

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM364929

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|---|-----------------------------|-----------------------|-----------------------------------|
| SUBMISSION TYPE: | RESUBMISSION | | |
| NATURE OF CONVEYANCE: | SECURITY INTEREST | | |
| RESUBMIT DOCUMENT ID: | 900343364 | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| OOFOS LLC | | 11/05/2015 | LIMITED LIABILITY COMPANY: NEVADA |
| RECEIVING PARTY DATA | | | |
| Name: | EASTERN BANK | | |
| Street Address: | 265 FRANKLIN STREET | | |
| City: | BOSTON | | |
| State/Country: | MASSACHUSETTS | | |
| Postal Code: | 02109 | | |
| Entity Type: | COMPANY: UNITED STATES | | |
| PROPERTY NUMBERS Total: 3 | | | |
| Property Type | Number | Word Mark | |
| Serial Number: | 85572899 | OO | |
| Serial Number: | 85572894 | OOFOAM | |
| Serial Number: | 85976474 | OOFOS | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | | | |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> | | | |
| Phone: | 6174220200 | | |
| Email: | amb@bostonbusinesslaw.com | | |
| Correspondent Name: | Alicia M. Bigos | | |
| Address Line 1: | 155 Federal Street | | |
| Address Line 2: | Hackett Feinberg P.C. | | |
| Address Line 4: | Boston, MASSACHUSETTS 02110 | | |
| ATTORNEY DOCKET NUMBER: | EAST.OOFOS | | |
| NAME OF SUBMITTER: | Alicia M. Bigos | | |
| SIGNATURE: | /amb/ | | |
| DATE SIGNED: | 12/08/2015 | | |
| Total Attachments: 11 | | | |

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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement") is dated as of November 5, 2015 by and between OOFOS LLC, a Nevada limited liability company with an address of 132 Chief Justice Cushing Highway, Cohasset, Massachusetts 02025 (the "Borrower"), and Eastern Bank, a Massachusetts bank with an office at 265 Franklin Street, Boston, Massachusetts 02110 (the "Lender"), in consideration of the mutual covenants contained herein and benefits to be derived herefrom.

RECITALS

Reference is made to a certain Loan and Security Agreement of even date herewith by and between the Borrower and the Lender (as such may be amended, modified, supplemented or restated hereafter, the "Loan Agreement"). Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Loan Agreement.

The Lender has agreed to make certain financing arrangements available to the Borrower upon the terms and subject to the conditions specified in the Loan Agreement. The agreement of the Lender to make the loans to the Borrower is conditioned upon, among other things, the execution and delivery by Borrower of an agreement in the form hereof to secure the Obligations (as defined in the Loan Agreement).

AGREEMENT

Accordingly, the Borrower and the Lender hereby agree as follows:

1. DEFINITIONS: As used herein, the following terms shall have the following meanings:

"Copyrights" shall mean all copyrights and like protections in each work of authorship or derivative work thereof of Borrower, whether registered or unregistered and whether published or unpublished, including, without limitation, the copyrights listed on EXHIBIT A annexed hereto and made a part hereof, together with all registrations and recordings thereof, all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

"Copyright Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to Borrower of any right to use any Copyright, including, without limitation, the agreements listed on EXHIBIT A annexed hereto and made a part hereof

"Copyright Office" shall mean the United States Copyright Office or any other federal governmental agency which may hereafter perform its functions.

“Intellectual Property” shall have the meaning assigned to such term in Section 3 hereof.

“IP Collateral” shall have the meaning assigned to such term in Section 2 hereof.

“Licenses” shall mean, collectively, the Copyright Licenses, Patent Licenses and Trademark Licenses.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, property, assets, or condition, financial or otherwise, of the Borrower, (b) the ability of the Borrower to perform any material obligation or to pay any Obligations under the Loan Agreement or any of the other Financing Documents, or (c) the validity or enforceability of the Loan Agreement or any of the other Financing Documents or any of the material rights or remedies of the Lender thereunder.

“Patents” shall mean all letters patent and applications for letters patent of Borrower, and the inventions and improvements therein disclosed, and any and all divisions, reissues and continuations of said letters patent including, without limitation the patents listed on EXHIBIT B annexed hereto and made a part hereof.

“Patent Licenses” shall mean all agreements, whether written or oral, providing for the grant by or to Borrower of any right to manufacture, use or sell any invention covered by a Patent, including, without limitation, the agreements listed on EXHIBIT B annexed hereto and made a part hereof

“PTO” shall mean the United States Patent and Trademark Office or any other federal governmental agency which may hereafter perform its functions.

“Trademarks” shall mean all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade dress, trade styles, service marks, designs, logos and other source or business identifiers of Borrower, whether registered or unregistered, including, without limitation, the trademarks listed on EXHIBIT C annexed hereto and made a part hereof, together with all registrations and recordings thereof all applications in connection therewith, and any goodwill of the business connected with, and symbolized by, any of the foregoing.

“Trademark Licenses” shall mean all agreements, whether written or oral, providing for the grant by or to Borrower of any right to use any Trademark, including, without limitation, the agreements listed on EXHIBIT C annexed hereto and made a part hereof.

2. GRANT OF SECURITY INTEREST: In furtherance and as confirmation of the security interest granted by Borrower to Lender under the Loan Agreement, and as further security for the payment or performance in full of the Obligations, the Borrower hereby ratifies such security interest and grants to Lender a continuing security interest, with a power of sale (which power of

sale shall be exercisable only following the occurrence of an Event of Default) in all of the present and future right, title and interest of Borrower in and to the following property, and each item thereof, whether now owned or existing or hereafter acquired or arising, together with all products, proceeds, substitutions, and accessions of or to any of the following property (collectively, the “IP Collateral”):

- (a) All Copyrights and Copyright Licenses.
- (b) All Patents and Patent Licenses.
- (c) All Trademarks and Trademark Licenses.
- (d) All renewals of any of the foregoing.
- (e) All General Intangibles connected with the use of, or related to, any and all Intellectual Property (including, without limitation, all goodwill of Borrower and its business, products and services appurtenant to, associated with, or symbolized by, any and all Intellectual Property and the use thereof).
- (f) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all Licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
- (g) The right to sue for past, present and future infringements and dilutions of any of the foregoing.
- (h) All of Borrower’s rights corresponding to any of the foregoing throughout the world.

3. PROTECTION OF INTELLECTUAL PROPERTY BY BORROWER: Except as set forth below in this Section 3, Borrower shall undertake the following with respect to each of the items respectively described in Sections 2(a), (b), (c), (d) and (e) (collectively, the “Intellectual Property”):

- (a) Pay all renewal fees and other fees and costs associated with maintaining the Intellectual Property and with the processing of the Intellectual Property and take all other reasonable and necessary steps to maintain each registration of the Intellectual Property.
- (b) Take all actions reasonably necessary to prevent any of the Intellectual Property from becoming forfeited, abandoned, dedicated to the public, invalidated or impaired in any way.
- (c) At Borrower’s sole cost, expense and risk, pursue the prompt, diligent processing of each application for registration which is the subject of the security interest created herein and not

abandon or delay any such efforts.

(d) At Borrower's sole cost, expense and risk, take any and all action which Borrower reasonably deems appropriate under the circumstances to protect the Intellectual Property from infringement, misappropriation or dilution, including, without limitation, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, and no Material Adverse Effect would result therefrom, Borrower shall not have an obligation to use or to maintain any Intellectual Property (i) that relates solely to any product, that has been discontinued, abandoned or terminated or (ii) that has been replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the lien created by this Agreement.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES:** The Borrower represents and warrants that:

(a) EXHIBIT A is a true, correct and complete list of all Copyrights and Copyright Licenses owned by Borrower as of the date hereof.

(b) EXHIBIT B is a true, correct and complete list of all Patents and Patent Licenses owned by Borrower as of the date hereof.

(c) EXHIBIT C is a true, correct and complete list of all Trademarks and Trademark Licenses owned by Borrower as of the date hereof

(d) Except as set forth in EXHIBITS A, B and C, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which the Borrower is the licensor or franchisor.

(e) All IP Collateral owned by Borrower is, and shall remain, free and clear of all liens, encumbrances, or security interests in favor of any Person, other than claims and encumbrances as may be permitted by the Loan Agreement or by Lender in its sole and absolute discretion from time to time in writing.

(f) The Borrower owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted. No material claim has been asserted and is pending by any Person challenging or questioning the use by the Borrower of any of its Intellectual Property or the validity or effectiveness of any of its Intellectual Property, nor does the Borrower know of any valid basis for any such claim. To the knowledge of Borrower, the use by Borrower of the Intellectual Property does not infringe the rights of any Person. No holding,

decision or judgment has been rendered by any governmental authority which would limit, cancel or question the validity of, or Borrower's rights in, any Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect on the business or the property of Borrower.

(g) Borrower shall give Lender written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following: (i) Borrower's obtaining rights to, and filing applications for registration of, any new Intellectual Property, or otherwise acquiring ownership of any newly registered Intellectual Property, (ii) Borrower's becoming entitled to the benefit of any registered Intellectual Property whether as licensee or licensor, (iii) Borrower's entering into any new Licenses, or (iv) Borrower's knowing or having reason to know that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the PTO, the Copyright Office or any court or tribunal) regarding Borrower's ownership of, or the validity of, any material Intellectual Property or Borrower's right to register the same or to own and maintain the same.

5. AGREEMENT APPLIES TO FUTURE INTELLECTUAL PROPERTY:

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in subsections (i), (ii) and (iii) of Section 4(g), above, all of which shall be deemed to be and treated as "Intellectual Property" within the meaning of this Agreement.

(b) Upon the reasonable request of Lender, Borrower shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Lender may request to evidence Lender's security interest in any Copyright, Patent or Trademark and the goodwill and General Intangibles of Borrower relating thereto or represented thereby (including, without limitation, filings with the PTO, the Copyright Office or any similar office), and Borrower hereby constitute Lender as its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; provided, however, Lender's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

6. BORROWER'S RIGHTS TO ENFORCE INTELLECTUAL PROPERTY: Prior to Lender's giving of notice to Borrower following the occurrence of an Event of Default, Borrower shall have the exclusive right to sue for past, present and future infringement of the Intellectual Property including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Intellectual Property against encroachment by third parties, provided, however: (a) Borrower first provide Lender with written notice of Borrower's intentions to so sue for enforcement of any Intellectual Property, (b) any money damages awarded or received by Borrower on account of such suit (or the threat of such suit) shall constitute IP Collateral, and (c)

following the occurrence of any Event of Default, Lender, by notice to Borrower, may terminate or limit Borrower's rights under this Section 6.

7. LENDER'S ACTIONS TO PROTECT INTELLECTUAL PROPERTY: In the event of (a) Borrower's failure, within five (5) days of written notice from Lender, to cure any failure by Borrower to observe or perform any of Borrower's covenants, agreements or other obligations hereunder; and/or (b) the occurrence and continuance of any other Event of Default, Lender, acting in its own name or in that of Borrower, may (but shall not be required to) act in Borrower's place and stead and/or in Lender's own right in connection therewith.

8. RIGHTS UPON DEFAULT: Upon the occurrence of any Event of Default, in addition to all of the other rights and remedies provided to Lender in the Loan Agreement with respect to the Collateral, Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code with respect to the IP Collateral, in addition to which Lender may sell, license, assign, transfer, or otherwise dispose of the Intellectual Property. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that Lender is authorized to exercise such rights and remedies.

9. LENDER AS ATTORNEY IN FACT:

(a) The Borrower hereby irrevocably constitutes and designates Lender as and for Borrower's attorney in fact, effective following the occurrence and during the continuance of any Event of Default: (i) to supplement and amend from time to time EXHIBITS A, B and C of this Agreement to include any new or additional Intellectual Property of Borrower, (ii) to exercise any of the rights and powers referenced herein, (iii) to execute all such instruments, documents, and papers as Lender reasonably determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Intellectual Property.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of Lender.

(c) Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a), but if Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding Lender has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. LENDER'S RIGHTS: Any use by Lender of the Intellectual Property, as authorized hereunder in connection with the exercise of Lender's rights and remedies under this Agreement

and under the Loan Agreement shall be coextensive with Lender's rights thereunder and with respect thereto and without any liability for royalties or other related charges. None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to Lender any present right, title or interest in and to the Intellectual Property, which right, title and interest is effective only following the occurrence of any Event of Default.

11. INTENT: This Agreement is being executed and delivered by the Borrower for the purpose of registering and confirming the grant of the security interest of Lender in the IP Collateral with the PTO and the Copyright Office. It is intended that the security interest granted pursuant to this Agreement is granted as a supplement to, and not in limitation of the security interest granted to Lender under the Loan Agreement. All provisions of the Loan Agreement shall apply to the IP Collateral. Lender shall have the same rights, remedies, powers, privileges and discretions with respect to the security interests created in the IP Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the IP Collateral and the Loan Agreement with respect to all other Collateral.

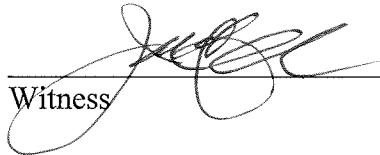
12. CHOICE OF LAWS: It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

[Signatures on following page.]


IN WITNESS WHEREOF, Borrower and Lender respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

BORROWER:

OOFOS LLC



Witness

By: 


Name: Louis Panaccione
Title: CEO

LENDER:

EASTERN BANK



Witness

By: 

Name: Jonathan Sanchez
Title: Vice President

EXHIBIT A

List of Copyrights and Copyright Licenses

| Title | Serial No. | Registration No. | Registration Date |
|-------|------------|------------------|-------------------|
|-------|------------|------------------|-------------------|

NONE.

Copyright Licenses

| Title | Serial No. | Registration No. | Registration Date |
|-------|------------|------------------|-------------------|
|-------|------------|------------------|-------------------|

NONE.

EXHIBIT B

List of Patents and Patent Licenses

Patents and Patent Applications

| <u>Patent No.</u> | <u>Date of Filing</u> | <u>Description</u> |
|-------------------|-----------------------|--------------------|
|-------------------|-----------------------|--------------------|

| | | |
|-----------------------------------|---------------------------------------|--|
| Oofos LLC - D621,594 for a Sandal | - filed 03/10/2010, issued 08/17/2010 | |
|-----------------------------------|---------------------------------------|--|

Patent Licenses

| <u>Patent No.</u> | <u>Date of Filing</u> | <u>Description</u> |
|-------------------|-----------------------|--------------------|
|-------------------|-----------------------|--------------------|

EXHIBIT C

List of Trademarks and Trademark Licenses

Trademark Registrations and Applications

| <u>Description</u> | <u>Application No.</u> | <u>Application Date</u> |
|--------------------|------------------------|-------------------------|
| OO (plus design) | 85/572,899 | December 4, 2012 |
| OOFOAM | 85/572,894 | November 27, 2012 |
| OOFOS | 85/976,474 | August 24, 2010 |

Trademark Licenses

| <u>Description</u> | <u>Registration No.</u> | <u>Registration Date</u> |
|--------------------|-------------------------|--------------------------|
| NONE. | | |