

# PROPERTY BROKER'S EXCESS SURETY BOND

BOND NO. 100005

MC # 172093

WHEREAS Virginia Hiway Inc. DBA VHI Transport (the "Principal") is a duly licensed property broker, and in compliance with applicable statutes and regulations under Title 49 of the United States Code (collectively, "Title 49"), Principal has on file with the Federal Motor Carrier Safety Administration ("FMCSA") a Form BMC-85 "Broker Trust Fund Agreement Under 49 U.S.C. 13906" (the "Required Security") under the Amtex program offered by TIA Services Corporation;

WHEREAS Title 49 requires the Principal to have proof of the Required Security on file with the FMCSA in order to ensure financial responsibility in the amount of \$10,000 in the course of providing services as a Title 49 licensed property broker;

WHEREAS the Principal wishes to provide to its cargo shippers and motor carriers (collectively, "CSMC") financial responsibility in excess of the amount of the Required Security for services the Principal renders under its authority as a Title 49 licensed broker;

NOW THEREFORE, in consideration of payment of an agreed-upon premium, the receipt of which is a condition precedent to effect coverage under this Property Broker's Excess Surety Bond (the "Excess Surety Bond"), and upon the terms, conditions, and limitations set forth below, Lincoln General Insurance Company (the "Surety") and Principal agree as follows:

## I. COVERAGE

"Exhausted the Required Security" means the CSMC(s) has received payment or a written promise of payment of all or a pro rata amount of the \$10,000 Required Security by its trustee, thereby exhausting the same, such that a deficiency remains toward the full satisfaction of the claim of the CSMC(s) against the Principal for services it renders under its authority as a Title 49 licensed broker.

The Surety, on behalf of the Principal, hereby agrees to provide payment to a CSMC or CSMCs, on a pro rata basis, if applicable, that have made a timely and valid claim under this Excess Surety Bond, in the manner set forth below, in an amount that is in excess over the amount of the Required Security, and up to the limit of \$90,000 of this Excess Surety Bond if, and only if, (a) any CSMC(s) have Exhausted the Required Security, and (b) this original, signed Excess Surety Bond is in the possession of the Surety prior to the subject shipment Date(s) that give rise to a claim hereunder.

## II. TERMS, CONDITIONS, AND LIMITATIONS

A. Except as otherwise provided herein, the protection afforded under this Excess Surety Bond is limited to eligible freight charges arising out of services the Principal has rendered as a Title 49 licensed broker, and this Excess Surety Bond is subject to and shall follow all of the terms, definitions, conditions, and limitations of the Required Security, and any applicable statutes, regulations, and/or rules.

As a condition precedent to the protection afforded under this Excess Surety Bond, the Principal shall timely pay all premiums due and maintain the Required Security.

All premiums are deemed fully earned by the Surety upon its receipt of the same. In the event that the Principal makes a material misrepresentation or omission in the information that the Principal furnishes to the Surety in applying for this Excess Surety Bond, such material misrepresentation or omission shall render this Excess Surety Bond null and void from its inception.

"Termination" of this Excess Surety Bond means its cancellation or non-renewal by either party or upon receipt of written notice that the Principal failed to maintain the Required Security. The effective date of any given Termination shall be thirty days from the date on which the terminating party has given written notice of Termination to the other party (the "Effective Date of Termination"). Regardless of which party terminates the Excess Surety Bond, it shall be the Principal's sole responsibility to notify its CSMCs of Termination. But any Termination shall be effective irrespective of whether the Principal notifies its CSMCs of the same.

B. The CSMCs are the sole obligees under this Excess Surety Bond, and only they shall be entitled to exercise any rights hereunder. Third-party claims are prohibited. Payment of any claim hereunder by the Surety shall be directly to the claiming CSMC(s) of the Principal, but only following that to the CSMC(s) under the Required Security.

Within ninety (90) days of the date of a CSMC's invoice to the Principal or the date of delivery, whichever is earlier, and in no event later than ninety (90) days from the Effective Date of Termination of this Excess Surety Bond (the "Claims Cut-Off Date"), a CSMC must submit an "Excess Claim" by writing to the Surety at the address set forth below in paragraph "G."

The Surety shall make payment to a CSMC in an amount equal to the excess over the Required Security amount of \$10,000, subject to a limit of \$90,000, promptly after the occurrence of all of the following events:

1. The CSMC(s) have Exhausted the Required Security;
2. The Surety's receipt of the CSMC's timely and completed Excess Claim on the required form; and
3. As part of the Excess Claim, the CSMC shall provide true and correct copies of the following documents: (a) proof that any CSMC has Exhausted the Required Security; (b) the invoice(s) issued by the CSMC to the Principal; (c) the subject bill(s) of lading; (d) the subject rate confirmation form(s); (e) the subject cancelled check(s) or other proof of payment; and (f) copies of all documents arising out of or in any way connected with any claim, litigation, or arbitration between the CSMC and Principal that is connected in any way to the CSMC's Excess Claim, including, without limitation, copies of the applicable broker-carrier and/or broker-shipper agreements.

The Surety shall require an affidavit from the CSMC, in a form acceptable to the Surety in its sole discretion, that the copies of the above documents are true and correct. The Surety, at its sole discretion, may waive any of the aforementioned events without prejudice to any other term, condition, or limitation of this Excess Surety Bond.

C. A payment by the Surety under this Excess Surety Bond shall, to the extent of that payment, constitute a defense of the Surety against any duplicative claim made under this Excess Surety Bond by any person.

D. The Principal, or its successor by operation of law or regulation, shall promptly notify the Surety (i) of any condition of the Principal that is reasonably likely to result in the Surety's being required to make a payment under this Excess Surety Bond or (ii) any assertion against the Principal of any claim or threatened claim, suit, or proceeding of which the Principal has received notice and that is reasonably likely to result in the Surety's being required to make a payment under this Excess Surety Bond.

The Surety has no duty or obligation to assume control of the settlement or defense of any claims made or suits brought or proceedings instituted against the Principal. But the Surety shall have the right and be given the opportunity to associate with the Principal or its successor in interest in the defense and control of any claim, suit, or proceeding, where such claim, suit, or proceeding involves or appears reasonably likely to affect payment under this Excess Surety Bond, in which event the Principal and the Surety shall cooperate in all respects in the defense of such claim, suit, or proceeding.

E. The Surety shall be subrogated to the rights and claims of each CSMC to which the Surety shall make payment under this Excess Surety Bond, to the extent of the Surety's payment to the CSMC or for its account. Each CSMC to which the Surety shall be obligated to make payment shall, as a condition to the receipt thereof, execute an assignment of such rights and claims in favor of the Surety in a form acceptable to the Surety, and the CSMC shall agree, at the Surety's expense, to cooperate with the Surety and exercise reasonable efforts to assist the Surety to recover such payment, together with all costs and expenses, including, without limitation, attorneys' fees, that the Surety incurs that arise out of or are in any way connected to the payment or the recovery.

F. The Principal agrees to submit for prior approval by the Surety any advertising or marketing by or on the Principal's behalf that references the Surety's name or coverage under this Excess Surety Bond.

G. The parties shall give any notices to each other required by this Excess Surety Bond by U.S. mail, postage prepaid, to the following addresses:

Lincoln General Insurance Company  
c/o Avalon Risk Management, Inc.  
Surety Department  
150 Northwest Point Boulevard, 4th Floor  
Elk Grove Village, IL 60007

Principal: Virginia Hiway Inc. DBA VHI Transport

Street Address: 4525 Lee Street

City, State ZIP: Chester, VA 23831

H. This Excess Surety Bond shall become effective at 12:01 a.m. Central Standard Time on 11/05/07, (the "Effective Date"), and shall continue for twelve months from the Effective Date, unless otherwise terminated under paragraph II(A) of this Excess Surety Bond. In the absence of either party's Termination, this Excess Surety Bond shall automatically renew in exchange for the Principal's payment of additional annual premiums. This Excess Surety Bond is non-stacking: Regardless of the number claims, CSMCs, or bond periods involved, the Surety's liability will in no event exceed this Excess Surety Bond's limit of \$90,000.

I. In lieu of litigation, the parties and CSMC(s) agree to settle any claim, dispute, or controversy that directly or indirectly, arises out of or is in any way related to this Excess Surety Bond, or the breach thereof, by a binding and neutral arbitration administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules then in effect. A person that receives an arbitration award may enter judgment on the award in any court of competent jurisdiction. This Excess Surety Bond, including this arbitration clause and the parties' relationship shall be construed under the laws of the State of Illinois, without giving consideration to principles of conflict of law. The parties agree to conduct any arbitration under this clause exclusively in Cook County, Illinois, and in no other place.

Any interested person may demand arbitration by giving notice in writing to all other interested persons, and in any event, to the Surety. No arbitration may commence within thirty days of the aforementioned written demand. Any such demand shall specifically set forth the issue or issues that are the basis for the person's demand. The parties to the arbitration shall choose a single arbitrator to hear the matter. In the event that those parties are unable to agree to an arbitrator within fourteen days of the notice demanding arbitration, then the AAA shall select the arbitrator at random. The arbitration shall commence no later than three months after the appointment of the arbitrator. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including the costs and fees of the arbitration and the costs and attorneys' fees of the prevailing party, against the party or parties that did not prevail. The prevailing party shall be the party that, in the sole discretion of the arbitrator received the greater relief in the entire arbitration.

J. The Principal shall indemnify the Surety for all amounts it has paid to any and all CSMCs under this Excess Surety Bond and for all administrative expenses, costs, and fees, and any and all third-party expenses, costs, and fees, including, without limitation, arbitration, and reasonable attorneys' fees. For every Excess Claim that any CSMC makes under this Excess Surety Bond, in addition to the complete indemnity requirement of the preceding sentence, the Principal further agrees to pay to the Surety a liquidated-damage fee of 10 per cent of each Excess Claim. The Principal agrees that the liquidated-damage fee shall become due and payable at the time of the Surety's Receipt of each Excess Claim under this Excess Surety Bond.

**PRINCIPAL**

By: Virginia Hiway Inc. DBA VHI Transport

Name: Bruce D. Gee

Title: President

Date: \_\_\_\_\_

**SURETY**

By: Lincoln General Insurance Company

Name:  Scott Wollney

Title: President

Date: 11/05/07

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
Nov 5, 2007

**PRODUCER**  
Avalon Risk Management, Inc.  
150 N.W. Point Blvd., 4th Floor  
Elk Grove Village, IL 60007

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**  
Virginia Hiway, Inc. DBA VHI Transport  
4525 Lee Street  
Chester, VA 23831

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Lincoln General Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
					MED EXP (Any one person)	\$
					PERSONAL & ADV INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS - COMP/OP AGG	\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AUTO ONLY: AGG	\$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	<b>OTHER</b> TIA Guaranteed Payment Program (GPP)	100005	Nov 5, 2007	Nov 5, 2008	Lincoln General	\$ 90,000 Bond

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Excess coverage for claims exceeding the \$10,000 BMC-85 broker trust fund agreement of the FMCSA licensed property broker named herein as the Insured. See bond terms for scope of coverage.

### CERTIFICATE HOLDER

Evidence of coverage for benefit of shippers and carriers of Named Insured only.

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE