

AMENDED AND RESTATED HERITAGE GREEN COMMUNITY TRUST INDENTURE

This trust indenture made the ● day of ●, 2019.

BETWEEN:

REVOLUTION LANDFILL LP, a limited partnership created under the laws of Manitoba
(hereinafter referred to as "**Terrapure Environmental**")

- and -

Julie Kovacs, Franco Valconi, Rachel Incretolli, Lorenzo Alfano, and Brad Clark, all of
the City of Hamilton

- and -

THE CITY OF HAMILTON, a corporation incorporated under the laws of Ontario
(hereinafter referred to as "**Hamilton**")

RECITALS

The Compensation Agreement dated September, 1996, (the "**Compensation Agreement**") made between Taro Aggregates Ltd. ("**Taro**"), Lynne Gillott, Len Gray, William McFarland, Federico Perez, Michael Prendergast and Lenard Tomini and the Corporation of the City of Stoney Creek required Taro to make annual payments with respect to the operation of a new waste disposal site by Taro at the East Quarry (the "**Waste Disposal Site**") to a Community Trust Fund (the "**Trust Fund**") to be established in accordance with the terms and conditions of the Trust Indenture set out in Schedule "C" to the Compensation Agreement;

The Taro/Philip Community Trust (the "**Trust**") was created pursuant to a Trust Indenture dated May 29, 1997 (the "**Trust Indenture**") entered into between Taro, Lynne Gillott, Michael Prendergast, Lenard Tomini, Anne Bain, and Derek McClurg, and the former Corporation of the City of Stoney Creek for the purpose of receiving, holding and disbursing the annual payments to the Trust Fund;

Terrapure Environmental is the successor in law to the rights and obligations of Taro under the Compensation Agreement and the Trust Indenture;

The Trust Indenture establishes the requirements for being a trustee of the Trust and the process for the appointment of the trustees of the Trust;

The Trustees are the current trustees of the Trust having all the rights and obligations of trustees appointed pursuant to the Trust Indenture;

The City of Hamilton is the successor in law to the rights and obligations of the former Corporation of the City of Stoney Creek under the Trust Indenture;

By resolution of the Trustees dated December 13, 2002, the name of the Trust was changed to the Taro Community Trust;

By resolution dated November 2, 2006, the name of the Trust was changed to the Heritage Green Community Trust;

Julie Kovacs, Franco Valconi, Rachel Incretolli, Lorenzo Alfano, and Brad Clark are, as of the date of this Trust Indenture, Trustees of the Trust,

The Parties now wish to enter into this Amended and Restated Trust Indenture in order to amend certain articles of the Trust Indenture.

THEREFORE, in consideration of the premises and the covenants herein contained and other good and valuable consideration, Terrapure Environmental, the Trustees and Hamilton (collectively, the "**Parties**") covenant and agree as follows:

1.1 In this indenture, unless the context otherwise requires, the following terms shall have the meanings ascribed to them below, and undefined capitalized terms shall have the meaning ascribed to them in the Compensation Agreement:

- (a) "Beneficial Uses" means expenditures for community, educational and charitable works or purposes, including contributions to capital works, programs and operating costs for undertakings benefitting the community, schools, and seniors, provided that Beneficial Uses described herein are limited to capital works projects and programs which clearly provide demonstrable benefits to residents in the City of Hamilton residing south of the Niagara Escarpment and within three (3) kilometers of the perimeter of the Waste Disposal Site as shown in Schedule B to the Compensation Agreement (the "**Community**").
- (b) "\$" means Canadian dollars.
- (c) "Qualified Investment" means those investments which from time to time are permitted investments pursuant to the provisions of the *Trustee Act*, (Ontario), as amended from time to time.
- (d) "Termination Date" means the earlier of the date on which the Trustees have distributed all of the Trust Property, or the date two years after the closure of the Waste Disposal Site.
- (e) "Trustee" or "Trustees" means the Trustees appointed pursuant to the terms of this Amended and Restated Trust Indenture.
- (f) "Trust Property" means the money settled upon the Trustees described in section 2.1 hereof, the money contributed by Terrapure Environmental described in section 3.1 hereof and such additional property, provided that it is in the form of a Qualified Investment, which Terrapure Environmental or other persons, subject to the receipt and consent referred to in section 5.1 hereof, may at any time and from time to time with the approval of the Trustees pay, transfer, assign or convey to the Trust Fund, to be held by the Trustees on the trusts herein contained, and shall include any and all assets of whatever kind in which the same may be invested by the Trustees, or into which the same may be converted by the Trustees, at any time or from time to time, as well as any additions or accretions thereto, including without limitation, all income thereon and excluding all amounts paid or disbursed therefrom whether out of capital or income in the normal course of the administration of the Trust Fund.

- 2.1 Terrapure Environmental hereby annually assigns, transfers and sets over the sum of dollars determined in accordance with section 7.2 of the Compensation Agreement to the Trustees and the Trustees stand possessed of the said sum together with those payments that are described in section 3.1 of this Trust Indenture, and all other assets that are assigned, transferred and set over unto the Trustees, and the accumulations upon all such assignments, transfers and settings over and payments, in trust, upon and subject to the terms of this indenture.
- 3.1 Terrapure Environmental shall contribute to the Trust Fund all sums required to be paid by it into the Trust Fund pursuant to the Compensation Agreement at the time or times prescribed by the Compensation Agreement.
- 4.1 The Trustees by joining in the execution of this indenture signify their acceptance of the duties and obligations contained herein, and any person agreeing to be appointed as a Trustee agrees to observe and carry out the same according to the terms and provisions hereof.
- 5.1 Assets, provided they are in the form of a Qualified Investment or cash, may at any time, with the consent of Terrapure Environmental and the Trustees be added to the Trust Fund or otherwise contributed to the Trust Fund by any person, corporation or trust.
- 6.1 (a) Until the Termination Date, the Trustee shall invest and keep invested the Trust Property, provided that the Trustees may in their absolute discretion and on such terms as they deem advisable distribute part or all of the capital and/or income of Trust Property for Beneficial Uses during any calendar year. Distribution of Trust Property for Beneficial Uses involving capital works projects shall not be approved by the Trustees without the Trustees first confirming that the person constructing the capital works project has planned for and sufficiently funded the operating costs associated with the capital works project.
- (b) Notwithstanding the terms and provisions of this Trust Indenture the Trustees may within one (1) year of the Termination Date, but without infringing the rule against perpetuities applicable to this Trust Indenture transfer and convey the whole or any part of the Trust Fund to any other trust or settlement established under or pursuant to the laws of Ontario or Canada to be held by the trustees of such other trust or settlement with and subject to the powers and provisions of such other trust or settlement provided that such other trust or settlement shall not infringe the rule against perpetuities applicable to this Trust Indenture and provided that the Beneficial Uses of this Trust Indenture shall be Beneficial Uses of such other trust or settlement, and upon such transfer and conveyance being made, the trusts herein declared concerning the property comprised in such transfer and conveyance shall cease and determine and the said property shall for all purposes be subject to the trusts, powers and provisions contained in such other trust or settlement.
- 7.1 Until the Termination Date, Terrapure Environmental shall, by March 31 of each calendar year, cause its auditors to certify to the Trustees the number of tonnes of waste received at the Waste Disposal Site and the tipping fees charged by it in respect thereof in the previous year, as calculated in accordance with section 7.2(c) of the Compensation Agreement.
- 8.1 The Trustees agree to hold the Trust Property in trust as herein provided and administer it in compliance with the following:
- (a) subject to section 8.1(b) hereof, the Trustees shall invest the Trust Property from time to time only in property which is in the form of a Qualified Investment with a view to the best return possible within the limits of prudent risk taking and shall be

guided in doing so by the investment advice of such investment adviser as may be appointed from time to time by the Trustees; and

- (b) the Trustees are to hold all Trust Property properly segregated from their own assets.

9.1 The Trustees shall have the right and power to require that the payments contemplated in section 3.1 hereof are paid by Terrapure Environmental to the Trustees and may take any reasonable steps permitted by law to enforce such payments in any court of competent jurisdiction.

10.1 Without in any way limiting or derogating from the powers, authorities, discretions and immunities otherwise howsoever available to the Trustees, whether under any statute or law or otherwise, the Trustees hereunder shall have and be invested with all powers, authorities, discretions and immunities, including the following powers:

- (a) to monitor funding of the Trust Fund, and for that purpose Terrapure Environmental shall provide the Trustees, in a timely manner, with copies of its audited financial statements;
- (b) to make disbursements of capital or income from the Trust Fund for the Beneficial Uses described in section 1.1(a) hereof;
- (c) the Trustees are hereby expressly authorized to engage the services of one or more investment counsel managers, mutual fund managers and/or investment advisers as the Trustees from time to time think fit ("the Investment Adviser") to advise the Trustees in respect of the investment and reinvestment of the Trust Property with power to the Trustees to delegate to the Investment Adviser the power to manage all or any part of the Trust Property within the limits and for the period, if any stipulated by the Trustees and the Trustees shall settle the terms and conditions for the remuneration of the Investment Advisor and the reimbursement of the Investment Advisers expenses as the Trustees in their absolute discretion deem proper. Such remuneration and expenses shall be paid by the Trustees from and out of the annual net income of the Trust, or out of the capital of the Trust, or partly out of the annual net income and partly out of capital, as the Trustees shall, in their absolute discretion, determine.
- (d) to make any payments, provisions, apportionments, or distributions from the Trust Property, which may be required under the terms of the Trust Fund;
- (e) to open or have opened on behalf of the Trust, and operate such bank account or bank accounts as may be expedient in the opinion of the Trustees and to deposit any cash balances in the hands of the Trustees at any time in any chartered bank or trust company, and, for the purposes of the Trust Fund, to draw, make endorse, deposit, or deal in cheques, bills of exchange, promissory notes, drafts, or any other mercantile, commercial or security documents of any nature or kind, and to enter into contracts or agreements of any nature or kind, with such bank or trust company, and for such purposes the signature of the Trustees, as Trustees, and not in their personal capacity, shall be valid and binding upon the Trust Fund and all such forms as may be required to open bank accounts or trust company accounts, to operate same and for related matters, shall be completed in the required manner and on the forms required by such bank or trust company, and to designate any person or persons as "signing authorities" for any such bank

account or accounts or trust company account or accounts opened by the Trustees;

- (f) to employ and compensate agents, accountants, solicitors, brokers and other assistants and advisers deemed by it to be helpful, for the proper settlement or administration of the within trusts, and to do so without any liability for any neglect, omission, misconduct or default of any person so employed; provided he or she was selected and supervised with reasonable care;
- (g) to institute, prosecute and defend any suits or actions or other proceedings affecting them or the Trust Property or any part hereof, to compromise or settle any matter of difference or to submit any such matters to arbitration, to compromise or compound any debts owing to or by the Trust Fund upon evidence that is deemed sufficient;
- (h) to hold the Trust Property or any part or parts thereof at any place or places and to move the same from time to time and from place to place inside the City of Hamilton;
- (i) to make, or refrain from making, in their absolute discretion, any election or elections, any determination or determinations, and any designation or designations either alone or together permitted by any statute or statutes or regulation or regulations enacted by the Government of Canada, by the legislature or government of any province or territory of Canada, or by any other legislature or governmental body of any other country, province, state or territory;
- (j) if the Trust Property or any portion thereof or the annual income therefrom becomes liable to or subject to income, capital gains or any other taxes to pay such amount of such taxes, and for such purposes to sell such portion of the investments representing the Trust Property as may be necessary;
- (k) to sell, transfer, assign or otherwise dispose of any or all of the assets of the Trust Property, at such price and on such other terms as may be determined by the Trustees, and to perform all acts of alienation and ownership with respect to the Trust Property to the same extent and with the same effect as if the Trustees were the absolute owners of the Trust Property;
- (l) At any time, and from time to time, the Trustees shall have the power and right to amend or rescind any term and condition of this Trust Indenture or to add thereto any further term or provision, or an application may be made for such purposes by any person concerned herein pursuant to the Variations of *Trusts Act* (Ontario); provided however, that no such amendment, revocation or alteration shall have the effect or shall be designed to revoke this trust, which is irrevocable, and in addition, no such amendment; revocation or alteration shall vary or affect in any way whatsoever the distribution of the Trust Fund, to the persons beneficially entitled herein nor shall in any way vary or affect the definition of the Beneficial Uses.

11.1 The Trustees shall have the accounts of the Trust Fund for each year audited by such auditor as may be appointed by the Trustees and the Trustees shall cause such auditor to submit audited financial statements for each calendar year of the Trust Fund to Terrapure Environmental and Hamilton within ninety days of the end of such year.

- 12.1 In the exercise of their powers and discretion under this Trust Indenture, the decisions of the Trustees shall be final and binding upon all parties, provided that the Trustees have acted properly in the making of those decisions. No person dealing with the Trustees shall be charged with any duty to enquire into the propriety of their action.
- 13.1 (a) The Trustees shall not be responsible for their acts or defaults or for any error in judgment or for any act of omission or commission not amounting to actual fraud, gross negligence or wilful misconduct in the management and administration of the Trust Property provided they have acted with reasonable diligence and in good faith. The Trustees shall not be personally liable upon any monies to become due from or by any claims against the Trust Property or upon any investment executed by the Trustees under the provisions hereof. The Trustees shall have power to bind the Trust Property without rendering themselves personally liable. The Trustees shall be fully protected in exercising any discretion granted to them by the Trust Indenture and shall not be liable to Terrapure Environmental, Hamilton or any other person by reason of the exercise of or failure to exercise any such discretion, except where the exercise of or failure to exercise any such discretion results from, or is caused by the gross negligence or wilful misconduct of the Trustees.
- (b) All property of the Trust Fund shall at all times be clearly recorded in the books and records of the Trustees so as to show that the beneficial ownership of such property is vested in the Trust Fund.
- (c) Any trustee may resign on thirty days' written notice to the other trustees and any trustee is disqualified from acting further as a trustee if he or she becomes insolvent. In the event of the resignation, insolvency, death or other incapacity of a Trustee, a replacement Trustee shall, subject to the provisions below regarding representatives, be appointed by the remaining trustees within thirty days of such resignation, insolvency, death or incapacity, and, if only one Trustee or no Trustee shall remain or the remaining Trustees fail to appoint a replacement Trustee so that there are at all times five Trustees, then a replacement Trustee, or Trustees as the case may be, shall be appointed by a judge of the Ontario Court of Justice (General Division) on the application of any one or all of the parties hereto. In all cases and at all times not less than three (3) and up to five (5) Trustees shall be representative of the Community, one (1) Trustee shall be the Mayor of Hamilton or his/her designate and one (1) Trustee shall be a representative nominated by Terrapure Environmental. The Trustees agree to fill a vacancy and to appoint the representative or representatives of the party to this Trust Indenture where the resignation, insolvency, death or incapacity as described herein results in such vacancy.
- (d) At all times the representatives of the residents in the Community shall be resident within the area described in section 1.1(a) of this Trust Indenture. If one of the representatives of in the residents of the Community ceases to be resident in the Community, that person shall no longer be qualified to act as a Trustee and shall be replaced according to the provisions set out herein.
- (e) The Trustees, being representatives of the residents of the Community, also shall not be elected to any municipal, provincial or federal governmental position and if at any time during the term of this Trust Indenture an individual who is such a Trustee becomes an elected official, that person shall no longer be qualified to act as Trustee and shall be replaced according to the provisions as set out herein.
- (f) All Trustees being representatives of the residents of the Community shall be appointed for a term of three (3) years, but are eligible to be reappointed as a Trustee for a further

period of three (3) years. No Trustee shall be eligible to serve as a Trustee for a period of greater than six (6) years.

- 14.1 All matters relating to the administration of the Trust Fund and the disbursement of Trust Property shall be determined by the majority of the Trustees and any decision made of a majority of the Trustees shall for the purposes of this Trust Indenture be deemed to be the decision or act of the Trustees. Every deed or instrument of any nature and description signed by a majority of the Trustees shall be as valid, effectual and binding on the Trustees.
- 15.1 The Trustees and the investment counsel shall from time to time be paid reasonable direct out-of-pocket expenses properly incurred by them in the performance of their duties and authorized activities on behalf of the Trust Fund.
- 16.1 The Trustees shall ensure that the principal place of administration of the Trust Fund is within the City of Hamilton.
- 17.1 The Trustees shall ensure that one meeting open to the public shall be held during each year in which the Trust Fund continues to exist and that Notice of that meeting is advertised within the geographic boundaries of the City of Hamilton.
- 18.1 This indenture shall be governed and construed by the laws of Ontario and the laws of Canada applicable therein.
- 19.1 Any notice, demand, waiver, election or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to be sufficiently given if personally delivered or e-mailed, addressed to the Party to whom the same is given, as follows:
 - (a) In the case of Terrapure Environmental and Terrapure Environmental's representative:

Attention: Kim Bailey, Trust Administrator
Terrapure Environmental
65 Green Mountain Road
Stoney Creek, Ontario L8J 1X5

Telephone: (905) 548-5870
E-mail: kbailey@terrapureenv.com

with a copy to:

Revolution Environmental Solutions LP
1100 Burloak Drive, Suite 500
Burlington, Ontario L7L 6B2

Attention: Mr. Took Whiteley

Telephone: (403) 215-6932
E-mail: twhiteley@terrapureenv.com

- (b) In the case of the Trustees:

Ms. Julie Kovacs
35 Meadow Wood Crescent

Stoney Creek, Ontario L8J 3Z7

Telephone: (905) 928-1430
E-mail: juliekov1966@gmail.com

and

Mr. Franco Valconi
46 Audubon Street S.
Stoney Creek, Ontario L8J 1J8

Telephone: (905) 531-8595
E-mail: Fvalconi@hotmail.com

and

Ms. Rachel Incretolli
35 Ainsworth Street
Stoney Creek, Ontario L8J 1T2

Telephone: (289) 921-6163
E-mail: rincretolli@live.com

and

Mr. Lorenzo Alfano, Terrapure Representative Trustee
65 Green Mountain Road W.
Stoney Creek, Ontario L8J 1X5

Telephone: (905) 548-5876
Fax: (905) 549-4515
E-mail: lalfano@terrapureenv.com

and

Mr. Brad Clark, City of Hamilton Representative Trustee
71 Main Street W., 2nd Floor
Hamilton, Ontario L8P 4Y5

Telephone: (905) 546-2703
Fax: (905) 546-2535
E-mail: brad.clark@hamilton.ca

with a copy to:

Gowling WLG
1 First Canadian Place – Suite 1600
Toronto, Ontario M5X1G5
Attention: Mr. Harry Dahme

Telephone: (416) 862-4300
Fax: (416) 863-3410

E-mail: harry.dahme@gowlingwlg.com

- (c) In the case of the City of Hamilton and Hamilton's representative:

Office of the Mayor
Hamilton City Hall
71 Main Street W., 2nd Floor
Hamilton, Ontario L8P 4Y5

Telephone: (905) 546-4200
Fax: (905) 546-2340
E-mail: mayor@hamilton.ca

with a copy to:

Office of the City Clerk
Hamilton City Hall
71 Main Street W., 1st Floor
Hamilton, Ontario L8P 4Y5

Telephone: (905) 546-2489
E-mail: clerk@hamilton.ca

or at such other address as any party may from time to time advise the other by notice in writing. Any notice given by personal delivery shall be deemed to be received on the date of delivery. Any notice sent by fax shall be deemed to have been received on the next day following its transmission that is not a Saturday, Sunday or statutory holiday in Ontario.

- 20.1 The parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this agreement and to carry out its provisions.
- 21.1 Any provision of this agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof which shall be deemed severable from any such prohibited or unenforceable provision and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 22.1 This agreement shall be binding upon the parties hereto and shall enure to the benefit of, and the respective successors and assigns of the Trustees, Terrapure Environmental and Hamilton.

IN WITNESS WHEREOF the parties hereto have executed this indenture as of the day and year first above written.

REVOLUTION LANDFILL LP, by its general partner
REVOLUTION LANDFILL ACQUISITION GP INC., a
general partnership incorporated under the laws of
Ontario

Per: _____

TRUSTEES

Per: _____
Julie Kovacs

Per: _____
Franco Valconi

Per: _____
Rachel Incretolli

Per: _____
Lorenzo Alfano

Per: _____
Brad Clark

THE CORPORATION OF THE CITY OF HAMILTON

Per: _____
Mayor

Per: _____
Clerk