

REPORT TO SUBCOUNCIL 24

1 **ITEM NUMBER** 24SUB 10/01/2021

2 **SUBJECT**

PROPOSED LEASE OF PORTION OF CITY LAND, ERF 32394 HLELA AND MAKHULU STREETS KHAYELITSHA: IKAMVA LABANTU CHARITABLE TRUST (082-581 NPO)

ONDERWERP

VOORGESTELDE VERHURING VAN 'N GEDEELTE STADSGROND, ERF 32394, HLELA- EN MAKHULUSTRAAT, KHAYELITSHA: IKAMVA LABANTU CHARITABLE TRUST (082-581 NPO)

ISIHLOKO

ISIPHAKAMISO SENGQESHISO NGESIQEPHU SOMHLABA WESIXEKO, ISIZA 32394 HLELA NE-MAKHULU STREETS EKHAYELITSHA: KWI-IKAMVA LABANTU CHARITABLE TRUST (082-581 NPO)

M1154

PTMS NO: 130004441

File Ref No: T/CO14/3/6/1/2/190

(Category 3)

3. **DELEGATED AUTHORITY**

- ☒ The report is for comment by Subcouncil to the competent authority in terms of Part 24, Delegation 10(1).

“To comment to the competent authority on the granting of rights to use, manage or control City immovable assets such as land, property and buildings and to recommend conditions of approval where deemed necessary.”

- ☐ In terms of delegation Part 27B paragraph 19(7), the following delegation was conferred upon the City Manager. The City Manager has sub-delegated this delegation to the Director: Property Management.

“To approve the granting of rights to use, control or manage capital assets: Capital assets less than R10 million, longer than 3 years (<R10 million and > 3 years) and capital assets more than R10 million, not longer than 3 years (>R10 million and <3 years) for the following categories:

- a) Social Care Leases: Leases to Social Care organisations) NPOs, NGOs, sports organisations not for profit) at a tariff rental as approved by Council annually.
- b) Non-viable gardening and security leases: Leases of non-viable portion(s) of municipal land to adjacent land owners at a tariff rental as approved by Council annually.”

Provided that this delegation may only be exercised after considering the comment from the Sub-council in whose area of jurisdiction the capital is situated.

☒ Final delegation lies with Director: Property Management.

4. EXECUTIVE SUMMARY

PURPOSE OF REPORT	To consider the proposed lease of City land, portion of erf 32394 Khayelitsha to Ikamva Labantu Charitable Trust (082-581 NPO) for social care purposes.			
Site extent	1 062 m ²			
Submission date	24 August 2018			
Current zoning	Community II (Regional)			
Current usage	Social care – Senior Clubs for the Elderly			
Proposed usage	Social care – Senior Clubs for the Elderly			
WARD CLLR	NOTICE DATE		WARD	
Danile Khatshwa	16 March 2020		96	
Internal circulation date	31 January 2019			
Internal department comments	No objections were received, subject to certain conditions.			
Public participation outcome summary	Advertised in the Cape Argus and Die Burger on 20 March 2020. No comments or alternative proposals were received.			
Viable	Yes	x	No	
	Viable immovable property is deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity by the Registrar of Deeds.			
Recommended decision	Approval	x	Refusal	
Regulation 34(1) In-principle approval	Granted by Director: Property Management in terms of delegated authority after 21 June 2018			
Factors motivating recommendation:	<ul style="list-style-type: none">• The leasing of the property will relieve Council of the maintenance burden.• Better utilization of City property.• A tariff related rental income will be generated.			
Strategic intent	SFA 1 : an OPPORTUNITY City of Cape Town			
	Objective 1.1	Positioning Cape Town as forward looking globally competitive City		
	Programme 1.1(q)	Leveraging the City's assets		

5. RECOMMENDATIONS FOR CONSIDERATION AND COMMENT BY THE

Making progress possible. Together.

RELEVANT SUBCOUNCIL

It is recommended that the lease of City land, portion of erf 32394 Khayelitsha situated at, Hlela and Makhulu Streets, Khayelitsha, shown bordered grey and lettered ABCD on the attached sketch ET 771 marked annexure A, in extent approximately 1 062 m², to Ikamva Labantu Charitable Trust (082-581 NPO), or its successors in title, be approved subject to inter alia the following conditions:

- a) A tariff rental of R966,09 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable;
- b) The lease will endure for a period of ten (10) years, with an option to renew a further ten (10) years;
- c) The rental will be adjusted annually in terms of the rental tariff structure as approved by Council;
- d) The property be used for social care (senior clubs for the elderly) purposes only;
- e) Subject to such further conditions to be imposed by the Director: Property Management in terms of her delegated authority;
- f) Subject to compliance with any other statutory requirements;
- g) No compensation will be payable for any improvement made to the property.

5. AANBEVELINGS VIR OORWEGING EN KOMMENTAAR DEUR DIE BETROKKE SUBRAAD

Daar word aanbeveel dat die verhuring van Stadsgrond, 'n gedeelte van erf 32394 Khayelitsha, geleë in Hlela- en Makhulustraart, Khayelitsha, aangetoon deur grys grense en die letters ABCD op die aangehegte skets ET 771 gemerk bylae A, ongeveer 1 062 m² groot, aan die Ikamva Labantu Charitable Trust (082-581 NPO) of sy regsopvolgers, goedgekeur word, onderworpe aan onder meer die volgende voorwaardes, naamlik:

- a) 'n Tariefhuurgeld van R966,09 per jaar, BTW uitgesluit - bereken teen die koers wat ten tye van die transaksie geld - betaal moet word. Eiendomsbelasting is nie van toepassing nie;
- b) Die huurooreenkoms vir 'n termyn van tien jaar (10) sal duur, met 'n opsie om dit vir 'n verdere tien (10) jaar te hernieu;
- c) Die huurgeld jaarliks aangepas sal word volgens die huurtariefstruktuur soos deur die Raad goedgekeur;
- d) Die eiendom slegs vir maatskaplikesorgdoeleindes (seniorburgerklubs vir bejaardes) gebruik mag word;
- e) Onderworpe aan enige verdere voorwaardes opgelê deur die direkteur: eiendomsbestuur ingevolge haar gedelegeerde bevoegdheid;

- f) Onderworpe aan die nakoming van enige ander statutêre vereistes;
- g) Geen vergoeding betaal sal word vir enige verbetering wat aan die eiendom aangebring word nie.

5. IZINDULULO ZOKUBA ZIQWALASELWE KWAYE KUHLONYULWE KUZO LIBHUNGANA ELIFANELEKILEYO

Kundululwe ukuba makuphunyezwe ingqeshiso yomhlaba weSixeko, isiqephu sesiza-32394 esiseKhayelitsha esime eHlela naseMakhulu Streets, eKhayelitsha, esibonakaliswe ngemigca egreyi nonoobumba ABCD kwisazobe esingu-ET 771 esiphawulwe njengesihlomelo A, esibukhulu obumalunga ne- 1 062 m², kwi-Ikamva Labantu Charitable Trust (082-581 NPO), okanye abangena ezihlangwini zabo ngokwetayitile, ngokuxhomekeke phakathi kwezinye izinto kule miqathango ilandelayo:

- a) Makuhlawulwe ixabiso larenti elingama-R966.09 ngonyaka ngaphandle kweRhafu-ntengo ebalwe ngokwexabiso elisetyenziswayo ngexesha lonaniselwano; lintlawulo zobuhlali azisebenzi;
- b) Ingqeshiso iza kuhlala isithuba seminyaka elishumi(10) apho kuyakuthi kubekho ummiselo wokuzikhethela ukuhlaziya eminye iminyaka elishumi(10);
- c) Irenti iyakuthi ilungelelaniswe rhoqo ngonyaka ngokungqinelana nesakheko samaxabiso erenti njengoko siphunyezwe liBhunga;
- d) Ipropati mayisetyenziselwe imibandela yezentlalo (iiklabhu ejoliswe kwiinkonde) kuphela;
- e) Ngokuxhomekeke kweminye imiqathango eza kumiselwa nguMlawuli woLawulo lwePropati ngokwamagunya wakhe awagunyaziselweyo.
- f) Ngokuxhomekeke ekuthotyelweni kwayo nayiphi na imiqathango yomthetho engeminye;
- g) Akusayi kuhlawulwa mbuyekezo ngophuculo oluthe lwenziwa kwipropati.

6. DISCUSSION/CONTENTS

6.1 BACKGROUND

An application was received for the lease of City land, portion of erf 32394 situated at Hlela and Makhulu Streets, Khayelitsha, shown lettered ABCD on the attached sketch ET 771 marked annexure A, in extent approximately 1 062 m², to Ikamva Labantu Charitable Trust (082-581 NPO) or its successors in title for the lease of the aforementioned property for social care (senior clubs for the Elderly) purposes for a period of ten (10) years with an option to renew for a further period of ten (10) years, subject at anytime to six (6) months' notice of termination.

The applicant has been in occupation and operating on the premises for the past few years and has maintained it to the satisfaction of the City of Cape Town and meets all the requirements in terms of 12.5.1 of Chapter C of Council's policy relating to the

Management of Certain of the City of Cape Town's Immovable Property (approved 26 August 2010) as discussed in 6.4.2 of the report.

The application has been circulated and is supported by all the relevant services branches subject to certain conditions as provided in paragraph 6.2 of the report.

As part of the public participation process a call for comments or objections was advertised. The proposed lease was advertised for public comments or objections. None were received.

6.2 CONSULTATION WITH INTERNAL BRANCHES:

The various Council Departments were consulted and have no objection to the lease subject to the following conditions that will form part of the lease agreement:

- 6.2.1 Building plans to be submitted for all new building work/structures;
- 6.2.2 The applicant must make use of all Solid Waste services and will be responsible for the Clean-Up of the area;
- 6.2.3 That the applicant at his/her cost provides all services and link services required to the satisfaction of the Council prior to transfer of individual erven;
- 6.2.4 All applicable service connection fees will be applicable and will be payable upfront;
- 6.2.5 The applicant will be responsible for the full cost for any new or upgrading of existing service connections;
- 6.2.6 The applicant must submit an official application for the connection of all Municipal services;
- 6.2.7 That no structure is constructed over the municipal service and that a servitude, with a minimum width of 3.0m, be registered over such a service. This shall be for the cost of the applicant;
- 6.2.8 Should it be necessary to move / relocate or support any existing services for possible future needs then it will be at the developer's cost and application can be made to Sabelo Potela on cell number: 084 745 8990;
- 6.2.9 Once a development is proposed, a formal application must be made in this regard to the Reticulation District Head.

6.3 VALUATION

The application category fits within the tariff structure of the City approved on 27 May 2020;

An annual rental tariff of R966,09 excl. VAT subject to increase in accordance with the City's tariff structure as approved by Council and as may be amended from time to time will be payable.

6.4 CONSTITUTIONAL AND POLICY IMPLICATIONS

- 6.4.1. Chapter C of Council's policy relating to the Management of certain of the City of Cape Town's Immovable Property (approved 26 August 2010), permits the leasing of immovable property.
- 6.4.2 Chapter 4 of the MATR governs the granting of a property right in circumstances where section 14 of the MFMA does not apply, in other words, where the granting of such rights do not amount to the transfer or permanent disposal of the asset, for example when a right is acquired through a leasing, letting or hiring out arrangement.

Paragraph 12.5.1. of the Policy is quoted, as follows:

Social care properties / Community sport properties

In exceptional circumstances where a Property, to be used for a social care / community sport purposes, has not been reserved in accordance with the processes provided for in Chapter C of this policy, and where the City's Property Management Department receives an unsolicited application for Property Transaction, then the following factors may be taken into account in justifying not following a competitive bidding process-

Whether the applicant has historically enjoyed a Property Right granted by the City and, if so, how long;

The applicant, Ikamva Labantu Charitable Trust is a registered Non-Profit Organisation and has been operating since 2000. They submitted an application to enter into a lease agreement with the City of Cape Town for a period of ten (10) years with an option to renew for a further period of ten (10) years.

The terms and conditions of such lease;

A lease for a period of ten (10) years with an option to renew for a further ten (10) years, at a rental of R966,09 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable.

The exact nature of the social care or community purposes;

The property will be utilized for social care (senior clubs for the elderly) purposes only that will enrich and benefit the community.

Whether the applicant in the past made improvements to the property and, if so, the value of such improvements;

During a site inspection on the premises, it was confirmed that structures were erected on the property by the applicant. There was a prefabricated structure being built on the property. It cannot be determined what the value of the structures are.

Whether or not the City is satisfied with the manner in which the applicant gives effect to the social care or community purpose;

The City is satisfied that the property will be used by the local community and will have beneficial advantages for both the City and the community.

6.5 FINANCIAL IMPLICATIONS

All costs involved in this transaction will be for the Applicant's account

6.6 TAX COMPLIANCE

Paragraph 98.3 of the City's Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), stipulates that the City may not consider a bid or quote unless the bidder who submitted the bid or quote has submitted a valid tax clearance certificate certifying that the provider's tax matters are in order.

Paragraph 99 of the City's Supply Chain Management Policy, approved by Council on 30 May 2019 (C18/05/19), stipulates: "Irrespective of the procurement process, the City may not make any award above R15 000,00 to a person whose tax matters have not been declared by the SARS to be in order."

Paragraphs 372 – 375 of the aforementioned policy deal with the sale and letting of City-owned immovable property and are silent on the SARS requirement. Property Management adopted the principle as per paragraph 99 above and applicants need to submit a SARS clearance certificate or exemption certificate for the sale of all City-owned immovable property. Except for tariff-based rentals, which do not exceed R15 000, all applicants need to submit a SARS clearance or exemption certificate for the leasing of City-owned immovable property.

This transaction is tariff based and does not exceed R15 000,00 and as such the requirements for a SARS clearance or exemption certificate is not applicable.

6.7 FINANCIAL DUE DILIGENCE

The applicant's debt profile has been verified and they are in arrears. The client has since made a full payment for the outstanding debt. Proof of payment attached as annexure C.

6.8 SUSTAINABILITY IMPLICATIONS

Does the activity in this report have any sustainability implications for the City?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>
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6.9 LEGAL IMPLICATIONS

Regulation 36 of the MATR

In terms of the above Regulation, Council must take into account a number of factors (highlighted in bold) when considering any proposed granting of rights to use, control or manage municipal capital assets, and it is herewith confirmed that:

Whether asset may be required for the municipality's own use during the period for which the right is to be granted

Council's service branches confirmed that the asset is not required for own purposes.

Extent to which any compensation to be received, estimated value of improvements or enhancements to party the right is granted to will be required to make, economic or financial benefit to the City

Council will receive a financial benefit in the form of a tariff rental to the amount of R966,09 per annum excluding VAT calculated at the rate applicable at the time of transaction be payable. Rates not applicable.

Management of Risk

No operational or control risk to the City.

Stakeholder comments and recommendations

The Director: Property Management in terms of her delegated powers, has approved the public participation process as required, resulting in the proposed lease being advertised in the Cape Argus and Die Burger on 20 March 2020. Closing dates for objections were 20 April 2020.

Copies of the advertisement were sent to the Ward Councillor, Manager and Chairperson of the relevant Sub-Council and registered local community organisations. No objections or any comments were received.

Views from National and Provincial Treasury

In terms of Regulation 34 of the MATR the subject property falls within the category of a capital asset in respect of which the proposed right to be granted has a value less than R10 million and a period exceeding 3 years (Non-Significant Property Right). National and Provincial Treasury have been notified. No objections or any comments were received.

Strategic, Legal and Economic Interests

None of these interests will be compromised through the granting of the right to use, control or manage the asset. In fact, they will be supported.

Compliance with Legislative Regime that is Applicable to Proposed Granting of Rights

Granting of the right to use, control or manage the asset is compliant with the Municipal Finance Management Act, Municipal Asset Transfer Regulations and Council's policy on the management of certain of the City of Cape Town's immovable property.

6.10 STAFF IMPLICATIONS

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No ☒

Yes ☐

ANNEXURES

Annexure A: Plan ET 771

Annexure B: Certificate of Registration as Non-Profit Organization

Annexure C: Proof of payment

AB

FOR FURTHER DETAILS CONTACT:

NAME	ELEANOR ARENDS Donavon C Geysman <small>Digitally signed by Donavon C Geysman Date: 2021.01.08 09:57:58 +02'00'</small>
CONTACT NUMBERS	021 444 5871
E-MAIL ADDRESS	ELEANOR.ARENDS@CAPETOWN.GOV.ZA
DIRECTORATE	ECONOMIC OPPORTUNITIES & ASSET MANAGEMENT
FILE REF NO	T/CO14/3/6/1/2/190
MANAGER: PROPERTY HOLDING RACHEL SCHNACKENBERG	

Comment:

**ACTING DIRECTOR : PROPERTY MANAGEMENT IN
HER CAPACITY AS EXECUTIVE DIRECTOR :
ECONOMIC OPPORTUNITIES & ASSET
MANAGEMENT NOMINEE**

NAME RACHEL SCHNACKENBERG

DATE _____

☐ REPORT COMPLIANT WITH THE PROVISIONS OF
COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS
AND ALL LEGISLATION RELATING TO THE MATTER
UNDER CONSIDERATION.

☐ NON-COMPLIANT

LEGAL COMPLIANCE

NAME _____

TEL _____

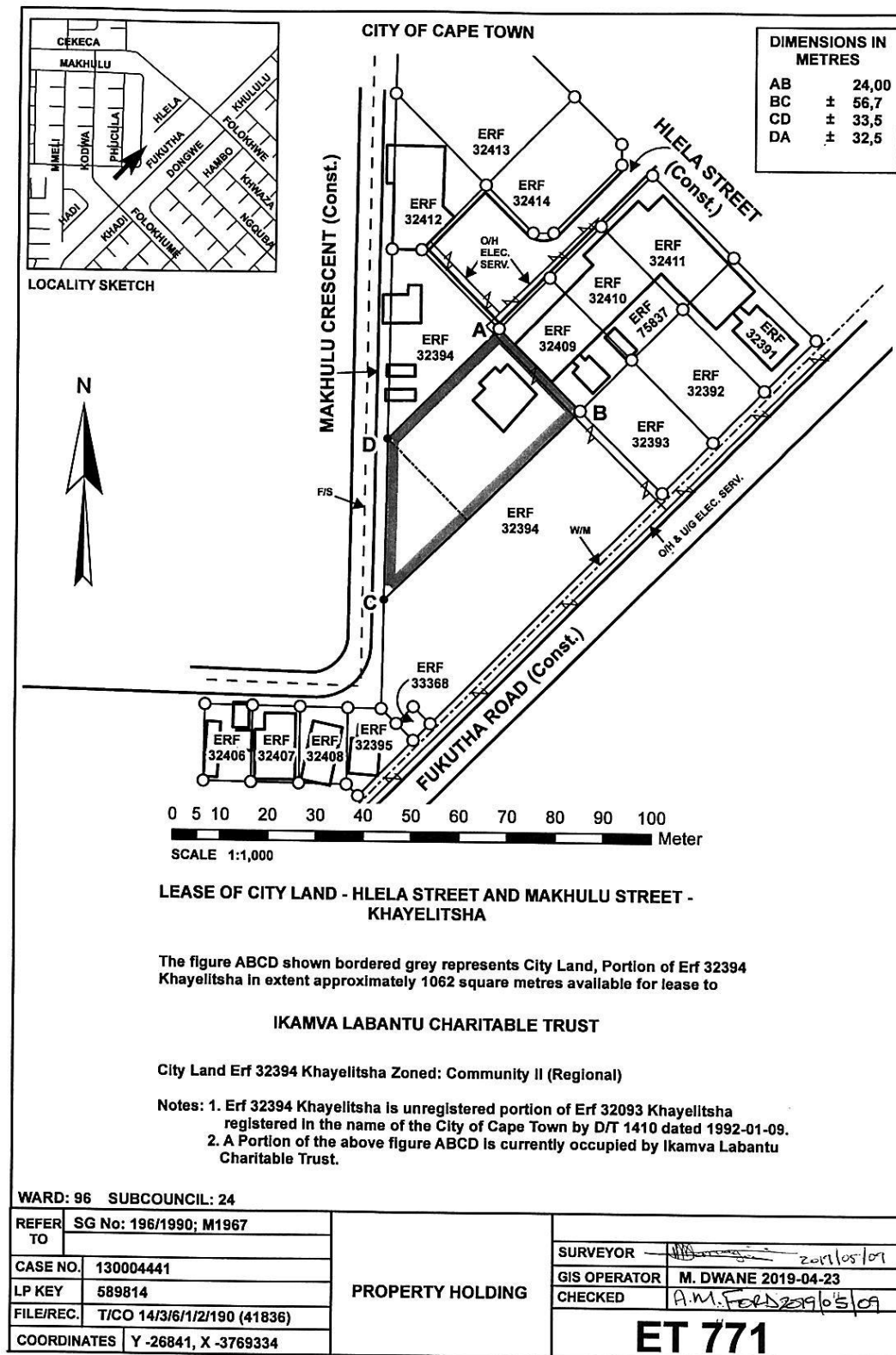
DATE _____

Comment:

Certified as legally compliant based on the contents of the report

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ANNEXURE A



Making progress possible. Together.

G.P.S. 012-0123



CERTIFICATE OF REGISTRATION OF NONPROFIT ORGANIZATION

In terms of the Nonprofit Organisation Act, 1997, I am satisfied that

Ikamva Labantu Charitable Trust

(name of the nonprofit organization)

meets the requirements for registration.

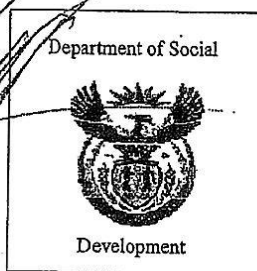
The organisation's name was entered into the register on **27 September 2000**
(date)

Registration number

082-581-NPO

Director's signature

Date **12 November 2010**





NOTIFICATION OF PAYMENT

To Whom It May Concern:

RMB Private Bank hereby confirms that the following payment instruction has been received:

Date Actioned	: 18 Sep 2020
Time Actioned	: 05:20:12
Trace ID	: TTZFDCTG

Payer Details

Payment From	: Ikamva Labantu Charitable Trust
Curr/Amount	: 11,760.87

Payee Details

Name	: City of Cape Town Municipality
Bank	:
Branch Code	:
Reference	: 217601480

END OF NOTIFICATION

To authenticate this Payment Notification, please visit the RMB Private Bank website at rmbprivatebank.com, select the "Verify Payment" and follow the on-screen instructions

Our customer (the payer) has requested FirstRand Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. FirstRand Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

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