

**OSTER**

2-358A003

**Researching Services**

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RECORDATION NO. **18049** FILED 1425

DEC 23 1992 9:40 AM

INTERSTATE COMMERCE COMMISSION

December 23, 1992

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Purchase and Sale Agreement dated as of December 7, 1992, between the following parties:

Seller: George Zettler  
214 Camino Del Campo  
Redondo Beach, CA 90277

Buyer: Northwestern Oklahoma Railroad Co.  
One Foxfield Square, #200  
St. Charles, IL 60174

The equipment involved in this transaction is as follows:

Equipment: 1, 100-ton 4750 cf Covered Hopper  
NOKL 6000

Please record this agreement as a primary document. The filing fee of \$16 is enclosed. Thank you.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Counterparts - Mary Ann Oster*

DEC 23 9 34 AM '92  
MOTOR CARRIER UNIT

18049 FILED 1425  
DEC 23 1992 9:40 AM  
INTERSTATE COMMERCE COMMISSION

### Purchase and Sale Agreement

This Purchase and Sale Agreement (the "Agreement") is made as of this 7th day of December by and between Northwestern Oklahoma Railroad Co. (the "Buyer"), a corporation organized under the laws of the state of Oklahoma, and George A. Zettler, an individual (herein called "Seller"). Seller is the owner of railroad rolling stock which Buyer desires to purchase and Seller desires to sell.

For and in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Sale of Equipment: Seller agrees to sell, and Buyer agrees to purchase one (1) 4750 cubic-foot 100-ton covered hopper identified in Exhibit A (such car hereinafter collectively referred to as the "Railcar").

2. Purchase Price: The purchase price of the Railcar shall be \$21,100.00 (the "Purchase Price"), payable in U.S. funds immediately available on the "Closing Date" (as defined in Section 3), by wire transfer to the account of George A. Zettler, Account No. CMA-20342204 at Merrill Lynch, Department 2019, Los Angeles, CA 90088-2019.

3. Closing: The "Closing" is defined as the time when the conditions precedent to closing, the exchange of relevant documents, and the payment of the Purchase Price have all been completed. The date on which the Closing actually occurs shall be defined as the "Closing Date", and shall be on or before \_\_\_\_\_ . Prior to the Closing, Seller shall deliver to Buyer: (a) a Bill of Sale for the Railcar in the form of Exhibit B to this Agreement; and (b) evidence reasonably satisfactory to Buyer of Seller's title to the Railcar. Upon closing, the Railcar shall be deemed to have been delivered to Buyer at the location the Railcar is then to be found, and Buyer agrees to accept delivery at such location.

4. Allocation of Revenues and Expenses. All revenues which are earned and all expenses which are incurred with respect to the Railcar and with respect to the Railcar prior to the Closing Date shall be for the account of the Seller. All revenues which are earned and all expenses which are incurred with respect to the Railcar and with respect to any Railcar on or after the Closing Date shall be for the account of Buyer.

5. Representations and Warranties of Seller. Seller hereby represents, warrants and declares to and in favor of Buyer that:

(a) Seller holds title to Railcar free and clear of all liens, claims, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever;

(b) Seller is the lawful owner of the Railcar and has good right and title to sell the same to Buyer;

(c) Upon Closing, Buyer shall hold good and marketable title to the Railcar free and clear of all liens, claims, demands, encumbrances, privileges, pledges or other charges of every nature and kind whatsoever;

(d) This Agreement constitutes legal, valid and binding obligations of Seller, enforceable in accordance with the provisions hereof.

6. Condition of Equipment. BUYER AGREES THE RAILCAR SHALL BE SOLD TO BUYER BY SELLER "AS IS, WHERE IS," "WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE RAILCARS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OF FITNESS FOR ANY PARTICULAR PURPOSE.

7. Buyer's Indemnity. Buyer shall indemnify and hold Seller harmless from and against any and all costs, claims, liabilities and causes of action, including but not limited to attorneys' fees and the costs of defending such claims (collectively, the "Claims"), arising from events occurring from and after the Closing Date, with respect to the condition, repair, leasing, sale, utility, use, ownership or management of the Railcar. Upon payment of such indemnity, Buyer shall be subrogated to Seller's rights against any third parties respecting the Claim.

8. Seller's Indemnity. Seller shall indemnify and hold Buyer harmless from and against Claims arising from events occurring prior to the Closing Date, with respect to the condition, repair, leasing, sale, utility, use, ownership or management of the Railcar. Upon payment of such indemnity, Seller shall be subrogated to Buyer's rights against any third parties respecting the Claim.

9. Broker's Commissions. Each party hereto represents and warrants that it has not entered into any agreement with any broker relating to the sale of the Railcar and that no broker's commission is due with respect to the transactions contemplated herein. Each party agrees to indemnify and hold the other party harmless from and against any claims for broker's commissions arising out of the acts of such party and for expenses (including reasonable attorneys' fees) and costs relating to such claims as a result of a breach of the warranty contained in this section.

10. Survival of Representations and Warranties. The representations and warranties herein contained shall survive the closing of this Agreement by the parties hereto and shall be deemed made as of the Closing.

11. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors, administrators and assigns.

12. Severability. Any term, condition or provision of this Agreement which is, or is deemed to be, void, prohibited, or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, and is ineffective to the extent of such avoidance, prohibition and unenforceability without in any way invalidating the remaining terms, conditions and provisions hereof. Any such avoidance, prohibition and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

13. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, understandings and representations, oral or written. No modification, limitation or release of the terms and conditions contained herein shall be made except by mutual agreement to that effect in writing and signed by the parties hereto.

14. Governing Law. THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF ILLINOIS, SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF SUCH STATE, AND THIS AGREEMENT SHALL BE DEEMED IN ALL RESPECTS TO BE A CONTRACT OF SUCH STATE.

15. Notice. All communications under this Agreement shall be in writing and shall be deemed received when deposited in the United States mail (by certified mail, postage prepaid) or when personally delivered. The addresses are as follows:

Northwestern Oklahoma Railroad Co.  
One Foxfield Square, Suite 200  
St. Charles, IL 60174  
Attention: Richard Seymour

Mr. George A. Zettler  
214 Camino Del Campo  
Redondo Beach, CA 90277

16. Counterparts. This Agreement may be executed in any number of counterparts; but all of such counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year first hereinabove set forth.

**Seller:** \_\_\_\_\_ **Buyer:** \_\_\_\_\_  
**By:** George A. Zettler **By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_  
**Date:** December 7, 1992 **Date:** \_\_\_\_\_

STATE OF ILLINOIS

COUNTY OF KANE ss:

On this 16<sup>TH</sup> day of DECEMBER before me personally appeared Thomas W. Harvey, to be personally known, who, being by me duly sworn, says that he is VP MARKETING of Northwestern Oklahoma Railroad Co., and that the foregoing Purchase and Sale Agreement was signed on behalf of said corporation by authority of its Board of Directors. Further, he acknowledged that the execution of the foregoing Purchase and Sale Agreement was the free act and deed of said corporation.

Kathleen Kregul  
Notary Public



STATE OF CALIFORNIA

COUNTY OF LOS ANGELES ss:

On this 7TH day of DECEMBER 1992 before me personally appeared GEORGE A. ZETTLER, to be personally known, who, being by me duly sworn, says that he is Owner of Railcar, and that the foregoing Purchase and Sale Agreement was signed on his behalf. Further, he acknowledged that the execution of the foregoing Purchase and Sale Agreement was the free act and deed of said individual.

Mary M. Serrano  
Notary Public



Exhibit A

List of Railcar

Description of Railcar

Identifying Number

One (1) 4750 cu. ft. capacity  
100-ton covered hopper car.

NOKL 6000

Exhibit B

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, George A. Zettler, (herein called the "Seller"), for good and valuable consideration, receipt of which is hereby acknowledged, does hereby bargain, sell, convey, transfer and set over unto Northwestern Oklahoma Railroad, an Oklahoma corporation (herein called the "Purchaser"), its successors and assigns, all of Seller's right, title and interest in and to the following railroad car which has been sold and delivered by the Seller to the Purchaser pursuant to a Purchase Agreement dated 12/14/92, between the Seller and the Purchaser:

The Seller, for itself, its successors and assigns, hereby represents and warrants that it is the lawful owner of the Car, that it has good right and lawful authority to sell the same and that the Car sold and transferred to Purchaser by this instrument is free and clear of all liens, encumbrances and security interests of any nature whatsoever, and the Seller will defend the same against the claims and demands of all persons.

IN WITNESS WHEREOF, the Seller has caused this instrument to be executed in his name this 17<sup>th</sup> day of December 1992.

By: \_\_\_\_\_

*George A. Zettler*

Title: \_\_\_\_\_