**UNITED STATES BANKRUPTCY COURT**

**MIDDLE DISTRICT OF NORTH CAROLINA**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DIVISION**

**In Re: )**

 **)**

 **) ORDER**

 **)**

 **)** Case No. \_\_\_\_\_\_\_\_\_\_\_

 **)**

 **Debtor. )**

**ORDER ALLOWING SUBSTITUTION OF COLLATERAL AND ATTORNEY FEES**

 THIS MATTER came before the Court for hearing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ on motion of the Debtor for substitution of collateral and for attorney fees (the “Motion”). All interested parties having received proper notice, appearing at the hearing were \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the Debtor and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Chapter 13 Trustee (“Trustee”). The Debtor was also present. Having considered the motion and other matters of record in this case, the Court finds and concludes as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. The Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

1. At the time the Debtor filed the Chapter 13 petition, the Debtor owned a \_\_\_\_\_\_\_(description of the vehicle being replaced)\_\_\_\_ (the “Vehicle”), on which \_\_\_\_(name of creditor)\_\_\_\_\_\_\_ (hereinafter “Creditor”) held a valid first lien.
2. The Creditor is being paid through disbursements by the Trustee pursuant to the Confirmation Order in this case.
3. The Vehicle wa**s** involved in an accident and was deemed a total loss.
4. The loss of the Vehicle leaves the Debtor without reliable transportation necessary to the Debtor’s reorganization.
5. The Vehicle was insured with \_\_\_\_(name of insurance company)\_\_\_\_ (“Insurance Company”) at the time of the accident.
6. The current approximate balance owed to the Creditor on its secured claim is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
7. The Insurance Company is holding the insurance proceeds for the loss of the Vehicle of $\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Insurance Proceeds”).
8. The Debtor’s request for substitution of collateral would not cause undue hardship upon the Creditor and replacement of the collateral would not adversely affect the Creditor’s secured claim in this case.
9. To allow the Creditor to retain the Insurance Proceeds as a result of this accident would seriously jeopardize the Debtor’s reorganization and would place the Creditor in a position of being paid early at the expense of the Debtor’s reorganization.
10. The Creditor should be required to forward the clear certificate of title to the Vehicle to the Insurance Company upon written notification from the Debtor’s attorney that the Insurance Proceeds have been received by the Debtor’s attorney and no later than 30 days from the date of this Order.
11. The Debtor incurred reasonable and necessary attorney fees in the prosecution of this Motion.

The Court finds that there is sufficient cause to grant the relief requested in the Motion; therefore, it is ordered as follows:

1. The Debtor is allowed to substitute collateral for the Vehicle, as a result of which the Creditor will release its lien on the Vehicle and obtain a first lien upon a replacement vehicle.

1. The replacement vehicle chosen by the Debtor (the “Replacement Vehicle”) must be mutually acceptable to the Debtor and the Creditor and must be comparable in value to the Vehicle. Prompt consent (within **twenty-four** hours) shall not be unreasonably withheld or delayed by the Creditor.
2. The Insurance Proceeds shall be paid by the Insurance Company forthwith to the trust account of the Debtor’s attorney, to be held by the attorney and released to the seller of the Replacement Vehicle only under such circumstances that the Creditor is granted a security interest in the Replacement Vehicle and entered as the first lienholder on the Debtor’s certificate of title to the Replacement Vehicle. In this regard, the Debtor’s attorney is hereby expressly authorized to sign and deliver to the Creditor a Substitution of Collateral Agreement for the Replacement Vehicle, in the form attached hereto as **Attachment A**, on behalf of the Debtor as Debtor’s attorney in fact.
3. The Debtor’s attorney shall upon receipt of the Insurance Proceeds immediately provide written notification to the Creditor that the Insurance Proceeds have been received and that the clear certificate of title to the Vehicle should be turned over to the Insurance Company no later than 30 days from the date of entry of this Order.
4. The Creditor is required to forward the clear certificate of title for the Vehicle to the Insurance Company upon notification by the Debtor’s attorney that the Insurance Proceeds have been received and no later than 30 days from the date of entry of this Order.
5. Any portion of the Insurance Proceeds not used for the purchase of the Replacement Vehicle shall be delivered by the Debtor’s attorney to the Trustee for disbursement on the Creditor’s secured claim.
6. The Debtor’s attorney is allowed the presumptive fee of $450.00 for services in connection with this motion, to be paid through disbursements by the Trustee.

END OF DOCUMENT

**ATTACHMENT 1**

**(FORM AGREEMENT TO SUBSTITUTE COLLATERAL)**

AGREEMENT TO SUBSTITUTE COLLATERAL

|  |
| --- |
| BUYER NAME(S) ADDRESS ACCOUNT # DATE OF CONTRACT |
| ORIGINAL SELLING DEALER ADDRESS |
| NEW SELLING DEALER ADDRESS |
| ORIGINAL VEHICLE | SUBSTITUTED VEHICLE |
| YEAR AND MAKE | YEAR AND MAKE |
| SERIES NAME | SERIES NAME |
| BODY TYPE & MODEL NO. | BODY TYPE & MODEL NO. |
| VEHICLE IDENTIFICATION NUMBER | VEHICLE IDENTIFICATION NUMBER |
| VEHICLE COLOR | NUMBER OF CYLINDERS | VEHICLE COLOR | NUMBER OF CYLINDERS |

 **Whereas,** Original Selling Dealer and Buyer(s) entered into a Retail Installment Contract identified by the above account number (the “Contract”) for the purchase of the Original Vehicle; and

 **Whereas**, the Contract was assigned by Selling Dealer to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Assignee”), and

 **Whereas,** the Original Vehicle has been determined to be a total loss as a result of theft or damage to the vehicle; and

 **Whereas,** Buyer(s) and Assignee wish to use the insurance proceeds to acquire the Substituted Vehicle from the New Selling Dealer and substitute the Substituted Vehicle for the Original Vehicle under the contract.

 **NOW,** therefore, in consideration of the undertakings herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Release of Original Vehicle. Buyer(s) relinquish to New Selling Dealer all of their title and interest in the insurance proceeds from the Original Vehicle.
2. Delivery of Substituted Vehicle/Grant of Security Interest by Buyer(s). Buyer(s) accept delivery of the Substituted Vehicle. Buyer(s) agree that the terms and conditions of the Contract shall apply for the Substituted Vehicle, and Assignee shall have a security interest in the Substituted Vehicle as provided in the Contract.
3. Consent to Security Interest/Release of Security Interest in Original Vehicle. Assignee accepts a security interest in the Substituted Vehicle and releases its security interest in the insurance proceeds from the Original Vehicle.
4. Effect on Other Agreements. Except as stated above, the terms and conditions of the Contract shall continue in full force and effect. The terms and conditions of the agreement between Selling Dealer and Assignee shall apply to the Substituted Vehicle and shall otherwise remain in full force and effect.

 By signing below, we acknowledge our agreement to the above Agreement to Substitute Collateral, effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

Buyer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Co- Buyer:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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