

COMMERCIALIZATION AGREEMENT

This Commercialization Agreement (this "**Agreement**") is dated November 29, 2021 (the "**Effective Date**")

BETWEEN

AFFINOR GROWERS INC., a British Columbia company with a registered office located at 1055 West Georgia Street, P.O. Box 11117, 1500 Royal Centre, Vancouver, B.C. V6E 4N7 ("**Affinor**")

AND

BRITESPAN BUILDING SYSTEMS INC., an Ontario corporation with a registered office located at 688 Josephine St., Wingham, ON N0G 2W0 ("**Britespan**")

(collectively, the "**Parties**").

WHEREAS:

- A. Britespan currently designs, engineers, and manufactures prefabricated buildings and as such intends to do the same for prefabricated greenhouse structures;
- B. By adding a polycarbonate material to the outside surface of the Britespan building trusses, Affinor conceived the "Atlantis" greenhouse, that dramatically improves certain key performance characteristics of commercial greenhouse systems (the "**Atlantis Greenhouse**");
- C. Affinor wishes to engage Britespan to prefabricate and manufacture the component parts of the Atlantis Greenhouse Structure (as defined herein); and
- D. Britespan has agreed to prefabricate and manufacture the components parts for the Atlantis Greenhouse Structure for the consideration and on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 **Defined Terms.** For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.1:
- 1.1.1 "**Affiliate**" has the meaning given to it in the *Business Corporations Act* (British Columbia).
- 1.1.2 "**Agreement**" has the meaning given in first paragraph of this Agreement.
- 1.1.3 "**Atlantis Greenhouse**" has the meaning as set out in the Recitals.
- 1.1.4 "**Atlantis Greenhouse Structure**" means the trusses, with polycarbonate material added, the outside cover, and all related component parts, but does not include the foundation, or any interior systems such as electric or water that are part of the Atlantis Greenhouse.
- 1.1.5 "**Business Day**" means any day other than a Saturday, Sunday or public holiday under the Laws of the Province of British Columbia.
- 1.1.6 "**Confidential Information**" means information relating to the business affairs, employees, suppliers, manufacturing processes, customers, business and market forecasts, research, development, accounting, marketing, financial condition, assets, operations, science, technology, inventions, sales projects, proposed products, trade secrets, designs, drawings, electronic design data, product specifications and other data (whether or not of a similar nature) in respect of the Discloser or the Demonstration Project that is either non-public, confidential or proprietary in nature and may include information concerning the Discloser's respective Affiliates and subsidiaries, in a form that may be transmitted orally, visually or by any other means by the Discloser or any directors, officers, employees, agents, counsel, consultants and advisors of the Discloser and shall include information, if any, that was previously made available to the Recipient by the Discloser on a confidential basis and may or may not be designated or marked "confidential" or the like, but excluding information which:
- (a) the Recipient can prove by written records it knew or possessed before the Confidential Information was disclosed or made available to it by the Discloser;
 - (b) is or becomes available to the public otherwise than by a breach of this Agreement by the Recipient;
 - (c) is lawfully acquired by the Recipient from a third party without restrictions as to its use or disclosure; or
 - (d) is disclosed as required by law.
- 1.1.7 "**Dealers**" means those contractors, builders or dealers from time to time authorized, approved, and contracted by Britespan to build Britespan products; including without limitation the Atlantis Greenhouse Structure.

- 1.1.8 "**Demonstration Greenhouse**" means the initial test Atlantis Greenhouse constructed at the Site pursuant to the Demonstration Project.
- 1.1.9 "**Demonstration Project**" means the project described in ARTICLE 5 pursuant to which the Parties shall work together to supply and build a Demonstration Greenhouse.
- 1.1.10 "**Developments**" has the meaning given in Section 8.1.
- 1.1.11 "**Discloser**" means any Party disclosing or making available Confidential Information to a Recipient or its respective Representatives.
- 1.1.12 "**Force Majeure**" means circumstances beyond the reasonable control of the Party concerned and includes war, acts of terrorism, weather, natural disasters, strikes, lockouts, pandemics or national health emergencies of a material nature or duration, and other industrial disturbances even if they were not "beyond reasonable control" of the Party; however a failure to obtain financing or pay any obligations as and when they come due shall not be deemed to be a Force Majeure.
- 1.1.13 "**Governmental Authority**" means any: (a) national, state, county, province, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, province, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (d) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.
- 1.1.14 "**Greenhouse IP**" has the meaning set out in Section 8.3.
- 1.1.15 "**Intellectual Property Rights**" means all of the following in any jurisdiction throughout the world and all rights therein: (a) all rights in Confidential Information; (b) copyrights, copyrights registrations and applications therefor, moral rights, and all other rights corresponding thereto; and (c) trade names, logos, common law trademarks and service marks and trademark and service mark registrations, and related goodwill and applications therefor; and any similar or equivalent rights to any of the foregoing.
- 1.1.16 "**Law**" means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, court order, consent, decree, regulation, license, permit, statute, Order or treaty.
- 1.1.17 "**Order**" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority or by any arbitrator.
- 1.1.18 "**Person**" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

- 1.1.19 "**Recipient**" means any Party receiving Confidential Information from a Discloser, and includes the Recipient's Representatives.
- 1.1.20 "**Representatives**" means the directors, officers, employees, agents, counsel, consultants and advisors of the Discloser and the Recipient, as applicable.
- 1.1.21 "**Services**" means the prefabrication of the Atlantis Greenhouse Structure and all associated sourcing of ARTICLE 2the structural materials only, in addition to those Services described in Section 2.3.
- 1.1.22 "**Site**" has the meaning given in Section 5.2.
- 1.2 **Construction.** In interpreting this Agreement, the following rules of construction shall apply:

- (a) Where the context requires, the use of the singular form in this Agreement will include the plural, the use of the plural will include the singular, and the use of any gender will include any and all genders.
- (b) The word "including" (and, with correlative meaning, the word "include") means that the generality of any description preceding such word is not limited, and the words "shall" and "will" are used interchangeably and have the same meaning.
- (c) References in this Agreement to "Articles" or "Sections" shall be to Articles or Sections of or to this Agreement unless otherwise specifically provided.
- (d) References to any agreement or contract are to such agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.
- (e) References to any statute and related regulation shall include any amendments of the same and any successor statutes and regulations.
- (f) References to any Person include the successors and permitted assigns of such Person.
- (g) References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including," respectively.

ARTICLE 2 BRITESPAN RIGHTS AND RESPONSIBILITIES

2.1 **Exclusive Dealer.** Britespan and Affinor acknowledge and agree that Affinor shall be the exclusive worldwide dealer of the Atlantis Greenhouse and the Atlantis Greenhouse Structure. Britespan shall have no right to sell, resell, license or otherwise deal in the Atlantis Greenhouse or the Atlantis Greenhouse Structure except through Affinor, nor shall Britespan authorize, license or otherwise enable any third party (including any other resellers of the Atlantis Greenhouse

Structure) to sell, resell, license or otherwise deal in the Atlantis Greenhouse or the Atlantis Greenhouse Structure.

- 2.2 **Exclusive Supplier.** Britespan and Affinor acknowledge and agree that Britespan shall be the exclusive worldwide supplier of the Atlantis Greenhouse Structure for a term of ten (10) years.
- 2.3 **Prefabrication.** Britespan shall be responsible for the manufacture and prefabrication of the Atlantis Greenhouse Structure. In furtherance of this objective, Britespan shall use its reasonable efforts to perform the Services, which will include the following:
- 2.3.1 **Dealers.** Britespan shall provide referral and contact details of its Dealers, whom Affinor may engage to manage, supervise and direct the construction of any and all units of the Atlantis Greenhouse Structure sold by Affinor. Britespan will provide the Dealers with an Atlantis Greenhouse Structure installation manual, and will make every effort to be available to consult on the installation of the Atlantis Greenhouse Structure.
- 2.3.2 **Sales and Marketing Calls.** Britespan shall direct all sales and marketing calls relating to the Atlantis Greenhouse and the Atlantis Greenhouse Structure to Affinor.
- 2.3.3 **General.** Such other functions as are normally carried out by a manufacturer in connection with the development of a prefabricated structure of the size, type, design and specifications of the Atlantis Greenhouse, the intention being that Britespan will use its reasonable efforts to cause the Atlantis Greenhouse Structure to be developed, manufactured, and constructed, all in conformity with the requirements of applicable laws and bylaws.

ARTICLE 3 AFFINOR RIGHTS AND RESPONSIBILITIES

- 3.1 **Exclusive Dealer.** Affinor and Britespan acknowledge and agree that Affinor shall be the exclusive worldwide dealer of the Atlantis Greenhouse and the Atlantis Greenhouse Structure. Affinor shall have the right to sell, resell, authorize others to sell or resell, or otherwise commercialize the sale of the Atlantis Greenhouse and the Atlantis Greenhouse Structure as it so determines, in Affinor's sole and exclusive discretion, subject to its obligation to purchase the Atlantis Greenhouse Structure in the manner outlined in ARTICLE 4.
- 3.2 **Promotion of Atlantis Greenhouse.** Affinor shall at all times retain sole responsibility for sales, marketing and promotion of sales of the Atlantis Greenhouse and the Atlantis Greenhouse Structure through effective marketing, business development and sales strategies, and implementation plans, all as determined and executed by Affinor in its sole and exclusive discretion. Britespan shall, from time to time, cooperate or provide such business development resources to Affinor for the purpose of accelerating industry adoption, as Affinor may from time to time reasonably request, at the expense of Affinor and as mutually agreed upon between the Parties.

3.3 **Dealers.** Britespan acknowledges and agrees that, pursuant to Section 2.3.1, Affinor may engage, employ or contract Dealers as Affinor deems necessary and appropriate, in its sole and exclusive discretion.

3.4 **Ongoing Customer Servicing.** Affinor shall at all times retain sole responsibility for ongoing servicing of contracts and relations of customers having purchased a Atlantis Greenhouse and Britespan shall have no obligation with respect to such customer contracts except as set out herein.

ARTICLE 4 COMPENSATION

4.1 **Costs.** Subject to Section 4.3, Affinor shall place orders for the Atlantis Greenhouse from Britespan at the rates indicated by Britespan in an agreed purchase order with respect to each such order. Affinor, and not Britespan, shall be responsible for any and all costs, charges and expenses incurred and owing to any Dealers. Britespan acknowledges and agrees that Affinor shall have the right to set the retail price for any sale of the Atlantis Greenhouse Structures as it determines at its sole and exclusive discretion.

4.2 **Payment Terms.** Subject to Section 4.3, Affinor shall pay all amounts payable to Britespan pursuant to Section 4.1 by wire transfer of funds to an account specified by Britespan, or as otherwise agreed between the Parties. Affinor agrees to pay Britespan a 30% deposit at the time of order, and the 70% remaining balance will be paid 30 days after the Atlantis Greenhouse Structure has shipped from the Britespan plant.

4.3 **Purchases in British Columbia.** Notwithstanding Sections 4.1 and 4.2, for sales of the Atlantis Greenhouses being constructed in British Columbia, Affinor will purchase the Atlantis Greenhouse Structure through Spanmaster Structures Ltd. on the same terms and conditions as Affinor would purchase the Atlantis Greenhouse from Britespan under this Agreement.

4.4 **Taxes.** Each Party is responsible for payment of all GST, PST, HST and other tax amounts payable by the Party in accordance with applicable Law.

ARTICLE 5 DEMONSTRATION PROJECT

5.1 **Scope.** The scope of the Demonstration Project is for the Parties to work together to supply and manufacture the first full-scale build and operation of a Demonstration Greenhouse in order to provide a benchmark for Atlantis Greenhouse build costs and timing.

5.2 **Location.** The location of the Demonstration Project is the facility owned and operated by Affinor at 34240 Page Road, Abbotsford, B.C. V3G 1M7 (the "Site").

5.3 **Engineering, Procurement and Construction of Demonstration Greenhouse.** Britespan shall manufacture the component parts of the Demonstration Greenhouse pursuant to the design of the Atlantis Greenhouse Structure. Britespan shall be responsible for manufacturing the components parts of the Demonstration Greenhouse in accordance with the agreed

specifications. Affinor shall be responsible for engaging a Dealer (or other third party) to build and complete the Demonstration Greenhouse at the Site. Affinor shall be responsible for the costs associated with the supply, manufacture and construction of the Demonstration Greenhouse including the costs of (i) construction of the Demonstration Greenhouse, (ii) support equipment, and (iii) engineering and automation, (iv) the Atlantis Greenhouse Structure. Notwithstanding the foregoing, Britespan shall supply all component parts for the Demonstration Greenhouse at Britespan's regular margin. Once the Demonstration Greenhouse is constructed on the Site it shall be owned by Affinor in accordance with ARTICLE 8 of this Agreement.

5.4 **Demonstration Greenhouse Buildout.** Britespan shall pay all costs required to design the Atlantis Greenhouse Structure.

5.5 **Demonstration Greenhouse Operation.** Affinor shall be responsible for the operation of the Demonstration Greenhouse, the collection and interpretation of data, and the reporting of the performance.

5.6 **Data Collection.** The scope of the Demonstration Project also includes all instrumentation, collection of data, analysis and reporting of data and monetization of the benefits of the Atlantis Greenhouse, as more particularly described in ARTICLE 7. Affinor is responsible for same.

ARTICLE 6 TERM AND TERMINATION

6.1 **Term.** Unless earlier terminated as provided in this ARTICLE 6, this Agreement shall come into force on the Effective Date and shall continue for a period of ten (10) years. This Agreement shall automatically renew for successive periods of two (2) years upon the same terms and conditions as agreed to herein.

6.2 **Termination.**

6.2.1 This Agreement may be terminated at any time by mutual agreement of the Parties.

6.2.2 This Agreement may be terminated by either Party for convenience on 120 days prior written notice.

6.2.3 This Agreement may be terminated by either Party upon the occurrence of any of the following which is not stayed or vacated within ninety (90) days of such occurrence:

- (i) petition in bankruptcy filed by or against the other Party;
- (ii) adjudication of the other Party as bankrupt or insolvent;
- (iii) appointment of a liquidator, receiver or trustee for all or a substantial part of the other Party's property; or
- (iv) an assignment for the benefit of creditors of the other Party.

6.3 **No Waiver.** The right of either Party to terminate this Agreement as provided herein shall not be affected in any way by its waiver of, or failure to take action with respect to, any previous failure to perform hereunder.

ARTICLE 7 DATA COLLECTION

7.1 **Data Collection.** The Parties will collaborate mutually to determine what data will be collected from the construction of the Demonstration Greenhouse as well as the method and frequency for data collection and reporting. The data is required to demonstrate the costing and performance of the Demonstration Greenhouse with respect to hard materials, labour, as well as maintenance and safety. Affinor shall be responsible for data collection.

7.2 **Use of Data.** The data will form a basis by which Affinor and Britespan can price the Atlantis Greenhouse for commercial sale. Affinor shall solely and exclusively own any and all rights, title and interest in, to and associated with the any and all data collected with respect to the Atlantis Greenhouse and Britespan acknowledges and agrees that it shall have no ownership or other rights to any such data except as specifically granted or authorized by Affinor.

ARTICLE 8 INTELLECTUAL PROPERTY OWNERSHIP

8.1 **Affinor Developments.** Affinor shall own the Intellectual Property Rights as well as any and all right, title and interest in, to with any technology, process, materials, or findings developed, licensed or otherwise acquired ("**Developments**") by Affinor prior to entering into this Agreement, or that after the Effective Date of this Agreement are:

- (a) independently developed by or on behalf of Affinor outside of the scope of this Agreement;
- (b) acquired by Affinor through a license or purchased other than the licenses granted pursuant to this Agreement; or
- (c) developed specifically by Britespan for Affinor under this Agreement.

8.2 **Britespan Developments.** Britespan shall own the Intellectual Property Rights as well as any and all right title, and interest in, to and associated with any Developments acquired by Britespan prior to entering into this Agreement, or that after the Effective Date of this Agreement are:

- (a) independently developed by or on behalf of Britespan outside of the scope of the this Agreement, or
- (b) acquired by Britespan through a license or purchased other than the licenses granted pursuant to this Agreement.

8.3 **Ownership of the Atlantis Greenhouse.** The Parties acknowledge and agree that Affinor and Britespan have joint right, title and interest in, to and associated with the Atlantis Greenhouse, including any enhancements, changes, improvements or other changes to the Atlantis Greenhouse introduced by either Party, and all Intellectual Property Rights therein (the "**Greenhouse IP**") as tenants in common, subject to the terms of this Agreement. Notwithstanding the applicable patent or other Intellectual Property Rights Laws in any jurisdiction, neither of the Parties may commercially exploit any rights in the Greenhouse IP, except as outlined in this Agreement.

8.4 **Restrictions on Use.** No Affinor Developments, including any materials, documentation or other aspects of the Developments, may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted by Britespan in any form or means without Affinor's prior express written permission.

8.5 **Use of Brands.** Affinor and Britespan shall allow joint use of corporate logos, promotional material, and identifiers as part of the promotional materials with the express purpose of increasing the market adoption of the Atlantis Greenhouse and the relationship and collaboration of the Parties under this Agreement. The use of each Parties marketing communications and branding information shall be in compliance with the principles, policies and practices of each Party, as they may evolve from time to time. The use of branding information must be pre-approved by the provider of the brand, in writing, to ensure that it is used in a manner which is consistent with the brand marketing standards for the provider. The brand provider may at its sole discretion ask the user to cease and desist from using brands in any way deemed inappropriate by the provider.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party as follows:

9.1.1 **Organization and Good Standing.** It is a corporation duly organized, validly existing, and in good standing under the Laws of its jurisdiction of incorporation.

9.1.2 **Authority; No Conflict.**

- (a) **Power and Authority.** This Agreement and each other agreement and instrument to be executed by it in connection herewith has been duly and validly authorized by such Party and has been (or upon execution will have been) duly and validly executed and delivered by such Party. It has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and each such other agreement and instrument and to perform its respective obligations hereunder and thereunder.
- (b) **Enforceability.** This Agreement and each other agreement and instrument to be executed by it in connection herewith, constitutes (or upon execution will constitute) the legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms (assuming the due authorization, execution and delivery by the other Party hereto and thereto), subject to applicable

bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally.

- 9.1.3 **No Actions.** There are no actions, applications, complaints, claims, suits or proceedings, judicial or administrative, pending or, to such Party's knowledge, threatened, by or against or affecting it or otherwise affecting any of its respective property or assets that could reasonably be expected to have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the transactions contemplated by this Agreement, at Law or in equity, or before or by any court or other Governmental Authority, domestic or foreign, nor are there grounds on which any such action, suit or proceeding might be commenced with any reasonable likelihood of success.

ARTICLE 10 COVENANTS

10.1 **Business Development and Marketing.** The Parties shall mutually cooperate and use commercially reasonable efforts to support the business development, operations, marketing and financial success of the development and sale of the Atlantis Greenhouses.

10.2 **Confidentiality.** The Parties agree to the following provisions related to the confidentiality of information disclosed in connection with this Agreement:

10.2.1 The Recipient shall receive and maintain the Confidential Information in the strictest confidence and shall not, without the prior written consent of the Discloser:

- (a) Disclose the Confidential Information in any manner whatsoever, in whole or in part;
- (b) Disclose to any other person or entity the fact that the Confidential Information has been made available, or any of the terms, conditions or other facts with respect to the Atlantis Greenhouse or the Demonstration Project including, without limitation, the status thereof or any facts related thereto except and only to the extent that disclosure is required by law and then only with prior written notice to and consultation with, as soon as possible, responsible officers of the Discloser;
- (c) Use, reverse engineer, deconstruct or disassemble, or otherwise deal with the Confidential Information, directly or indirectly, other than for the purposes for which it was provided and as expressly permitted under this Agreement; and/or
- (d) Furnish the Confidential Information to any person except its Representatives who need to know the Confidential Information for the purposes of considering the Demonstration Project within the parameters of, and for the purposes contemplated by, this Agreement and who are informed by the Recipient of the confidential nature of the Confidential Information and who agree with the Recipient, on behalf of the Discloser, to be bound by the terms of this Agreement.

10.2.2 The Recipient acknowledges that the Confidential Information is a valuable proprietary asset of the Discloser and constitutes trade secrets of the Discloser and that it has a duty to maintain the Confidential Information as confidential and secret. Accordingly, the Recipient shall:

- (a) Maintain the Confidential Information as confidential and secret and shall avoid any unauthorized disclosure, use, publication, dissemination or other communication of the Confidential Information to any third party, including, without limitation, any parent, subsidiary or affiliated or related entity of the Recipient, any purchaser of the Recipient or entity with which the Recipient is merged and any successor or assign of the Recipient.
- (b) Not disclose, use, publish, disseminate or otherwise communicate, directly or indirectly, in whole or in part, at any time or in any manner, any Confidential Information without the prior written consent of the Discloser in each instance; nor shall the Recipient permit any of the Recipient's Representatives to do any of the foregoing.
- (c) Keep a list of its Representatives to whom any Confidential Information has been delivered and provide that list to the Discloser upon request;
- (d) Make all reasonable efforts to safeguard the Confidential Information from disclosure, including inadvertent disclosure, to anyone other than as permitted herein and shall use all reasonable and prudent efforts to protect and safeguard the Confidential Information from loss, theft or destruction;
- (e) Take all steps necessary to prevent the Confidential Information from being used to the competitive disadvantage of the Discloser and its Affiliates;
- (f) Be responsible for and indemnify and hold harmless the Discloser from each and every reasonably foreseeable cost, expense, claim, liability or damage of whatsoever kind suffered, sustained or incurred by the Recipient arising from any breach of this Agreement by the Recipient or by any other person to whom the Recipient has provided the Confidential Information or resulting from the unauthorized use or disclosure of the Confidential Information by the Recipient;
- (g) At the request of the Discloser, promptly return or destroy (or delete in the case of any Confidential Information contained in any electronic retrieval system or data base) all notes, memoranda, correspondence, documents or other records containing or comprising any part of the Confidential Information, including all copies thereof, then in the Recipient's possession, whether furnished by the Discloser or prepared by the Recipient and relating to the Discloser or the Demonstration Project;
- (h) At the request of the Discloser, have a senior officer of the Recipient certify to the Discloser that all of the Confidential Information, including but not limited to

documents, materials, and data constituting or derived from the Confidential Information, held by the Recipient have been returned or destroyed; and

- (i) Notwithstanding the terms of Section 10.2.2(g), if the Recipient's computer system automatically backs up or archives information, the Recipient is not obliged to remove the Confidential Information from its electronically backed up or archived records provided that the Recipient or any person or entity under the control or direction of the Recipient does not access or use any of the backed up or archived Confidential Information. This provision will apply to the backed up Confidential Information until it is deleted or overwritten in the normal course of business.

- 10.2.3 The Confidential Information is and shall remain the sole and exclusive property of the Discloser, and the Recipient shall not copy or reproduce any materials comprising all or any part of the Confidential Information, except that copies of the Confidential Information may be made for a limited number of the Recipient's Representatives for the purposes of considering this Agreement and the Demonstration Project within the parameters, and for the purposes, contemplated by, this Agreement.
- 10.2.4 Except as specifically provided herein, neither this Agreement nor the disclosure of any Confidential Information to the Recipient shall be construed as granting to the Recipient any license or rights in respect of any part of the Confidential Information, including trade secrets.
- 10.2.5 All Confidential Information is provided "AS IS" and nothing in this Agreement shall imply, directly or indirectly, any warranty regarding the accuracy or reliability of such information or materials, or that the Discloser will release any product or perform any services concerning which information has been disclosed as a part of the Confidential Information. The Discloser or its Representative shall not be liable for any expenses, losses or damages incurred or any action undertaken by the Recipient as a result of the receipt of the Confidential Information. The entire risk arising out of the use of the Confidential Information remains with the Recipient.
- 10.2.6 Neither the Discloser, nor its respective Affiliates or Representatives shall have any liability to the Recipient or any other person, of any nature or kind whatsoever, directly or indirectly, resulting from or arising out of the furnishing to the Recipient or the use made by the Recipient of any of the Confidential Information.
- 10.2.7 Except as specifically provided herein, the Discloser shall not have any obligation to provide any information to the Recipient as a result of this Agreement.
- 10.2.8 If the Recipient is legally required or becomes legally compelled to disclose any of the Confidential Information or any facts relating to this Agreement or the Demonstration Project, the Recipient shall provide the Discloser with prompt written notice so that the Discloser may seek a protective Order or other appropriate remedy or waive compliance with the provisions of this Agreement. If such protective Order or remedy is not obtained, or should the Discloser waive compliance with the provisions of this Agreement, in part or in whole, the Recipient will furnish only that portion of the Confidential Information that

is legally required and will exercise best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

10.3 **Specific Performance.** A breach of any of the covenants or provision contained in this ARTICLE 10 may cause the Discloser to suffer loss that cannot be adequately compensated for by damages and that, in addition to claiming damages in respect thereof, the Discloser shall be entitled to seek an injunction and to enforce specifically the terms and provisions of this Agreement and such right shall be cumulative and in addition to any other remedies which may be available to the Discloser.

ARTICLE 11 LIMITATION OF LIABILITY AND INDEMNIFICATION

11.1 **Disclaimer of Warranty.** BRITESPAN ACKNOWLEDGES, AGREES AND ACCEPTS THAT AFFINOR IS PROVIDING THE TECHNOLOGY WITH RESPECT TO THE ATLANTIS GREENHOUSE AND ALL RELATED INTELLECTUAL PROPERTY RIGHTS ON AN "AS IS" BASIS, INCLUDING WITH ANY ERRORS, FAULTS OR DEFECTS. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, AFFINOR MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE ATLANTIS GREENHOUSE AND RELATED INTELLECTUAL PROPERTY RIGHTS, AND SPECIFICALLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

11.2 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR PAYMENT OF ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, GOODWILL, BUSINESS OPPORTUNITIES, USE OR REVENUE, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE), IN WARRANTY OR OTHERWISE, RESULTING FROM THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, ANY ACTS OR OMISSIONS OF THEM HEREUNDER, OR THE USE BY EITHER OF THE ATLANTIS GREENHOUSE AND RELATED INTELLECTUAL PROPERTY RIGHTS INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGES TO PROPERTY OR EQUIPMENT, OR INJURY OR DEATH OF PERSONS, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, EXCEPT FOR PAYMENT OF AMOUNTS OWED UNDER ARTICLE 4, EITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL BE LIMITED TO ACTUAL DAMAGES NOT TO EXCEED \$200,000.

11.3 **Indemnification.** Each Party to this Agreement and its respective parents, Affiliates, successors and assigns will indemnify and hold harmless the other Party to this Agreement and its

officers, directors, employees, attorneys, consultants, agents, servants, parents, Affiliates, successors and assigns, jointly and severally (collectively, the "Indemnitee"), from and against any and all losses, claims, damages, liabilities, awards, costs and expenses, including but not limited to reasonable legal fees to which Indemnitee may become subject by virtue of, in connection with, resulting from, its activities related to this Agreement (hereinafter collectively "Claim" or "Claims"). Without limitation - but in illustration - of the foregoing, Claims shall include reasonable legal and other expenses, including the cost of any investigation and preparation, incurred by Indemnitee in connection with any pending or threatened Claim by any person or entity, whether or not it results in a loss, damages, liability or award. Indemnitee shall be indemnified and held harmless for any and all Claims whether they arise in tort, under contract, or otherwise. The obligations of indemnification provided herein shall survive the term of this Agreement.

ARTICLE 12 FORCE MAJEURE

12.1 **Events.** If as a result of Force Majeure, any Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation to pay any amounts due and to maintain confidentiality of the Confidential Information, then the obligations of the Party giving such notice, so far as and to the extent that the obligations are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused and for such reasonable period thereafter as may be necessary for the Party to put itself in the same position that is occupied prior to the Force Majeure, but for no longer period.

12.2 **Notice.** The Party claiming Force Majeure shall notify the other Party of the Force Majeure within a reasonable time after the occurrence of the facts relied on and shall keep the other Party informed of all significant developments. Such notice shall give reasonably full particulars of the Force Majeure and also estimate the period of time which the Party will probably require to remedy the Force Majeure. The affected Party shall use all reasonable diligence to remove or overcome the Force Majeure situation as quickly as possible in a commercially reasonable manner but shall not be obligated to settle any labor dispute except on terms acceptable to it. All such disputes shall be handled within the sole discretion of the affected Party.

ARTICLE 13 ARBITRATION

13.1 **Matters for Arbitration.** All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, will be resolved by final and binding arbitration pursuant to the terms hereof.

13.2 **Notice.** It shall be a condition precedent to the right of any Party to submit any matter to arbitration pursuant to the terms hereof, that any Party intending to submit any matter to arbitration shall have given not less than five (5) Business Days' prior written notice of its intention to do so to the other Parties, together with particulars of the matter in dispute. On the expiration of such five (5) Business Days the Party, if the dispute has not been resolved, the dispute will be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. The seat of arbitration will be Vancouver, British Columbia. The language of the arbitration will be English.

ARTICLE 14
GENERAL PROVISIONS

14.1 **Relationship of the Parties.** Nothing contained in this Agreement shall be deemed to constitute either Party as the partner, agent or legal representative of the other Party, or to create any fiduciary relationship between them, for any purpose whatsoever, except as specifically contemplated in this Agreement. Except as expressly provided in this Agreement, neither Party shall have any authority to act for or assume any obligation or responsibility on behalf of the other Party, and any act by a Party as an agent, without proper authorization, shall create a separate liability in the Party so acting to any and all third parties affected. For greater certainty, any contract entered into by a Party that is outside the scope of this Agreement will not be binding on the other Party, and only the Party entering into that contract shall be liable to third parties.

14.2 **Entire Agreement and Modification.** This Agreement supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the Party to be charged with the amendment.

14.3 **Assignment.** No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent may be unreasonably withheld or delayed.

14.4 **Severability.** The invalidity of any particular provision of this Agreement does not affect any other provision of it, but the Agreement is to be construed as if the invalid provision has been omitted.

14.5 **Notices.** Any notice, consent, request or other communication required or provided for by this Agreement shall be in writing (in English) and shall be deemed to have been duly and properly given or served for any purpose only if (i) delivered personally (with written confirmation of receipt), (ii) sent by e-mail (with written confirmation of receipt and a duplicate copy to be sent by another method specified in this Section 14.5), (iii) sent by registered or certified mail, return receipt requested, or (iv) sent by a nationally recognized courier service, postage and charges prepaid, in each case to the appropriate addresses set forth below:

If to Affinor:

Affinor Growers Inc.
4th Floor, 595 Howe Street.
Vancouver, BC V6C 2T5

Attention: Nick Brusatore
e-mail: [email address redacted]

If to Britespan:

Britespan Building Systems Inc.
688 St Josephine St
Wingham, Ontario
N0G2W0

Attention: Ben Hogervorst
e-mail: [email address redacted]

- 14.5.1 All such notices, requests, consents and other communications shall be deemed to have been given (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of mailing by an internationally recognized express courier service, if sent by next day delivery providing receipt of delivery, on the second Business Day following the date of such mailing, (iii) in the case of registered or certified mailing, postage and charges prepaid, return receipt requested, on the third Business Day following the date of such mailing and (iv) in the case of e-mail, when received.
- 14.5.2 Any Party may at any time or from time to time notify the other Party in writing of a change of address and the new address to which notice shall be given to it thereafter until further change.
- 14.6 **Expenses.** Except as otherwise set forth herein, each Party to this Agreement will pay its own respective internal costs and for their legal, accounting and other professional fees incurred in connection with the negotiation, preparation and execution of this Agreement.
- 14.7 **Further Assurances.** The Parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.
- 14.8 **Waiver.** The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law: (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

14.9 **Section Headings.** The headings of Articles, Sections and subsections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

14.10 **Governing Law.** This Agreement will be governed by the Laws of the Province of British Columbia and the federal Laws of Canada applicable therein, without regard to conflicts of laws principles.

14.11 **Survival.** Termination for any reason hereunder shall not affect any accrued rights or obligations of the Parties arising in any manner under this Agreement as of the date of termination. Without limiting the generality of the foregoing, Section 2.1, ARTICLE 8, ARTICLE 11, ARTICLE 13, ARTICLE 14, and Section 10.2 shall survive any termination of this Agreement.

14.12 **Counterparts.** This Agreement may be executed in two or more counterparts, all of which taken together shall constitute but one instrument. Delivery of a copy of this Agreement or such other document (including, without limitation, any Schedules to this Agreement) bearing an original signature by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

AFFINOR GROWERS INC.

By: "Nick Brusatore"
Name: Nick Brusatore
Title: President and Chief Executive Officer

BRITESPAN BUILDING SYSTEMS INC.

By: "Ben Hogervorst"
Name: Ben Hogervorst
Title: Director