RECORDATION NO. 30750-D FILED

FEB 17 2016 -11 :06 AM

SURFACE TRANSPORTATION BOARD

SLOVER & LOFTUS LLP
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KATHERINE F. WARING
BRADFORD J. KELLEY

OF COUNSEL
DONALD G. AVERY
CHRISTOPHER A. MILLS

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
kfw@sloverandloftus.com

February 16, 2016

BY HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

Re: Durbin & Greenbrier Valley Railroad, Recordation
Pursuant to 49 U.S.C § 11301

Dear Ms. Brown:

Enclosed for recordation pursuant to 49 U.S.C. § 11301 and the Board's regulations at 49 C.F.R. § 1177 is an executed original and one certified true copy (with a notary's certificate in accordance with 49 C.F.R. § 1177.3(b)(1)) of the following document:

COMMERCIAL SECURITY AGREEMENT dated January 12, 2016 made and executed between the Durbin and Greenbrier Valley Railroad ("Grantor") and the Davis Trust Company ("Lender").

This document is a Commercial Security Agreement, a secondary document under 49 C.F.R. § 1177.1(b). The collateral in this Commercial Security Agreement includes collateral that was included in the Commercial Security Agreement bearing STB Recordation Nos. 30750 C, 30751C, and 30752 B, and recorded on December 19, 2014; the Commercial Security Agreement bearing STB Recordation Nos. 30750 B, 30751 B, and 30752 A, and recorded on March 19, 2014; the Commercial Security Agreement bearing STB Recordation Nos. 30750 A and 30751 A, and recorded on December 20, 2013; and the Commercial Security Agreement bearing STB Recordation Nos. 30750, 30751, and 30752, and recorded on June 5, 2013.

The names and addresses of the parties to the Commercial Security Agreement are as follows:

Grantor/Debtor:

Durbin & Greenbrier Valley Railroad
PO Box 44
Durbin, WV 26264

Lender/Secured Party:

Davis Trust Company
227 Davis Avenue
PO Box 1429
Elkins, WV 26241-1429

The equipment covered by the Commercial Security Agreement consists of 59 locomotives, rail cars, tank cars, gondolas, hoppers, cabooses, and other rolling stock, more specifically described in Exhibit A, attached hereto.

A short summary of the Commercial Security Agreement for indexing purposes is as follows:

> Commercial Security Agreement dated January 12, 2016 between the Durbin and Greenbrier Valley Railroad, Inc. ("Grantor") and the Davis Trust Company ("Lender") covering 59 locomotives, rail cars, tank cars, gondolas, hoppers, cabooses, and other rolling stock bearing certain reporting marks between DGVR #1-10, 39-67, 106, 109A, 120-367, 402-900, 1045-1909, 6530, 6532, 6641, 10102-10104, 14374, 90532, 91157, 357521, 429782, 492698, 493039, 995680, M-3, MW2 – MW14, non-inclusive.

We request that you charge our STB account in the amount of the requisite filing fee. The bearer of this letter will provide that account number to you. Please accept for recordation one executed original of the Commercial Security Agreement, stamp the copy with your recordation number, and return the stamped copy to the bearer of this letter, along with your fee receipt.

Thank you for your attention to this matter.

Sincerely,

Katherine F. Waring
*An Attorney for the*
*Durbin & Greenbrier Valley Railroad*

Enclosures

## EXHIBIT A

**DGVR Equipment List for Recordation**

1. DGVR #1: Locomotive built in 1936 by Whitcomb Locomotive
2. DGVR #3: 55 Ton Climax Steam Locomotive , Class B, built in 1910 by Climax Mfg. Co., Corry, PA
3. DGVR #10: ex-Union Pacific self-propelled railcar (known as "Big Ugly")
4. DGVR #5: 1954 380hp GE 44 ton Center Cab switch engine, No. 1885
5. DGVR #39 (formerly #2): Locomotive built in 1939 by Plymouth Locomotive Works (known as "Lil Bit")
6. DGVR #67: F7A EMD Locomotive
7. DGVR #106: ALCO RS3 Locomotive
8. DGVR #120 (formerly or also known as #112): Observation Parlor Car, ex St. Louis & Southwestern Railway
9. DGVR #147: RPO car
10. DGVR #184: Power Car-Refrigerator Car, ex Fruit Growers Express
11. DGVR #201: Coach Car, ex Erie Lackawanna Railroad
12. DGVR #202: Buffet dining car, ex Erie Lackawanna Railroad
13. DGVR #203: Yellow open window coach car built in 1898, ex New York Elevated Railway Co.
14. DGVR #204: Open Air Excursion car, ex US Army
15. DGVR #243: F7A EMD Locomotive
16. DGVR #324: Coach Car, ex New Jersey Central Railroad
17. DGVR #367: 1958 1700hp ALCO RS-11M locomotive, No. 82958
18. DGVR #402: Business Car N&W, former ATSF business car
19. DGVR #407: Business/Parlor Car, former ATSF business car
20. DGVR #415: F7B EMD Locomotive
21. DGVR #800 (formerly or also known as #506): Café/Lounge Car, ex Northern Pacific Railroad
22. DGVR #706 (formerly or also known as #711): Railway post office/Power/Concession car, ex Delaware & Hudson Railroad
23. DGVR #710: Blue railway post office car, ex Delaware & Hudson Railroad
24. DGVR #805 (formerly or also known as #850): Lounge Car/Table, ex Northern Pacific Railroad
25. DGVR #10102: 70 ton Hopper Car
26. DGVR #10103: 70 ton Hopper Car
27. DGVR #1045: Milk car

28. DGVR #1493: Dining Car, ex Santa Fe Railway
29. DGVR #1891 (formerly or also known as #92891): Caboose
30. DGVR #1906: Plywood caboose built in 1906, ex Baltimore & Ohio Railroad
31. DGVR #1908: Red caboose built in 1908 , ex Baltimore & Ohio Railroad
32. DGVR #1909 (formerly or also known as #106, #1955): Schultz Steel Bay Window Caboose, ex Louisville & Nashville Railroad
33. DGVR #40: GP9 Locomotive, ex C&O Railroad
34. DGVR #6530: EMD GP9 Locomotive
35. DGVR #6532: EMD GP9 Locomotive
36. DGVR #6641: GP9 Locomotive, ex Southern Pacific Railroad
37. DGVR # 900 (formerly #6765): Power Car, ex Southern Pacific Railroad
38. DGVR #109A (formerly #7094): F7A Locomotive, ex Milwaukee Road
39. DGVR #492698 (formerly or also known as #8910): Pullman heavyweight sleeper "Principio"
40. DGVR #493039 (formerly or also known as #8820): Pullman heavyweight sleeper "Horatio"
41. DGVR #303: 50' Gondola Car, ex Conrail
42. DGVR #10104 (formerly #601, a number that had already been assigned to a 50 ton Hopper Car): 70 ton Hopper Car
43. DGVR #14374: 5,000 gallon Gulf Oil Tank Car
44. DGVR #601: 50 ton steel hopper car, ex N&W
45. DGVR #602: 50 ton steel hopper car, ex N&W
46. DGVR #603: 57 ton steel hopper car, ex N&W
47. DGVR #995680: Tank car, built in 1959, ex FLMX Tank Car Co.
48. DGVR #90532: Flat car, ex TTMX Car Co.
49. DGVR #91157: Flat Car, ex TTMX Car Co.
50. DGVR #357521: Gondola car, ex Baltimore & Ohio Railroad
51. DGVR #429782 (formerly or also known as #PPLX 008): Hopper car
52. DGVR #4: 1926 Buffalo Creek Gauley 280 Steam Locomotive
53. DGVR #M-3: Edwards Self-propelled Railcar, built new for DGVR in 2000
54. DGVR #MW2: Fairmont A-5 motor car
55. DGVR #MW3: Fairmont MT-14 motor car
56. DGVR #MW11: Plasser ballast regulator
57. DGVR #MW12: Geismar production tie inserter
58. DGVR #MW13: Burro Crane
59. DGVR #MW14: Portable Tamper

Corporate Form of Acknowledgement

State of West Virginia
County of Randolph

On this 12th day of January 2016, before me, personally appeared Hoy A. Ferguson, to me known to be the person, who being by me duly sworn, says that he is the Commercial Loan Officer of Davis Trust Company, that the seal affixed to foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

Hoy A. Ferguson
On Behalf of Davis Trust Company
A West Virginia Corporation

Corporate Seal

Signature of Notary Public Brenda K. Imsay

My Commission Expires May 29, 2022

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Brenda K. Imsay

Corporate Form of Acknowledgement

State of West Virginia
County of Randolph

On this 12th day of January 2016, before me, personally appeared John W. Smith, to me known to be the person, who being by me duly sworn, says that he is the President of Durbin & Greenbrier Valley Railroad, Inc., that the seal affixed to foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

John W. Smith
On Behalf of Durbin and Greenbrier Valley Railroad
A West Virginia Corporation

Corporate Seal

Signature of Notary Public Brenda K Vanscoy

My Commission Expires May 29, 2022

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Brenda K. Vanscoy
PO Box 94
Mill Creek, WV 26283
My Commission Expires May 29, 2022

Corporate Form of Acknowledgement

State of West Virginia
County of Randolph

On this 12th day of January 2016, before me, personally appeared Kathryn A. Smith, to me known to be the person, who being by me duly sworn, says that she is the Vice President of Durbin & Greenbrier Valley Railroad, Inc., that the seal affixed to foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

Kathryn A. Smith
On Behalf of Durbin and Greenbrier Valley Railroad
A West Virginia Corporation

Corporate Seal

Signature of Notary Public Brenda K Vansey

My Commission Expires May 29, 2022

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Brenda K. Vansey
PO Box 44
Mathias, WV 26283
My Commission Expires May 29, 2022

Individual Form of Acknowledgement

State of West Virginia
County of Randolph

On this 12th day of January, 2016, before me, personally appeared John W. Smith, to me know to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

_____
John W. Smith

Signature of Notary Public Brenda K. Vansoy

My Commission Expires May 29, 2022

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Brenda K. Vansoy
PO Box 34
Mercer, WV 26283
My Commission Expires May 29, 2022

State of West Virginia
County of Randolph

On this 12th day of January, 2016, before me, personally appeared Kathryn A. Smith, to me know to be the person described in and who executed the foregoing instrument and she acknowledged that he executed the same as her free act and deed.

_____
Kathryn A. Smith

Signature of Notary Public Brenda K. Vansoy

My Commission Expires May 29, 2022

OFFICIAL SEAL
STATE OF WEST VIRGINIA
NOTARY PUBLIC
Brenda K. Vansoy
PO Box 34
Mercer, WV 26283
My Commission Expires May 29, 2022

# COMMERCIAL SECURITY AGREEMENT

| Principal | Loan Date | Maturity | Loan No | Call / Coll | Account | Officer | Initials |
|---|---|---|---|---|---|---|---|
| $625,000.00 | 01-12-2016 | 01-26-2036 | 34108 | | 3113808 | *** | |

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "***" has been omitted due to text length limitations.

**Grantor:** Durbin & Greenbrier Valley Railroad (TIN: 55-0753434)
P.O. Box 44
Durbin , WV 26264

RECORDATION NO. 30750-D
FEB 17 2016 -11 :06 AM
SURFACE TRANSPORTATION BOARD

**Lender:** DAVIS TRUST COMPANY
227 DAVIS AVENUE
PO BOX 1429
ELKINS, WV 26241-1429
(304) 636-0991

THIS COMMERCIAL SECURITY AGREEMENT dated January 12, 2016, is made and executed between Durbin & Greenbrier Valley Railroad ("Grantor") and DAVIS TRUST COMPANY ("Lender").

**GRANT OF SECURITY INTEREST.** For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

DGVR 1 1936 Whitcomb 'Leroi', DGVR 3 55 Ton Climax, DGVR 10 Self-Propelled Railcar 'Big Ugly', DGVR 5 GE 44 Tonner, DGVR 39 1939 Plymouth 'Lil Bit', DGVR 67 EMD F7A Locomotive, DGVR 106 ALCO RS3, DGVR 120 or 112 Observation/Parlor Car, DGVR 147 RPO Car, DGVR 184 Power Car, DGVR 201 Coach Car, DGVR 202 Buffet Dining Car, DGVR 203 Yellow Open Window Coach Car, DGVR 204 Open Coach Flat Car, DGVR 243 EMD F7A Locomotive, DGVR 324 Coach Car, DGVR 367 ALCO RS-11 Locomotive, DGVR 402 Business Car N&W, DGVR 407 Business/Parlor Car, DGVR 415 EMD F7B Locomotive, DGVR 800 Lounge/ Café Car/Concession, DGVR 706 or 711 RPO/Power/Concession Car, DGVR 710 Blue RPO Car, DGVR 805 Lounge Car/Table, 10102 70 Ton Hopper Car (red), 10103 70 Ton Hopper Car (red), DGVR 1045 Milk Car, DGVR 1493 Dining Car, DGVR 1891 Caboose (#92891 on appraisal), DGVR 1906 Plywood Caboose, DGVR 1908 Red Bead Board Caboose, DGVR 1909 Schultz Steel Bay Window Caboose (#1955 on appraisal) Coach Car,

DGVR 40 EMD GP9 Locomotive, EMD GP-9 Locomotive, EMD GP-9 Locomotive, DGVR 6641 EMD GP9 Locomotive, DGVR 900 Power Car, 109A EMD F7A Locomotive, 492698 PRR Heavyweight Sleeper Car, 493039 PRR Heavyweight Sleeper Car, 70 Ton Hopper Car (black) (#601 on appraisal), DGVR 303 50' Gondola Car, N&W Car, 5000 gal Gulf Oil Tank Car, DGVR 603 57 Ton Hopper Car H-1, DGVR 602 50 Ton Hopper Car, DGVR 601 50 Ton Hopper Car, DGVR 995680 Tank Car, DGVR 90532 Flat Car, DGVR 91157 Flat Car, DGVR 357521 Gondola Car, PPLX 008 or 429782, PP&L Hopper Car, 1926 Buffalo Creek Gauley 280 #4 Steam Locomotive, DGVR M-3 2000 Edwards Self-Propelled Railcar, Ex C&O 8RC Tender, DGVR MW11 Plasser Regulator (for ballast) MOW, DGVR MW12 Geismar Tie Inserter MOW, John Deere 317 Bobcat MOW, DGVR MW2 Fairmont A-5 Motorcar/Speeder, MOW,DGVR MW3 Fairmont MT-14 Motorcar/Speeder Orange MOW, Burro Crane MOW, Lot of 8 Push Carts, Portable Tamper MOW, 70' Railroad Turntable

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Perfection of Security Interest.** Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender.

**Notices to Lender.** Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

**No Violation.** The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is

a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

**Enforceability of Collateral.** To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

**Location of the Collateral.** Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

**Removal of the Collateral.** Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of West Virginia, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

**Transactions Involving Collateral.** Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

**Title.** Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

**Repairs and Maintenance.** Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

**Inspection of Collateral.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

**Taxes, Assessments and Liens.** Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

**Compliance with Governmental Requirements.** Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

**Hazardous Substances.** Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

**Maintenance of Casualty Insurance.** Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that

coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

**Application of Insurance Proceeds.** Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

**Insurance Reserves.** Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

**Insurance Reports.** Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

**GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS.** Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the Indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**DEFAULT.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Grantor fails to make any payment when due under the Indebtedness.

**Other Defaults.** Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Defective Collateralization.** This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

**Insolvency.** The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of

Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

**Adverse Change.** A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

**Insecurity.** Lender in good faith believes itself insecure.

**RIGHTS AND REMEDIES ON DEFAULT.** If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the West Virginia Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

**Accelerate Indebtedness.** Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

**Assemble Collateral.** Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

**Sell the Collateral.** Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

**Appoint Receiver.** Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

**Collect Revenues, Apply Accounts.** Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

**Obtain Deficiency.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Election of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of West Virginia without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of West Virginia.**

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of RANDOLPH County, State of West Virginia.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Borrower.** The word "Borrower" means Durbin & Greenbrier Valley Railroad and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means Durbin & Greenbrier Valley Railroad.

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

**Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

**Hazardous Substances.** The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

**Lender.** The word "Lender" means DAVIS TRUST COMPANY, its successors and assigns.

**Note.** The word "Note" means the Note dated January 12, 2016 and executed by Durbin & Greenbrier Valley Railroad in the principal amount of $625,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED JANUARY 12, 2016.**

**GRANTOR:**

**DURBIN & GREENBRIER VALLEY RAILROAD**

By: _____
**Authorized Signer for Durbin & Greenbrier Valley Railroad**

By: _____
**Authorized Signer for Durbin & Greenbrier Valley Railroad**

LaserPro, Ver. 15.5.10.002 Copr. D+H USA Corporation 1997, 2016. All Rights Reserved. - WV L:\CFI\LPL\E40.FC TR-21258 PR-65