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VIA EMAIL AND FEDEX

Scott A. Barshay, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064

Re: Crown Castle, Inc.

Dear Scott:

We write on behalf of our clients Theodore B. Miller, Jr. and Boots Capital Management, LLC ("Boots"), a major stockholder of Crown Castle, Inc. ("CCI" or the "Company"), on a matter of mutual concern.

The CCI Board has been presented with an unusual situation. Elliott launched a proxy campaign in July 2020, and by December 2020 the Board announced the addition of three new directors. Crown Castle shares traded in that period at around $170. On November 27, 2023, with Crown Castle shares trading at around $103, Elliott launched its second proxy campaign. Within 17 business days, the Board entered into the December 19, 2023 "Cooperation Agreement" with Elliott, which included a range of substantial governance rights, Board committee deals, side agreements and the appointment of an Elliott senior portfolio manager as a director. Prior to the Cooperation Agreement, Boots reached out to the Company repeatedly, however, the Board did not respond until after the Cooperation Agreement with Elliott was executed.

The resumption of Elliott's public activist pressure has required the CCI Board to balance any responsive measures against the threat posed by the activist. In our view, the Cooperation Agreement (which could have been called a Domination Agreement), has struck the wrong balance. It has extended Elliott's influence at the Company from substantial power to almost complete dominance, all in return for Elliott agreeing to vote for the incumbent Board members. Moreover, at the time the Cooperation Agreement was entered into, Elliott was a related party to CCI as a result of its representation on the Board, its share ownership, and its publicly assertive

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behavior.[1] Despite that, according to public record, no Special Committee was designated to negotiate the agreement, and no approval by disinterested shareholders was sought.

Standstill and cooperation agreements are common. They are often sensible approaches to resolving conflicts with activist investors.[2] Under these circumstances, the Cooperation Agreement should have been negotiated in a fair process and should have been put to a vote by disinterested CCI shareholders. By failing to do that, the Board has permitted Elliott to dominate CCI, including the possible sale of the Fiber business and the selection of the next CEO.

The Board has now twice appeased a single shareholder by giving Elliott remarkable power and influence over the governance of the Company—power that far outstrips its voting rights as a stockholder and its economic interest in the Company—all to preserve incumbent Board seats and avoid a proxy contest with Elliott. As Mr. Bartolo recently wrote, "[i]n total, 7 of our [12] directors have been appointed to the Board since 2020," the year when Elliott launched its first campaign. (R. Bartolo Ltr. to T. Miller (Feb. 2, 2024).) At least six of the twelve directors—half of the Board—have either been selected by Elliott or with its direct input and consent. The Cooperation Agreement does more than give Elliott more Board seats. The Board and Elliott also agreed, among other things, that:

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[1] *See, e.g.*, *Basho Techs. Holdco B, LLC v. Georgetown Basho Inv'rs, LLC*, C.A. No. 11802-VCL, 2018 WL 3326693, at *27 (Del. Ch. July 6, 2018) ("Broader indicia of effective control also play a role in evaluating whether a defendant exercised actual control over a decision. Examples of broader indicia include ownership of a significant equity stake (albeit less than a majority), the right to designate directors (albeit less than a majority), decisional rules in governing documents that enhance the power of minority stockholder or board-level position, and the ability to exercise outsized influence in the board room, such as through high-status roles like CEO, Chairman, or founder.") (footnotes omitted).

[2] Although some have been criticized for terms that favor activists at the expense of other shareholders. *See, e.g.*, Lindsey Pelucacci, *John C. Coffee Jr. Discusses Agency Costs of Activism*, Fordham Law News (Nov. 15, 2017), https://news.law.fordham.edu/blog/2017/11/15/john-c-coffee-jr-discusses-agency-costs-activism/ (quoting Coffee, "Backroom political deals are replacing shareholder elections, and the result is the opposite of democratic"); John C. Coffee Jr., Robert J. Jackson Jr., Joshua R. Mitts, and Robert E. Bishop, *Activist Directors and Agency Costs: What Happens When an Activist Director Goes on the Board*, 104 Cornell L. Rev. 381 (2019), https://scholarship.law.cornell.edu/clr/vol104/iss2/3.

- the Cooperation Agreement would dictate the composition of the Board and number of directors;
- Elliott would vote for the Company's slate of directors and in turn, the Company would recommend Elliott directors as a part of the director slate at the 2024 Annual Meeting;
- the Board would install an interim CEO-director endorsed by Elliott, Tony Melone;
- the Board would create a new "Fiber Review Committee" to review "strategic and operational alternatives" for the Fiber business, with three-fifths of the committee comprised of directors appointed in response to Elliott's proxy campaigns (including an Elliott senior portfolio manager), and a fourth seat filled by the Elliott-endorsed interim CEO; and
- the Board would create a new "CEO Search Committee" to identify and hire a new CEO, with one-half of the committee comprised of directors appointed in response to Elliott's proxy campaigns (including an Elliott senior portfolio manager).

The terms of this deal with Elliott present real concerns. The Cooperation Agreement is a defensive measure that was unreasonable and disproportionate to the threat posed by Elliott. Given the lack of progress on Fiber and the overall CCI business deterioration between Elliott's 2020 and 2023 campaigns, the Board was vulnerable. By committing Elliott to vote for the Company's slate of directors, the Cooperation Agreement provided the Board security at the cost of dominance by Elliott and at the expense of the voting and participation rights of all other CCI stockholders months in advance of the Company's February 17th nomination deadline for directors.

Stockholders could view the dominance given to Elliott to be unreasonable and disproportionate.[3] That dominance includes de facto Board control; a de facto supermajority of

[3] *Cf. Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) ("Because of the omnipresent specter that a board may be acting primarily in its own interests, rather than those of the corporation and its shareholders, there is an enhanced duty which calls for judicial examination at the threshold before the protections of the business judgment rule may be conferred."); *Kellner v. AIM ImmunoTech Inc.*, C.A. No. 2023-0879-LWW, 2023 WL 9002424, at *17 (Del. Ch. Dec. 28, 2023) ("'Fundamentally, the standard to be applied is one of reasonableness.' First, the court 'review[s] whether the board faced a threat 'to an important corporate interest or to the achievement of a significant corporate benefit.' Second, the court

the Fiber Review Committee; two of four members of the CEO Search Committee; and an interim CEO who may be beholden to Elliott, who will no doubt have much input when it comes time to select a permanent CEO. The Board could have perceived no risk, stockholders might say, that could justify making such extreme concessions to Elliott without any CCI stockholder input.

Furthermore, the Company has ceded key governance decisions to a single, minority stockholder with outsized influence. The Company has offered stockholders no explanation for the Board's decision to give Elliott such dominance, nor has it reassured stockholders that Elliott is sufficiently disinterested to act with the best interests of all stockholders in mind.[4]

There is a straightforward solution to all this: promptly submit the Cooperation Agreement to a stockholder vote. Doing so would resolve any concerns about transparency and make clear that the Board will reflect the will of all stockholders, not just Elliott. Doing so is also the best way to forestall litigation, costly distraction, and potential delay of a Fiber sale, all of which would prevent the Company from realizing significant value for its stockholders.

We thus urge the Board to immediately submit the Cooperation Agreement to a stockholder vote. Until that vote, the Board should refrain from naming a permanent CEO or committing to any transaction overseen by the Fiber Review Committee. This is the best way to clear a path for a timely Fiber sale and a properly functioning Board.

'review[s] whether the board's response to the threat was reasonable in relation to the threat posed and was not preclusive or coercive to the stockholder franchise.' The defendants bear the burden of proof.") (internal citations omitted); *Paragon Techs., Inc. v. Cryan*, C.A. No. 2023-1013-LWW, 2023 WL 8269200, at *17 (Del. Ch. Nov. 30, 2023) ("The court must consider whether the Board's actions were 'draconian, by being either preclusive or coercive,' and fall 'within a range of reasonable responses.'") (internal citations omitted).

[4] Further, we understand that Elliott has expressed interest in financing the contemplated sale of the Fiber business. In that eventuality, because that the Board has given Elliott dominance over the Fiber Review Committee, a future Fiber transaction in which Elliott participates will be subject to higher scrutiny under Delaware law. *See, e.g.*, *In re Viacom Inc. S'holders Litig.*, C.A. No. 2019-0948-JRS, 2020 WL 7711128, at *1 (Del. Ch. Dec. 30, 2020) ("Indeed, when a controlling stockholder engages in self-dealing, she should assume, if challenged, that the court will perform its "*ex post* review" function with vigor, and that it will generally allow public stockholders who might challenge the self-dealing transaction an opportunity to proceed beyond the pleadings to test the fairness of the transaction.") This enhanced scrutiny, and attendant litigation, risks delaying execution of a Fiber deal.

Time is of the essence here. The deadline for stockholder nominations is quickly approaching and stockholders deserve to know if the Company plans to hold a vote prior to the deadline.

* * *

We appreciate the Board's attention to this important matter. Our client is available to discuss this and any other matter of stockholder concern at the Board's convenience.

Very truly yours,

Stephen Fraidin /JAH

Stephen Fraidin

SF/jah

cc: Jonathan M. Watkins, Esq.
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