

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THEODORE B. MILLER, JR. and  
BOOTS CAPITAL MANAGEMENT, LLC,

Plaintiffs,

V.

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 : C.A. No. \_\_\_\_\_

P. ROBERT BARTOLO, CINDY CHRISTY,  
ARI Q. FITZGERALD, ANDREA J.  
GOLDSMITH, KEVIN T. KABAT,  
ANTHONY J. MELONE, TAMMY K. JONES,  
KEVIN A. STEPHENS, MATTHEW  
THORNTON, III, BRADLEY E. SINGER,  
CROWN CASTLE INC., ELLIOTT  
INVESTMENT MANAGEMENT L.P.,  
ELLIOTT ASSOCIATES, L.P., ELLIOTT  
INTERNATIONAL, L.P., JASON GENRICH,  
and SUNIT PATEL

Defendants.

## VERIFIED COMPLAINT

Plaintiffs Theodore B. Miller, Jr. (“Mr. Miller”) and Boots Capital Management, LLC (“Boots,” and together with Mr. Miller, “Plaintiffs”), by and through their undersigned counsel, make the allegations below against Defendants P. Robert Bartolo, Cindy Christy, Ari Q. Fitzgerald, Andrea J. Goldsmith, Kevin T. Kabat, Anthony J. Melone, Tammy K. Jones, Kevin A. Stephens, and Matthew Thornton, III (collectively, the “Director Defendants”), Bradley E. Singer, Crown Castle Inc. (“Crown Castle” or the “Company”), Elliott Investment Management,

L.P., Elliott Associates, L.P., Elliott International, L.P. (collectively, “Elliott”), Jason Genrich, and Sunit Patel, (together, the “Elliott Directors,” and together with the Director Defendants, the Company, and Elliott, “Defendants”). The allegations of this Verified Complaint are based on the personal knowledge of Plaintiffs as to themselves and on information and belief (including the investigation of counsel and review of publicly available information) as to all other matters.

### **NATURE OF THE ACTION**

1. Mr. Miller, the co-founder of Crown Castle, and his investment vehicle Boots bring this action to protect the stockholder franchise and free the Company and its Board of Directors (the “Board”) from the overreaching and preclusive effects of a letter agreement (the “Cooperation Agreement,” Ex. A hereto), an unreasonable and disproportionate defensive measure, the Director Defendants entered into in December 2023 after activist investor Elliott threatened to remove them from the Board.

2. Crown Castle owns, operates, and leases more than 40,000 cell towers, 115,000 small cells on air or under contract, and about 85,000 route miles of fiber supporting small cells and fiber solutions across every major U.S. market. For several years, industry commentators and stockholders have been urging Crown Castle to consider strategic alternatives, including to create a pure play U.S. cell

tower company, a move that all agree would boost stockholder value and save about \$1.2 billion in annual capital expenditure (“CapEx”) for the Company.

3. In 2020, Elliott launched a proxy contest to elect nominees to the Board in a campaign styled “Reclaiming the Crown.” The central premise was for the Company to improve its Fiber strategy, including recalibrating Fiber CapEx, ensuring the Fiber business had proper leadership, and refreshing the Board with directors that have fiber-specific experience. The Company ultimately acceded to Elliott’s demands, agreeing to refresh its Board and adding three new directors.

4. Over the ensuing three years, the Company failed to deliver on an improved Fiber strategy as promised. That followed a decade of failed leadership and improvident strategy at the Board level, including the sale of international assets resulting in potentially billions of dollars of opportunity loss for stockholders. The Company’s inexplicable inaction on Fiber has resulted in persistent lost value for stockholders and sunk costs. Not surprisingly, the Company’s stock price languished over this period, dropping from around \$170 per share at the end of Elliott’s 2020 campaign to approximately \$90 per share by mid-2023.

5. Amid these struggles, in 2023, Mr. Miller—who co-founded Crown Castle in 1994 and has decades of experience in the communications sector—concluded that it was time for the Company to take action. Mr. Miller formed Boots, which crafted an extensively researched, concrete proposal to achieve the long-held

goal of a Fiber spin off by year-end 2024. “Project Boots” articulated a comprehensive Fiber plan and pure play Tower strategy to reset the Company’s culture, and offered to bring in outside voices with the necessary expertise and capability to implement the proposed plan.

6. In August 2023, Boots reached out to Crown Castle’s Board to discuss its proposal. The Board, however, did not respond.

7. Following Boots’ outreach to the Board, Elliott launched another proxy contest. On November 27, 2023, Elliott sent a demand letter to the Company, commencing a short-lived campaign under the banner “Restoring the Castle.” Despite the new name and packaging, Elliott’s proposal was much like Boots’, calling for a “strategic and operating review of [the] fiber business” in contemplation of a spin off Fiber sale. Yet, Elliott’s proposal lacked the benefit of the detailed research, data, and advisors collated by Boots to get the job done.

8. Even so, the Company quickly folded. On December 7, 2023, the Company announced the CEO was stepping down and agreed to appoint a new interim CEO Anthony J. Melone. On December 19, 2023—barely three weeks from the start of the campaign—the Company announced a settlement with Elliott. The key component of the settlement was not, however, an improved strategy for the Fiber business. Rather, it was a Cooperation Agreement between the Company and Elliott that conferred valuable concessions and control upon Elliott.

9. The Cooperation Agreement includes uncommon, noncommercial terms that raise significant questions about the incentives and loyalties of the Board and Elliott, including agreements creating a new “Fiber Review Committee” and “CEO Search Committee,” locking in the committees’ composition, and committing to Elliott representation on both. The Cooperation Agreement does not require Elliott to maintain a minimum ownership stake in the Company to keep these positions. The Cooperation Agreement also purports to set the size of the Company’s Board, and requires the Board to recommend that shareholders approve particular nominees (including the Elliott Directors) at the upcoming 2024 Annual Meeting.

10. The Board, in turn, received valuable benefits of its own under the Cooperation Agreement in the form of Elliott agreeing to suspend its proxy campaign and to rubber stamp the election of all the incumbent directors. In essence, the Board struck a grand bargain with Elliott: Elliott gets influence over key decisions (including CEO selection and Fiber strategy), and the incumbent directors get to keep their jobs.

11. In their haste to lock in a deal and establish a frozen board, the Board agreed to the Cooperation Agreement a month before the nomination window for the 2024 Annual Meeting opened and before it had an opportunity to hear alternative

proposals from any other stockholders. As it stands, there is no mechanism in place for stockholders to object to this unusual arrangement.

12. The Board did not respond to Boots’ multiple attempted outreaches between August and December 2023 until the day after it entered into the Cooperation Agreement with Elliott.

13. On December 27, 2023, Mr. Miller and the Boots team met with Chairman Bartolo and interim CEO Tony Melone to share Boots’ specific proposal to spin off Fiber, use the proceeds to pay down Company debt and fund a share buyback, and return the Company to a pure-play cell phone tower business, realizing billions in stockholder value. On January 30, 2024, Boots presented its plan to the full Board. On February 13, 2024, Mr. Miller submitted a formal notice of nomination under the Company’s Bylaws (the “Nomination Notice”) nominating Mr. Miller, Charles Campbell Green III, Tripp H. Rice, and David P. Wheeler (the “Boots Director Candidates”) for election to the Company’s Board at the 2024 Annual Meeting.

14. The Board’s apparent engagement, however, has been exposed as a mere charade. On February 14, 2024, through its counsel, Boots privately raised its concerns about how stockholder perception of the Board’s sweetheart deal for Elliott could derail a timely Fiber sale and result in substantial losses to the Company’s stockholders—an outcome that none of the parties want. In response, the Board,

also through counsel, stated definitively that it would not recommend Boots' director candidates for election to the Board.

15. Through the Cooperation Agreement and the conduct described here, the Director Defendants have acted unreasonably to entrench themselves in office, and have taken an unreasonable and disproportionate defensive measure in response to no genuine threat to any corporate interest or benefit. As a result of the Cooperation Agreement, critical Company decisions would be subject to the whims of Elliott and the artificial constraints imposed by a legally untenable Cooperation Agreement—including selection of the Company's CEO and adoption of a new course on Fiber strategy. The affairs of Delaware corporations, however, must be managed by Boards of Directors, not backroom deals. Should the Company be permitted to press forward, while the validity of the Cooperation Agreement stands in limbo, stockholders face the threat of injury that cannot be quantified or unscrambled.

16. Mr. Miller thus seeks a declaratory judgment that key provisions of the Cooperation Agreement are invalid and unenforceable under Delaware law, a determination that the Director Defendants breached their fiduciary duties to the Company and its stockholders by entering into this preclusive Cooperation Agreement, and an injunction or other appropriate equitable relief preventing the enforcement of the Cooperation Agreement's preclusive terms.

## **JURISDICTION AND VENUE**

17. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341 and 8 *Del. C.* § 111.

18. As a Delaware corporation, this Court has personal jurisdiction over Crown Castle.

19. As directors of a Delaware corporation, the Director Defendants and the Elliott Directors have consented to the jurisdiction of this Court pursuant to 10 *Del. C.* § 3114.

20. As Delaware entities and under Section 24 of the Cooperation Agreement, this Court has personal jurisdiction over Elliott.

21. Further, this Court has personal jurisdiction over Elliot pursuant to 6 *Del. C.* § 2708(b) because Elliott consented to the jurisdiction of the courts of Delaware in the Cooperation Agreement, and the Cooperation Agreement provides for Delaware choice of law.

## **PARTIES**

22. Plaintiff Theodore B. Miller, Jr. is an individual resident of the State of Texas. At all times relevant, Mr. Miller has been a record holder of 100 shares of common stock of the Company; and has beneficial ownership of 718,716.958 shares of common stock. Together with his affiliates, Mr. Miller has approximately \$100



million of economic exposure in the common stock of the Company. Mr. Miller founded the Company in 1994 and served as its CEO until 2002.

23. Plaintiff Boots Capital Management, LLC is a limited liability corporation incorporated in the State of Delaware, with its principal place of business in the State of Texas. Boots, together with affiliates, has beneficial ownership of 784,009 shares of the Company's common stock.

24. Defendant Crown Castle is a real estate investment trust, incorporated in the State of Delaware, with its principal place of business in the State of Texas. Crown Castle stock trades on the New York Stock Exchange under the ticker symbol "CCI." The Company owns, operates, and leases shared communications infrastructure throughout the United States, including more than 40,000 towers and other structures; about 115,000 small cells on air or under contract; and around 85,000 route miles of fiber supporting mostly small cells and fiber solutions.

25. Defendant P. Robert Bartolo is an individual resident of Nevada. He was appointed as a director for the Company in February 2014, and has served as the Company's Board Chair since May 2022. He holds 35,117 shares of common stock, representing .008 percent of common stock outstanding.

26. Defendant Cindy Christy is an individual resident of Florida and has served as a director of the Company since August 2007.

27. Defendant Ari Q. Fitzgerald is an individual resident of Maryland and has served as a director of the Company since August 2002.

28. Defendant Jason Genrich is an individual resident of Florida and has served as a director of the Company since January 2024. Genrich was appointed to the Board under the Cooperation Agreement. Genrich has worked at Elliott since 2014, and was promoted to Partner in February 2024.

29. Defendant Andrea J. Goldsmith is an individual resident of California and has served as a director of the Company since February 2018.

30. Defendant Tammy K. Jones is an individual resident of New Jersey and has served as a director of the Company since November 2020. Jones was appointed to the Board following Elliott's 2020 proxy campaign.

31. Defendant Kevin T. Kabat is an individual resident of Florida and has served as a director of the Company since August 2023.

32. Defendant Anthony J. Melone is an individual resident of New Jersey and has served as a director of the Company since May 2015. On January 6, 2024, Melone was approved by Elliott to be appointed by the Board as Interim Chief Executive Officer.

33. Defendant Sunit Patel is an individual resident of Colorado and has served as a director of the Company since January 2024. Patel was appointed to the Board under the Cooperation Agreement.

34. Defendant Kevin A. Stephens is an individual resident of Texas and has served as a director of the Company since December 2020. Stephens was appointed to the Board following Elliott's 2020 proxy campaign.

35. Defendant Matthew Thornton, III is an individual resident of Tennessee and has served as a director of the Company since November 2020. Thornton was appointed to the Board following Elliott's 2020 proxy campaign.

36. Defendant Bradley E. Singer is an individual resident of California and has served as a director of the Company since January 2024. Singer was appointed to the Board following Elliott's 2023 proxy campaign.<sup>1</sup>

37. Defendants Bartolo, Christy, Fitzgerald, Genrich, Goldsmith, Jones, Kabat, Melone, Patel, Singer, Stephens, and Thornton comprise the entirety of the Company's incumbent Board.

38. Through their positions as directors and officers of Crown Castle and their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants collectively have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of here.

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<sup>1</sup> Plaintiffs do not seek to impose liability against Singer, but name him as a party to ensure that Plaintiffs can obtain complete relief as further requested below.

39. Each Director Defendant is sued individually in his or her capacity as a director and/or officer of Crown Castle.

40. Defendant Elliott Associates, L.P. is a limited partnership incorporated in the State of Delaware with a principal place of business in the State of Florida, and is a party to the Cooperation Agreement with Crown Castle.

41. Defendant Elliott International, L.P. is a limited partnership incorporated in the Cayman Islands with a principal place of business in the State of Florida, and is a party to the Cooperation Agreement with Crown Castle.

42. Defendant Elliott Investment Management L.P. is a limited partnership is a limited partnership incorporated in the State of Delaware with a principal place of business in the State of Florida, and is a party to the Cooperation Agreement with Crown Castle.

43. Elliott is well-known as one of the largest activist funds in the world.

### **FACTUAL BACKGROUND**

#### **A. Crown Castle's Fortunes Depend on Successful Redeployment of Its Fiber Assets.**

44. Crown Castle owns, operates and leases shared communications infrastructure that is geographically dispersed throughout the U.S., including (1) more than 40,000 towers and other structures, such as rooftops, (2) about 115,000 small cells on air or under contract and (3) around 85,000 route miles of fiber primarily supporting small cells and fiber solutions. The Company's operating

segments consist of (1) Towers and (2) Fiber, which includes both small cells and fiber solutions. The Company's core business is providing access, including space or capacity, to its shared communications infrastructure via long-term contracts in various forms, including lease, license, sublease and service agreements.

45. Over the last two decades, Crown Castle has assembled a leading portfolio of towers, predominately through acquisitions from large wireless carriers or their predecessors. More recently, it has extended its communications infrastructure presence by investing significantly in acquiring Fiber assets.

46. Crown Castle's Fiber segment consists of small cells and fiber solutions. The Company's small cells offload data traffic from towers and bolster tenants' network capacity where data demand is the greatest and are typically attached to public right-of-way infrastructure, including utility poles and street lights. The Company's Fiber customers generally consist of large wireless carriers and organizations with high-bandwidth and multi-location demands, such as enterprise (including healthcare and financial), wholesale, government and education institutions. Its three largest tenants are T-Mobile, AT&T, and Verizon Wireless.

47. Over the last decade, the Company has allocated a significant amount of capital to its Fiber business. Its Fiber segment represented 31% and 33% of its site revenues in 2021 and 2022. The business model for the Company's Fiber

operations, moreover, contains differences from the business model for its Towers operations, including those relating to tenant base, competition, contract terms, upfront capital requirements, deployment and ownership of network assets, government regulations, growth rates, and applicable laws. Accordingly, as the Company itself has acknowledged, if it does not successfully operate its Fiber business model or identify and manage Fiber-related operational risks, its overall operational results may suffer.

48. Given the substantial and growing importance of the Company's stewardship of its Fiber assets to its overall financial health, the topic has been a prime focus for stockholders, analysts, and the broader investing community. For several years, industry commentators and stockholders have been urging the Company to consider strategic alternatives, including to create a "pure play" U.S. cell tower company, a move that would swell stockholder value and save at least \$1 billion in annual CapEx for the Company.

**B. Elliott Launches a Proxy Campaign in 2020 Premised on Improving Crown Castle's Fiber Business.**

49. In July 2020, Elliott launched a proxy contest to elect nominees to the Company's Board in a campaign styled "Reclaiming the Crown." At the time, Elliott owned an economic interest of \$1 billion in the Company.

50. The central premise of Elliott's 2020 campaign was for the Company to improve its Fiber strategy. Elliott believed that the Company had underperformed

its potential and compared to its peer companies by a wide margin for more than a decade, and that its underperformance was directly attributable to its Fiber strategy. In Elliott's view, Fiber had yielded disappointing returns despite \$16 billion of investment.

51. In its campaign, Elliott recommended a series of initiatives to improve the Company's performance, including (i) refocusing its highest return opportunities and targeting a Fiber CapEx revenue ROI of at least 40%; (ii) incorporating return-on-invested-capital to appropriately align allocation decisions with compensation; (iii) increasing free cash flow by 35% by decreasing discretionary Fiber CapEx by \$600 million per year; and (iv) addressing, in Elliott's words, the Company's "extraordinarily long-tenured Board to improve oversight of its capital allocation approach and ensure Crown Castle's underperforming Fiber business has the appropriate management skillset to deliver improved results."

52. In response to Elliott's campaign, the Company made several leadership changes, purportedly to improve the Company's management and Fiber strategy.

53. In October 2020, the Company announced that it was adding to its Board Defendants Jones and Thornton, whom the Company described as "two high caliber individuals who possess the right mix of skills, diversity and backgrounds and experience to help drive continued value creation for all shareholders."

54. In December 2020, the Company announced the new appointment of Defendant Stephens. In announcing Stephens' appointment, the Company emphasized the contribution he would make to Fiber strategy, declaring that "Crown Castle will benefit greatly from Kevin's extensive experience in the fiber and telecommunications industry as we continue to scale our fiber operations and invest in assets that will help support the development of nationwide 5G networks."

**C. The Company Fails to Deliver on an Improved Fiber Strategy, Resulting in Lost Value for Stockholders.**

55. Despite the lofty promises of Elliott's 2020 campaign, and the three new directors brought on following Elliott's demands, the Company has failed to deliver on an improved Fiber strategy.

56. The Company's stock price largely tells the tale. In July 2020, when Elliott entered the fray, the Company's stock hovered around \$170 per share, with a market capitalization exceeding \$70 billion. By October 19, 2023, the stock price had plummeted to a close of \$85.89 per share, nearly a 50% decline, with a market capitalization of only around \$37 billion. In other words, post Elliott's entry, there was nearly a 50% reduction in stockholder value.

57. Meanwhile, growth in the Company's Fiber segment has been almost non-existent. A comparison with the Company's Towers segment is instructive. From 2020 to 2022, Towers rental revenues increased by almost 24%, rental gross margin increased almost 23%, and operating profit increased over 29%, and



operating profit increased almost 36%. By contrast, over the same period, Fiber revenues increased by a paltry 7.8% (only 3% from 2021 to 2022), gross margin by 9.5% (only 3% from 2021 to 2022), and total segment operating profit has *declined* by 18.5%. These results are a far cry from the “refined fiber investment strategy,” “greater investment returns,” “higher cash flow,” and “more value for Crown Castle and its shareholders” Elliott touted in 2020.

58. Ultimately, Elliott’s 2020 “Reclaiming the Crown” campaign failed to achieve many of its proposed benchmarks. Contrary to the lofty goals set by Elliott in 2020, Fiber CapEx has not produced a return on investment of at least 40%. Nor has the company reduced yearly Fiber discretionary CapEx from \$1.2 billion a year to \$600 million. And the Company failed to incorporate return on invested capital metrics into compensation considerations, to align capital allocation with compensation—a change Elliott demanded in both 2020 and 2023. As a result of these failures, stockholders have paid the price.

**D. Mr. Miller Launches “Project Boots” to Right the Ship On Fiber and Maximize Value for All Stockholders.**

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59. In 2023, Mr. Miller concluded that it was time to take action. Mr. Miller co-founded Crown Castle in 1994 and served as the Company’s Chief Executive Officer from 1994 until 2002 and Chairman from 1999 to 2002. Mr. Miller has extensive executive, financial, and governance experience as a significant stockholder, executive officer and director of both start-up companies

and large public companies, including, on top of his prior role at Crown Castle, as founder of Intercomp Technologies, LLC, a privately held business process outsourcing company with operations throughout Eurasia, Visual Intelligence, L.P., a privately held imaging technologies company, and 4M HR Logistics, LLC, a government and defense contractor and aviation staffing business, and as a director for Airgas during its business combination with AirLiquide, and for Affiliated Computer Services Inc. during its acquisition by Xerox. Mr. Miller understands Crown Castle's business, cares deeply about unlocking the Company's potential and maximizing value for stockholders, and, through his extensive experience, knows how to achieve results.

60. Mr. Miller formed Boots to comprehensively analyze the Company and test commonsense investment theses with the help of a full advisory team. Over five months, and using approximately \$5 million of Mr. Miller's own funds, and with the advice of expert outside advisors, Boots crafted an extensively researched, concrete proposal to improve the Company's fortunes and benefit stockholders. The proposal, called "Project Boots," lays out a plan for the Company to complete a Fiber spin off transaction by year-end 2024.

61. The "Project Boots" proposal sets forth a Fiber plan and "pure play" tower strategy to reset the Company's culture and identifies new voices with the necessary expertise and capability to help implement the plan.

62. To develop its proposal, Boots conducted an in-depth Fiber strategic review. Boots identified 25 potential buyers and financing sources, which are under binding NDAs.

63. Boots further quantified the potential benefits of a speedy Fiber sale for stockholders. By selling the Fiber business, the Company could focus on its tower leasing business, with high recurring revenues, low CapEx, and earnings before interest, taxes, depreciation, and amortization (“EBITDA”) margins typically exceeding 65 percent. This transition would liberate a great business from a good business, resulting in the Company trading at 25 times EBITDA, compared to its current multiple of 18 times EBITDA with the current hybrid portfolio.

64. Selling the Fiber business would correct \$20 billion in capital misallocation, driven by a combination of acquisitions and annual CapEx exceeding \$1 billion per year, which had not exceeded weighted average cost of capital and created an unsustainable dividend.

65. In the past decade, the Company’s fiber transactions mark the beginning of a period when the Company’s value fell behind its peers:<sup>2</sup>

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<sup>2</sup> Crown Castle Inc., Schedule 14A (DFAN14A) (Feb. 20, 2024) (comparing stock value between the Company and two peer companies, SBA Communications Corp. and American Tower Corp., from 2014 to 2023).



66. In short, Boots proposes that the Company sell off Fiber, pay off debt, buy back shares, and return the Company to its core Towerco. Boots’ proposal would lead to a positive cash flow and a sustainable dividend.

67. Using the head start offered by Boots, the Company could significantly reduce the time needed to execute a Fiber spin off transaction. By laying the groundwork for an expedited transaction, the Boots proposal provides another benefit to stockholders—if the transaction is completed in 2024, the Company can capture an approximately \$1 billion tax benefit that will otherwise expire. Yet, the Company must complete the Fiber deal soon to achieve the full benefit.

#### **E. The Board Rebuffs Boots’ Outreach and Declines to Engage on Boots’ Proposal.**

68. Mr. Miller and the Boots team were eager to share their proposal to unlock significant stockholder value with the Company’s Board. Starting in August

2023, Boots began reaching out to the Company's Board to discuss its proposal, including multiple emails and voicemails to Chairman Bartolo. The Board, however, assiduously rebuffed Boots' outreach at the time.

69. On August 15, 2023, Mr. Miller called Board Chairman Bartolo to discuss how Boots could work with the Company to formulate a path forward. Bartolo declined the call, and Mr. Miller left a voicemail message and requested a meeting.

70. That same day, Mr. Miller also emailed Bartolo to follow up on the call and meeting request. Bartolo did not respond.

71. On December 15, 2023, Mr. Miller again called Bartolo to discuss Boots' proposal. Bartolo again declined the call, so Plaintiffs left another voicemail message. As before, Mr. Miller sent a follow-up email after his voice message that day, to which Bartolo did not respond.

72. On December 18, 2023, the day before the Company signed the Cooperation Agreement with Elliott, Mr. Miller emailed Bartolo and again requested a meeting. Once again, Chairman Bartolo did not respond.

73. Over this period, Boots also solicited feedback from significant Company stockholders on its research, findings, and proposal to improve the Company's fortunes. This outreach—and the Boots proposal—was met with a widespread and positive response from stockholders.

**F. Elliott Launches a Second Proxy Contest.**

74. By late November 2023, Elliott held a \$2 billion investment in Crown Castle, and thus stood to benefit from the value-maximizing proposal developed by Mr. Miller and Boots. It was then, however, that Elliott surprisingly launched its second proxy contest in three years against the Company. It is worth noting that at this time, Boots had not yet discussed its proposal for Crown Castle with Elliott.

75. On November 27, 2023, Elliott sent a demand letter to the Company, launching a campaign styled “Restoring the Castle.” Despite successfully lobbying the Board to add three directors in 2020, Elliott asserted that the Company had “disregarded our data-driven analysis, and our recommended changes were neither made nor taken seriously.” According to Elliott, Crown Castle “suffer[ed] from a profound lack of oversight by the Board,” which “contributed to its irresponsible stewardship and flawed financial policy.”

76. As in its 2020 campaign, Elliott outlined proposed steps for the Company, including “comprehensive leadership change” and a “strategic and operating review” of the Company’s Fiber business. Echoing Boots’ proposal, Elliott stated that “[a]ll aspects of the fiber strategy must be re-evaluated, including whether Crown Castle is the best owner of its fiber business.”

77. Aside from generically calling for a review of Fiber strategy, however, Elliott’s demand lacked details. That is not surprising: Unlike Mr. Miller and Boots,

Elliott is an activist investor. It lacks relevant industry experience and knowledge. It has not done the considerable legwork already undertaken by Boots—including millions of dollars in investment, and detailed research, data, and advisory work—to execute on a plan and get the job done. Elliott’s lack of qualifications is evident from its record following the 2020 proxy campaign. There too, Elliott called for an improved Fiber strategy. Despite three new directors, none materialized.

78. On November 28, 2023, at the request of Elliot Managing Partner Jesse Cohn, two representatives of Boots spoke with Jason Genrich, a partner at Elliott, who would be selected as a Company director weeks later, and is a defendant in this lawsuit. In this discussion, Boots’ representatives explained that Boots had developed a detailed, two-year business plan for Crown Castle, had completed an economic analysis, had a developed, step-by-step plan for a Fiber sale (including prospective buyers and financing sources) in hand, and had identified the right people to execute its plan, and requested that Genrich and Elliott refer to Boots any long-term oriented LPs that may have interest in Boots’ plan—without the desire to form a group between Boots and Elliott under Section 13(d)(3) of the Securities Exchange Act of 1934.

79. Despite having no concrete plan of its own, on November 29, 2023, Cohn informed Boots’ representatives that Elliott was unable to make any such

referrals and asked Boots’ representatives to “keep us posted.” Elliott then pressed forward on its own (short-lived) proxy campaign.

**G. The Board Quickly Capitulates to Elliott, Conferring Upon It Outsized Influence in Exchange for a Rubber Stamp on the Incumbent Directors at the 2024 Annual Meeting.**

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80. Despite giving the cold shoulder to Boots, the Board did not so much as put up a fight against Elliott’s 2023 campaign. Rather, the Board quickly folded, conferring upon Elliott all that it was asking for—and more.

81. On December 7, 2023, not even two weeks into Elliott’s campaign, the Company announced that Jay Brown would retire as Crown Castle’s President, Chief Executive Officer, and Director, effective January 16, 2024. The Company announced that Board member Anthony J. Melone would begin serving as interim CEO at that time, and the Board would conduct a search process to identify a permanent CEO.

82. On December 19, 2023, twelve days later, the Company announced that it had entered into an overall settlement with Elliott, embodied in a letter agreement between the Company and Elliott which imposed certain key constraints on the Company’s internal governance arrangements. The Cooperation Agreement, however, did not include a specific plan or path for optimizing value from the Company’s Fiber segment. Rather, it conferred valuable concessions and control



over material aspects of the Company’s internal governance arrangements and its strategy upon Elliott. These terms included:

83. ***Leadership Changes.*** The Company agreed to appoint two new members to the Board, Defendants Genrich (a Partner at Elliott) and Patel, and to include them on the Company’s slate for reelection at the 2024 Annual Meeting. With the addition of Defendants Genrich and Patel, nearly half of the Company’s Board consists of individuals appointed in connection with or in response to Elliott’s 2020 and 2023 proxy campaigns.

84. ***Maximum Board Size*** to expand the size of the Board while the Cooperation Agreement is in effect:

Until the appointment of the New CEO (as defined below), the size of the Board shall not exceed (i) twelve (12) directors prior to January 16, 2024 and (ii) eleven (11) directors from January 16, 2024 until the Expiration Date. If the New CEO is appointed to the Board, the size of the Board shall not exceed twelve (12) directors from the date of such appointment until the Expiration Date.

(Cooperation Agr. § 1.)

85. ***Fiber Review Committee.*** The Company agreed to create a new “Fiber Review Committee” of the Board. (Cooperation Agr. § 2.) The Fiber Review Committee is tasked with conducting a review of the Company’s Fiber business “with the goal of enhancing and unlocking shareholder value.” Importantly, a majority of the Fiber Review Committee—three of five members—is to be

comprised of directors appointed in response to Elliott’s campaigns—including Elliott Portfolio Manager Genrich.

86. ***CEO Search Committee.*** The Company also agreed to establish a “CEO Search Committee” to conduct a search to identify candidates in selecting the Company’s next Chief Executive Officer and President. (Cooperation Agr. § 3.) Once again, directors appointed in response to Elliot’s proxy campaigns were given a prominent role with two of four seats, including Genrich, with Jones serving as Chair. No charter for the CEO Search Committee has been published for stockholder review.

87. As a further concession to Elliott, the Cooperation Agreement explicitly freezes the membership of the Fiber Review Committee and CEO Search Committee. Pursuant to the Cooperation Agreement, any change to the membership of these committees constitutes a “material breach” that would “automatically” terminate Elliott’s standstill covenants. In practice, this means the Board cannot agree to add additional directors or change the composition of these committees prior to the 2024 Annual Meeting without Elliott’s consent.

88. The Cooperation Agreement also attaches an Elliott-approved Fiber Review Committee charter and stipulates that this charter “shall not be modified

prior to the end of the Cooperation Period<sup>3</sup>”—which is anticipated to last at least a year—“except with the written consent of [Elliott].” (Cooperation Agr. § 2.) The Fiber Review Committee Charter likewise states that “that any proposed change to this charter prior to the end of the Cooperation Period . . . will require Elliott’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).” (*Id.* Ex. A at 3.)

89. The Board and Committee composition provisions of the Cooperation Agreement directly infringe on rights granted to the Board in the Company’s bylaws, including: (i) Section 3.02 which states that “the number of Directors shall be fixed from time to time exclusively pursuant to a resolution adopted by the Board”; (ii) Section 3.09(c), which gives the Board a right to modify the powers and authority of any committee by a two-thirds vote of the full Board; and (ii) Sections 3.10(a)-(c), which authorize the Board to replace, remove, or designate alternate committee members. (Crown Castle Bylaws §§ 3.09(c), 3.10(a)-(c).)

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<sup>3</sup> The Cooperation Period is defined as “the period starting on the date of this Agreement until the Expiration Date.” (Cooperation Agr. § 13.) “‘Expiration Date’ means the later of (i) the date that is thirty (30) calendar days prior to the notice deadline under the Company’s By-laws for the nomination of non-proxy access director candidates for election to the Board at the Company’s 2025 Annual Meeting of Stockholders and (ii) 11:59 p.m., Eastern Time, on the date that is five (5) calendar days following the date on which the New Investor Director (or any Replacement New Director for the New Investor Director who is an employee of an Investor or an Affiliate of the Investors) ceases to serve on, or resigns from, the Board;” (*Id.* § 17(e).)

90. The Company further pledged to solicit proxies in support of the Elliott Directors at the upcoming 2024 Annual Meeting:

Company Recommendations at 2024 Annual Meeting. In connection with the 2024 Annual Meeting (and any adjournments or postponements thereof), the Company will recommend that the Company's shareholders vote in favor of the election of each of the Board's nominees, solicit proxies for each of the Board's nominees, and cause all Company common stock represented by proxies granted to it (or any of its officers, directors or representatives) to be voted in favor of each of the Board's nominees (in each case, including each of the New [Elliott] Directors).

(Cooperation Agr. § 8.)

91. In return, the incumbent members of the Board received benefits of their own under the Cooperation Agreement in the form of termination of the proxy contest, enhanced job security, and a rubberstamp on their elections from Elliott at the 2024 Annual Meeting.

92. Elliott agreed to (i) vote all of its shares in favor of the Director Defendants at the 2024 Annual Meeting and otherwise vote in accordance with the Board's recommendation on any other nomination or proposal not related to an "Extraordinary Transaction" (*e.g.*, a merger), (Cooperation Agr. § 9); (ii) suspend its proxy campaign and agree to an overall standstill, including with respect to nominations, solicitation of proxies, and proposals (*id.* § 13), and (iii) withdraw its

then pending demand to inspect the Company's books and records under Section 220 of the Delaware General Corporation Law (*id.* § 12).

93. In sum, the Board had struck a grand bargain with Elliott: Elliott would get significant influence over the Company's future direction and strategy—including seats at the table in selecting the next CEO and charting the Company's course on Fiber strategy; in turn, Elliott would lay down its arms, and the incumbent directors would keep their jobs.

94. Neither the Company nor Elliott explained why ceding control over key governance decisions to Elliott, a single minority stockholder, while effectively entrenching the incumbent Board, would benefit stockholders. Nor was any rationale provided for the Company's decision not to submit an arrangement of such great consequence for the Company's governance and strategic course to the stockholders for a vote.

95. Further, the terms of the Cooperation Agreement tie the Board's hands from considering alternatives. Elliott negotiated a fiduciary out under the Cooperation Agreement under certain circumstances for Genrich, but there is no fiduciary out for the incumbent directors or the Company. (Cooperation Agr. § 13 (“[N]othing in this Agreement shall prohibit or restrict the New Investor Director from exercising his or her rights and fiduciary duties as a director of the Company or restrict his or her discussions solely among other members of the Board and/or

management, advisors, representatives or agents of the Company; provided that any such discussions are limited to communications in his or her capacity as a director.”).) Further, because altering the membership of the Fiber Review Committee and CEO Search Committees is a *per se* “material breach” of the Cooperation Agreement, the Board cannot bring more stockholder voices to the table without Elliott’s consent.

96. The timing of the Cooperation Agreement also improperly shut other stockholder voices out ahead of the 2024 Annual Meeting. In their haste to lock in a deal and establish a frozen board, the Board agreed to the Cooperation Agreement a month before the nomination window for the 2024 Annual Meeting opened and before it had an opportunity to hear timely alternative proposals from any other stockholders. The Director Defendants had a duty to consider stockholder proposals made during the nomination window, which ran from January 18 to February 17, 2024, and to consider each proposal on its merits. The Defendant Directors breached their contractual obligations to stockholders by entering into the preclusive Cooperation Agreement foreclosing such consideration a month before the window opened.

97. Despite the major concessions to Elliott in the implications for the Company’s future course and all stockholders, the Board opted not to bring the Cooperation Agreement before the stockholders for a vote. Instead, when Boots’

counsel suggested that it do so as a cleansing measure into ensure that the agreement with Elliott reflect the will of its stockholders, the Board’s counsel flatly “*reject[ed] [Boots’] request to submit the Cooperation Agreement to a stockholder vote.*”<sup>4</sup>

**H. Following Entry Into the Cooperation Agreement, Elliott Divests of Its Stake in the Company.**

98. Notably absent from the Cooperation Agreement was any provision requiring Elliott to maintain a minimum ownership stake in the Company. The missing minimum ownership requirement is eye-opening, given the outsized influence conferred upon Elliott in the Cooperation Agreement. Effectively, Elliott could guide the Company’s future strategy and operations, and influence value for all of the Company’s public stockholders, while having zero skin in the game.

99. Before the ink was dry on the Cooperation Agreement, Elliott took quick advantage of this lacuna in the Agreement.

100. On November 27, 2023, when Elliott launched its “Restoring the Crown” campaign, Elliott claimed that it held “an investment of approximately \$2 billion in Crown Castle Inc.”<sup>5</sup>

101. On February 14, 2024, however, Elliott disclosed that, as of December 31, 2023 (*i.e.*, 12 days after entry into the Cooperation Agreement), Elliott held

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<sup>4</sup> Ltr. from S. Barshay to S. Fraidin at 2 (Feb. 20, 2024).

<sup>5</sup> Ltr. from J. Cohn & J. Genrich to Crown Castle Bd. of Dirs. at 1 (Nov. 28, 2023).

shares worth only \$141 million, a small fraction of the \$2 billion stake it claimed before the Cooperation Agreement.

102. By selling shares in December 2023, Elliott would have realized significant gains from the increase in the Company’s stock price during that period, which went from an average of \$96 per share in fall 2023 to an average of \$115 per share in December 2023.

103. When Boots pointed out this discrepancy, Elliott resorted to wordplay, insisting that it “remains one of the largest *investors* in the Company.”<sup>6</sup> What Elliott meant by that, however, is unclear because it did not—and could not—say it was one of the largest “stockholders.”

104. Elliott did not deny selling shares following the Cooperation Agreement, nor has it stated that its disclosures are inaccurate. Instead, an unnamed source told the press that Elliott “structure[d]” its position “using a mix of stock and derivatives, which are not fully reported out on regulatory filings.” Elliott declined to specify its current holdings.

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<sup>6</sup> Rohan Goswami, *Crown Castle Co-Founder Launches Proxy Fight After Elliott Rejection*, CNBC (Feb. 20, 2024), <https://www.cnbc.com/2024/02/20/crown-castle-cofounder-launches-proxy-fight-challenges-elliott-agreement.html>.



**I. Armed with the Cooperation Agreement, the Director Defendants Act to Block Boots and Its Director Candidates.**

105. Following its entry into the Cooperation Agreement, the Board, which had declined to engage with Boots for four months, suddenly appeared receptive to Boots' outreach.

106. On December 20, 2023—the day the Cooperation Agreement was announced—Mr. Miller again emailed Chairman Bartolo to request a meeting about Boots' proposal.

107. A day later, Chairman Bartolo responded for the first time since Boots began reaching out in August, and agreed to meet.

108. On December 27, 2023, Mr. Miller and Boots met with Chairman Bartolo and Interim CEO Melone to share Boots' specific proposal to spin off the Fiber business and realize billions on stockholder value.

109. On January 30, 2024, Boots presented its plan to the full Board.

110. The Company's Nominating Committee agreed to interview four Boots Director Candidates—Messrs. Miller, Green, Rice, and Wheeler—each of whom helped craft the Project Boots strategy and has relevant expertise to quickly execute that plan.

111. Mr. Miller founded the Company in 1994, served as its CEO from 1994 to 2002 and its corporate chair from 1999 to 2002, and has beneficial ownership of 784,716.958 shares of Company common stock. Among the other companies he

pioneered, Mr. Miller founded and served as Executive Chairman of Visual Intelligence LP, a privately held imaging technologies company focused on telecommunications infrastructure.

112. Likewise, Mr. Green, who owns beneficially 1,736 shares of Company common stock, has over 50 years of experience across asset management, commercial property development, oil and gas, and telecommunications. And Mr. Green further boasts a 26-year tenure in the tower industry, where he has overseen 23 tower sale/leaseback and carveout transactions across the globe.

113. Mr. Rice, who has interests in 784,009 shares of Company common stock owned beneficially, has more than 18 years in investing and financial roles across a range of businesses. Mr. Rice regularly evaluates telecommunication companies globally across the capital structure.

114. And Mr. Wheeler has extensive expertise in the media and telecommunications industries, on top of more than 45 years' experience in investment banking. In fact, Mr. Wheeler is another trailblazer in the tower industry, having advised on the first-ever significant European tower transaction for Castle Communications' purchase of the BBC Transmission Division.

115. By February 9, 2023, all interviews were complete. On February 13, 2024, Mr. Miller submitted a formal notice nominating Messrs. Miller, Green, Rice,

and Wheeler for election to the Company's Board at the 2024 Annual Meeting scheduled for May 22, 2024.

116. The Board's apparent engagement, however, has been exposed as a mere charade.

117. On February 14, 2024, through counsel, Boots privately raised its concerns about how stockholder perception of the Board's sweetheart deal for Elliott could derail a timely Fiber sale and result in substantial losses to the Company's stockholders—an outcome that none of the parties want.

118. Hours later, the Board's outside counsel left a voicemail with Boots' counsel: "the Nominating Governance Committee and the Board have both met and decided not to recommend any of the Boots candidates for election to the Board and to not include them on the Board." No reason for the rejection was provided.

119. On February 20, 2024, the Company issued a press release formally rejecting Boots' proposed slate of qualified directors ahead of the 2024 Annual Meeting, and otherwise stated that no stockholder action was necessary.<sup>7</sup>

120. The message was clear: the incumbent Board and Elliott are in complete charge of the Company and its strategic course. There is no room at the table for new voices.

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<sup>7</sup> Press Release, Crown Castle Inc., Crown Castle Reiterates Actions Underway to Enhance and Unlock Shareholder Value (Feb. 20, 2024).

**J. Through the Cooperation Agreement and Their Subsequent Actions, The Director Defendants Have Improperly and Unreasonably Sought To Entrench Themselves in Office.**

121. There can be no doubt that the Cooperation Agreement provided the incumbent Crown Castle directors with job security in the face of Elliott's 2023 proxy campaign. Elliott is an activist investor with ample resources and a long track record of running successful proxy contests that result in the replacement of directors and, sometimes, entire boards of directors.

122. Threatened by Elliott in 2020, the Board added directors.

123. Threatened by Elliott again in 2023, the Board capitulated entirely. It not only added two new directors (including an Elliott Partner), but also placed in their hands responsibility over the Company's future. That responsibility included selection of a new CEO and direction over the Fiber strategy, which is critical to the Company's success.

124. In return, the Director Defendants received a reprieve from a serious threat to their jobs: rather than seek to replace them Elliott agreed to rubber stamp their election at the 2024 Annual Meeting.

125. There is no conceivable business justification for the Director Defendants' actions. In launching its 2023 campaign, Elliott posed no threat to any important corporate interests or to the achievement of any significant corporate

benefit. The only threat it posed was to the incumbent directors' continued service on the Board.

126. Nor was the Board's response to Elliott—complete capitulation, including placing Elliott (not bound by any minimum share ownership requirement) in the driver's seat of key decisions—reasonable. Key decisions at the Company, including its direction on Fiber, should be made by an unencumbered Board of Directors, elected in free and fair elections by the Company's stockholders, consistent with the Board's fiduciary duties.

127. The Cooperation Agreement frustrates that ideal by, among other things, freezing the incumbent Board and CEO search and Fiber Review Committee composition. It also renders any departure from its Elliott-friendly requirements (even if mandated by the Board's fiduciary duties) a “material breach” that could unleash Elliott and its proxy contest machine once again.

128. The Director Defendants are evidently aware of the consequences of non-compliance: they have already shut the door to consideration of Boots' director candidates; and they have flatly rejected a Boots-crafted Fiber strategy that would undermine the authority of the Elliott-dominated Fiber Review Committee.

129. Additionally, the Cooperation Agreement unfairly corrupts the election process and tilts the election in favor of the incumbent Board's nominees at the upcoming 2024 Annual Meeting scheduled for May. The Cooperation Agreement

requires the Board to nominate and recommend a predetermined slate—including the Elliott Directors—and requires Elliott to vote its shares in favor of that slate. These measures improperly and unfairly reduce the likelihood of Boots’ Director Candidates winning election, causing irreparable harm to Plaintiffs and all Company stockholders.

130. As a result of the Director Defendants’ actions, the Board stands on the precipice of making critical decisions of tremendous importance to the Company’s future strategic course, including selection of its CEO and a potentially irreversible decision on Fiber strategy. Under the circumstances, those decisions would be tainted by the constraints imposed by a suspect Cooperation Agreement. Meanwhile, the Board remains contractually bound under the Cooperation Agreement to resist Boots, its director candidates, and its well-researched and value-maximizing plan for Fiber.

131. If the Director Defendants are permitted to press forward—including, for example, by entering into a major transaction involving its Fiber segment—it will be difficult if not impossible to unscramble the eggs or quantify the harm to stockholders. Additionally, the Company and its stockholders will permanently miss out on the opportunity to reap the benefits of Boots’ proposal, including up to \$1 billion in tax savings if a spin off is completed by year-end 2024. Irreparable harm will result.

## **COUNT I**

### **(MOELIS CLAIM INVALIDATING SECTIONS 1, 2, 3, 6(a), AND 8 OF THE COOPERATION AGREEMENT UNDER DGCL § 141) DIRECT CLAIM FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF AGAINST DIRECTOR DEFENDANTS, CROWN CASTLE, & ELLIOTT**

132. Plaintiffs repeat and reallege all of the allegations above as if fully set forth herein.

133. DGCL Section 141(a), (b), and (c) set standards for the general management powers, composition, and committees of boards of Delaware corporation. 8 *Del. C.* § 141. Together with the fiduciary duties of loyalty and candor and related principles of Delaware law, Section 141 establishes that the board of a Delaware corporation must make recommendations to shareholders concerning the exercise of the board's general management powers, composition of the board and its committees, and selection the board's nominees, consistent with their own independent fiduciary judgment as to what is best for the corporation.

134. Yet Sections 1, 2, 3, 6(a) and 8 of the Cooperation Agreement place improper constraints on the Board's ability to conduct the Company's internal affairs and governance, in violation of Section 141.

135. Section 1 dictates the composition of the Board by purporting to bind the Company's Board in setting a maximum number of Board seats "until the Expiration Date" at 12 directors. Cooperation Agr. § 1. As a result, Section 1

improperly infringes the Board’s powers and responsibilities, and thus the Board’s ability to use its own best judgment (as is its duty), in setting the Board.

136. Similarly, Sections 2 and 3 dictate the composition of the Board’s committees by purporting to require specific individuals to serve on both the Fiber Review and CEO Search Committees—in each case, including the Elliott Directors. Cooperation Agr. §§ 2, 3. As a result, Sections 2 and 3 improperly infringe upon the Board’s powers and responsibilities, and thus the Board’s ability to use its own best judgment (as is its duty), when setting committee membership.

137. Additionally, Section 6(a) places arbitrary and immovable constraints on the Board’s discretion to select its slate of director nominees, providing that “[t]he Company *shall* include the New Directors as director nominees on its slate for election at the 2024 Annual Meeting.” (Emphasis added.)

138. Last, Section 8 requires the Board to recommend that the stockholders vote for each of the nominees, “including each of the New Directors,” e.g., Messrs. Genrich and Patel. Cooperation Agr. § 8. As a result, Section 8 improperly infringes the Board’s powers and responsibilities, and thus the Board’s ability to use its own best judgment (as is its duty), when deciding key management matters such as deciding who should serve as Board directors.

139. The Cooperation Agreement contains no exception or fiduciary out (other than with respect to Defendant Genrich, an Elliott Partner) to ensure that the



Board may fulfill its fiduciary duties notwithstanding the requirements of Sections 1, 2, 3, 6(a) and 8 of the Cooperation Agreement.

140. In sum, Sections 1, 2, 3, 6(a) and 8 of the Cooperation Agreement directly and improperly infringe upon the Board's powers and responsibilities, and substantially restrain the Board's ability to use its own best judgment on key management matters, in accordance with its duties of loyalty and candor, in violation of DGCL Section 141.

141. Plaintiffs have no adequate remedy at law.

142. Plaintiffs are thus entitled to a declaration that Sections 1, 2, 3, and 8 of the Cooperation Agreement are invalid and unenforceable under Delaware law, and an injunction enjoining the Director Defendants, the Company, and Elliott from enforcing Sections 1, 2, 3, 6(a) and 8 of the Cooperation Agreement.

## **COUNT II**

### **(UNOCAL SCRUTINY ON COOPERATION AGREEMENT) DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTIES AGAINST DIRECTOR DEFENDANTS**

143. Plaintiffs repeat and reallege all of the allegations above as if fully set forth herein.

144. The Director Defendants owe Crown Castle and *all* of its stockholders fiduciary duties of care and loyalty. These duties mandate that the Director Defendants put the interests of the Company above their own personal interests.

145. Under Delaware law, the Director Defendants have a duty to act reasonably and in good faith, and not to invoke defensive measures unless they are in response and proportionate to a legitimate threat to Crown Castle's corporate policy and effectiveness.

146. If a defensive measure is adopted with the primary purpose of interfering with or impeding the stockholder franchise a compelling justification must be shown for adopting the defensive measure.

147. The Director Defendants breached their fiduciary duties by putting their interests ahead of the stockholders when they approved the Cooperation Agreement—an agreement adopted only to interfere with or impede the stockholder franchise in connection with the 2024 Annual Meeting.

148. A threatened proxy fight by Elliott in 2023—a less than 1% stockholder—did not pose a legitimate threat to Crown Castle's corporate policy and effectiveness.

149. The Cooperation Agreement is not a reasonable or proportionate response to any legitimate threat to Crown Castle's corporate policy and effectiveness.

150. The circumstances leading up to the adoption of the Cooperation Agreement show the Director Defendants' entrenchment motivation.

151. In 2020, Elliott sought to replace members of the incumbent board. The incumbent directors did not endorse Elliott’s candidates, and Elliott mounted a proxy fight to “Reclaim the Crown.” As a result, three new directors were elected to the board.

152. By the end of 2023, the Company was struggling. The stock price had hit a six-year low. Elliott seized on this opportunity. In November 2023, Elliott began its new campaign: “Restoring the Castle.” Elliott publicly disparaged the board and the then-CEO, submitted a books-and-records demand and threatened to launch a proxy fight. Fearing the same result as 2020, the Director Defendants caved to Elliott’s demands in order to protect their seats.

153. On November 28, 2023, two representatives of Boots spoke with Jason Genrich, a partner of Elliott, and explained that Boots had completed an economic analysis, had developed a detailed, two-year business plan for Crown Castle, had a developed, step-by-step plan for a Fiber sale (including prospective buyers and financings sources) in hand, and had identified the right people to execute its plan, and requested that Genrich and Elliott refer to Boots any long-term oriented LPs that may have interest in Boots’ plan—without the desire to form a group between Boots and Elliott under Section 13(d)(3) of the Securities Exchange Act of 1934. Despite having no concrete plan of its own, on November 29, 2023, Jesse Cohn informed Boots’ representatives that Elliott could not make any such referrals and asked

Boots’ representatives to “keep us posted.” Elliott then pressed forward on its own (short-lived) proxy campaign.

154. But at the time Elliott only owned less than 1% of the stock and had already managed to get board representation. Rather than call Elliott’s bluff and risk losing their seats, the Director Defendants gave away the store to protect themselves.

155. Any threat posed by Elliott was non-existent insofar as Elliott did not have the minimum 3% stockholdings required in the bylaws for nominating directors at an annual meeting. The bylaws also require a commitment to hold 3% throughout the vote.

156. The terms of the Cooperation Agreement are an unreasonable and disproportionate response to any threat posed by Elliott.

157. In the Cooperation Agreement the Director Defendants confirmed the resignation of the then-current CEO, guaranteed the new CEO would be chosen by a fixed committee with Elliott representation, and agreed with Elliott to add two new directors (one, an Elliott Partner)—on top of the three directors added as part of the 2020 campaign. The Director Defendants further contractually obligated themselves to include Elliott’s directors as part of the Board’s slate in the 2024 election, solicit proxies for and vote those proxies in favor of Elliott’s directors.

158. Not only did the Director Defendants virtually guarantee the Elliott directors a favorable vote at the 2024 Annual Meeting, they also guaranteed Elliott had majority representation on the CEO Search and Fiber Review Committees.

159. In return, the only concession the Company obtained was Elliott's agreement to stand-down on a proxy fight and vote its stock in favor of the Director Defendants.

160. The Director Defendants gave this support and control to Elliott without *any* protection that Elliott's interests were aligned and would continue to be aligned with the rest of the stockholders. Strikingly absent from the Cooperation Agreement is *any* requirement that Elliott maintain its less than 1% stock ownership or *any* level of stock ownership. This despite the requirement in the Crown Castle bylaws that a stockholder nominating a slate of directors must own at least 3% of the Company's stock and continue to maintain that ownership through the date of the stockholder vote.

161. Thus, when asked by Plaintiffs to consider and support Plaintiffs' slate of directors it is no surprise the Director Defendants refused to do so. The Director Defendants were contractually disabled from exercising their fiduciary duties in considering Plaintiffs' directors because the Cooperation Agreement required that the Director Defendants support Elliott's nominees. The Cooperation Agreement did not provide any fiduciary-out that would allow the Director Defendants to

support a director slate that was superior to Elliott's directors. The Cooperation Agreement was entered into a month before the nomination window for nominating candidates to the Board for the 2024 Annual Meeting even opened, before the Board had an opportunity to hear timely alternative proposals from any other stockholders.

162. The Director Defendants have further breached their fiduciary duties by refusing to put the Cooperation Agreement to a stockholder vote to give the stockholders the ability to decide whether to approve the Director Defendants' self-interested scheme and Elliott's control over the Company.

163. As a result of these actions, the stockholders have and will continue to be harmed. These actions result in the incumbents entrenching themselves in exchange for giving Elliott, a stockholder whose interests are not aligned with the rest of the stockholders, complete control over Crown Castle's strategy, including the sale of 1/3 of Crown Castle's business.

164. In order to nullify the effects of the Cooperation Agreement, Plaintiffs are entitled to an injunction or other appropriate declaratory/equitable relief to prevent the enforcement of the Cooperation Agreement, including the processes Elliott will improperly control under the CEO Search and Fiber Review Committees. Plaintiffs are also entitled to a declaration that the Director Defendants breached their fiduciary duties.

165. Plaintiffs have no remedy at law.

### **COUNT III**

#### **DIRECT CLAIM FOR AIDING AND ABETTING BREACHES OF FIDUCIARY DUTIES AGAINST ELLIOTT AND ELLIOTT DIRECTORS**

166. Plaintiffs repeat and reallege all of the allegations above as if fully set forth herein.

167. Elliott and the Elliott Directors knew that the Directors Defendants' fiduciary duties, as set forth above, required that the Director Defendants act reasonably and in good faith, and not invoke defensive measures unless they are in response and proportionate to a legitimate threat to Crown Castle's corporate policy and effectiveness, and not interfere with or impede the stockholder franchise through those defensive measures.

168. Elliott and the Elliott Directors were aware of the requirements in the Bylaws regarding director nominations, as shown by Elliott's amendment of the Bylaws on December 19, 2023.

169. Elliott and the Elliott Directors actively participated in and acted with knowledge of the Director Defendants' breaches of their fiduciary duties to Plaintiffs and Crown Castle's stockholders.

170. Elliott and the Elliott Directors knowingly aided and abetted the Director Defendants' wrongdoing alleged herein and rendered them substantial assistance.

171. As a result of Elliott's and the Elliott Directors' conduct, Plaintiffs and Crown Castle's stockholders have been and are being harmed.

172. Plaintiffs have no adequate remedy at law.

#### **COUNT IV**

#### **(BREACH OF THE BYLAWS) DIRECT CLAIM AGAINST CROWN CASTLE**

173. Plaintiffs repeat and reallege all of the allegations above as if fully set forth herein.

174. The Bylaws "constitute part of a binding broader contract among the directors, officers and stockholders."

175. Section 3.02 of the Bylaws states:

Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock, the number of Directors shall be fixed from time to time exclusively pursuant to a resolution adopted by the Board. However, no decrease in the number of Directors constituting the Board shall shorten the term of any incumbent Director.

176. The Cooperation Agreement provides:

Until the appointment of the New CEO (as defined below), the size of the Board shall not exceed (i) twelve (12) directors prior to January 16, 2024 and (ii) eleven (11) directors from January 16, 2024 until the Expiration Date. If the New CEO is appointed to the Board, the size of the Board shall not exceed twelve (12) directors from the date of such appointment until the Expiration Date.



177. The Cooperation Period runs until the later of the date that is thirty days before the 2025 annual meeting window or five days following the date on which Jason Genrich (or his replacement who is an employee or Affiliate of Elliott) stops serving on the Board.

178. Thus, the Cooperation Agreement purports to prevent the Board from adding any new seats for at least a year, and potentially for many years or indefinitely.

179. By giving Elliott the power to approve the addition of directors to the Board, and contractually obligating itself to the same, the Company breached Section 3.02 the Bylaws.

180. Further, Section 3.09(c) of the Bylaws states:

Any modification to the powers and authority of any committee shall require the adoption of a resolution by a two-thirds vote of the Entire Board.

181. The Cooperation Agreement provides:

The charter of the Fiber Review Committee shall be in the form attached in this Agreement as Exhibit A and shall not be modified prior to the end of the Cooperation Period (as defined below) except with the written consent of the Investors (such consent not to be unreasonably withheld, conditioned or delayed.)”

182. Likewise, the Fiber Review Committee Charter provides that any change the Board desires to make to it “will require Elliott’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).”

183. The Cooperation Period runs until the later of the date that is thirty days before the 2025 annual meeting window or five days following the date on which Jason Genrich (or his replacement who is an employee or Affiliate of Elliott) ceases to serve on the Board.

184. Thus, the Cooperation Agreement purports to give Elliott the ability to approve amendments to the Fiber Review Charter for at least a year and potentially for many years or indefinitely.

185. By giving Elliott the power to approve any modification of the powers and authority of the Fiber Review Committee and contractually obligating itself to the same, the Company breached Section 3.09(c) the Bylaws.

186. Section 3.10 of the Bylaws provides:

The Board may fill any vacancy on any committee by a resolution adopted by a two-thirds vote of the Entire Board. Each member of any committee of the Board shall hold office until such member's successor is duly elected and has qualified, unless such member sooner dies, resigns or is removed or disqualified. The number of Directors which shall constitute any committee shall be determined by resolution adopted by two-thirds vote of the entire Board.

187. The Fiber Review Committee Charter provides that “[t]he process for selecting replacements for Committee members is subject to the terms of the Cooperation Agreement.”

188. Section 2 of the Cooperation Agreement provides that if any “New Director” (*i.e.*, one of the Elliott Directors) resigns, is unwilling to serve, is removed from or ceases to be a member of the Fiber Review Committee before the Expiration Date the “Investors” (*i.e.*, Elliott) may choose a replacement committee member from one of the other board members. The Company only has the right to approve Elliott’s selection which approval may not be “unreasonably withheld, conditioned or delayed.”

189. Section 3 of the Cooperation Agreement provides that if the “New Investor Director” (*i.e.*, Defendant Jason Genrich) resigns, is unwilling to serve, is removed or ceases to be a member of the CEO Search Committee the “Investors” (*i.e.*, Elliott) may choose a replacement committee member from one of the other board members. The Company only has the right to approve Elliott’s selection which approval may not be “unreasonably withheld, conditioned or delayed.”

190. The Expiration Date is defined in the Cooperation Agreement as the later of the date that is thirty days before the 2025 annual meeting window or five days following the date on which Jason Genrich (or his replacement who is an employee or Affiliate of Elliott) ceases to serve on the board.

191. Thus, the Cooperation Agreement purports to give Elliott the ability to fill vacancies created at the Fiber Review Committee or the CEO Search Committee for at least a year and potentially for many years or indefinitely.

192. By giving Elliott the power to fill vacancies created in the Fiber Review Committee and CEO Search Committee, the Company breached Section 3.10(a) of the Bylaws.

193. In the alternative, if the Company intended for the Cooperation Agreement to amend the Bylaws, the amendment is also invalid and *ultra vires* because the Company did not provide proper notice of such amendment or alteration as required in Section 8.01 of the Bylaws.

194. Plaintiffs are entitled to relief declaring that the Cooperation Agreement is invalid and *ultra vires* as a violation of the Company's Bylaws.

195. Alternatively, Plaintiffs are entitled to a declaration that Sections 2 and 3 of the Cooperation Agreement and the Fiber Review and CEO Search Committee Charters breach the terms of the Company's Bylaws and should be stricken as invalid and *ultra vires*.

196. Plaintiffs have no adequate remedy at law.

### **COUNT V**

#### **(BREACH OF THE BYLAWS) DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST DIRECTOR DEFENDANTS**

197. Plaintiffs repeat and reallege all of the allegations above as if fully set forth herein.

198. The Bylaws are a contract between the Company and the stockholders to provide stockholders certain rights including rights that protect the stockholder franchise and give the stockholders certainty over how decisions will be made within the Company.

199. By causing the Company to violate the Bylaws as set forth in Count IV the Director Defendants have breached their fiduciary duties to Plaintiffs.

200. Plaintiffs are entitled to relief declaring that the Cooperation Agreement is invalid and *ultra vires* as a breach of the Director Defendants' fiduciary duties.

201. Alternatively, Plaintiffs are entitled to a declaration that Sections 2 and 3 of the Cooperation Agreement and the Fiber Review and CEO Search Committee Charters should be stricken as invalid and *ultra vires* as a breach of the Director Defendants' fiduciary duties.

202. Plaintiffs have no adequate remedy at law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court enter an order or judgment in their favor against Defendants as follows:

A. Declare that Sections 1, 2, 3, 6(a), and 8 of the Cooperation Agreement are invalid and unenforceable under Delaware law;

B. Declare the Cooperation Agreement invalid and *ultra vires* or unenforceable;

C. Declare that the Cooperation Agreement was an unreasonable and disproportionate defensive measure;

D. Declare that the Cooperation Agreement unjustifiably interferes with or impedes the stockholder franchise;

E. Declare that the Director Defendants breached their fiduciary duties by entering into the Cooperation Agreement with Elliott;

F. Declare that Crown Castle breached the Bylaws, its contract with the stockholders, by entering into the Cooperation Agreement with Elliott;

G. Declare that the Director Defendants breached their fiduciary duties by causing the Company to breach the Bylaws and entering into the Cooperation Agreement with Elliott;

H. Declare that Elliott and the Elliott Directors aided and abetted the Director Defendants' breaches of fiduciary duties;

I. Rescind or modify the Cooperation Agreement, or, alternatively, rescind or modify Sections 1, 2, 3, 6(a), and 8 of the Cooperation Agreement;

J. Enjoin Director Defendants, the Company, and Elliott from enforcing Sections 1, 2, 3, 6(a), and 8 of the Cooperation Agreement;

K. Enjoin Crown Castle and the Board from taking any actions under the Cooperation Agreement, including any further action by the Fiber Review Committee or the CEO Search Committee;

L. Enjoin Crown Castle and the Board from including the Elliott Directors on the Company's slate of director nominees for the 2024 Annual Meeting;

M. Enjoin Crown Castle and the Board from recommending that the Company's stockholders vote for the election of the Elliott Directors at the 2024 Annual Meeting;

N. Enjoin Crown Castle and the Board from soliciting proxies for the Elliott Directors at the 2024 Annual Meeting;

O. Enjoin Crown Castle and the Board from causing all Company common stock represented by proxies granted to it (or any of its officers, directors or representatives) to be voted for the Elliott Directors at the 2024 Annual Meeting;

P. Award Plaintiffs their fees, costs, and expenses, including attorneys' fees and costs, incurred in connection with this Action; and

Q. Grant Plaintiffs any other relief the Court deems just and proper.

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GATTUSO & HIRZEL LLP

*/s/ Kurt M. Heyman*

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Dated: February 27, 2024