

## Annexure A

### Foster's offer for Southcorp Limited

#### Offer conditions

Foster's Group Limited's (**Foster's**) offer under a takeover bid for all of the shares in Southcorp Limited (**Southcorp**) (through Beringer Blass Wines Pty Ltd (**Bidder**), a wholly owned subsidiary of Foster's) will be subject to the conditions substantially the same as those described below:

#### 90% Condition

- (a) (**90% Condition**) during, or at the end of, the Offer Period, Bidder and its associates have a Relevant Interest in at least 90% (by number) of Southcorp Shares;

#### Regulatory approval conditions

- (b) (**ACCC**) either:
  - (i) at the end of the Offer Period, the ACCC has not commenced or threatened to commence legal proceedings seeking orders to restrain or prevent the acquisition of Southcorp Shares by Bidder under the Offers or any other relief in connection with the Offers;
  - (ii) before the end of the Offer Period, Bidder has received notice in writing from the ACCC to the effect that the ACCC does not propose to intervene or seek to prevent, pursuant to section 50 of the *Trade Practices Act 1974* (Cth) (**TPA**), the acquisition of Southcorp Shares by Bidder; or
  - (iii) before the end of the Offer Period, Bidder has been granted clearance or authorisation for the acquisition of Southcorp Shares by Bidder from the ACCC or the Australian Competition Tribunal under Part VII of the TPA and there has been no application for a review of the clearance or authorisation or determination lodged within 21 days of the date of the clearance or determination;
- (c) (**Hart-Scott-Rodino (USA)**) before the end of the Offer Period, all applicable waiting periods if any (including any extensions thereof) under the *Hart-Scott-Rodino Antitrust Improvements Act 1976* (United States) and the regulations thereunder have expired or been terminated in respect of the Offers without the US Department of Justice or the Federal Trade Commission challenging the acquisition of Southcorp Shares by Bidder;
- (d) (**Competition Act (Canada)**) before the end of the Offer Period, all applicable waiting periods if any (including any extensions thereof) under section 123 of the *Competition Act* have expired in respect of the Offers without the Commissioner of Competition having made or threatened to make any application under sections 92, 100 or 104 of the *Competition Act* and without having otherwise made or issued any communication which might make it inadvisable for Bidder to proceed with the acquisition of Southcorp Shares;

- (e) **(Investment Canada Act)** before the end of the Offer Period, all applicable approvals or deemed approvals if any required by the *Investment Canada Act* (Canada) have been received;
- (f) **(European Commission Approval)** before the end of the Offer Period, the European Commission has made a declaration that the Offers do not fall within the scope of the *EC Merger Regulations* or, if they do, that the Offers are compatible with the *EC Merger Regulations*;
- (g) **(other regulatory approvals)** before the end of the Offer Period, all Approvals required by law or by any Public Authority:
  - (i) as are necessary to permit the Offers to be lawfully made to and accepted by Southcorp Shareholders;
  - (ii) which are required as a result of the Offers or the acquisition of Southcorp Shares and which are necessary for the continued operation of the Southcorp business; or
  - (iii) as are necessary to permit the completion of any transaction contemplated by the Bidder's Statement (including implementation of Foster's intentions in respect of Southcorp expressed in the Bidder's Statement),

(including all Approvals required in respect of liquor licensing or liquor control in each State and Territory of Australia and elsewhere) are granted, given, made or obtained on an unconditional basis and remain in full force and effect in all respects and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same;

- (h) **(absence of regulatory actions)** between 12 January 2005 and the end of the Offer Period:
  - (i) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority;
  - (ii) no inquiry, action or investigation is instituted or threatened by any Public Authority; and
  - (iii) no application is made to any Public Authority (other than by Bidder or its associates),

which restrains, prohibits, threatens to restrain or prohibit or otherwise materially adversely impacts (or could reasonably be expected to restrain, prohibit or otherwise materially adversely impact upon) the making of the Offers or the completion of any transaction contemplated by the Bidder's Statement (including implementation of Foster's intentions in respect of Southcorp expressed in the Bidder's Statement) or seeks to require (or could reasonably be expected to require) the divestiture by Bidder of any Southcorp Shares, or the divestiture of any assets of the Southcorp Group or of the Foster's Group;

### **Adverse change conditions**

- (i) **(no material adverse change)** before the end of the Offer Period, there not having occurred, been announced or become known to Bidder (whether or not becoming public) any event, occurrence, action, proceeding, fact, circumstance or

change in circumstance that has, will or is reasonably likely to result in a material adverse change in the business, assets, liabilities, financial position, trading position, performance, profitability or prospects of the Southcorp Group since 12 January 2005, including as a result of the making of the Offers or the acquisition of Southcorp Shares under the Offers;

(j) **(no major acquisitions, disposals or commitments)** between 12 January 2005 and the end of the Offer Period, neither Southcorp nor any of its subsidiaries:

- (i) purchases or otherwise acquires or agrees to purchase or otherwise acquire, sells or otherwise disposes of or surrenders, or agrees to sell or otherwise dispose of or surrender, or comes under an obligation to purchase, acquire, sell or otherwise dispose of or surrender, any property or assets (or any right, title or interest therein), the total consideration for which, or value of which, in aggregate, exceeds \$50 million; or
- (ii) enters any other commitment, or comes under an obligation to enter any other commitment, which would require expenditure by Southcorp or a subsidiary of Southcorp of an amount which, in aggregate, exceeds \$50 million,

other than of an operational nature and in the ordinary course of trading or as publicly announced by Southcorp before 12 January 2005;

(k) **(rights under agreements and instruments)** between 12 January 2005 and the end of the Offer Period, no person exercises or purports to exercise, or states an intention to exercise, any rights under any provision of any agreement or other instrument to which Southcorp or any subsidiary of Southcorp is a party, or by or to which Southcorp or any subsidiary of Southcorp or any of its assets may be bound or be subject, which results, or could result, to an extent which is material to the Southcorp Group (being any agreement or instrument with a value of at least \$50 million or with a term of longer than 2 years), in:

- (i) any monies borrowed by Southcorp or any subsidiary of Southcorp being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or instrument;
- (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising thereunder;
- (iii) the interest of Southcorp or any subsidiary of Southcorp in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to such interest) being terminated, modified or required to be transferred or redeemed; or
- (iv) the business of Southcorp or any subsidiary of Southcorp with any other person being adversely affected,

as a result (directly or indirectly) of the acquisition or proposed acquisition of Southcorp Shares by Bidder;

- (l) (**dividends**) between 12 January 2005 and the end of the Offer Period, Southcorp does not declare or pay any dividend, bonus or other distributions by Southcorp to Southcorp Shareholders;
- (m) (**write-down or profit downgrade**) between 12 January 2005 and the end of the Offer Period, Southcorp does not:
  - (i) write down by more than \$50 million the value of the Southcorp Group's assets (as stated in Southcorp's 2004 Annual Report);
  - (ii) release to ASX a statement to the effect that Southcorp or its subsidiaries intend to write down by more than \$50 million the value of the Southcorp Group's assets (as stated in Southcorp's 2004 Annual Report); or
  - (iii) release to ASX an earnings profit warning, whether or not as contemplated by ASX Guidance Note 8;
- (n) (**ASX 200 Index**) between the Announcement Date and the end of the Offer Period, the ASX 200 Index published by ASX does not close at a level that is at or below 3600 points);
- (o) (**no prescribed occurrences**) between 12 January 2005 and the end of the Offer Period, no Prescribed Occurrence occurs;

#### **Other conditions**

- (p) (**Southcorp Options**) before the end of the Offer Period, all Southcorp Options have been exercised or cancelled or are the subject of cancellation agreements entered into between Bidder and the relevant Southcorp Optionholder; and
- (q) (**availability of Facility**) during and at the end of the Offer Period:
  - (i) each of the Pre-Conditions to Availability of the Facility is and remains satisfied or is waived by the lenders under the Facility; and
  - (ii) there is no Event of Default, or potential Event of Default, under the Facility which has not been forgiven by the lenders under the Facility,(see attached).

#### **Best endeavours in relation to conditions**

Foster's and its subsidiaries (including Bidder) will each:

- (a) use their best endeavours to procure that each of the conditions is satisfied; and
- (b) not do or omit to do anything which may cause a breach of any such condition.

Without limiting the above, Foster's and Bidder will each:

- (c) use their best endeavours to ensure that each of the Pre-Conditions to Availability of the Facility is and remains satisfied; and
- (d) not do or omit to do any thing which may trigger an Event of Default under the Facility.

## **Definitions**

<b>ACCC</b>	the Australian Competition and Consumer Commission.
<b>Announcement Date</b>	17 January 2005, being the date on which Foster's announced details of the Takeover Bid to ASX.
<b>Approval</b>	a licence, authority, authorisation, consent, permission, approval, clearance, grant, confirmation, order, exemption, waiver or ruling.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Bidder</b>	Beringer Blass Wines Pty Ltd ACN 105 344 965.
<b>Bidder's Statement</b>	the statement of Bidder under Part 6.5 Division 2 of the <i>Corporations Act</i> relating to the Offers.
<b>Business Day</b>	a day which is not a Saturday, Sunday, bank or public holiday in Melbourne.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Events of Default</b>	those events of defaults under the Facility (see attached).
<b>Facility</b>	the share acquisition and refinancing facility to be entered into by Foster's or a Related Body Corporate of Foster's to fund (among other things) part of the consideration under the Offer (see attached).
<b>Foster's</b>	Foster's Group Limited ABN 49 007 620 886.
<b>Foster's Group</b>	Foster's and its Related Bodies Corporate.
<b>Offer</b>	the offer for Southcorp Shares contained in the Bidder's Statement and <b>Offers</b> means the several like offers for Southcorp Shares sent or to be sent to other Southcorp Shareholders (or persons entitled to receive such offers under the Takeover Bid).
<b>Offer Period</b>	the period commencing on <b>[**]</b> 2005 and (unless the Offer is withdrawn) ending at 7pm (Melbourne time) on <b>[**]</b> 2005, or such later date to which the Offer has been extended.
<b>Pre-Conditions to Availability</b>	those pre-conditions to an initial drawing under the Facility (see attached).
<b>Prescribed Occurrence</b>	any of the following events: <ul style="list-style-type: none"><li>(a) Southcorp converts all or any of its shares into a larger or smaller number of shares;</li><li>(b) Southcorp or a subsidiary of Southcorp resolves to reduce its share capital in any way;</li><li>(c) Southcorp or a subsidiary of Southcorp:<ul style="list-style-type: none"><li>(i) enters into a buy-back agreement; or</li></ul></li></ul>

- (ii) resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the *Corporations Act*;
- (iii) Southcorp or a subsidiary of Southcorp issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option;
- (iv) Southcorp or a subsidiary of Southcorp issues, or agrees to issue, convertible notes;
- (v) Southcorp or a subsidiary of Southcorp disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (vi) Southcorp or a subsidiary of Southcorp charges or agrees to charge, the whole, or a substantial part, of its business or property;
- (vii) Southcorp or a subsidiary of Southcorp resolves to be wound up;
- (viii) a liquidator or provisional liquidator of Southcorp or a subsidiary of Southcorp is appointed;
- (ix) a court makes an order for the winding up of Southcorp or a subsidiary of Southcorp;
- (x) an administrator of Southcorp, or of a subsidiary of Southcorp, is appointed under section 436A, 436B or 436C of the *Corporations Act*;
- (xi) Southcorp or a subsidiary of Southcorp executes a deed of company arrangement; or
- (xii) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Southcorp or of a subsidiary of Southcorp.

**Public Authority**

any government or any governmental, semi-governmental, administrative, statutory or judicial entity, authority or agency, whether in Australia, the United States of America, the United Kingdom, the European Union or elsewhere, including the ACCC and any authority regulating competition issues, any self regulatory organisation established under statute or any stock exchange, but excluding:

- (a) ASIC;
- (b) the Takeovers Panel;
- (c) any person mentioned in section 657G(2) of the *Corporations Act* who applies to the Court for an order under section 657G(1) of the *Corporations Act*;

- (d) any person mentioned in section 659B(1) of the *Corporations Act* who commences court proceedings in relation to a takeover bid or a proposed takeover bid;
- (e) a court or a Court that makes an order in response to an application under section 657G(1) of the *Corporations Act* or proceedings commenced pursuant to section 659B(1),

(all terms used in this definition, unless otherwise defined, have the meaning conferred on them by the *Corporations Act*).

<b>Related Body Corporate</b>	has the meaning given to that term in the <i>Corporations Act</i> .
<b>Relevant Interest</b>	has the meaning given to that term in the <i>Corporations Act</i> .
<b>Southcorp</b>	Southcorp Limited ABN 80 007 722 643.
<b>Southcorp Group</b>	Southcorp and its Related Bodies Corporate.
<b>Southcorp Optionholder</b>	a holder of Southcorp Options.
<b>Southcorp Options</b>	unquoted options to subscribe for Southcorp Shares.
<b>Southcorp Shareholder</b>	a holder of Southcorp Shares.
<b>Southcorp Shares</b>	fully paid ordinary shares in the capital of Southcorp.
<b>Takeover Bid</b>	the off-market bid in accordance with Part 6.5 of the <i>Corporations Act</i> under which Bidder offers to acquire all Southcorp Shares.
<b>2004 Annual Report</b>	the statements of financial performance, financial position and cash flows for Southcorp and the Southcorp Group for the year to and as at 30 June 2004 and the related reports and declarations.

Unless expressed to the contrary, if a word or phrase is defined in the *Corporations Act*, it bears the same meaning.

## **Attachment to Annexure A**

### **Share Acquisition and Refinancing Facility**

#### **Summary of conditions of financing**

The financing to support the offer is conditional on the following:

- a) Approval of any changes to the bid structure which would result in the aggregate payments to be made by the Offer exceeding the available funding;
- b) That Foster's will hold at least 50.1% of the shares in Southcorp on completion of the bid;
- c) All necessary regulatory consents and approvals have been obtained;
- d) Satisfaction or waiver of all bid conditions (waiver of condition (i) that there is no material adverse change with respect to the Southcorp Group after the Announcement Date requires the consent of the lenders under the Facility, such consent not to be unreasonably withheld);
- e) The ASX 200 Index has not closed at a level below 3600 points during the period from announcement of the bid to the earlier of close of the offer or financial close;
- f) That Foster's senior unsecured debt is rated at least BBB- (Standard & Poor's) and Baa3 (Moody's) at the date of initial drawdown; and
- g) Other usual non-material conditions generally required by facilities of this type which are consistent with the FGL Group Financing Trust.

#### **No reliance**

Foster's will not rely on any failure of the financing conditions to be satisfied as a basis to not proceed with the bid to the extent that satisfaction of those conditions is within Foster's control.

#### **Summary of events of default**

There are a number of events of default specified in relation to the financing. Those events of default either arise under or are consistent with the FGL Group Financing Trust including:

- a) Failure to pay monies when due;
- b) Failure to comply with relevant financial undertakings, unless waived;
- c) Failure to remedy defaults (being capable of remedy) within 21 days of notice of failure to comply;
- d) Cross default of A\$100 million or more; and
- e) Material adverse change in the condition of the business, assets or financial condition of relevant group companies which has or is likely to have a relevant material adverse effect.

There are also a number of other customary events of default.

## **Summary of Prepayment Events**

The Facility is subject to the following prepayment events;

- a) any misrepresentation, breach of warranty or breach of undertaking specific to the Facility Agreement not being remedied within 21 days; and
- b) if Standard and Poor's issue a post acquisition rating for Foster's senior unsecured debt of less than BBB-, that rating is not restored to BBB- or above within 60 days.