Respondent, State of Washington, Department of Ecology (Ecology), represented by Robert W. Ferguson, Attorney General, and Koalani Kaulukukui-Barbee, Assistant Attorney General, and Appellant, Kenmore Air Harbor, Inc. (Kenmore Air Harbor), represented by attorney Lori Terry Gregory, hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

I. BACKGROUND

1. On July 26, 2017, Ecology issued Notice of Penalty Docket No. 14169 (Penalty No. 14169) in the amount of $25,000.00 to Kenmore Air Harbor.

2. On August 24, 2017, Kenmore Air Harbor appealed Penalty No. 14169 to the Board.
3. Ecology and Kenmore Air Harbor have agreed to resolve the appeal of Penalty No. 14169 through the settlement outlined below.

II. SETTLEMENT AGREEMENT

The parties desire to resolve the dispute herein and avoid the cost and time associated with further litigation, therefore, without admitting liability or fault, the parties stipulate and agree as follows:

A. SCOPE

This Agreement constitutes the entire agreement between the parties to this appeal, and settles all issues raised by Penalty No. 14169. Ecology agrees to deem Penalty No. 14169 satisfied upon Kenmore Air Harbor's satisfactory and timely completion of its obligations under this Agreement. This Agreement applies only to Penalty No. 14169 issued on July 26, 2017, and does not in any way limit Ecology’s authority to issue other penalties or enforcement actions for violations that are not addressed in Penalty No. 14169.

B. RESOLUTION OF PENALTY

1. Cash Payment

Ecology must receive Kenmore Air Harbor’s payment of $5,000 within 30 calendar days of the date the Board dismisses this appeal. If the 30th day falls on a holiday or weekend, payment shall be due on the next business day. Kenmore Air Harbor shall make the payment by check or money order directly payable to “Department of Ecology” and make reference to Penalty No. 14169, and shall send the payment to:

Department of Ecology
Attn: Cashiering Unit
P.O. Box 47611
Olympia, WA 98504-7611

If Ecology does not receive Kenmore Air Harbor’s payment of $5,000 within 30 days of the Board’s dismissal of this appeal, the full penalty amount of $25,000 will become immediately due and payable without further right of administrative or judicial review, except as provided in Paragraph C of this Agreement.
2. **Portion of Penalty Held in Abeyance for Two Years**

Ecology agrees to hold $5,000 of the total penalty amount in abeyance for two years from the effective date of this Agreement, on the condition that Kenmore Air Harbor stays in compliance with Washington's Dangerous Waste Regulations (WAC 173-303). If Ecology determines that Kenmore Air Harbor violates the dangerous waste regulations within the two-year period, then the $5,000 will be due and payable within 30 days from the date Ecology notifies Kenmore Air Harbor of the violation, and Ecology's determination that a violation occurred will not be appealable. If Kenmore Air Harbor does not violate the dangerous waste regulations within two years from the effective date of this Agreement, then the $5,000 penalty held in abeyance is rescinded.

3. **Supplemental Environmental Project (SEP)**

In order to satisfy the remainder of the penalty, within 30 calendar days from the date the Board dismisses this appeal, Kenmore Air Harbor will pay $15,000 to the City of Kenmore for the specific purpose of facilitating the City of Kenmore's implementation of the Integrated Aquatic Vegetation Management Plan. If the 30th day falls on a holiday or weekend, payment shall be due on the next business day. Ecology must receive proof of Kenmore Air Harbor's payment of $15,000 to the City of Kenmore for implementation of the Integrated Aquatic Vegetation Management Plan within 45 calendar days of the date the Board dismisses this appeal. If the 45th day falls on a holiday or weekend, proof of payment will be due on the next business day. Kenmore Air Harbor will send the proof of payment to:

   Department of Ecology  
   Hazardous Waste & Toxics Reduction Program  
   3190 160th Avenue SE  
   Bellevue, WA 98008

If Kenmore Air Harbor fails to pay $15,000 to the City of Kenmore for implementation of the Integrated Aquatic Vegetation Management Plan within 30 days of the Board's dismissal of this appeal, or if the Kenmore Air Harbor fails to provide proof of such payment to Ecology within 45 days of the Board's dismissal of this appeal, the balance of the
$25,000 penalty not already paid to Ecology will become immediately due and payable to Ecology without further right of administrative or judicial review, except as provided in Paragraph C of this Agreement.

C. REMEDIES

In the event that Kenmore Air Harbor violates the terms of this Agreement, Ecology may pursue all remedies available by law. By entering into this Agreement, Kenmore Air Harbor shall have waived its right of administrative or judicial review on the underlying merits of the Penalty. However, Kenmore Air Harbor does not waive the right to contest whether violations of this Agreement have occurred. Ecology’s determination that a dangerous waste violation occurred as provided in Paragraph B.2 of this Agreement will not be appealable. Ecology shall be entitled to recover its costs, including attorney fees, in any action brought to enforce this Agreement in which Ecology is a prevailing party.

D. VENUE

Kenmore Air Harbor agrees that the venue for any judicial action to enforce this Agreement and/or to collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

E. PRESS RELEASES AND OTHER DOCUMENTS

Any document prepared by Kenmore Air Harbor related to this settlement, such as a press release, shall be identified as resulting from a settlement with Ecology. In addition, any sum paid to a third party, not a party to this Agreement, as a result of this Agreement, shall be identified as resulting from a settlement with Ecology in any public statement.

F. TAX CREDIT DISALLOWED

Kenmore Air Harbor shall not deduct or credit against taxes due or payable: (a) any monies paid as cash payments, (b) monies utilized for implementation of supplemental environmental projects under this Agreement, or (c) in-kind contributions for supplemental environmental projects under this Agreement, nor otherwise receive any tax benefits from...
payment of monies as cash payments or for implementation of supplemental environmental projects under this Agreement.

G. Waiver of Appeal Rights

Kenmore Air Harbor understands that it has the right to contest Penalty No. 14169 and by presenting evidence at a Board hearing. Kenmore Air Harbor voluntarily waives its right to a hearing upon signature and acceptance of this Agreement by representatives for Kenmore Air Harbor and Ecology.

H. Release of Liability

Kenmore Air Harbor and its heirs, assigns, or other successors in interest, agree to release and discharge the Department of Ecology and its officers, agents, employees, agencies and departments from any damages and causes of action of any nature arising out of the incidents that gave rise to this appeal.

I. Dismissal of Appeal

The parties consent to the submission of this Agreement to the Board and request that, based upon a full and final settlement having been reached, the Board dismiss this appeal with prejudice. Both parties further agree to bear their own costs and attorneys’ fees associated with this appeal.

J. Effective Date

This Agreement shall become effective upon issuance of the Board’s order dismissing this appeal.

K. Signatories Authorized

The undersigned representatives for Ecology and Kenmore Air Harbor certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Agreement and to legally bind such party thereto.
L. EXECUTION

This document may be executed in counterparts and may be executed by facsimile, and each executed counterpart shall have the same force and effect as the original instrument.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

DARIN RICE
Program Manager
Hazardous Waste & Toxics Reduction
Northwest Regional Office

Dated: 12/11/17

ROBERT W. FERGUSON
Attorney General

Dated: 12/14/17

KENMORE AIR HARBOR, INC.

TODD BANKS
President

FOSTER PEPPER, PLLC

LORI TERRY GREGORY
Attorneys for Appellant

Dated: 11/30/2017

KOALANI KAULUKUKUI-BARBEE
WSBA #50642
Assistant Attorney General
Attorneys for Respondent
360-586-3513

Dated: 12/14/17

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
360-586-6770