

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Smallhold, Inc.,¹

Debtor.

Chapter 11

Case No. 24-10267 (CTG)

**Proposed Obj. Deadline: March 19, 2023, at 3:30
p.m. (ET)**

**Proposed Hearing Date: March 19, 2023, at 3:30
p.m. (ET)**

**DEBTOR'S EMERGENCY MOTION FOR ENTRY OF AN
ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, AND 507,
(I) AUTHORIZING THE DEBTOR TO OBTAIN SECURED PRIMING POSTPETITION
FINANCING, (II) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, (III) AUTHORIZING THE USE OF CASH COLLATERAL, (IV)
MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING A FINAL HEARING, AND
(VI) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor”) files this motion (this “Motion”) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1, 4001-1, 9013-1, and 9014-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim DIP Order”) and entry of a final order (the “Final DIP Order” and together with the Interim DIP Order, the “Proposed Orders”), (i) authorizing the Debtor to (a) obtain post-petition financing in an aggregate principal amount of up to \$900,000.00 (the “DIP Financing”) pursuant to the terms and conditions set forth

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

in the DIP Term Sheet (as defined herein),² attached to the Interim DIP Order as Exhibit 1 thereto, and (b) use Cash Collateral (as defined herein), (ii) scheduling a final hearing (the “Final Hearing”) to consider entry of the Final DIP Order and (iii) granting related relief. The facts and circumstances supporting this Motion are set forth in the *Declaration of James Dunn in Support of First Day Relief* [D.I. 29] (the “First Day Declaration”) and the *Declaration of Tariq Jawad in Support of DIP Financing*, attached hereto as **Exhibit B** (the “DIP Financing Declaration”). In further support of this Motion, the Debtor respectfully represents as follows:

Preliminary Statement

1. The Debtor seeks post-petition use of Cash Collateral, and access to post-petition financing on a superpriority basis from Monomyth Sponsor Group, LLC (the “DIP Lender”). In the ordinary course of business, the Debtor requires cash on hand to fund its liquidity needs and operate its business. As described in greater detail in the DIP Financing Declaration, there is an urgent need for DIP financing because the Debtor does not have sufficient liquidity to maintain its operations. Moreover, the Debtor has a continuing need to fund administrative expenses in the Chapter 11 Case (defined below), which will also be funded by the proceeds of the DIP Financing. As a result, there is an immediate need for the DIP Financing.

2. The DIP Financing also serves a larger purpose for the Debtor. The additional standby liquidity made available under the DIP Financing signals to the Debtor’s vendors, suppliers, customers, and employees that the Debtor will continue to meet its commitments as it navigates and emerges from the Chapter 11 Case. Moreover, the Debtor believes that the DIP

² Unless indicated otherwise, capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Term Sheet or the Interim DIP Order, as applicable.

Financing is in the best interest of the estate because it is the Debtor's best financing option available and will allow the Debtor to maximize value for its estate.

3. Although the DIP Lender is an insider of the Debtor, the Debtor believes the proposed DIP Financing is appropriate and necessary in this case. Over a period of several weeks, the Debtor solicited four (4) debtor-in-possession financing proposals but only received a debtor-in-possession financing proposal from the DIP Lender. The Debtor scrutinized the proposal and found that the terms of the DIP Facility were reasonable and the best (and only) terms available. If the Debtor is unable to gain access to the DIP Financing, the proposed path to a successful emergence of the Chapter 11 Case and the Debtor's value as a whole would be materially and irreparably harmed. Absent the liquidity provided by the DIP Financing and use of Cash Collateral, the Debtor likely would, among other things, be unable to continue its operations or pay administrative costs and expenses, which might result in a possible denial of discharge or conversion of the Chapter 11 Case. The relief requested by this Motion is a necessary step to both preserving the Debtor's operations as well as a bridge to emerging from the Chapter 11 Case, which is the optimal result for the Debtor's estate and all of its stakeholders. On this record, and as the Debtor is prepared to demonstrate at the interim hearing of this Motion and the Final Hearing, the relief requested herein represents a sound exercise of business judgment, meets the heightened scrutiny of a transaction between a debtor and its insider, and should therefore be approved.

Relief Requested

4. For the reasons set forth herein, the Debtor seeks the entry of the Order providing the following relief:

- a. authorizing the Debtor to obtain the DIP Financing to be funded by the DIP Lender under a credit facility (the "DIP Facility") subject to the terms, conditions, and limitations set forth herein and in the documentation regarding the DIP Facility (the

commitments thereunder, the “DIP Commitments”, and the term loan thereunder the “DIP Loan”);

- b. authorizing the Debtor and the DIP Lender, in connection with the DIP Facility, to (i) execute and enter into that certain *Terms and Conditions for \$900,000 Debtor-In-Possession Credit Facility*, dated as of March 14, 2024, between the Debtor and the DIP Lender in its capacity as such, substantially in the form attached as Exhibit 1 to the proposed Interim DIP Order (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP Term Sheet” and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments, and amendments executed and delivered in connection therewith, including an approved budget, the “DIP Documents”) and (ii) to perform all such other and further acts as may be required in connection with the DIP Documents;
- c. authorizing the Debtor to execute and deliver the DIP Term Sheet and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- d. granting to the DIP Lender valid, enforceable, non-avoidable, and automatically and fully perfected liens and security interests, subject only to the (i) the Carve-Out and (ii) existing liens that under applicable law, are senior to, and have not been subordinated to, the liens of the DIP Lender under the DIP Documents, but only to the extent that such liens are valid, perfected, enforceable, and non-avoidable as of the Petition Date or perfected following the Petition Date as permitted by section 546 of Bankruptcy Code (such liens, the “Permitted Liens”), to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;
- e. granting superpriority administrative claims to the DIP Lender payable from, and having recourse to, all prepetition and post-petition property of the Debtor’s estate and all proceeds thereof, subject to (i) the Carve-Out and (ii) Permitted Liens;
- f. authorizing the Debtor (i) upon entry of the Interim Order, to incur in a single draw (or as otherwise agreed) on the Closing Date, DIP Loans in an aggregate principal amount of \$300,000.00 and (ii) upon entry of the Final Order, to incur in additional draws in an aggregate principal amount of up to \$600,000;
- g. authorizing the Debtor’s use of the proceeds of the DIP Facility pursuant to the DIP Term Sheet and the other DIP Documents, including the Approved DIP Budget;
- h. authorizing the Debtor to use the Cash Collateral (subject to the Approved DIP Budget);
- i. modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents and the Proposed Orders;

- j. scheduling the Final Hearing to be held within 21 days after the interim hearing on the Motion, to consider entry of the Order approving the DIP Facility and use of the Cash Collateral, as set forth in the Motion and the DIP Documents; and
- k. granting related relief.

Jurisdiction

5. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are sections 105, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, and 9014 and Rules 2002-1, 4001-1, 9013-1(f), and 9014-1 of the Local Rules.

7. The Debtor confirms its consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

Background

A. General Background

8. On February 18, 2024 (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code as a debtor defined in Bankruptcy Code section 1182(1) and the Debtor elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code pursuant to the Small Business Debtor Reorganization Act, as amended (the “Chapter 11 Case”).

9. On February 20, 2024, Jami Nimeroff was appointed as the subchapter V trustee (the “Subchapter V Trustee”). No other trustee, examiner, or official committee has been

appointed in this case. The Debtor is operating its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

10. Additional detail regarding the Debtor, its business, and the events leading to commencement of this case, is set forth in the First Day Declaration and is incorporated herein by reference.

11. Furthermore, additional detail regarding the facts and circumstances surrounding the need for the relief requested in this Motion is set forth in the DIP Financing Declaration, which is incorporated herein by reference.

B. The Prepetition Capital Structure

12. The Debtor is a public benefit corporation organized under the laws of Delaware.

13. Monomyth, LLC, an affiliate of the DIP Lender, was originally a minority equity investor in the Debtor. Monomyth, LLC currently owns 90.77% of the Debtor's common stock as of the Petition Date.

14. As of the Petition Date, the Debtor has no secured funded debt. The Debtor has approximately \$1.4 million in unsecured debt of non-insiders, consisting mostly of trade debt.

SUMMARY

15. Pursuant to Bankruptcy Rule 4001(b), (c), and (d), and Local Rule 4001-2(a), the following is a concise summary highlighting the proposed material terms of the DIP Financing, as specified in the DIP Term Sheet and the Order:³

Material Provision	Summary Description of Material Provision
DIP Term Sheet Parties	<u>Borrower:</u> Smallhold, Inc.

³ This summary is qualified in its entirety by the provisions of the DIP Term Sheet and the Proposed Orders.

Material Provision	Summary Description of Material Provision
Fed. R. Bankr. P. 4001(c)(1)(B)	<u>Lender</u> : Monomyth Sponsor Group, LLC ⁴
The Amount of Credit Sought Local Rule 4001-2(a)(i)(A) DIP Term Sheet: <u>DIP Facility/Availability</u> p.2 Interim Order, ¶ 4	The DIP Lender's commitment shall consist of a senior secured, superpriority multi-draw term loan facility (the "<u>DIP Facility</u>") to be provided by the DIP Lender to the Borrower in an aggregate principal amount of up to \$900,000 (the "<u>Commitment</u>"), of which up to \$300,000 shall be available promptly following the Interim DIP Order Entry Date (defined below). All amounts outstanding under the DIP Facility shall become due and payable on the Termination Date (as defined below) in the priority and on the terms set forth herein and in the DIP Orders. Borrowings under the DIP Facility (the "<u>DIP Loans</u>") shall, subject to the borrowing conditions set forth herein and in the applicable DIP Order, be incurred as follows: (a) in one draw promptly following the Closing Date, DIP Loans in an aggregate principal amount of \$300,000; and (b) following entry of the final order of the Bankruptcy Court approving the DIP Facility (the "<u>Final DIP Order</u>"; and together with the Interim DIP Order; the "<u>DIP Orders</u>"), DIP Loans in additional draws, subject to the Approved DIP Budget and the conditions precedent set forth below, in an aggregate principal amount of up to \$600,000; provided, (i) there shall not be more than one draw in any seven day period, (ii) each draw shall be in a minimum amount of \$100,000, and (iii) no draw (other than the initial borrowing shall exceed \$200,000. Once repaid or prepaid, no portion of the DIP Loans may be reborrowed.
Interest Rates Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)	The DIP Obligations shall bear interest, at any time of determination, at the rate per annum set forth in the following table that corresponds to the two-week average revenue, in each case, determined for the most recently completed two-week period ending prior to the most recent borrowing; provided, that for the period from the Closing Date through the first borrowing thereafter the interest rate shall be equal to 17.0% per annum. The interest rate shall be determined by the Lender promptly after any draw request hereunder.

⁴ The DIP Lender, as a wholly-owned subsidiary of the chairman of the Debtor's board of directors, is an insider of the Debtor.

Material Provision	Summary Description of Material Provision	
DIP Term Sheet: <u>Interest Rate p.3</u>	Two-week Average Revenue:	Interest Rate:
	≤ \$75,000	17%
	> \$75,000 and ≤ \$100,000	16%
	> \$100,000 and ≤ \$125,000	15%
	> \$125,000	14%
Maturity Date Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(ii) DIP Term Sheet: <u>Maturity p.3-4</u> Interim Order, ¶ 18	The interest rate shall, at the election of Lender, be increased by 2.0% per annum upon the occurrence and during the continuance of an event of default. Interest shall be calculated on the basis of the actual number of days elapsed in a year of 365 days. Interest shall be payable in cash in immediately available funds monthly in arrears on the first business day of each month and on the Termination Date. The termination date (the “<u>Termination Date</u>”) of the DIP Facility means the earliest to occur of: (a) 120 days after the Final DIP Order Entry Date (the “<u>Maturity Date</u>”). (b) On April 30, 2024 if a final order approving the DIP Facility is not entered, unless extended by the Borrower and the DIP Lender. (c) The effective date of an acceptable plan. (d) The date of consummation of the sale of all or substantially all of the assets of the Borrower. (e) The date of termination of the Commitments (including as a remedy from an event of default). Upon the Termination Date, the DIP Lender is entitled to immediate payment of any and all amounts owing under the DIP Facility.	
Use of Proceeds Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i) DIP Term Sheet: <u>Purposes p. 2-3</u>	The DIP Facility shall be available for the following purposes, in each case in accordance with the terms of the then-Approved DIP Budget: (a) to fund the Borrower’s working capital requirements, operating expenses, and other line items in accordance with the terms of the Approved DIP Budget (subject to agreed variances) including the reasonable fees and expenses of the Debtor’s Professionals (defined below) and the Subchapter V Trustee assigned to the Bankruptcy Case (the “<u>Subchapter V Trustee</u>”);	

Material Provision	Summary Description of Material Provision
Interim Order, ¶ 7	(b) to pay fees and expenses of the DIP Lender related to the DIP Facility and the Bankruptcy Case, including, without limitation, reasonable out of pocket fees of attorneys and other professional advisors of the DIP Lender, including, without limitation, Greenberg Traurig, LLP, and any financial advisor that may be retained by the DIP Lender. No proceeds of the DIP Facility shall be transferred to, or used by, any entity other than the Borrower, except as permitted under the Approved DIP Budget, and the Interim DIP Order or Final DIP Order, as applicable. No portion of the DIP Facility or the Carve-Out (as defined below) shall be used to assert any claim, cause of action or objection against the DIP Lender or any its affiliates or any of their respective employees, officers, directors, advisors, investment managers, agents and subagents.
Conditions of Closing and Borrowing Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(ii) DIP Term Sheet: <u>Conditions Precedent to the DIP Facility/ Conditions Precedent to Each Borrowing p. 11-12</u>	<u>Conditions Precedent to the DIP Facility:</u> The following shall be conditions precedent to the effectiveness of the DIP Facility (the date of satisfaction of such conditions together with the conditions precedent to borrowing set forth below, the “<u>Closing Date</u>”): (a) The entry by the Bankruptcy Court of the interim order of approving the DIP Facility (“<u>Interim DIP Order</u>”), which shall be in form and substance satisfactory to DIP Lender, on or before March 20, 2024 (the date on which such Interim DIP Order is entered, the “<u>Interim DIP Order Entry Date</u>”). (b) All premiums, fees and documented out of pocket fees and expenses (including reasonable and documented fees and expenses of counsel and financial advisors) required to be paid to the DIP Lender on or before the Closing Date for which invoices have been presented shall have been paid. (c) The DIP Lender shall have a valid and perfected lien on and security interest in the DIP Collateral with the priority described herein. (d) No default or Event of Default shall exist under the DIP Documents. (e) The representations and warranties of the Borrower under the DIP Documents shall be true and correct in all material respects after giving effect to such funding.

Material Provision	Summary Description of Material Provision
	(f) The Borrower shall have established a cash management system (including delivery of deposit account control agreements, in form and substance satisfactory to the DIP Lender, with respect to each of the Borrower's deposit accounts and securities accounts) for the Bankruptcy Case satisfactory to the DIP Lender. (g) The DIP Lender shall have received a certificate from the Borrower's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to the DIP Documents is in full force and effect and that the DIP Lender has been named as additional insured and/or lenders loss payee thereunder to the extent required under the DIP Documents. <u>Conditions Precedent to Each Borrowing:</u> The following conditions precedent shall have been satisfied with respect to each borrowing under the DIP Facility: (a) No default or Event of Default shall exist under the DIP Documents or would occur as a result of such borrowing. (b) The making of a DIP Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently. (c) The DIP Lender shall have received a borrowing request no later than 11:00 a.m. (Eastern time) on the date which is three business days prior to the requested date of funding, in form and substance satisfactory to DIP Lender, setting for the proposed date and amount of such borrowing along with instructions for the funding of such amount to Borrower's deposit account. (d) The Borrower shall have demonstrated to the DIP Lender (i) pro forma compliance with the Approved DIP Budget after giving effect to such borrowing and (ii) that average weekly sales volume, for the two-week period ending immediately before such borrowing, shall have averaged at least \$100,000. (e) The DIP Orders shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any manner adverse in any respect to the DIP Lender without the consent of the DIP Lender.

Material Provision	Summary Description of Material Provision
Pricing and Economic Terms Sought to be Filed under Seal Local Rule 4001-2(a)(ii)(B)	None.
Funding of Non-Debtor Affiliates With DIP Financing Local Rule 4001-2(a)(i)(D)	None.
Budget, Reporting, and Variance Covenants Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(E) DIP Term Sheet: <u>DIP Budget; Reporting p.4-6</u> Interim Order, ¶ 7	The Borrower has prepared and delivered a rolling 13-week cash flow budget, in form and substance acceptable to, and consented to by, the DIP Lender, setting forth all line-item and cumulative receipts and operating disbursements once every two weeks for the period beginning as of the week of the Closing Date through and including the 13th week after such week. The Initial DIP Budget shall be deemed the “ <u>Approved DIP Budget</u> ” for all purposes of the DIP Facility until superseded by any Updated DIP Budget (as defined below) that subsequently is consented to by the DIP Lender.
Term and Termination Events/Events of Default Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(M)	Unless waived by the DIP Lender, breach of any of the following shall be an “Event of Default” under the DIP Facility: (a) failure of the Borrower to make any payment of principal, interest, fees, or other amounts as and when due; (b) any representation or warranty of the Borrower that was materially incorrect when made;

Material Provision	Summary Description of Material Provision
DIP Term Sheet: <u>Events of Default</u> <u>p.12-14</u>	(c) failure of the Borrower to observe or perform any covenants, condition, or agreement hereunder or any other DIP Document; (d) failure of the Borrower to satisfy or stay execution of judgments above \$10,000; (e) default by the Borrower in other agreements relating to postpetition indebtedness; (f) any material provision of the DIP Facility or any DIP Document shall cease to be in full force and effect, or cease to create a valid and perfected lien; (g) any change in ownership or control of the Borrower; (h) dismissal of the Bankruptcy Case or conversion of the Bankruptcy Case into a case under chapter 7 of the Bankruptcy Code; (i) granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third-party to proceed against any material asset of the Borrower, except as the DIP Lender may reasonably approve; (j) entry of an order granting any superpriority claim which is senior to or pari passu with the DIP Lender's claims under the DIP Facility without the prior consent of the DIP Lender or as otherwise provided in the DIP Orders; (k) entry of an order staying, reversing, vacating or otherwise modifying, without the prior written consent of the DIP Lender, the DIP Facility, the Interim DIP Order or the Final DIP Order, and such order is not stayed or reversed within two business days after entry thereof; (l) Payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Orders) in a manner that requires cash expenditures in excess of \$10,000 either (i) not contemplated by the Approved DIP Budget or (ii) would have a material adverse effect on the DIP Collateral (as reasonably determined by the DIP Lender), in each case, unless otherwise agreed by the DIP Lender;

Material Provision	Summary Description of Material Provision
	(m) cessation of liens or superpriority claims granted with respect to the DIP Collateral to be valid, perfected and enforceable in all respects with the priority described herein; (n) failure to satisfy any Milestone; (o) (i) the removal or attempted removal by the Borrower, or replacement or attempted replacement by the Borrower of the chief financial officer as an officer of the Borrower, (ii) the dissolution or attempted dissolution of the position of the chief financial officer as an officer of the Borrower, or the change or derogation or attempted change or derogation of the duties thereof, or (iii) the hindering or other circumvention or attempted hindering or other circumvention of the duties of the chief financial officer; (p) The Subchapter V Trustee being granted enlarged powers relating to the operation of the business of the Borrower; (q) obtaining additional financing or granting liens not permitted under the DIP Facility (unless the DIP Facility is indefeasibly paid in full in cash) or using cash collateral without the consent of DIP Lender or seeking to reduce, set-off or subordinate DIP Obligations or related liens; (r) the entry of an order granting automatic stay relief to a third party allowing them to foreclose on any asset worth more than \$10,000; and (s) the Borrower becomes adverse in any lawsuit to the DIP Lender.
Adequate Protection Fed. R. Bankr. P. 4001(c)(1)(B)(ii)	None.
Carve Out Fed. R. Bankr. P. 4001(c)(1)(B);	The “<u>Carve-Out</u>” means the sum of: (a) to the extent allowed by the Bankruptcy Court (regardless of whether the order allowing such fees is entered before or after the Carve-Out Notice is received) and in an aggregate amount on a line item basis not exceeding the budgeted amounts for such unpaid professional fees and disbursements as reflected in the Approved DIP Budget, (i) as of the date of delivery of the Carve-Out Notice (as defined below), all accrued and

Material Provision	Summary Description of Material Provision
Local Rule 4001-2(a)(i)(F) DIP Term Sheet: <u>Carve-Out p. 6-7</u> Interim Order, ¶ 16	unpaid fees and expenses incurred by persons or firms retained by the Borrower pursuant to sections 327, 328 or 363 of the Bankruptcy Code (the “<u>Debtor’s Professionals</u>”) and the Subchapter V Trustee and (ii) after the delivery of a Carve-Out Notice, all unpaid fees and expenses incurred by the Debtor’s Professionals and the Subchapter V Trustee in an aggregate amount not to exceed \$50,000; (b) in the event of a conversion of the Bankruptcy Case to cases under chapter 7 of the Bankruptcy Code, allowed fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$20,000; <u>provided, however</u>, no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge to (i) the amount, extent, priority, validity, perfection or enforcement of the indebtedness of the Borrower owing to the DIP Lender or any of its affiliates, or (ii) liens or security interests in the collateral securing such indebtedness, including challenges to the perfection, priority or validity of the liens granted in favor of the DIP Lender or any of its affiliates with respect thereto. The Carve-Out and the DIP Loans may not be used to investigate or challenge the validity, perfection, priority, extent, or enforceability of the DIP Facility, or the liens or security interests securing the DIP Facility. Any funding of the Carve-Out shall constitute advances under the DIP Facility secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim DIP Order, the Final DIP Order, the Bankruptcy Code and applicable law. The Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Facility. All amounts owed to Debtor’s Professionals under the Carve-Out must be allowed by order of the Bankruptcy Court. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clause (b). For purposes of the foregoing, “<u>Carve-Out Notice</u>” shall mean a written notice delivered by the DIP Lender to the Borrower and its counsel, the Office of the United States Trustee and the Subchapter V Trustee, which notice may be delivered following the occurrence and during the continuance of an Event of Default.
Waiver/Modification of Automatic Stay	The automatic stay under section 362(a) of the Bankruptcy Code is modified as necessary to effectuate all of the terms and provisions of the Order, including, without limitation, to authorize the Debtor to

Material Provision	Summary Description of Material Provision
Fed. R. Bankr. P. 4001(c)(1)(B)(iv) Local Rule 4001-2(a)(i)(S) Interim Order, ¶ 20	make, and DIP Lender to retain and apply, payments in accordance with the terms of the Order.
Release Fed. R. Bankr. P. 4001(c)(1)(B) DIP Term Sheet: <u>Releases and Stipulations p.7-8</u>	Subject to the right of other parties in interest with standing, the Borrower shall release and waive any such claims, including affirmative causes of action and objections to claims, with respect to the DIP Lender and each of its affiliates, advisors, investment managers, employees, officers, directors, agents, subagents, and representatives, in each case.
Stipulations of the Debtor Local Rule 4001-2(a)(i)(Q) DIP Term Sheet: <u>Releases and Stipulations p.7-8</u>	Subject to the right of other parties in interest with standing, the Borrower shall acknowledge that no affirmative claims exist with respect to the DIP Lender, and each of its affiliates, advisors, investment managers, employees, officers, Pursuant to section 363(k) of the Bankruptcy Code, the DIP Lender shall have the exclusive right to credit bid the DIP Obligations with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral.
Binding Effect of the Debtor's Stipulations on Third Parties Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(Q)	None.
Challenge Period	None.

Material Provision	Summary Description of Material Provision
Fed. R. Bankr. P. 4001(c)(1)(B) Local Rule 4001-2(a)(i)(Q)	
Limitation on Charging Expenses Against Collateral /Section 506(c) Waiver Fed. R. Bankr. P. 4001(c)(1)(B)(x) Local Rule 4001-2(a)(i)(T), (V) DIP Term Sheet: <u>Releases and Stipulations p.7-8</u>	The Final DIP Order shall also prohibit the assertion of claims under section 506(c) of the Bankruptcy Code against the DIP Lender and provide that the DIP Lender and its counsel, advisors and consultants shall be entitled to the benefit a “good faith” finding pursuant to section 364(e) of the Bankruptcy Code.
Section 552(b) Waiver Local Rule 4001-2(a)(i)(W)	None.
Provisions that Limit the Court’s Discretion Local Rule 4001-2(a)(i)(C)	None.
Liens on Unencumbered Assets Fed. R. Bankr. P. 4001(c)(1)(B)(i)	The DIP Lender shall have a valid and perfected lien on and security interest in the DIP Collateral with the priority described herein under the terms of the Interim DIP Order.

Material Provision	Summary Description of Material Provision
Local Rule 4001-2(a)(i)(G) DIP Term Sheet: <u>Conditions Precedent to the DIP Facility</u> p.11 Interim Order, ¶ 12	
Milestones Local Rule 4001-2(a)(i)(H) DIP Term Sheet: <u>Milestones</u> p.5 Interim Order, ¶ 17	Failure to satisfy any of the following milestones (each, a “<i>Milestone</i>”) by the date specified for such Milestone shall constitute an immediate event of default under the DIP Facility: (a) On or before April 30, 2024, entry of the Final DIP Order in a form acceptable to the DIP Lender; (b) On or before May 26, 2024 (the “<u>Plan Filing Date</u>”), filing of a plan in a form acceptable to the DIP Lender; (c) Within 40 days of the Plan Filing Date, entry of a confirmation order, confirming a plan acceptable to the DIP Lender (the “<u>Confirmation Date</u>”); (d) Within 30 days of the Confirmation Date, substantial plan consummation and occurrence of the plan’s effective date.
Prepayment Penalty Local Rule 4001-2(a)(i)(I) DIP Term Sheet: <u>Optional Prepayments</u> p.9	The Borrower may, upon at least one business days’ notice, prepay in full or in part, the DIP Facility, without premium or penalty. Once repaid, DIP Loans may not be re-borrowed.
Joint Liability Local Rule 4001-2(a)(i)(J)	None.
Payment of DIP Lender Party’s Fees Without Review Local Rule 4001-2(a)(i)(K)	All premiums, fees and documented out of pocket fees and expenses (including reasonable and documented fees and expenses of counsel and financial advisors) required to be paid to the DIP Lender on or before the Closing Date for which invoices have been presented shall have been paid.

Material Provision	Summary Description of Material Provision
DIP Term Sheet: <u>Conditions Precedent to the DIP Facility</u> <u>p.11</u> Interim Order, ¶ 5	
Use of Estate Funds for Investigations Local Rule 4001-2(a)(i)(L)	None.
Cross-Collateralization and Administrative Expense Status Local Rule 4001-2(a)(i)(N)	None.
Roll Up Local Rule 4001-2(a)(i)(O)	None.
Non-Consensual Priming Liens Local Rule 4001-2(a)(i)(P)	None.
Provisions Approving All Terms of the Loan Agreement Local Rule 4001-2(a)(i)(R)	None.
Provisions Limiting Arguments	None.

Material Provision	Summary Description of Material Provision
Local Rule 4001-2(a)(i)(T)	
Liens on Avoidance Actions Local Rule 4001-2(a)(i)(U) Interim Order, ¶ 12	Subject to entry of a Final DIP Order.
Marshalling Waiver Local Rule 4001-2(a)(i)(X) Interim Order, ¶25	Subject to entry of a Final DIP Order.
Use of Prepetition Loans to Pay Prepetition Debt Local 4001-2(a)(i)(E)	None.
Security and Priority Status Fed. R. Bankr. P. 4001(c)(1)(B)(i),(ii),(iii) Interim Order, ¶ 12	12. As security for the DIP Obligations, and as provided in the DIP Documents and this Interim DIP Order, the DIP Lender, shall have (effective and continuing, without the necessity of the execution, filing, and/or recordation of mortgages, security agreements, control agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements, or otherwise) (a) pursuant to Bankruptcy Code §§ 364(c)(2), 364(c)(3), and 364(d)(1), valid, binding, fully perfected, enforceable, and non-avoidable first priority priming liens on and security interests in all now owned or hereafter acquired assets and property of the Debtor, and any and all rents, issues, products, offspring, proceeds, and profits generated by any item of such collateral, without the necessity of any further action of any kind or nature by the DIP Lender in order to claim or perfect such rents, issues, products, offspring, proceeds, and/or profits, including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights,

Material Provision	Summary Description of Material Provision
	trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds, (b) all owned real property interests and all proceeds of leased real property, (c) subject to entry of a Final DIP Order, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state or federal law equivalents, and the proceeds thereof, and (e) subject to entry of a Final DIP Order, the Debtor's rights under Bankruptcy Code §§ 506(c) and 550 and the proceeds thereof (collectively, the "DIP Collateral"); provided, the DIP Liens are senior and superior in priority to all other secured and unsecured creditors of the Debtor's estate, subject only to the Carve-Out (as defined below).
Cash Collateral Fed. R. Bankr. P. 4001(c)(1)(B)(ii) L.R. 4001-2(a)(ii) Interim Order, ¶7	The Debtor is hereby authorized, solely in accordance with the Budget and the terms and conditions of the Order, to use all Cash Collateral in order to permit, among other things, the orderly continuation of the operation of its business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to administer this Chapter 11 Case, and to satisfy other working capital and operational needs.
Non-Consensual Priming Liens Local 4001-2(a)(i)(F)	None.
Representations and Warranties Fed. R. Bankr. P. 4001(c)(1)(B) DIP Term Sheet: <u>Additional</u> <u>Affirmative</u> <u>Covenants/</u>	The DIP Term Sheet contains representations and warranties customarily found in loan agreements for similar debtor in possession financings, including, without limitation, with respect to collateral standing, organization in good standing, validity of agreements, and compliance with laws.

Material Provision	Summary Description of Material Provision
<u>Additional Negative Covenants p.9-11</u>	
Indemnification Fed. R. Bankr. P. 4001(c)(1)(B)(ix) DIP Term Sheet: <u>Indemnification p.14</u> Interim Order, ¶19	Borrower shall indemnify the DIP Lender and its affiliates and their respective advisors, investment managers, employees, officers, directors, attorneys, consultants, agents, subagents, and representatives in relation to the DIP Facility and the DIP Orders, except to the extent arising solely out of fraud or willful misconduct of DIP Lender.
Releases and Waivers Fed. R. Bankr. P. 4001(c)(1)(B) (iv), (v), (vii), (viii), (x) DIP Term Sheet: <u>Releases and Stipulations p.7-8</u>	Subject to the right of other parties in interest with standing, the Borrower shall (i) acknowledge that no affirmative claims exist with respect to the DIP Lender, and each of its affiliates, advisors, investment managers, employees, officers, directors, agents, subagents, and representatives, in each case, with respect to any matters, and (ii) release and waive any such claims, including affirmative causes of action and objections to claims, with respect to the DIP Lender and each of its affiliates, advisors, investment managers, employees, officers, directors, agents, subagents, and representatives, in each case. The Final DIP Order shall also prohibit the assertion of claims under section 506(c) of the Bankruptcy Code against the DIP Lender and provide that the DIP Lender and its counsel, advisors and consultants shall be entitled to the benefit a “good faith” finding pursuant to section 364(e) of the Bankruptcy Code. Pursuant to section 363(k) of the Bankruptcy Code, the DIP Lender shall have the exclusive right to credit bid the DIP Obligations with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral.
Establishment of Deadlines Fed. R. Bankr. P. 4001(c)(1)(B) (vi)	None.
Granting of a Lien on any Claim or Cause of Action Fed. R. Bankr. P. 4001(c)(1)(B) (xi)	None.

BASIS FOR RELIEF

A. THE REQUESTED RELIEF SHOULD BE GRANTED PURSUANT TO SECTIONS 364(c) AND 364(d)(1) OF THE BANKRUPTCY CODE

23. As set forth above, the Debtor's ability to maximize the value of its estate and successfully navigate the Chapter 11 Case hinges upon it being able to access postpetition financing. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business, and (c) obtaining credit with specialized priority or on a secured basis. Pursuant to section 364(c) of the Bankruptcy Code, if a debtor cannot obtain postpetition credit on an unsecured basis, a court may authorize such debtor to obtain credit or incur debt that is entitled to super-priority administrative expense status, secured by a senior lien on unencumbered property or secured by a junior lien on encumbered property. *See* 11 U.S.C. § 364(c).

24. Under section 364 of the Bankruptcy Code, courts also may authorize postpetition credit secured by a senior or equal lien on encumbered property if the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) of the Bankruptcy Code provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the [debtor] is unable to obtain credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

I. The Debtor Has Exercised Its Business Judgment in Entering Into the DIP Facility And Satisfies the Heightened Scrutiny Required for an Insider

25. A debtor’s decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is generally governed by the business judgment standard. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“Cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest.”); *see also In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, *inter alia*, an exercise of “sound and reasonable business judgment”); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivable facility and asset-based facility were approved because they “reflect[ed] sound and prudent business judgment . . . [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors.”).

26. However, when a transaction is between a debtor and its insider, “courts apply a ‘heightened scrutiny’ test in assessing the bona fides of a transaction among a debtor and an insider of the debtor.” *In re LATAM Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020). “A claim arising from the dealings between a debtor and an insider is to be rigorously scrutinized by the courts.” *Schubert v. Lucent Techs. Inc. (In re Winstar Commc’ns, Inc.)*, 554 F.3d 382, 412 (3d Cir. 2009) (*quoting Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991)).

27. In seeking to enter into the DIP Facility, the Debtor has not only exercised sound business judgment but has also satisfied the heightened scrutiny test for entering into transactions with insiders. The chairman of the Debtor’s board of directors, who owns a material amount of

the equity of the DIP Lender, recused himself from negotiating and voting on approval of the DIP Facility.

28. The use of its current cash reserves and reliance on business operations is insufficient to meet the Debtor's working capital needs to operate its business in the ordinary course and simultaneously navigate, and emerge from, the Chapter 11 Case. As detailed in the DIP Financing Declaration, there is an urgent need for DIP Financing because the Debtor's current finances are insufficient to allow the Debtor to continue to operate its business and meet its obligations in the Chapter 11 Case.

29. Further, the Debtor solicited DIP financing proposals from the DIP Lender and three other distressed investors/financing parties and received only one (1) DIP financing proposal from the DIP Lender. Therefore, following reasoned business judgment, it is clear the DIP Term Sheet was the best offer obtainable under the circumstances.

30. The Debtor engaged in arm's length negotiations with the DIP Lender and further improved the terms of the DIP Facility. The DIP Term Sheet contains terms and conditions that are the best available and provides the Debtor with sufficient liquidity to effectively operate the Debtor's business through the Chapter 11 Case and make necessary administrative payments. This Court has previously approved similar debtor-in-possession financing agreements where the debtor was not able to obtain postpetition financing under other conditions. *See, e.g., In re Lunya Co.*, Case No. 23-10783 (Bankr. D. Del. Oct. 5, 2023); *In re Imris, Inc.*, Case No. 15-11133 (Bankr. D. Del. May 25, 2015); *In re Cal Dive Int'l, Inc.*, Case No. 15-10458 (Bankr. D. Del. April 20, 2015); *In re Digital Domain Media Grp., Inc.*, Case No. 12-12568 (BLS) (Bankr. D. Del. Nov. 7, 2012); *In re Real Mex Restaurants, Inc.*, Case No. 11-13122 (BLS) (Bankr. D. Del. Nov. 9, 2011);

In re Landsource Communities Dev. LLC, Case No. 08-11111 (KJC) (Bankr. D. Del. July 21, 2008).

31. The funds provided by the DIP Facility are essential to enable the Debtor to continue to operate during the course of this Chapter 11 Case and allow it to emerge from bankruptcy. Indeed, failure to obtain approval of the DIP Facility potentially would lead to a wind-down of the Debtor's business operations which, in turn, would adversely affect its creditors and the estate.

32. Accordingly, pursuant to sections 364(c) and (d) of the Bankruptcy Code, the Debtor respectfully submits that it should be granted authority to obtain financing from the DIP Lender on the terms set forth in the DIP Term Sheet.

II. The DIP Facility Represents the Best Financing Available.

33. A debtor seeking financing under section 364 of the Bankruptcy Code must make a reasonable effort to seek other sources of unsecured credit, but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37–40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”).

34. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988),

aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep't Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

35. As discussed above and in the DIP Financing Declaration, the Debtor conducted a marketing process to solicit financing proposals. The DIP Lender proposed the postpetition financing facility with the only available terms and conditions under the circumstances, which address the Debtor's working capital needs and permits the Debtor to successfully navigate the Chapter 11 Case. As noted above, no other entity responded to the Debtor's request for a financing proposal. Postpetition financing is not otherwise available without granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with the security interests in and the liens upon the DIP Collateral pursuant to section 364(c) and (d) of the Bankruptcy Code. The Debtor obtained the necessary postpetition financing needed on terms it believes to be favorable and reasonable. Accordingly, the Debtor's efforts to obtain postpetition financing satisfy the statutory requirements of section 364(c) of the Bankruptcy Code.

III. The DIP Facility is Necessary to Maintain the Debtor's Ongoing Business Operations and Successfully Navigate the Chapter 11 Case.

36. The DIP Facility, if approved, will provide essential working capital, allowing the Debtor to maintain its ongoing business operations. Without the DIP Facility, the Debtor will not be able to continue its operations while funding the attendant costs of being in bankruptcy.

37. In addition, the DIP Facility will provide the Debtor's various constituencies, including employees, vendors, and service providers, with confidence in the Debtor's ability to maintain operations while working through the Chapter 11 Case.

38. If the relief sought in this Motion is denied or delayed, the Debtor's ability to receive a discharge and conclude the Chapter 11 Case will be put at risk but, most likely, the Debtor will be forced to cease operations. Accordingly, the DIP Facility is necessary to maximize value for the Debtor's estate and inure to the benefit of creditors and all parties in interest.

IV. The Terms of the DIP Facility Are Fair, Reasonable, and Adequate Under the Circumstances.

39. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record at 740:4–6, In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions reasonable here and now.”).

40. The terms and conditions of the DIP Facility were negotiated in good faith and at arm's length among the parties, culminating in the DIP Term Sheet that is designed to provide the Debtor with essential working capital and maintain the Debtor's ongoing business operations while working towards emerging from the Chapter 11 Case. Indeed, when viewed in its totality, the DIP Facility reflects the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and is supported by fair consideration.

V. The Priming of Liens Should be Approved

41. As previously mentioned, if a debtor is unable to obtain credit under the provisions of section 364(c) alone, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien." 11 U.S.C. § 364(d). To justify a priming lien, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *See In re Snowshoe Co.*, 789 F.2d at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996). "Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process." *Id.* (quoting *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)).

42. The Debtor has no secured debt, but out of an abundance of caution, the DIP Lender has requested a priming lien in substantially all of the Debtor's assets. As far as the Debtor is aware, there is no secured party that will suffer from a priming lien. Accordingly, to the extent the DIP Facility affords the DIP Lender a priming lien, such priming lien should be approved.

VI. Section 364(e) Protections Should Apply to the DIP Facility.

43. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor's estate, and its right in any lien securing those loans, even if the authority of the trustee to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

44. As explained herein, the DIP Financing is the result of the Debtor's reasonable and informed determination that the DIP Lender offered favorable terms on which to obtain needed postpetition financing, and of arm's length, good-faith negotiations between the Debtor and the DIP Lender. The terms and conditions of the DIP Financing are reasonable and appropriate under the circumstances, and the proceeds of the DIP Financing will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Financing other than as described herein. Accordingly, the Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

B. THE DEBTOR'S REQUEST FOR USE OF CASH COLLATERAL IS APPROPRIATE.

45. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of this title and unless the court orders otherwise, the [debtor] may enter into

transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

23. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtor to use cash collateral as long as the applicable secured creditors consent or are adequately protected. *See In re McCormick*, 354 B.R. 246, 251 (Bankr. C D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the Court that the secured creditor's interest in the cash collateral is adequately protected). "Cash Collateral" is defined as, "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a).

24. The Debtor has an urgent need for the immediate use of the Cash Collateral pending the hearing on this Motion and seeks to use Cash Collateral, to which the DIP Lender has consented. The Debtor requires the use of the Cash Collateral in order to effect the orderly continuation of the operation of its business, maintain business relationships with vendors, suppliers and customers, administer this Chapter 11 Case, and to satisfy other working capital and operational needs. Because such use is essential to the preservation of the Debtor's estate and the Debtor's secured lender has consented, the Court should approve the Debtor's use of Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

C. MODIFICATION OF THE AUTOMATIC STAY ON A LIMITED BASIS IS WARRANTED.

25. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to the extent necessary to permit the DIP Lender to exercise, upon the occurrence of a Termination Event, all rights and remedies provided for in the

DIP Term Sheet and the Order, and to take various actions without further order of or application to the Court.

26. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the Debtor's business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated by the DIP Loan Documents and the proposed DIP Orders.

D. SCHEDULING A FINAL HEARING.

27. The Debtor is contemporaneously filing a motion to shorten notice of the hearing on the Motion.

28. In addition, the Debtor is requesting the Final Hearing to be held more than fourteen days after service of the Motion as required by Bankruptcy Rule 4001 and Local Rule 9006-1.

29. Bankruptcy Rules 4001(b) and (c) provide that a hearing on a motion to obtain credit under section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion.

30. Further, as a default, Local Rule 9006-1(c)(ii) provides, "the deadline for objection(s) shall be no later than seven (7) days before the hearing date." Del. Bank. L.R. 9006-1(c)(ii).

31. The Debtor respectfully submits that allowing the Motion to be considered on shortened notice at a hearing on March 19, 2024 at an interim hearing is reasonable and appropriate under the circumstances and that a Final Hearing be scheduled to consider entry of the Final DIP Order.

E. WAIVER OF BANKRUPTCY RULE 6004(h).

32. The Debtor believes an efficient and expeditious approval and implementation of the DIP Facility is in the best interests of its creditors and other parties in interest. Accordingly, the Debtor seeks waiver of the 14-day stay of orders authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Notice

33. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Subchapter V Trustee; (iii) the Debtor's twenty (20) largest unsecured creditors; and (iv) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtor requests entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: March 14, 2024
Wilmington, Delaware

**PASHMAN STEIN WALDER
HAYDEN, P.C.**

/s/ Joseph C. Barsalona II
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-and-

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*Counsel to the Debtor and
Debtor in Possession*

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Smallhold, Inc.

Debtor.¹

Chapter 11

Case No. 24-10267 (CTG)

Re: D.I. _

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364,
AND 507, BANKRUPTCY RULES 2002, 4001, 6004, AND 9014, AND LOCAL
RULE 4001-2 (I) AUTHORIZING THE DEBTOR TO USE CASH COLLATERAL
AND OBTAIN POST-PETITION FINANCING, (II) GRANTING LIENS AND
PROVIDING SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) GRANTING ADEQUATE PROTECTION, (IV) SCHEDULING A
FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above captioned debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 case (the “Chapter 11 Case” or “Case”), pursuant to sections 105(a), 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(d)(1), 364(e), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking, among other things, entry of an interim order (an “Interim DIP Order”):

i. Authorizing the Debtor to obtain postpetition financing, consisting of senior secured superpriority, multi-draw term loans (the “DIP Loan(s)”, and together with all other obligations under the DIP Documents (as defined below), the “DIP Obligations”) to be advanced and made available to the Debtor in the aggregate maximum principal amount of **\$900,000.00** (such amount, the “Committed Amount”; such facility, the “DIP Facility”) from Monomyth

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Sponsor Group, LLC (the “DIP Lender”) consistent with the terms and conditions contained in the Term Sheet attached hereto as Exhibit 1 (with such changes or amendments, if any, as were or may be made with the agreement of the DIP Lender prior to or as a result of the Interim Hearing (as defined herein) and as amended, supplemented or otherwise modified from time to time in accordance with the terms and conditions set forth herein, the “Term Sheet”), and the Approved Budget (as defined below and together with the Term Sheet and any other document or instrument executed and/or delivered in connection with the DIP Facility, the “DIP Documents”) (A) to pay certain costs, fees, and expenses related to the Chapter 11 Case as provided for in this Interim Order; and (B) to provide working capital and for other general corporate purposes of the Debtor;

ii. Authorizing the Debtor to execute and enter into the DIP Documents and to perform all such other and further acts as may be required in connection with the DIP Documents, including the DIP Obligations, and all instruments, security agreements, assignments, pledges, mortgages, reaffirmations and other documents referred to therein or requested by the DIP Lender to give effect to the terms thereof;

iii. Authorizing the Debtor to use proceeds of the DIP Facility as permitted in the DIP Documents and in accordance with this Interim DIP Order;

iv. Authorizing the Debtor to grant, and granting, superpriority administrative expense claims status pursuant to Bankruptcy Code § 364(c)(1) to the claims of the DIP Lender in respect of the DIP Obligations;

v. Granting liens on and security interests in the DIP Collateral (as defined herein) as follows: (a) pursuant to Bankruptcy Code §§ 364(c)(2) and (d), valid, perfected, enforceable, and non-avoidable first priority priming liens on and security interests in all now owned or hereafter acquired assets and property of the Debtor, and (b) pursuant to Bankruptcy Code § 364(c)(3), valid,

perfected, enforceable, and non-avoidable second priority or other junior liens on and security interests in all now owned or hereafter acquired assets and property of the Debtor, in each case on the terms set forth in the DIP Documents;

vi. Modifying the automatic stay pursuant to Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim DIP Order and the DIP Documents;

vii. Scheduling a final hearing to consider entry of a final order (the “Final DIP Order”) authorizing, among other things, the Debtor to obtain financing under the DIP Documents and continue using cash collateral; and

viii. Granting the Debtor such other and further relief as is just and equitable.

The Court having held a hearing on the Motion on March [19], 2024 (the “Interim Hearing”); the Court having considered all objections, if any, to the Motion; and upon the record made (a) by the Motion and the exhibits attached thereto; (b) the *Declaration of Tariq Jawad in Support of Debtor’s Emergency Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507, (I) Authorizing the Debtor to Obtain Secured Priming Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, and (c) at the Interim Hearing, and after due deliberation and consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND CONCLUDED THAT:³

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. Pursuant to Bankruptcy Rule 7052, to the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. Statements made by the Court from the bench during the Final Hearing shall constitute additional conclusions of law and findings of fact, as appropriate.

A. On February 18, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief with the Court under Subchapter V of Chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate and maintain its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over the Chapter 11 Case and the Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 Case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has authority to enter this Interim DIP Order consistent with Article III of the United States Constitution.

C. Sufficient and adequate notice of the Motion and entry of this Interim DIP Order has been given pursuant to Bankruptcy Code §§ 102(1) and 364(c) and (d) and Bankruptcy Rules 2002 and 4001(c) to all entities entitled thereto such that no other or further notice of the Motion or of the entry of this Interim DIP Order need be provided to any entity.

D. The Debtor hereby admits, stipulates and agrees that an immediate and ongoing need exists for the Debtor to obtain the DIP Facility and borrow the DIP Loans in order for the Debtor to confirm a chapter 11 plan (a “Plan”) or to market substantially all of its assets for a sale (a “Sale”) and maximize the value of its business and assets as debtor in possession under chapter 11 of the Bankruptcy Code through, among other things: the orderly continuation of the operation of their businesses; maintenance of business relationships with vendors, suppliers, and customers; paying payroll obligations; satisfaction of other working capital and operational needs; and achieving the milestones and accomplishing the other acts necessary to be in a position to confirm a Plan or consummate a Sale. The Debtor does not have sufficient available resources of working capital to operate its business in this Chapter 11 Case in the ordinary course without postpetition

financing. The Debtor's ability to maintain business relationships with vendors, to pay employees, and otherwise to fund operations is essential to the Debtor's viability and preservation of the going-concern value of its business and successful reorganization.

E. The Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1) as an administrative expense, and the Debtor is unable to obtain the postpetition financing that it needs on terms more favorable than those provided in the Term Sheet. Without limiting the foregoing, postpetition financing is not available to the Debtor without the Debtor granting to the DIP Lender the DIP Liens and the Super-Priority Claims (as defined below) provided under the Term Sheet and this Interim DIP Order.

F. The DIP Facility has been negotiated in good faith and at arms-length between the Debtor and the DIP Lender. Any credit extended and loans made to the Debtor pursuant to the Term Sheet and this Interim DIP Order shall be deemed to have been extended, issued, or made, as the case may be, in good faith as required by, and within the meaning of, Bankruptcy Code § 364(e), and the DIP Lender is entitled to the protections of Bankruptcy Code § 364(e).

G. The use of cash collateral and extension of credit under the DIP Facility is fair and reasonable and reflects the Debtor's exercise of prudent business judgment consistent with its fiduciary duties. The DIP Lender has provided fair, adequate, and sufficient consideration that constitutes reasonably equivalent value for the DIP Liens conveyed to, and the rights, protections, and benefits obtained by, the DIP Lender under this Interim DIP Order and under the DIP Documents.

H. Entry of this Interim DIP Order is in the best interests of the Debtor's estate and creditors because its implementation, among other things, will allow for the immediate availability to the Debtor of working capital to use cash collateral and to borrow **\$300,000.00** on an interim

basis to avoid immediate and irreparable harm and will enhance the Debtor's prospects for a potential marketing process for the sale of substantially all of its assets and/or confirmation of a Plan.

I. The DIP Lender is willing to provide the DIP Facility to the Debtor, but only upon the terms and conditions set forth in the DIP Documents and this Interim DIP Order. Absent entry of this Interim DIP Order, the DIP Lender would not provide the DIP Facility but for the terms and conditions set forth in this Interim DIP Order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. Any objections to the Motion or to entry of this Interim DIP Order that have not been withdrawn or otherwise resolved are hereby OVERRULED.
3. The execution and delivery of the Term Sheet and other DIP Documents by the Debtor is authorized and approved. Further, the Debtor is expressly authorized and directed to (a) execute and deliver to the DIP Lender any other document of any kind required to be executed and delivered in connection with the Term Sheet and the other DIP Documents; (b) take any action to carry out the intent and purpose of the Term Sheet and other DIP Documents, including all such actions to create, protect, and perfect the DIP Liens in favor of the DIP Lender, and (c) comply with and perform all of the terms and conditions contained in the Term Sheet and other DIP Documents. Upon execution and delivery of the Term Sheet and entry of this Interim DIP Order, the DIP Documents shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor and its estate and any successor trustee, in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Documents as approved under this Interim DIP Order shall be stayed, restrained, voided, voidable, or recoverable under the

Bankruptcy Code or applicable nonbankruptcy law, except to the extent this Interim DIP Order expressly provides otherwise.

4. The Debtor is expressly authorized to borrow from the DIP Lender, on an interim basis up to **\$300,000.00**, and, pending entry of the Final DIP Order (as defined below), a maximum principal amount of the DIP Loans outstanding up to **\$900,000.00**, on the terms and conditions set forth in the DIP Documents and this Interim DIP Order.

5. The DIP Obligations are subject to (i) a Commitment Fee equal to one percent (1%) of the Committed Amount and (ii) interest at the annual rate of 17.0% per annum, subject to the adjustments included in the Term Sheet ("Interest"). Accrued Interest earned shall be payable monthly. Principal and accrued, unpaid Interest will be payable at the Maturity Date (as defined below). Upon the closing of the DIP Facility, the Facility Fee shall accrue to the benefit of the DIP Lender and shall be fully earned and payable at the Maturity Date. The fees and expenses relating to the DIP Facility, including the Commitment Fee and all other fees associated with the DIP Facility, are authorized and approved for payment without further order of the Court. In addition to the Commitment Fee, the Debtor is authorized and directed to pay the reasonable and documented costs and expenses of the DIP Lender associated with the negotiation, preparation, closing, execution, delivery, administration, and monitoring of the DIP Documents and DIP Loan and any amendment or waiver with respect thereto, as well as proceedings before the Court relating to the DIP Facility or this Chapter 11 Case (including, without limitation, the reasonable fees, disbursements, and other charges of counsel, financial advisors, and other professionals and advisors) (the "DIP Lender Expenses"). The DIP Lender Expenses shall be payable to the extent consistent with, and permitted under the amounts projected by, the Approved Budget (as it may be amended). The DIP Lender shall provide copies of its professionals' respective invoices reflecting

their professional costs, fees, and expenses incurred in connection with the DIP Documents (edited to delete any attorney-client communications, attorney work product, or other confidential information) to the Debtor, the Subchapter V Trustee, and the United States Trustee. Any such party may object to the reasonableness of any such costs, fees, and expenses. However, any such objection shall be forever waived and barred, and the Debtor shall promptly pay such invoiced DIP Lender Expenses, unless, within ten (10) calendar days of receipt of the invoice to which the objection relates or such later date as agreed to by the DIP Lender: (1) the objection is served upon the DIP Lender and its counsel; and (2) the objection describes with particularity the items or categories of fees, costs, and expenses that are the subject of the objection and provides the specific basis of the objection to each such item or category of fees, costs, and expenses. To the extent such objection cannot be resolved, the objection shall be filed with the Court and set for a hearing. Any objection to the fees, costs, and expenses set forth on any such invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs, and expenses which are the subject of such objection. The disallowance of any such fees and expenses shall not affect the DIP Lender's right to collect such amounts from any person or entity other than the Debtor.

6. The DIP Lender Expenses are not subject to the provisions of sections 327, 328, 329, 330, or 331 of the Bankruptcy Code and will be paid pursuant to this Interim DIP Order without further order of this Court, except in the event the Court is required to adjudicate a dispute relating to payment of the DIP Lender Expenses.

7. The Debtor is hereby authorized to use Cash Collateral and proceeds of the DIP Loans in accordance with the budget approved by the DIP Lender (the "Approved Budget"). The initial Approved Budget is attached as **Exhibit 2** hereto. The Debtor shall provide to the DIP

Lender on or before 5:00 p.m. New York City time on Thursday of every other week, starting on [March 28, 2024], (a) an updated 13-week forecast (each, a “13-Week Forecast”) for the current week then ended and the immediately following consecutive 12 weeks (collectively, 13 weeks), set forth on a weekly basis in a format consistent with the Approved Budget and (b) a Variance Report (as defined below). As of any date for which a Variance Report is delivered, the Debtor shall not permit (i) the amount of receipts in any line item during such Testing Period to be less than 90% of the amount of receipts for such line item as set forth in the Approved Budget for such Testing Period or (ii) the amount of disbursements (for the avoidance of doubt, excluding professional fees, which must be no more than 100% of the amount set forth in the Approved Budget for such Testing Period) in any line item during such Testing Period to be greater than 110% of the amount of disbursements for such line item as set forth in the Approved Budget for such Testing Period (the “Budget Compliance Covenant”) (the “Test Period”) or (y) “Total Operating Receipts” to be less than 90% of the amount shown for “Operating Receipts” in the Variance Baseline Amount on a rolling 4-week basis. On or before 5:00 p.m. New York City time on Thursday of every other week, starting on [March 28, 2024], the Debtor shall deliver (a) a supplement to the initial Approved Budget (or the previously supplemented Approved Budget, as the case may be), covering the subsequent 13-week period that commences with the week immediately following the date of delivery of the supplemental budget (and which, for the avoidance of doubt, cannot modify previous weeks), consistent with the form and level of detail set forth in the initial Budget and otherwise in form and substance reasonably acceptable to, and consented to by the DIP Lender in its discretion (each such supplemental budget, an “Updated Budget”), (b) an actual consolidated cash flow of the Borrower for the week preceding the first week of such Updated Budget, showing line item variances between actual results and projected

results (if applicable) for such week from the most recent Approved Budget delivered pursuant to clause (a), in each case in a form acceptable to the DIP Lender which (I) shall be approved and certified by the chief financial officer of the Borrower, as being accurate in all material respects (or in the case of the projections, as being projections believed to be reasonable at the time furnished, prepared in good faith based on assumptions believed to be reasonable at the time furnished), and (II) shall (A) show, in the case of clause (a), projected cash receipts and projected cash disbursements, (B) include for such period, in the case of clauses (a) and (b), a summary of collections, disbursements, outstanding checks and interest payments, (C) in the case of clause (b), include a line item variance report setting forth (x) actual results against anticipated results under the Approved Budget for the week in regard to which such accompanying cash flow forecast is being delivered, reported in the aggregate (highlighting key line items) as of the end of such period, (y) variances in dollar amounts and percentages, and (z) a written explanation for all line item variances of greater than 10% for the applicable week, and (D) such other information as the DIP Lender may reasonably request (such items described in this clause (b), the “Variance Report”).

8. [Reserved]

9. Upon an Event of Default (as defined in the Term Sheet) and any applicable notice period, the DIP Lender may direct the Debtor to (or the DIP Lender may directly) instruct all account debtors of future accounts receivable included in the DIP Collateral to make payments directly into accounts satisfactory to the DIP Lender, in which event all such Cash Proceeds (as defined below) shall be applied in accordance with the DIP Documents. As used herein, “Cash Proceeds” means Cash Collateral and other cash coming into the possession or control of the Debtor, including arising from the collection or other conversion to cash of the DIP Collateral,

including cash from the sale of inventory and the collection of accounts receivable, tax refunds, deposits subject to setoff, and insurance proceeds.

10. Following an Event of Default and any applicable notice period, the DIP Lender is authorized to collect upon, convert to Cash Proceeds, and enforce checks, drafts, instruments, and other forms of payment now or hereafter coming into its possession or under their control which constitute DIP Collateral or proceeds of DIP Collateral, subject to the provisions hereof.

11. Following an Event of Default and subject to the Carve-Out, the Debtor will not use or seek to use Cash Proceeds, unless the Debtor obtains an order of the Court approving such use and: (i) the DIP Lender has consented to such order; or (ii) at the time of the entry of such an order, there are no DIP Obligations outstanding, and no obligation of the DIP Lender to extend additional DIP Loans.

12. As security for the DIP Obligations, and as provided in the DIP Documents and this Interim DIP Order, the DIP Lender, shall have (effective and continuing, without the necessity of the execution, filing, and/or recordation of mortgages, security agreements, control agreements, patent security agreements, trademarks security agreements, pledge agreements, financing statements, or otherwise) (a) pursuant to Bankruptcy Code §§ 364(c)(2), 364(c)(3), and 364(d)(1), valid, binding, fully perfected, enforceable, and non-avoidable first priority priming liens on and security interests in all now owned or hereafter acquired assets and property of the Debtor, and any and all rents, issues, products, offspring, proceeds, and profits generated by any item of such collateral, without the necessity of any further action of any kind or nature by the DIP Lender in order to claim or perfect such rents, issues, products, offspring, proceeds, and/or profits, including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory

(wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, fee interests in real property owned by the Debtors, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds, (b) all owned real property interests and all proceeds of leased real property, (c) subject to entry of a Final DIP Order, avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state or federal law equivalents, and the proceeds thereof, and (e) subject to entry of a Final DIP Order, the Debtor's rights under Bankruptcy Code §§ 506(c) and 550 and the proceeds thereof (collectively, the "DIP Collateral"); provided, the DIP Liens are senior and superior in priority to all other secured and unsecured creditors of the Debtor's estate, subject only to the Carve-Out (as defined below).

13. This Interim DIP Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens granted herein, effective as of the Petition Date, without any further action by Debtor or DIP Lender and without the execution, filing or recordation of any financing statements, security agreements, mortgages, certificates or other agreements, documents or instruments. Notwithstanding the foregoing, the Debtor shall execute and deliver to the DIP Lender such financing statements, mortgages, instruments, certificates, agreements and other

documents as the DIP Lender may request from time to time to provide further evidence of the perfection of the DIP Liens, and any such documents filed by the DIP Lender shall be deemed filed as of the Petition Date.

14. In accordance with Bankruptcy Code § 364(c)(1), to the extent the DIP Liens do not satisfy the DIP Obligations, the DIP Obligations shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code §§ 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), or 726 (to the extent permitted by law), and/or 364(c)(1), and any other provision of the Bankruptcy Code (other than section 506(c) of the Bankruptcy Code), and shall at all times be senior to the rights of the Debtor, any chapter 11 trustee, any chapter 7 trustee, or any other creditor in the Chapter 11 Case (the “Super-Priority Claims”); provided, however, that the Super-Priority Claims shall be subject to the Carve-Out. For the avoidance of doubt, the Super-Priority Claims are not payable from credit card receipts or cash proceeds thereof that are not property of the Debtor’s estate.

15. While any portion of the DIP Obligations remains unpaid or any of the DIP Documents remains in effect, the Debtor shall not seek entry of any order approving or authorizing (under Bankruptcy Code §§ 105 or 364, or otherwise) (a) the granting of any lien or security interest in any of the DIP Collateral in favor of any party other than the DIP Lender or (b) the obtaining of credit or the incurring of indebtedness that is entitled to superpriority administrative status, in either case *pari passu* with or superior to that granted to the DIP Lender pursuant to this Interim DIP Order, unless, in connection with any transaction cited in clause (a) or (b) of this Paragraph, such request by the Debtor seeks to authorize and direct that the full amount of the DIP Obligations shall first be paid indefeasibly and in full from the proceeds of the DIP Collateral.

16. The DIP Lender's liens, claims, and security interests in the DIP Collateral and its Super-Priority Claim, shall be subject only to the right to payment of the following (the "Carve-Out"):

- (a) to the extent allowed by the Bankruptcy Court (regardless of whether the order allowing such fees is entered before or after the Carve-Out Notice is received) and in an aggregate amount on a line item basis not exceeding the budgeted amounts for such unpaid professional fees and disbursements as reflected in the Approved Budget, (i) as of the date of delivery of the Carve-Out Notice (as defined below), all accrued and unpaid fees and expenses incurred by persons or firms retained by the Debtor pursuant to sections 327, 328 or 363 of the Bankruptcy Code (the "Debtor's Professionals") and the Subchapter V Trustee and (ii) after the delivery of a Carve-Out Notice, all unpaid fees and expenses incurred by the Debtor's Professionals and the Subchapter V Trustee in an aggregate amount not to exceed \$50,000;
- (b) in the event of a conversion of the Case to a case under chapter 7 of the Bankruptcy Code, allowed fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$20,000; provided, however, no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge to (i) the amount, extent, priority, validity, perfection, or enforcement of the indebtedness of the Borrower owing to the DIP Lender or any of its affiliates, or (ii) liens or security interests in the collateral securing such indebtedness, including challenges to the perfection, priority or validity of the liens granted in favor of the DIP Lender or any of its affiliates with respect thereto.

The Carve-Out and the DIP Loans (or the proceeds thereof) may not be used to investigate or challenge the validity, perfection, priority, extent, or enforceability of the DIP Facility, or the liens or security interests securing the DIP Facility. Any funding of the Carve-Out shall constitute advances under the DIP Facility secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim DIP Order, the Final DIP Order, the Bankruptcy Code, and applicable law. The Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Facility. All amounts owed to Debtor's Professionals under the Carve-Out must be allowed by order of the Bankruptcy Court. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clause (b). For purposes of the foregoing, "Carve-Out Notice" shall mean a written notice delivered by the DIP Lender to the Debtor and its counsel, the Office of the United States Trustee, and the Subchapter V Trustee, which notice may be delivered following the occurrence and during the continuance of an Event of Default. Upon receipt of any Carve-Out Notice, any party in interest may seek an emergency hearing from the Court on any issue, including whether an Event of Default has occurred, within five (5) days of receipt of such notice (the "Remedies Notice Period"). The DIP Lender is prohibited from exercising any remedies with respect to the Interim DIP Order, the DIP Facility, and the Term Sheet during the Remedies Notice Period.

17. Failure to satisfy any of the following milestones (each, a "Milestone") by the date specified for such Milestone shall constitute an immediate Event of Default under the DIP Facility:

- (a) On or before April 30, 2024, entry of the Final DIP Order in a form acceptable to the DIP Lender in its sole discretion;
- (b) On or before May 26, 2024, (the "Plan Filing Date"), filing of a chapter 11 plan in a form acceptable to the DIP Lender in its sole discretion;

- (c) Within 40 days of the Plan Filing Date, entry of a confirmation order, confirming a chapter 11 plan acceptable to the DIP Lender in its sole discretion (the “Confirmation Date”);
- (d) Within 30 days of the Confirmation Date, substantial plan consummation and occurrence of the chapter 11 plan’s effective date.

18. The DIP Facility shall terminate and the DIP Loans and all other DIP Obligations shall mature and be due and owing, upon the DIP Lender’s election, at the earliest to occur of (such date, the “Maturity Date”): (a) the date of the occurrence of an Event of Default under the DIP Facility; (b) the date of the acceleration of any outstanding extension of credit under the DIP Facility; (c) the closing of any Sale of the Debtor’s assets; (d) the effective date of a confirmed chapter 11 plan; (e) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code; (f) the entry of an order dismissing the Case; (g) the entry of an order expanding the powers of the Subchapter V Trustee in the Case; (h) the failure to comply with any of the Milestones; (i) the date of the commencement of the Final Hearing, if this Interim DIP Order is modified at the Final Hearing in a manner unacceptable to the DIP Lender, in its sole discretion, and (j) 180 days after the Petition Date. Written notice of the occurrence of the Maturity Date shall be given by electronic mail (or other electronic means) to counsel to the Debtor, the Subchapter V Trustee, and the Office of the United States Trustee.

19. The Debtor shall indemnify and hold harmless the DIP Lender, and each of its partners, members, officers, directors, employees, affiliates, successors, assigns, agents, counsel, and other advisors (collectively, the “Indemnified Parties”) from and against any and all claims, damages, losses, liabilities, and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party,

in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with (a) the DIP Facility, the transactions contemplated thereby and in the DIP Documents, and any use made or proposed to be made with the proceeds thereof and (b) the Chapter 11 Case, except in either instance for any conduct that is determined by final order to have been the result of gross negligence or intentional misconduct.

20. The automatic stay imposed by Bankruptcy Code § 362(a) is hereby modified, to the extent necessary, to implement and effectuate the terms and conditions of this Interim DIP Order.

21. The Debtor is authorized to perform all acts and execute and comply with the terms of such other documents, instruments, and agreements in addition to the DIP Documents, as the DIP Lender may reasonably require, as evidence of and for the protection of the DIP Obligations, or which otherwise may be deemed reasonably necessary by the DIP Lender to effectuate the terms and conditions of this Interim DIP Order and the DIP Documents. The Debtor and the DIP Lender are hereby authorized to implement, in accordance with the terms of the DIP Documents, any non-material modifications of the DIP Documents without further order of this Court.

22. Upon the indefeasible payment in full in cash, and the termination of, the DIP Facility, the Debtor shall execute and deliver in favor of the DIP Lender a valid and binding termination and release agreement, in form and substance reasonably acceptable to the DIP Lender.

23. Upon the entry of the Final DIP Order, except for the Carve-Out, neither the Debtor nor any estate representative (including any trustee or official committee) will invoke or seek to invoke the surcharge provisions of Section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of Section 552 of the Bankruptcy Code (including, without limitation, the

“equities of the case” exception under Section 552(b) of the Bankruptcy Code) or any other legal or equitable doctrine upon the DIP Agent, the DIP Lender, or any of the DIP Collateral for the benefit of any party in interest, including any Debtor, any official committee, any trustee, or any professionals engaged by any of the foregoing.

24. By executing the DIP Documents or taking any actions pursuant to this Interim DIP Order or the Final DIP Order, the DIP Lender shall not: (a) be deemed to be in control of the operations or liquidation of the Debtor; or (2) be deemed to be acting as a “responsible person” with respect to the operation, management, or liquidation of the Debtor.

25. Upon the entry of the Final DIP Order, the DIP Lender shall not be subject to the equitable doctrine of marshalling or any other similar doctrine with respect to any of the DIP Collateral, as applicable.

26. The DIP Lender shall not be required to file any proof of claim in the Chapter 11 Case for any claim under the DIP Documents, or for any claim allowed herein.

27. Reserved.

28. The DIP Lender’s failure, at any time or times hereafter, to require strict performance by the Debtor (or by any trustee) of any provision of this Interim DIP Order or the DIP Documents shall not waive, affect, or diminish any right of the DIP Lender thereafter to demand strict compliance and performance therewith. No delay on the part of the DIP Lender in the exercise of any right or remedy under this Interim DIP Order, the DIP Documents, the Bankruptcy Code, or applicable nonbankruptcy law shall preclude any other or further exercise of any right or remedy. The DIP Lender shall not be deemed to have suspended or waived any of their rights or remedies under this Interim DIP Order, the DIP Documents, the Bankruptcy Code,

or applicable nonbankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of such party, and directed to the Debtor.

29. Any stay, modification, reversal, or vacation of this Interim DIP Order shall not affect the validity and enforceability of any DIP Obligations of the Debtor to the DIP Lender incurred pursuant to this Interim DIP Order or the validity, priority, or enforceability of any of the DIP Liens and Super-Priority Claims granted to the DIP Lender under this Interim DIP Order. Notwithstanding any such stay, modification, reversal, or vacation, all DIP Liens and Super-Priority Claims granted under this Interim DIP Order, the DIP Loans made pursuant to this Interim DIP Order, and all DIP Obligations incurred by the Debtor pursuant hereto and pursuant to the terms of the DIP Documents prior to the effective date of any such stay, modification, reversal, or vacation shall be governed in all respects by the original provisions of this Interim DIP Order, and the DIP Lender shall be entitled to all the rights, privileges, and benefits, including, without limitation, the DIP Liens, and priorities granted herein with respect to all such DIP Obligations.

30. The provisions of this Interim DIP Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (a) confirming any plan of reorganization in the Chapter 11 Case (and, to the extent not satisfied in full, the DIP Obligations shall not be discharged by the entry of any such order, notwithstanding Bankruptcy Code § 1141(d)); (b) converting the Chapter 11 Case to a chapter 7 case; (c) appointing a chapter 11 trustee, or (d) dismissing the Chapter 11 Case. The terms and provisions of this Interim DIP Order as well as the Super-Priority Claims and DIP Liens granted pursuant to this Interim DIP Order and the DIP Documents shall continue in full force and effect notwithstanding the entry of such order, and such Super-Priority Claims, DIP Liens, and any adequate protection liens shall maintain their

priority as provided by this Interim DIP Order until all of the DIP Obligations are paid indefeasibly and in full, subject to the Carve-Out.

31. The provisions of this Interim DIP Order shall be binding upon and inure to the benefit of the DIP Lender, the Debtor, and their respective successors and assigns, including any trustee appointed or elected in the Chapter 11 Case, whether under chapter 11 or chapter 7.

32. If there is any inconsistency between the terms of the DIP Documents and the provisions of this Interim DIP Order, the provisions of this Interim DIP Order shall control to the extent of such inconsistency.

33. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim DIP Order shall be valid, take full effect, and be enforceable immediately upon entry hereof; there shall be no stay of execution or effectiveness of this Interim DIP Order; and any stay of the effectiveness of this Interim DIP Order that might otherwise apply is hereby waived for cause shown.

34. A hearing to consider entry of the Final DIP Order and final approval of the DIP Facility (the “Final Hearing”) is scheduled for April ____, 2024, at __:___.m. before the Honorable Craig T. Goldblatt, in the United States Bankruptcy Court for the District of Delaware. Within two (2) business days following entry of this Interim DIP Order, the Debtor shall serve or cause to be served by United States mail, first-class postage prepaid, notice of entry of this Interim DIP Order and of the Final Hearing (the “Final Hearing Notice”), together with copies of the Interim DIP Order and the Motion, on (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court, and (c) the Subchapter V Trustee. The Final Hearing Notice shall state that any party-in-interest

objecting to the entry of the proposed Final DIP Order shall file written objections with the Court no later than April ____, 2024, at 4:00 p.m. (prevailing Eastern time), which objections shall be served so as to be actually received on or before such date on: (a) proposed counsel for the Debtor, _____; (b) the Subchapter V Trustee, (c) counsel to the DIP Lender, Greenberg Traurig, LLP, Attn: John D. Elrod, Esq. (elrodj@gtlaw.com) and Dennis Meloro, Esq. (melorod@gtlaw.com); and (d) the Office U.S. Trustee for the District of Delaware. The Final Hearing may be continued from time to time without further notice other than given in open court.

35. The Court has and will retain jurisdiction to enforce this Interim DIP Order according to its terms.

Exhibit 1

Terms and Conditions for
\$900,000 Debtor-In-Possession Credit Facility

Dated as of March 14, 2024

The terms and conditions set forth herein and any related exhibits, schedules and/or annexes (this “Term Sheet”) reflect the terms for an senior secured, superpriority multi-draw term loan debtor-in-possession credit facility (the “DIP Facility”) to be provided by Monomyth Sponsor Group, LLC (“DIP Lender”), for Smallhold, Inc., a Delaware corporation (the “Debtor” or the “Borrower”), in its bankruptcy case filed on February 18, 2024 (the “Petition Date”), under Subchapter V of Chapter 11 of Title 11 of the United States Code, Case No. 24-10267 (the “Bankruptcy Case”). The terms and conditions for the extension of credit described herein are dependent upon, among other things, (i) authorization and approval by the Bankruptcy Court (as defined below) and (ii) internal authorization and approval by the DIP Lender (as defined below). The terms and conditions with respect to such commitments are mutually dependent on each other, and the DIP Lender shall not be obligated to extend credit unless (i) the Bankruptcy Court approves such terms and conditions as a whole and without modification and (ii) the DIP Lender has obtained the necessary internal authorizations and approvals, unless otherwise agreed by the Debtor and the DIP Lender in writing, which may be email. As used herein, “DIP Documents” shall mean the DIP Facility described in this Term Sheet, together with any documents, instruments, or agreements executed or delivered in connection herewith and “DIP Obligations” means all obligations of any kind and nature of the Borrower under the DIP Facility.

Senior Secured, Superpriority, Multi-draw Term Loan DIP Credit Facility Terms

<u>Borrower:</u>	Smallhold, Inc. (“ <u>Debtor</u> ” or the “ <u>Borrower</u> ”), as debtor and debtor-in-possession in the Bankruptcy Case filed with the United States Bankruptcy Court for the District of Delaware (the “ <u>Bankruptcy Court</u> ”).
<u>DIP Lender:</u>	Monomyth Sponsor Group, LLC (including any permitted assignees and successors, the “ <u>DIP Lender</u> ”)
<u>DIP Facility/Availability:</u>	The DIP Lender’s commitment shall consist of a senior secured, superpriority multi-draw term loan facility (the “ <u>DIP Facility</u> ”) to be provided by the DIP Lender to the Borrower in an aggregate principal amount of up to \$900,000 (the “ <u>Commitment</u> ”), of which up to \$300,000 shall be available promptly following the Interim DIP Order Entry Date (defined below). All amounts outstanding under the DIP Facility shall become due and payable on the Termination Date (as defined below) in the priority and on the terms set forth herein and in the DIP Orders.

	Borrowings under the DIP Facility (the “<u>DIP Loans</u>”) shall, subject to the borrowing conditions set forth herein and in the applicable DIP Order, be incurred as follows: (a) in one draw promptly following the Closing Date, DIP Loans in an aggregate principal amount of \$300,000; and (b) following entry of the final order of the Bankruptcy Court approving the DIP Facility (the “<u>Final DIP Order</u>”; and together with the Interim DIP Order; the “<u>DIP Orders</u>”), DIP Loans in additional draws, subject to the Approved DIP Budget and the conditions precedent set forth below, in an aggregate principal amount of up to \$600,000; provided, (i) there shall not be more than one draw in any seven day period, (ii) each draw shall be in a minimum amount of \$100,000, and (iii) no draw (other than the initial borrowing shall exceed \$200,000. Once repaid or prepaid, no portion of the DIP Loans may be reborrowed.
<u>Purposes:</u>	The DIP Facility shall be available for the following purposes, in each case in accordance with the terms of the then-Approved DIP Budget: (a) to fund the Borrower’s working capital requirements, operating expenses, and other line items in accordance with the terms of the Approved DIP Budget (subject to agreed variances) including the reasonable fees and expenses of the Debtor’s Professionals (defined below) and the Subchapter V Trustee assigned to the Bankruptcy Case (the “<u>Subchapter V Trustee</u>”); (b) to pay fees and expenses of the DIP Lender related to the DIP Facility and the Bankruptcy Case, including, without limitation, reasonable out of pocket fees of attorneys and other professional advisors of the DIP Lender, including, without limitation, Greenberg Traurig, LLP, and any financial advisor that may be retained by the DIP Lender. No proceeds of the DIP Facility shall be transferred to, or used by, any entity other than the Borrower, except as permitted under the Approved DIP Budget, and the Interim DIP Order or Final DIP Order, as applicable. No portion of the DIP Facility or the Carve-Out (as defined below) shall be used to assert any claim, cause of action or objection against the DIP Lender or any its affiliates or any of their respective employees, officers, directors, advisors, investment managers, agents and subagents.

<u>Interest Rate:</u>	The DIP Obligations shall bear interest, at any time of determination, at the rate per annum set forth in the following table that corresponds to the two-week average revenue, in each case, determined for the most recently completed two-week period ending prior to the most recent borrowing; provided, that for the period from the Closing Date through the first borrowing thereafter the interest rate shall be equal to 17.0% per annum. The interest rate shall be determined by the Lender promptly after any draw request hereunder. <table border="1" data-bbox="613 552 1464 900"> <tr> <th>Two-week Average Revenue:</th><th>Interest Rate:</th></tr> <tr> <td>≤ \$75,000</td><td>17%</td></tr> <tr> <td>> \$75,000 and ≤ \$100,000</td><td>16%</td></tr> <tr> <td>> \$100,000 and ≤ \$125,000</td><td>15%</td></tr> <tr> <td>> \$125,000</td><td>14%</td></tr> </table> The interest rate shall, at the election of Lender, be increased by 2.0% per annum upon the occurrence and during the continuance of an event of default. Interest shall be calculated on the basis of the actual number of days elapsed in a year of 365 days. Interest shall be payable in cash in immediately available funds monthly in arrears on the first business day of each month and on the Termination Date.	Two-week Average Revenue:	Interest Rate:	≤ \$75,000	17%	> \$75,000 and ≤ \$100,000	16%	> \$100,000 and ≤ \$125,000	15%	> \$125,000	14%
Two-week Average Revenue:	Interest Rate:										
≤ \$75,000	17%										
> \$75,000 and ≤ \$100,000	16%										
> \$100,000 and ≤ \$125,000	15%										
> \$125,000	14%										
<u>Fees:</u>	A fee in the amount of 1.0% times the Commitment shall be fully earned and due and payable on the Closing Date.										
<u>Maturity:</u>	The termination date (the “<u>Termination Date</u>”) of the DIP Facility means the earliest to occur of: (a) 120 days after the Final DIP Order Entry Date (the “<u>Maturity Date</u>”). (b) On April 30, 2024 if a final order approving the DIP Facility is not entered, unless extended by the Borrower and the DIP Lender. (c) The effective date of an acceptable plan. (d) The date of consummation of the sale of all or substantially all of the assets of the Borrower. (e) The date of termination of the Commitments (including as a remedy from an event of default). Upon the Termination Date, the DIP Lender is entitled to immediate										

	payment of any and all amounts owing under the DIP Facility.
<u>DIP Budget; Reporting:</u>	The Borrower has prepared and delivered a rolling 13-week cash flow budget, in form and substance acceptable to, and consented to by, the DIP Lender (attached hereto as <u>Exhibit A</u>, the “<u>Initial DIP Budget</u>”), setting forth all line-item and cumulative receipts and operating disbursements once every two weeks for the period beginning as of the week of the Closing Date through and including the 13th week after such week. The Initial DIP Budget shall be deemed the “<u>Approved DIP Budget</u>” for all purposes of the DIP Facility until superseded by any Updated DIP Budget (as defined below) that subsequently is consented to by the DIP Lender. On or before 5:00 p.m. New York City time on Thursday of every other week, the Borrower shall deliver (a) a supplement to the Initial DIP Budget (or the previously supplemented Approved DIP Budget, as the case may be), covering the subsequent 13-week period that commences with the week immediately following the date of delivery of the supplemental budget (and which, for the avoidance of doubt, cannot modify previous weeks), consistent with the form and level of detail set forth in the Initial DIP Budget and otherwise in form and substance reasonably acceptable to, and consented to by, the DIP Lender in its discretion (each such supplemental budget, an “<u>Updated DIP Budget</u>”), (b) an actual consolidated cash flow of the Borrower for the week preceding the first week of such Updated DIP Budget, showing line item variances between actual results and projected results (if applicable) for such week from the most recent Approved DIP Budget delivered pursuant to clause (a), in each case in a form acceptable to the DIP Lender which (I) shall be approved and certified by the chief financial officer of the Borrower, as being accurate in all material respects (or in the case of the projections, as being projections believed to be reasonable at the time furnished, prepared in good faith based on assumptions believed to be reasonable at the time furnished), and (II) shall (A) show, in the case of clause (a), projected cash receipts and projected cash disbursements, (B) include for such period, in the case of clauses (a) and (b), a summary of collections, disbursements, outstanding checks and interest payments, (C) in the case of clause (b), include a line item variance report setting forth (x) actual results against anticipated results under the Approved DIP Budget for the week in regard to which such accompanying cash flow forecast is being delivered, reported in the aggregate (highlighting key line items) as of the end of such period, (y) variances in dollar amounts and percentages, and (z) a written explanation for all line item variances of greater than 10% for the applicable week, and (D) such other

	information as the DIP Lender may reasonably request (such items described in this clause (b), the “<u>Variance Report</u>”). Upon (and subject to) the approval of any such Updated DIP Budget by the DIP Lender in its sole discretion, such Updated DIP Budget shall constitute the then-approved Approved DIP Budget. To the extent that a proposed Updated DIP Budget is not approved by the DIP Lender, the Initial DIP Budget or last approved Updated DIP Budget shall remain in full force and effect. As of the Friday after the second calendar week ending after the Interim DIP Order Entry Date and on each Friday thereafter (each a “<u>Testing Date</u>” and, as to the first three Testing Dates, the period between the Interim DIP Order Entry Date to the Testing Date and, as to subsequent Testing Dates, the four weeks prior to the Testing Date, a “<u>Testing Period</u>”), the Borrower shall not permit (i) the amount of receipts in any line item during such Testing Period to be less than 90% of the amount of receipts for such line item as set forth in the Approved DIP Budget for such Testing Period or (ii) the amount of disbursements (for the avoidance of doubt, excluding professional fees, which must be no more than 100% of the amount set forth in the Approved DIP Budget for such Testing Period) in any line item during such Testing Period to be greater than 110% of the amount of disbursements for such line item as set forth in the Approved DIP Budget for such Testing Period (the “<u>Budget Compliance Covenant</u>”). The Borrower shall (i) require its attorneys and advisors to have a weekly call with advisors and attorneys of the DIP Lender, at a time to be mutually agreed, (ii) require senior management (including Tariq Jawad) to have calls with the DIP Lender on Mondays of each week (and more frequently if an Event of Default has occurred and is continuing), (iii) upon the request of the DIP Lender, from time to time conduct DIP Lender presentations by senior management (including Tariq Jawad) regarding the business and affairs of the Borrower, and (iv) allow the DIP Lender to have direct access to senior management (including Tariq Jawad) from time to time in its discretion to discuss business and affairs of the Borrower.
<u>Milestones:</u>	Failure to satisfy any of the following milestones (each, a “<i>Milestone</i>”) by the date specified for such Milestone shall constitute an immediate event of default under the DIP Facility: (a) On or before April 30, 2024, entry of the Final DIP Order in a form acceptable to the DIP Lender; (b) On or before May 26, 2024 (the “<u>Plan Filing Date</u>”), filing of a plan in a form acceptable to the DIP Lender;

	(c) Within 40 days of the Plan Filing Date, entry of a confirmation order, confirming a plan acceptable to the DIP Lender (the “<u>Confirmation Date</u>”); (d) Within 30 days of the Confirmation Date, substantial plan consummation and occurrence of the plan’s effective date.
<u>Security and Priority:</u>	As set forth in the Interim DIP Order. Promptly after request by DIP Lender, Borrower agrees to execute and deliver one or more security agreements in form and substance acceptable to DIP Lender.
<u>Carve-Out:</u>	The “<u>Carve-Out</u>” means the sum of: (a) to the extent allowed by the Bankruptcy Court (regardless of whether the order allowing such fees is entered before or after the Carve-Out Notice is received) and in an aggregate amount on a line item basis not exceeding the budgeted amounts for such unpaid professional fees and disbursements as reflected in the Approved DIP Budget, (i) as of the date of delivery of the Carve-Out Notice (as defined below), all accrued and unpaid fees and expenses incurred by persons or firms retained by the Borrower pursuant to sections 327, 328 or 363 of the Bankruptcy Code (the “<u>Debtor’s Professionals</u>”) and the Subchapter V Trustee and (ii) after the delivery of a Carve-Out Notice, all unpaid fees and expenses incurred by the Debtor’s Professionals and the Subchapter V Trustee in an aggregate amount not to exceed \$50,000; (b) in the event of a conversion of the Bankruptcy Case to cases under chapter 7 of the Bankruptcy Code, allowed fees and expenses incurred by a trustee and any professional retained by such trustee, in an aggregate amount not to exceed \$20,000; <u>provided, however</u>, no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge to (i) the amount, extent, priority, validity, perfection or enforcement of the indebtedness of the Borrower owing to the DIP Lender or any of its affiliates, or (ii) liens or security interests in the collateral securing such indebtedness, including challenges to the perfection, priority or validity of the liens granted in favor of the DIP Lender or any of its affiliates with respect thereto. The Carve-Out and the DIP Loans may not be used to investigate or challenge the validity, perfection, priority, extent, or enforceability

	of the DIP Facility, or the liens or security interests securing the DIP Facility. Any funding of the Carve-Out shall constitute advances under the DIP Facility secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim DIP Order, the Final DIP Order, the Bankruptcy Code and applicable law. The Carve-Out shall not reduce the amounts payable to the DIP Lender under the DIP Facility. All amounts owed to Debtor's Professionals under the Carve-Out must be allowed by order of the Bankruptcy Court. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clause (b). For purposes of the foregoing, "<u>Carve-Out Notice</u>" shall mean a written notice delivered by the DIP Lender to the Borrower and its counsel, the Office of the United States Trustee and the Subchapter V Trustee, which notice may be delivered following the occurrence and during the continuance of an Event of Default.
<u>Releases and Stipulations</u>	Subject to the right of other parties in interest with standing, the Borrower shall (i) acknowledge that no affirmative claims exist with respect to the DIP Lender, and each of its affiliates, advisors, investment managers, employees, officers, directors, agents, subagents, and representatives, in each case, with respect to any matters, and (ii) release and waive any such claims, including affirmative causes of action and objections to claims, with respect to the DIP Lender and each of its affiliates, advisors, investment managers, employees, officers, directors, agents, subagents, and representatives, in each case. The Final DIP Order shall also prohibit the assertion of claims under section 506(c) of the Bankruptcy Code against the DIP Lender and provide that the DIP Lender and its counsel, advisors and consultants shall be entitled to the benefit a "good faith" finding pursuant to section 364(e) of the Bankruptcy Code. Pursuant to section 363(k) of the Bankruptcy Code, the DIP Lender shall have the exclusive right to credit bid the DIP Obligations with respect to any bulk or piecemeal sale of all or any portion of the DIP Collateral.
<u>Remedies:</u>	Upon the occurrence of an Event of Default and subject to the opportunity for the Debtor or the Subchapter V Trustee to seek an expedited hearing before the Bankruptcy Court (the "<u>Emergency Hearing</u>"), the DIP Lender shall all remedies available to it under applicable law and the DIP Orders, including, without limitation: (i) delivering a notice of an Event of Default; (ii) charging the default

	rate of interest on the DIP Facility and other outstanding obligations; (iii) terminating the Commitment under the DIP Facility; and (iv) exercising, upon five (5) business days' prior written notice to the Borrower, their rights to realize on any or all DIP Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court. Upon five (5) business days' written notice from the DIP Lender, in its sole and absolute discretion, following an Event of Default but subject to the Emergency Hearing, the automatic stay of section 362 of the Bankruptcy Code shall be terminated without further order of the Bankruptcy Court, without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lender to do any of the following: (i) foreclose on the DIP Collateral; (ii) accelerate all loans and other outstanding obligations under the DIP Facility; and (iii) declare the principal of and accrued interest, premiums, fees and expenses constituting the obligations under the DIP Facility to be due and payable. Section 362 relief from the stay in favor of the DIP Lender shall be embodied in any order approving the DIP Facility and the use of cash collateral. The Bankruptcy Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the DIP Documents, the Interim DIP Order, the Final DIP Order and with respect to the DIP Collateral.
<u>Mandatory Prepayments:</u>	The Borrower shall promptly, and in any event, within one business day, prepay the DIP Obligations in an amount equal to (a) 100% of net insurance and condemnation proceeds, (b) 100% of net cash proceeds from the issuance of post-petition indebtedness not permitted hereunder and (c) 100% of the net cash proceeds of any sale of all or any material portion of the Debtor's assets (without any reinvestment rights or de minimis dollar carveouts). At the election of the DIP Lender in its sole discretion, all or a portion of such mandatory prepayments may be declined and available to the Borrower to be used in accordance with the Approved DIP Budget. Subject to the Carve-Out, all optional prepayments and mandatory prepayments (within one business day of receipt thereof) shall be applied as follows: first, to pay accrued and unpaid interest on, and expenses in respect of, the obligations under the DIP Facility, to the extent then due and payable; and second, to repay any principal amounts or other obligations which have been advanced and are outstanding under the DIP Facility.
<u>Optional Prepayments:</u>	The Borrower may, upon at least one business days' notice, prepay in full or in part, the DIP Facility, without premium or penalty. Once repaid, DIP Loans may not be re-borrowed.

<u>Additional Affirmative Covenants:</u>	Until the indefeasible payment in full of all DIP Obligations and termination of the Commitment, the Borrower covenants and agrees with the DIP Lender that it shall: (a) provide to DIP Lender (including its agents) advance copies of all pleadings and/or filings in the Bankruptcy Case to be made by the Debtor prior to filing; (b) maintain its existence and qualifications to do business in its jurisdiction of incorporation and all other jurisdictions where qualification is required; (c) maintain all authorizations, licenses, certifications, and approvals necessary or desirable to conduct its business as presently conducted and in accordance with all applicable law; (d) maintain the perfection and priority of liens securing the DIP Facility and the effectiveness of the DIP Orders; (e) delivery to DIP Lender of the Approved DIP Budget and variance reports as and when required herein; (f) deliver to DIP Lender monthly financial statements within 15 days after the last day of each month; (g) deliver to DIP Lender such other information reasonably requested by the DIP Lender from time to time (including information required to be delivered pursuant to the Bankruptcy Case and such other reporting as set forth herein); (h) except to the extent consented in writing by DIP Lender, maintain its properties in the ordinary course of business; (i) provide the DIP Lender with prompt (and in any event within two business days) notice of any (A) default, (B) litigation, and (C) any other material event; (j) pay all taxes as and when due; (k) comply with all laws; (l) maintain its books and records in the ordinary course of business;
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	(m) maintain insurance with reputable insurance companies in form and substance satisfactory to DIP Lender; (n) cause the DIP Lender to be named as additional insureds and lender's loss payee on all insurance policies pursuant to certificates and endorsements in form and substance satisfactory to DIP Lender; and (o) comply with the Budget Compliance Covenant.
<u>Additional Negative Covenants:</u>	Until the indefeasible payment in full of all DIP Obligations and termination of the Commitment, the Borrower covenants and agrees with the DIP Lender that it shall not, without the prior written consent of the DIP Lender: (a) assume or reject any leases or executory contracts; (b) use any cash or the proceeds of any DIP Loans in a manner or for a purpose other than in accordance with the DIP Facility and Approved DIP Budget; (c) incur or permit to exist any indebtedness (other than trade debt in the ordinary course of business); (d) grant or permit to exist any liens on any of its assets other than liens in favor of the DIP Lender and statutory liens for taxes arising as a matter of law; (e) declare or make any dividend or distribution; (f) prepay any indebtedness except as expressly set forth herein; (g) make any payment on account of any prepetition indebtedness of the Borrower; (h) make any investment or loan to any other person; or (i) sell or dispose of any assets other than inventory in the ordinary course of business.
<u>Conditions Precedent to the DIP Facility:</u>	The following shall be conditions precedent to the effectiveness of the DIP Facility (the date of satisfaction of such conditions together with the conditions precedent to borrowing set forth below, the "<u>Closing Date</u>"): (a) The entry by the Bankruptcy Court of the interim order of approving the DIP Facility ("<u>Interim DIP Order</u>"), which shall be in form and substance satisfactory to DIP Lender,

	on or before March 20, 2024 (the date on which such Interim DIP Order is entered, the “<u>Interim DIP Order Entry Date</u>”). (b) All premiums, fees and documented out of pocket fees and expenses (including reasonable and documented fees and expenses of counsel and financial advisors) required to be paid to the DIP Lender on or before the Closing Date for which invoices have been presented shall have been paid. (c) The DIP Lender shall have a valid and perfected lien on and security interest in the DIP Collateral with the priority described herein. (d) No default or Event of Default shall exist under the DIP Documents. (e) The representations and warranties of the Borrower under the DIP Documents shall be true and correct in all material respects after giving effect to such funding. (f) The Borrower shall have established a cash management system (including delivery of deposit account control agreements, in form and substance satisfactory to the DIP Lender, with respect to each of the Borrower’s deposit accounts and securities accounts) for the Bankruptcy Case satisfactory to the DIP Lender. (g) The DIP Lender shall have received a certificate from the Borrower’s insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to the DIP Documents is in full force and effect and that the DIP Lender has been named as additional insured and/or lenders loss payee thereunder to the extent required under the DIP Documents.
<u>Conditions Precedent to Each Borrowing:</u>	The following conditions precedent shall have been satisfied with respect to each borrowing under the DIP Facility: (a) No default or Event of Default shall exist under the DIP Documents or would occur as a result of such borrowing. (b) The making of a DIP Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently. (c) The DIP Lender shall have received a borrowing request no later than 11:00 a.m. (Eastern time) on the date which is three business days prior to the requested date of funding, in

	form and substance satisfactory to DIP Lender, setting for the proposed date and amount of such borrowing along with instructions for the funding of such amount to Borrower's deposit account. (d) The Borrower shall have demonstrated to the DIP Lender (i) pro forma compliance with the Approved DIP Budget after giving effect to such borrowing and (ii) that average weekly sales volume, for the two-week period ending immediately before such borrowing, shall have averaged at least \$100,000. (e) The DIP Orders shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any manner adverse in any respect to the DIP Lender without the consent of the DIP Lender.
<u>Events of Default:</u>	Unless waived by the DIP Lender, breach of any of the following shall be an "Event of Default" under the DIP Facility: (a) failure of the Borrower to make any payment of principal, interest, fees, or other amounts as and when due; (b) any representation or warranty of the Borrower that was materially incorrect when made; (c) failure of the Borrower to observe or perform any covenants, condition, or agreement hereunder or any other DIP Document; (d) failure of the Borrower to satisfy or stay execution of judgments above \$10,000; (e) default by the Borrower in other agreements relating to postpetition indebtedness; (f) any material provision of the DIP Facility or any DIP Document shall cease to be in full force and effect, or cease to create a valid and perfected lien; (g) any change in ownership or control of the Borrower; (h) dismissal of the Bankruptcy Case or conversion of the Bankruptcy Case into a case under chapter 7 of the Bankruptcy Code; (i) granting of relief from any stay of proceeding (including the automatic stay) so as to allow a third-party to proceed

	against any material asset of the Borrower, except as the DIP Lender may reasonably approve; (j) entry of an order granting any superpriority claim which is senior to or pari passu with the DIP Lender's claims under the DIP Facility without the prior consent of the DIP Lender or as otherwise provided in the DIP Orders; (k) entry of an order staying, reversing, vacating or otherwise modifying, without the prior written consent of the DIP Lender, the DIP Facility, the Interim DIP Order or the Final DIP Order, and such order is not stayed or reversed within two business days after entry thereof; (l) Payment of, or granting adequate protection with respect to, prepetition debt (other than as contemplated by the DIP Orders) in a manner that requires cash expenditures in excess of \$10,000 either (i) not contemplated by the Approved DIP Budget or (ii) would have a material adverse effect on the DIP Collateral (as reasonably determined by the DIP Lender), in each case, unless otherwise agreed by the DIP Lender; (m) cessation of liens or superpriority claims granted with respect to the DIP Collateral to be valid, perfected and enforceable in all respects with the priority described herein; (n) failure to satisfy any Milestone; (o) (i) the removal or attempted removal by the Borrower, or replacement or attempted replacement by the Borrower of the chief financial officer as an officer of the Borrower, (ii) the dissolution or attempted dissolution of the position of the chief financial officer as an officer of the Borrower, or the change or derogation or attempted change or derogation of the duties thereof, or (iii) the hindering or other circumvention or attempted hindering or other circumvention of the duties of the chief financial officer; (p) The Subchapter V Trustee being granted enlarged powers relating to the operation of the business of the Borrower; (q) obtaining additional financing or granting liens not permitted under the DIP Facility (unless the DIP Facility is indefeasibly paid in full in cash) or using cash collateral without the consent of DIP Lender or seeking to reduce, set-
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	off or subordinate DIP Obligations or related liens; (r) the entry of an order granting automatic stay relief to a third party allowing them to foreclose on any asset worth more than \$10,000; and (s) the Borrower becomes adverse in any lawsuit to the DIP Lender.
<u>Expense Reimbursement:</u>	Borrower shall be obligated to pay all reasonable and documented out-of-pocket costs and expenses of the DIP Lender, including all reasonable and documented counsel to the DIP Lender in connection with (i) the discussion, negotiation, preparation, execution and delivery of any documents in connection with the DIP Facility and the funding of all DIP Loans, the administration of the DIP Facility and any amendment, modification or waiver of any provision of the DIP Facility, (ii) the interpretation, enforcement or protection of any of its rights and remedies under the DIP Facility or (iii) the Bankruptcy Case. Such reimbursement to be made in the manner and in accordance with the procedures set forth in the DIP Orders.
<u>Indemnification</u>	Borrower shall indemnify the DIP Lender and its affiliates and their respective advisors, investment managers, employees, officers, directors, attorneys, consultants, agents, subagents, and representatives in relation to the DIP Facility and the DIP Orders, except to the extent arising solely out of fraud or willful misconduct of DIP Lender.
<u>Governing Law;</u> <u>Submission to Jurisdiction:</u>	This DIP Facility will be governed by the Bankruptcy Code, and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws. Any suit, claim, or other action to enforce the terms of the DIP Documents shall be brought exclusively in the Bankruptcy Court.
<u>Assignments; Participations</u>	DIP Lender shall be permitted to assign or sell participations in its rights and obligations under the DIP Facility, or any part thereof, to any person or entity without the consent of Borrower.
<u>Entire Agreement and Amendments:</u>	The DIP Facility described in this Term Sheet, the DIP Orders, and any other DIP Documents, constitutes the entire agreement between the parties with respect to the subject matter hereof. To the extent there is any inconsistency between the terms of this Term Sheet and the terms of either the Interim DIP Order or the Final DIP Order, the terms of the Interim DIP Order and the Final DIP Order, as applicable, shall govern.

[Signature Pages to Follow]

IN WITNESS HEREOF, the parties hereto have caused this Term Sheet to be executed as of the date set forth above.

SMALLHOLD, INC., as Borrower

By: 
Tariq Jawad (Mar 14, 2024 10:08 EDT)
Name: Tariq Jawad
Title: Treasurer

MONOMYTH SPONSOR GROUP, LLC,
as DIP Lender

By: 
Name: James Dunn
Title: CEO

Exhibit 2

New Plan

	Aug 03	Feb 19	Feb 26	Mar 04	Mar 11	Mar 18	Mar 25	Apr 01	Apr 08	Apr 15	Apr 22	Apr 29	May 06	May 13	May 20	May 27	Jun 03
Cash balance					331,636	42,064	130,564	32,264	200,764	100,964	230,964	138,664	311,047	193,356	235,739	132,322	142,205
<i>Growth and Seasonality</i>																	
East Coast												98,729	98,729	98,729	98,729	98,729	98,729
West Coast												125,885	125,885	125,885	125,885	125,885	125,885
CPG																	
Revenue					50,000	75,000	75,000	75,000	75,000	75,000	75,000	179,691	157,230	179,691	179,691	179,691	179,691
<u>COGS</u>					(inventory)	(inventory)	(inventory)	(inventory)	(inventory)	(inventory)	(inventory)	(inventory)	(farm network)				
Fresh Mushroom					40,000	40,000	40,000	40,000	40,000	40,000	40,000						
East Coast (fresh mushrooms)		50%										49,365	49,365	49,365	49,365	49,365	49,365
West Coast (fresh mushrooms)		50%										62,943	62,943	62,943	62,943	62,943	62,943
Packing labor		10%										17,969	15,723	17,969	17,969	17,969	17,969
Packaging		11%			5,500	8,250	8,250	8,250	8,250	8,250	8,250	19,766	17,295	19,766	19,766	19,766	19,766
Inbound - Farm					5,000	5,000	5,000	5,000	5,000	5,000	5,000						
Inbound - Primo																	
Total COGS					50,500	53,250	53,250	53,250	53,250	53,250	53,250	150,042	145,325	150,042	150,042	150,042	150,042
Gross Profit					-500	21,750	21,750	21,750	21,750	21,750	21,750	29,649	11,905	29,649	29,649	29,649	29,649
Gross Margin					-1%	29%	29%	29%	29%	29%	29%	17%	8%	17%	17%	17%	17%
Outbound shipping		11%			5,500	8,250	8,250	8,250	8,250	8,250	8,250	19,766	17,295	19,766	19,766	19,766	19,766
<u>Corporate</u>																	
HQ					115,472		70,800		70,800		70,800		70,800		70,800		
Farm Salaries					24,000												
Hourly					43,000	60,000	2,000	2,000									
PTO - salaried					66,100												
Bookkeeper							1,500						1,500				1,500
Insurance								8,000					5,000				
NetSuite										15,000							
NSPB									7,500								
General Software										2,500				2,500			
Kauffman (tax filing)										1,000							
Sales and Marketing																	10,000
Travel															5,000		
Total Corporate					248,572	60,000	74,300	10,000	78,300	18,500	70,800	0	77,300	2,500	75,800	0	11,500
<u>Advisors</u>																	
Pashman (bankruptcy)					25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000		
Epiq					10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000		
Gustavo						15,000				15,000				15,000			
SubChapter V							2,500					2,500			2,500		
Tariq						15,000				15,000				15,000			
Total Advisors					35,000	65,000	37,500	35,000	35,000	65,000	35,000	37,500	35,000	65,000	37,500	0	0
EBITDA					-289,572	-111,500	-98,300	-31,500	-99,800	-70,000	-92,300	-27,617	-117,691	-57,617	-103,417	9,883	-1,617
Cash injection						200,000		200,000		200,000		200,000		100,000			
Change in cash					-289,572	88,500	-98,300	168,500	-99,800	130,000	-92,300	172,383	-117,691	42,383	-103,417	9,883	-1,617
<i>Ending Balance</i>					42,064	130,564	32,264	200,764	100,964	230,964	138,664	311,047	193,356	235,739	132,322	142,205	140,588

Exhibit B

Jawad Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Smallhold, Inc.,¹

Debtor.

Chapter 11

Case No. 24-10267 (CTG)

DECLARATION OF TARIQ JAWAD IN SUPPORT OF DIP FINANCING

I, Tariq Jawad, hereby declare as follows:

1. I am the Chief Financial Officer (the “CFO”) of Smallhold, Inc. (the “Debtor” or “Smallhold”).

2. As the Debtor’s CFO, I am generally familiar with the Debtor’s business, day-to-day operations, financial affairs, and books and records. Except as otherwise indicated, the statements set forth in this declaration (this “Declaration”) are based upon my personal knowledge of the Debtor’s operations, information learned from my review of relevant documents, information supplied to me from the Debtor’s advisors, or my own opinion based on my knowledge, experience and information concerning the Debtor’s operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtor. If called to testify, I could and would testify competently to the matters set forth in this Declaration.

3. On February 18, 2024, (the “Petition Date”), the Debtor filed a voluntary petition commencing this chapter 11 case (the “Chapter 11 Case”). The Debtor is eligible, and has elected, to proceed under Subchapter V of title 11 of the United States Code (the “Bankruptcy Code”).

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

4. The Debtor continues to operate its business and manage its affairs in the ordinary course of business as a debtor in possession. I submit this Declaration in support of the *Debtor's Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 362, 364, 503, 506 and 507, (I) Authorizing the Debtor to Obtain Superpriority Secured Post-Petition Financing, (II) Modifying the Automatic Stay, (III) Scheduling Final Hearing, And (IV) Granting Related Relief* (the "Motion")².

5. Pursuant to the Motion, the Debtor seeks entry of the Interim Order and the Final Order approving the Debtor's entry into the DIP Facility. As explained below, the Debtor has an immediate need to access liquidity.

DEBTOR'S NEED FOR DIP FINANCING AND ACCESS TO DIP FINANCING

6. Following the commencement of the Chapter 11 Case, the Debtor, its management ("Management"), and its advisors carefully considered a number of potential alternatives to address the Debtor's capital structure and liquidity challenges.

7. I have worked closely with Management, and the Debtor's advisors, to evaluate the Debtor's cash requirements for its business and its continued operation in the Chapter 11 Case. In our evaluation of the Debtor's liquidity position, we developed the Debtor's short-term and long-term cash flow forecasts. These forecasts took into account anticipated cash receipts and disbursements during the projected period and considered a number of factors, including the effect of the chapter 11 filings on the operations of the business, fees and interest expenses associated with potential debtor-in-possession financing, professional fees, and required

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion, the DIP Term Sheet or the Interim Order, as applicable.

operational payments. These forecasts indicated that the Debtor faces significant shortfalls, and the capital necessary to navigate the Chapter 11 Case.

8. Based on these forecasts and discussions with Management, stakeholders, and the Debtor's advisors—and despite the Debtor's efforts—the Debtor determined that it would require access to post-petition funding to provide sufficient liquidity to effectuate its successful emergence from the Chapter 11 Case. Among other things, the Debtor needs such liquidity to pay employees, pay administrative costs and expenses in the Chapter 11 Case and make any other payments that are essential or appropriate for the continued management, operation, and preservation of the Debtor's business and assets. In addition, the Debtor requires access to post-petition financing to fund its ordinary course working capital needs, necessary repairs, and capital expenditures. I believe that the Debtor's ability to continue making such payments as it navigates the Chapter 11 Case is essential to the Debtor's continued operation and the preservation of its assets during the pendency of the Chapter 11 Case.

EFFORTS TO OBTAIN POSTPETITION FINANCING

9. More recently, I, along with Management and the Debtor's advisors, advised and assisted the Debtor in obtaining post-petition debtor-in-possession financing when it became apparent that Smallhold would need additional liquidity to support the administrative costs of the case and to emerge from bankruptcy protection. Management has worked closely with the Debtor's advisors and other professionals retained by the Debtor with respect to the Debtor's restructuring efforts.

10. Management and its advisors solicited debtor-in-possession financing proposals. Despite reaching out to four potential lenders in the distressed investors/financing field, Monomyth, LLC (the "DIP Lender") was the only entity that provided a proposal.

11. James Dunn is the Chairman of the Board of Directors of the Debtor (the “Chairman”) and the CEO of the DIP Lender. Because the DIP Lender is an insider to the Debtor, we had the Chairman recuse himself from the analysis and selection process to allow arm’s-length negotiations of the DIP Facility.

12. Although we received only one proposal, the DIP Facility provides the best terms available to the Debtor.

13. Specifically, I have reviewed the terms, conditions, and the potential impact of the proposed post-petition financing. Further, I have worked with the rest of the Management as well as the Debtor’s advisors to evaluate the Debtor’s debtor-in-possession financing needs and to develop, negotiate and ultimately finalize the proposed DIP Facility described in the Motion.

14. During our debtor-in-possession financing marketing process beginning in February 2024, Management worked with the DIP Lender in providing superpriority priming debtor-in-possession financing to the Debtor. As noted in the DIP Financing Motion, as of the Petition Date, there was no secured debt against the Debtor, nor has the Debtor incurred secured debt since the Petition Date. Therefore, I believe any debtor-in-possession financing that provided for a priming lien would simply be out of an abundance of caution for a debtor-in-possession lender.

15. After the proposal, the Management team and I determined that the proposal was an attractive offer and, most importantly, provided the much needed liquidity to allow the Debtor to continue as a going concern.

16. Although the DIP Lender is an insider of the Debtor, I believe the proposed DIP Financing offers the best available terms to allow the Debtor to best navigate the Chapter 11 Case and to be a success as a going concern.

17. As a result, in parallel with overall restructuring negotiations, the Management team and I, as well as the Debtor's advisors, continued to engage with the DIP Lender for post-petition financing to obtain better terms than its initial proposal. The resulting DIP Facility is a material component of the restructuring contemplated by the Debtor's restructuring efforts that will allow for a smooth operation in the Chapter 11 Case and creates a path towards a successful emergence from the Chapter 11 Case.

18. Based upon the Debtor's liquidity needs and the lack of other debtor-in-possession financing proposals the Debtor received despite its solicitation efforts; I do not believe alternative sources of financing are available to the Debtor on better terms than the DIP Facility. In my opinion, the DIP Facility provides the best available material terms, including with respect to the interest rate, fees and expenses, and permitted uses. Thus, I believe, the proposed DIP Facility will deliver positive value to the Debtor in facilitating the Debtor to continue to operate as a going concern as it navigates the Chapter 11 Case, pay its administrative costs and fees, and guarantee a successful emergence from the Chapter 11 Case.

THE PROPOSED DIP FACILITY

19. I believe that the DIP Facility provides the Debtor with much-needed immediate access to liquidity. The amounts borrowed under the DIP Facility will be used to provide working capital for, and other general corporate purposes of, the Debtor and pay administrative costs and expenses related to the Chapter 11 Case.

20. Without the DIP Facility, I believe that the Debtor would be unable to operate its business as a going concern and successfully navigate the Chapter 11 Case. Additionally, following the absence of other proposals received and discussions with the Debtor's advisors, I believe that the total cost of the DIP Facility, taking into account both its interest rate

and associated fees, is consistent with the cost of recent debtor-in-possession facilities incurred by other debtors.

21. Accordingly, I believe that the Debtor's entry into the DIP Facility is the only viable option to provide the Debtor with critical liquidity and working capital to allow the Debtor to successfully emerge from the Chapter 11 Case and continue the business as a going concern, and I believe the DIP Facility is in the best interests of the Debtor's stakeholders and estate.

**DIP FINANCING AND USE OF CASH COLLATERAL HAVE BEEN
NEGOTIATED AT ARM'S LENGTH AND IN GOOD FAITH**

22. Since the time when the Debtor was seeking proposals on potential DIP financing, the Chairman of the Debtor recused himself from the process and the Debtor and its advisors subsequently engaged in extensive negotiations with the DIP Lender and its advisors. The DIP Lender and the Debtor exchanged multiple drafts of term sheets and debtor-in-possession documents with respect to the proposed facility. Based on my experience and knowledge of the market, I believe that the fees and expenses in the proposed DIP Facility are necessary under the circumstances, and, on the whole and under the current circumstances, the financial terms of the DIP Facility are reasonable. Furthermore, based upon my observations and involvement in the negotiation of the DIP financing in this matter, I believe that the negotiations with the DIP Lender was conducted at arm's length and in good faith.

CONCLUSION

23. I believe approval of the relief requested in the DIP Financing Motion is in the best interests of all stakeholders and respectfully request that the Court grant all relief requested in the DIP Financing Motion and such other further relief as may be just.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: March 14, 2024
Brooklyn, NY

/s/ Tariq Jawad
Tariq Jawad