

## **SECURITY AND ESCROW AGREEMENT FOR TREE FELLING**

**THIS SECURITY AND ESCROW AGREEMENT FOR TREE FELLING (the "Security Agreement")** is made and entered this 27th day of January, 2021 among BHT of Clewiston 2150, LLC, having an address at 5555 Anglers Avenue, Suite 25, Fort Lauderdale, Florida 33312 ("BHT" or the "Auto Auction Developer"), and the Town of Thompson, having an address at 4052 Route 42, Monticello NY 12701 (the "Town") (collectively known as the "Parties").

### **WITNESSETH**

**WHEREAS**, BHT is under contract to acquire two parcels of land totaling 153.3 +/- acres located at the northwest intersection of Kaufman Road and NYS Route 17B in the Town identified on the Town Tax map Section 12 Block 1 Lots 54.1 and 55, for the purposes of developing an auto auction facility as generally depicted on Exhibit A (the "Auto Auction Development Site"); and

**WHEREAS**, an affiliate of BHT, Series 11, a Separate Series of BBIS Investment 767, LLC, was granted a special permit and site plan approval on December 9, 2020, to construct the Auto Auction Facility in three phases (the "Auto Auction Facility") subject to satisfaction of listed conditions and anticipates satisfying all the conditions for phases 1A, 1B and 2 of said site plan approval in the coming weeks and commence construction of the Auto Auction Facility; and

**WHEREAS**, in anticipation of satisfying conditions of the site plan approval BHT desires to conduct some initial tree felling activities for Phases 1A, 1B and 2 of the Auto Auction Facility (the "Tree Felling Work") on certain portions of the Auto Auction Development Site as generally shown on Exhibit A, attached hereto; and

**WHEREAS**, BHT has met with the Town Planning Board and McGoeys Hauser and Edsall (the "Town Engineer") to discuss the Tree Felling Work; and

**WHEREAS**, the Town Planning Board adopted a resolution approving such Tree Felling Work on Wednesday, January 27, 2021, subject to the comments from the Town Engineer; and

**WHEREAS**, the estimated cost to remove the felled trees and temporary erosion controls, if any, from the Auto Auction Development Site is \$335,995.00 as summarized in Exhibit B, attached hereto; and

**WHEREAS**, BHT will post a financial performance guaranty, as herein provided, for the purpose of guaranteeing the removal of the felled trees and temporary erosion controls plus a voluntary agreed contingency of 10% to be used by the Town for any purpose, if any, in the event BHT does not complete phases 1A, 1B and 2 of the Auto Auction Facility site grading, and erosion control plan for the entire site within two (2) years from the date of this agreement; and

**WHEREAS**, the Town has requested the establishment of a financial performance guaranty of \$335,995.00 (the "Security") representing security for the purpose of guaranteeing the removal of the felled trees and temporary erosion controls, if in the event that BHT does not complete the Auto Auction Development (the "Removal Work"); and

**WHEREAS**, BHT will not begin any tree clearing activity until BHT provides satisfactory evidence to the Town and or if the current owner of the property contacts the Town stating that BBIS has closed on the property and is the legal owner of the premises; and

**WHEREAS**, the Planning Board requires as a condition of this Agreement that BHT commence constructions of the berm at the earliest possible time, in order to shield the felled trees from view; and

**WHEREAS**, at the Town's request, BHT has agreed to the posting of the Security for the aforesaid cost to complete the Tree Removal and Temporary Erosion and Control Work in the form of a cash deposit; and

**WHEREAS**, the Town has agreed that the full amount of the Security shall be refunded once BHT has performed all conditions necessary to obtain Final Site Development Plan for phases 1A, 1B and 2 are met and the Final Site Development Plan is signed by the Planning Board Chair for the Auto Auction Development Site; and

**WHEREAS**, the Parties desire to establish an Escrow to hold the Security for the purpose of ensuring funding of the Tree Removal Work in accordance with the terms hereof.

**NOW, THEREFORE**, in consideration of the recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In furtherance of the aforementioned, the Town hereby acknowledges that BHT has delivered together with a copy of this Security Agreement, the amount of \$335,995.00 (the "Security") to ensure the performance of the Removal Work, plus penalty, if required.

2. The Town agrees to deposit the Security in an official bank account of the Town (the "Security Escrow Account") for the purpose of using said funds only to ensure the performance of the Removal Work, plus penalty if necessary, and to hold and disburse said funds, as hereinafter provided.

3. Transfer of Security to Ensure Performance of Future Work. Upon completion of all requirements to obtain approval of the Final Site Development Plan for phases 1A, 1B and 2 of the Auto Auction Facility, the Town shall promptly release the Security back to BHT. The parties agree that, phase 3 of construction, if necessary, will be governed by a separate security agreement which shall establish security in an amount and form reasonably acceptable to the Town.

4. In the event BHT decides not to pursue development of the Auto Auction Facility, BHT shall complete the Removal Work within six (6) months of such final Town determination or decision. Requests by BHT to extend the time to complete the Removal Work shall not be unreasonably withheld by the Town.

5. At the completion of the Tree Removal Work, BHT shall notify and provide the Town Engineer with correspondence from BHT's design professional that the Removal Work was completed in compliance with the specifications and guidelines contained within Exhibit A. At that time, the Town Engineer shall conduct a field review of the worksite approximately five (5) business days thereafter to observe the status of completed work. If no reasonable exception is taken by the Town Engineer, as determined by the Town, to the completed work and supporting documentation provided by BHT's Design Professional, the Town Engineer shall provide both the Town and BHT with notification of same, and the Town shall promptly refund the security to BHT and all rights of the Town in and to the security shall be extinguished. If exception is taken to the completed work and/or supporting documentation, then the Town Engineer shall advise BHT of such and identify the specifications and guidelines which the Town determines have not been satisfied. BHT shall then complete the work and request additional inspection by the Engineer to confirm that the Removal Work has been completed to the reasonable satisfaction of the Engineer, at which time the Town shall promptly refund the security to BHT.

6. Notwithstanding execution of this Security Agreement by the Town, or any actions taken by the Town in furtherance of this Agreement, the Town shall have no liability whatsoever for any claim arising out of design, construction, conveyance, use and maintenance of the Tree Felling Work or the Removal Work and BHT shall defend, indemnify, and hold harmless the Town, its officers, employees, and consultants against all claims of any kind, nature and description, arising by reason of the design, construction, conveyance, use and maintenance of the Tree Felling Work or the Removal Work.

7. In the event of a dispute between the Parties, in the sole discretion of the Town to justify its doing so, the Town shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Security Agreement, together with such legal pleading as it deems appropriate, and thereupon be discharged.

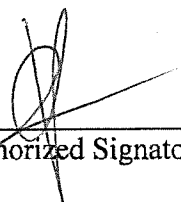
8. This Security Agreement may be executed in multiple counterpart signature pages (original, facsimile, or scanned electronic version) which taken together shall constitute a single document.

**(Signatures on following pages)**

(Signature Page - Security and Escrow Agreement for Tree Felling Work- Golf Developer)

IN WITNESS WHEREOF, the parties hereto have signed this agreement as of the date first written above.

BHT of Clewiston 2150, LLC.,

BY:   
Amram Adar, Authorized Signatory

THE TOWN OF THOMPSON PLANNING BOARD

BY:   
Title: LOU KIEFER, CHAIRMAN