effective as of April 2, 2021, by deleting the reference to "April 2, 2021" contained in the paragraph entitled "**Line of Credit**" on page 1 of the Loan Agreement, and by substituting in lieu thereof a reference to "October 15, 2022".

(b) By deleting the paragraph beginning "**Loan Base Report:**" contained in Section 3.08 of the Loan Agreement and by substituting in lieu thereof the following:

Loan Base Report: On or before the twentieth (20th) day of each month, 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 month in form acceptable to Bank signed by the President or chief financial officer of the Borrower.

(c) By adding the following to the end of Section 3.10 of the Loan Agreement:

Notwithstanding the terms of this Section or any other terms of this Agreement to the contrary, Borrower shall not be required to furnish an appraisal with respect to Inventory at any time that Inventory is excluded from the calculation of the Collateral Loan Value.

(d) By deleting the definition of "Availability" contained in Section 10.01 of the Loan Agreement in its entirety and by substituting in lieu thereof:

"Availability" shall mean the lesser of (i) \$20,000,000 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 month 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 – the lesser of (i) 85% of the NOLV Percentage and (ii) 50% of cost; Eligible Investment Grade Accounts – 90% (other than Eligible Foreign Accounts); Eligible Foreign Accounts that are Eligible Investment Grade Accounts – 85%; Eligible non-Investment Grade Accounts – 85%.

(e) By deleting the definition of "Cross Aging Rule" contained in Section DD.01 of Schedule DD to the Loan Agreement in its entirety and by substituting in lieu thereof:

Cross Aging Rule. Should any Account Debtor (other than ATX Networks or a Designated Extended Terms Account Debtor) have 50% or more, or should ATX Networks or any Designated Extended Terms Account Debtor have 25% or more (or, upon notice by Bank to Borrower, such other percentage as Bank in its discretion shall determine with respect to any Account Debtor) of its total aggregate Accounts aged in excess of the applicable Eligibility Period, then all Accounts from such Account Debtor shall be deemed ineligible.

(f) By adding the following new definition of "NOLV Percentage" to Section DD.01 of Schedule DD to the Loan Agreement in alphabetical order:

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrower's Inventory performed by an appraiser and on terms satisfactory to Bank.

(g) By deleting clauses (c) and (e) from Section DD.02 of Schedule DD to the Loan Agreement, and by substituting in lieu thereof the following, respectively:

(c) 85% against Eligible Foreign Accounts that are Eligible Investment Grade Accounts,

(e)

Against the Eligible Inventory as follows (provided, that on and after June 12, 2021, Eligible Inventory shall not be included in the calculation of the Collateral Loan Value unless Borrower provides written notice to Bank of its desire to include Eligible Inventory in the Borrowing Base, and updated Loan Base Report, and an Inventory appraisal in form and substance satisfactory to Bank prepared as of a date not greater than ten (10) business days prior to such request, at which time Eligible Inventory shall at all times thereafter be included in the calculation of the Collateral Loan Value):

The lesser of (i) 85% of the NOLV Percentage and (ii) 50% of cost of Finished Inventory	<u>\$N/A</u>	Inventory Sublimits:
The lesser of (i) 85% of the NOLV Percentage and (ii) 50% of cost of Raw Materials Inventory	<u>\$N/A</u>	
The lesser of (i) 85% of the NOLV Percentage and (ii) 50% of cost of Work in Process Inventory	<u>\$N/A</u>	
<u>N/A%</u> In Transit Inventory	<u>\$N/A</u>	
<u>N/A%</u> Other Eligible Inventory {Describe}	<u>\$N/A</u>	
	Subtotal:	<u>\$N/A</u>

(h) By deleting clause (k) of Section DD.03 of Schedule DD to the Loan Agreement, and by substituting in lieu thereof the following new clause (k):

(k) That portion of Accounts due from an Account Debtor with a dollar value in excess of fifteen percent (15%) (or, in the case of Accounts due from (i) SYNEX Corporation and its subsidiary, Hyve Solutions Corporation, collectively, fifty percent (50%), (ii) Amazon Corporate LLC and its respective affiliates, fifty percent (50%), (iii) Cisco Systems, Inc. and its affiliates, forty-five percent (45%), (iv) each of World Wide Technology, Inc. and Microsoft Corporation, and their respective affiliates, forty percent (40%), (v) Syncreon Logistics USA LLC, thirty percent (30%), and (vi) ATX Networks, twenty-five percent (25%), of Borrower's aggregate dollar amount of all outstanding Accounts. For the avoidance of doubt, the increased percentages described in clauses (i)-(v) above shall only apply with respect to the Account Debtors described therein, but not to other Persons such as, without limitation, counterparties to master purchase agreements or similar agreements with any such Account Debtor.

3) **Amendment to Security Agreement.** The Security Agreement is hereby amended by deleting clause (ii) following the phrase "This Security Agreement is entered into in connection with (check applicable items):" in the introductory section on page 1 of the Security Agreement in its entirety, and by substituting in lieu thereof the following:

[X] (ii)a Promissory Note dated September 28, 2017 (including, without limitation, all addenda, extensions, renewals, modifications and substitutions thereof, the "Note"), made by Debtor (the "Borrower") in favor of Secured Party, as modified on September 30, 2019 to be in the principal amount of \$20,000,000 and on April 5, 2021 to extend the maturity to October 15, 2022;

4) **Ratification and Reaffirmation.** Borrower hereby ratifies and reaffirms the indebtedness under the Loan Agreement and the other Loan Documents, each of the Loan Documents, and all of Borrower's covenants, duties, indebtedness and liabilities under the Loan Documents.

5) **Acknowledgments and Stipulations.** Borrower acknowledges and stipulates that each of the Loan Documents executed by Borrower creates legal, valid and binding obligations of Borrower that are enforceable against Borrower in accordance with the terms thereof; all of the indebtedness under the Loan Agreement, the Notes and the other Loan Documents is owing and payable without defense, offset or counterclaim (and to the extent there exists any such defense, offset or counterclaim on the date hereof, the same is hereby knowingly and voluntarily waived by Borrower); the security interests and liens granted by Borrower in favor of Bank are duly perfected, first priority security interests and liens; and at the beginning of business on March 30, 2021, the unpaid principal amount of the Line of Credit totaled \$18,700,000.

6) **Representations and Warranties.** Borrower represents and warrants to Bank, to induce Bank to enter into this Amendment, that no Event of Default or event which, with the passage of time or giving of notice, would become an Event of Default exists on the date hereof; the execution, delivery and performance of this Amendment have been duly authorized by all requisite corporate action on the part of Borrower and this Amendment has been duly executed and delivered by Borrower; and all of the representations and warranties made by Borrower in the Loan Agreement are true and correct on and as of the date hereof.

7) **Reference to Loan Agreement.** Upon the effectiveness of this Amendment, each reference in the Loan Agreement to "this Agreement", "hereunder", or words of like import shall mean and be a reference to the Loan Agreement, as amended by this Amendment. Upon the effectiveness of this Amendment, each reference in the Security Agreement to "this Security Agreement", "hereunder", or words of like import shall mean and be a reference to the Security Agreement, as amended by this Amendment.

8) **Breach of Amendment.** This Amendment shall be part of the Loan Agreement and the Security Agreement, and a breach of any representation, warranty or covenant herein shall constitute an Event of Default.

9) **Conditions Precedent.** The amendments contained in Sections 2 and 3 hereof shall be effective as of the date of this Amendment, subject to Bank's receipt of each of the following on or before the date of this Amendment, in form and substance satisfactory to Bank, together with all originals of the same to the extent requested by Bank in its sole discretion:

- (a) a counterpart of this Amendment, duly executed by Borrower;
- (b) a Note Modification Agreement (together with addendum thereto), duly executed by Borrower, in form and substance satisfactory to Bank;
- (c) resolutions of Borrower authorizing Borrower to enter into this Amendment and the other documents executed in connection herewith, certified by an authorized officer of Borrower;
- (d) the amendment fee referenced in Section 10 hereof; and
- (e) all other approvals, opinions or documents as Bank may reasonably request.

10) **Amendment Fee; Expenses of Bank.** In consideration of Bank's willingness to enter into this Amendment as set forth herein, Borrower agrees to pay to Bank an amendment fee in the amount of \$30,000 in immediately available funds on the date hereof. Additionally, Borrower agrees to pay, **on demand**, all costs and expenses incurred by Bank in connection with the preparation, negotiation and execution of this Amendment and any other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the costs and fees of Bank's legal counsel and any taxes, filing fees and other expenses associated with or incurred in connection with the execution, delivery or filing of any instrument or agreement referred to herein or contemplated hereby.

11) **Release of Claims.** To induce Bank to enter into this Amendment, Borrower hereby **RELEASES, ACQUITS AND FOREVER DISCHARGES** Bank, and all officers, directors, agents, employees, successors and assigns of Bank, from any and all liabilities, claims, demands, actions or causes of action of any kind or nature (if there be any), whether absolute or contingent, disputed or undisputed, at law or in equity, or known or unknown, that Borrower now has or ever had against Bank arising under or in connection with any of the Loan Documents or otherwise. Borrower represents and warrants to Bank that Borrower has not transferred or assigned to any Person any claim that Borrower ever had or claimed to have against Bank.

12) **Governing Law.** This Amendment shall be governed by and construed in accordance with the internal laws of the State of Texas.

13) **No Novation, etc.** Except as otherwise expressly provided in this Amendment, nothing herein shall be deemed to amend or modify any provision of the Loan Agreement, the Security Agreement or any of the other Loan Documents, each of which shall remain in full force and effect. This Amendment is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction, and the Loan Agreement and the Security Agreement as herein modified shall continue in full force and effect.

14) **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15) **Further Assurances.** Borrower agrees to take such further actions as Bank shall reasonably request from time to time in connection herewith to evidence or give effect to the amendments set forth herein or any of the transactions contemplated hereby.

16) **Miscellaneous.** This Amendment may be executed in any number of counterparts and by different parties to this Amendment on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any manually executed signature page to this Amendment delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature hereto. Section titles and references used in this Amendment shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreements among the parties hereto. This Amendment expresses the entire understanding of the parties with respect to the subject matter hereof and may not be amended except in a writing signed by the parties.

17) **Waiver of Jury Trial.** To the fullest extent permitted by applicable law, each party hereby waives the right to trial by jury in any action, suit, counterclaim or proceeding arising out of or related to this Amendment.

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

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers on the date first written above.

WITNESS:
("Borrower")

APPLIED OPTOELECTRONICS, INC.

By: /s/ Stefan Murry
Stefan Murry, Chief Financial Officer

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

[CORPORATE SEAL]

Accepted by Lender:

TRUIST BANK
("Bank")

By: /s/ Brannon E. Fitch
Brannon E. Fitch, Senior Vice President

MAKER: Applied Optoelectronics, Inc.
 ADDRESS: 13139 Jess Pirtle Blvd
Sugar Land, Texas
77478

NOTE MODIFICATION AGREEMENT

Account Number
00001
Note Number

\$20,000,000.00
 Modified Principal Amount

\$60,000,000.00
 Original Principal Amount

September 28, 2017
 Original Date

April 5, 2021
 Modification Date

This Note Modification Agreement (hereinafter referred to as "Agreement") is made and entered into as of this 30th day of September, 2019 by **APPLIED OPTOELECTRONICS, INC.**, as maker(s) and co-maker(s), if any, of the Promissory Note as defined below (whether one or more, hereinafter referred to jointly and severally as "Borrower"), in favor of **TRUIST BANK**, a North Carolina banking corporation f/k/a Branch Banking and Trust Company, a North Carolina banking corporation (including its successors and assigns, hereinafter referred to as "Bank").

Borrower previously executed a Promissory Note payable to Bank as more particularly identified by the description of the original amount and date set forth above (including all previous renewals, extensions and modifications thereof, collectively the "Promissory Note"). Borrower and Bank hereby agree that the Promissory Note shall be modified only to the limited extent as is hereinafter set forth; that all other terms, conditions, and covenants of such Promissory Note shall remain in full force and effect; and that this Agreement shall constitute a renewal, extension and modification of the Promissory Note and not a novation.

NOW, THEREFORE, in mutual consideration of the premises, the sum of One Dollar (\$1.00) and other good and valuable consideration, each to the other parties paid, the parties hereto agree that the Promissory Note is hereby amended as follows (checked items contain applicable modifications):

- Borrower shall pay a prepayment fee as set forth in the Prepayment Fee Addendum attached hereto.
- This Agreement hereby permanently reduces the principal amount of the loan to Borrower to the Modified Principal Amount set forth above.

INTEREST RATE, PRINCIPAL AND INTEREST PAYMENT TERM MODIFICATIONS

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.
- As of the Modification Date, any fixed, floating or average maximum rate and fixed minimum rate in effect by virtue of the Promissory Note(s) are hereby deleted. 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 Promissory Note is repaid in full by Borrower annually beginning on ___.
- The Adjusted LIBOR Rate as more specifically described in the Addendum to Note attached hereto and incorporated herein.

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.

Principal and interest are payable as follows:

- Principal (plus any accrued interest not otherwise scheduled herein) is due in full at maturity on October 15, 2022.
- 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 April 5, 2021 and continuing on the same day of each calendar period thereafter, with one final payment of all remaining interest due on October 15, 2022.
- 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 Agreement. Borrower understands the payment may increase if interest rates increase.
- This Agreement evidences a revolving line of credit and advances under this Agreement, 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 (as defined in the Loan Agreement, as hereinafter defined), Borrower may borrow, repay, and reborrow pursuant to the terms of the Loan Agreement dated September 28, 2017, between Borrower and Bank (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement").
- 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 Agreement on the date(s) due. Borrower shall provide appropriate account number(s) for account(s) at Bank or another bank.
- _____.

The following scheduled payment(s) is (are) deferred:

- \$ ___ principal}
- \$ ___ interest} Payments due on ___

is (are) hereby deferred. Payments will resume on ___ according to the schedule contained herein or to the existing schedule (if no other changes are made herein).

APPLICATION OF PAYMENTS. Unless otherwise expressly required by applicable law, payments will be applied to any unpaid collection costs, late and other charges and fees, accrued unpaid interest, and principal in such order as Bank may determine in its sole and absolute discretion.

INTEREST CALCULATION; REAMORITIZATION. 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; 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.

LATE FEE; RETURNED ITEM FEE. 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.

FEES AND CHARGES. Borrower agrees that the only interest charge is the interest actually stated in the Promissory Note, as modified, and that any renewal 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 the Promissory Note, and such charges shall be fully earned and non-refundable when accrued. All other charges imposed by Bank upon Borrower in connection with the Promissory Note, as modified, and the loan evidenced thereby 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 the Promissory Note, as modified, and the loan and shall under no circumstances be deemed to be charges for the use of money. Bank may, at its option, charge any reasonable fees for the modification, renewal, extension, or amendment of any of the terms of the Promissory Note(s) or this Agreement not prohibited by applicable law. All such charges shall be fully earned and non-refundable when due.

COLLATERAL. Unless otherwise provided herein, it is expressly understood and agreed by Borrower that any and all real and personal property given or pledged, whether by Borrower or a third party, as collateral to secure the Promissory Note, shall remain as security for the Promissory Note as modified hereby. In addition to Bank's right of setoff and other liens and security interests previously granted to Bank, 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 the Promissory Note and this Agreement.

ADDITIONAL COLLATERAL. [] The Promissory Note, as modified, and the performance of the terms of any agreement or instrument relating to, evidencing, or securing the Promissory Note shall be additionally secured by the collateral hereinafter described, a new security instrument shall be executed by Borrower and/or Debtor(s)/Grantor(s), and all other steps necessary to perfect or record Bank's lien with priority acceptable to Bank shall be taken. All of the terms, conditions and covenants of the below-described agreements ("Additional Agreements") are expressly made a part of the Promissory Note and this Agreement 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 Additional Agreements and any other related documents given by Borrower, any guarantor, or any pledgor in favor of Bank.

Date:	Type of Agreement:
From:	
Date:	Type of Agreement:
From:	
Date:	Type of Agreement:
From:	

JOINT AND SEVERAL OBLIGATION; NO NOVATION OR RELEASE. If the Promissory Note being modified by this Agreement is signed by more than one person or entity, the Promissory Note shall be the joint and several obligation and liability of all of the undersigned. It is expressly agreed that this Agreement is a modification of the Promissory Note only and not a novation. The original indebtedness and obligation of Borrower evidenced by the Promissory Note is not extinguished hereby and except for the modifications contained herein, the Promissory Note, and any other loan documents securing or relating to the Promissory Note, shall be and remain in full force and effect. This Agreement shall not release or affect the liability of any guarantors, endorsers or obligors of the Promissory Note. Borrower hereby represents and warrants to Bank that all guarantors, endorsers, pledgors or other obligors of Borrower's indebtedness have approved and consented to the terms of this Agreement, have waived any objection hereto, have affirmed any and all obligations to Bank and certify that there are no defenses or offsets against such obligations to Bank, including without limitation the Promissory Note. Bank expressly reserves all rights as to any party with right of recourse on the Promissory Note.

WAIVER BY BORROWER. Each of the parties signing this Agreement 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.

DEFAULT RATE OF INTEREST; ATTORNEY'S FEES AND COSTS. From and after any Event of Default under this Agreement, the Promissory Note, or any related loan document, including failure to pay upon final maturity, 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 that such rate shall apply after judgment. If the Promissory Note and this Agreement are 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.

FINANCIAL STATEMENTS. To the maximum extent permitted by applicable law, Borrower hereby waives all rights, remedies, claims, and defenses based upon or related to Sections 51.003, 51.004, and 51.005 of the Texas Property Code, to the extent the same pertain or may pertain to any enforcement of this Note. Unless otherwise required under the Loan Agreement, if applicable, and as long as any indebtedness evidenced by the Promissory Note, as modified hereby, 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.

GOVERNING LAW; CHOICE OF VENUE. All rights and obligations arising hereunder shall be governed by and construed in accordance with the laws of the same state which governs the interpretation and enforcement of the Promissory Note. Any legal action with respect to the indebtedness evidenced by the Promissory Note and this Agreement 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. 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.

NON-WAIVER BY BANK. Borrower agrees that if Bank has released any collateral, it shall not be required or obligated to take any further steps to release such collateral from any lien or security interest unless Bank determines, in its sole discretion, that it may do so without releasing or impairing its existing liens and security interests or its priority in other collateral; and unless Borrower bears the reasonable cost of such action. No delay or omission on the part of Bank in exercising any right under the Promissory Note or this Agreement shall operate as a waiver of such right or of any other right of Bank, 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.

MISCELLANEOUS. Wherever possible, the provisions of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of any such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. This Agreement 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. The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement. Time is of the essence in the performance of this Agreement.

WAIVER OF JURY TRIAL. 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 AGREEMENT, THE PROMISSORY NOTE OR 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 OR 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)

NOTE MODIFICATION SIGNATURE PAGE

Borrower: Applied Optoelectronics, Inc.

Account Number:

Modification Amount:

\$20,000,000.00

Note Number:

00001

Modification Date:

April 5, 2021

IN WITNESS WHEREOF, the undersigned have caused this Note Modification Agreement to be executed, as of the date first written above.

WITNESS:

Print Name: _____

Print Name: _____

APPLIED OPTOELECTRONICS, INC.

Name of Corporation

By:

Name:

Stefan Murry

Title:

Chief Financial Officer

By:

Name:

David Kuo

Title:

Vice President, General Counsel and Secretary

LIBOR ADDENDUM TO PROMISSORY NOTE

THIS LIBOR ADDENDUM TO PROMISSORY NOTE (“Addendum”) is entered this 5th day of April, 2021 and is hereby made a part of the Promissory Note dated September 28, 2017, from **APPLIED OPTOELECTRONICS, INC.**, a Delaware corporation (“Borrower”) payable to the order of **TRUIST BANK**, a North Carolina banking corporation f/k/a Branch Banking and Trust Company, a North Carolina banking corporation (including its successors and assigns, hereinafter referred to as “Bank”) in the principal amount of \$20,000,000.00 (including all renewals, extensions, modifications and substitutions thereof, the “Note”).

1. APPLICATION OF INTEREST RATE.

1.1 **Interest Rate.** Interest shall accrue at the rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/16th of 1.0%) by adding (i) USD LIBOR for one month (or any subsequent Benchmark) determined as of the Reference Time as quoted by Bloomberg Finance L.P., or any quoting service or commonly available source utilized by Bank, on the determination date plus (ii) one-half percent (1.50%) per annum (the “Margin”) (“Interest Rate”), which shall be adjusted on the first day of each Interest Period and shall apply to the entire principal balance outstanding for any Interest Period. The Interest Rate shall be adjusted for any Changes in Costs and Reserve Requirements so that Bank shall receive the same yield. Should USD LIBOR, or any subsequent Benchmark, be less than three quarters of one percent (0.75%), then USD LIBOR, or the applicable Benchmark as the case may be, shall be deemed to be three quarters of one percent (0.75%).

1.2 **Minimum and Maximum Interest Rate.** If checked here the Interest Rate will not decrease below a fixed minimum rate of 2.25% (“Minimum Rate”). If checked here the Interest Rate will not exceed a fixed maximum rate of _____% or an average maximum rate of ____% (“Maximum Rate”). 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. For avoidance of doubt, upon the replacement of USD LIBOR, or any subsequent Benchmark, with a Benchmark Replacement, the Interest Rate shall equal the then current Benchmark plus the Margin and shall be subject to any Minimum Rate or Maximum Rate.

1.3 **Inability to Determine Index.** In the event Bank determines in its sole discretion that Bank cannot make, fund, or maintain a loan based upon the Benchmark (provided a Benchmark Transition Event has not occurred), for any reason, including without limitation illegality or the inability to ascertain or determine said rate on the basis provided for herein, then Bank shall give notice to Borrower of such determination. Thereafter, Bank will have no obligation to make, fund or maintain a loan based on such Benchmark and the Interest Rate shall convert to the Standard Rate for purposes of any fundings or advances requested by Borrower and shall apply to any outstanding balance and, thereafter, the Interest Rate on the Note shall adjust simultaneously with any fluctuation in the Standard Rate. In the event Bank determines that the circumstances giving rise to a notice pursuant to this Section 1.3 have ended, Bank shall provide notice of same at which time the Interest Rate will revert to the prior rate based upon the Benchmark (provided a Benchmark Transition Event has not occurred).

2. BENCHMARK REPLACEMENT SETTING.

2.1 **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then, (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, in connection with a Benchmark Transition Event, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Addendum or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, or in connection with an Early Opt-in Election, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Charlotte, North Carolina) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Borrower without any amendment to this Addendum or any other Loan Document, or further action or consent of Borrower.

2.2 **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

2.3 **Notices; Standards for Decisions and Determinations.** Bank will promptly notify Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.4 below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Bank pursuant to Section 2, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from Borrower.

2.4 **Unavailability of Tenor of Benchmark.** Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Bank in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Bank may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Bank may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

2.5 **Benchmark Unavailability Period.** Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any request for an advance based upon USD LIBOR, conversion to or continuation of loans based upon USD LIBOR to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to the Standard Rate. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Standard Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Standard Rate.

2.6 **Definitions.** In addition to the terms defined in the Note, the following definitions shall apply:

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Addendum as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.4.

"Benchmark" means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.1.

"Benchmark Replacement" means, for any Available Tenor, the first alternative set forth in the order below that can be determined by Bank for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by Bank as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by Bank in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Addendum and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by Bank:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Bank for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by Bank in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Standard Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Bank in a manner substantially consistent with market practice (or, if Bank decides that adoption of any portion of such market practice is not administratively feasible or if Bank determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Bank decides is reasonably necessary in connection with the administration of this Addendum and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or
- (3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to Borrower.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.

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

“Changes in Costs and Reserve Requirements” means any increased costs or a reduction in the amounts received or receivable on the Note by Bank 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 with respect to dollar funding in the London interbank market or any Benchmark Replacement.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by Bank in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Bank decides that any such convention is not administratively feasible for Bank, then Bank may establish another convention in its reasonable discretion.

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a determination by Bank that at least five currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate; and

(2) the election by Bank to trigger a fallback from USD LIBOR and the provision by Bank of written notice of such election to Borrower.

“Floor” means the Benchmark rate floor, if any, provided in this Addendum initially (as of the execution of this Addendum, the modification, amendment or renewal of this Addendum or otherwise) with respect to USD LIBOR.

“Interest Period” means the one month period commencing on the date of the Note and each subsequent period shall commence on the same numerically corresponding day; provided that, if any such subsequent period does not have such numerically corresponding day, it shall begin on the last day of the immediately preceding period.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Loan Documents” means the Note, this Addendum, any loan agreement including any schedule attached thereto, deed of trust, mortgage, security deed, assignment of leases and rents, guaranty agreement, security agreement, financing statements, and all other documents, certificates, and instruments executed in connection therewith, and all renewals, extensions, modifications, substitutions, and restatements thereof and therefor.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by Bank in its reasonable discretion.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Standard Rate**” means, for any day, a rate per annum equal to Bank’s announced Prime Rate, and the Interest Rate shall change with each change in the Standard Rate effective on the date any change in Bank’s Prime Rate is publicly announced as being effective.

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**USD LIBOR**” means the London interbank offered rate for U.S. dollars.

3. BENCHMARK REPLACEMENT SETTING FOR LOANS WITH INTEREST RATE SWAPS. With respect to Loans evidenced by the Note is subject to an interest rate swap agreement with Bank, the following provisions shall apply in lieu of Section 2:

3.1 **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Replacement Date has occurred prior to the Reference Time in respect of any setting of the then-current Benchmark on any date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Addendum or any other Loan Document.

3.2 **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, Bank will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

3.3 **Notices; Standards for Decisions and Determinations.** Bank will promptly notify Borrower of (i) any occurrence of a Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination or decision that may be made by Bank pursuant to Section 3, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non- occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in Bank’s sole discretion and without consent from Borrower.

3.4 **Benchmark Unavailability Period.** Upon Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, Borrower may revoke any request for a USD LIBOR borrowing, conversion to or continuation of USD LIBOR loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to the Standard Rate.

3.5 **Certain Defined Terms.** In addition to the terms defined in the Note, the following definitions shall apply:

“**Benchmark**” means, initially, USD LIBOR; provided that if a Benchmark Replacement Date has occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.1.

“**Benchmark Replacement**” means, for any Interest Period, the sum of the successor rate and any applicable spread adjustment that would apply for derivatives transactions referencing the ISDA Definitions upon the occurrence of an index cessation effective date with respect to the then-current Benchmark for the applicable tenor; provided that if the Benchmark Replacement would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Addendum and the other Loan Documents. In the event of the payment of any principal prior to the last day of an Interest Period for any reason, any reference to the Benchmark Replacement shall mean the most recent Benchmark Replacement rate available as determined by Bank in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Standard Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Bank decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Bank in a manner Bank decides is reasonably necessary in connection with the administration of this Addendum and the other Loan Documents.

“Benchmark Replacement Date” means the occurrence of an index cessation effective date with respect to an index cessation event for the then-current Benchmark, upon which the then-current Benchmark would be replaced in derivatives transactions referencing the ISDA Definitions.

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.

“Changes in Costs and Reserve Requirements” means any increased costs or a reduction in the amounts received or receivable on the Note by Bank 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 with respect to dollar funding in the London interbank market or any Benchmark Replacement.

“Floor” means the Benchmark rate floor, if any, provided in this Addendum initially (as of the execution of this Addendum, the modification, amendment or renewal of this Addendum or otherwise) with respect to USD LIBOR.

“Interest Period” means the one month period commencing on the date of the Note and each subsequent period shall commence on the same numerically corresponding day; provided that, if any such subsequent period does not have such numerically corresponding day, it shall begin on the last day of the immediately preceding period.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Loan Documents” means the Note, this Addendum, any loan agreement including any schedule attached thereto, deed of trust, mortgage, security deed, assignment of leases and rents, guaranty agreement, security agreement, financing statements, and all other documents, certificates, and instruments executed in connection therewith, and all renewals, extensions, modifications, substitutions, and restatements thereof and therefor; provided however, for purposes of Section 3 any swap agreement shall not be deemed a Loan Document.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by Bank in its reasonable discretion.

“Standard Rate” means, for any day, a rate per annum equal to Bank’s announced Prime Rate, and each change in the Standard Rate shall be effective on the date any change in Bank’s Prime Rate is publicly announced as being effective.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

NOTICE OF BENCHMARK TRANSITION EVENT

On March 5, 2021, the United Kingdom's Financial Conduct Authority (FCA), the regulator of LIBOR, announced the final publication date for USD LIBOR is June 30, 2023. This announcement is a Benchmark Transition Event as defined above and this constitutes notice of this event. If the promissory note matures after the final publication date, at the appropriate time the USD LIBOR index will be replaced with the Benchmark Replacement in accordance with the terms of this Addendum. The FCA's public statement is available at:

<https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>.

[signatures on following page]

This Addendum is executed under seal and shall have the effect of a sealed instrument according to law.

If Borrower is an Entity:

APPLIED OPTOELECTRONICS, INC.

Name of Entity

WITNESS:

Print Name: _____

By: /s/ Stefan Murry

Name: **Stefan Murry**

Title: Chief Financial Officer

If Borrower is an Individual:

WITNESS:

Print Name: _____

/s/ David Kuo

Name: **David Kuo**

Title: Vice President, General Counsel and Secretary