

THIS INSTRUMENT HAS BEEN ISSUED PURSUANT TO SECTION 4(A)(6) OF THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND NEITHER IT NOR ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OR THE SECURITIES LAWS OF ANY STATE. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED BY RULE 501 OF REGULATION CROWDFUNDING UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR EXEMPTION THEREFROM.

**PISTIL & POLLEN, LLC**

**CROWD SAFE**

**(Crowdfunding Simple Agreement for Future Equity)**

THIS CERTIFIES THAT in exchange for the payment by [Investor Name] (“**Investor**”) of \$[\_\_\_\_\_] (the “**Purchase Amount**”) on or about \_\_\_\_\_, 2018, PISTIL & POLLEN, LLC, a Delaware limited liability company (the “**Company**”), hereby issues to Investor the right to certain units of the Company, subject to the terms set forth below.

**1. Events**

(a) **Equity Financing.**

(i) If an Equity Financing occurs before this instrument terminates in accordance with Sections 1(b)-(d) (“**First Equity Financing**”), the Company shall notify Investor of the closing of the First Equity Financing and of the Company’s discretionary decision to either (1) continue the term of this Crowd Safe without converting the Purchase Amount to CF Shadow Series Units of the Company; or (2) convert the Purchase Amount to CF Shadow Series Units of the Company. The number of CF Shadow Series Units issued to Investor upon conversion of the Purchase Amount shall equal (a) if the pre-money valuation of the Company is less than or equal to the Valuation Cap, the quotient obtained by dividing the Purchase Amount by the applicable Conversion Price; or (b) if the pre-money valuation of the Company is greater than the Valuation Cap, the quotient obtained by dividing the Purchase Amount by the Safe Price (either the Conversion Price or the Safe Price, as applicable, the “**First Financing Price**”).

(ii) If the Company elects to continue the term of this Crowd Safe past the First Equity Financing and another Equity Financing occurs before the termination of this Crowd Safe in accordance with Sections 1(b)-(d) (each, a “**Subsequent Equity Financing**”), the Company shall notify Investor of the closing of the Subsequent Equity Financing and of the Company’s discretionary decision to either (1) continue the term of this Crowd Safe without converting the Investor’s Purchase Amount to CF Shadow Series Units of the Company; or (2) convert the Investor’s Purchase Amount to CF Shadow Series Units of the Company. The number of CF Shadow Series Units issued to Investor upon the Conversion of the Investor’s Purchase Amount shall equal the quotient obtained by dividing (x) the Purchase Amount by (y) the First Financing Price.

(b) **Liquidity Event.**

(i) If there is a Liquidity Event (other than an IPO) before the termination of this instrument and before any Equity Financing, Investor will, at the option of the Company, either (i) receive a cash payment equal to the Purchase Amount (subject to the following paragraph) or (ii) automatically receive from the Company a number of Units equal to the Purchase Amount divided by the Conversion

Price, if the Company fails to select the cash option. In connection with this Section 1(b)(i), the Purchase Amount will be due and payable by the Company to Investor immediately prior to, or concurrent with, the consummation of the Liquidity Event. If there are not enough funds to pay Investor and holders of other Crowd Safes (collectively, the “**Cash-Out Investors**”) in full, then all of the Company’s funds available will be distributed with equal priority and pro rata among the Cash-Out Investors in proportion to their Purchase Amounts.

(ii) If there is a Liquidity Event (other than an IPO) after one or more Equity Financings have occurred but before the termination of this instrument, Investor will, at the option of the Company, either (i) receive a cash payment equal to the Purchase Amount (as described in the foregoing paragraph) or (ii) automatically receive from the Company a number of the most recent issued Units equal to the Purchase Amount divided by the First Financing Price, if the Company fails to select the cash option. Any Units granted in connection therewith shall have the same liquidation rights and preferences as the Units issued in connection with the Company’s most recent Equity Financing.

(iii) In the event of a Liquidity Event that is an IPO (for the avoidance of doubt, other than a Change of Control), Investor will, at the option of Investor, either (i) receive a cash payment equal to the Purchase Amount (as described in the foregoing paragraph) or automatically receive from the Company a number of the most recent issued Units equal to the Purchase Amount divided by the First Financing Price, if Investor fails to select the cash option. Any Units granted in connection therewith shall have the same liquidation rights and preferences as the Units issued in connection with the Company’s most recent Equity Financing.

(c) **Dissolution Event**. If there is a Dissolution Event before this instrument terminates in accordance with Sections 1(a) or 1(b), subject to the preferences applicable to any series of Units, the Company will distribute its entire assets legally available for distribution pursuant to its then organic documents, with equal priority among all investors of the Company, all holders of other Crowd Safes (on an as converted basis based on a valuation as determined in good faith by the Company’s board of directors at the time of Dissolution Event), and all holders of common Units.

(d) **Termination**. This instrument will terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this instrument) upon the earlier to occur: (i) the issuance of Units of the Company upon conversion of the CF Shadow Series Units to Investor pursuant to Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due to Investor pursuant to Sections 1(b) or 1(c).

## **2. Definitions**

“**CF Shadow Series Units**” means a series of units that is identical in all respects to the units issued in the relevant Equity Financing (e.g., if the Company sells Series A Preferred Units in an Equity Financing, the Shadow Series would be Series A-CF Preferred Units), except that:

- (i) Investor shall have no voting rights and shall not be entitled to vote on any matter that is submitted to a vote or for the consent of the members of the Company;
- (ii) On any matter to which Investor is entitled to vote by law, Investor shall automatically vote in line with the majority of the members of the Company; and
- (iii) Investor shall have no information or inspection rights, except with respect to such rights deemed not waivable by laws.

**“Change of Control”** means (i) a transaction or series of related transactions in which any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company’s board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

**“Conversion Price”** means (i) with respect to a conversion pursuant to Section 1(a), the lowest price per unit of the securities sold in the Equity Financing; and (ii) with respect to a conversion pursuant to Section 1(b), the quotient resulting from dividing (x) the Company’s current valuation immediately prior to the closing of the Liquidity Event by (y) the Fully Diluted Capitalization immediately prior to the closing of the Liquidity Event.

**“Dissolution Event”** means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company’s creditors or (iii) any other liquidation, dissolution or winding up of the Company (*excluding* a Liquidity Event), whether voluntary or involuntary.

**“Equity Financing”** shall mean the next sale (or series of related sales) by the Company of its Equity Securities to one or more third parties following the date of this instrument from which the Company receives gross proceeds of not less than \$2,000,000 (excluding the conversion of any instruments convertible into or exercisable or exchangeable for units, such as Safes or convertible promissory notes) with the principal purpose of raising capital.

**“Equity Securities”** shall mean Units or any securities convertible into, exchangeable for or conferring the right to purchase (with or without additional consideration) Units, except in each case, (i) any security granted, issued and/or sold by the Company to any director, officer, employee, advisor, consultant, licensee or vendor of the Company in such capacity for the primary purpose of soliciting or retaining his, her or its services, (ii) any Units issued upon conversion of any convertible promissory notes issued by the Company, (iii) any Units issued to any third party in connection with an acquisition by the Company and (iv) any other Safes.

**“Fully Diluted Capitalization”** shall mean the aggregate number of issued and outstanding Units of the Company, assuming full conversion or exercise of all convertible and exercisable securities then outstanding, all outstanding vested or unvested options or warrants to purchase equity.

**“IPO”** means the closing of the Company’s first firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act.

**“Liquidity Event”** means a Change of Control or an IPO.

**“Lock-up Period”** means the period commencing on the date of the final prospectus relating to the Company’s IPO, and ending on the date specified by the Company and the managing underwriter(s). Such period shall not exceed one hundred eighty (180) days, or such other period as may be requested by the Company or an underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports, and (ii) analyst recommendations and opinions.

“**Regulation CF**” means Regulation Crowdfunding promulgated under the Securities Act.

“**Safe**” means any simple agreement for future equity (or other similar agreement), including a Crowd Safe, which is issued by the Company for bona fide financing purposes and which may convert into units of the Company in accordance with its terms.

“**Safe Price**” means the price per unit equal to the Valuation Cap divided by the Fully Diluted Capitalization.

“**Units**” mean any common, preferred or incentive units of the Company.

“**Valuation Cap**” means \$10,000,000.

### ***3. The Company Representations***

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted.

(b) The execution, delivery and performance by the Company of this instrument is within the power of the Company and, other than with respect to the actions to be taken when equity is to be issued to Investor, has been duly authorized by all necessary actions on the part of the Company. This instrument constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and general principles of equity. To the knowledge of the Company, it is not in violation of (i) its current articles of organization or governing documents; (ii) any material statute, rule or regulation applicable to the Company; or (iii) any material indenture or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this instrument do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material indenture or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien upon any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this instrument, other than: (i) the Company’s corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of units of CF Shadow Series issuable pursuant to Section 1.

(e) The Company shall, prior to the conversion of this instrument, reserve from its authorized but unissued units for issuance and delivery upon the conversion of this instrument and, from time to time, will take all steps necessary to amend its charter to provide sufficient authorized numbers of upon the conversion of this instrument. All such units shall be duly authorized, and when issued upon any such conversion, shall be validly issued, fully paid and non-assessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions on sale and free and clear of all preemptive rights, except encumbrances or restrictions arising under federal or state securities laws.

#### **4. Investor Representations**

(a) Investor has full legal capacity, power and authority to execute and deliver this instrument and to perform its obligations hereunder. This instrument constitutes a valid and binding obligation of Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) Investor has been advised that this instrument and the underlying securities have not been registered under the Securities Act or any state securities laws and are offered and sold hereby pursuant to Section 4(a)(6) of the Securities Act. Investor understands that neither this instrument nor the underlying securities may be resold or otherwise transferred unless they are registered under the Securities Act and applicable state securities laws or pursuant to Rule 501 of Regulation CF, in which case certain state transfer restrictions may apply.

(c) Investor is purchasing this instrument and the securities to be acquired by Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and Investor has no present intention of selling, granting any participation in, or otherwise distributing the same.

(d) Investor acknowledges, and is purchasing this instrument in compliance with, the investment limitations set forth in Rule 100(a)(2) of Regulation CF, promulgated under Section 4(a)(6)(B) of the Securities Act.

(e) Investor acknowledges that Investor has received all the information Investor has requested from the Company and Investor considers necessary or appropriate for deciding whether to acquire this instrument and the underlying securities, and Investor represents that Investor has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of this instrument and the underlying securities and to obtain any additional information necessary to verify the accuracy of the information given to Investor. In deciding to purchase this instrument, Investor is not relying on the advice or recommendations of the Company or of Republic.co and Investor has made its own independent decision that an investment in this instrument and the underlying securities is suitable and appropriate for Investor. Investor understands that no federal or state agency has passed upon the merits or risks of an investment in this instrument and the underlying securities or made any finding or determination concerning the fairness or advisability of this investment.

(f) Investor understands and acknowledges that as a Crowd Safe investor, Investor shall have no voting, information or inspection rights, aside from any disclosure requirements the Company is required to make under relevant securities regulations.

(g) Investor understands that no public market now exists for any of the securities issued by the Company, and that the Company has made no assurances that a public market will ever exist for this instrument and the securities to be acquired by Investor hereunder.

(h) If Investor is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended), Investor hereby represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for this instrument, including (a) the legal requirements within its jurisdiction for the purchase of this instrument; (b) any

foreign exchange restrictions applicable to such purchase; (c) any governmental or other consents that may need to be obtained; and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, conversion, redemption, sale, or transfer of this instrument. Investor's subscription and payment for and continued beneficial ownership of this instrument and the underlying securities will not violate any applicable securities or other laws of Investor's jurisdiction. Investor acknowledges that the Company has taken no action in foreign jurisdictions with respect to this instrument and the underlying securities.

## **5. *Transfer Restrictions.***

(a) Investor hereby agrees that during the Lock-up Period it will not, without the prior written consent of the managing underwriter: (A) lend; offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; grant any option, right, or Units or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Units (whether such units or any such securities are then owned by Investor or are thereafter acquired); or (B) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities; whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Units or other securities, in cash, or otherwise.

(b) The foregoing provisions of Section 5(a) will: (x) apply only to the IPO and will not apply to the sale of any securities to an underwriter pursuant to an underwriting agreement; (y) not apply to the transfer of any securities to any trust for the direct or indirect benefit of Investor or the immediate family of Investor, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such transfer will not involve a disposition for value; and (z) be applicable to Investor only if all officers and directors of the Company are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all unitholders individually owning more than 5% of the outstanding Units or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Units. Notwithstanding anything herein to the contrary, the underwriters in connection with the IPO are intended third-party beneficiaries of Section 5(a) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Investor further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with the IPO that are consistent with Section 5(a) or that are necessary to give further effect thereto.

(c) In order to enforce the foregoing covenant, the Company may impose stop transfer instructions with respect to Investor's registrable securities of the Company (and the Company units or securities of every other person subject to the foregoing restriction) until the end of the Lock-up Period. Investor agrees that a legend reading substantially as follows will be placed on all certificates representing all of Investor's registrable securities of the Company (and the units or securities of the Company held by every other person subject to the restriction contained in Section 5(a)):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD BEGINNING ON THE EFFECTIVE DATE OF COMPANY'S REGISTRATION STATEMENT FILED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT COMPANY'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SECURITIES.

(d) Without in any way limiting the representations and warranties set forth in Section 4 above, Investor further agrees not to make any disposition of all or any portion of this instrument or the underlying

securities unless and until the transferee has agreed in writing for the benefit of the Company to make the representations and warranties set out in Section 4 and the undertaking set out in Section 5(a) and:

(i) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition and, if reasonably requested by the Company, Investor shall have furnished the Company with an opinion of counsel reasonably satisfactory to the Company that such disposition will not require registration of such units under the Securities Act.

(e) Investor agrees that it shall not make any disposition of this instrument or any underlying securities to any of the Company's competitors, as determined by the Company in good faith.

(f) Investor understands and agrees that the Company will place the legend set forth below or a similar legend on any book entry or other forms of notation evidencing this Crowd Safe and any certificates evidencing the underlying securities, together with any other legends that may be required by state or federal securities laws, the Company's charter or bylaws, any other agreement between Investor and the Company or any agreement between Investor and any third party:

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## **6. Miscellaneous**

(a) Investor agrees to take any and all actions determined in good faith by the Company's board of directors to be advisable to reorganize this instrument and any units issued pursuant to the terms of this instrument into a special purpose vehicle or other entity designed to aggregate the interests of holders of Crowd Safes.

(b) Any provision of this instrument may be amended, waived or modified only upon the written consent of the Company and Investor.

(c) Any notice required or permitted by this instrument will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(d) Investor is not entitled, as a holder of this instrument, to vote or receive dividends or be deemed the holder of units of the Company for any purpose, nor will anything contained herein be construed

to confer on Investor, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings, or to receive subscription rights or otherwise until units have been issued upon the terms described herein.

(e) Neither this instrument nor the rights contained herein may be assigned, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this instrument and/or the rights contained herein may be assigned without the Company's consent by Investor to any other entity who directly or indirectly, controls, is controlled by or is under common control with Investor, including, without limitation, any general partner, managing member, officer or director of Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or units the same management company with, Investor; and *provided, further*, that the Company may assign this instrument in whole, without the consent of Investor, in connection with a reincorporation to change the Company's domicile.

(f) In the event any one or more of the terms or provisions of this instrument is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the terms or provisions of this instrument operate or would prospectively operate to invalidate this instrument, then such term(s) or provision(s) only will be deemed null and void and will not affect any other term or provision of this instrument and the remaining terms and provisions of this instrument will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(g) All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(h) Any dispute, controversy or claim arising out of, relating to or in connection with this instrument, including the breach or validity thereof, shall be determined by final and binding arbitration administered by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and Mediation Procedures ("**Commercial Rules**"). The award rendered by the arbitrator shall be final, non-appealable and binding on the parties and may be entered and enforced in any court having jurisdiction. There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent of the request for arbitration or, in default thereof, appointed by the AAA in accordance with its Commercial Rules. The place of arbitration shall be Denver, Colorado. Except as may be required by law or to protect a legal right, neither a party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of the other parties.

*(Signature page follows)*



IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and delivered.

**Pistil & Pollen, LLC**

By: \_\_\_\_\_

Name: Amy Dannemiller

Title: Chief Executive Officer

Address: 5082 East Hampden, Suite 242

Denver, CO 80222

Email: investor@janewest.com

**INVESTOR:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_