



February 3, 2022

**Re:** BH3 DJ SUB, LLC - Commitment Letter – Commercial Real Estate Term Loan

We are pleased to inform you that Banesco USA (the "Bank") has approved your request to BH3 DJ SUB, LLC (the "Borrower"), subject to the following terms and conditions:

**BORROWER:**

BH3 DJ SUB, LLC

**AMOUNT:**

\$6,200,000.00; with an initial advance at closing will be in the amount of \$5,200,000.00

**TERM:**

Five (5) year term

**INTEREST RATE:**

3.85% Fixed. Interest shall be calculated daily on a 360-day year, based on the outstanding principal balance

**REPAYMENT TERMS:**

12-Month I/O period to allow for stabilization. Remaining 48 payments to be based on monthly P&I based on a 25-year amortization, with all unpaid principal and any accrued interest due at maturity. Based on a 360-day year.

**PRE-PAYMENT PENALTY:**

Step down 3/2/1.

**SECURITY:**

Loan will be secured by a first mortgage position real estate property located in the Ft. Lauderdale area. Also to include but not limited to a first mortgage and security agreement encumbering a) the property, b) all the Borrower's right, title and interest in and assignment of all leases relating to the subject building, including all rents, sub-lease and profit with respect thereto; and c) all furniture, fixtures and equipment (other than those owned by individual unit tenant, if applicable) located at or affixed to the land or improvements constituting part of the property. 801-819 NE. 2nd Ave. Fort Lauderdale, Florida 33304. Folio: 494234062570, 494234062610, 494234062591 and 494234062580

**LOAN PURPOSE:**

Term facility i/a/o \$6.2MM [\$5.2MM initial advance] to refinance and provide cash-out for a retail property with twelve (12) rentable bays with total leasable area of 23,816 Sqft.

**PERSONAL GUARANTOR:**

Non-Recourse with Standard Bad Boy Carveouts to Daniel Lebensohn and Gregory Freedman

**COMMITMENT FEE:**

As consideration for the issuance of this commitment, Borrower agrees to pay to Bank a non-refundable commitment fee of 0.50% of the initial funding amount [\$26,000.00]. Borrower agrees that no part of such commitment fee will be returned to Borrower in any event, either by credit against costs or expenses, or otherwise. Borrower agrees that this commitment fee is neither interest nor payment for the use of money. The commitment fee is paid to Bank in consideration of the Bank's promise to hold or reserve the amount of this commitment and is deemed for all purposes fully earned at time of closing.

**TITLE INSURANCE:**

The title commitment must be issued by Borrower's legal counsel. Borrower agrees to reimburse the Bank for all of the Bank's expenses in connection with the closing of the loan, including, but not limited to Bank attorneys' fees. The attorneys' fees depend on the number of billable hours employed by the attorney in establishing the Collateral property's title attributes, preparing all of the necessary documentation and closing the loan.

**INSURANCE:**

Borrower must deliver to the Bank, evidence of satisfaction of the following, as may be required by Bank: General Commercial liability insurance, ~~builder's risk insurance~~, windstorm hazard insurance, ~~business interruption and worker's compensation insurance~~ (the insurance coverage required shall be in amounts satisfactory to Bank. If applicable, flood insurance coverage will also be required. The policies must show the Bank as additional (mortgagee) insured must be issued in such terms and by such insurance carriers as are approved by the Bank and subject only to such terms and conditions as are acceptable to the Bank. The additional mortgagee clause should read as follows:

Banescos USA  
ISAOA ATIMA  
150 Alhambra Circle, Suite 100  
Coral Gables, Florida 33134

Any collateral securing this loan must be adequately covered by insurance at all times during the life of the loan. It is your sole responsibility as the borrower to obtain, pay for, and keep at all times in force, such policies of insurance as may be required to protect the Bank's interest in the collateral.

If applicable, Borrower acknowledges that certain property insurance and/or windstorm insurance coverages, particularly those issued through Citizens Property Insurance will not be issued and will not be in effect unless Citizens has received the required premium payment and the application several days in advance of the closing date. Borrower must make all required arrangements to have such coverages in effect as of the time of the closing including arrangements which would involve applying for and paying for such insurance coverages in advance of the closing, if necessary. All such arrangements shall be coordinated between Borrower and Borrower's insurance agent.

Failure to carry insurance is an event of material default. In the event that you fail to provide the Bank with evidence of insurance the Bank may, but is not required to, force place coverage on the collateral property and debit your account for the corresponding premium.

**SURVEY:**

Three (3) originals of a current ALTA mortgage survey by a registered land surveyor, certified to and satisfactory to Bank, its legal counsel and to the Title Company, which survey shall reflect the correct legal description of the Property, shall show the location and perimeter boundaries of the Property, shall disclose access, elevations, all improvements, encroachments, easements and rights of-way, and shall reflect no conditions unsatisfactory to Bank, its counsel or the Title Company.

**APPRAISAL:**

Borrower shall provide Bank, at the Borrower's sole cost and expense, a satisfactory appraisal of the property with a maximum loan to value of 65%. The appraisal, including, without limitation, the appraisal methodology and conclusion(s) of market value, shall be subject to Bank's review and approval. **Complied**

**ENVIRONMENTAL REPORT:**

Borrowers shall provide Bank, at the Borrowers' sole cost and expense, a satisfactory Environment Site Assessment Report ("Environmental Audit"), performed by a firm previously approved by Bank. The report must disclose the results for topsoil and the underlying land. The environmental Audit Report shall be, in form, scope and substance, acceptable to Bank.

**LOAN DOCUMENTS:**

Lender's counsel shall prepare the necessary documentation in order to comply with all the terms and conditions of this commitment and to comply with applicable law. All documentation must be satisfactory to Lender. Legal costs shall be borne by Borrower. Documentation shall include, but not be limited to, the following instruments to be executed at closing:

Promissory Note  
Mortgage and Security Agreement  
Loan Agreement  
UCC-1 Financing Statements  
Borrower's Affidavit and Indemnity  
(Re: Hazardous or Toxic Materials)

Borrower's Affidavit (re: no liens, possession, licenses, gap, etc.)  
Lender reserves the right to require additional documentation at its discretion.

**OPINION OF COUNSEL:**

There will be furnished to Bank an opinion of counsel satisfactory to Bank to the effect that:

- a) All of the loan documents are valid and enforceable,
- b) That any required consents from shareholders, partners, and governmental agencies having any jurisdiction with respect to any aspect of the loans have been unconditionally obtained prior to closing of the loan,
- c) Borrower has the full right, power and legal authority to carry out the terms of this commitment and any documents executed pursuant thereto,
- d) There is no litigation or claim pending which would affect the title of the Borrower to the land,
- e) The loan does not violate in any manner the usury laws of the State of Florida.

**LOAN REQUIREMENTS:**

- Annual Distributions/Dividend payments and loans to stockholders or related parties are permitted without Banesco USA's prior consent, so long as the loan is not in default and the distributions and/or dividend payments are not more than 100% of the Borrower's net income.
- Prior to closing satisfactory appraisal and appraisal review yielding a maximum of as stabilized 65.00% LTV. Complied
- Subject to all other standard conditions imposed by Bank and its legal counsel at the time of formal underwriting and/or closing, as outlined in Banesco USA's commitment letter.
- Requires insurance coverage of property, liability, wind and flood (if applicable) with Bank named as loss payee.
- Borrower to maintain and establish accounts used in connection with the management or operation of the property for the life of the loan prior to closing with 5% depository relationship
- Loan monthly payments to be automatically debited from Borrower's account at Bank
- Borrower(s) will provide Banesco USA with additional financial statements at Bank's request within 10 days.
- Borrower shall not incur additional debt or encumbrance on collateral without the Bank's written consent
- No secondary financing
- No material changes in ownership of Borrower(s) at any time during the term of the loan without consent of Banesco USA.
- Subject to Bank's compliance approval
- Bank to escrow for property taxes but not insurance on the property. However, Escrow to begin at the start of the 13th month once the I/O period has ended
- Obligors to provide a sinking I/O reserve i/a/o \$200,200 to serve as PSOR for 12 month I/O period to be held back from loan proceeds.
- Prior to close, obligors to provide the last 2-months of bank statements to validate their business and personal liquidity. Complied

- Banesco to consider an assignment to loan documents subject to review by legal counsel and Credit Dpt approval

**LOAN COVENANTS:**

1. Borrower(s) to submit annual corporate tax returns (including K-1 schedules and attachments) within 30 days of filing or no later than "Due Date".
2. Borrower(s) to submit company prepared annual financial statements, including consolidated and consolidating information, if applicable, within 30 days of completion or no later than "Due Date". Borrower shall provide Company Prepared financial statements, Rent Rolls, Operating statements
3. ~~Personal Guarantors shall provide the Bank with annual fiscal year end personal financial statements within 30 days of completion or no later than "Due Date"~~
4. ~~Personal Guarantors shall provide personal tax returns with accompanying k-1 schedules annually. If extension is submitted, the tax returns shall be provided to the Bank within 30 days of completion or no later than "Due Date"~~
5. Standalone minimum DSCR of 1.30x based on tax return or CFS to be calculated as follows: NOI/Total Debt. NOI = Net Rental Income (actual rents minus all operating expenses of property, excluding depreciation, amortization, and interest expense). Total Debt = Proposed annual property debt service (Principal and Interest). First year [FY2022] to be waived as a function of the I/O portion of the facility.
6. Borrower is eligible for up to \$1MM future advance still subject to meeting of 1.35x DSCR and max 65% LTV (stabilized property) based on verifiable tax return, no derogatory repayments history and no event of default.

**CLOSING COSTS:**

Borrower to pay all related closing costs including, but not limited to, lender's attorney fees and all related loan fees, which are incurred by Banesco in connection with this loan.

**EXPENSES:**

Applicant agrees to pay all expenses in connection with the creation and closing of said mortgage loan including, but not limited to, recording costs, document preparation, title insurance fees, survey, revenue stamps, environmental report, appraisal reports, and any other expense incurred by the Bank in connection with this loan.

**BROKER'S FEE:**

All brokerage commissions relating to the loan, if any, will be payable by Borrower. The Borrower agrees by the acceptance hereof to indemnify, defend and hold Bank harmless from and against any and all liability, loss, cost or expense (including reasonable attorney's fees) resulting from any claim of a broker arising in connection with the execution of this Letter of Intent or the consummation of the Loan. Bank hereby acknowledges that they have not engaged any broker in connection with this loan transaction.

**RESTRICTION ON CHANGE OF OWNERSHIP AND FURTHER ENCUMBRANCES:**

Borrower agrees that Borrower's rights under this commitment and the Loan shall be deemed particular and unique to Borrower since Bank has evaluated this Loan and has agreed to make this Loan based on the unique qualifications of Borrower, both financial and otherwise. So long as this commitment or any part of the Loan is outstanding, the Property shall remain free and clear of all other encumbrances, liens, mortgages, security interests and secondary financing, and Borrower shall not, without the prior written consent of Bank, encumber any part of the Property or any portion thereof. Additionally, any change in the present stock ownership of the borrowing entity or change in partnership structure which may decrease Guarantors' ownership of the membership units of Borrower, or other breach of the foregoing provisions shall constitute a default under the note and mortgage, or if prior to closing, shall constitute grounds for terminating this commitment.

**REPRESENTATIONS OF BORROWER:**

This commitment is subject to the accuracy of all information, representations and materials submitted with or in support of the application for the Loan or the issuance of this commitment. In the event of inaccuracy or material changes in the information, representations and materials submitted to Bank or in the financial condition of Borrowers, Bank shall, in its sole and absolute discretion, have the right to terminate this commitment and all of Bank's obligations hereunder and in so doing, Bank shall have no liability whatsoever to Borrower, guarantor or any third party.

**NONASSIGNABILITY:**

Neither this commitment nor any of the proceeds of the Loan shall be assignable by Borrower, nor any attempt to make such assignment shall be void.

**TIME:**

Time is of the essence with respect to all dates and periods of time set forth in this commitment.

**TERMINATION OF THIS COMMITMENT:**

Upon the occurrence of any of the following events Bank may, at its option, terminate this commitment without further notice or obligation and without any liability whatsoever to Borrowers.

- a) If all applicable conditions contained herein have not been met to the reasonable satisfaction of Bank or the Loan has not been closed within Forty-Five Days (45) days from the issuance of this commitment.
- b) Upon Borrower making a general assignment for the benefit of creditors, or if there is filed by or against Borrower a petition in bankruptcy, or for the appointment of a receiver, or if there commences under any bankruptcy or insolvency law proceedings for Borrower's relief or the composition, extension, arrangement, adjustment of any of its obligations, or if Borrower's business is discontinued as a going concern, or if there is a suspension of business, or default on any other obligation Borrower may have to Bank, or in case of the issuance of any warrant or attachment against any of Borrower's properties or the taking of possession of or assumption of control of all or any substantial part of the property of Borrower's businesses by any governmental agency.

- c) Upon any material adverse change in the financial condition of Borrower or upon the default by Borrower of any material obligation of Borrower to any third party.
- d) If any legal or administrative action, suit or proceeding shall be instituted or threatened against the Borrower or any judgment is entered or tax lien filed against the Borrower.

The occurrence of any of the events described in subparagraphs (a) to (d) above to any person named as a guarantor of the Loan shall also give Bank the right, at its option, to terminate this commitment without further notice or obligation, and without any liability whatsoever to Borrower, guarantors or any third party.

**DEFAULT ON PROVIDING FINANCIAL INFORMATION:**

A default by Borrower or of any other obligor or guarantor of the Note to timely provide Lender with the required financial statements or tax returns, shall, at the election of the Lender, initially result in a Two Percent (2.00%) increase in the then applicable annual interest rate of the Note.

At any time thereafter, if the default is not cured, Lender may elect to exercise such other remedies which are applicable when the Lender determines that such default is an event of default (Initial here <sup>DS</sup> GP).

**HAZARDOUS WASTE:**

At closing, Bank is to be furnished with an affidavit from Borrowers, representing to Bank that the Property and any improvements thereon have not in the past been (to the best of Borrower's knowledge) used, are not presently being used, and will not in the future be used for the handling, storage, transportation, or disposal of hazardous or toxic materials. Borrower agrees to indemnify, defend, and hold harmless the Bank from and against any loss, including, without limitation, attorneys' fees, incurred by Bank as a result of such past, present or future use, handling, storage, transportation, or disposal of hazardous or toxic materials; the foregoing indemnification and other provisions of this paragraph shall survive repayment of the Loan.

**FLOOD INSURANCE NOTICE:**

The Bank has approved the subject loan which will be secured by an interest in real property located at various. See collateral section. Pursuant to federal regulations, Bank must evaluate whether the property is in an area that is subject to flood risk, if the Flood Determination reveals that the property securing the loan is in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards, then special flood hazard insurance in the subject property will be necessary.

Bank has determined from information available to it, including a review of NFIP Map, that the properties that will secure the loan ARE NOT in such an area. Therefore, special flood hazard insurance was NOT necessary at this time

**COMPLIANCE:**

Bank's obligations under this commitment are subject to the requirements of the supervisory authorities regulating banks, and all applicable federal and state laws and regulations, including without limitation those related to lending limits. If the terms of this commitment or the obligations of Bank hereunder conflict with any applicable law or regulation, such law or regulation shall control over and supersede any such conflicting term or obligation. Borrower agrees that Bank shall have no liability whatsoever to Borrower, guarantor, or any third party, including any intended or incidental beneficiary hereof, as a result of any such conflict, and Borrower and guarantor shall indemnify and exculpate Bank from all liabilities, costs and attorneys' fees resulting from any such conflict.

**ENTIRE AGREEMENT, MODIFICATIONS AND AMENDMENTS:**

This commitment contains the entire agreement of Borrower and Bank with respect to the Loan. No change in the provisions of this commitment shall be binding unless in writing and executed in the name of and by two officers of Bank. All obligations and duties of Borrower hereunder not accomplished or completed at or before closing shall survive the closing and continue to remain obligations and duties of Borrower.

**SURVIVAL:**

In the event of any conflict among the terms and provisions of this commitment, and the Note and Mortgage provided for herein, then the terms and provisions of the Note and Mortgage shall control.

**ADVERTISING:**

~~Borrower shall not publicize or advertise in any signs, advertising materials, sales or leasing brochures, or other sales or leasing offering materials, the name of Lender as a source of financing without the prior express written permission of Lender.~~

~~Notwithstanding the foregoing and only for 6 months from the date of the loan, Lender may install a sign in a prominent location at the Property which names the Lender. Moreover, with prior written permission from Borrower, the Lender may also issue or publish advertising and/or promotional materials ("Publicity") concerning the Loan and may use the Name of the Loan in the Publicity, as Lender in its sole discretion may deem beneficial for its Publicity but excluding private financial information.~~

**WAIVER OF RIGHT TO JURY TRIAL:**

EXCEPT IN THE CASE OF BANK'S WILLFUL MISCONDUCT, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVE THE RIGHT WHICH ANY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, LITIGATION OR COUNTERCLAIM BASED HEREON, OR ARISING OUT OF, UNDER, ON OR IN CONNECTION WITH THIS COMMITMENT, THE LOAN, AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK ISSUING THIS COMMITMENT TO BORROWER.




**ACCEPTANCE OF COMMITMENT:**

Borrower may accept this commitment by returning to Bank a fully executed copy hereof within seven (7) days from the date hereof, together with a check in the amount of \$10,000 representing partial commitment net of the application fee already collected. The commitment fee is not refundable except by reason of the Bank's failure to close the loan without cause. If the executed copy of this commitment and said deposit are not received by Bank within seven (7) days from the date hereof, this commitment shall be null and void.

We look forward to continue working with you on this transaction. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely yours,



Digitally signed  
by Hasel Villoch  
Date: 2022.02.03  
10:26:09 -05'00'

Hasel Villoch  
Banesco USA

**Accepted By:**

**Borrower:** BH3 DJ SUB, LLC

DocuSigned by:  
  
ECE47C1386DD439...  
**By:** Gregory Freedman