



Tab settings

To the Honorable Commissioner of Patents:

101472026

original documents or copy thereof.

1. Name of conveying party(ies):

9-8-00

Overhill Farms, Inc.  
Overhill L.C. Ventures, Inc.

- Individual(s)
- General Partnership
- Corporation-State Nevada and California
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: November 24, 1999

2. Name and address of receiving party(ies)

Levine Leichtman Capital

Name: Partners II, L.P.

Internal Address: Steven Hartman

Street Address: 335 N. Maple Drive

Suite 240

City: Beverly Hills State: CA ZIP: 91210

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership California
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic representative design is attached:  Yes  No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

75/663,736

B. Trademark Registration No.(s)

1,228,615

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Jane Shay Wald, Esq.

Internal Address: Irell & Manella LLP

Street Address: 1800 Avenue of the Stars

City: Los Angeles State: CA ZIP: 90067

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$ 65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

09/25/2000 MTHA11 00000154 75663736

DO NOT USE THIS SPACE

01 FC: 81  
02 FC: 82

40.00 DP  
25.00 DP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

JANE SHAY WALD  
Name of Person Signing

*Jane Shay Wald*  
Signature

9-7-00

Date

Total number of pages including cover sheet, attachments, and document: 10

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

THE OBLIGATIONS UNDER THIS AGREEMENT ARE SUBORDINATED TO THE CLAIMS OF UNION BANK OF CALIFORNIA, N.A. ("UBOC"), PURSUANT TO AND IN ACCORDANCE WITH THE TERMS OF THAT CERTAIN INTERCREDITOR AND SUBORDINATION AGREEMENT OF EVEN DATE HEREWITH BETWEEN SECURED PARTY (AS DEFINED BELOW) AND UBOC, AS AMENDED (COLLECTIVELY, THE "SUBORDINATION AGREEMENT")

## **PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT**

THIS PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT dated as of November 24, 1999 (amended, restated, supplemented or otherwise modified from time to time, this "Agreement") is made by OVERHILL FARMS, INC., a Nevada corporation ("Overhill Farms"), and OVERHILL L.C. VENTURES, INC., a California corporation ("Ventures") (each of Overhill Farms and Ventures is referred to as a "Grantor" and collectively as the "Grantors"), in favor of LEVINE LEICHTMAN CAPITAL PARTNERS II, L.P., a California limited partnership ("Secured Party").

### **RECITALS**

A. Pursuant to that certain Securities Purchase Agreement of even date herewith by and among Grantors, POLYPHASE CORPORATION, a Nevada corporation ("Parent"), and Secured Party (including all annexes, exhibits and schedules thereto, as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement"), Secured Party is purchasing from Overhill Farms the Securities, all on the terms and subject to the conditions set forth therein.

B. Each of Grantors and Parent is either a direct or indirect beneficiary of the borrowings made available to Overhill Farms under the Note.

C. In order to induce Secured Party to purchase the Securities as provided for in the Securities Purchase Agreement, Grantors have agreed to enter into this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, and to induce Secured Party to purchase the Securities under the Securities Purchase Agreement, the parties agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Securities Purchase Agreement. In addition, the following capitalized terms shall have the following respective meanings:

"Books and Records" means, with respect to any Person, all books, records, board minutes, contracts, licenses, insurance policies, environmental audits, business plans, files, accounting books and records, financial statements (actual and pro forma), and filings with Governmental Authorities.

"Copyright License" shall mean any and all rights now owned or hereafter acquired by any Person under any written agreement granting any right to use any Copyright or Copyright registration.

"Copyrights" shall mean all of the following now owned or existing or hereafter adopted or acquired by any Person: (a) all copyrights and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States or any territory thereof, or any other country or any political subdivision thereof; and (b) all extensions or renewals thereof.

"General Intangibles" means all "general intangibles," as such term is defined in the UCC, now owned or hereafter acquired by any Person, including all customer lists, licenses, copyrights, trademarks, patents, and all applications therefor and reissues, extensions, or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures, and other business associations, Licenses, permits, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, Goodwill (including the Goodwill associated with any Intellectual Property), all rights and claims in or under insurance policies (including insurance for fire, damage, loss, and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man, and business interruption insurance, and all unearned premiums), uncertificated securities, certificated securities, choses in action, deposit, checking, and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, instruments, and other property in respect of or exchange for pledged shares or other equity interests, rights of indemnification, all Books and Records, correspondence, credit files, invoices and other papers, including all tapes, cards, computer runs, and other papers and documents in the possession or under the control of such Person or any computer bureau or service company from time to time acting for such Person.

"Goodwill" means all goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs, operating and training manuals, customer lists, and distribution agreements now owned or hereafter acquired by any Person.

**"Intellectual Property"** means all of the following now owned or hereafter acquired by any Person: (a) patents, trademarks, trade dress, trade names, service marks, copyrights, trade secrets, and all other intellectual property or Licenses thereof; and (b) all Proceeds of the foregoing.

**"License"** means any license under any written agreement now owned or hereafter acquired by any Person granting the right to use any Intellectual Property or other license of rights or interests now held or hereafter acquired by any Person.

**"Patent License"** shall mean rights under any written agreement now owned or hereafter acquired by any Person granting any right with respect to any invention on which a Patent is in existence.

**"Patents"** shall mean all of the following in which any Person now holds or hereafter acquires any interest: (a) all letters patent of the United States or of any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or of any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States or any territory thereof, or any other country, and (b) all reissues, continuations, continuations-in-part, divisions or extensions thereof.

**"Proceeds"** means "proceeds," as such term is defined in the UCC, including: (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to any Person from time to time with respect to any collateral; (b) any and all payments (in any form whatsoever) made or due and payable to any Person from time to time in connection with any requisition, confiscation, condemnation, seizure, or forfeiture of any collateral by any Governmental Authority (or any Person acting under color of Governmental Authority); (c) any claim of any Person against third parties for past, present, or future infringement or dilution of any Intellectual Property or for injury to the Goodwill associated with any Intellectual Property; (d) any recoveries by any Person against third parties with respect to any litigation or dispute concerning any collateral; and (e) any and all other amounts from time to time paid or payable under or in connection with any collateral, upon disposition or otherwise.

**"Secured Obligations"** mean any and all Obligations to Purchaser owing to Secured Party, and all covenants and duties regarding such amounts, of any kind or nature, present or future, contingent or liquidated, whether or not evidenced by any note, agreement or other instrument, the payment or performance of which is provided for or arises now or hereafter under or in connection with the Securities Purchase Agreement or any other Investment Document.

**"Security Agreement"** means the Security Agreement of even date herewith between Overhill Farms and Secured Party.

**"Senior Liens"** shall mean the Liens granted to the Senior Lender pursuant to the Senior Collateral Documents.

"Trademark License" shall mean rights under any written agreement now owned or hereafter acquired by any Person granting any right to use any Trademark.

"Trademarks" shall mean all of the following now owned or existing or hereafter adopted or acquired by any Person: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered) all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all extensions or renewals thereof; and (c) all Goodwill associated with or symbolized by any of the foregoing.

2. Grant of Security Interest in Intellectual Property Collateral. To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, each Grantor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to Secured Party a security interest (subject, as to priority, only to the Senior Liens) upon all its right, title and interest in, to and under the following property, whether now owned by or owing to, or hereafter acquired by or arising in favor of, such Grantor (including under any trade names, styles or derivations of such Grantor), and whether owned by or consigned by or to, or leased from or to, such Grantor, and regardless of where located (collectively, the "Intellectual Property Collateral"):

- (a) all of such Grantor's Patents and Patent Licenses to which it is a party, including those referred to in Part A to Schedule I hereto;
- (b) all of such Grantor's Trademarks and Trademark Licenses to which it is a party, including those referred to in Part B to Schedule I hereto;
- (c) all of such Grantor's Copyrights and Copyright Licenses to which it is a party, including those referred to in Part C to Schedule I hereto;
- (d) all Goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs, operating and training manuals, customer lists, and other General Intangibles with respect to the foregoing; and
- (e) all Proceeds of the foregoing, including (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Person from time to time with respect to any of the foregoing, (ii) any and all payments (in any form whatsoever) made or due and payable to any Person from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the foregoing by any Governmental Authority (or any Person acting under color of Governmental Authority), (iii) any claim of any Person against third parties for (A) past, present or future infringement of any Patent or Patent License, (B) past, present or future infringement of any Copyright or Copyright License, (C) past, present or future infringement or dilution of any Trademark or Trademark License, or

(D) injury to the Goodwill associated with any Trademark or Trademark License, (iv) any recoveries by any Person against third parties with respect to any litigation or dispute concerning any of the foregoing, and (v) any and all other amounts from time to time paid or payable under or in connection with any of the foregoing, upon disposition or otherwise.

3. Covenants Regarding Intellectual Property Collateral.

(a) Each Grantor shall notify Secured Party immediately if it knows or has reason to know (i) that any application or registration relating to any of its Licenses, Patents, Trademarks or Copyrights that are material to the operation of its business may become abandoned or dedicated, or (B) of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding such Grantor's ownership of any such License, Patent, Trademark or Copyright that is material to the operation of its business, its right to register the same, or to keep and maintain the same.

(b) In no event shall any Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving Secured Party prior written notice thereof, and, upon request of Secured Party, such Grantor shall execute and deliver any and all security documents as Secured Party may request to evidence Secured Party's Lien on such Patent, Trademark or Copyright, and the General Intangibles of such Grantor relating thereto or represented thereby.

(c) Each Grantor shall take all actions necessary or requested by Secured Party to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of its Patents, Trademarks and Copyrights, including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless such Grantor shall determine that (i) such Patent, Trademark or Copyright is not material to the conduct of its business or (ii) in its reasonable judgment, it is not desirable to such Grantor's business to register such Patent, Trademark or Copyright.

(d) In the event that any of any Grantor's Intellectual Property is infringed upon, or misappropriated or diluted by a third party, such Grantor shall notify Secured Party promptly after such Grantor learns thereof. Each Grantor shall, unless it shall reasonably determine that such Intellectual Property is in no way material to the conduct of its business or operations, promptly sue for, and seek recovery of any and all damages resulting from, such infringement, misappropriation or dilution, and shall take such other actions as Secured Party shall deem appropriate under the circumstances to protect such Intellectual Property.

4. Security Agreement. The Liens granted pursuant to this Agreement are granted in conjunction with, and restate the Liens granted to Secured Party pursuant to the Security Agreement. Each Grantor hereby acknowledges and affirms that additional rights and remedies of Secured Party with respect to the Liens granted under this Agreement are set forth in

the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

5. Subordination. The parties hereto hereby acknowledge and agree that (a) the Liens now or hereafter held by Secured Party in and to any of the assets or property of any Grantor, including the Intellectual Property Collateral (as defined in Section 2), are and shall be subject and subordinate in priority to the Liens now or hereafter held by Senior Lender in and to any such assets or property, and (b) the rights of Secured Party hereunder are subject and subordinate to the rights of Senior Lender under the Senior Collateral Documents pursuant to the Subordination Agreement.

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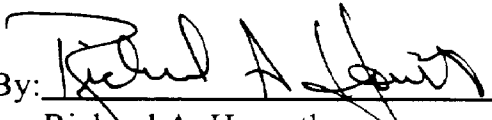


IN WITNESS WHEREOF, the parties have executed this Patent, Trademark and Copyright Security Agreement as of the date first set forth above.


**"Grantors"**

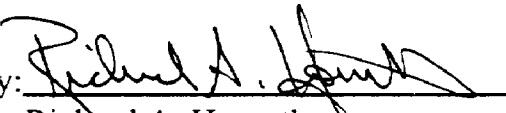
OVERHILL FARMS, INC., a Nevada corporation

By:   
James Rudis  
President and Chief Executive Officer

By:   
Richard A. Horvath  
Vice President and Chief Financial Officer

OVERHILL L. C. VENTURES, INC., a California corporation

By:   
James Rudis  
President and Chief Executive Officer

By:   
Richard A. Horvath  
Vice President and Chief Financial Officer

Agreed to and Acknowledged by:

**"Secured Party"**

LEVINE LEICHTMAN CAPITAL PARTNERS, INC.,  
a California corporation

On behalf of LEVINE LEICHTMAN  
CAPITAL PARTNERS II, L.P., a  
California limited partnership

By:   
Lauren B. Leichtman  
Chief Executive Officer

# SCHEDULE I

## INTELLECTUAL PROPERTY

### PART A – Patents and Patent Licenses

#### Overhill Farms, Inc.

None

#### Overhill L.C. Ventures, Inc.

None

### PART B – Trademarks and Trademark Licenses

#### Overhill Farms, Inc.

Overhill Farms® (Registration #1228615); Ready-to-go; Dine-2-Nite

Licensing Agreement, dated January 26, 1988, between International House of Pancakes, Inc., and Overhill Farms, Inc., granting Overhill Farms right to use mark “International House Of Pancakes Restaurant” and Design.

#### Overhill L.C. Ventures, Inc.

Assignment of Trademark made by Creative Foods International, Inc. in favor of Overhill L.C. Ventures, Inc., relating to the application for registration of the mark “Latin Cravings.” Such application is pending with the U.S. Patent and Trademark Office (Serial # 75-663736).

### PART C – Copyrights and Copyright Licenses

#### Overhill Farms, Inc.

None

#### Overhill L.C. Ventures, Inc.

None