

## MASTER REPLACEMENT BUS FINANCING AGREEMENT

**THIS MASTER REPLACEMENT BUS FINANCING AGREEMENT**, dated as of \_\_\_\_, 2003 (this "Agreement"), is made and entered into by and between **Carlyle Capital Markets Inc.** ("CCMI"), a Texas corporation located at 14755 Preston Road, Suite 424, Dallas, Texas 75254, and the \_\_ (hereinafter referred to as "local education agency" or the "LEA"), a political subdivision of the State of North Carolina (the "State"), whose offices are located at \_\_\_\_\_.

### RECITALS

**WHEREAS**, pursuant to the authority granted by G.S. 115C-240(c) and 115C-528, the LEA is authorized to acquire, own, lease, contract and operate school buses for the transportation of pupils enrolled in the public schools of such LEA, in accordance with the rules and regulations adopted by the North Carolina State Board of Education (the "State Board") under the authority of G.S. 115C-12(17); and

**WHEREAS**, the General Assembly of the State of North Carolina has authorized the State Board to use up to \$10 million for allotments to the various local education agencies of the State for the replacement of school buses for the 2002-2003 fiscal year; and

**WHEREAS**, pursuant to a solicitation for third party financing (#40 - Finance), the State Board, acting through its Department of Public Instruction ("DPI") has selected Carlyle Capital Markets Inc. ("CCMI") to provide financing for the replacement of school buses; and

**WHEREAS**, the LEA desires to purchase certain replacement buses (the "Buses") and CCMI desires to finance the purchase of the Buses on an installment basis, pursuant to the terms and conditions hereinafter set forth and as authorized by G.S. 115C-240(c) and 115C-528; and

**WHEREAS**, this Agreement shall be implemented through one or more series of Appendices (as defined herein), with each Appendix constituting a single transaction subject to and entered into pursuant to this Agreement;

**NOW, THEREFORE**, for and in consideration of the foregoing recitals and the covenants and agreements contained herein, the parties do hereby agree as follows:

### ARTICLE I DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

**"Accepted Buses"** means those Buses identified on "Part I--List of Accepted Buses" as a part of each Appendix, to be purchased by the LEA and financed, on an installment basis by CCMI for a term not exceeding the useful life of each Accepted Bus pursuant to this Agreement.

**"Acquisition Fund"** means that fund established with respect to each Appendix hereunder in accordance with Section 4.06 of the Trust Agreement and pursuant to Section 5.03 hereof.

**"Agreement"** means this Master Replacement Bus Financing Agreement by and between the LEA and CCMI and the Appendices executed in connection herewith, as the same may be supplemented or amended from time to time.

**“Appendix”** means each consecutively numbered Appendix utilized to acquire the Accepted Buses, and includes--

- Part 1--List of Accepted Buses indicating the total cost of the Accepted Buses
- Part 2--Payment Schedule
- Part 3--Disbursement Request, with Acceptance Certificate
- Form 8038-G and UCC-1 Financing Statements, if applicable

**“Buses”** means the aggregate listing of anticipated replacement buses identified by DPI to be acquired by the LEA and identified on Exhibit B attached to this Agreement.

**“Certificates”** means each series of privately-placed Certificates of Participation (herein so called) evidencing proportionate interests in the aggregate Installment Payments to be made pursuant to this Agreement, which Certificates will be authenticated and delivered by the Trustee pursuant to the Trust Agreement, and the proceeds of which will be used, in connection with the acquisition of the Accepted Buses, to fund the Acquisition Fund established pursuant to the Trust Agreement, and to pay the costs associated with the delivery of the Certificates.

**“CCMI”** means (i) Carlyle Capital Markets Inc., acting as the third-party financier hereunder; (ii) any surviving, resulting or transferee corporation; and (iii) any assignee(s) of CCMI.

**“Code”** means the Internal Revenue Code of 1986, as amended, together with all published rulings, regulations and court decisions with respect thereto.

**“Contract Documents”** consist of--

- this Agreement
- Exhibit A--North Carolina General Contract Terms and Conditions Third-Party Financing
- Exhibit B--Aggregate List of Replacement Buses Anticipated to be Acquired by the LEA
- Exhibit C--General Certificate of the LEA
- each Appendix
- any other documents deemed necessary by CCMI and/or the LEA. Where the terms and provisions of the Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of the Agreement shall prevail over the other Contract Documents.

**“Financing Term”** means, with respect to the Accepted Buses acquired pursuant to an Appendix, the term of its related Payment Schedule.

**“Installment Payment Date”** means, with respect to an Appendix, each date set forth in its related Payment Schedule on which the payment of an installment of principal or interest must be made by the LEA.

**“Installment Payments”** means one or more of the periodic payments made by the LEA pursuant to Section 4.01 hereof and at the times and in the amounts set forth in the Payment Schedule with respect to each Appendix, and that are payable in consideration of CCMI’s acquisition of the Accepted Buses for the benefit of the LEA and other obligations under this Agreement.

“LEA” or local education agency means \_\_\_\_\_, a political subdivision of the State of North Carolina, and its successors and permitted assignees.

“Master Facilitator Agreement” means the Master Facilitator Agreement executed between CCMI and the State Board, dated as of May 22, 2003.

“Payment Schedule” means the schedule of payments set forth in Part 2 to each Appendix to be made by the LEA in consideration of CCMI’s acquisition of the Accepted Buses pursuant to this Agreement.

“Prepayment Price” means the amount which the LEA may, in its discretion, pay to CCMI to prepay all Installment Payments with respect to an Appendix. With respect to the LEA’s option to prepay all Installment Payments with respect to an Appendix, the “Prepayment Price” shall be set forth on “Part 2--Payment Schedule” to the applicable Appendix after paying the Installment Payment and all other amounts due on or before such date for prepayment.

“State” means the State of North Carolina.

“Trust Agreement” means that certain Master Trust Agreement, by and between CCMI, as trustor, and Deutsche Bank National Trust Association, as trustee, together with each and every Supplemental Trust Agreement delivered in connection therewith and all amendments and supplements thereto, pursuant to which each series of the Certificates are executed and delivered.

“Trustee” means Deutsche Bank National Trust Association, Olive Branch, Mississippi, or any successor trustee appointed in accordance with the terms of the Trust Agreement.

“Vendor” means any manufacturer of the Buses as well as the agents or dealers of the manufacturer from whom the Buses were originally purchased or are being purchased.

## ARTICLE II GENERAL

**Section 2.01 Purpose of this Agreement.** The purpose of this Agreement is to provide for the terms of the financing of the Accepted Buses by CCMI to the LEA. Each transaction implemented and entered into hereunder shall be deemed to be a separate and distinct legal and binding obligation of the LEA with this Agreement being applicable thereto independent of additional transactions that may be entered into by CCMI and the LEA hereunder.

**Section 2.02 Agreement to Finance.** CCMI agrees to provide financing for the Accepted Buses described in “Part 1--List of Accepted Buses” to each properly executed Appendix for the consideration indicated in “Part 2--Payment Schedule” of the related Appendix to the LEA, and the LEA agrees to accept the terms of the financing provided by CCMI for each of the Accepted Buses. The LEA shall be entitled to retain possession of the Accepted Buses as long as it is not in default under this Agreement.

**ARTICLE III  
IMPLEMENTATION OF THE AGREEMENT**

**Section 3.01 General Contract Terms and Conditions.** The North Carolina General Contract Terms and Conditions Third-Party Financing attached hereto as Exhibit A are incorporated herein by reference. All references to the term “the State” in Exhibit A are deemed to mean the “LEA”, with the exception of references to “the State” contained in Section 8(b) and Section 8(c), and in Section 20, “Insurance”, which are unchanged.

**Section 3.02 Delivery of the Buses.** The DPI has identified certain Buses for replacement for use by the LEA, which are listed on the attached Exhibit B and incorporated herein by reference. From time to time, the Vendor will deliver one or more replacement Buses to the DPI on behalf of the LEA. Upon delivery, the DPI and the LEA will inspect the replacement Buses to ascertain that the replacement Buses meet the State’s replacement criteria.

**Section 3.03 Acceptance of the Buses.** Upon acceptance of the replacement Buses, the DPI and/or the LEA will notify CCMI of the aggregate cost of the Accepted Buses. The LEA will provide to CCMI a properly completed Appendix, including a listing of the “Part 1--List of Accepted Buses” as well as notifying CCMI as to the aggregate cost of the Accepted Buses. CCMI will be responsible for preparing “Part 2--Payment Schedule” for each Appendix. In accordance with the Master Facilitator Agreement, CCMI will provide copies of “Part 2--Payment Schedule” for each Appendix to the State Board.

**Section 3.04 Vendor Payment.** Pursuant to the Master Facilitator Agreement, the State Board will allocate funds to the LEAs for the acquisition of the Buses acquired pursuant to the Financing Agreements. The Board will direct those funds to CCMI or its assignee to pay the Installment Payments required by this Agreement. Within ten (10) days from the date of acceptance of the Accepted Buses in connection with an Appendix, the State Board will direct funds representing the LEA’s first annual Installment Payment to be paid pursuant to “Part 2--Payment Schedule” of an Appendix and will arrange to transfer the Installment Payment to CCMI or its assignees. The first annual Installment Payment will be deposited to the Acquisition Fund pending payment to the Vendor. No later than thirty (30) days after the LEA accepts the Accepted Buses, CCMI will pay the total cost of the Accepted Buses to the Vendor.

**Section 3.05 The State Board’s Allocation of Funds to the LEA.** Pursuant to the MFA, the State Board will allocate to the LEA funds appropriated by the General Assembly for the purchase of School Buses and will direct such funds to CCMI for annual Installment Payments. By its execution of this Agreement and of each Appendix, the LEA authorizes the State Board to and acknowledges that the State Board will direct to CCMI such funds, and that such arrangement is for the benefit of CCMI and its assignee and is irrevocable and unconditional.

**ARTICLE IV  
INSTALLMENT PAYMENTS**

**Section 4.01 Payment of Installment Payments.** The interest rate designated on each “Part 2--Payment Schedule” attached to each Appendix is the rate as quoted by CCMI in its response to RFP #40-Finance, which is incorporated into this Agreement by reference thereto. Pursuant to the terms of the Contract Documents, the LEA will pay three equal Installment Payments for each Bus, as set forth on each “Part 2--Payment Schedule”. The total financed cost for the Buses is shown on Exhibit B attached hereto.

Each Installment Payment comprises an interest component and a principal component, as set forth on “Part 2--Payment Schedule” to each Appendix. The Installment Payments will be payable without notice or demand at such address as CCMI may from time to time designate in writing. Pursuant to the Master Facilitator Agreement, and subject to Section 4.03 hereof, the State Board will direct funds allocated to the LEA by the General Assembly of the State for the replacement of buses to pay, on behalf of the LEA, the Installment Payments to CCMI or its assignees.

In the event that the State Board is unable to direct Installment Payments because the General Assembly fails to allocate funds for the replacement of school buses, the LEA may continue this Agreement, at its option, from alternative sources of funding .

The LEA hereby acknowledges and agrees that the State Board will combine the Installment Payments with similar payments from other local education agencies acquiring replacement Buses and will cause the total of the Installment Payments be paid to the Trustee.

The Trustee as CCMI’s assignee will distribute the total of the Installment Payments payable by the State Board on behalf of the LEA on each Installment Payment Date set forth on “Part 2--Payment Schedule” to each Appendix on such Installment Payment Date to the holders of the Certificates. The proceeds of sale of the Certificates will be used to finance the acquisition of the Accepted Buses.

**Section 4.02 Unconditional Obligation to Pay Installment Payments.** There will be no abatement or reduction of payments by the LEA for any reason, including but not limited to, any defense, recoupment, setoff, counterclaim, or any claims (real or imaginary) arising out of or related to any defects, damages, malfunctions, breakdowns or infirmities of the Accepted Buses. The LEA assumes and shall bear the entire risk of loss and damage to the Accepted Buses from any cause whatsoever, it being the intention of the parties that the Installment Payments shall be made in all events unless the obligation to pay such amount is terminated as otherwise provided herein.

**Section 4.03 Nonappropriation.** The LEA’s obligation to pay any amounts due under this Agreement is conditioned upon availability and continuation of funds for that purpose as stated in Section 11 of Appendix A - North Carolina General Contract Terms and Conditions - Third Party Financing. Notwithstanding the foregoing, the LEA agrees that it will use its best efforts to obtain approval of the necessary funds to continue this Agreement by taking appropriate action to request adequate funds to continue the Agreement in force. In the event the LEA returns the Accepted Buses pursuant to the terms of this paragraph, CCMI or its assignee shall retain all sums paid hereunder.

**Section 4.04 Late Payments.** Any Installment Payment or other payment required to be paid under this Agreement which is not received by the CCMI or its assignee on or before the date specified on the Payment Schedule shall be considered past due. Any past due amounts shall bear interest at the lesser of 12% per annum or the maximum rate allowed by applicable law.

**ARTICLE V  
TITLE TO ACCEPTED BUSES; SECURITY INTEREST;  
ACQUISITION FUND**

**5.01. Title; Security Interest.** Title to each Accepted Bus shall and does vest immediately in the LEA upon acceptance of the Bus by the DPI and the delivery of an Acceptance Certificate to CCMI by the

DPI; provided, however, in the event of termination of this Agreement pursuant to Section 8.02 (a) and Section 8.02(b) hereof, title to the Accepted Buses will immediately vest in CCMI or its assignees.

Upon any vesting of title to the Accepted Buses in CCMI or its assignees pursuant to the preceding sentence, the LEA shall deliver the Accepted Buses to CCMI or its assignee promptly without fraud or delay and in good order, condition and repair, except for reasonable wear and tear, free and clear of all lettings, liens and encumbrances created or suffered by the LEA, and without any payment or allowance whatever by CCMI on account of any improvements made by the LEA, to a mutually-agreed upon location in the State of North Carolina. CCMI or its assignees will have all legal and equitable rights and remedies to take possession of the Accepted Buses.

In order to further secure its obligations hereunder, the LEA hereby (i) grants to CCMI and its assignees a first and prior security interest in any and all right, title, and interest of the LEA in the Accepted Buses and on any proceeds therefrom; (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

**5.02. Liens.** The LEA shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, security interest, encumbrance, or claim on or with respect to the Accepted Buses or any interest therein, except for the lien and security interest of CCMI therein. The LEA shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, security interest, charge, encumbrance, or claim if the same shall arise at any time.

**5.03. Acquisition Fund.** CCMI will cause the Trustee to establish, pursuant to the Trust Agreement, a designated Acquisition Fund (the "Series \_\_\_ Acquisition Fund") for each series of Certificates delivered to finance the Accepted Buses hereunder.

Immediately following acceptance, the LEA will execute and deliver to CCMI "Part 3-- Disbursement Request" together with each of the documents referenced thereon. The Disbursement Request will include the vehicle identification number of each of the Accepted Buses and the aggregate cost of the Accepted Buses. The LEA will request that payment be made to the Vendor within thirty (30) days, pursuant to the Disbursement Request.

Within ten (10) days of the acceptance of the Accepted Buses by the LEA and the DPI, the State Board, on behalf of the LEA, will transmit the first annual Installment Payment as indicated on the Payment Schedule for that Appendix, to the Trustee.

Immediately upon the Trustee's receipt of the first annual Installment Payment, the Trustee will deposit the first annual Installment Payment into the Acquisition Fund pending payment to the Vendor. Within thirty (30) days of the LEA's acceptance of the Accepted Buses, CCMI will deposit into the Acquisition Fund an amount which will be sufficient, together with the first annual Installment Payment, to pay the cost of acquiring the Accepted Buses subject to the conditions of this Agreement; and will use the funds so deposited in the designated Acquisition Fund to finance the acquisition of the Accepted Buses.

Subject to the receipt of the first annual Installment Payment for each Appendix and the satisfaction of the other terms and conditions of this Agreement, CCMI shall make available or shall cause

to be made available moneys for the payment to the Vendor within thirty (30) days from the LEA's acceptance of the Accepted Buses.

The LEA intends that funds in the Acquisition Fund will be disbursed within thirty (30) days from the date of deposit.

## **ARTICLE VI RESPONSIBILITIES OF THE LOCAL EDUCATION AGENCY**

**Section 6.01 Maintenance of the Accepted Buses.** The LEA agrees that for each Accepted Bus described in Part I to an Appendix, the LEA, at its own cost and expense, shall maintain, preserve and keep such Accepted Bus in good repair, working order and condition subject to reasonable wear and tear, as outlined in the Preventative Maintenance and Vehicle Replacement Manual promulgated by the DPI.

**Section 6.02 Inspection.** CCMI shall have the right upon reasonable prior notice to the LEA to enter into and upon the premises where the Accepted Buses are located to inspect them and observe its use during normal business hours.

**Section 6.03 Taxes.** The LEA agrees to pay or cause to be paid when due all taxes related to the Accepted Buses and the LEA's obligations hereunder, including but not limited to, all license or registration fees, gross receipts tax, sales and use tax, documentary stamp taxes, rental taxes, assessments, charges, ad valorem taxes, excise taxes, and all other taxes, licenses and charges imposed on the ownership, possession or use of the Accepted Buses by any governmental body or agency, together with any interest and penalties, other than taxes on or measured by the net income of CCMI, if any.

**Section 6.04 Damage, Destruction, and Insurance.** The State of North Carolina is covered under a program of self-insurance. Pursuant to the G.S. 115C-249(f), if any Accepted Bus is damaged or destroyed by fire, collision or otherwise, the LEA may apply to the State Board for funds with which to replace it. If the State Board finds that the Accepted Bus has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board finds that the replacement of the Accepted Bus is necessary in order to enable the LEA to operate properly its transportation system, the State Board shall allot the LEA from the funds held by it for the replacement of school buses, or from funds hereafter appropriated by the General Assembly of the State for that purpose, a sum sufficient to purchase a new bus to be used as a replacement for the damaged or destroyed Accepted Bus and upon such allocation, such sum shall be paid over to or for the account of the LEA for such purpose. The replacement Bus will be substituted as a security interest for the financing of the damaged or destroyed Bus.

**Section 6.05 Federal Taxation.** The LEA will not take or permit any of its officers to take any action with respect to the Agreement or the Buses which would cause the interest component of any Installment Payment payable under any Appendix to become subject to federal income taxation under the Code and will take all actions legally and reasonably within its powers necessary to ensure that the interest will not become subject to federal income taxation under the Code.

**ARTICLE VII  
DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES;  
USE OF THE ACCEPTED BUSES**

**Section 7.01 Disclaimer of Warranties.** (a) **CCMI AND ITS ASSIGNEES, NOT BEING A SELLER OF THE ACCEPTED BUSES AS SUCH TERM IS USED IN THE UNIFORM COMMERCIAL CODE NOR A SELLER'S AGENT, HEREBY EXPRESSLY DISCLAIM, AND MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE ACCEPTED BUSES, OR ANY OTHER WARRANTY WITH RESPECT THERETO AND, AS TO CCMI AND ITS ASSIGNEES, THE LEA PURCHASES THE ACCEPTED BUSES AS IS.** In no event shall CCMI or its assignees be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement or the existence, furnishing, functioning, or LEA's use of the Accepted Buses.

(b) Each execution of an Appendix shall constitute acknowledgment by (and as to (i) and (ii), a representation of) the LEA that: (i) the Accepted Buses are of a size, design, capacity and manufacture selected by the LEA and DPI; (ii) the LEA is satisfied that the Accepted Buses are suitable for its purpose; (iii) neither CCMI nor its assignees are vendors or a manufacturers or dealers in property of such kind; and (iv) CCMI and its assignees have disclaimed any representation or warranty or covenant as set forth in Section 7.01(a) above.

**Section 7.02 Vendor's Warranties.** CCMI irrevocably appoints the LEA its agent and attorney-in-fact during the term of this Agreement, so long as the LEA shall not be in default hereunder for the purpose of asserting from time to time whatever claims and rights which CCMI may have against the Vendor, including warranty claims with respect to the Accepted Buses, but for no other purpose whatsoever. The LEA's sole remedy for the breach of a warranty shall be against the Vendor and not against CCMI, nor shall such matters have any effect whatsoever of this Agreement, including the LEA's obligation to make timely Installment Payments hereunder. The LEA expressly acknowledges that CCMI makes, and has made, no representation or warranties whatsoever as to the existence or availability of such warranties from the Vendor.

**Section 7.03 Use of the Accepted Buses.** The LEA will not install, use, operate or maintain the Accepted Buses improperly, carelessly, in violation of any applicable law or regulations or in a manner contrary to that contemplated by this Agreement. The LEA shall obtain and maintain all permits and licenses necessary for the operation of the Accepted Buses.

**Section 7.04 Quiet Enjoyment.** The LEA shall be entitled to possess and use the Accepted Buses during the Financing Term of the related Appendix without interruption by CCMI, provided that the LEA has duly performed its obligations under this Agreement. Any Accepted Bus acquired under terms of this Agreement may be operated at any time at the convenience of the LEA (exclusive of time required for preventive maintenance, remedial maintenance and/or approved engineering changes). The LEA may make Accepted Buses available to other users, provided that the Accepted Buses are used for governmental purpose, as allowed by North Carolina General Statutes.

**ARTICLE VIII**  
**TERMINATION ON ACCOUNT OF NONAPPROPRIATION OF FUNDS;**  
**EVENTS OF DEFAULT AND REMEDIES**

**Section 8.01 Termination on Account of Nonappropriation of Funds.** Notwithstanding any contrary provision in this Agreement, the LEA may, at its option, terminate this Agreement as to all (but not less than all) the Accepted Buses that are the subject of each and every Appendix entered into herewith, as of the end of any fiscal year, if funds are not appropriated for the next fiscal year in an amount equal to the aggregate of all Installment Payments due during such next fiscal year for the purpose of making the Installment Payments. The LEA agrees to provide CCMI with written notice immediately upon the occurrence of nonappropriation.

If the LEA terminates this Agreement because of nonappropriation of funds in accordance with the provisions of this Section 8.01, the LEA shall return the Accepted Buses to CCMI in the manner described in Section 5.01 hereof and all obligations of the LEA to pay Installment Payments coming due following such termination shall cease without penalty or expense to the LEA of any kind.

**Section 8.02 Events of Default.** Any of the following events shall constitute an Event of Default under this Agreement:

(a) The LEA shall fail to make any Installment Payment when due for which payment funds have been lawfully appropriated and are lawfully available, or shall fail to perform or observe any term or condition or covenant of this Agreement or any schedule or supplemental hereto; or

(b) The failure by the LEA to observe and perform any other covenant, condition, or agreement on its part to be observed or performed hereunder for a period of thirty (30) days after written notice to the LEA by CCMI, specifying such failure and requesting that it be remedied;

(c) CCMI fails to cause the vendor to be paid under this Agreement.

(d) CCMI fails to perform under this Agreement, or otherwise observe, keep or perform any provision of this Agreement required to be observed, kept or performed by it.

**Section 8.03 Remedies on Default.** (i) Immediately upon the occurrence of an Event of Default described in Section 8.02(a) hereof or (ii) upon the occurrence of any other Event of Default described in Section 8.02 hereof, and the failure of the LEA or CCMI, as applicable, to remedy such Event of Default within any specified cure period, then the respective parties shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) With or without terminating this Agreement, and upon written notice to the LEA, CCMI may re-enter and take possession of the Accepted Buses; or

(b) With or without terminating this Agreement, and upon written notice to the LEA, en-enter and take possession of the Accepted Buses, and sell, lease or sublease all or any part of them in such a manner as will not cause a violation of Section 6.05 hereof, with any excess sales proceeds being paid to the State Board.

(c) The LEA may terminate this Agreement as to the financing of any additional Appendix.

**ARTICLE IX  
PREPAYMENT OPTION**

**Section 9.01 Prepayment Option.** Notwithstanding the provisions of Section 11.d of the General Terms and Conditions attached hereto as Exhibit A, and if no event of default exists, the LEA may at its option elect to prepay the Installment Payments due pursuant to an Appendix in full on the dates indicated on “Part 2--Payment Schedule” attached to each Appendix. The LEA agrees to provide written notice to CCMI of its intention to prepay not less than thirty (30) days prior to the applicable Installment Payment Date.

If the LEA exercise its option to prepay its obligations to pay the Installment Payments pursuant to an Appendix in full, the Prepayment Price shall be the amount shown as such on the Payment Schedule attached to the Appendix.

**Section 9.02 LEA’s Rights on Prepayment in Full.** Upon (1) the LEA’s exercise of its right to prepay in full in accordance with the preceding subsection or (2) the LEA’s having satisfied all of its monetary and other obligations hereunder, CCMI shall deliver to the LEA any reasonable documentation necessary to evidence the termination of CCMI’s interest in the Accepted Buses. The Accepted Buses will be accepted by the LEA at that time on an AS IS, WHERE IS basis, and neither CCMI nor its assignees make any warranties or representations of any type as to the Accepted Buses.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.01 Waiver.** No covenant or condition of this Agreement or in any of the other Contract Documents can be waived except by the written consent of the parties. The failure of any party to require strict performance by the other party or any waiver by any party of any terms, covenants or agreements herein shall not be construed as a waiver of any other breach of the same or of any other term, covenant or agreement herein.

**Section 10.02 Severability.** In the event any portion of this Agreement shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

**Section 10.03 Notice.** All notices made or required to be given pursuant to this Agreement shall be in writing and shall be deemed duly served if and when mailed, certified or registered mail, postage prepaid, return receipt requested, to the other party at its address set forth below or at such other address as such party shall hereafter designate in writing:

If to CCMI:

Carlyle Capital Markets Inc.  
14755 Preston Road, Suite 424  
Dallas, Texas 75254  
Attention: Barry L. Friedman

If to the Trustee:

Deutsche Bank National Trust Company,  
as trustee  
6810 Crumpler Blvd.  
Olive Branch, Mississippi 38654  
Attention: Dennis D. Gillespie  
Vice President

If to the LEA:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to the State Board:

North Carolina State Board of Education  
DPI Transportation Services  
6323 Mail Service Center  
Raleigh, North Carolina 27699-6323  
Attention: Derek Graham, Section Chief

**Section 10.04 Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

**Section 10.05 Entire Agreement.** This Agreement, the Contract Documents, and the Appendices as may be hereafter executed, constitute the entire agreement between the parties with regard to the subject matter hereof.

**Section 10.06 Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.

**Section 10.07 Time.** Time is of the essence of this Agreement and each and all of its supplements and provisions.

**Section 10.08 Governing Law.** The provisions of this Agreement shall be governed by the laws of the State of North Carolina.

**Section 10.09 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto by their duly authorized representatives.

**LOCAL EDUCATION AGENCY:**

**CCMI:**

**CARLYLE CAPITAL MARKETS INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Barry L. Friedman  
President

OR

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Superintendent, on behalf of the  
Local Education Agency

## Exhibit "A"

### North Carolina General Contract Terms and Conditions Third-Party Financing

1. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
2. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
3. **PAYMENT TERMS:** The using agency is responsible for payments under the contract.
4. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by race, color, religion, sex, national origin or disability.
5. **ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of the State of North Carolina as part of any commercial advertising.
6. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contract or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7.
7. **IMPLEMENTATION:** This Contract shall be implemented by Purchase Order(s) issued by the using agency.
8. **DEFINITIONS:** For purposes of this Contract, the following definitions will apply:
  - a. **Equipment:** The goods enumerated on the IFB and the Purchase Order(s), including replacement, repair parts, additional attachments and accessories.
  - b. **Acceptance:** The written acknowledgment by the State that the Equipment has been accepted and is performing satisfactorily.
  - c. **Acceptance Date:** the date when the Equipment is accepted by the State and is operating satisfactorily.
  - d. **Assignee:** the person(s) to whom Contractor transfers its payment rights pursuant to the section entitled "Assignment".
9. **ACCEPTANCE OF EQUIPMENT:** The State will provide a written acknowledgment to the Contractor when the Equipment is accepted and performing satisfactorily.
10. **ASSIGNMENT:** The State agrees not to sell, assign, lease, pledge or otherwise encumber or suffer a lien upon or against any interest in the Contract or the Equipment or to remove the Equipment from

its place of installation (or base) without the Contractor's prior written consent. Consent to any one of the foregoing actions applies only in the given instance and is not a consent to any subsequent like acts by the State or any other person. The State recognizes that the Contractor may assign its right to receive payment under this contract with written permission of the State. In no event does the recognition of assignment of the Contractor's right to receive payments obligate the State to anyone except the Contractor. The State merely recognizes financial assignment as a convenience to the Contractor and will hold the Contractor responsible for fulfillment of all contract obligations. Payments under an assignment of financial rights must be in accordance with the General Statutes of North Carolina as follows:

- a. Check made payable to the Contractor and Contractor endorses it over to the Assignee.
- b. Check made payable to the Contractor and forwarded directly to Assignee.
- c. Check made payable jointly to the Contractor and Assignee and forwarded directly to the Assignee.

**11. CONTRACT TERMINATION:** This Contract is effective from the date of acceptance by the State until terminated, in whole or in part, as provided below:

- a. **Termination for Non-Available Funds:** The State's obligations to pay any amounts due under the Contract are contingent upon availability and continuation of funds for that purpose, and in the event of the non-availability of funds the State may terminate this Contract by giving the Contractor thirty (30) days prior written notice. All payment obligations of the State will cease upon the date of termination. Notwithstanding the foregoing, the State agrees (I) not to effect termination of the Contract under this provision if funds are available to continue the Contract for this or functionally similar equipment, and (ii) that it will use its best efforts to obtain approval of the necessary funds to continue the Contract by taking appropriate action to request adequate funds to continue the Contract in force. In the event the State returns the Equipment pursuant to the terms of this paragraph, the Contractor shall retain all sums paid hereunder by State.
- b. **Activity Discontinuance:** This Contract may be terminated with thirty (30) days written notice to the Contractor if the organizational activity within the State agency using the Equipment is discontinued or disestablished. Notwithstanding the foregoing if such organizational activity is transferred to another agency, department or other instrumentality of the State, then this Contract shall not be subject to termination under this Section.
- c. **Return of the Equipment; Penalty Charges:** In any case of termination as stated in paragraphs (a) and (b) above, the State shall return the Equipment, along with all repair and other related records, in good operating condition (*i.e.*, in a condition equal to the condition of the Equipment as when it was originally delivered to the State subject to normal wear, tear and usage) to the Contractor, at the State's sole cost and expense, at a location to be mutually agreed upon.
- d. **Prepayment:** If no event of default exists, the State will have the right, upon providing the Contractor with thirty (30) days prior written notice, to prepay its obligation for the amount set forth according to respective dates provided in the Purchase Order(s) or prorated by Contractor to another specified date.

- e. The State's Rights on Prepayment or Payment in Full: Upon (i) the State's exercising of its right of prepayment or (ii) the State's having satisfied all of its monetary and other obligations hereunder, Contractor will release its security interest in the Equipment.

**12. DEFAULT AND REMEDIES:** Default: Any of the following events will constitute an event of default under this Contract:

- a. The State fails to make any payment required when due and such failure continues after written notice by Contractor; or
- b. The State fails to observe or perform any other covenants, conditions or agreements of the Contract and such failure continues for thirty (30) days without cure after the Contractor provides the State written notice of the failure.
- c. The Contractor fails to apply any payment required to be paid under this Agreement towards retirement of the State obligation hereunder.
- d. The Contractor fails to perform under this Agreement, or otherwise observe, keep or perform any provision of this Agreement required to be observed, kept or performed by Contractor.

Remedies: In the event of default as specified above, failure by either the Contractor or State to remedy such default within a period of thirty (30) days from receipt of written demand by either party, the Contractor or the State may, at its respective option as may be applicable, take any of the following actions:

- a. Proceed by appropriate court action(s) to enforce performance of the applicable covenants of this Contract or to recover damages for breach. In the case of such action by the Contractor, damages shall be limited to the then unpaid balance due and payable under the terms of the Contract.
- b. The Contractor may upon proper notice or demand upon the State, take possession of the Equipment and sell the same in a commercially reasonable manner and apply the proceeds of any such sale, after deducting all costs and expense incurred with the recovery, repair, storage and sale of the Equipment against any remaining obligations of the State hereunder. Any remaining sales proceeds shall be paid to the State.
- c. The State may terminate the Contract and direct the Contractor to remove all equipment at the Contractor's expense with no costs to be incurred by the State.

**13. TITLE:** Title to the Equipment is to be conveyed to the State by the Equipment vendor effective upon State acceptance in writing of Equipment and such title shall thereafter remain vested in the State.

**14. SECURITY INTEREST:** The State shall grant and convey a security interest in the Equipment to the Contractor, which the Contractor shall retain throughout the term of the Contract. The State will not change or remove any insignia or lettering which Contractor may place on the Equipment to indicate its

interest therein. The State will keep the Equipment free from any lien, encumbrance or legal process and the State will discharge such claims as it is responsible for creating or causing. In no event is the State subject to the Uniform Commercial Code.

**15. FILING:** Notwithstanding the foregoing paragraph, the State authorizes the Contractor to make Contractor's security interest a matter of public record by the filing of the contractual documents.

**16. WARRANTIES AND REPRESENTATIONS OF THE STATE:** The State represents and warrants to Contractor and, so long as this Contract is in effect or any part of State obligations to Contractor remain unfulfilled, shall continue to represent and warrant at all times that:

- a. The contracting agency of the State is a fully organized and validly existing political subdivision or agency of the State of North Carolina and has the power and authority to enter on behalf of the State into the Contract and to carry out the terms thereof.
- b. The Contract and the performance of the State's obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to the State; the consent of all necessary persons or bodies has been obtained, and, the execution of the Contract by the State has been duly and validly executed and delivered by authorized representatives of the State and constitutes a valid, legal and binding obligation of the State enforceable against the State in accordance with its terms.

**17. HEADINGS:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of this Contract.

**18. SEVERABILITY:** In the event any portion of this Contract shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of the Contract shall continue in full force and effect.

**19. CARE AND USE OF EQUIPMENT:** State, at its own expense, will obtain remedial and preventive maintenance to keep the Equipment in good operating condition and appearance.

**20. INSURANCE:** The State is covered under a program of self insurance. The State will provide to Contractor a letter or other document from its insuring authority evidencing the existence of the continuing self-insurance program insuring the full insurable value of each commercial unit of the equipment against loss from fire and hazards. The State will provide a minimum of ten (10) days written notice to Contractor of any change or cancellation of said self insurance program. In the event the State is not covered under a program of self insurance or the State's self insurance program is unavailable or terminated, the State agrees to procure and maintain with a carrier authorized to do business in North Carolina and acceptable to Contractor, which acceptance shall not be unreasonably withheld, such fire, theft, and extended coverage insurance on the Equipment as is necessary to insure the full insurable value of each commercial unit of the Equipment against risk of loss or damage, and providing for a minimum of ten (10) days written notice of change or cancellation to Contractor. Each policy of insurance shall be endorsed with such insurance coverage. This Agreement does not provide for or require any insurance coverage for bodily injury and property damage to others.

**21. SPECIAL PROVISION:** The Internal Revenue Code of 1986 (Section 149(c)) requires the filing of certain documentation containing pertinent information. Transactions of \$100,000.00 or more require an IRS FORM 8038G, while those less than \$100,000.00 are reported on IRS Form 8038CG. Failure to submit these reports may result in the tax exempt status of the subject transaction being disallowed. It is the intent of the State to work with the Contractor in completing and filing these required documents; however, the primary responsibility will rest with the Contractor. This Contract will not be effective until such forms have been submitted and acknowledged by the State as part of its written acknowledgment of Equipment. Information copies of these forms must be provided to:

Department of State Treasurer  
State and Local Government Finance  
North Salisbury Street  
Raleigh NC 27611

The forms shall reflect the issuer's name as "State of North Carolina", using agency, State of North Carolina.

**22. YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.

**23. TAXES:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

**Exhibit “B”**

Aggregate List of Replacement Buses Anticipated to be Acquired by the LEA

[insert here the complete list of Buses that the LEA will finance]

## Exhibit "C"

### Form of General Certificate of the LEA

#### CLOSING CERTIFICATE

I, the undersigned, do hereby certify that I am a duly elected or appointed and authorized officer of \_\_\_\_\_ (the "Local Education Agency" or "LEA"), that I hold the office set forth below my signature, and that I am hereby executing and delivering this certificate for the benefit of all persons interested in that certain Master Replacement Bus Financing Agreement, dated as of \_\_\_\_\_, 2003 and the Appendices executed from time to time in connection therewith (collectively, the "Agreement"), and being by and between Carlyle Capital Markets Inc., a corporation duly organized and existing under the laws of the State of Texas ("CCMI"), and the LEA. The Agreement and all other documents, certificates, or instruments executed or delivered by the LEA in connection therewith are referred to herein collectively as the "Contract Documents". Terms defined in the Agreement are used in this certificate with the same meanings as in the Agreement. I do hereby further certify that:

1. I am familiar with and have personal knowledge of the matters hereinafter stated.
2. The LEA is a political subdivision of the State of North Carolina.
3. Each person signing the Contract Documents to which the LEA is a party is a duly elected or appointed, qualified, and acting officer of the LEA holding the office set forth below such person's signature, and each such person's signature appearing thereon is true and genuine.
4. To the best of my knowledge (i) the representations, covenants and warranties of the LEA in the Agreement are true and correct on and as of the date hereof as though made on and as of the date hereof; (ii) the LEA has complied with all terms on its part to be performed or satisfied by it under the Agreement at or prior to the date hereof; and (iii) the Contract Documents remain in full force and effect and no default or breach, or other event that, with the giving of notice or the passage of time or both, would become a default or breach, has occurred thereunder.
5. Each of the Contract Documents has been duly executed and delivered by or on behalf of the LEA and constitutes a legal, valid, and binding obligation of LEA enforceable in accordance with its terms.
6. Except as have been obtained and are in full force and effect as of the date hereof, no governmental orders, permissions, consents, approvals or authorizations are required to be obtained and no registrations or declarations are required to be filed in connection with the execution and delivery by the LEA of the Contract Documents or the acquisition of the Accepted Buses.
7. The LEA has taken all actions necessary to provide for all amounts required to be paid under the Agreement during the current fiscal year, and the LEA has or expects to have sufficient unexhausted funds to make such payments as the same become due.

8. The LEA has, to the extent required, complied with all applicable provisions of the applicable laws of the State with respect to the Agreement including without limitation the provisions of the Agreement relating to such public bidding requirements as may be applicable to the Agreement and the acquisition of the Accepted Buses thereunder.

9. To the best of my knowledge, no litigation is pending or threatened in any court to restrain or enjoin the execution or delivery of the Agreement or the payment of the Installment Payments, or in any way contesting or affecting the validity of the Agreement, or contesting the powers of the LEA or contesting the authorization of the Agreement or which, if adversely determined, will have a material, adverse effect on the ability of LEA to perform its obligations under the Contract Documents.

10. The Accepted Buses will be used by the LEA only for the purpose of performing one or more of its essential governmental or proprietary functions consistent with the permissible scope of its authority. None of the Accepted Buses will be leased to or operated by any person in connection with a non-governmental trade or business.

11. The LEA will prepare or cause to be prepared and will file or cause to be filed a Form 8038-G in the manner and within the time provided by section 149(e) of the Internal Revenue Code of 1986, as amended.

12. The Federal Taxpayer Identification number of the LEA is \_\_\_\_\_.

EXECUTED on \_\_\_\_\_, 2003.

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**Form of Appendix #\_\_\_**

**Part 1**

**List of Accepted Buses indicating the total cost of the Accepted Buses**

VIN Number:

Total Cost of the Accepted Buses

\$\_\_\_\_\_

**Part 2**  
**Payment Schedule**

TO COME

**Part 3**  
**Request for Disbursement**

**SERIES 2003A REQUEST FOR DISBURSEMENT NO.:**

RE: Appendix \_\_ to Master Replacement Bus Financing Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2003, made and entered into by and between \_\_\_\_\_ (the "LEA") and Carlyle Capital Markets Inc. ("CCMI"); CCMI 03.4283EQ

Please refer to the above-described Agreement. Unless otherwise defined herein, all terms having a defined meaning in the Agreement shall have the same meaning when used herein.

1. The undersigned hereby certifies that:
  - (a) This Request for Disbursement is in accordance with the Agreement and Appendix \_\_ and is for payment to the Vendor of the Buses described on Part I--List of Accepted Buses, which Buses have been accepted as stated in the Acceptance Certificate attached to this Request for Disbursement and executed by the DPI and the LEA.
  - (b) The amount to be disbursed on this Request for Disbursement has not formed the basis of a previous request for payment and is due and owing.
  - (c) The following amount should be disbursed to the Vendor in payment of the Accepted Buses:
    - (1) The amount of the first annual payment to be paid by the LEA \$ \_\_\_\_\_
    - (2) Remaining amount to be financed by CCMI \$ \_\_\_\_\_
    - (3) Aggregate of amount owed the Vendor \$ \_\_\_\_\_

2. The following items are attached to this Request for Disbursement, each of which is true and correct in all respects.

- (xx) a copy of the invoice of the vendor and
- (xx) a copy of the title or title application for each item of the Equipment for which a title is issued (title must list **Deutsche Bank National Trust Company, as trustee**; 6810 Crumpler Blvd., Olive Branch, Mississippi 38654, as lienholder);

3. Please disburse the following amount to the following Payee:

Payee: International Truck and Engine Corp.

Amount: \$\_\_\_\_\_

Wire Instructions: Bank of America, Atlanta, Georgia  
Account Number: 3750205796  
ABA Routing #: 1110-0001-2  
For Credit to: International Truck and Engine C

Invoice  
No(s): \_\_\_\_\_

4. By its signature on this Part 3, the LEA agrees that it has reviewed and approved Part 1 and Part 2 of this Appendix.

**EXECUTED** as of \_\_\_\_\_.

\_\_\_\_\_  
as the LEA

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

Name: \_\_\_\_\_

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

**Acceptance Certificate**

**DATE:** \_\_\_\_\_

Re: Acceptance Certificate No. \_\_ to Master Facilitator Agreement (the "Agreement"), dated as of May 22, 2003, made and entered into by and between the **North Carolina State Board of Education** (the "State Board") and Carlyle Capital Markets Inc. ("CCMI"); CCMI 03.4283EQ; and that certain Master Replacement Bus Financing Agreement executed by the Local Education Agency indicated below (the "LEA") and CCMI (the "Financing Agreement"). Unless otherwise defined herein, all terms shall have the meaning ascribed thereto by the Agreement.

Ladies and Gentlemen:

Please refer to the above-described Agreement. In accordance with the terms of the Agreement, the LEA, together with the Department of Public Instruction (the "DPI"), acting on behalf of the State Board, acting hereby, each certify and represent to, and agree with CCMI as follows:

A. The Accepted Buses described on **Attachment A** hereto been inspected by the LEA and the DPI on behalf of the Board on or before the date hereof.

B. The LEA and the DPI have conducted such inspection of the Accepted Buses as each deems necessary and appropriate and hereby respectively acknowledge that the Accepted Buses are acceptable to be included in the State of North Carolina's bus fleet, effective the date hereof.

C. The Accepted Buses described on **Attachment A** are insured pursuant to a program of self-insurance as provided by the State Board.

Yours truly,

**DEPARTMENT OF PUBLIC INSTRUCTION**

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

Name: \_\_\_\_\_

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

\_\_\_\_\_,  
as the LEA

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

Name: \_\_\_\_\_

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