

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into between the California Air Resources Board (CARB) and CCA Co. VII, L.L.C. (collectively, the "Parties," or individually, "Party").

### **LEGAL BACKGROUND**

- (1) Purpose. The Global Warming Solutions Act of 2006 mandates CARB to adopt
- (2) regulations to reduce greenhouse gas emissions and to enforce those regulations. (Health & Saf. Code, §§ 38560, 38562, and 38580.)
- (3) Regulation. CARB adopted the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (the "Regulation"), which created the Cap-and-Trade Program (the Program). (Cal. Code Regs., tit. 17, § 95801 et seq.) The Regulation establishes yearly caps, called "budgets," for the total greenhouse gas emissions of all regulated sources (called "covered entities"). These emission budgets decline each year in order to require emission reductions from covered entities. CARB issues allowances, which represent authorizations to emit up to one metric ton of carbon dioxide equivalent greenhouse gases per allowance, in quantities equal to the emissions budget for a given year. (Cal. Code Regs., tit. 17, §§ 95801(a), 95820(a)(1)).
- (4) Regulatory Provisions. All registered entities are subject to the requirements of the Cap-and-Trade Regulation, including strict purchase limit and holding limit requirements. The holding limit is the maximum number of allowances that an entity or group of entities with direct corporate associations can hold at any point in time; this limit decreases each year as the overall allowance cap declines annually. (Cal. Code Regs., tit. 17, § 95920(a).) California Code of Regulations (CCR), title 17, section 95920(b), (c), (d), and (e) delineate the application and calculation of holding limits. There are separate holding limits for current vintage allowances and future vintage allowances. Entities that have direct corporate associations with separate registered accounts are required to share the holding limit among the group of corporate associates. (Cal. Code Regs., tit. 17, § 95920(f)(1).) If such entities do not consolidate their accounts in the Compliance Instrument Tracking System Service (CITSS), then they are responsible for allocating and disclosing to CARB percentage shares such that each affiliated registered entity has a specified percentage share of the group's holding limit and the sum of the percentage shares must total 100%. (Cal. Code Regs., tit. 17, § 95920(f)(3).) Account holdings of an entity may not exceed its applicable holding limit, and each entity is responsible for managing its account holdings to remain at or below this applicable holding limit. The holding limit allocation remains in effect until the associated entities take the required steps to formally reallocate the holding limit.

- (5) Penalty Provisions. Failure to comply with the regulatory requirements is a violation of state law that may result in penalties up to twelve thousand one hundred eighty dollars (\$12,180 USD) for strict liability violations for each day in which a violation occurs. (Cal. Code Regs., tit. 17, § 95920(b)(6); Health & Saf. Code, §§ 38580, 42402 et seq., 42411.)

### **CASE BACKGROUND**

- (6) Corporate Entity. At all relevant times, CCA Co. VII, L.L.C. was organized under the laws of Delaware and conducted business in the State of California. At all relevant times, CCA Co. VII, L.L.C. was a General Market Participant in the Cap-and-Trade Program.
- (7) Allegations. Each registered entity is required to abide by all requirements of the Regulation, including management of its account holdings to remain at or below the applicable holding limit. For four days, January 1-4, 2024, CCA Co. VII, L.L.C. did not comply with its holding limit share and did not adjust its holding limit share until CARB suspended the account.
- (8) Acknowledgment. CCA Co. VII, L.L.C. admits to the facts in paragraphs 1 through 6 but denies any liability resulting from the above allegations.
- (9) Consideration. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed facts and allegations and voluntarily agree to resolve this matter by means of this Settlement Agreement. In order to resolve the allegations described herein, CCA Co. VII, L.L.C. has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. Further, CARB accepts this Settlement Agreement in termination and full settlement of this matter.

### **TERMS AND CONDITIONS**

For the consideration described in Paragraph 8 above, CARB and CCA Co. VII, L.L.C. agree as follows:

- (10) Settlement Amount. Pursuant to Health and Safety Code sections 38580 and 39619.7, CCA Co. VII, L.L.C. shall pay four hundred thousand dollars (\$400,000.00 USD) ("settlement amount"). CCA Co. VII, L.L.C. shall make payment within thirty (30) calendar days from the Notification Date.
- (11) Notification Date. The date upon which CARB notifies CCA Co. VII, L.L.C. according to Paragraph 13 (Notices), that the Settlement Agreement is fully executed or when CARB sends the fully executed Settlement Agreement to CCA Co. VII, L.L.C.

- (12) Settlement Amount Payment Method. CCA Co. VII, L.L.C. shall pay the settlement amount by check, credit card, wire transfer, or portal, payable to the "California Air Resources Board," using instructions provided separately by CARB in a Payment Transmittal Form. CCA Co. VII, L.L.C. is responsible for all payment processing fees. Payments shall be accompanied by the Payment Transmittal Form to ensure proper application. CARB shall deposit the settlement amount into the Air Pollution Control Fund for the purpose of carrying out CARB's duties and functions to ensure the integrity of its air pollution control programs. Should payment instructions change, CARB will provide notice to CCA Co. VII, L.L.C. in accordance with Paragraph 13 (Notices).
- (13) Documents. CCA Co. VII, L.L.C. shall promptly email or mail the signed and dated Settlement Agreement to the address or email in Paragraph 13 (Notices).
- (14) Notices. Unless otherwise specified in this Settlement Agreement, whenever notifications, submissions, or communications are required by this Settlement Agreement, they shall be submitted in writing to the address or email below:

As to CARB:

California Air Resources Board  
Industrial Strategies Division / Settlement Agreements  
Climate Change Program Evaluation Branch  
Market Monitoring Section  
P.O. Box 2815  
Sacramento, California 95812-2815  
Settlement\_Agreement@arb.ca.gov

As to CCA Co. VII, L.L.C., via its Legal Representation:

Michael Romey  
Latham & Watkins LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071  
michael.romey@lw.com

and

Jean-Phillippe Brisson  
Latham & Watkins LLP  
1271 Avenue of the Americas  
New York, NY 10020  
jp.brisson@lw.com

Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this section shall be deemed submitted upon emailing or mailing.

- (15) Noncompliance and Repeat Violations. CCA Co. VII, L.L.C. agrees to comply with all regulatory requirements and acknowledges that repeat noncompliance and violations could result in increased penalties in the future.
- (16) Entirety. This Settlement Agreement constitutes the entire agreement and understanding between the Parties concerning the Case Background and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the Case Background hereof. This Settlement Agreement consists of 8 pages and 32 paragraphs.
- (17) Binding Effect. This Settlement Agreement binds CCA Co. VII, L.L.C., and any principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, and CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Settlement Agreement.
- (18) Effective Date. The effective date shall be the date upon which this Settlement Agreement is fully executed.
- (19) Modification and Termination. No agreement to modify, amend, extend, supersede, terminate, or discharge this Settlement Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Settlement Agreement.
- (20) Severability. Each provision of this Settlement Agreement is severable, and in the event that any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable in any jurisdiction, the remainder of this Settlement Agreement remains in full force and effect.
- (21) Choice of Law. This Settlement Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (22) Non-Discharge. It is further agreed that the penalties described in this Settlement Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7), which provides an exception from discharge for any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.
- (23) Rules of Construction. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Settlement Agreement.
- (24) Non-Waiver. The failure to enforce any provision of this Settlement Agreement shall not be construed as a waiver of any such provision, nor prevent such Party

thereafter from enforcing such provision or any other provision of this Settlement Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Settlement Agreement or otherwise provided by law.

- (25) Intent to be Bound. The Parties represent that: they have participated fully in the review and drafting of this Settlement Agreement; understand and accept all terms; enter into this Settlement Agreement freely and voluntarily; have had an opportunity to consult with legal counsel; are fully informed of the terms and effect of this Settlement Agreement; have agreed to this Settlement Agreement after independent investigation and agree it was not arrived at through fraud, duress, or undue influence; and knowingly and voluntarily intend to be legally bound by this Settlement Agreement.
- (26) Venue. The Superior Court of California, located in the County of Sacramento, shall hear any dispute between the Parties arising from this Settlement Agreement.
- (27) Counterparts and Electronic Signatures. This Settlement Agreement may be executed in counterparts. Electronic, facsimile, or photocopied signatures shall be considered as valid signatures.
- (28) Release. In consideration of full payment of the settlement amount, and all other undertakings above, CARB hereby releases CCA Co. VII, L.L.C. and its principals, officers, receivers, trustees, successors and assignees, subsidiary and parent corporations, from any claims CARB may have based on the circumstances described in Paragraph 6 (Allegations) above.
- (29) Authority. The undersigned represents that they have full authority to enter into this Settlement Agreement.

### **SETTLEMENT AMOUNT BASIS**

- (30) Settlement Amount. The strict liability per unit penalty for the holding limit exceedance alleged in this case is a maximum of \$12,180 per violation per day under Health and Safety Code sections 38580 and 42402 et seq. When determining the settlement amount, each allowance held over the holding limit was regarded as a separate noncompliance event for each day the entity failed to be in compliance with the Regulation. CARB notified the entity that it held allowances in excess of its applicable holding limit and was not in compliance with requirements pursuant to section 95920(a) of the Regulation for four (4) days. The settlement amount of \$400,000.00 was agreed to considering the total number of allowances held by the entity in excess of its applicable holding limit

over four days, from January 1, 2024, to January 4, 2024, as well as mitigating factors.

- (31) Aggravating and Mitigating Factors. The settlement amount in this matter was determined in consideration of all relevant circumstances, including statutory factors as described in CARB's Enforcement Policy. In light of the facts and allegations set forth herein, among others, CARB considered whether the alleged violator came into compliance quickly and cooperated with the investigation; the extent of harm to public health, safety and welfare; nature and persistence of the violation, including the magnitude of the excess emissions; compliance history; preventative efforts taken; innovative nature and the magnitude of the effort required to comply, and the accuracy, reproducibility, and repeatability of the available test methods; efforts to attain, or provide for, compliance prior to the alleged violation; action taken to mitigate the alleged violation; financial burden to the alleged violator; and voluntary disclosure. The settlement amount is set at a level sufficient to deter violations, to remove any economic benefit or unfair advantage from noncompliance, to obtain swift compliance, and the potential costs, risks, and uncertainty associated with litigation. Penalties in future cases might be smaller or larger depending on the unique circumstances of the case.
- (32) Confidential Business Information. CARB may have based the settlement amount in part on confidential business information provided by CCA Co. VII, L.L.C. or confidential settlement communications.
- (33) Effect of Settlement/Reservation of Rights. The following shall apply:
- (a) This Settlement Agreement resolves the civil claims of CARB for the noncompliance alleged in this Settlement Agreement.
  - (b) CARB reserves, and this Settlement Agreement is without prejudice to, all claims, rights, and remedies against CCA Co. VII, L.L.C. with respect to all matters not expressly resolved in this Settlement Agreement.  
Notwithstanding any other provision of the Settlement Agreement, CARB reserves all claims, rights, and remedies, whether in law or equity, against CCA Co. VII, L.L.C. with respect to:
    - (i) Noncompliance with or enforcement of any provision of this Settlement Agreement.
    - (ii) Facts that were not disclosed by CCA Co. VII, L.L.C. to CARB.
    - (iii) Violation of the California Health and Safety Code and its implementing regulations, or other State laws, regulations, or permit condition(s) not expressly resolved in this Settlement Agreement.

- (iv) Any imminent and substantial endangerment to the public health, welfare, or the environment in California, whether related to the noncompliance addressed in this Settlement Agreement or otherwise.
  - (v) Any criminal liability.
  - (vi) Any claim(s) of any officer or agency of the United States or California, other than CARB.
- (c) In any subsequent administrative or judicial proceeding initiated by CARB for injunctive relief, civil penalties, or other appropriate relief relating to enforcement of the Settlement Agreement, CCA Co. VII, L.L.C. shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by CARB in the subsequent proceeding were or should have been brought in the instant case.
- (d) This Settlement Agreement does not limit or affect the rights of CCA Co. VII, L.L.C. or of CARB against any third parties not covered by this Settlement Agreement, nor does it limit the rights of third parties not covered by this Settlement Agreement against CCA Co. VII, L.L.C., except as otherwise provided by law. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Settlement Agreement.
- (e) This Settlement Agreement is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. CCA Co. VII, L.L.C. is responsible for achieving and maintaining compliance with all applicable federal, State, and local laws, regulations, and permits; CCA Co. VII, L.L.C. compliance with this Settlement Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations, or permits. CARB does not, by its execution of this Settlement Agreement, warrant or aver in any manner that CCA Co. VII, L.L.C. compliance with any aspect of this Settlement Agreement will result in compliance with any provisions of federal, State, or local laws, regulations, or permits.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Signature: /S/

Name: Ellen M. Peter

Title: Chief Counsel

Date: December 20, 2024

**CCA Co. VII, L.L.C. via Legal Representation by Power of Attorney**

Signature: /S/

Name: Michael Romey

Title: Attorney

Date: December 16, 2024