

**THE LAND ACT, No. 4 OF 1999
SALE AGREEMENT**

BETWEEN

KILIMANJARO GOLF DEVELOPMENT LIMITED

AND

DAYA VOYAGE (KILIGOLF) INVESTMENT LIMITED

**CONCERNING THE SALE AND PURCHASE OF A PROPERTY MEASURING
APPROXIMATELY 22 ACRES, COMPRISED UNDER C.T NO 1753 SITUATED AT
DOLLY ESTATE, EAST BANK OF MAJI YA CHAI RIVER, ARUMERU DISTRICT IN
ARUSHA REGION**

Drawn by:

B&E AKO LAW

Plot No. 30, House No. 7

Ursino Street, Regent Estate

P. O. Box 71748

Dar es Salaam

www.beakolaw.co.tz

SALE AGREEMENT

This **SALE AGREEMENT** is made this ____ day of September 2021.

BETWEEN

KILIMANJARO GOLF DEVELOPMENT LIMITED, a company incorporated and registered under the Companies Act No. 12 Of 2002 of the laws of the United Republic of Tanzania with Certificate of Incorporation No. 64803 and registered address at P.O. Box 21, Usa River, Meru District Council, Arusha – Tanzania (hereinafter called the "**Vendor**" which expression shall include and extend to persons and/or entities deriving title under the Vendor, its successors and assigns) of one part;

AND

DAYA VOYAGE (KILIGOLF) INVESTMENT LIMITED, a company incorporated and registered under the Companies Act No.12 of 2002 of the laws of the United Republic of Tanzania with Certificate of Incorporation No. 152423209 and registered address at P.O. Box 21, Usa River, Meru District Council, Arusha - Tanzania (hereinafter referred to as "**DAYA** " which expression shall include and extend to persons and/or entities deriving title under DAYA, their successors and assigns);

PREAMBLE:

- A. WHEREAS** the Vendor is the legal and registered owner of **Certificate of Title 1753** measuring approximately **22 acres** being the equivalent of 89,555 Square Metres, situated at Dolly Estate, in Meru District - Arusha Region, (being the **Property** as defined below).
- B. AND WHEREAS** the Vendor is desirous to sell the said Property measuring approximately **22 acres (89,555 sq.m)** inclusive of all buildings, attachments, installations and features thereon to DAYA.
- C. AND WHEREAS**, DAYA is purchasing the Property with the intention to convert the existing Property into a hotel.

Vendor's Initials  _____

DAYA's Initials _____

NOW THIS SALE AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1.0 DEFINITIONS AND INTERPRETATION

1.1. In this Sale Agreement unless the context otherwise provides: -

"Agreement" means this Sale Agreement between the Vendor and DAYA for the sale, transfer and registration in favor of DAYA of approximately 22 acres (89,555 sq.m) land and all buildings, attachments, installations and features situated at Kilimanjaro Golf & Wildlife Estate, in Meru District, Arusha Region, currently registered under a Certificate of Title Number **1753**;

"Appointed Lawyers" means the law firms styled Kisaka & Associates as represented by its Managing Partner Advocate Kisaka Eneza Mnzava and B&E Ako Law as represented by its Partner Victor Mrema.

"Escrow Account" means the escrow account set up by DAYA and the Vendor via the Stakeholder Agreement entered into between the parties dated the 04th November 2020 for the purpose of this transaction which shall hold the Purchase Price in escrow and will be managed as per the Stakeholder Agreement.

"Completion": Completion of this Agreement in accordance with clause 7.2.

"Land Laws" means the Land Act, 1999, as amended;

"the Property" means the parcel of land measuring **22 acres (89,555 sq.m)** held under Certificate of Title Number 1753 and includes all buildings, attachments, installations, features, all things growing on the land, all rights,

Vendor's Initials _____

DAYA's Initials _____

easements, appurtenances (including water rights) belonging to and/or enjoyed with the land;

"Parties" means the signatories to this Agreement but in the case of **DAYA** shall include their respective nominees, assignees, principals and affiliates;

"Purchase price" means the amount of **United States Dollars Six Million Only (USD 6,000,000.00)** payable by **DAYA** to the **Vendor** as consideration in accordance with this Agreement;

"Transfer approval" means such consents and approvals as are required under applicable laws for the disposition of the Property to DAYA;

"USD" means United States Dollars, the currency of the United States of America.

"Vacant Possession" means the legal obligation of the Vendor to ensure that the Property is in vacant possession and a state fit to be occupied by DAYA as determined by DAYA at that given point in time.

- 1.2. Words importing the singular, shall where the context so admits, be construed as importing the plural and vice versa.
- 1.3. Words importing persons, shall where the context so admits, be construed as importing a corporate body and vice versa.
- 1.4. The headings to the respective clauses do not form part of this Agreement and are for convenience of reference only and shall not affect the construction or interpretation of the terms and provisions hereof.

Vendor's Initials

DAYA's Initials

1.5. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be void, voidable, invalid, illegal or otherwise unenforceable, or indications to that effect are received by either of the parties from any competent authority, the parties shall use their best efforts to achieve the purpose and intention of the relevant provision by amending this Agreement by adding a new legally valid and enforceable provision and the said invalid, illegal and unenforceable provision shall be deemed never to have been contained herein.

ARTICLE 2:

2.0 DESCRIPTION OF PROPERTY SOLD

2.1 **ALL THAT** parcel of land, measuring **22 acres** situated in Meru District -Arusha Region, held under a **Certificate of Title Number 1753**, and all buildings, attachments, installations, features, all things growing on the land, all rights, easements, appurtenances (including water rights) belonging to and/or enjoyed with the land.

2.2 The Vendor shall carry out all applications for the subdivision and transfer approvals. The final registration in favor of DAYA through the Tanzania Investment Center shall be facilitated and finalized by DAYA.

3.0 CONSIDERATION AND MODE OF PAYMENT:

3.1 The Purchase Price shall be **United States Dollars Six Million Only (USD 6,000,000.00)** of which inclusive of all taxes and dues assessed and levied over the Property.

3.2 On signing of this Agreement, DAYA agrees to deposit the sum of **United States Dollars Five Million Four Hundred Thousand Only (USD 5,400,000.00)** in the designated escrow account representing Ninety percent (90%) of the agreed consideration. The disbursement of **United States Dollar Six Hundred Thousand Only (USD 600,000)** which is 10% of purchase price shall be advanced to the Vendor to cover for the Capital Gains Taxes and other related costs which shall be upon completion of the following conditions precedent:

Vendor's Initials  _____

DAYA's Initials _____

- 3.2.1 DAYA having conducted an appropriate due diligence in respect of the Property.
- 3.2.2 The Vendor and DAYA establishing proper boundary markers and beacons
- 3.2.3 The Vendor handing over to the DAYA a separate title deed for the sub-divided 22 acres.
- 3.3 Upon closing of the transfer, DAYA agrees to release the sum of **United States Dollars Four Million Eight Hundred Thousand (USD 4,800,000.00)** representing eighty percent (80%) of the agreed consideration to the Vendor.
- 3.4 The Balance of **United States Dollars Six Hundred Thousand (USD 600,000.00)** is to be kept in the designated escrow account as a retention sum. The retention period is **twelve (12) months** from the date of signing this Agreement.
- 3.5 The parties agree that immediately on signing of this Agreement and the relevant statutory forms for disposition, DAYA shall deposit the amount detailed in Clause 3.2 for Capital Gains Tax and other costs to the following bank account:

Account Name: **KILIMANJARO GOLF DEVELOPMENT LIMITED**

Account Number: **022010001228**

Currency: **UNITED STATES DOLLARS**

Swift Code: **AZANTZTZ**

Bank Name: **AZANIA BANK (TANZANIA) LIMITED**

Branch: **ARUSHA BRANCH**

Bank Address: **Joel Maeda Road, Plot 29, Block E, P.O. Box 2728
Arusha -Tanzania**

- 3.6 The release of the 80% (USD 4,800,000) from the Escrow Account to the Vendor's Account shall be payable on fulfillment of the conditions stipulated under clause 7.3 of this Agreement

4.0 VENDOR'S COVENANTS:

- 4.1 The Vendor's covenants hereby to DAYA are as follows:

- 4.1.1 It is understood that in the event the sale and the eventual transfer envisaged in this Sale Agreement shall fail for any reason whatsoever, the parties here-in

Vendor's Initials _____

DAYA's Initials _____


shall relapse to the *status quo* whereas all the monies deposited and paid by DAYA in consideration of the sale shall be refunded to DAYA in full by the Vendor and without any right of set-off or counterclaim. Thereafter neither party shall have any claim against the other arising from this agreement.

- 4.1.2 To promptly pay all utility accounts and all outgoings levied or assessed on the Property until such time as when physical possession of the Property shall have been delivered to DAYA. These include, but are not limited to, Electricity bills, Land rent and any dues to government agencies and/or commercial vendors.
- 4.1.3 Upon signing of this Agreement, the Vendor shall allow and do all that is necessary to facilitate the Appointed Lawyers for this sale of the Property, to do the following (in each case on terms acceptable to DAYA):
- 4.1.3.1 To collect and hold the Certificate of Title of the Property.
 - 4.1.3.2 Lodge all the necessary documents, apply for and obtain the Transfer Approvals from the Meru District Council Land Office.
 - 4.1.3.3 To oversee the Capital Gain Tax assessment and payment to the Tanzania Revenue Authority.
 - 4.1.3.4 To oversee stamp duty payment and other statutory costs to the relevant authorities.
 - 4.1.3.5 Lodge all the necessary documents for registration with the relevant authorities.
 - 4.1.3.6 Obtain all necessary legal registrations of the Title Deed in the name of DAYA.
- 4.1.4 The Vendor agrees to indemnify and hold harmless DAYA from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including legal fees and costs, but only to the extent caused by, arising out of, or relating to non-adherence of the applicable laws by the Vendor.
- 4.1.5 The Vendor represents and warrants that it has the right, power and all necessary authority to enter into this Sale Agreement and to transfer to DAYA all the Property sold.

Vendor's Initials _____

DAYA's Initials _____

- 5.1.2 All restrictions, conditions and covenants applicable to the Property have been fully observed and complied with and no notice of any breach thereof have been received or is to the Vendor's knowledge likely to be received.
- 5.1.3 This agreement and the deeds of transfer of the Property from the Vendor to DAYA shall be subject to the consent of the statutory officials concerned or duly authorized in that behalf being recorded to this disposition and in the event such consent shall be refused the parties shall revert to their original position and any monies paid or deposited shall be refunded to DAYA free of set-off or counterclaim.
- 5.1.4 The land is not contaminated, hazardous or declared by the appropriate authority to be so in terms of section 7 of the Land Act, Cap. 113 and is not in violation of any environmental laws or regulations.
- 5.1.5 The execution or performance of the terms and conditions of this Agreement, transfer deeds and all related documents shall not result in any breach of the Vendor's constitutional documents, or any related corporate documents.
- 5.1.6 All information given by or on behalf of the Vendor to DAYA in the course of all negotiations leading to this Agreement was, when given, and remains true, complete and accurate in all respects and the Vendor is not aware of any facts or matters which would render such information untrue, incomplete, inaccurate or misleading.
- 5.1.7 The execution of this Agreement and the relevant documents or the performance of its terms will not result in any breach of any agreement to which the Vendor is a party or to any court order or decree.
- 5.1.8 This being the Agreement for sale, all liabilities including any related to employees of the Vendor are the full and sole responsibility of the Vendor and shall not in any way be assumed by DAYA.

Vendor's Initials 

DAYA's Initials

5.1.9 The Vendor will not do or omit or permit to be done any act or thing or permit the omission of any act or thing, which is intended to or may impair or have an adverse effect upon the consummation of the transactions contemplated in this Agreement or on the whole or part of the Property.

6.0 DAYA S' REPRESENTATIONS AND WARRANTIES

6.1 DAYA represents and warrants as follows to the Vendor, and acknowledges that the Vendor is relying upon such representations and warranties in entering into this Agreement.


6.1.1. DAYA have sufficient mandate, authority and right to enter into this Agreement and complete the transactions contemplated hereby.

6.1.2. The execution of this Agreement and the consummation of the transactions contemplated thereby have been duly and validly authorized, and shall not result in a breach of DAYA 's organizational documents.

6.1.3. DAYA will perform their obligations as imposed under this Agreement and comply with the applicable law. The Vendor shall not be liable for any loss that may arise as a result of failure on the part of DAYA to comply with such law.

7.0 COMPLETION, CONDITIONS PRECEDENT AND SPECIFIC COVENANTS

7.1 Subject to clause 7.2, the Vendor and DAYA hereby expressly agree that the completion of this Agreement will be within forty (40) days of signing this Agreement. However, Parties shall consider an extension of time to complete the transaction for sufficient reason including delay in obtaining relevant approvals and registration from Government Authorities.

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DAYA's Initials

7.2 At Completion, the following shall occur:

7.2.1 DAYA shall confirm in writing to the Vendor that, in their reasonable opinion, the conditions precedent set out in clause 7.3 below have been duly satisfied; and

7.2.2 Subject to the conditions precedent set out in clause 7.3 below being duly satisfied, the balance of the Purchase Price shall be released to the Vendor

7.3 The release of the 80% of the Purchase Price (**United States Dollars Four Million Eight Hundred Thousand USD 4,800,000.00**) from the Escrow Account to the Vendor is conditional upon the fulfillment of the following conditions precedent, in each case to the satisfaction of DAYA:

7.3.1 Vendor having a clean title to the Property free from any encumbrances together with proper boundary markers and having beacons in place;

7.3.2 The Vendor having complied with any applicable conditions of the title to the Property

7.3.3 Settling all taxes and dues assessed and levied over the Property as levied and demanded by the relevant Government Authorities;

7.3.4 Obtaining Transfer Approvals in favor of DAYA;

7.3.5 Legal registration of separate Title Deed, with subdivision drawing/map in conformation of the proper boundary markers and beacons, in the name of DAYA with relevant Government Authorities;

7.3.6 The Vendor having delivered to DAYA Vacant Possession to the Property.

7.4 Disbursements: -

7.4.1 It is hereby agreed that the following costs will be deducted and paid from the deposits in the Escrow Account, upon Vendor's presentation of valid documents, in accordance with clause 3.2:

7.4.1.1 Capital Gains Tax as shall be assessed by the Tax Authorities will be deducted and paid from the deposits.

7.4.1.2 Fees to conduct valuation and preparation of a valuation report.

Vendor's Initials 

DAYA's Initials

7.4.1.3 Any professional fees payable by the Vendor in relation to this Agreement. The Vendor shall provide these costs by way of legal binding agreements.

8.0 NOTICES

8.1 All notices, requests, consents, demands, waivers and other communications, duly given by either party, shall be in writing in the English language, and shall be sent by hand delivery, prepaid post letter or other speedier mode of communications or transmittal whether manual or electronic including but not limited to telefax and email to the addresses set forth below:

FOR THE VENDOR:

KILIMANJARO GOLF DEVELOPMENT LIMITED

c/o Jerome Bruins and Bastiaan Bruins

Mobile: +255 784 410 100; +31 615926929

Email: zsbruins@icloud.com; bas@kiligolf.com

FOR DAYA

DAYA VOYAGE (KILIGOLF) INVESTMENT LIMITED

c/o Toby Bath

Telephone: +852 2638 2899

Email: tobybath@dayainvestment.com

9.0 GOVERNING LAW

All matters arising from and in connection with this Sale Agreement shall be governed and construed in accordance with the laws of the United Republic of Tanzania.

10.0 DISPUTE RESOLUTION

10.1 Should any dispute or difference arise between the Parties in connection with this Sale Agreement, the Parties shall do their very best and all that is within their ability and reach to settle such disputes and differences amicably.

Vendor's Initials _____



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DAYA's Initials _____

10.2 Failure to the above, each party shall appoint one arbitrator and the two arbitrators shall appoint one arbitrator (umpire) who shall arbitrate the dispute and make a decision thereon as provided in the Arbitration Act, Cap 15 R. E. 2002.

11.0 INDEMNITY CLAUSE

11.1 The **Vendor** hereby undertakes to indemnify and hold harmless **DAYA** from and against any loss, damage, liability, cost, expense or action suffered or incurred by **DAYA** directly as a result of any breach or non-observance by the **Vendor** of any of the **Vendor's** obligations or duties herein.

11.2 Each **Party** undertake to indemnify the other Party on a full and unqualified indemnity basis against any action, claim, loss, cost, damage or expense either Party may suffer or incur as a result of any document delivered to it pursuant to this Agreement being unauthorized, invalid or for any reason ineffective for its purpose.

11.3 Without prejudice to any of the **either Party's** other rights under this Agreement, if it comes to the knowledge of either Party prior to the Completion that any fact is inconsistent with the warranties given by a Party pursuant to the provisions of this Agreement or which may cause the said warranties to be untrue, misleading or breached, the **affected Party** shall be entitled to rescind this Agreement and claim any damages incurred by such affected party and at the same time, all Parties shall revert to their original position before such rescission.

12.0 MISCELLANEOUS PROVISIONS

12.1 Each Party to this Agreement undertakes to take all steps necessary for its implementation and to sign, from time to time all documents, contracts or writings and to do, or to see done, all which is considered necessary to be done in order to fulfill the object of this Agreement and in order to give full effect to its provisions.

Vendor's Initials 

DAYA's Initials

- 12.2 The parties to this Agreement shall maintain confidentiality and shall not disclose to any third party, the subject matter, the terms and contents of this Agreement, except by mutual consent in writing or to the extent required by law.
- 12.3 This Agreement constitutes the entire contract between the parties with regard to the matters dealt with in this Agreement and no representation; terms or warranties not contained herein shall be binding on the parties.
- 12.4 No agreement varying, adding to, deleting from or canceling this Agreement shall be effective unless reduced in writing and signed by or on behalf of the parties.
- 12.5 Except in the case of express waiver, the fact that one Party does not exercise all or any part of its rights, which are conferred upon it by this Agreement, shall not constitute in any event the waiver, or abandonment of the rights not exercised.
- 12.6 No amendment to this Agreement shall be effective unless it is in writing and duly executed by or on behalf of the Parties to this Agreement.
- 12.7 This Agreement has been executed in Four (4) identical originals, all of which shall constitute one instrument.

IN WITNESS HEREOF, the Parties hereto have executed Four (4) originals of this Sale Agreement on the date and year first herein above written in the following manner:-

SIGNED by said **KILIMANJARO GOLF DEVELOPMENT LIMITED**

in our presence this _____ day of September 2021.

NAME: BASTIAAN BRUINS
 DESIGNATION: DIRECTOR
 SIGNATURE: [Signature]
 DATE: 20 SEPT 2021



Vendor's Initials [Initials]
 DAYA's Initials _____

NAME:
DESIGNATION:
SIGNATURE:
DATE:

J.H. Bruins
DIRECTOR
[Signature]
20/9/2021

SEALED with the **COMMON SEAL** of the
said **DAYA VOYAGE (KILIGOLF) INVESTMENT LIMITED** and
DELIVERED in our presence this _____ day of September 2021

NAME: _____
DESIGNATION: _____
SIGNATURE: _____
DATE: _____

NAME: _____
DESIGNATION: _____
SIGNATURE: _____
DATE: _____

Vendor's Initials [Signature]
DAYA's Initials _____