

THIS INSTRUMENT AND THE SECURITIES ISSUABLE ON CONVERSION HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

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## CONVERTIBLE PROMISSORY NOTE

Up to \$1,000,000.00

September 29, 2010 ("*Issuance Date*")

FOR VALUE RECEIVED, AquaSpy Group, Inc., a Delaware corporation ("*Maker*"), having its principal place of business and executive offices located at 3815 River Crossing Parkway, Suite 100, Indianapolis, Indiana 46240, hereby promises to pay to the order of the Indiana Economic Development Corporation, for and on behalf of the Indiana Twenty-First Century Research and Technology Fund ("*Lender*"), at its offices located at One North Capitol Avenue, Suite 700, Indianapolis, Indiana 46204, or at such other place as Lender may from time to time direct, in the amounts, at the times and subject to the conditions set forth in **Schedule B** attached hereto, in lawful money of the United States, the principal sum of One Million and 00/100 Dollars (\$1,000,000.00) (the "*Maximum Loan Amount*") or such lesser amount actually advanced to Maker and outstanding as indicated on the schedule of loan advances set forth on **Schedule A** attached hereto and made a part hereof as updated in accordance herewith (the "*Loan Schedule*"), together with interest, attorneys' fees and costs of collection and without relief from valuation or appraisal laws, all in accordance with the terms and provisions of this Convertible Promissory Note (this "*Note*").

### SECTION 1 PRINCIPAL AND INTEREST

A. Principal. The outstanding principal balance of this Note at any one time is the sum of all loan advances actually advanced to Maker by Lender at Maker's request and which are listed on the Loan Schedule (each a "*Loan Installment*" and, collectively, the "*Loans*"). The outstanding principal balance shall not exceed the Maximum Loan Amount. Each Loan Installment will be evidenced by a written notation of Lender on the Loan Schedule and will constitute a valid and binding obligation of Maker in accordance with the terms and conditions contained herein as of the time at which such notation is made upon or following a corresponding advancement of a Loan Installment to Maker; provided, however, any evidence of Maker's receipt of a wire transfer of a Loan Installment or any other good and customary external evidence that such a Loan Installment has been made by Lender will be sufficient evidence and will constitute a valid and binding obligation of Maker to repay such Loan Installment to Lender pursuant to the terms of this Note. Lender shall advance (i) an initial Loan Installment to Maker in the amount of \$500,000.00 as soon as reasonably practicable following the execution and delivery of this Note by Maker (the "*Initial Loan Installment*") and (ii) at Maker's request, an additional Loan Installment to Maker in the amount of \$500,000.00 on the date of the Milestone Closing [REDACTED]



(i) Maker fails to make any timely payment of any amount due under this Note or any other loan agreement or promissory note or material contract to which Maker and Lender are parties within ten [REDACTED] of demand therefor;

(ii) Maker fails or neglects to comply with the notice requirements set forth in Section 5.1(F) and such failure has not been cured within [REDACTED] after such failure first occurs;

(iii) except as otherwise provided herein, Maker fails or neglects to comply with or to perform in accordance with any provision hereunder or under any other written contract or instrument between Maker and Lender and such failure has not been cured within [REDACTED] after such failure first occurs;

(iv) the execution of an assignment for the benefit of creditors by Maker or the filing or commencement for any proceedings for relief under the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.), as may be amended from time to time, or insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or the appointment of a trustee for, by or against Maker; or

(v) except as otherwise provided herein, a material breach by Maker of any of its covenants, representations or warranties contained in this Note or any other written contract between Maker and Lender that is not cured within [REDACTED] after Maker has received notification from Lender of such breach.

C. Remedies Upon an Event of Default. Upon and after the occurrence of an Event of Default, Lender shall have the right without presentment, notice or demand of any kind, to accelerate this Note and to declare all of the obligations of Maker under this Note immediately due and payable.

D. Additional Expenses. If this Note or any principal or interest thereon is not paid when due, whether by reason of acceleration or otherwise, and this Note is placed in the hands of any attorney or attorneys for collection (whether or not litigation is commenced) or for representation of Lender hereof in connection with bankruptcy or insolvency proceedings, Maker promises to pay, in addition to the other amounts due hereon, the reasonable costs and expenses of such collection and representation, including reasonable attorneys' fees and expenses. Until Lender is fully paid, such costs and expenses shall be added to the obligations of Maker under this Note, shall be payable on demand and shall bear interest at a rate equal to the Default Rate.

SECTION 4  
CONVERSION

**REDACTED**

**REDACTED**

# REDACTED

## SECTION 5 COVENANTS OF MAKER

5.1 Affirmative Covenants. Maker covenants and agrees with Lender, for so long as this Note remains outstanding, it will:

A. Furnish to Lender:

(i) as soon as available and in any event within thirty (30) days after the end of each calendar quarter, an unaudited balance sheet and unaudited statements of operations, cash flows and stockholders' equity, showing the financial condition of Maker and its subsidiaries for each such calendar quarter;

(ii) as soon as available and in any event within ninety (90) days after the end of each fiscal year of Maker, an unaudited balance sheet and unaudited statements of operations, cash flows and stockholders' equity, showing the financial condition of Maker and its subsidiaries for such fiscal year;

(iii) concurrently with each set of financial statements delivered pursuant to clauses (i) and (ii) of this subsection, a "no default" certificate signed by the Chief Executive Officer of Maker; and

(iv) technology commercialization reports summarizing Maker's science and technology development, business development, and other indicators of economic impact in a

form reasonably specified and provided by Lender, as may be amended from time to time, provided that such disclosure need not include trade secrets or confidential proprietary data relating to Maker's Intellectual Property (as defined below). Maker shall submit such reports on or before the end of each calendar quarter until the earlier to occur of (a) the Maturity Date and (b) the date this Note is converted in accordance with the terms hereof.

B. Allow Lender and such agents, advisors and counsel as Lender may designate to visit and inspect any of the properties of Maker, examine the books of account of Maker, take extracts therefrom and discuss the affairs, finances and accounts of Maker with its officers and employees and accountants (and by this provision Maker hereby authorizes said accountants to discuss with Lender and such persons its finances and accounts), at reasonable and mutually convenient times and with reasonable prior notice during normal business hours. All such visits and inspections shall be conducted in a manner that will not unreasonably interfere with the normal business operations of Maker. Maker will furnish to Lender such other information as it from time to time may reasonably request. The provisions of Sections 5.1(A) and 5.1(B) will not be in limitation of any rights Lender may have with respect to the books and records of Maker, or to inspect or discuss its affairs, finances and accounts, under the laws of the State of Indiana.

C. Maintain and preserve its existence, rights and privileges, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

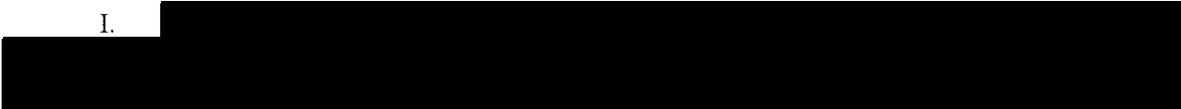
D. Establish administrative and cost allocation standards to enable Maker to appropriately account for the expenditure of Loan proceeds consistent with Lender guidelines. Maker may be subject to at least one financial review regarding the use of Loan proceeds (the "*Audit*") to ensure compliance with the terms of this Note, Maker's application and Indiana Code § 5-28-16, *et. seq.* Each Audit shall also be conducted by an independent accounting firm selected by Lender. Lender anticipates conducting one (1) Audit. Maker shall be responsible for paying, [REDACTED] any bill forwarded to Maker for an Audit, [REDACTED]. If Maker fails to timely pay any such bill, Lender shall have the right to directly pay for the Audit from undisbursed Loan proceeds, in addition to its other remedies.

E. Maintain its status as an "Indiana business", as such term is defined in Indiana Code § 5-22-15-20.5(b).

F. Give Lender written notice: (i) immediately upon the occurrence of any Event of Default under this Note, together with a written statement of the action being taken by Maker to remedy such Event of Default; (ii) of any event that results in an adjustment to the Conversion Price as set forth in Section 4; (iii) no less than forty-five (45) days in advance of the closing of an event requiring a mandatory conversion as provided in Section 4(B)(i) hereof; (iv) no less than fifteen (15) days in advance of the occurrence of an event requiring an effective conversion as provided in Section 4(B)(ii) hereof; provided, however, that in the event Maker has less than fifteen (15) days notice of any such occurrence then Maker shall provide written notice to lender pursuant to this subsection within twenty-four (24) hours of Maker receiving notice of such occurrence; (v) promptly upon any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency which, if adversely determined, could materially impair the right of Maker to carry on business substantially as presently conducted, could materially affect its business, operations, properties, assets or condition, financial or otherwise, or could materially impair its ability to perform any of its obligations under this Note; (vi) promptly upon any development in its business or affairs, including without limitation any changes, amendments, or modifications to existing contracts, which may materially and adversely affect Maker's operations, financial condition or ability to perform any of its obligations under this Note, disclosing the nature thereof; and (vii) within fifteen (15) days of any amendment, alteration, repeal or waiver of any provision of the Certification of Incorporation or the Bylaws of Maker.

G. Use its best efforts to possess and maintain all material intellectual property rights necessary to the conduct of its business and own all right, title and interest in and to, or have a valid license for, all material intellectual property rights used by Maker in the conduct of its business. Maker shall not knowingly take any action, or fail to take any action, which would result in the invalidity, abuse, misuse or unenforceability of such intellectual property rights or which would infringe upon any rights of any other individual, corporation, partnership, joint venture, trust or unincorporated organization (each, a "*Person*").

H. Maintain insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which Maker operates.

I. 

 Further, concurrently with delivery to the Board, Maker shall give a representative of Lender copies of all notices, minutes, consents and other materials that Maker provides to its Board, except that the representative may be excluded from access to any materials or meetings or portions thereof if the Board determines in good faith, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege, to protect highly confidential proprietary information, to address a conflict of interest or for other similar reasons. Upon reasonable notice and at a scheduled meeting of the Board or such other time, if any, as the Board may determine in its reasonable discretion, such representative may address the Board with respect to Lender's concerns regarding significant business issues facing Maker.

J. Upon the reasonable request of Lender, duly execute and deliver to Lender such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of Lender to carry out more effectively the provisions and purposes of this Note.

K. Indemnify, defend, and hold harmless Lender and the State of Indiana and their respective agents, officers, employees and representatives from all claims and suits for damages or loss or damage to property, including the loss of use thereof, and injuries to or death of persons, including without limitation any officers, agents, employees and representatives of Maker or its contractors, and from all judgments recovered therefor and for expenses in defending any such claims or suits, including court costs, attorneys' fees, and for any other expenses caused by an act or omission of Maker or its grantees, contractors, agents, officers or employees in connection with performance of this Note or in the operation of Maker's business.

L. Comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Maker's acknowledgements, certifications, representations, warranties and agreements set forth in this Note shall in no way limit the generality of the foregoing. The enactment of any state or federal statute or the promulgation of rules or regulations hereunder after execution of this Note shall be reviewed by Lender and Maker to determine whether the provisions of this Note require formal modification.

M. Abide by all ethical requirements that apply to persons who have a business relationship with Lender, as set forth in Indiana Code § 4-2-6 et seq., Indiana Code §4-2-7 et seq., the regulations promulgated thereunder, Executive Order 04-08, dated April 27, 2004, Executive Order 05-12, dated January 10, 2005, and 25 Indiana Administrative Code 6, effective January 1, 2006. If Maker, or any of its agents, are not familiar with these ethical requirements, they should refer any questions to the State

Ethics Commission, or visit the State Ethics Commission website at <http://www.in.gov/ethics/>. In addition to triggering an Event of Default, a violation of this subsection may subject Maker to penalties under Indiana Code § 4-2-6-12.

N. Obtain and maintain all required material permits, licenses, and approvals, as well as comply with all material health, safety, and environmental statutes, rules, or regulations for its operations as may be required by any federal, state, local, or other governing and/or regulating body.

O. Allow Lender to confirm, at any time, that no liabilities exist to Lender (other than any obligation under this Note) or to the State of Indiana or any of its agencies. If such liabilities are discovered, then, in addition to triggering an Event of Default, Lender may bar Maker from contracting with Lender and the State of Indiana in the future, cancel existing contracts and withhold any requested Loan Installments until Maker is current in its payments on its liability to Lender or the State of Indiana and has submitted proof of such payment to Lender.

P. Disclose to Lender when an Interested Party (as defined below) is or becomes an employee of Lender. The obligation under this provision extends only to those facts that Maker knows or reasonably could know.

Q. Make a good faith effort to provide and maintain a drug-free workplace. Maker will give written notice to Lender within ten (10) days after receiving actual notice that Maker or an employee of Maker has been convicted of a criminal drug violation occurring in Maker's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Loan payments, termination of this Note and/or debarment of funding and other contract opportunities with Lender for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Note is in excess of \$25,000, Maker hereby further agrees that this Note is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with the State of Indiana in excess of \$25,000. No contract, the total amount of which exceeds \$25,000, shall be made or be valid unless and until this certification has been fully executed by Maker and made a part of this Note.

Maker certifies and agrees that it will provide a drug-free workplace by:

(i) Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Maker's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(ii) Informing its employees of (a) the dangers of drug abuse in the workplace; (b) Maker's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

(iii) Notifying all employees in the statement required by subparagraph (i) above that as a condition of continued employment the employee will (a) abide by the terms of the statement; and (b) notify Maker in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction;

(iv) Notifying in writing Lender within ten (10) calendar days after receiving notice from an employee under subdivision (iii)(b) above or otherwise receiving actual notice of such conviction;

(v) Within thirty (30) days after receiving notice under subdivision (iii)(b) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and

(vi) Making a good faith effort to continue to maintain a drug-free workplace through the implementation of subparagraphs (i) through (v) above.

R. Use commercially reasonable efforts to (i) explore opportunities for any desired private funding of Maker with capital providers located in the State of Indiana, and (ii) spend all of the Loans disbursed to it pursuant to this Note with individuals residing and entities domiciled within the State of Indiana.

S. Diligently pursue the commercialization of any patented technology and/or copyrightable works produced using the proceeds of this Note. Further, Maker recognizes that Lender's primary objectives are to support proposals for economic development which are likely to: (i) increase the success of Indiana institutions of higher education, Indiana businesses and Indiana nonprofit corporations and organizations in securing research funding; (ii) transfer research and technologies into marketable products; (iii) assist with diversifying Indiana's economy by focusing investment in targeted industry clusters requiring high skill, high wage workers; and (iv) encourage an environment of innovation and cooperation among universities and businesses to promote research activity. Maker agrees that all activities supported with the Loans will further efforts toward accomplishing one or more of these objectives.

T. Obtain prior written approval from Lender whenever there are significant changes in the Project (as defined below) or in its direction, as follows:

(i) Lender intends to provide flexibility to Maker in the pursuit of its technology development/commercialization goals. However, a proposed change in the objectives of the Project must be communicated in writing to Lender by Maker along with a request for modification of the Project. Approval by Lender of any such changes to the Project, if granted, must be memorialized by a written amendment to this Note signed by both parties hereto; or

(ii) The Project shall be performed under the direction of [REDACTED] (the "*Principal*"). If the Principal plans to or becomes aware that he will: (1) devote substantially less effort to the Project than anticipated in the application previously submitted to Lender (defined as a reduction of 25% or more in time); (2) sever his connection with Maker; or (3) be absent for a continuous period of three (3) months or more, or otherwise relinquish active direction of the Project, he and/or Maker shall, in writing, advise Lender of such circumstance. In the event of an occurrence of any of the foregoing circumstances, the parties hereto agree to attempt to identify

and secure a mutually acceptable substitute for the Principal. In the event the parties are unable to identify and/or agree upon a mutually acceptable substitute within a time frame established by Lender in its sole discretion, an Event of Default shall have occurred under this Note.

5.2 Negative Covenants. For so long as this Note remains outstanding, Maker shall not, without the prior written consent of Lender (in addition to any other vote required by law, including without limitation any approval required by the Certificate of Incorporation):

# REDACTED

D. Pursuant to Indiana Code § 22-9-1-10, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Civil Rights Act of 1964, discriminate against any employee or applicant for employment, to be employed in the performance of this Note, with respect to the employee's or applicant's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Note also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran. Breach of one or both of these covenants may be regarded as a material breach of this Note.

## SECTION 6 REPRESENTATIONS AND WARRANTIES OF MAKER

A Schedule of Exceptions, attached hereto as Exhibit B (the "*Schedule of Exceptions*"), shall be delivered to the Lender in connection with the execution and delivery of this Note on the Issuance Date. To induce Lender to enter into this Note, Maker hereby represents and warrants to Lender that, except as set forth on the Schedule of Exceptions, as of the Issuance Date:

A. Organization, Qualifications and Power. Maker is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own or lease its properties and assets and to conduct its business as it is presently being conducted and to issue, sell and deliver this Note. Maker does not own any equity interest, directly or indirectly, in any other Person or business enterprise and Maker has no subsidiaries. Maker is qualified to do business in Indiana and in each other jurisdiction in which the failure to so qualify could have a material adverse effect upon its assets, properties, financial condition, results of operations or business.

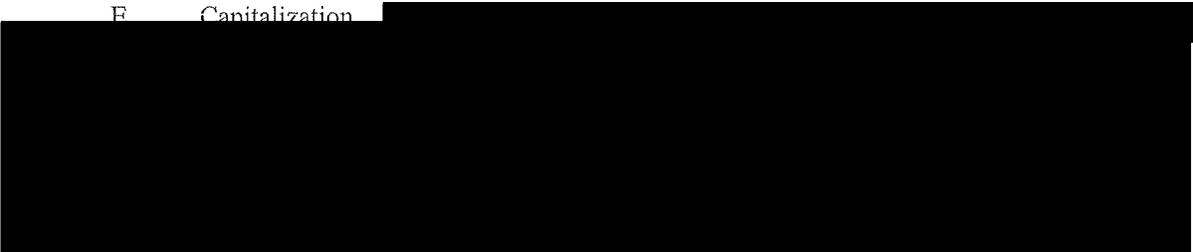
B. Authorization. The execution and delivery by Maker of this Note, and the performance by Maker of its obligations hereunder, have been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the Certificate of Incorporation or the Bylaws of Maker, will not result in a violation of any provision of any indenture, agreement or other instrument to which Maker or any of its properties or assets is bound, or conflict with, result in a material breach of or constitute (with due notice or lapse of time or both) a default under any

such indenture, agreement or other instrument, or result in the creation or imposition of any lien, or, to Maker's knowledge, any claim of any nature whatsoever upon any of the properties or assets of Maker, the result of any of which could have a material adverse effect on the assets, properties, financial condition, results of operations, business of Maker.

C. Validity. This Note, when delivered hereunder, is or will be duly and validly executed and delivered by Maker and constitutes the legal, valid and binding obligations of Maker, enforceable against Maker in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws of the United States (both state and federal) now or hereafter in effect relating to or affecting the enforcement of creditors' rights or remedies in general as may from time to time be in effect and the exercise by courts of equity powers or their application of public policy.

D. Governmental Approvals. No registration or filing with, or consent or approval of or other action by, any federal, state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance by Maker of this Note.

E. Capitalization



F. Litigation. There is no (i) action, suit, claim, proceeding or investigation pending or, to Maker's knowledge, threatened against Maker, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) arbitration proceeding relating to Maker pending under collective bargaining agreements or otherwise, or (iii) governmental inquiry pending or, to Maker's knowledge, threatened against Maker (including, without limitation, any inquiry as to the qualification of Maker to hold or receive any license, permit or approval), and to Maker's knowledge, there is no basis for any of the foregoing. There is no action or suit by Maker pending, threatened or presently contemplated against others.

G. Patents, Trademarks, Etc. To Maker's knowledge, Maker owns or possesses valid licenses or other valid and lawful rights to use all intellectual property or other technology necessary to the conduct of Maker's business as presently conducted, including, without limitation, all such intellectual property and technology found in any of Maker's patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, manufacturing processes, formulae, trade secrets, customer lists and know how (such intellectual property, and the rights thereto, are collectively referred to herein as "*Maker's Intellectual Property*"), and no claim is pending or, to the best of Maker's knowledge, threatened to the effect that the operations of Maker infringe upon or conflict with the asserted rights of any other Person under any of Maker's Intellectual Property, and to Maker's knowledge, there is no valid basis for any such claim. To Maker's knowledge, each current and former employee of Maker, and each of Maker's consultants and independent contractors involved in the development of any of Maker's Intellectual Property, has executed an agreement relating to such Person's nondisclosure of proprietary information of Maker and such Person's assignment of his or her rights (to the extent any exist) in the inventions of such Person created during his or her employment or association with Maker and, to Maker's knowledge, none of such employees, consultants or independent contractors

is in violation of any agreement or in breach of any agreement or arrangement with former or present employers.

H. Financial Statements. Maker has delivered or made available for examination by Lender copies of (i) the unaudited balance sheet with respect to Maker as of December 31, 2009 and the related statement of profit and loss for the 12-month period then ended (the “*Interim Financial Statements*”) and (ii) the unaudited balance sheet and statement of profit and loss of Maker for the twelve (12) months ended December 31, 2009 (together with the Interim Financial Statements, the “*Financial Statements*”). The Financial Statements are true and correct and present fairly the financial position of Maker as of such date in all material respects. The Financial Statements are true and correct in all material respects and present fairly the financial position and results of operations of Maker as of the date(s) thereof and the results of operations for the period(s) indicated.

I. Indebtedness. Except as reflected on the Financial Statements, Maker has no Indebtedness of any nature whatsoever, whether absolute, accrued, contingent or otherwise in excess of \$100,000 in the aggregate. Maker is not in default and no waiver of default is currently in effect in the payment of any principal or interest on any Indebtedness of Maker and no event or condition exists with respect to any Indebtedness of Maker that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment. For purposes hereof, “*Indebtedness*” means (1) obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (2) obligations for the deferred purchase price of capital assets, excluding trade payables, (3) obligations under conditional sales or other title retention agreements, and (4) lease obligations which have been or should be capitalized on the books of Maker.

J. Contracts. Maker is not a party to or bound by any contract pursuant to which it has obligations in excess of \$100,000 in the aggregate (any such contract, a “*Material Contract*”). To Maker's knowledge, all of Maker's Material Contracts are valid and binding obligations of Maker, and, to Maker's knowledge, are valid and binding obligations on the other parties thereto.

K. Accuracy and Completeness of Information. All information furnished by Maker to Lender or any persons representing Lender in connection with this Note, when all such information is considered together as a whole, is accurate and complete in all material respects as of the Issuance Date.

L. No Violation. Maker is not in material violation of its organizational documents and Maker has not received notice and has no reasonable grounds to believe that it is in violation of any laws or orders that in any manner adversely and materially affect Maker's ability to perform its obligations under this Note. No Event of Default has occurred and is continuing.

M. Approvals. No other approval, consent or authorization of any form is or will be required in connection with the execution and delivery by Maker of this Note, except as indicated herein.

N. Required Payments. Maker certifies by entering into this Note that it is not presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, Maker agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to Maker.

O. Enforcement Actions. Maker warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify Lender of any such actions.

P. Debarment and Suspension. Maker certifies, by entering into this Note, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Note by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Note means an officer, director, or stockholder of Maker. Maker certifies that it has verified the suspension and debarment status for it and its principals and acknowledges that it shall be solely responsible for any recoupments or penalties that might arise from non-compliance. Maker shall immediately notify Lender if any of its principals become debarred or suspended, and shall consent, at Lender’s request, to the termination of this Note.

Q. Conflict of Interest. No Interested Party is an employee of Lender, unless Maker provides Lender an opinion by the Commission indicating that the existence of this Note and the employment by Lender of the Interested Party does not violate any statute or rule relating to ethical conduct of Lender employees. As used in this section, “*Immediate Family*” means the spouse and the unemancipated children of an individual; “*Interested Party*” means: (i) the individual executing this Note on behalf of Maker, (ii) an individual who has an interest of one percent (1%) or more of Maker, if Maker is not an individual, or (iii) any member of the Immediate Family of an individual specified under the foregoing subdivision (i) or (ii); and “*Commission*” means the Indiana State Ethics Commission.

R. As required by Indiana Code § 5–22–3–7:

(i) Maker, and its principals, certify that (1) Maker, except for de minimis and nonsystematic violations, has not violated the terms of (A) Indiana Code § 24–4.7 [Telephone Solicitation Of Consumers], (B) Indiana Code § 24–5–12 [Telephone Solicitations], or (C) Indiana Code § 24–5–14 [Regulation of Automatic Dialing Machines] in the previous 365 days, even if Indiana Code § 24–4.7 is preempted by federal law; and (2) Maker will not violate the terms of Indiana Code § 24–4.7 for the duration of this Note, even if Indiana Code § 24–4.7 is preempted by federal law.

(ii) Maker certifies that, except for de minimis and nonsystematic violations, neither it nor any of its affiliates or principals and agents have violated in the previous 365 days, or will violate for the duration of this Note, the terms of Indiana Code § 24–4.7, even if Indiana Code § 24–4.7 is preempted by federal law.

## SECTION 7 REPRESENTATIONS AND WARRANTIES OF LENDER

Lender hereby represents and warrants to Maker as of the Issuance Date that:

A. Binding Obligation. Lender has full legal capacity, power and authority to execute and deliver this Note and to perform its obligations hereunder. This Note constitutes a valid and binding obligation of Lender, 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. Securities Law Compliance. Lender has been advised that the Note and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. Lender is aware that Maker is under no obligation to effect any such registration with respect to the Note or the underlying securities or to file for or comply with any exemption from registration. Lender is purchasing the Note to be acquired

by Lender 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 Lender has no present intention of selling, granting any participation in, or otherwise distributing the same. Lender has such knowledge and experience in financial and business matters that Lender is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing Lender's financial condition and is able to bear the economic risk of such investment for an indefinite period of time. To the best of its belief and understanding, Lender represents that it is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act.

C. Access to Information. Lender acknowledges that Maker has given Lender access to the corporate records and accounts of Maker and to all information in its possession relating to Maker, has made its officers and representatives available for interview by Lender and has furnished Lender with all documents and other information required for Lender to make an informed decision with respect to this Note prior to the execution thereof.

D. Tax Advisors. Lender has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of the transactions contemplated by this Note. With respect to such matters, Lender relies solely on any such advisors and not on any statements or representations of Maker or any of its agents, written or oral. Lender understands that it (and not Maker) shall be responsible for its own tax liability that may arise as a result of the transactions contemplated by this Note.

## SECTION 8 USE OF PROCEEDS

Maker shall use all Loan proceeds received from Lender pursuant to this Note (i) for the purpose of performing, coordinating and supervising to completion the experiments, studies, investments and/or commercialization plans (collectively, the "*Project*") as described in the application previously submitted to Lender by Maker and the Project abstract of Maker as set forth on Schedule B, or (ii) as otherwise mutually determined by Maker and Lender; provided, however, such Loan proceeds are not to be used to repay Indebtedness.

## SECTION 9 CLOSING DELIVERIES; CONDITIONS

A. Closing Deliveries.

(i) Maker agrees to furnish to Lender, at or prior to the closing of this Note, in form and substance reasonably satisfactory to Lender:

- (a) the Note, duly executed by Maker;
- (b) copies of the Certificate of Incorporation and Bylaws of Maker;
- (c) copies of resolutions of Maker evidencing approval of the transactions contemplated hereunder;
- (d) an Officer's Certificate, dated as of the Issuance Date, certifying that the conditions specified in Sections 9(B)(i) and 9(B)(ii) have been fulfilled to the best of such officer's knowledge; and
- (e) such other documents and instruments as Lender may reasonably require.

(ii) Lender shall provide to Maker, as soon as reasonably practicable following the closing of this Note, against delivery of the items set forth in Section 9A(i) above, the Initial Loan Installment in immediately available funds.

B. Conditions. In addition to providing to Lender the closing deliveries required by Section 9(A) in a form satisfactory to Lender, Lender's obligation to enter into this Note on the date hereof is subject to the fulfillment to Lender's reasonable satisfaction of the following conditions:

(i) Representations and Warranties. The representations and warranties of Maker in this Note shall be true and correct in all material respects as of the Issuance Date.

(ii) Performance; No Default. Maker shall have performed and complied with all agreements and conditions in this Note required to be performed or complied with by it prior to or at the time of Maker's execution of this Note and, after giving effect to this Note (and the application of the proceeds thereof as provided herein), no Event of Default shall have occurred and be continuing.

(iii) Proceedings and Documents. A copy of any other documents and instruments required to be executed in connection with the transactions contemplated by this Note shall be reasonably satisfactory to Lender, and Lender and its counsel shall have received all such counterpart originals or certified or other copies of such documents as Lender may reasonably request.

(iv) Fulfilling State Conditions. Maker acknowledges that Lender is a body corporate and politic of the State of Indiana and that all disbursements must abide by the requirements of the Indiana State Budget Agency and the Indiana State Auditor's Office and that Lender may not disburse funds under this Note unless Maker meets the state guidelines applicable to such requests.

Further, the parties agree that if the Director of the Indiana State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of this Note, Maker is entitled to no further disbursements under this Note. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## SECTION 10 MISCELLANEOUS

A. Amendments. No amendment or waiver of any provision of this Note, nor consent to any departure by Maker herefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

B. Severability. If any term, covenant or provision contained in this Note, or the application thereof to any Person or circumstance, shall be determined to be void, invalid, illegal or unenforceable to any extent or shall otherwise operate to invalidate this Note, in whole or part, then such term, covenant or provision only shall be deemed not contained in this Note; the remainder of this Note shall remain operative and in full force and effect and shall be enforced to the greatest extent permitted by law as if such clause or provision had never been contained herein or therein; and the application of such term, covenant or provision to other Persons or circumstances shall not be affected, impaired or restricted thereby.

C. Captions. The captions or headings at the beginning of any paragraph or portion of any paragraph in this Note are for the convenience of Maker and Lender and for purpose of reference only and shall not limit or otherwise alter the meaning of the provisions of this Note.

D. Expenses. Maker will pay the reasonable attorneys' fees of Lender incurred in connection with the negotiation and preparation of this Note, [REDACTED]

E. Usury Savings Clause. It is the intention of the parties hereto to comply with applicable state and federal usury laws from time to time in effect. Accordingly, notwithstanding any provision to the contrary in this Note or any other document related hereto, in no event (including, but not limited to, prepayment or acceleration of the maturity of any obligation) will this Note or any such other document require the payment or permit the collection or receipt of interest in excess of the highest lawful rate. If under any circumstance whatsoever, any provision of this Note or of any other document pertaining hereto will provide for the payment, collection or receipt of interest in excess of the highest lawful rate, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstances Lender will ever receive anything of value as interest or deemed interest by applicable law under this Note or any other document pertaining hereto or otherwise an amount that would exceed the highest lawful rate, such amount that would exceed the highest lawful rate shall be applied to the reduction of the principal amount owing under this Note or on account of any other indebtedness of Maker to Lender, and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of this Note and such other indebtedness, such excess shall be refunded to Maker. In determining whether or not the interest paid or payable with respect to any indebtedness of Maker to Lender, under any specified contingency, exceeds the highest lawful rate, Maker and Lender will, to the maximum extent permitted by applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, (iii) amortize, prorate, allocate and spread the total amount of interest throughout the full term of such indebtedness (including any extension or renewal) so that interest thereon does not exceed the maximum amount permitted by applicable law, and/or (iv) allocate interest between portions of such indebtedness, to the end that no such portion shall bear interest at a rate greater than that permitted by applicable law. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event that the maturity of this Note is accelerated. If at any time the Interest Rate or the Default Rate, as applicable, exceeds the highest lawful rate, then the rate at which interest shall accrue hereunder shall automatically be limited to the highest lawful rate, and shall remain at the highest lawful rate until the total amount of interest accrued hereunder equals the total amount of interest that would have accrued but for the operation of this sentence. Thereafter, interest shall accrue at the Interest Rate or the Default Rate, as applicable, unless and until such applicable rate again exceeds the highest lawful rate, in which case the immediately preceding sentence shall apply.

F. Governing Law; Venue. The construction and enforcement of this Note shall be governed by the laws of the State of Indiana, without regard to principles of choice of law and the venue for any court action shall be the circuit or superior court of Marion County, Indiana or the United States District Court of the Southern District of Indiana and Maker hereby consents to the personal jurisdiction of said courts.

G. Notices. Any notice, request or other communication required or permitted hereunder will be in writing and be deemed to have been duly given (i) when personally delivered, (ii) one (1) business day after being sent by a nationally recognized overnight courier service, or (iii) five (5) business days after being sent by registered or certified mail, return receipt requested, postage prepaid, to the parties at their respective addresses set forth below:

If to Maker: AquaSpy Group, Inc.  
3815 River Crossing Parkway, Suite 100  
Indianapolis, IN 46240  
Attention: [REDACTED]

with a copy to: [REDACTED]

If to Lender: Indiana 21<sup>st</sup> Century Research and Technology Fund  
c/o Indiana Economic Development Corporation  
One North Capitol Avenue, Suite 700  
Indianapolis, IN 46204  
Attention: General Counsel

H. To the extent feasible and permissible by law, each party hereto agrees that confidential information submitted by the disclosing party to the receiving party shall remain confidential. The receiving party will treat the information as confidential only if: (i) the information is in fact protected confidential information, such as trade secrets or privileged or confidential commercial or financial information; (ii) the information is specifically marked and identified as confidential by the disclosing party; (iii) the information is segregated from other material submitted; and (iv) no disclosure of the information is required by applicable law or judicial order.

I. This Note and the rights and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. The rights, but not the obligations, of Lender hereunder may be assigned by Lender without prior notice to and without the prior approval of Maker provided that such assignment is made (i) pursuant to an exemption from registration under the Securities Act and applicable state securities laws and (ii) to any of the following: (a) an entity affiliated with the government of the State of Indiana; or (b) a successor or spin-off legal entity of Lender; provided, however, that for any other assignment by Lender of its rights hereunder, Lender must obtain the prior consent of Maker, which consent shall not be unreasonably withheld or delayed. Maker may not assign this Note or any rights or duties hereunder, other than by operation of law, without Lender's prior written consent, which written consent shall not be unreasonably withheld or delayed.

J. As required by Indiana Code § 4-13-2-14.8 and notwithstanding any other law, rule or custom, a person or company which has a contract with Lender or the State of Indiana or submits invoices to Lender or the State of Indiana for payment shall authorize in writing the direct deposit by electronic funds transfer of all payments by the State of Indiana to such person or company. The written authorization must designate a financial institution and an account number to which all payments are to be credited.

K. The undersigned attests, subject to the penalties for perjury that he/she is the authorized officer or representative of Maker, that he/she has not, nor has any other officer, representative, or employee of Maker, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Note other than that which appears on the face hereof.

IN WITNESS WHEREOF, the parties to this Note, having read and understood the foregoing terms of the Note, hereby do, by their respective authorized representatives, agree to the terms thereof.

“MAKER”

AQUASPY GROUP, INC.

By: B. COPY  
Printed: B. COPY  
Title: CEO  
Date: 9/2/10

“IEDC”

INDIANA ECONOMIC DEVELOPMENT CORPORATION

INDIANA TWENTY-FIRST CENTURY RESEARCH AND TECHNOLOGY FUND

By: E. Mitchell Roob, Jr.  
Printed: E. Mitchell Roob, Jr.  
Title: Secretary of Commerce and CEO  
Date: 9-15-10

APPROVED:

STATE BUDGET AGENCY

By: [Signature]  
Printed: Adam M. Horst  
Title: Director  
Date: 9/29/2010

Schedule A

LOAN SCHEDULE

DATE	PRINCIPAL AMOUNT OF LOAN	INTEREST ON PRINCIPAL AMOUNT	NOTATION MADE BY
October 1, 2010	\$500,000.00		PML
January 27, 2011	\$500,000.00		PML

Schedule B

**Principal Investigator Information**

Name [REDACTED]  
Title Chief Executive Officer  
Organization AquaSpy Group, Inc.  
Phone [REDACTED]  
Address 3815 River Crossing Parkway, Suite 100  
Indianapolis, Indiana 46240  
E-Mail [REDACTED]

**Project Information**

**Project Title** AquaSpy

**Abstract** Cellular and web based service to gather deep soil data for growers such that actionable information can be obtained through a secure web site concerning soil moisture, root growth, fertilizer, water, pesticide applications and optimum crop yield.

**Total Budget** \$5,000,000

**Award Amount** \$1,000,000

**Date Approved** June 23, 2010 by IEDC Board  
July 7, 2010 by State Budget Committee

**Disbursement Schedule**

Disbursement Date	Disbursement Amount	Enabling Documentation
As soon as reasonably practicable following the execution of the Note to which this schedule is attached as Schedule B	\$500,000.00	[REDACTED]
As soon as reasonably practicable following the date of the Milestone Closing as set forth in Section 1A of the Note to which this schedule is attached as Schedule B	\$500,000.00	[REDACTED]
<b>TOTAL</b>	<b>Up to \$1,000,000</b>	

Exhibit A

CERTIFICATE OF INCORPORATION

**REDACTED**

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Exhibit B

SCHEDULE OF EXCEPTIONS

AQUASPY GROUP, INC.

SCHEDULE OF EXCEPTIONS

**REDACTED**

**REDACTED**

**REDACTED**