VERIS · LAW GROUP ·

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August 15, 2023

Via Email

Steve Teel
Washington State Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
Olympia, Washington 98504
steve.teel@ecy.wa.gov

Re: *Access to SFI Capital LLC Property*
Milton's Dry Cleaners Site

Dear Steve:

We write on behalf of SFI Capital LLC ("SFI"), formerly known as SFI Holding LLC, in response to the letter the Washington State Department of Ecology ("Ecology") sent to SFI dated August 3, 2023, regarding access to the property SFI owns located on NE Fourth Plain Boulevard in Vancouver, Washington ("SFI Property"). Ecology requests that SFI grant Pat Milton and his consultant access to the SFI Property to collect groundwater samples from monitoring well MW-37bs as part of the ongoing remedial investigation of the Milton's Dry Cleaners Site ("Site"). SFI previously granted Mr. Milton access to the SFI Property to install the well and analyze groundwater samples collected from the well. SFI will continue to grant Mr. Milton access to analyze groundwater samples collected from the well.

The SFI Property is impacted by contamination that has migrated there through groundwater from a former dry cleaners that operated on property owned by Mr. Milton. The Site consists of the lateral and vertical extent of the contamination attributable to the former dry cleaners. SFI did not cause or contribute to the contamination but has incurred more than $27,000 in legal and consulting costs since 2008 in response to the contamination. Mr. Milton has reimbursed $4,500 of that amount but refused requests to reimburse the remainder.

Mr. Milton first sought access to the SFI Property in 2008 but abandoned the request when SFI sought to impose reasonable conditions on the access, including a condition that Mr. Milton reimburse SFI for the legal and consulting costs it incurred relating to the grant of access, installation of the groundwater monitoring well, and review of data generated for the SFI Property and its vicinity. Mr. Milton renewed the request for access in March 2014, presenting SFI with a draft access agreement that was unbalanced and did not protect SFI's interests. As before, SFI offered to provide access subject to reasonable conditions, but the discussions faltered for reasons unknown to SFI. Hearing nothing from Mr. Milton for the next several years, SFI independently monitored the results of the investigation Mr. Milton was performing on adjoining properties to understand the potential impacts to the SFI Property. In 2018, Mr. Milton approached SFI for

access once again, this time willing to accept some of SFI's reasonable conditions. The negotiations culminated with the first access agreement, which was executed in January 2020. The first access agreement obligated Mr. Milton to reimburse SFI a maximum of $4,500 in legal and consulting costs but did not release claims SFI could assert against Mr. Milton for costs it incurs in excess of that amount.

Mr. Milton installed monitoring well MW-37bs on the SFI Property in May 2020. Groundwater samples have been collected and analyzed from the well on seven occasions. No constituents have ever been detected in any of the groundwater samples at concentrations exceeding applicable cleanup levels. The first access agreement expired on December 31, 2021.

In March 2022, SFI informed Mr. Milton that the first access agreement had expired. In light of the consistently good data from the well, SFI requested that Mr. Milton seek Ecology approval to cease monitoring the well rather than extend the access agreement. After Ecology rejected the request, Mr. Milton presented SFI with a draft second access agreement that offered to cover only $4,000 of SFI's legal and consulting costs. SFI informed Mr. Milton that it had incurred more than $22,500 in unreimbursed legal and consulting costs to review Site data, respond to requests for access, and negotiate access agreements, among other things. As a gesture of goodwill and reasonableness, SFI offered to waive $5,000 of its past costs in exchange for a commitment by Mr. Milton to reimburse up to a maximum of $10,000 in future costs. Mr. Milton never responded to the offer. Instead, SFI received Ecology's letter insisting that it grant Mr. Milton continued access to the SFI Property.

SFI has always worked in good faith with Mr. Milton regarding access to the SFI Property and monitoring well MW-37bs. SFI granted Mr. Milton access to the SFI Property to install the well and collect and analyze groundwater samples from the well. After the first access agreement expired, SFI offered Mr. Milton continued access to the SFI Property subject to the condition that it reimburse some of SFI's legal and consulting costs. It is not unreasonable for a landowner to insist that the party responsible for the contamination on its property cover the costs the landowner expends in response to the contamination. To the contrary, it is consistent with the Washington Model Toxics Control Act ("MTCA"), Chapter 70A.305 RCW, which gives a landowner the right to seek recovery of remedial action costs from a responsible party.

That said, SFI retracts its demand for reimbursement of legal and consulting costs and will grant Mr. Milton and his consultant access to the SFI Property subject to the terms of the second access agreement enclosed with this letter. As the second access agreement indicates, SFI reserves all claims against Mr. Milton for recovery of remedial action costs and damages under MTCA and tort, including claims for costs incurred since 2008 that have not been reimbursed. SFI has not decided whether it will assert such a claim against Mr. Milton, but it might, particularly if its costs continue to rise.

We notice that Ecology's letter has been posted on the website for the Site. Please post this response on the website too so the full picture is publicly available.

Please do not hesitate to contact me if you have any questions.

Sincerely,

VERIS LAW GROUP PLLC

HANNAH M. SOLOMON

Enclosure: Second Access Agreement

cc: Rebecca Lawson (rebecca.lawson@ecy.wa.gov)
Jerome Lambiotte (jerome.lambiotte@ecy.wa.gov)
John Level (john.level@atg.wa.gov)
Scott D. Johnson (sjohnson@helsell.com)
Client

SECOND ACCESS AGREEMENT FOR ENVIRONMENTAL INVESTIGATION

This *Second Access Agreement for Environmental Investigation* ("Second Agreement") is made effective as of August 15, 2023 (the "Effective Date"), by and between SFI Capital LLC, formerly known as SFI Holding LLC, a Washington limited liability company ("Owner"), Mr. Pat Milton, an individual ("Milton"), and Geosyntec Consultants, Inc., a Florida corporation ("Geosyntec"), acting as an environmental consultant for Milton.

WHEREAS, Owner owns the real property located on NE Fourth Plain Boulevard in Vancouver, Clark County, Washington, identified in the property records of Clark County as Tax Parcel No. 161867000 (the "Property");

WHEREAS, Milton is conducting an environmental investigation of the Milton's Dry Cleaners Site (the "Site") with oversight from the Washington State Department of Ecology ("Ecology") under Agreed Order No. DE4239 07/4-TC-S ("Agreed Order");

WHEREAS, tetrachloroethene (a.k.a. perchloroethylene or PCE) has been detected in the soil and groundwater in the vicinity of the Property in concentrations of potential concern;

WHEREAS, Ecology is requiring Milton to collect environmental data at the Property;

WHEREAS, Owner has reasonably cooperated with and facilitated the environmental investigation by allowing Milton to install a groundwater monitoring well on the Property (MW-37bs), collect groundwater samples from the monitoring well, and analyze the collected samples pursuant to an Access Agreement for Environmental Investigation entered into between the parties effective January 15, 2020 ("First Agreement");

WHEREAS, the First Agreement terminated on December 31, 2021, but Ecology is requiring Milton to continue sampling the existing monitoring well on the Property; and

WHEREAS, Owner is willing to allow Milton and Geosyntec access to the Property to collect additional groundwater samples from the existing monitoring well and submit them for laboratory analyses;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Access to the Property. Subject to the provisions of this Second Agreement, Owner hereby grants Milton and Geosyntec and any subcontractors under the direct care and supervision of Milton and Geosyntec (collectively "Guests") a temporary, non-exclusive license to enter the Property for the sole purposes of: (a) collecting groundwater samples from the existing monitoring well on the Property and submitting the samples for chemical analysis of volatile organic compounds by EPA Method 8260B, (b) measuring water levels in the well, (c) maintaining the well, (d) decommissioning the well, and (e) restoring the Property as required by Section 5 (collectively, the "Work").

2. Suspension and Termination. This Second Agreement will terminate automatically, without further action of the parties, upon completion of the Work or on

December 31, 2025, whichever is sooner (the "Termination Date"), unless the Termination Date is extended in writing by the parties. Notwithstanding the preceding sentence, Sections 7, 8, and 10 through 14 will survive termination of this Second Agreement. Milton will notify Owner after it completes the Work and no longer needs access to the Property. If Ecology requires Milton to continue using the monitoring well installed on the Property after the Termination Date, then the parties will work together in good faith to extend the Termination Date. Owner may suspend any or all Work at the Property if it reasonably determines a dangerous condition exists or any Guest has breached any term or condition of this Second Agreement. Owner will notify Milton no less than five (5) days before suspending the Work if circumstances allow and as soon as reasonably practicable in all other circumstances. No Guest may resume any suspended Work until it obtains the approval of Owner, which Owner may not unreasonably withhold, condition, or deny. Owner may terminate this Second Agreement before the Termination Date if any Guest breaches any term or condition of this Second Agreement and fails to cure such breach within ten (10) days after Owner delivers notice of such breach to Milton.

3. Conduct of Work. Guests will perform the Work in accordance with all applicable federal, state, and local laws, regulations, and ordinances, and will obtain all permits, licenses, or government approvals required to perform the Work. Milton will bear all costs and expenses associated with the Work. Guests will not cause or permit the Work to be performed in a manner that would cause damage to the Property that cannot be remedied and restored. Guests will not perform the work in a manner that damages the sign structure on the Property, or that interferes with any tenant activity on the Property. Guests will be solely responsible for repairing any damage to the Property or the fixtures thereon, for the safe performance of the Work, and the safety of all persons that perform the Work.

4. Advance Notice and Minimal Disruption. Owner will be notified at least three (3) days in advance of any entry by a Guest onto the Property. Such notice will be in writing and inform Owner of the identity of the Guest and the nature and dates of the Work to be performed. Guests will perform the Work only at times pre-approved by Owner. If notice of a Guest's entry onto the Property is properly given under this Section 4 and Owner does not object prior to the entry, such entry will be deemed to have been approved by Owner. In exercising the right of access granted in this Second Agreement, Guests will use best efforts to minimize any disturbance or inconvenience to Owner, any tenant, or any business or operations at the Property.

5. Property Restoration and Decommissioning of Well. As soon as reasonably possible, but in no event later than the Termination Date, Milton will, at his sole cost and expense, restore the Property to the same condition it was in prior to performance of the Work, subject to Owner's approval. Any damaged surface will be patched using materials that reasonably match the existing surface. With respect to temporary soil borings, restoration will occur immediately after drilling and sampling procedures have been completed at the Property. The monitoring well will be lawfully decommissioned no later than the Termination Date. Milton will, prior to commencing the Work, provide Owner with a

bond or other financial security with a value of no less than $10,000 to insure decommissioning of the monitoring wells.

6. Observation and Reporting of Work. Owner has the right, but not the obligation, to be present and observe performance of the Work, and to collect split samples from the samples collected by Guests for independent analysis. Milton will deliver to Owner all data, test results, and laboratory reports relating to the Work within ten (10) days after such data, test results, and laboratory reports are obtained or made available to Milton. Milton will also deliver to Owner all plans, studies, figures, memoranda, and other information relating to the Work on the same day they are submitted to Ecology.

7. Generated Waste. Milton will, at his sole cost and expense, promptly and lawfully dispose of all waste generated from the Work, including without limitation, all investigation-derived waste. Milton may not store any waste on the Property. One or more of the parties designated as potentially liable persons under the Agreed Order will be listed as the "generator" of all waste generated by the Work for transportation and disposal purposes. Owner will not be listed as the "generator" of such waste.

8. No Liens. Milton will not permit any lien to stand against the Property for any Work conducted by any Guest. Milton will remove any such lien at its sole cost and expense within ten (10) days after Owner notifies Milton of any such lien. Milton will indemnify and hold Owner harmless from and against any and all losses arising out of or relating to any such lien.

9. Insurance. Before any Guest may access the Property to perform the Work, Geosyntec will furnish Owner with a certificate of insurance, which certificate will (a) demonstrate insurance coverage of the kinds and minimum limits listed in the table below and (b) name Owner as an additional insured. Insurance will be placed with insurers authorized to conduct business in the state of Washington with a current Standard & Poor's rating of no less than BBB. Geosyntec must provide at least thirty (30) days' prior written notice to Owner of any change in insurance coverage that would reduce the coverage below the limits in the table below. The purchase of insurance as required by this Section 9 in no way limits the liability of Milton or Geosyntec to Owner under this Second Agreement.

Kind of Insurance	Minimum Limits
Commercial General Liability	$2,000,000 per occurrence $5,000,000 general aggregate
Business Auto Liability	$1,000,000 per accident $5,000,000 general aggregate
Pollution Liability	$2,000,000 per occurrence $5,000,000 general aggregate

10. Indemnity. Milton and Geosyntec will, to the fullest extent permitted by law, indemnify, defend using counsel reasonably approved by Owner, whose approval shall not be

unreasonably withheld, and hold harmless Owner and its affiliates, tenants, members, employees, and agents from and against any liability, claims, damages, judgments, penalties, fees, costs, and expenses, including attorneys' fees, for bodily injury to or death of any person, or damage to property (collectively "Losses") arising out of or in connection with the acts or omissions of a Guest in performing the Work. In no event will Milton or Geosyntec be liable for claims of bodily injury or property damage, including environmental contamination, arising from pre-existing conditions at the Property, except to the extent such liability existed before the Work commenced or to the extent of a Guest's negligence or failure to comply with applicable laws or regulations. To the extent any Losses arise out of the concurrent negligence of a Guest and Owner, then Milton's and Geosyntec's indemnity obligation will apply only to the extent of the Guest's negligence. The indemnity obligations in this Section 10 will not be limited by any worker's compensation, benefit, or disability laws, and each indemnifying party hereby waives any immunity it may have under the Industrial Insurance Act, Title 51 RCW, and similar worker's compensation, benefit, or disability laws. The indemnity obligations in this Section 10 were mutually negotiated by the parties and will survive termination or expiration of this Second Agreement.

11. Release of Claims. Milton and Geosyntec release, waive, and forever discharge all claims either one could assert against Owner for injuries or damages arising out of performance of the Work or the presence of any Guest on the Property, except to the extent such injuries or damages were caused by the gross negligence or willful misconduct of Owner.

12. Resolution of Disputes. Any dispute that arises under this Second Agreement will be resolved according to this Section 12. Either party may initiate the dispute resolution process by providing a written notice of dispute to the other party. Within ten (10) business days after delivery of the notice of dispute, the parties' designated representatives will meet in person to attempt to resolve the dispute through good faith negotiations. If the parties cannot resolve the dispute within five (5) business days after the date of such meeting, then any party may file an action in any court of competent jurisdiction in Clark County, Washington. The party that prevails in such action will be awarded its reasonable attorneys' fees and expenses, including those incurred at trial or on appeal. The parties will not suspend or delay performance of any obligations under this Second Agreement pending the dispute resolution process, except for those obligations that are the subject of the dispute.

13. Notices. All notices and communications regarding this Second Agreement will be effective when delivered to the parties pursuant to this Section 13. Notices will be sent via certified mail, return receipt requested, or electronic mail. Contact information for the parties is as follows:

To Owner: Ann Schnitzer
SFI Capital LLC
11221 Pacific Highway SW
Lakewood, WA 98499
acs@rainiercapitalgroup.com

with a copy to: Howard Jensen
Hannah Solomon
Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, WA 98101
howard@verislawgroup.com
hannah@verislawgroup.com

To Milton: Cindy Bartlett
Geosyntec Consultants, Inc.
920 SW Sixth Avenue, Suite 600
Portland, Oregon 97204
cbartlett@geosyntec.com

with a copy to: Scott Johnson
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154
sjohnson@helsell.com

14. Reservation of Rights. Except as provided otherwise in this Second Agreement, the parties reserve all rights and defenses against each other for claims relating to the presence of hazardous substances at or under the Property, including claims by Owner against Milton for recovery of remedial action costs under the Washington Model Toxics Control Act and for tort damages, whether incurred before or after the effective date of this Second Agreement. The parties do not waive, and expressly reserve, all rights, claims, and defenses they may have against third parties.

15. Parties Bound and Assignment. This Second Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns. No party may assign this Second Agreement without the other parties' prior written consent, which consent may be denied, conditioned, or withheld, except Owner will assign this Second Agreement to any party that acquires ownership of the Property before the Termination Date.

16. Relationship of Parties and Enforceability by Third Parties. This Second Agreement will not be construed in any way to create a partnership, joint venture, or any other association between Owner and any other party. This Second Agreement is not intended to create any benefit for, nor is it enforceable by, any third party.

17. No Interest in Property. This Second Agreement constitutes a license only and does not convey or create any interest in the Property. All rights granted under this Second Agreement are subject to all encumbrances affecting the Property and all rights and privileges of third parties existing before the execution of this Second Agreement.

18. No Admission. Nothing in this Second Agreement will constitute an admission of fact, responsibility, fault, or liability of any kind, or constitute a waiver or limitation of any legal claim or defense available to any party. Owner's execution of this Second Agreement will not be construed to be acquiescence in, or acknowledgement or approval of, the adequacy or sufficiency of the Work or any conclusions or recommendations that result from performance of the Work.

19. Waiver and Severability. The waiver of performance of any provision of this Second Agreement by any party will not be construed as a waiver of any subsequent breach of the same provision. If a court determines any provision of this Second Agreement is invalid or otherwise unenforceable, then the remaining provisions will remain in full force and effect.

20. Entire Agreement. This Second Agreement contains the entire understanding of the parties and supersedes all previous agreements and understandings between them relating to the subject matter of this Second Agreement. This Second Agreement may only be modified by written agreement of the parties.

21. Choice of Law; Venue. This Second Agreement will be construed in accordance with the laws of the State of Washington and venue for any action arising from this Second Agreement will be in a court of competent jurisdiction in King County, Washington.

22. Authority. Each person executing this Second Agreement represents and warrants that he or she has the authority to enter into this Second Agreement on behalf of the party under whose name he or she signs.

23. Counterparts. This Second Agreement may be executed in counterparts, and such counterparts once executed will together be deemed to constitute one final agreement, as if one document had been signed by all parties, and each such counterpart, upon execution and delivery, will be deemed a complete original, binding on the parties. An email copy of an original signature will be deemed to have the same force and effect as the original signature.

IN WITNESS WHEREOF, the parties have executed this Second Agreement to take effect on the date of the last dated signature below:

[Signatures Follow]

Accepted and agreed upon by SFI Capital LLC:

Signature: _____

Print Name: _____

Title: _____

Accepted and agreed upon by Pat Milton:

Signature: _____

Accepted and agreed upon by Geosyntec Consultants, Inc.:

Signature: _____

Print Name: _____

Title: _____