

11-03-2004

Form PTO-1595 (Rev. 06/04)  
OMB No. 0651-0027 (exp. 6/30/2005)U.S. DEPARTMENT OF COMMERCE  
States Patent and Trademark Office

RECORD

102874710  
PATENTS ONLY

11.1.04

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

## 1. Name of conveying party(ies)/Execution Date(s):

Michael W. Holmgvist  
Ventaire, Inc.Execution Date(s) Oct. 21, 1997 + Oct. 12, 2004Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

## 3. Nature of conveyance:

- ☒ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Government Interest Assignment  
☐ Executive Order 9424, Confirmatory License  
☐ Other \_\_\_\_\_

## 2. Name and address of receiving party(ies)

Name: JDC Tyme, Inc. dba Ventaire

Internal Address: \_\_\_\_\_

Street Address: 11900 Riverwood  
DriveCity: BurnsvilleState: Mn.Country: Dakota Zip: 55337Additional name(s) & address(es) attached? ☐ Yes ☐ No

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

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

US 6,802,336 B1

B. Patent No.(s)

5,679,072Additional numbers attached? ☐ Yes ☒ No

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

Name: Ventaire Attn: Dave JohnsonInternal Address: DJohnson@Ventaire.comStreet Address: 11900 Riverwood  
DriveCity: BurnsvilleState: Mn. Zip: 55337Phone Number: 952-894-6637Fax Number: 952-894-0750

Email Address: \_\_\_\_\_

## 6. Total number of applications and patents involved:

27. Total fee (37 CFR 1.21(h) & 3.41) \$ 80.00

- ☐ Authorized to be charged by credit card  
☐ Authorized to be charged to deposit account  
☒ Enclosed  
☐ None required (government interest not affecting title)

## 8. Payment Information

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date 10/25/04

b. Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

## 9. Signature:

Signature

Date

David W. Johnson

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 16Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, V.A. 22313-1450

11/02/2004 ECOOPER 00000304 6802336

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PATENT  
REEL: 015931 FRAME: 0454

# BILL OF SALE

This Bill of Sale is executed and delivered as of this 1st day of October, 2004, by Michael Holmquist ("Seller").

WHEREAS, Seller has agreed to sell, transfer, assign and deliver to Ventaire, Inc., a Minnesota corporation ("Buyer") the following patents (the "Patents"):

Patent No. 5,679,072

~~Patent No. , , ,~~

*all patents owned by Seller, including*

*[Signature]*

KNOW ALL MEN BY THESE PRESENTS, in consideration of the sum of One Dollar and other good and valuable consideration to it in hand paid by Buyer, the receipt of which is hereby acknowledged, Seller does hereby convey, grant, bargain, sell, transfer, set over, assign, deliver and confirm unto Buyer, its successors and assigns, all of Seller's right, title and interest in, to and under the Patents, as well as the good will associated with such patents.

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns forever.

This Bill of Sale includes and is subject to all of the terms, conditions and provisions set forth in the Agreement. The Agreement is hereby incorporated in its entirety herein by reference.

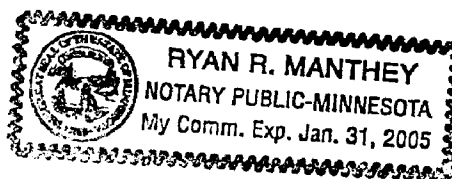
IN WITNESS WHEREOF, Seller has caused this instrument to be duly executed by its authorized representative and delivered to Buyer as of the day and year first set forth above.

*[Signature]*  
\_\_\_\_\_  
Michael Holmquist

STATE OF MINNESOTA     )  
  ) ss  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this 1st day of October, 2004, by Michael Holmquist.

*[Signature]*  
\_\_\_\_\_  
Notary Public



## AMENDMENT TO AGREEMENT TO PURCHASE

**THIS AGREEMENT**, made this 1st day of October, 2004, by and among Venteaire, Inc. ("Seller"), Michael Holmquist ("Shareholder"), and JDC Tyme, Inc. ("Buyer").

### WITNESSETH:

**WHEREAS**, Seller owns a business located at 11900 Riverwood Drive, Burnsville, Minnesota 55337 (the "Location") which designs, manufactures, and sells commercial and industrial ventilation systems and related products and services, and which is known as Venteaire, Inc. (the "Business");

**WHEREAS**, Seller desires to sell the assets of the Business, as described below, to Buyer and Buyer desires to purchase such assets and to make certain payments in consideration thereof, each as specifically described below and according to the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein, the parties agree as follows:

#### 1. PURCHASE OF ASSETS.

Subject to the terms and conditions hereof, Seller shall on the Closing Date (as defined hereafter) assign, sell, transfer, convey and deliver to Buyer good and marketable title to the items indicated below, and Buyer agrees on the Closing Date to purchase such items from Seller:

- A. All of the equipment, tools, furniture, trade fixtures and other assets of the business including those listed in attached Exhibit A, but excluding those items listed in the attached Exhibit B;
- B. All inventory indicated in attached Exhibit C;
- C. All general intangibles relating to the business of Seller and the exclusive use and ownership of the name "Venteaire"; Seller, upon request, will provide Buyer with all documents necessary to secure Buyer's use and ownership of such name;
- D. All advertising, customer manuals, program manuals, and training manuals with respect to the Business;
- E. All trademarks, trade names, copyrights, licenses, permits, or variances held or owned by Seller with respect to the Business, including but not limited to Patent No. 5,679,072 and Patent No. \_\_, \_\_, \_\_, to the extent these items are transferrable;
- F. All telephone numbers, fax numbers, signage, email addresses and websites with respect to the Business; and
- G. All files, books, warranties and records relating to the above-described assets.

All of the foregoing items under A-G, inclusive, shall be collectively defined hereunder as the "Assets."

## **2. TRAINING AND CONSULTING SERVICES.**

Shareholder, at reasonable times, and at no additional cost to Buyer, shall provide a minimum of twenty-five (25) hours of consulting services per week to Buyer during the thirty (30) day period following the Closing Date.

Shareholder agrees to work for Buyer, and Buyer agrees to employ Shareholder, at the Business, during the twelve (12) month period from November 1, 2004 through October 31, 2005 ("Employment Term"). Shareholder shall be employed as the lead engineer of the Business and shall perform such duties and obligations customarily expected of an individual in Shareholder's position, in addition to any duties and obligations mutually agreed upon by and between Buyer and Shareholder. Shareholder shall work a minimum of twenty-five (25) hours per week, and shall receive from Buyer an annual salary of \$35,000, to be paid on the Business' regular pay dates. During the Employment Term and any Renewal Terms (as defined below), Buyer shall pay up to \$1,000 per month towards Shareholder's health and disability insurance. Any additional terms of Shareholder's employment by Buyer, including but not limited to termination of employment, shall be mutually agreed upon by and between Buyer and Shareholder.

In the event that Gross Revenues (as defined in Section 3.C. below) fail to meet the Targeted Revenues (as set forth in the table below) for any calendar year during the Earn Out Period (as defined in Section 3.C. below), Buyer shall have the option to renew Shareholder's employment as lead engineer of the Business for an additional twelve (12) month term ("Renewal Term"). In the event that Gross Revenues meet or exceed the Targeted Revenues for any calendar year during the Earn Out Period, Shareholder shall have the option to renew his employment as lead engineer of the Business for a Renewal Term. Any Renewal Terms shall be on the same terms as the Employment Term. In no event shall Buyer be obligated to employ Shareholder beyond the end of the Earn Out Period.

<u>Year of Earn Out Period</u>	<u>Targeted Revenues</u>
One (1/1/2005 through 12/31/2005)	\$1,495,000
Two (1/1/2006 through 12/31/2006)	\$1,719,250
Three (1/1/2007 through 12/31/2007)	\$1,891,175
Four (1/1/2008 through 12/31/2008)	\$2,080,293
Five (1/1/2009 through 12/31/2009)	\$2,288,322

## **3. TOTAL PURCHASE PRICE.**

- A. In payment of the Assets, Buyer, at the Closing shall pay to Seller the sum of Four Hundred Thirty Five Thousand and 00/100 Dollars (\$435,000.00) ("Purchase Price") payable as follows:

- (i) One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) in cash of which Ten Thousand and 00/100 Dollars (\$10,000.00) has been received as and for Earnest Money;
- (ii) Two Hundred Eighty Five Thousand and 00/100 Dollars (\$285,000.00) to be paid pursuant to that certain Promissory Note ("Note"), attached hereto as Exhibit D and secured by the Security Agreement ("Security Agreement") at Exhibit E attached hereto, said Note shall be executed by Buyer subject to the following terms:

Principal and interest on the Note shall be payable in sixty (60) monthly installments of Two Thousand Seven Hundred Eighty One and 17/100ths Dollars (\$2,781.17) with the first such installment due and payable on January 1, 2005, and subsequent installments due and payable on the 1st day of each month thereafter until December 1, 2009. A balloon payment of One Hundred Eighty Eight Thousand Five Hundred Fifty and 73/100 Dollars (\$188,550.73) shall be due and payable on January 1, 2010.

- B. Inventory. The Purchase Price includes inventory in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00). If the actual inventory value, as determined by the Parties on September 30, 2004, is more or less, the Purchase Price shall be adjusted accordingly; however, in no event shall the inventory value exceed One Hundred Thirty Five Thousand and 00/100 Dollars (\$135,000.00).
- C. Earn Out. The Purchase Price does not include amounts to which Seller is entitled to receive from Buyer, and which Buyer agrees to pay to Seller, with respect to revenues received by the Business after the Closing Date, as provided below.

During the five (5) year period beginning on January 1, 2005 and ending on December 31, 2009 (the "Earn Out Period"), Buyer shall be obligated to pay to Seller, at the end of each calendar year, fifteen percent (15%) of all Gross Revenues (as defined below) of the Business in excess of the first One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) in Gross Revenues of the Business for that calendar year (hereinafter referred to as "Earn Out"). Earn Out shall be paid by Buyer to Seller, on an annual basis, no later than ninety (90) days following the end of the calendar year in which the Earn Out was earned.

At such time as Buyer has paid to Seller Four Hundred Forty Six Thousand One Hundred Six and 00/100 Dollars (\$446,106.00) in total Earn Out during the Earn Out Period, Seller agrees to forgive the Balloon Payment (as defined in Section 3.A.(ii) above) on a dollar for dollar basis, as additional Earn Out is received by Seller, until the entire amount of the Balloon Payment is forgiven, or the Earn Out Period ends, whichever occurs first. In the event that the Earn Out Period

ends before the entire amount of the Balloon Payment is forgiven, the amount of the Balloon Payment that remains unforgiven at the end of the Earn Out Period shall remain due and payable on January 1, 2010. In the event that the entire amount of the Balloon Payment is forgiven prior to the end of the Earn Out Period, Buyer shall remain obligated to pay Earn Out to Seller, in accordance with this Section 3.C., until the end of the Earn Out Period. Seller is not obligated to apply any Earn Out received by Seller after the entire amount of the Balloon Payment is forgiven to the forgiveness of any other amounts due and payable by Buyer to Seller.

Buyer shall, during the Earn Out Period, maintain a permanent, complete and accurate set of financial records ("Records") pertaining to the Gross Revenues of the Business, said Records to be maintained in an orderly fashion and in accordance with generally accepted accounting principles and to include all supporting records. Seller shall have the right, upon reasonable notice to Buyer and during normal business hours, to have an audit conducted of the Records. If such audit reveals liability for Earn Out for any calendar year which is greater than the Earn Out reported and actually paid by Buyer, Buyer shall immediately pay the amount of the deficiency to Seller together with accrued interest thereon at a rate equal to six percent (6%). Such audit shall be at Seller's expense; provided, however, that if such audit discloses liability for Earn Out for any calendar year which is more than three percent (3%) in excess of the Earn Out reported and actually paid by Buyer for such period, Buyer shall upon demand pay to Seller the cost of said audit and related legal fees. The acceptance by Seller of payments of Earn Out shall be without prejudice to Seller's right to an audit of the Records in order to verify the amount of Gross Receivables received by Buyer with respect to the Business. Any information obtained by Seller as a result of any such audit shall be held in strict confidence by Seller except in any litigation or arbitration proceedings between the parties hereto or their respective heirs, successors or assigns and except that Seller may disclose such information as may be ordered by a court asserting proper jurisdiction.

"Gross Revenues" for purposes of this Agreement, shall mean all amounts received or receivable by Buyer from the operation of the Business, whether cash or credit or payment in kind, excepting returns or the amount of any sales tax levied upon the sale of goods or services by a taxing authority provided the same are collected and paid to said taxing authority.

- D. Allocation of Purchase Price. The Purchase Price shall be allocated for all purposes, including, without limitation, Section 1060 of the Internal Revenue Code of 1986, as amended, the regulations thereunder and Form 8594 and all other required tax filings, based upon the following allocation and the Parties hereto agree not to contest such allocation for any purpose:

ITEM	ALLOCATION
1. Fixtures, Equipment & Trade Fixtures	\$35,000.00

2. Inventory	\$135,000.00
3. Good Will	\$265,000.00

All amounts received by Seller as Earn Out, as provided in Section 3.C. above, shall be added to the allocation for good will (Item #3 on the above list).

#### **4. EARNEST MONEY.**

Upon Seller's and Buyer's execution of the Agreement to Purchase, dated August 30, 2004 ("Effective Date"), Buyer deposited Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money (the "Earnest Money") with Broker, which is non-refundable. Upon Closing, said Earnest Money shall be assigned to Broker, as defined below, in partial payment of Broker's fee.

#### **5. CLOSING.**

- A. The closing shall be held on October 1, 2004 (the "Closing Date"), at 11:00 a.m., where at such time Seller shall cause to be delivered to Buyer at Sunbelt Business Brokers ("Broker"), 9801 Dupont Avenue South, Suite 370, Bloomington, Minnesota 55431: (a) this Agreement fully executed by Seller and Shareholder as well as all attachments hereto; (b) a Bill of Sale and Assignment that contains and conveys the items identified on Exhibit A and Exhibit C, attached hereto and other agreements otherwise referenced herein, each executed by the appropriate party(ies); (c) any documents necessary for the transfer of good and marketable title for the Assets; and (d) any other documents reasonably required by Buyer to effectuate the terms of this Agreement.
- B. Subsequent to the Closing Date, Buyer and Seller, each at the request of another, shall execute, deliver and acknowledge all such further instruments and documents and do and perform all such other acts and deeds as may be reasonably required to consummate and properly document the transactions contemplated by this Agreement and to carry out the purpose and intent of this Agreement.
- C. Operating costs of the Business, including but not limited to rent, utilities, taxes, permits, licenses, and other customary prepaids will be allocated between Seller and Buyer based upon the Closing Date, such that Seller will pay that portion of the operating costs pertaining to that period of time up to and including the Closing Date, and Buyer will pay that portion of the operating costs from and after the actual Closing Date.
- D. All salary and wages and other unpaid employee benefits due as of the Closing Date shall be paid by Seller on Seller's next normally scheduled pay day.

#### **6. LIABILITIES.**

Buyer shall assume no liabilities of Seller existing as of the Closing Date; except that Buyer shall assume Seller's responsibilities under the lease with respect to the Location ("Lease") by

executing an assignment of the Lease ("Assignment of Lease"). The Lease and Assignment of Lease are attached hereto as Exhibit F and Exhibit G, respectively.

**7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AND SHAREHOLDER.**

Seller and Shareholder undertake the following covenants and make the following representations and warranties to Buyer with the intention that Buyer may rely upon the same and acknowledge that the same shall be true on the date hereof and as of the Closing Date and all of the foregoing covenants, warranties and representations shall survive the closing of this transaction:

- A. Seller is a corporation duly organized under the laws of the State of Minnesota, has all requisite power and authority to own and to convey Assets hereunder, to conduct its business as it is now conducted and to enter into this Agreement and the closing documents to be signed by or on behalf of Seller.
- B. Neither the execution and delivery by Seller and Shareholder of this Agreement, the consummation of the transactions contemplated hereby nor compliance by Seller and Shareholder with any of the provisions hereof will:
  - (i) Violate or conflict with any provisions of the Articles of Incorporation or Bylaws of Seller.
  - (ii) Violate or constitute a default under or give rise to any right of termination, cancellation or acceleration under any of the terms, conditions or provisions of any agreement or instrument to which Seller or Shareholder are a party or by which any of them or any of their properties or assets is bound except as has been duly and validly waived, consented to or approved of by the other parties to such agreement or instrument.
  - (iii) Result in the creation or imposition of any security interest, lien or other encumbrance upon any of the Assets under any agreement or commitment.
  - (iv) Violate any statute or law or any judgment, order, decree, regulation or rule of any court or governmental authority applicable to Seller or Shareholder, or any of the Assets;
- C. To the best of Seller's knowledge, all of the furniture, fixtures, equipment, and inventory included as part of the Assets are in good repair and will be maintained in good repair, ordinary wear and tear excepted, from the date hereof until the Closing Date, and on the Closing Date will be capable of safe and normal operation. Seller has previously disposed of any damaged and/or obsolete inventory. Seller hereby assigns to Buyer as of the Closing Date, to the extent legally permitted, any and all warranties covering the Assets as of the Closing Date.

- D. As of the Closing Date, Seller shall hold good and marketable title to its respective Assets free and clear of all liens, interests, levies, encumbrances, licenses or leases. On the Closing Date, Seller shall transfer title of the Assets to Buyer free and clear of all mortgages, pledges, liens, conditional sales agreements, leases or other encumbrances of any kind or nature whatsoever.
- E. Seller warrants that it will not sell any of the Assets, other than in the ordinary course of business, from the date that this Agreement is executed until the Closing Date.
- F. Except as otherwise stated herein, there are no obligations of Seller, contingent or otherwise, for which Buyer will be responsible pertaining to the Business. All employees of the Business are "at will" and no employee contracts will be in effect as of the Closing Date.
- G. Seller is not subject to any charter, bylaw provision or shareholder agreement, or except as otherwise stated herein, any mortgage, lien, lease, agreement, instrument, order, judgment or decree, or any other restriction of any kind or character which materially adversely affects the property and assets to be conveyed hereunder or which would prevent the transaction contemplated by this Agreement.
- H. With the exception of this Agreement, no options, contracts, or commitments of any character are outstanding to any person, firm, or corporation to purchase any of the Assets.
- I. Except as otherwise stated herein, no liability of Seller of any kind whatsoever is being assumed, directly or indirectly, by Buyer and Buyer shall not, as a result of consummation of the transactions contemplated by this Agreement, acquire or be responsible for any liabilities of or claims against Seller. All liabilities, claims or expenses of any nature whatsoever which relate to a period or periods prior to the Closing Date shall be the responsibility of Seller and shall be paid by Seller in the ordinary course of business as due.
- J. Seller, and the assets of the Business, are subject to no pending or threatened litigation, action, suit or proceeding by or before any court, arbitrator or federal, state or other governmental commission, board or other agency, or by any private party.
- K. To the best of Seller's knowledge, Seller is in compliance with all applicable laws, rules, and regulations regarding the Business and the Assets.
- L. Seller has accurately prepared and timely filed all applicable federal, state, local and foreign tax or assessment reports and returns of every kind to be filed by Seller with respect to Seller's Business, including but not limited to income tax,

sales and use tax, real estate tax, personal property and employment tax, and has paid all taxes and other charges (including interest and penalties) due or claimed to be due by any taxing authority.

- M. The financial statements of the Business provided by Seller for Buyer's review were prepared in accordance with generally accepted accounting principals ("GAAP") and fairly and accurately present the financial condition of Seller.

## **8. SHAREHOLDER'S REPRESENTATIONS AND WARRANTIES.**

Shareholder represents and warrants that Shareholder is the only Shareholder of Seller and agrees to be individually bound by all of Seller's Representations, Warranties, and Covenants herein.

## **9. BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer undertakes the following covenants and makes the following representations and warranties to Seller with the intention that Seller may rely upon the same and acknowledge that the same shall be true on the date hereof and as of the Closing Date and all of the foregoing covenants, warranties and representations shall survive the closing of this transaction:

- A. No provisions exist in any article, document, or instrument to which Buyer is a party or by which it is bound that would be violated by consummation of the transactions contemplated by this Agreement.
- B. The execution and delivery of this Agreement does not, and the consummation of this transaction as contemplated herein will not, violate any provisions of, or result in the acceleration of obligations under any agreement, instrument, order, judgment or decree to which Buyer may be a party or which will affect Seller. Buyer has no subsidiaries.
- C. There are no suits, judgments or executions, of any kind or nature, pending against the Buyer nor any claim of any kind that may impede the right of the Buyer to consummate the transactions contemplated by this Agreement.
- D. There is no threatened action or actions by any state, local, or national governmental agency that would affect the property and business of the Buyer.
- E. There are no State or Federal tax liens of any kind affecting the Buyer and there are no unpaid Federal or State income taxes due from Buyer for any period prior to the Closing Date.
- F. Buyer is not in default under or in breach of any terms or conditions of any contracts, express or implied warranties, commitments or other arrangements, which relate to the operation of Buyer's business or this which Buyer has become a party in the normal course of business prior to the Closing Date.

- G. Buyer has complied with all laws, rules and regulations relating to its business and property and is not currently in violation of the same.
- H. No representation or warranty by Buyer contained in this Agreement or in any exhibit attached hereto or in connection with the transactions contemplated hereby contains or will contain any untrue statement of material fact necessary to make the statements herein or therein not misleading.

#### **10. BOOKS AND RECORDS.**

Buyer shall have the right, at reasonable times and places prior to the Closing Date to have access to all warranties, maintenance records, maintenance receipts, and maintenance logs regarding the Assets and all other books and records of Seller relating to the Assets and the Business.

#### **11. NON-COMPETE.**

In partial consideration of the Purchase Price, Seller and Shareholder shall not, at any time for a period of five (5) years from the Closing Date or during such time as any amount remains due and payable under the Note, whichever is greater, own and operate a business that provides goods and services that are substantially related to the goods and services provided by the Business, anywhere within the United States.

#### **12. MUTUAL INDEMNIFICATION.**

- A. Seller hereby agrees to indemnify, save and hold harmless the Buyer, and its officers, directors, employees, agents, successors and assigns, from and against any all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties, including, without limitation, related attorney and consultant fees and expenses (hereinafter collectively a "Loss"), actually suffered or incurred by them, arising out of, relating to or resulting from (i) the inaccuracy of any representation or warranty made by Seller in this Agreement, (ii) the breach by Seller of any of their covenants or agreements in this Agreement; or (iii) any aspect of the operation of the business of Seller on or prior to the Closing Date.
- B. Buyer hereby agrees to indemnify, save and hold harmless Seller, and Seller's officers, directors, employees, agents, successors and assigns, from and against any and all Loss actually suffered or incurred by them, arising out of, relating to or resulting from (i) the inaccuracy of any representation or warranty made by Buyer in this Agreement, (ii) the breach by Buyer of any of its covenants or agreements in this Agreement; or (iii) any aspect of the operation of the business of Buyer after the Closing Date.

- C. The mutual indemnification provided for herein shall be a continuing, absolute, and unconditional guaranty, and shall remain in full force and effect until any and all said indebtedness, obligations, and liabilities shall be fully paid. The death, dissolution, or withdrawal of any one or more of the undersigned shall not terminate the guaranty given herein.
- D. For purposes hereof, a party seeking indemnification shall be considered the "Indemnified Party" and the party from whom indemnification is sought shall be considered the "Indemnifying Party." The Indemnifying Party shall reimburse the Indemnified Party, on demand, for any payment made by the Indemnified Party at any time in respect of any liability, obligation or claim to which the above indemnity relates. The Indemnified Party shall be entitled to offset any amount owed to the Indemnifying Party against the amount of the indemnification obligation of the Indemnifying Party under this Agreement.

### **13. CONTROLLING LAW AND LITIGATION EXPENSES.**

This Agreement has been made under the laws of the State of Minnesota without reference to its Conflict of Law, and such laws will control its interpretation as well as any disputes between the parties hereto. Any dispute between the parties hereto shall be exclusively venued in the District Court for Dakota County, Dakota County, Minnesota and all parties hereto consent to the jurisdiction of such court. The party who least prevails in such proceeding shall, upon entry of a final judgment in such proceedings, pay to the party who most prevails in such proceedings, the latter party's costs and expenses, including reasonable attorneys fees, incurred in such proceeding. Koepke & Daniels, P.A. (the "Firm") has not represented either Seller, Shareholder, Buyer or Broker in any way whatsoever and they are not relying on any representations of the Firm in executing this Agreement or closing on the transactions contemplated herein. Seller and Buyer have each been advised and have had the opportunity to consult independent legal representation in this matter.

### **14. BROKER; FINDER; DOCUMENT PREPARATION COSTS.**

Broker's fees in the amount of \$40,000.00 will be paid to Maxann, LLC d/b/a Sunbelt Business Brokers by Seller, on the Closing Date, out of the proceeds of the sale. In addition, Seller agrees to pay to Broker an additional fee equal to ten percent (10%) of all amounts received by Seller as Earn Out (as defined in Section 3.C. above), said payments to be made within fifteen (15) days of Seller's receipt of the Earn Out upon which Broker's fees are based; provided, however, that Broker shall not be entitled to any percentage of any Earn Out representing a forgiveness of the Balloon Payment due and payable under the Note (as provided in Section 3.C. above).

At Closing, Buyer and Seller shall each pay \$1,000.00 in good funds for document preparation costs. In payment of such costs, Buyer shall deliver a certified check for \$2,000.00 payable to the law firm of Koepke & Daniels, P.A.; provided, however, that such document preparation and closing costs may be adjusted upward to reflect additional service through or at Closing. Seller's portion of such document preparation costs shall be deducted from Seller's proceeds at closing.

## **15. WARRANTIES; SURVIVAL.**

All representations, covenants, and warranties contained in this Agreement shall not be canceled by performance of this Agreement and the closing or by wording of the closing documents, but shall survive the closing of this Agreement and the delivery of the Bill of Sale or other documents of conveyance; and such representations, covenants, and warranties shall not merge in said Bill of Sale or other closing documents.

## **16. NOTICE.**

Notwithstanding anything to the contrary, any notices required by this Agreement must be made in writing and served either by actual delivery of the Notice into the hands of the parties therewith entitled or by Certified U.S. Mail Return Receipt Requested to the address below:

If to Seller:                      Michael Holmquist  
    2516 East 125th Street  
    Burnsville, MN 55337

If to Buyer:                        JDC Tyme, Inc.  
    Attn: David W. Johnson  
    1583 Coventry Lane  
    Shakopee, MN 55379

## **17. ASSIGNMENTS.**

Buyer may assign its rights and interests under this Agreement to an affiliate and the assignee affiliate shall succeed to all rights and obligations of Buyer hereunder. In the event Buyer assigns this Agreement to a non-affiliate, all representations, covenants and warranties herein contained shall, without notice, terminate.

## **18. GENERAL PROVISIONS.**

- A.     Severability. The invalidity of any provision of this Agreement shall not impair the validity of any other provision. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and the Agreement may be enforced with that provision severed or as modified by the Court.
- B.     Binding on Heirs and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto. Each party hereto hereby does covenant and agree that they themselves, their heirs, executors, administrators, successors, and assigns will execute any and all instruments, releases, assignments, and consents which may be required of them in order to carry out the provisions of this Agreement.
- C.     Time. Time is of the essence of this Agreement.

- D. Counterparts. This Agreement may be executed in counterparts, any one of which shall be deemed an original.
- E. Capacity. When signed by a corporation, the persons so signing represent and warrant that they are signing the same in their capacity as the corporate officers indicated and the execution of the same is pursuant to authority granted by the said corporation's Board of Directors for the purpose herein set forth. Upon request, corporate resolutions shall be furnished documenting the existence of that authority. When signed in any capacity, the person signing this Agreement represents and warrants that he has authorization to sign the Agreement without condition or limitation.
- F. Entire Agreement. This Agreement, along with that certain Agreement to Purchase dated August 30, 2004, that certain Addendum to Agreement to Purchase, and the other written agreements expressly referred to herein contain the entire agreement of the parties hereto with respect to the subject matter hereof, provided, however, that to the extent that a term of this Agreement conflicts with a term of any previous agreement, then such term in this Agreement shall control and supersede the other term. This Agreement may not be amended except in writing signed by the party against whom enforcement is sought.
- G. No Waiver or Estoppel. Forbearance or non-enforcement of any terms, covenants, and conditions of this Agreement shall not be a waiver of same or of any other terms, covenants, or conditions of this Agreement, nor shall the non-breaching party be estopped to enforce any such terms, covenants, or conditions at such time as it sees fit.
- H. Contemporaneous Agreements or Documents; Defaults. If the execution and performance of the terms of this Agreement is contingent upon the contemporaneous execution and performance by the parties hereto of the other agreement(s) or documents, then any default under any one of such agreements or documents shall also be a default hereunder.

[remainder of page intentionally left blank]

To: U.S. Patent Office  
From: David W. Johnson; JDC Tyme, Inc. dba Ventaire  
Re: U.S. Patent Assignment

10-25-04

Dear Sir or Madame,

I have attached the following information to PTO-1595. I purchased Ventaire, Inc. on 10-1-04 from Michael W. Holmquist. At the time Mike owned two patents. In our purchase agreement these patents became the property of my corporate entity, JDC Tyme, Inc. The attached "Amendment to Agreement to Purchase" outlines the patents in #1E and also in the "Bill of Sale". At the time of the purchase the second patent was pending. Since I have received the patent number US 6,802,336 B1 and the date of the patent is Oct. 12, 2004. If you need additional information please let me know.

Thank you,



Dave Johnson  
President  
Ventaire