

WEINER, MCCAFFREY, BRODSKY, KAPLAN & LEVIN, P.C.

ATTORNEYS AT LAW

SUITE 800

1350 NEW YORK AVENUE, N W  
WASHINGTON, D.C. 20005-4797

(202) 628-2000

TELECOPIER (202) 628 2011

November 28, 1990

HARVEY E WEINER  
R LAWRENCE MCCAFFREY JR  
JAMES A BRODSKY  
PETER E KAPLAN  
IRVING P MARGULIES  
MARK M LEVIN  
PETER A GILBERTSON  
MARK H SIDMAN  
L MARK WINSTON  
THOMAS A BROOKS  
RICHARD J MELNICK  
MITCHEL H KIDER

PATRICIA L PAYNE  
JAY A STEPHENS  
OF COUNSEL

LAURENCE R LATOURETTE  
RANDAL D SHIELDS  
RICHARD J ANDREANO, JR  
CHRISTOPHER E HAGERUP  
C A AVRAKOTOS\*  
STEPHEN D NILES  
JEFFREY A SOULE\*  
THOMAS LAWRENCE III\*  
PAUL A MONDOR\*  
JILL M HAWKEN\*  
JONATHAN L KATZ\*  
STEPHEN W McVEARRY\*

\*NOT ADMITTED IN D C

0-332A01C

17090

RECORDATION NO \_\_\_\_\_ FILED 1025

VIA HAND DELIVERY

The Honorable Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

NOV 28 1990 10 15 AM

INTERSTATE COMMERCE COMMISSION

Re: Lease-Purchase Agreement between  
VMV Enterprises, Inc. and Buffalo and  
Pittsburgh Railroad, Inc.

Dear Mr. Strickland:

Enclosed herewith please find an original and one counterpart of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Locomotive Lease-Purchase Agreement, a primary document, dated October 23, 1990.

The names and addresses of the parties to the documents are as follows:

Lessor:

VMV Enterprises, Inc.  
1300 Kentucky Avenue  
Paducah, KY 42003

Lessee:

Buffalo and Pittsburgh Railroad, Inc.  
P.O. Box 1532  
Butler, PA 16001

NOV 28 1990 10 15 AM

*J. M. Strickland, Jr.*

*C. D. [Signature]*

The Hon. Sidney L. Strickland, Jr.      -2-      November 28, 1990

A description of the equipment covered by the document is attached as Exhibit A to the Agreement.

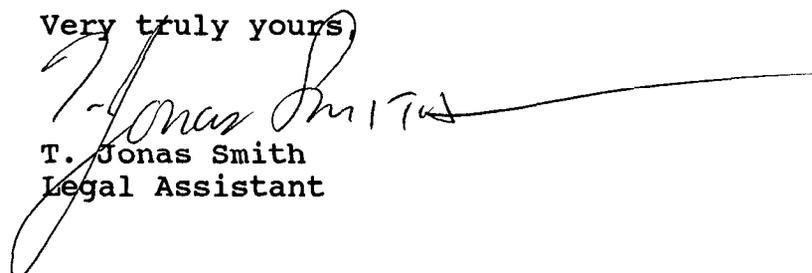
A fee of \$15.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the representative of this firm filing this document.

A short summary of the document to appear in the index follows:

A Locomotive Lease-Purchase Agreement between VMV Enterprises, Inc., 1300 Kentucky Avenue, Paducah, KY 42003, and Buffalo and Pittsburgh Railroad, Inc., P.O. Box 1532, Butler, PA 16001, dated October 23, 1990, and covering two (2) GP-40 diesel electric locomotives, numbers 3000 and 3001, manufactured by Electro-Motive Division (EMD), General Motors Corporation.

If you have any questions regarding this filing please contact me at (202) 628-2000.

Very truly yours,



T. Jonas Smith  
Legal Assistant

NOV 28 10 20 AM '90

**Interstate Commerce Commission**  
Washington, D.C. 20423

11/28/90

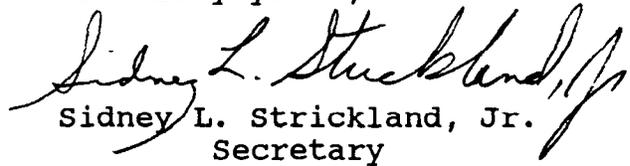
OFFICE OF THE SECRETARY

T. Jonas Smith  
Legal Assistant  
Weiner, McCaffrey, Brodsky, Kaplan & Levin P.C.  
1350 New York Avenue N.W.  
Washington, D.C. 20005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/28/90 at 10:15am, and assigned recordation number(s). 17090

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17090  
RECORDATION NO. \_\_\_\_\_ FEB 1993

NOV 28 1990 - 10 15 AM

LOCOMOTIVE LEASE-PURCHASE AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS LEASE-PURCHASE AGREEMENT made and entered into as of this 23<sup>rd</sup> day of October, 1990, by and between VMV ENTERPRISES, INC., a Kentucky corporation, hereinafter called "Lessor", and BUFFALO AND PITTSBURGH RAILROAD, INC., a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease of Locomotives. Lessee agrees to lease from Lessor the Locomotives described in Exhibit "A", together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives").

2. Rent. The term of this Lease shall commence with respect to each Locomotive on acceptance and delivery at interchange of each Locomotive at Louisville, KY, and shall continue for a period of three (3) years (the "Term") for each Locomotive at which time the final rental and buyout payment is due. Lessee may cancel this Lease Agreement as to any Locomotive not delivered and accepted by Lessee prior to December 31, 1990. The daily rental for each Locomotive shall be payable monthly in arrears on or before the first day of each and every month for the previous month and shall be in the amount set forth on attached Exhibit "A".

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, except as provided in Section 9 or as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of the Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessee acknowledges that: (1) Lessor is in no manner connected to the Locomotive manufacturer; and (2) Lessors decision to enter into this Lease is made in reliance upon Lessee's commitment not to assert against Lessor any claims, defenses, set-offs or counter claims it may now or hereafter have against the Locomotive manufacturer.

3. Warranties and Representations. LESSOR MAKES, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF

ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon, except for warranties of Lessor in Section 9. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

4. Place of Payment of Rent. Lessee shall direct payment of the monthly rent to the following address:

VMV Enterprises, Inc.  
1300 Kentucky Avenue  
Paducah, KY 42003  
Attn: Paul M. Seaton

5. Recordkeeping; Inspection. Lessee agrees to keep and maintain and make available to Lessor a record of Lessee's use, inspection, repairs, maintenance, storage and out of service periods of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times with reasonable notice to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

6. Loss or Destruction. In the event that any Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use; or, in the reasonable opinion of the Lessee, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, or taken

or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by the Lessee for a period of sixty (60) consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall notify Lessor of such Casualty Occurrence.

On the payment date next following the date of the Casualty Occurrence, Lessee shall pay to Lessor the Casualty Value of the Locomotive, as set forth under the casualty schedule on attached Exhibit "A". Upon making the Casualty Value payment, all of Lessor's right, title and interest in such Locomotive shall automatically pass to Lessee on an as is, where is basis, and this Lease shall terminate with respect to such Locomotives.

7. Insurance. (a) During the term hereof, all risk of loss of, damage to or destruction of the Locomotives shall at all times be on Lessee except for loss, damage or destruction resulting from gross negligence of Lessor, its officers, employees, agents, representatives, assignees, and/or successors.

(b) Lessee shall provide (i) insurance against loss, theft and destruction or damage of the Locomotives, in the manner Lessee provides for coverage of similar equipment owned and leased by it and (ii) comprehensive public liability insurance against claims for personal injuries, death and property damage in no event less comprehensive in amount and against risk customarily insured

against by Lessee in respect of similar equipment owned or leased by it. Lessee shall pay applicable premiums for insurance. Lessor shall have the right but not the obligation to insure the Locomotives for its own account.

8. Indemnity. Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and save Lessor harmless from and against any and all liability, loss, damage, expense, causes of action, suits, claims or judgments arising from or caused directly or indirectly by: (a) Lessee's failure to promptly perform any of its obligations under any provision of this Agreement, or (b) injury to persons or property during the term of the Lease resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) inadequacy of the Locomotives, or any part thereof, for any purpose of and deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any maintenance, repairs, servicing or adjustments or any interruption or loss of service or use thereof or any loss of business; and Lessee shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claims and shall satisfy, pay and discharge any and all judgments and fines that may be assessed against Lessor in any such action or actions, provided, however, that Lessor promptly shall give Lessee written notice of any such claim

or demand. This indemnity shall survive the expiration or termination of this Lease-Purchase Agreement. To the extent Lessor receives payment from Lessee, Lessee shall be subrogated to the extent of such payment to Lessor's rights with respect to the transaction or event requiring such indemnification.

9. Compliance with Law; Repair and Maintenance. Lessee shall comply with all applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Term, including, but not limited to the regulations of the Federal Railroad Administration.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee will, at its sole expense, perform or cause to be performed all repair and maintenance work, servicing lubrication and inspection of the Locomotives in accordance with Lessee's existing maintenance practices except that during the first one-hundred eighty (180) days of the Term, Lessor agrees to accept limited responsibility, as set forth in this Section 9, for the failure of the (a) main generator, (b) prime mover, (c) traction motors and (d) air compressor (a "Substantial Failure") unless the Substantial Failure is the result of Lessee's misuse or abuse or caused by derailment or an accident.

In the event of a Substantial Failure during the first one-hundred eighty (180) days of the Term: (i) repair work to be performed resulting from a failure of the prime mover or main generator shall be at Lessor's expense and rent will abate for each Locomotive upon interchange off Lessee's railroad for delivery to Lessor's Shop for repairs until the Locomotive is returned to Lessee's railroad in interchange, and (ii) repair work to be performed resulting from the failure of a traction motor or air compressor, shall be at Lessee's expense, except that Lessor shall supply the necessary replacement parts at no expense to Lessee and rent shall abate for one (1) day while Lessee repairs same.

During the term of this Lease, Lessor shall allow Lessee a five percent (5%) discount from VMV's standard prices for UTEX components used to repair or maintain the Locomotives.

10. Assignment. Lessee shall not assign or sublet its interest, or any part thereof, under this Lease-Purchase Agreement, or permit the use or operation of any Locomotive subject to this Agreement by any other person, firm or corporation, other than a wholly-owned subsidiary of Lessee, without the prior written consent of Lessor, which shall not be unreasonably withheld. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements.

Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee.

11. Notice. Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Buffalo and Pittsburgh Railroad, Inc.  
P. O. Box 1532  
Butler, PA 16001  
Attn: E. R. Evans

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

VMV Enterprises, Inc.  
1300 Kentucky Avenue  
Paducah, KY 42003  
Attn: Paul M. Seaton

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

12. Quiet Enjoyment. So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

13. Authority. The undersigned signatories herewith represent and warrant that they are fully authorized to execute the Lease and bind the respective parties to the terms and provisions hereof.

14. Late Charges. Delinquent installments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate. Rent installments are delinquent ten (10) days following due date.

15. ICC Recording. Lessor will promptly cause this Lease to be duly filed, registered or recorded in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act or other place within the United States as Lessor may reasonably request for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

16. Taxes. Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts

taxes arising out of receipts from use or operation of the Locomotives and all other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

17. Performance Obligations of Lessee by Lessor. In the event that the Lessee shall fail duly and promptly to perform any of its obligations under the provisions of this Lease-Purchase Agreement, the Lessor may, at its option, perform the same for the account of Lessee without thereby waiving such default, and any expense or amount paid (including reasonable attorney's fees), penalty or other liability incurred by the Lessor in such performances, together with interest at the rate of 1-1/2% per month thereon until paid by the Lessee to the Lessor, shall be payable by the Lessee upon demand as additional rent hereunder.

18. Further Assurance. Lessee shall execute and deliver to Lessor, upon Lessor's request such instruments and assurances as Lessor reasonably deems necessary or advisable for the confirmation or perfection of this Lease and Lessor's right hereunder.

19. Lessee's Covenants. The Lessee: (a) shall defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives; (b) shall do everything necessary or expedient to preserve or perfect the Lessors' interest in the

Locomotives; (c) shall not misuse, fail to keep in good repair (ordinary wear and tear excepted), and notwithstanding Lessor's claim to proceeds, sell, rent, lend, encumber or transfer any interest in the Locomotives.

20. Default. An event of default shall occur if: (a) Lessee fails to pay when due any installment of rent and such failure continues for a period of ten (10) days after receipt of written notice; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for fifteen (15) days after written notice thereof to Lessee by Lessor; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties.

Upon the occurrence of an event of default, Lessor, at its option, may: (a) declare all sums due hereunder immediately due and payable; (b) proceed by appropriate court action or actions or other proceedings either at law or equity to enforce performance by the Lessee of any and all covenants of this Lease-Purchase Agreement and to recover damages for the breach thereof; (c) demand that Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at such place as Lessor may

designate; and (d) Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the Locomotives may be or by Lessor is believed to be, and repossess all or any item thereof, disconnecting and separating all thereof from any other property and using all force permitted by applicable law so to do, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for injuries suffered through or loss caused by such repossession. Upon Lessee's default and at any time thereafter, Lessor shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws. Lessee shall further be responsible for the payment of Lessor's attorney fees. Lessee understands that Lessor's rights are cumulative and not alternative.

In addition to any remedies provided in this Lease, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provisions thereto.

21. Transportation Expense. Lessor shall deliver the Locomotives at its expense to Louisville, Kentucky. In the event that it becomes necessary to return the Locomotives to Lessor for any reason, Lessee shall pay all transportation expense to Louisville, KY.

22. Purchase of Locomotives. At the conclusion of the Term, Lessee shall purchase all of the Locomotives subject to this Lease-Purchase Agreement for the purchase price as shown on attached Exhibit "A" (the "Purchase Price"). The Purchase Price shall be paid in full in United States dollars by certified check or wire transfer within ten (10) days from the date that the Term concludes. Upon receipt of the Purchase Price, Lessor (VMV) shall deliver to Lessee (Buffalo and Pittsburgh Railroad) a Bill of Sale with respect to the Locomotives in the form as shown on attached Exhibit "B".

23. Choice of Law. This Lease shall be governed in all respects by the law of the Commonwealth of Kentucky and the Interstate Commerce Act.

24. Miscellaneous. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof.

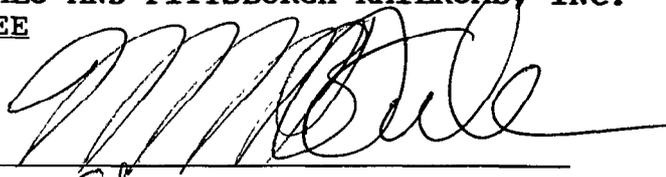
24. Execution. This Lease-Purchase Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused this Lease-Purchase Agreement to be signed in their respective names as of the date first above written.

**VMV ENTERPRISES, INC.**  
**LESSOR**

By:   
Title: President & CEO

**BUFFALO AND PITTSBURGH RAILROAD, INC.**  
**LESSEE**

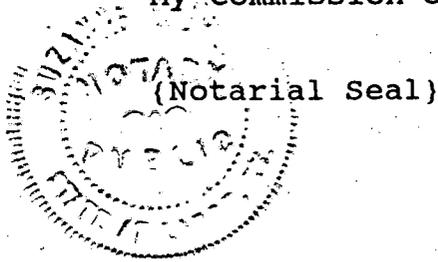
By:   
Title Chairman

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF MCCRACKEN )

On this 23rd day of October, 1990, before me personally appeared Paul M. Seaton, to me personally known, who, being by me duly sworn, says that he is President & CEO of VMV ENTERPRISES, INC., that said instrument was signed and sealed on behalf of said corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Suzanne Bassett  
Notary Public

My Commission expires: 09/20/94



\* \* \* \* \*

STATE OF Connecticut )  
 )  
COUNTY OF Fairfield )

On this 15th day of November, 1990, before me personally appears Mortimer B. Fuller, III, to me personally known, who being by me duly sworn says that he is Chairman of Buffalo & Pittsburgh, that said instrument was signed and sealed on behalf of said corporation upon appropriate authority and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joyce M. Barrett  
JOYCE M. BARRETT  
NOTARY PUBLIC

My Commission Expires: MY COMMISSION EXPIRES MARCH 31, 1993

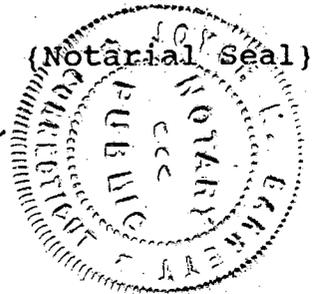


EXHIBIT "A"

Locomotive Description

General Motors (Electro-Motive Division) GP-40 diesel electric locomotive numbered as follows:

Loco No.	Type	Horsepower	Daily Rental Rate	Casualty Value	Purchase Price
3000	GP-40	3000	\$265.00	see below	\$250,000.00
3001	GP-40	3000	\$265.00	see below	\$250,000.00

EXHIBIT "B"

**BILL OF SALE**

FOR AND IN CONSIDERATION and upon the payment of One Dollar (\$1.00) and other good and valuable consideration, the adequacy of which is hereby acknowledged, VMV ENTERPRISES, INC. (the "Seller"), does hereby grant, bargain, sell, transfer and deliver unto BUFFALO AND PITTSBURGH RAILROAD, INC. (the "Buyer"), its successors and assigns, all of Seller's right, title to and interest in the locomotives described on Exhibit "A" attached hereto and made a part hereof (the "Units").

The Seller hereby warrants that at the time of delivery of the Units to the Buyer, pursuant to the terms and conditions of a Lease Purchase Agreement between the parties hereto, dated \_\_\_\_\_, 1990, the Seller had legal title thereto and good and lawful right to sell the Units and that the Units were at such time free of all claims, liens and encumbrances of any nature: and the Seller covenants to defend such title against the claims and demands of any persons whomsoever based on claims originating prior to such delivery of the Units.

IN WITNESS WHEREOF, VMV ENTERPRISES, INC. has executed this Bill of Sale as of this \_\_\_\_ day of \_\_\_\_\_, 1990.

**VMV ENTERPRISES, INC.**

By: \_\_\_\_\_  
(Title)