

**THIS CONVERTIBLE PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. THIS PROMISSORY NOTE MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR QUALIFICATION OR AN EXEMPTION THEREFROM UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS. THIS CONVERTIBLE PROMISSORY NOTE HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE.**

## **SECURED CONVERTIBLE PROMISSORY NOTE**

### **SERIES A FINANCING**

FOR VALUE RECEIVED, DiversyFund, Inc., a Delaware corporation (the “Company”), promises to pay to the order of \_\_\_\_\_, or its successors or assigns (the “Holder”), the principal amount of \_\_\_\_\_ Dollars and No/100 (\$\_\_\_\_\_.00) together with interest in the amount of twelve percent (12%) per annum.

1. Maturity. Unless sooner paid in accordance with the terms hereof or converted by the Holder per Section 3 below, the entire unpaid principal amount and all accrued but unpaid interest on this Note shall become fully due and payable on the date that is two years from date of the Company’s signature below (the “Maturity Date”).

2. Payments and Interest.

(a) Interest. This Note will bear simple interest at the fixed rate of twelve percent (12%) per annum from the date of this Note. Interest will accrue on a monthly basis assuming a calendar year of 360 days. Interest will not be compounded. Company will pay such accrued interest on the Maturity Date.

(b) Payments. The Company will make quarterly payments, based on a fiscal calendar year ending December 31, of eight percent (8%) interest per annum, payable in arrears, within ten (10) business days of the end of each such quarter.

(c) Form of Payment. All payments of interest and principal (other than payment by way of conversion per Section 3 below) shall be in lawful money of the United States of America to the Holder, via ACH payment to such bank account as may be specified from time-to-time by the Holder to the Company. All payments shall be applied first to any costs or expenses incurred by the Holder in collecting this Note, second to accrued but unpaid interest, and thereafter to principal.

(d) Prepayment. The Company may prepay all or any portion of the outstanding principal amount of the indebtedness evidenced by this Note at any time without penalty upon ten days’ written notice to Holder unless such Holder provides written response to the Company within ten days of receipt of such prepayment notice that Holder elects to convert

its principal plus accrued but unpaid interest into common stock of the Company pursuant to the valuation terms of the Maturity Date Conversion as described in Section 3(c) below.

3. Conversion.

(a) Automatic Conversion. In the event that the Company issues equity securities (“**Shares**”) in a transaction or series of related transactions (whether via an Initial Public Offering or a venture capital raise or similar third party investment) resulting in aggregate gross proceeds to the Company of at least Ten Million USD (\$10,000,000) prior to the Maturity Date (a “**Qualified Financing**”), then the Note, and any accrued but unpaid interest thereon, will automatically convert (a “**Qualified Financing Conversion**”) into the Shares issued pursuant to the Qualified Financing at a conversion price per Share equal to a ten percent (10%) discount off of the per Share price paid to the Company by the third party purchasers of such Shares in the Qualified Financing.

(b) Sale of Company. If a Qualified Financing has not occurred and the Company elects to consummate a sale of at least a majority of outstanding shares of the Company prior to the Maturity Date, then notwithstanding any provision of the Notes to the contrary (i) the Company will give the Holder at least five days prior written notice of the anticipated closing date of such sale of the Company and (ii) the Company will pay the Holder an aggregate amount equal to two (2) times the aggregate amount of principal and accrued but unpaid interest under this Note in full satisfaction of the Company’s obligations under this Note.

(c) Maturity Date Conversion. If the Note has not been previously converted pursuant to a Qualified Financing Conversion, then, effective upon the Maturity Date, the principal amount of the Note, along with any accrued but unpaid interest, will automatically convert into shares of the Company’s common stock at the Company’s current pre-money valuation of Sixty Million USD (\$60,000,000) (a “**Maturity Date Conversion**”) unless the Holder provides written notice to the Company at least seventy-five (75) days prior to the Maturity Date that the Holder elects to be repaid its principal and accrued but unpaid interest in full on the Maturity Date.

4. Secured Collateral. Upon the funding of the \$6 million aggregate principal amount of Convertible Notes by Holders and other noteholders (collectively, the “**Holders**”), the Company will file within ten business days, a UCC-1 Statement in the State of Delaware, granting the Holders a first position lien over the Company's limited liability interests in its limited liability company subsidiaries that hold real property, including, without limitation all economic rights, shares in the profits and losses of such subsidiaries and all rights to receive distributions.

5. Events of Default.

(a) Definition. For purposes of this Note, the term “Event of Default” shall mean:

(i) Company shall fail to pay when due any principal or interest payment of this Note on the due date hereunder; or

(ii) Any representation, warranty, or certificate delivered by or on behalf of the Company to Holder shall be false, incorrect, incomplete or misleading in any material respect when made or delivered, or any covenant made by the Company shall be breached; or

(iii) Any indebtedness under any bonds, debentures, notes or other evidences of indebtedness for money borrowed (or any guarantees thereof, excluding this Note and the other Transactions Documents) by the Company is not paid when due either at its stated maturity or upon acceleration thereof, and such indebtedness is not discharged, or such acceleration is not rescinded or annulled; or

(iv) Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) take any action for the purpose of effecting any of the foregoing; or

(v) Proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or any of its Subsidiaries or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 30 days of commencement.

(b) Consequences of an Event of Default.

(i) If an Event of Default occurs and remains uncured by Company more than thirty (30) days after Holder provides written notice of such Event of Default to Company, then all indebtedness under this Note shall become immediately due and payable without any action on the part of the Holder, and the Company shall immediately pay to the Holder all such amounts. From and after the occurrence of an Event of Default, all indebtedness hereunder shall accrue interest at the rate of 15% per annum.

(ii) The Holder shall also have any other rights that the Holder may have been afforded under any contract or agreement at any time and any other rights that the Holder may have pursuant to applicable law.

6. Governing Law. This Note is entered into under and shall be governed by and construed in accordance with the laws of the State of Delaware, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Delaware, excluding that State's choice-of-law principles. Furthermore, the parties

hereto do FULLY AND FOREVER WAIVE ALL OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY PROCEEDING ARISING OUT OF THIS AGREEMENT OR RELATED TO THE SALE OF CONVERTIBLE NOTES. The parties hereto further agree that any and all claims, disputes or controversies arising from or related to this Agreement, existing at or arising after the effective date of this Agreement, will be submitted to binding arbitration under the Delaware Rapid Arbitration Act, as amended from time to time (the “DRAA”), and the rules for DRAA arbitrations adopted by the DRAA and the Delaware courts (the “Arbitration Rules”) shall govern all aspects of the arbitration. In no event shall class arbitration be permitted, and the arbitrator shall have no authority to conduct any class arbitration. The parties knowingly and voluntarily consent to the waiver of any rights resulting from this Arbitration Provision or application of the DRAA or the Arbitration Rules.

The parties agree that arbitration shall be the sole and exclusive forum for resolving disputes subject to this Arbitration Provision. In the event a party initiates litigation in violation of this Arbitration Provision, such action shall be subject to dismissal, with the reasonable fees and expenses of the non-initiating party or parties paid by the party or parties that initiated the action. Nothing in this Arbitration Provision shall limit the right of a party to seek an order from a court of competent jurisdiction (a) dismissing litigation brought in violation of this Arbitration Provision or (b) compelling a party to arbitrate in accordance with this Arbitration Provision. In the event such an order is sought and obtained, the non-prevailing party shall pay all reasonable fees and expenses of the prevailing party. The parties stipulate and agree that a violation of this Arbitration Provision shall constitute irreparable harm and that, on proof of a breach, the party seeking relief from such violation shall be entitled to equitable relief including, but not limited to, an injunction or specific performance.

To the extent permitted under the DRAA, all hearings relating to the arbitration, along with the arbitration itself, will take place in either San Diego, California or the State of Delaware, per the sole election of the Company. Notwithstanding anything herein to the contrary, each party to the arbitration will bear its own attorneys’ fees relating to the arbitration, regardless of the which party prevails in such arbitration. In the event that the binding arbitration provision above is not enforceable, the parties hereby subject themselves to the jurisdiction of the federal and state courts located within the State of California and agree that the exclusive venue and place of jurisdiction for any lawsuit arising under or related to the sale of the Convertible Notes shall be in the federal or state courts located within San Diego County, California.

The parties hereto waive to the fullest extent permitted by applicable law all claims to consequential and punitive damages in any arbitration or other legal action brought by any of them against any other of them in respect of (i) any claim among or between any of them arising under this Agreement, the related Private Placement Memorandum, or any other agreement or agreements between or among any of them at any time, including any such agreements, whether written or oral, made or alleged to have been made at any time, and (ii) any and all claims arising under common law or under any statute of any state or the United States of America.

7. Amendment. Any term of this Note may be amended and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holder.

Any amendment or waiver effected in accordance with this Section 6 shall be binding upon the Company and the Holder.

8. Notices. Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Note shall be made in writing and to addresses of the Company and Holder as specified in the corresponding Subscription Agreement for this Note.

9. Restrictions on Transfer. This Note may only be transferred in compliance with applicable state and federal laws. All rights and obligations of the Company and the Holder will be binding upon and benefit the successors, assigns, heirs and administrators of the Holder and the Company.

10. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of this Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Company has executed this Convertible Promissory Note effective as of the date written below the Company's signature.

**COMPANY:**

DIVERSYFUND, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Name: Alan Lewis  
Title: Chief Investment Officer  
Date:

ACKNOWLEDGED:

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