



Doc#: 1312201031 Fee: \$54.00  
RHSP Fee:\$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 05/02/2013 10:29 AM Pg: 1 of 9

This instrument was prepared by  
and after recording should be  
returned to:

Vedder Price P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, Illinois 60601  
Attn: Thomas E. Schnur, Esq. (MHG)  
(312) 609-7500

**THIRD AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

8223629 -16 1 of 1

THIS THIRD AMENDMENT TO MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Amendment") is entered into as of the 16th day of April, 2013 by NETCOM PROPERTIES INC., an Illinois corporation ("Mortgagor"), in favor of FIFTH THIRD BANK, an Ohio banking corporation (successor by merger with FIFTH THIRD BANK, a Michigan banking corporation (f/k/a Fifth Third Bank (Chicago)) ("Mortgagee") as Agent for itself and certain other Financial Institutions (collectively, the "Lenders").

WITNESSETH:

WHEREAS, Mortgagor and Mortgagee entered into that certain Loan and Security Agreement, dated as of October 20, 2006, as amended from time to time (the "Prior Loan Agreement");

WHEREAS, in order to secure the Obligations under the Loan Agreement (defined hereafter), Mortgagor and Mortgagee entered into that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of October 20, 2006, which was recorded with the Cook County Recorder of Deeds as Document Number 0629431163 on October 20, 2006, as amended by (i) that certain First Amendment to Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of October 27, 2010 (the "First Amendment to Mortgage"), which was recorded with the Cook County Recorder of Deeds as Document Number 1031233095 and (ii) that certain Second Amendment to Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of May 31, 2011 (the "Second Amendment to Mortgage"), which was recorded with the Cook County Recorder of Deeds as Document Number 1116118015 (as it may be further amended, restated or modified from time to time, the "Mortgage") whereby Mortgagor mortgaged and warranted unto Mortgagee, its successors and assigns, among other things, the real estate described on Exhibit A attached hereto and all of its estate, right, title and interest therein situated;

Box 400-CTCC

S N  
P 9  
S A  
SCY  
INT

# UNOFFICIAL COPY

WHEREAS, Mortgagor, certain of its affiliates and Mortgagee, as agent for itself and the Lenders have entered into a Amended and Restated Loan and Security Agreement, dated as of October 27, 2010, as amended prior to the date hereof, as further amended by that certain Limited Waiver, Consent and Amendment No. 4 to Amended and Restated Loan and Security Agreement dated of even date herewith (as it may be further amended, restated or modified from time to time, the "Loan Agreement") amending and restating the terms of the Prior Loan Agreement and certain other loan facilities; and

WHEREAS, Mortgagor and Mortgagee now desire to amend such Mortgage pursuant to this Amendment to set forth the terms of the Loan Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements herein contained and for the purposes of setting forth the terms and conditions of this Amendment, the parties, intending to be bound, hereby agree as follows.

1. Incorporation of the Mortgage. All capitalized terms which are not defined hereunder shall have the same meaning as set forth in the Mortgage and in the Loan Agreement, and the Mortgage, to the extent not inconsistent with this Amendment, is incorporated herein by this reference as though the same were set forth in its entirety. To the extent any terms and provisions of the Mortgage are inconsistent with the amendments set forth below, such terms and provisions shall be deemed superseded hereby. Except as specifically set forth herein, the Mortgage shall remain in full force and effect and its provisions shall be binding on the parties hereto.

2. Amendment of the Mortgage. The following amendment to the Mortgage shall be made:

(a) Loans. The definition of "Loans" in the second Recital of the Mortgage is hereby amended to state that the Loans consist of: (i) a revolving loan (as amended, restated or modified from time to time, the "Revolving Loan") in the maximum principal amount of Five Million Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00); (ii) a term loan (as amended, restated or modified from time to time, the "Term Loan A") in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00); (iii) a term loan (as amended, restated or modified from time to time, the "Term Loan C") in the principal amount of Five Hundred Nineteen Thousand Eight Hundred Fifty Nine and 40/100 Dollars (\$519,859.40) and (iv) a term loan (as amended, restated or modified from time to time, the "Term Loan E") in the principal amount of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00). The aggregate principal amount of the Loans as stated in the second Recital of the Mortgage is hereby amended to Seven Million Eight Hundred Sixty Nine Thousand Eight Hundred Fifty-Nine and 40/100 Dollars (\$7,869,859.40).

(b) Notes Defined. The definition of "Notes" in the third Recital of the Mortgage is hereby amended to state that the Loans are evidenced by: (i) the Second Amended and Restated Revolving Loan Note dated October 27, 2010, made by Borrowers in favor of Lenders, in the maximum principal amount of Eight Million Five Hundred Thousand and 00/100 Dollars (\$8,500,000.00) (said note, with all allonges,

# UNOFFICIAL COPY

amendments, supplements, modifications and replacements thereof, being sometimes referred to in the Mortgage as the “**Revolving Note**”); (ii) the Amended and Restated Term Loan A Note dated October 27, 2010, made by Borrowers in favor of Lenders, in the principal amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (said note, with all allonges, amendments, supplements, modifications and replacements thereof, being sometimes referred to in this Mortgage as the “**Term Note A**”); (iii) the Amended, Restated and Consolidated Term Loan C Note dated October 27, 2010, made by Borrowers in favor of Lenders, in the principal amount of Five Hundred Nineteen Thousand Eight Hundred Fifty-Nine and 40/100 Dollars (\$519,859.40) (said note, with all allonges, amendments, supplements, modifications and replacements thereof, being sometimes referred to in this Mortgage as the “**Term Note C**”) and (iv) the Amended and Restated Term Loan E Note dated May 31, 2011, made by Borrowers in favor of Lenders, in the principal amount of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00) (said note, with all allonges, amendments, supplements, modifications and replacements thereof, being sometimes referred to in this Mortgage as the “**Term Note E**”).

(c) Maturity Date of Notes. As of the date hereof, the Notes are scheduled to be paid in full on October 27, 2013.

(d) Interest Rate. The interest rate of the Notes is a variable rate based upon the formulas set forth on Schedule 1 attached hereto.

3. Representations and Warranties. The representations, warranties and covenants set forth in the Mortgage shall be deemed remade and affirmed as of the date hereof by Mortgagor, except that any and all references to the Agreement in such representations, warranties and covenants shall be deemed to include this Amendment.

4. Relation Back. It is the intent of Mortgagor and Mortgagee that the First Amendment to Mortgage, Second Amendment to Mortgage and this Amendment will relate back to and be effective as if adopted on October 20, 2006.

5. Effectuation. The amendments to the Agreement contemplated by this Amendment shall be deemed effective immediately upon the full execution of this Amendment and without any further action required by the parties hereto. There are no conditions precedent or subsequent to the effectiveness of this Amendment.

6. Incorporation of Recitals. The recitals set forth in the “Witnesseth” Section of this Amendment are hereby incorporated into and made a part of this Amendment as if fully set forth in the body of this agreement.

[SIGNATURE PAGE FOLLOWS]



# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 7 (EXCEPT THE WEST 15.25 FEET THEREOF) AND ALL OF LOT 8 IN BLOCK 1 IN HERZOG'S 1ST INDUSTRIAL SUBDIVISION OF PART OF THE EAST ½ OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE WEST ½ OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON DECEMBER 13, 1955 AS DOCUMENT NUMBER LR1639763 AND CERTIFICATE OF CORRECTION THEREOF REGISTERED DECEMBER 14, 1956 AS DOCUMENT NUMBER LR1713481, IN COOK COUNTY, ILLINOIS.

P.I.N.: 03-11-300-004-0000; 03-11-300-005-0000

Common Address: 599 South Wheeling Road, Wheeling, Illinois 60090

Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE 1

The variable interest rates for the Loans are as follows:

(a) Revolving Loans.

(1) Each Revolving Loan that is a Base Rate Loan shall bear interest at a rate per annum equal to the sum of the Base Rate plus one-quarter of one percent (0.25%), payable in arrears on the fifth day of each calendar month during the Term. Said rate of interest shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the effective date of each such change in the Base Rate.

(2) Each Revolving Loan constituting a LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate for the applicable Interest Period plus three percent (3.00%), such rate to remain fixed for such Interest Period. Interest shall be payable on the fifth day of each month in arrears and on the last Business Day of such Interest Period.

(b) Term Loan A.

(1) Each advance under Term Loan A constituting a Base Rate Loan shall bear interest at the rate per annum equal to the sum of the Base Rate plus one-half of one percent (0.5%), payable on the fifth day of each month in arrears. Said rate of interest shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the effective date of each such change in the Base Rate.

(2) Each Term Loan A constituting a LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate for the applicable Interest Period plus three and one quarter of one percent (3.25%), such rate to remain fixed for such Interest Period. Interest shall be payable on the fifth day of each month in arrears and on the last Business Day of such Interest Period.

(c) Term Loan C.

(1) Each advance under Term Loan C constituting a Base Rate Loan shall bear interest at the rate per annum equal to the sum of the Base Rate plus one-half of one percent (0.5%), payable on the fifth day of each month in arrears. Said rate of interest shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the effective date of each such change in the Base Rate.

(2) Each Term Loan C constituting a LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate for such Interest Period plus three and one-quarter of one percent (3.25%), such rate to remain fixed for such Interest Period. Interest shall be payable on the fifth day of each month in arrears and on the last Business Day of such Interest Period.

(d) Term Loan E.

# UNOFFICIAL COPY

(1) Each advance under Term Loan E constituting a Base Rate Loan shall bear interest at the rate per annum equal to the sum of the Base Rate plus one and one-half of one percent (1.5%), payable on the fifth day of each month in arrears. Said rate of interest shall increase or decrease by an amount equal to each increase or decrease in the Base Rate effective on the effective date of each such change in the Base Rate.

(2) Each Term Loan E constituting a LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate for the applicable Interest Period plus four and one-quarter of one percent (4.25%), such rate to remain fixed for such Interest Period. Interest shall be payable on the fifth day of each month in arrears and on the last Business Day of such Interest Period.

Capitalized terms used in this Schedule 1 and not otherwise defined herein are defined in Schedule 2 attached hereto.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## SCHEDULE 2

### SCHEDULE 1 DEFINITIONS

“Agent” shall mean Mortgagee.

“Base Rate” shall mean the prime rate publicly announced by Agent, in effect from time to time, which is not intended to be the Agent’s lowest or most favorable rate of interest at any one time.

“Base Rate Loans” shall mean the Loans bearing interest with respect to the Base Rate.

“Borrower Representative” shall mean Netcom, Inc.

“Business Day” shall mean any day other than a Saturday, a Sunday or any day that banks in Chicago, Illinois are required or permitted to close.

“Interest Period” shall mean any continuous period of one (1) month, as selected from time to time by Borrower Representative by irrevocable notice (in writing, by telecopy, telex, electronic mail or cable) given to Agent not less than three (3) Business Days prior to the first day of each respective Interest Period; provided that: (A) each such period occurring after such initial period shall commence on the day on which the immediately preceding period expires; (B) the final Interest Period shall be such that its expiration occurs on or before the end of the Term Loan A Maturity Date with respect to Term Loan A, the Term Loan C Maturity Date with respect to Term Loan C and the Term Loan E Maturity Date with respect to Term Loan E; and (C) if for any reason Borrower Representative shall fail to timely select a period, then such Loans shall continue as, or revert to, Base Rate Loans. Interest shall be payable on the last Business Day of each month in arrears and on the last Business Day of such Interest Period.

“LIBOR Rate” shall mean, with respect to any LIBOR Rate Loan for any Interest Period, a rate per annum equal to (a) the offered rate for deposits in United States dollars for a period equal to such Interest Period as displayed in the Bloomberg Financial Markets system (or such other authoritative source as selected by Agent in its sole discretion) as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period divided by (b) a number equal to 1.0 minus the maximum reserve percentages (expressed as a decimal fraction) including, without limitation, basic supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other governmental authority having jurisdiction with respect thereto, as now and from time to time in effect, for Eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of such Board) which are required to be maintained by Agent by the Board of Governors of the Federal Reserve System. The LIBOR Rate shall be adjusted automatically on and as of the effective date of any change in such reserve percentage.

“LIBOR Rate Loans” shall mean the Loans bearing interest with reference to the LIBOR Rate.

“Loans” shall mean the Revolving Loan, Term Loan A, Term Loan C and Term Loan E.



# UNOFFICIAL COPY

“Term” shall mean the period ending October 27, 2013.

“Term Loan A Maturity Date” shall mean October 27, 2013.

“Term Loan C Maturity Date” shall mean October 27, 2013.

“Term Loan E Maturity Date” shall mean April 5, 2013.

Property of Cook County Clerk's Office