

## ENFORCEABLE UNDERTAKING

### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT SECTION 93AA

#### 1. INTRODUCTION

1.1. This document contains an undertaking by Citie Centre 4 Pty Ltd ACN 078 016 092 ("Citie Centre 4"), Citie Centre Ltd ACN 075 140 911 ("Citie Centre"), Berela Limited ACN 010 671 315 ("Berela") and Mirani Pty Ltd ACN 010 728 597 ("Mirani") to the Australian Securities and Investments Commission ("ASIC"). The undertaking is offered to ASIC pursuant to section 93AA of the Australian Securities and Investments Commission Act ("ASIC Act").

1.2. In summary, ASIC, following its investigations, has formed a view that:

1.2.1. By Citie Centre 4, Citie Centre and Berela entering into Heads of Agreement on or about 30 November 1998, the then directors of Berela, Citie Centre 4 and Citie Centre and those companies contravened section 615 of the Corporations Law ("Law");

1.2.2. There is evidence to infer that Mirani is an associate of other substantial shareholders such as to constitute a breach of section 615 of the Law; and

1.2.3. Unacceptable circumstances arose in connection with the Part C Announcement made by Citie Centre 4 for shares in Berela and as a result of Citie Centre 4 withdrawing its takeover announcement in reliance upon purported prescribed occurrences as defined by section 603 of the Law.

#### 2. FACTUAL BACKGROUND

2.1. Ron Borland Real Estate Pty Ltd ACN 010 349 345 ("Borland") on 15 October 1998 sold shares it held in Berela constituting approximately 37% of Berela's share capital to Mirani and Citie Centre 4. Mirani obtained approximately 17% of Berela's shares and Citie Centre 4 obtained approximately 19.9% of Berela's shares. Also on 15 October 1998, Borland nominated three directors of Citie Centre 4 and a director of Mirani to be directors of Berela.

On 12 November 1998, Citie Centre 4 a wholly owned subsidiary of Citie Centre made a Part C Announcement ("the takeover announcement") for certain shares of Berela at an offer price of 22 cents per share, whereby during the period commencing on 26 November, 1998 and expiring at the close of trading on the Australian Stock Exchange ("ASX") on 29 December, 1998,

Morgan Stock Broking Limited ACN 010 669 726 ("Morgans") offered to acquire all the fully paid ordinary shares in Berela on behalf of Citie Centre 4 but purported to exclude the shares issued under a 1:1 rights issue and the allotment of 800,000 Berela shares to Pauline Taylor.

- 2.2. On 24 November 1998, the takeover announcement was withdrawn from the market on the basis that two "prescribed occurrences" had taken place. The ASX release dated 24 November 1998 indicates that Citie Centre 4 withdrew its bid on the basis that a replacement prospectus offering the 1:1 rights issue was being pursued by the current board of Berela and that the directors of Berela made an allotment of 800,000 Berela shares to Pauline Taylor in order to raise \$160,000.00.
- 2.3. At the time of the takeover announcement, Citie Centre 4 was aware of a lodged prospectus and proposed allotment to Pauline Taylor of 800,000 Berela shares.
- 2.4. Berela issued a prospectus on 5 November 1998 for the offer of 1 share in Berela for each share then issued, with attaching options. Berela's constitution did not permit the issue of options. Citie Centre 4 obtained Court orders to prevent the dispatch of the prospectus of 5 November 1998 and obtained an undertaking from Berela that it would lodge a replacement prospectus. Berela issued a replacement prospectus on 19 November 1998. Citie Centre 4 was unsuccessful in Court proceedings preventing the dispatch of Berela's replacement prospectus and the replacement prospectus went to shareholders.
- 2.5. On 25 November 1998, Berela issued legal proceedings against Citie Centre 4 and others. Citie Centre 4 and Berela settled the legal proceedings and other issues between them by entering into a document entitled Heads of Agreement on or about 30 November 1998 under which they agreed to appoint three persons to act as members of the Berela board and who would use their proxies in a manner consistent with the terms of the Heads of Agreement at the Annual General Meeting of Berela on 30 November 1998.
- 2.6. ASIC is of the view that by Citie Centre 4, Citie Centre and Berela entering into Heads of Agreement on or about 30 November 1998, the then directors of Berela, Citie Centre 4 and Citie Centre formed an association which contravened section 615 of the Law.
- 2.7. In relation to the acquisition of shares in Berela by Mirani, ASIC found that Mirani and the beneficial owner of the Berela shares had not previously invested more than \$30,000.00 in shares and had not previously invested in a project construction company of a type like Berela. Mirani purchased 17.9% of the shares in Berela without carrying out any due diligence and upon receiving verbal information from a third party who provided a loan of approximately \$601,000.00 to enable Mirani to purchase such shares. There is no documentation to prove the existence of that loan.

- 2.8 ASIC has formed the view that the takeover announcement by Citie Centre 4 and its withdrawal are "unacceptable circumstances" for the following reasons:-
- 2.8.1 The takeover announcement failed to make an offer for the Berela shares then held by Pauline Taylor and the Berela shares to be issued under the 1:1 rights issue thereby depriving those shareholders of an opportunity under the takeover announcement;
- 2.8.2 Citie Centre 4 should not be permitted to rely on a "prescribed occurrence" triggered by the replacement prospectus of Berela dated 19 November 1998. Citie Centre 4 knew that Berela had lodged a prospectus on 5 November 1998, and that it had proposed an allotment to Pauline Taylor. In addition, Citie Centre 4 had initiated Court proceedings in relation to the contents of that prospectus and its dispatch and the proposed allotment. In the circumstances outlined above, Citie Centre 4 knew before the takeover announcement, that Berela intended to make a rights issue and an allotment to Pauline Taylor;
- 2.8.3 The takeover announcement was a tactical measure by Citie Centre 4; and
- 2.8.4 As a result of the conduct of Citie Centre 4, there are persons who may have suffered loss or damage and such conduct may have affected the integrity of the market.
- 2.9 Citie Centre 4, Citie Centre, Mirani and Berela acknowledge ASIC's concerns set out in this undertaking. Citie Centre 4, Citie Centre and Berela acknowledge that it is ASIC's view that their conduct in entering the Heads of Agreement contravened section 615 of the Law.

### 3. UNDERTAKINGS

- 3.1 Citie Centre 4 and Citie Centre severally and jointly undertake to ASIC that:
- 3.1.1 Citie Centre 4 shall by 24 December 1998 cause to be made a Part C Announcement ("the second takeover announcement") for all the issued ordinary shares in Berela including shares issued during the currency of the bid at a price no less than 23 cents per share;
- 3.1.2 Citie Centre 4 will not withdraw the second takeover announcement on the basis of any prescribed occurrence other than with the prior written consent of ASIC; and
- 3.1.3 Citie Centre will use its endeavours to ensure that Citie Centre 4 honours its undertaking herein and will report any breach of this undertaking by Citie Centre 4 to ASIC as soon as practicable after becoming aware of the breach.

## 4.

- 3.2 Berela undertakes to ASIC that the Part D Statement in response to the second takeover announcement will be accompanied by a copy of a written report made by an independent and appropriately qualified expert approved by ASIC, setting out relevant information and stating whether, in the expert's opinion, the second takeover announcement is fair and reasonable and the reasons in support of that opinion.
- 3.3 Mirani undertakes to ASIC that:
- 3.3.1 Mirani shall dispose of all its Berela shares on the ASX before the expiration of the second takeover announcement as set out in sub paragraph 3.1.1; and
- 3.3.2 Mirani shall not vote or provide proxies in relation to the shares in Berela held by it from the date of this undertaking.
- 3.4 Berela undertakes to provide Berela shareholders with such information as may be reasonably required to explain the effect of this undertaking, including but not limited to, details of Berela's obligations set out in this undertaking.
- 3.5 Each of Citie Centre 4, Citie Centre, Mirani and Bereia will nominate the following directors of the respective parties to monitor the respective parties' obligations under this undertaking and shall respectively cause each of those directors to provide ASIC with such information, explanations and/or assistance as ASIC may from time to time require concerning their compliance with this undertaking:

Berela	-	Samuel Sydney Doumany
Citie Centre 4	-	Barry Francis Cronin
Citie Centre	-	Gerald Adrian Lambert
Mirani	-	Phillip Shakespeare

Where any of these directors ceases to act as a director of the relevant party to this undertaking, the relevant party must notify ASIC immediately of this occurrence and details of a replacement officer to carry out the functions set out in this clause.

## 4. ACKNOWLEDGMENTS

- 4.1 Berela, Citie Centre 4, Citie Centre and Mirani jointly and severally acknowledge that ASIC:
- 4.1.1 will issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
- 4.1.2 will from time to time publicly refer to this undertaking; and

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- 4.1.3 will make this undertaking available for public inspection.
- 4.2 As soon as practicable after execution of this undertaking, Berela must lodge a copy of this undertaking with the ASX. Berela, Citie Centre 4, Citie Centre and Mirani acknowledge that the terms of this undertaking shall remain confidential until either the lodgement by Berela of a copy of this undertaking with the ASX or the making of the second takeover announcement in accordance with clause 4.1.1 hereof whichever occurs earlier.
- 4.3 Berela, Citie Centre 4, Citie Centre and Mirani acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this undertaking or any future conduct.
- 4.4 Berela, Citie Centre 4, Citie Centre and Mirani jointly and severally acknowledge that this undertaking has no operative force until accepted by ASIC.

The Common Seal of Berela Limited  
(ACN 010 671 315) was duly affixed  
to this undertaking on 17 December 1998

in the presence of, and the sealing  
is attested by:



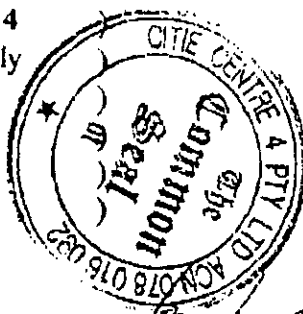
[Signature]  
Director

[Signature]  
Director/ Secretary

SAMUEL SYDNEY DOUMAY  
Name (Print)

GLAUCIE MARIE CAFFERKUCH  
Name (Print)

The Common Seal of Citie Centre 4  
Pty Ltd (ACN 078 016 092) was duly  
affixed to this undertaking  
on 17 December 1998  
in the presence of, and the sealing  
is attested by:



[Signature]  
Director

[Signature]  
Director/ Secretary

JOHN . N. POTTER.  
Name (Print)

GERALD A LAMBERT  
Name (Print)

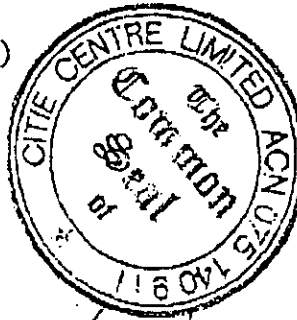
The Common Seal of Mirani Pty Ltd  
(ACN 010 728 597) was duly by its  
affixed to this undertaking duly  
on authorised attorney  
in the presence of, and the sealing  
is attested by:

Mirani Pty Ltd  
by  
[Signature]  
duly authorised  
attorney.

17 December 1998  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (Print)

The Common Seal of Citie Centre Limited)  
(ACN 075 140 911) was duly  
affixed to this undertaking  
on 17 DECEMBER 1998  
in the presence of, and the sealing  
is attested by:



[Signature]  
Director

[Signature]  
Director/ Secretary

JOHAN W. POTTEL  
Name (Print)

GERALD A LAMBERT  
Name (Print)

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN  
SECURITIES AND INVESTMENT COMMISSION ACT BY ITS DULY  
AUTHORISED DELEGATE:

[Signature]

[Name] ANTHONY EDWIGED STUMAS  
[Position] Council (Reservant)

Dated this 17th day of December 1998