

Simple Agreement for Future Equity (SAFE)

Wine Gallery Pty Ltd ACN 601 172 936 (trading as Good Pair Days) as the Company

and

Andrew Simon & Shant Simon ATF Andrew Simon Self-Managed Super Fund as the Investor

PARTIES

This deed (**Deed**) is entered into between the following Parties, on the date that the last Party executes the Deed:

Name:	Wine Gallery Pty Ltd ACN 601 172 936 (trading as Good Pair Days) (Company)
Notices to:	Attention: Thomas Walenkamp
Address:	119 Catherine Street, LEICHHARDT NSW 2040
Email Address:	tom@goodpairdays.com
Name:	Andrew Simon & Shant Simon ATF Andrew Simon Self-Managed Super Fund (Investor)
Notices to:	Andrew Simon
Address:	14 Rosebery, Street, Mosman, NSW, 2088
Email Address:	andrewsimon@tdmam.com.au

Background:

- A. The Company wishes to raise capital from the Investor; and
- B. In exchange for the payment of the Purchase Amount, the Company issues to the Investor the right to acquire shares in the capital of the Company on and subject to the terms of this Deed.

It is agreed as follows:

1. DEFINITIONS

- 1.1 In this Deed, except to the extent that the context requires otherwise:

Business Day means a day (other than Saturday, Sunday or bank or public holiday) on which commercial banks are open for business in New South Wales;

Cash Investors has the meaning given in clause 4(b);

Corporations Act means the *Corporations Act* 2001 (Cth);

Discount Price means the price per share of the QR Shares sold in the Qualifying Round multiplied by (1 minus the Discount Rate);

Discount Rate means 20%;

Exit Event means:

- (a) the sale of the whole, or substantially the whole, of the assets of the Company in a single transaction or a series of related transactions; or
- (b) the sale of all, or substantially all, of the issued share capital of the Company in a single transaction or a series of related transactions; or
- (c) an IPO; or
- (d) any other event or series of events that together have the effect of allowing a realisation of substantially all the Shares in, or substantially all of the assets of, the Company;

Exit Event Price means the price per share equal to the fair market value of the Ordinary Shares at the time of the Exit Event, as determined by reference to the purchase price payable in connection with such Exit Event, multiplied by (1 minus the Discount Rate);

Fully Diluted means, the total aggregate number of shares in the capital of the Company which would be on issue assuming all securities issued by the Company were exercised or converted but excluding: (a) this instrument; or (b) any other Safe financing instrument;

IPO means an initial public offering of Shares (or shares in the Company's holding company) in conjunction with a listing or quotation of Shares (or shares in the Company's holding company) on a recognised stock exchange;

Insolvency Event means the occurrence of any of the following events:

- (a) the Company is or states that it is unable to pay all its debts as and when they become due and payable;
- (b) the Company is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution of the Company or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Company or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 5 Business Days;
- (e) a controller is appointed in respect of any property of the Company;
- (f) the Company is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of the Company;
- (h) the Company enters into or takes action to enter into an arrangement (including a scheme of arrangement or Deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of the Company is presented and the petition is not stayed, withdrawn or dismissed within 5 Business Days or the Company presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Company;

Ordinary Share means an ordinary share in the capital of the Company;

Parties means the Investor and the Company and a **Party** means either one of them;

Purchase Amount means \$30,000;

QR Shares means Shares in the class which are issued in connection with the Qualifying Round;

Qualifying Round means a bona fide equity fundraising event or series of events by the Company for the principal purposes of raising capital through the issue of QR Shares;

Safe means an instrument containing a future right to Shares, similar in form and content to this Deed, purchased by investors for the purpose of funding the Company's business operations;

Safe Price means the price per share equal to the Valuation Cap divided by the Fully Diluted share capital of the Company;

Shareholders Agreement means the shareholders agreement between the Company and its shareholders, as amended from time to time;

Shares means a share in the capital of the Company and includes Ordinary Shares and QR Shares where applicable;

Termination Date means the earlier of:

- (a) the issue of Ordinary Shares or QR Shares to the Investor in accordance with this Deed; or
- (b) the payment of amounts due to the Investor in accordance with this Deed; and

Valuation Cap means \$25,000,000.

1.2 In this Deed, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Deed;
- (c) any gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Deed;
- (e) if any act which must be done under this Deed is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) if a word or phrase is defined in this Deed then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (i) "includes" and similar words mean includes without limitation;
- (j) no clause of this Deed shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (k) a reference to a Party includes the Party's legal personal representatives, successors, assigns and persons substituted by novation;
- (l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
- (m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (n) a reference to time is to local time in New South Wales; and
- (o) a reference to "\$" or "dollars" refers to the currency of Australia from time to time, unless stated otherwise.

2. INVESTMENT AMOUNT

The Investor will pay the Purchase Amount to the Company in immediately available funds on the date of this Deed.

3. QUALIFYING ROUND

- (a) If there is a Qualifying Round before the Termination Date, the Company will automatically issue to the Investor that number of QR Shares equal to the higher of:
 - (i) the Purchase Amount divided by the Discount Price; and
 - (ii) the Purchase Amount divided by the Safe Price.
- (b) The Company must send to the Investor a certificate for the number of QR Shares issued to the Investor no later 3 Business Days after the issue of the QR Shares in accordance with clause 3(a).
- (c) Prior to being issued with any QR Shares, the Investor must, if it is not already a party to the Shareholders Agreement, provide the Company with a duly executed deed of accession to the

Shareholders Agreement (if there is a Shareholders Agreement in existence at that point in time).

4. EXIT EVENT

- (a) If the Company enters into definitive documents required to give effect to an Exit Event before the Termination Date, then:
 - (i) the Company must, within 1 Business Day of the entry into such documents, notify the Investor that it has entered into such documents; and
 - (ii) the Investor may elect, within 2 Business Days of receipt of notice from the Company under clause 4(a)(i), either:
 - (A) receive a cash payment equal to the Purchase Amount; or
 - (B) automatically receive from the Company (with effect immediately prior to the Exit Event) that number of Ordinary Shares equal to the higher of:
 - 1. the Purchase Amount divided by the Exit Event Price; or
 - 2. the Purchase Amount divided by the Safe Price.

If the Investor makes no election within 2 Business Days of notice from the Company under clause 4(a)(i), it will be deemed to have elected to receive Ordinary Shares in accordance with clause 4(a)(ii)(B).

- (b) If the Investor elects to receive a cash payment equal to the Purchase Amount in accordance with clause 4(a)(ii)(A) and there not enough funds to pay the Investor and all holders of all other Safes (the **Cash Investors**) in full, then all of the Company's available funds will be distributed with equal priority and pro-rated among the Cash Investors in proportion to their purchase amounts, and the Cash Investors will automatically receive the number of Ordinary Shares equal to the remaining unpaid purchase amount divided by the higher of the Exit Event Price or the Safe Price.
- (c) The Company must, if the Investor has elected or is deemed to have elected to receive Ordinary Shares in accordance with clause 4(a)(ii)(B), send to the Investor a certificate for the number of Ordinary Shares issued to the Investor no later than 3 Business Days after the issue of those Ordinary Shares.
- (d) The Investor must comply with the obligation set out in clause 3(c) (if applicable) prior to being issued with any Ordinary Shares.

5. INSOLVENCY EVENT

- (a) If there is, or the Investor reasonably believes that there is likely to be, an Insolvency Event before the Termination Date, the Company must pay to the Investor a cash amount equal to the Purchase Amount on, or immediately following, the occurrence of the Insolvency Event or notification by the Investor that it reasonably believes there is likely to be an Insolvency Event.
- (b) The Purchase Amount will be paid in priority to any distribution of any of the assets of the Company to holders of Ordinary Shares in the Company.
- (c) If the assets of the Company available for distribution to the Investor and all holders of all other Safes (**Dissolving Investors**) are insufficient to permit the payment to the Dissolving Investors of their respective purchase amounts, then the entire assets of the Company available for distribution to the Dissolving Investors will be pro-rated among the Dissolving Investors in proportion to the purchase amount they would otherwise be entitled to receive.

6. TERMINATION

This Deed will expire and terminate on the Termination Date. Termination of this Deed does not relieve a party of any prior breach of this Deed.

7. WAIVER OF PRE-EMPTIVE RIGHTS

The Company must procure that any existing holders of Ordinary Shares, and any entities or persons that become new shareholders in the Company after the date of this Deed and before the Termination Date, must immediately waive any rights in respect of any Shares issued by the Company in accordance with this Deed (including, without limitation, any pre-emptive rights or any contractual rights) in its favour whether arising under, or in connection with, the Shareholders Agreement or otherwise.

8. ADJUSTMENTS

If, prior to the issue of Shares in accordance with this Deed, the Company makes any reconstruction of its share capital, including without limitation a consolidation, share split, share dividend, bonus issue or capital reduction, the number of Shares which may be issued to the Investor must be reconstructed in the same manner so that the Investor is entitled to receive the same proportion of total shares of the Company on issue or the paid up capital of the Company as would have been the case but for the reconstruction of the Company's share capital. The Company must take all necessary or desirable actions to ensure that the Investor is not disadvantaged or advantaged by the operation of this clause 8 if the Company makes any reconstruction of its share capital.

9. VOTING AND OTHER RIGHTS

Until Shares are issued in accordance with this Deed, the Investor has no right as a shareholder of the Company, including any voting, dividend or any related rights or the right to participate in any issue of Shares by the Company.

10. COMPLIANCE WITH LAW

Notwithstanding any other provision of this Deed, the Company may not issue Shares in accordance with this Deed if:

- (a) the Company would be required to issue a disclosure document under Chapter 6D of the Corporations Act in connection with the issue of such Shares; or
- (b) the Company would become subject to the takeover provisions set out in Chapter 6 of the Corporations Act following the issue of such Shares.

11. REPRESENTATIONS AND WARRANTIES

11.1 Each of the Company and the Investor hereby represents and warrants to the other that as of the date of this Deed:

- (a) if it is a corporation, it duly incorporated and validly existing under the laws of its place of incorporation and has the power and authority to own its assets and to conduct the business which it conducts and/or proposes to conduct;
- (b) it has the power to enter into, exercise its rights, and perform and comply with its obligations under this Deed;
- (c) this Deed constitutes its valid and binding obligations and it is enforceable against it by the other Party in accordance with its terms;
- (d) its entry into, exercise of its rights, and/or performance of or compliance with its obligations under this Deed do not and will not (a) contravene any law or directive from a government body, its constitutional documents, any agreement or instrument (including trust Deeds) to which it is a party or any obligation of it to any other person, or (b) result in the existence of, or oblige it to create any security over those assets; and
- (e) other than as notified to the other Party in writing prior to the date of this Deed, it does not enter this Deed as trustee of any trust.

11.2 The Investor further represents and warrants to the Company that:

- (a) it is a 'Sophisticated Investor' or 'Professional Investor' (as those terms are defined in the Corporations Act); and

- (b) it has obtained independent advice on its investment in the Company pursuant to this Deed, or it has waived its right to independent advice, and has not relied on any representations or warranties made by the Company, its directors, officers, agents, employees and advisers.

11.3 The Parties acknowledge that they are entering into this Deed in reliance on the representations and warranties set out in this clause.

11.4 Each representation and warranty survives the execution of this Deed and is deemed repeated with reference to the facts and circumstances then existing on each day that money is owing (actually or contingently) by the Company to the Investor under this Deed.

12. CONFIDENTIALITY

12.1 Each Party shall at all times keep confidential and procure that its respective employees and agents shall keep confidential this Deed and any confidential information (whether or not marked confidential) which it or they may acquire in relation to the other Parties or in relation to the clients, business or affairs of the other Parties, and shall not use or disclose this Deed or any of such information, except that it may disclose the fact of this Deed having been entered into for the purposes of the performance of its obligations under this Deed, or otherwise as permitted by law, or with the consent of the other Parties, or in accordance with the order of a court of competent jurisdiction.

12.2 The obligations of each Party contained in this clause shall:

- (a) apply to any related corporation of the Party, and to any employee or agent of the Party or of any related corporation of such Party; and
- (b) continue without limit in point of time, but shall cease to apply to any information coming into the public domain otherwise than by breach by any such Party of its obligations,

provided always that nothing contained in this clause shall prevent any Party from disclosing any such information to the extent required in or in connection with legal or arbitration proceedings arising out of this Deed or as may be required by any law, regulation, government policy or by any stock exchange or other regulatory body or by their respective professional advisers.

13. NOTICES

- (a) Form of notice

A notice or other communication must be in writing in English and may be:

- (i) delivered personally;
- (ii) given by an agent of the sender;
- (iii) sent by prepaid mail to a Party's current postal address for notices as set out in this Deed; and/or
- (iv) sent by email to a Party's current email address for notices as set out in this Deed.

- (b) Receipt of notice

A notice or communication is taken as having been given:

- (i) when left at a Party's current delivery address for notices; or
- (ii) if mailed within Australia to an Australian address, on the third Business Day after posting; or
- (iii) if mailed outside of Australia to an Australian postal address or within Australia to an address outside of Australia, on the tenth Business Day after posting; or
- (iv) if sent by email, when the sender receives an email read receipt regarding the recipient's email address.

A Party may change its address for service of notices by written notice to the other Party.

14. GENERAL

- (a) **Relationship:** This Deed is not intended to create a relationship between the Parties of partnership, joint venture, agency or employer-employee. Neither Party has authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the other Party.
- (b) **Amendment:** This Deed may only be amended by written deed executed by all the Parties.
- (c) **Assignment:** This Deed is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under this Deed without the prior written consent of the other Party. Any purported dealing in breach of this clause is of no effect.
- (d) **Waiver or variation of rights:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Deed does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.
- (e) **Powers, rights and remedies:** Except as expressly stated to the contrary in this Deed, the powers, rights and/or remedies of a Party under this Deed are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Deed or any other person.
- (f) **Consents and approvals:** Where this Deed provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Deed, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.
- (g) **Costs and expenses:** The Company and the Investor shall each bear their own costs and expenses associated with the negotiation and execution of this Deed.
- (h) **Further assurance:** Each Party must from time to time and in a timely manner do all things reasonably required of it by the other Party to give effect to this Deed.
- (i) **Counterparts:** This Deed may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Deed. The date of this Deed will be the date that it is executed by the last Party.
- (j) **Entire agreement and understanding:** In respect of the subject matter of this Deed: this Deed contains the entire understanding between the Parties; all previous oral and written communications, representations, warranties or commitments are superseded by this Deed and do not affect the interpretation or meaning of this Deed; and each of the Parties has relied entirely on its own enquiries before entering into this Deed.
- (k) **Partial invalidity:** The illegality, invalidity or unenforceability of any provision of this Deed under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
- (l) **Governing law and jurisdiction:** This Deed is governed by the laws of New South Wales and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales.

EXECUTED AS A DEED

Signed, Sealed and delivered as a deed in accordance with section 127 of the Corporations Act by **Wine Gallery Pty Ltd ACN 601 172 936**



Signature of director

Thomas Walenkamp

Name (PRINT)

17/5/20

Date

Signature of director / secretary


Humberto de Castro Moreira Neto

Name (PRINT)

17/5/20

Date**BY CORPORATE TRUSTEE ATF A TRUST**

Signed, Sealed and delivered as a deed in accordance with section 127 of the Corporations Act by **Andrew Simon & Shant Simon ATF Andrew Simon Self-Managed Super Fund**



Signature of director

Andrew Simon

Name (PRINT)

15/05/2020

Date

Signature of director / secretary

Shant Simon

Name (PRINT)

15/05/20

Date