

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

BOA NUTRITION, INC.

CASE NUMBER: 23-03665-5-PWM

DEBTOR

CHAPTER 7

NOTICE OF SALE OF ASSETS

JOHN C. BIRCHER III, CHAPTER 7 TRUSTEE OF BOA Nutrition, Inc. (the “Trustee”), is seeking to sell all or substantially all the assets of the Debtor (the “**Sale Assets**”). The Trustee has entered into that certain Asset Purchase Agreement (the “Stalking Horse Agreement”) by and between the Trustee and BOA Refinance Corp. (the “Stalking Horse Purchaser”) for the purchase of the Sale Assets. **The Stalking Horse Agreement is attached as Exhibit A.**

By Order, dated March 25, 2024 (DE 35, the “Bidding Procedures Order”), the Court approved certain “Bidding Procedures” that govern the sale of, or other transaction to acquire, the Sale Assets by the highest and best bidder. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

The Trustee has requested that the Court enter an order after further notice and hearing, providing, among other things, for the sale of the Sale Assets free and clear of all liens, claims, encumbrances and other interests, to the extent permissible by law (the “Sale”).

Copies of the Bidding Procedures Order, the Bidding Procedures, and other pleadings can be accessed through the Court’s electronic case docket or can be provided upon request via email to counsel to the Debtor as noted below.

ANY PARTY INTERESTED IN BIDDING ON THE SALE ASSETS SHOULD CONTACT:

John C. Bircher III, Attorney for Trustee
N.C. State Bar No. 24119
DAVIS HARTMAN WRIGHT LLP
209 Pollock Street
New Bern, NC 28560
Telephone/Fascimile 252-262-7055
Email: jcb@dhwlegal.com

PLEASE TAKE NOTE OF THE FOLLOWING INFORMATION AND IMPORTANT DEADLINES:

- The deadline to file an objection with the Bankruptcy Court to the proposed sale of the Sale Assets (the “Sale Objection Deadline”) is **April 19, 2024** provided that, solely with respect to an objection to the conduct of the Auction, the designation of any Prevailing Bidder or Bid or Back-Up Bidder or Bid, or the terms (including price) of such bids (each, an “Auction Objection”), the deadline to file an Auction Objection shall be the commencement of the Sale Hearing.
- Objections must be filed and served in accordance with the Bidding Procedures Order. In connection with the sale process, interested bidders may be subject to an expedited discovery process.
- The deadline to be qualified as a Qualifying Bidder and to submit a Qualifying Bid is **May 10, 2024 by 4:00 p.m.** All Qualifying Bids must be accompanied with a deposit in an amount equal to five percent (5%) of the total consideration provided under the proposed Transaction Agreement.
- If a Qualifying Bid is timely submitted other than the Stalking Horse Agreement, an Auction shall be held at the United States Bankruptcy Court, 300 Fayetteville Street, Second Floor, Raleigh, North Carolina beginning on **May 14, 2024, at 10:30 a.m.**
- The Bankruptcy Court will conduct a hearing (the “**Sale Hearing**”) to consider the proposed Sale on **May 14, 2024, at 11:30 a.m.** and held at the United States Bankruptcy Court, 300 Fayetteville Street, Second Floor, Raleigh, North Carolina.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION BY THE APPLICABLE OBJECTION DEADLINE SHALL BE DEEMED CONSENT TO, AND A BAR TO THE ASSERTION BY SUCH PERSON OR ENTITY OF ANY OBJECTION TO, THE SALE AND/OR THE DEBTOR’S CONSUMMATION AND PERFORMANCE OF THE STALKING HORSE AGREEMENT OR TRANSACTION AGREEMENT, AS APPLICABLE (INCLUDING, WITHOUT LIMITATION, THE DEBTOR’S TRANSFER OF ANY OF THE SALE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS OTHER THAN AS PROVIDED IN THE APPLICABLE PURCHASE AGREEMENT).

Dated: 03/26/2024

s/John C. Bircher III
John C. Bircher III
N.C. State Bar No. 24119
DAVIS HARTMAN WRIGHT LLP
209 Pollock Street
New Bern, NC 28560
Telephone/Facsimile 252-262-7055
Email: jcb@dhwlegal.com

EXHIBIT A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made as of February 19, 2024, by and between BOA Refinance Corp, LLC (the “Purchaser”), and BOA Nutrition, Inc. (the “Seller”).

WITNESSETH

WHEREAS, Seller is or was engaged in the design and manufacture of energy-enhancing nutrients (a mixture of fast-acting and slow-acting carbohydrates, B vitamins, caffeine and electrolytes) with a unique, fast-acting, transmucosal delivery mechanism (the “Business”); and

WHEREAS, Seller filed a voluntary petition (the “Petition”) with the United States Bankruptcy Court for the Eastern District of North Carolina (the “Bankruptcy Court”) for relief under Chapter 7, title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Case No. 23-03665-5-PWM (the “Bankruptcy Case”); and

WHEREAS, certain bidding procedures (the “Bidding Procedures”) will be approved and authorized by order (the “Bidding Procedures Order”) of the Bankruptcy Court, which will govern the proposed sale (the “Sale”), including any auction (the “Auction”) conducted in connection therewith, of substantially all of the assets of the Debtor’s bankruptcy estate pursuant to the Debtor’s motion for an order authorizing the Sale and granting related relief (the “Sale Motion”); and

WHEREAS, Purchaser intends to become a “Qualified Bidder” and the “Stalking Horse Purchaser” and participate in the Auction (if any) as set forth in the Bidding Procedures, and thereby offers to purchase from Seller certain assets (the “Sale Assets”) as more fully described in this Agreement (the “Stalking Horse Agreement”), free and clear of all Liens (as defined below), subject to final approval by the Bankruptcy Court.

NOW, THEREFORE, for and in consideration of the representations, warranties, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

- (a) “*Assumed Contracts*” means the Contracts (if any); provided, however, that any Contract which is terminated or rejected by Seller or the other party thereto, or terminates or expires by its terms, prior to the Closing (or prior to being assumed after the Closing), or as to which a consent or governmental authorization (other than of the Bankruptcy Court) is required by the Bankruptcy Code to be obtained from any Person in order to permit the sale or transfer to Purchaser of the Seller’s rights under such Contract and for which no such consent or governmental authorization shall have been obtained prior to

Closing, shall not be an Assumed Contract. It is not anticipated that there will be any Assumed Contracts.

(b) ***“Bidding Procedures Order”*** means the Order Approving Bidding Procedures, Sale Notice, And Related Dates And Setting Deadlines In Connection With The Sale Of The Debtor’s Assets.

(c) ***“Business Day”*** means any day that is not a Saturday, Sunday, or other day on which banks are required or authorized by law to be closed in New York, New York.

(d) ***“Closing”*** means the closing of the transactions contemplated by this Agreement.

(e) ***“Contract”*** means any lease, contract, deed, mortgage, license or other legally enforceable agreement or instrument.

(f) ***“Lien”*** means any lien, security interest, pledge, hypothecation, encumbrance or other interest or claim (including, but not limited to, any and all “claims,” as defined in Section 101(5) of the Bankruptcy Code, and any and all rights and claims under any bulk transfer statutes and similar laws) in or with respect to any of the Sale Assets (including, but not limited to, any options or rights to purchase such Sale Assets and any mechanics’ or tax liens), whether arising by agreement, by statute or otherwise and whether arising prior to, on or after the date of the filing of the Bankruptcy Petition.

(g) ***“Permitted Encumbrances”*** means: (a) statutory liens for current taxes, special assessments or other governmental charges not yet due and payable; (b) zoning, entitlement, building and other land use by-laws, ordinances or regulations imposed by governmental authorities having jurisdiction over any Leased Real Property which are not violated in any material respect by the current occupancy, use and operation of the Leased Real Property; (c) statutory liens creating a security interest in favor of landlords under leases which do not interfere with Seller’s current use of, or affect the value of, any material Sale Assets, in either case, in any material respect; (d) liens or encumbrances contained in the Assumed Contracts.

(h) ***“Person”*** means any individual, corporation, partnership, joint venture, trust, association, limited liability company, unincorporated organization, other entity, or governmental body or subdivision, agency, commission or authority thereof.

(i) ***“Petition Date”*** means the date on which Seller filed the Bankruptcy Petition under Chapter 7 of the Bankruptcy Code.

(j) ***“Sale Motion”*** means the Motion To Approve Bidding Procedures, Sale Notice, Related Dates And Deadlines, and Sale of the Debtor’s Assets.

(k) **“Sale Order”** means the entry of an Order of the Bankruptcy Court approving the transactions contemplated hereby and the definitive documentation and waiving the ten (10) day automatic stay of Bankruptcy Rules 6004(g) and 6006(d), which Sale Order has not been stayed pending appeal.

2. **Sale and Purchase of Assets.**

(a) **Sale of Assets.** Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer and deliver to Purchaser, and Purchaser shall, by Purchaser’s payment of the Purchase Price, purchase and acquire from Seller, all of Seller’s right, title and interest, free and clear of all Liens (other than Permitted Encumbrances), in and to all of the properties, rights, interests and other tangible and intangible assets of Seller (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with generally accepted accounting principles), including any assets acquired by Seller after the date hereof but prior to the Closing (collectively, the **“Sale Assets”**); provided, however, the Sale Assets shall not include any Excluded Assets (as defined below). The Sale Assets shall include the following:

- i. all patents issued and pending, trademarks registered and applied for, and other intellectual property of the Seller including, but not limited to, the following:
 - 1. patent application 63/209,748 filed 06/11/2021
 - 2. patent application 63/209,819 filed 06/11/2021
 - 3. patent application 63/209,752 filed 06/11/2021
 - 4. patent application 63/209,758 filed 06/11/2021
 - 5. patent application 63/209,767 filed 06/11/2021
 - 6. patent application 63/209,787 filed 06/11/2021
 - 7. patent application 63/209,810 filed 06/11/2021
 - 8. patent application 63/209,813 filed 06/11/2021
 - 9. patent application 63/209,816 filed 06/11/2021
 - 10. patent application 63/209,826 filed 06/11/2021
 - 11. patent application 17/838,773 filed 06/13/2022
 - 12. patent application 17/839,095 filed 06/13/2022
 - 13. patent application 17/839,123 filed 06/13/2022
 - 14. patent application 17/839,128 filed 06/13/2022
 - 15. patent application 63/577,194 filed 04/07/2023
 - 16. trademark reg. no. 7,133,354 registered 08/08/2023
 - 17. trademark reg. no. 7,133,355 registered 08/08/2023
 - 18. trademark reg. no. 7,131,045 registered 08/08/2023
- ii. all inventory, if any, owned by Seller in connection with the Business as of the Closing.

- iii. all rights under director and officer (or similar) insurance policies maintained by Seller.

(b) **Excluded Assets.** Notwithstanding any provision herein to the contrary, the Sale Assets shall not include the following (collectively, the "Excluded Assets"):

- i. Seller's minute books and other corporate books and records relating to its organization and existence (collectively, "Books and Records").
- ii. all cash and cash equivalents of Seller on hand or on deposit as of the Closing Date except for Deposits and Prepays.
- iii. Seller's rights under this Agreement, and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof.
- iv. any Contracts.
- v. any documents or other materials which are subject to attorney-client or other privilege.

(c) **Liabilities.** Except as specified herein, Purchaser shall not assume any liabilities or obligations of Seller, including, but not limited to, general liabilities, tax liabilities, environmental and employment-related liabilities and obligations, and any obligation or liability arising out of any breach, violation or default of or by Seller, whether known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated or otherwise (collectively, "Excluded Liabilities").

(d) **Purchase Price.**

- i. **Purchase Price.** In consideration for the Sale Assets, and subject to the other terms and conditions of this Agreement, and the entry and effectiveness of the Sale Order, Purchaser shall (i) pay to Seller an amount in cash equal to \$400,000.00 (four hundred thousand dollars) (the "Purchase Price"). The Purchase Price, less credit for any deposit and credit-bid of secured indebtedness, shall be paid by Purchaser to Seller on the Closing Date by wire transfer of immediately available U.S. funds to an account designated by Seller prior to the Closing.
- ii. **Deposit.** On or before the Bid Deadline under the Bidding Procedures, Purchaser deposited the sum of \$20,000.00 (twenty thousand dollars) (the "Deposit") in the form of a wire transfer or cashier's check payable to Seller's counsel, which is being held in a trust account by Seller's counsel pending the completion of the Auction. The Deposit shall be held as a trust fund and shall

not be subject to any lien, attachment, or any other judicial process of any creditor of Seller or Purchaser. The Deposit shall become payable to Seller upon the earlier of: (a) the Closing; or (b) the termination of this Agreement by Seller pursuant to Paragraph 11(d) (a "Purchaser Default Termination"). At the Closing, the Deposit shall be delivered to Seller and credited toward payment of the Purchase Price. In the event the Deposit becomes payable to Seller by reason of a Purchaser Default Termination, Seller and Purchaser shall, within one Business Day of such event, instruct Seller's counsel to, and Seller's counsel shall, within two Business Days after such instruction or upon entry of a Final Order to such effect by the Bankruptcy Court, disburse the Deposit to Seller to be retained by Seller for its own account. If this Agreement or the transactions contemplated herein are terminated other than a termination which constitutes a Purchaser Default Termination, Seller and Purchaser shall, within one Business Day of such event, instruct Seller's counsel to, and Seller's counsel shall, within two Business Days after such instruction or upon entry of a Final Order to such effect by the Bankruptcy Court, return the Deposit to Purchaser. In addition, the Purchaser shall also advance Broker expenses up to \$5,000.00 and a flat fee of \$25,000.00 payable to the Broker upon approval of Broker employment. In exchange, the Purchaser will be entitled to an administrative claim in the amount advanced.

- iii. **Allocation of the Purchase Price.** The parties will mutually agree on an allocation of the Purchase Price (and all other capitalizable costs) among the Sale Assets for all purposes (including financial accounting and tax purposes) no later than thirty (30) days after the Closing Date. Such allocation shall be used by the parties in completing Internal Revenue Service Form 8594 and in satisfying any and all other reporting requirements of the Internal Revenue Service.
- iv. **Prorations.** Liability for ad valorem and other taxes, utility charges and deposits, rents, prepaid expenses, security services and any and all other expenses relating to the Sale Assets, the Assumed Contracts or the Assumed Obligations, which are not treated elsewhere herein, will be allocated and prorated between Purchaser and Seller through the Closing Date to reflect the principle that Seller shall be responsible for the portion of such expenses arising on or prior to the Closing Date, and Purchaser shall be responsible for the portion of such expenses arising after the Closing Date. To the extent that any of such items are paid by Seller prior to the Closing or are payable by Purchaser or Seller after the Closing Date, such items shall be apportioned as of the Closing Date such that Seller shall be liable for (and shall reimburse Purchaser to the extent that Purchaser shall pay) that portion of any such item relating or attributable to periods on or prior to the Closing Date and Purchaser shall be liable for (and shall reimburse Seller to the extent Seller shall have paid) that portion of any such item relating or attributable to periods after the Closing Date. Should any amounts to be prorated not have been finally determined on the Closing Date, a mutually satisfactory estimate

of such amounts made on the basis of Seller's records shall be used as a basis for settlement at Closing, and the amount finally determined will be prorated as of the Closing Date, and appropriate settlement made as soon as practicable after such final determination. If as a result of any such settlement in accordance with the preceding sentence, either party is owed an amount from the other party, then the appropriate party shall make reimbursement for such amounts. Seller and Purchaser agree to furnish each other with such documents and other records as each party reasonably requests in order to confirm all adjustment and proration calculations made pursuant to this Paragraph.

3. **Closing and Court Approval.** The closing of the transaction contemplated hereby will take place (the "Closing" or "Closing Date") within ten (10) Business Days of the date on which the Sale Order becomes a final, non-appealable order (or such later date as the Debtor may agree). The Closing will take place at a location to be mutually agreed upon by Purchaser and Seller. The transfer of the Sale Assets and assumption of the Assumed Obligations shall be effective for all purposes as of 12:01 a.m. eastern time on the day following the Closing Date. Seller and Purchaser acknowledge and agree that the Bankruptcy Court's entry of the Sale Order is required in order for Seller and Purchaser to consummate the transactions contemplated hereby and that the requirement that the Sale Order be entered is a condition that cannot be waived by any party hereto.

4. **Deliveries by Seller.** At the Closing, Seller shall deliver or cause to be delivered to Purchaser the following (each in form and substance reasonably satisfactory to Purchaser):

- (a) Duly executed bill of sale transferring to Purchaser all right, title and interest in and to the Sale Assets free and clear of all Liens (other than Permitted Encumbrances), without exception or condition except as provided herein.
- (b) A copy of the Sale Order.
- (c) Such other instruments or documents as Purchaser may reasonably request to fully effect the transfer of the Sale Assets and to confer upon Purchaser the benefits contemplated by this Agreement.

5. **Deliveries by Purchaser.** At the Closing, Purchaser shall deliver, or cause to be delivered, the following:

- (a) The payments to be made on the Closing Date pursuant to Paragraph 2.
- (b) Such other instruments or documents as Seller may reasonably request to fully effect the transfer of the Sale Assets and assumption of the Assumed Contracts, if any, and the Assumed Obligations and to otherwise consummate the transactions contemplated by this Agreement.

6. **Purchaser's Representations and Warranties.** Purchaser hereby represents and warrants to Seller that the statements contained in this Paragraph 6 are correct and complete as of the date hereof and as of the Closing Date:

(a) Purchaser is a legal entity duly organized, validly existing and in good standing under the laws of the State of North Carolina. Purchaser has all requisite corporate power and authority to own, use and operate its properties and to carry on its business as now being conducted.

(b) The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated hereby have been duly authorized by the board of directors or other governing body of Purchaser and, subject to and conditioned upon the entry of the Sale Order, no other act or proceeding on the part of Purchaser is necessary to approve the execution and delivery of this Agreement, the performance by Purchaser of its obligations hereunder or the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms.

(c) The execution, delivery and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby will not: (i) with or without the giving of notice or the lapse of time, or both, conflict with, or result in the breach of or constitute a default under, or result in the modification, cancellation, lapse or termination of, or limitation, or curtailment under, or violate any (x) provision of law, or (y) any agreement, contract, lease, power of attorney, commitment, instrument, insurance policy, arrangement, undertaking, order, decree, ruling or injunction to which Purchaser is subject or a party or by which it is bound (or with respect to which its properties or assets are subject or bound); or (ii) violate the certificate of incorporation or bylaws of Purchaser.

(d) Except for the Sale Order, no consent, notice, authorization or approval of, or exemption by, any governmental or public body or authority or by any other Person, whether pursuant to contract or otherwise, is required to be obtained by Purchaser in connection with the execution, delivery and performance of this Agreement or any of the instruments or agreements herein referred to or the taking of any action herein or therein contemplated.

(e) Purchaser has cash available or has existing borrowing facilities or unconditional, binding funding commitments that are sufficient to enable it to consummate the transactions contemplated by this Agreement and to provide adequate assurance of future performance for the Assumed Contracts and Assumed Obligations, as applicable.

(f) Purchaser has not taken any action that would cause Seller to have any obligation or liability to any person for finders' fees, brokerage fees, agents' commissions or like

payments in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

7. **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser that, except as set forth in any of the Schedules hereto, the statements contained in this Paragraph 7 are correct and complete as of the date hereof and as of the Closing Date:

(a) At the Closing, Seller shall have and convey to Purchaser, good, valid and marketable title to the Sale Assets, free and clear of all Claims, Liens or encumbrances (other than Permitted Encumbrances).

(b) Except as expressly set forth herein, Seller makes no representation or warranty, express or implied, at law or in equity, with respect to Seller and the Sale Assets or any other information provided to Purchaser, its agents or representatives in connection with or in expectation of the transactions contemplated by this Agreement. Seller does not make any representations or warranties regarding information, documents, projections, forecasts or other material made available to Purchaser, its agents or representatives in connection with or in expectation of the transactions contemplated in this Agreement.

8. **Covenants and Agreements.**

(a) Prior to the Closing, each of Seller and Purchaser shall use its commercially reasonable efforts to make any filings and notifications, and to obtain any consents from governmental authorities, required to be made and obtained under applicable legal requirements in connection with the transactions contemplated by this Agreement as promptly as practicable.

(b) Except as expressly provided for herein, each party shall pay all fees, costs and expenses incurred by it with respect to this Agreement, whether or not the transactions contemplated hereby are consummated.

(c) Upon entry of the Sale Order, Purchaser and its representatives will have access to Seller's employees, premises, books and records maintained by Seller with respect to the Sale Assets during normal business hours until the Closing. After the Closing, Purchaser shall allow Seller (or Seller's assignees or designees) access to any books and records (or copies of) of Seller, along with access to a copier, which are purchased by Purchaser in order to allow Seller to fulfill its statutory and legal duties with respect to winding down the affairs of Seller's bankruptcy.

(d) Purchaser and Seller shall, from time to time after the Closing, without further consideration, execute and deliver such instruments and take such further actions as may be reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated hereby, including the assignment by Seller of such additional contracts and leases of Seller as Purchaser shall reasonably request. If Seller or its agents

collect receivables or other funds properly belonging to Purchaser after the Closing Date, Seller shall (and shall cause its agents to) promptly forward such collections or funds to Purchaser.

(e) After the Closing Date, Purchaser shall pay and perform all Assumed Obligations as and when due.

9. **Conditions Precedent to the Obligations of Purchaser.** The obligation of Purchaser to consummate the transactions contemplated herein is subject to the satisfaction, at or before the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on the Closing Date. Seller shall have performed and complied with in all material respects all covenants and agreements required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

(b) The Bankruptcy Court shall have entered the Sale Order in form reasonably satisfactory to Purchaser containing findings that (i) Purchaser is a “good faith Purchaser” within the meaning of Section 363(m) of the Bankruptcy Code and is thereby entitled to the protection afforded a good faith, arms’-length Purchaser; (ii) the Purchase Price is fair and reasonable; (iii) this Agreement was negotiated at arms’ length; and (iv) the sale of the Sale Assets hereunder was conducted in a “non-collusive manner” within the meaning of Section 363(n) of the Bankruptcy Code, which Sale Order is not subject to a stay pending appeal.

(c) Purchaser shall have received all documents and other items to be delivered by Seller hereunder. Seller shall assign to Purchaser the Assumed Contracts, if any; provided however, that the inability of Seller to assign to Purchaser one or more of such Contracts shall not be deemed to be a breach of this Agreement.

10. **Conditions Precedent to the Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated herein is subject to the satisfaction, at or before the Closing, of each of the following conditions:

(a) The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on the Closing Date. Purchaser shall have performed and complied with in all material respects all covenants and agreements required by this Agreement to be performed or complied with by Purchaser on or before the Closing Date.

(b) The Bankruptcy Court shall have entered the Sale Order containing findings that (i) Purchaser is a “good faith Purchaser” within the meaning of Section 363(m) of the Bankruptcy Code and is thereby entitled to the protection afforded a good faith, arms’-length Purchaser; (ii) the Purchase Price is fair and reasonable; (iii) this Agreement was negotiated at arms’ length; and (iv) the sale of the Sale Assets hereunder was conducted in a “non-collusive manner” within the meaning of Section 363(n) of the Bankruptcy Code, which Sale Order is not subject to a stay pending appeal.

(c) Seller shall have received all documents and other items to be delivered by Purchaser hereunder.

11. **Termination.** This Agreement may be terminated only as follows:

(a) by mutual written agreement of both Seller and Purchaser at any time.

(b) by Seller or Purchaser, if the Auction occurs and (x) a higher or better offer is received at the Auction from a third party who is designated by the Bankruptcy Court as the Prevailing Bidder and (y) either (i) Purchaser is not designated as a Back-up Bidder at the conclusion of the Auction or (ii) Purchaser is designated as a Back-up Bidder but the sale of the Sale Assets is consummated with the Prevailing Bidder.

(c) by Seller or Purchaser, if the Closing shall not have occurred on or prior to June 15, 2024 for any reason other than such party’s breach of this Agreement.

(d) by the Seller, if Purchaser shall have breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform cannot be or has not been cured prior to the date that is ten (10) days from the date that Purchaser is notified by the Seller of such breach or failure to perform; provided, however, that the Seller shall not have a right to terminate this Agreement under this Paragraph if the Seller is then in material breach of this Agreement.

(e) by Purchaser, if the Seller shall have breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform cannot be or has not been cured prior to the date that is ten (10) days from the date that the Seller is notified by Purchaser of such breach or failure to perform; provided, however, that Purchaser shall not have a right to terminate this Agreement under this Paragraph if Purchaser is then in material breach of this Agreement.

12. **Transaction Expenses.** Except as expressly provided for herein, each party shall pay all fees, costs and expenses incurred by it with respect to this Agreement, whether or not the transactions contemplated hereby are consummated.

13. **Further Assurances.** Purchaser and Seller shall, from time to time after the Closing, without further consideration, execute and deliver such instruments and take such further actions as may be reasonably necessary or desirable to carry out the provisions hereof and the transactions contemplated hereby.

14. **Survival.** The parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and neither of the parties nor any of its respective officers, directors, representatives, employees, advisors or agents shall have any liability to the other after the Closing for any breach thereof. The parties hereto agree that only the covenants contained in this Agreement that are expressly required to be performed at or after the Closing Date shall survive the Closing hereunder, and each of the parties hereto shall be liable to the other after the Closing Date for any breach thereof.

15. **Jurisdiction.** The parties agree that the Bankruptcy Court shall retain the exclusive and sole jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement or the implementation or the breach hereof. The parties consent to the core jurisdiction of the Bankruptcy Court, to the constitutional authority of the Bankruptcy Court to enter a final judgment, and agree to have waived any right to a jury trial in connection with any disputes related to or arising out of this Agreement.

16. **Notices.** All notices, consents or other communications required or permitted hereunder shall be given in writing and hand delivered or addressed and sent by Federal Express or other recognized overnight courier, or by certified or registered mail, postage prepaid, and return receipt requested, as follows:

If to Seller:	If to Purchaser:
BOA Nutrition, Inc. John C. Bircher III, Chapter 7 Trustee 209 Pollock Street New Bern, NC 28560	BOA Refinance Corp, LLC Attn: Kelley Williams, Jr. PO Box 14128 Jackson, MS 39326

or to such other address as may hereafter be designated by any party by the giving of notices in accordance with this Paragraph. All notices, consents or other communications shall be deemed given when actually delivered (in the case of hand delivery by Federal Express or other recognized overnight courier) or five days after mailing in accordance with this Paragraph.

17. **Governing Law.** To the extent not governed by the Bankruptcy Code, this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to rules governing the conflict of laws.

18. **Waiver.** The waiver by a party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any

prior or subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking.

19. **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of all other provisions hereof or thereof, shall not be affected thereby.

20. **Counterparts.** This Agreement may be executed in one or more counterparts (whether manually signed or by facsimile), each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement.

21. **Captions; References.** The headings, titles or captions contained in this Agreement are inserted only to facilitate reference, and they shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

22. **Amendments.** This Agreement may not be amended, changed, modified, altered or terminated unless the parties hereto agree in writing to such amendment, change, modification, alteration or termination.

23. **Remedies Cumulative; Specific Performance.** Except as otherwise expressly provided in this Agreement, no remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute. Except as otherwise expressly provided in this Agreement, in addition to any and all other remedies that may be available at law, in the event of any breach of this Agreement each party shall be entitled to seek specific performance of the agreements and obligations hereunder and to such other injunctive or equitable relief as may be granted by a court of competent jurisdiction.

24. **Binding Nature; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other party. Nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

25. **No Third-Party Beneficiaries.** This Agreement is a contract solely between Purchaser and Seller. No third-party beneficiaries, (including, without limitation, employees and customers of Seller) are intended hereunder and none shall be inferred herein; and no party other than Purchaser or Seller may assert any right, make any claim or otherwise attempt to enforce any provision of or under this Agreement.

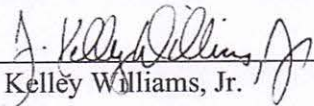
26. **Release and Waiver.** Effective upon the Closing, except as set forth in this Agreement, the Purchaser hereby irrevocably waives, releases, and discharges Seller, solely in Seller's capacity as the owner of the Sale Assets, from any and all liabilities or debts to its business and the Purchaser of any nature or kind whatsoever (including in respect of rights of contribution or indemnification).

[signatures on following page]

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement as of the day and year first above written.

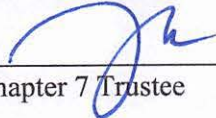
PURCHASER:

BOA REFINANCE CORP, LLC

By: _____
Kelley Williams, Jr.

SELLER:

BOA NUTRITION, INC.

By: _____
Chapter 7 Trustee