

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVE VERGARA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

APPLE REIT NINE, INC. now known as
APPLE HOSPITALITY REIT, INC.,

Defendant.

Civil Action No.: 1:19-cv-02027-DLI-RML

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 12th day of November, 2021, by and among (1) Steve Vergara (“Plaintiff”), on behalf of himself and all others similarly situated, and (2) Apple REIT Nine, Inc. n/k/a Apple Hospitality REIT, Inc. (“A-9” or “Defendant,” together with Plaintiff, the “Parties”) subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. The Parties hereby agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment after Final Approval and payment of the Settlement Amount, all claims of the Class against Defendant in the above-captioned action shall be settled and compromised upon the terms and conditions contained herein. The Parties will request that the Court retain jurisdiction with regard to all matters relating to the enforcement of this Settlement.

WHEREAS, the above-titled putative class action (the “Class Action” or the “Litigation”) is pending before the Court;

WHEREAS, Plaintiff believes that the proposed Settlement of the Action is fair, reasonable, adequate, and in the best interests of the Class;

NOW THEREFORE, without any admission or concession on the part of Plaintiff of any lack of merit of the Action whatsoever, and without any admission or concession on the part of Defendant as to the merits of the Action or Defendant's defenses thereto, it is hereby

STIPULATED AND AGREED by and among the parties to this Settlement Agreement, through their respective counsel (subject to approval of this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure), as follows:

I. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. "Action" means *Vergara v. Apple REIT Nine, Inc, n/k/a Apple Hospitality REIT, Inc.*, No. 1:19-cv-02027-DLI-RML and has the same meaning as "Class Action" or the "Litigation" as those terms may be used interchangeable in this Agreement.
2. "Allowed Payment Amount" shall mean the amount calculated in accordance with this Settlement Agreement and the Plan of Allocation annexed hereto as Rider A.
3. (a) The "Class" means:

All persons and entities that elected to participate in the A-9 DRIP between April 8, 2013 through the end of the A-9's Dividend Reinvestment Plan and received A-9 common stock in lieu of the declared cash dividend at a value of \$10.25 per share and any person in the United States who acquired shares of Apple REIT Nine, Inc. pursuant to the DRIP for Apple REIT Nine, Inc. from April 8, 2013 to June 27, 2013 inclusive. Excluded from the Class are: (a) Defendant; (b) its parents or any subsidiaries of Defendant; (c) any entity in which Defendant has a controlling interest; (d) any former executive officers or directors of Defendant and their legal representatives, predecessors, successors, and assigns; (e) the Court and any employees of the Court; and (f)

any persons or entities who validly and timely excluded themselves from the Class pursuant to the procedures described in the Notice.

4. “Class Counsel” means the law firm of Squitieri & Fearon, LLP.

5. “Class Member” means any person or entity included in the Class who (i) did not validly and timely exclude him/her/itself from the Class, or (ii) does not validly and timely excluded him/her/itself from the Settlement.

6. “Class Representative” means Steve Vergara.

7. “Complaint” means the Amended Complaint filed in the Action (Docket No. 6).

8. “Court” means the United States District Court for the Eastern District of New York.

9. “DRIP Shares” means the A-9 shares acquired by the Class Members during the Class Period via A-9’s dividend reinvestment program (i.e., DRIP).

10. “Effective Date” shall mean the date of Final Approval as defined herein.

11. “Escrow Account” means the escrow account established at a federally insured financial institution by Class Counsel for the Class for receipt of the Settlement Amount designated for the Class, and to which Defendant shall wire the Payment pursuant to Section III below.

12. “Final Approval” means the entry of Final Order and Judgment approving, *inter alia*, the Settlement after the Final Approval Hearing is conducted.

13. “Final,” with respect to the Judgment or to any award of attorneys’ fees and expenses, means that the time for appeal or review of the Final Order and Judgment has expired or, if an appeal or petition for review is taken and dismissed or the Settlement (or any component thereof) is affirmed, the time period during which further petition for hearing, appeal, or writ of

certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the Judgment shall not become Final.

14. “Final Approval Hearing” means the hearing held by the Court to determine whether the terms of this Agreement are fair, reasonable, and adequate for the Class as a whole, whether the Settlement should be granted final approval, and whether the Judgment should be entered.

15. “Final Settlement Date” means the date on which Judgment in this case becomes Final. If no appeal has been taken from the Judgment, the Final Settlement Date means the date on which the time to appeal has expired. If any appeal has been taken from the Judgment, the Final Settlement Date means the date on which all appeals, including petitions for rehearing, petitions for rehearing *en banc*, and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Judgment.

16. “Judgment” means the Final Order and Judgment to be entered by the Court pursuant to the Settlement and in substantially similar form as Exhibit B.

17. “Net Settlement Fund” means the balance of the Settlement Amount after Settlement Fund Deductions and any other amounts contemplated in this Agreement to be paid from the Settlement Amount.

18. “Notice” means the Notice of Proposed Settlement of Class Action thereof that the Plaintiff will ask the Court to approve in connection with the motion for preliminary approval of the Settlement, in substantially similar form as Exhibit C.

19. “Notice Deadline” means the date by which the Settlement Administrator is required to send out Notice, namely not later than thirty days (30) days after entry of the Preliminary Approval Order.

20. “Notice Plan” means the notice plan and methods provided for in this Agreement. The Notice Plan consists of a direct mail notice to those Class Members which will be sent by the Settlement Administrator to each Class Member’s last known address. The Notice Plan shall be carried out in substantially the manner provided in this Agreement and/or any Preliminary Approval Order entered by the Court or as otherwise agreed by the Parties and approved by the Court.

21. “Objection Deadline” means sixty (6) days after the Notice Deadline.

22. “Opt-Out Deadline” means the same date as the Objection Deadline.

23. “Plan of Allocation” shall mean the Plaintiff’s proposed plan of distribution of the Net Settlement Fund to Class Members developed, calculated, sponsored, petitioned for approval, and executed solely by Plaintiff, substantially in the form attached hereto as Rider A, and about which Defendant takes no position and has no role, responsibility or involvement in the development, calculations, methodology, petition for approval or execution. The proposed Plan of Allocation is subject to Court approval.

24. “Preliminary Approval Order” means an order entered by the Court preliminarily approving the Settlement, scheduling Notice and Hearing dates and procedures for objections and exclusions, substantially in the form jointly agreed upon by the Parties annexed hereto as Exhibit D.

25. “Released Claims” means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises,

damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, whether asserted directly, indirectly, derivatively, representatively, or in any other capacity, including, without limitation, any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, and any claims for gross negligence, fraud or negligent misrepresentation that a Class Member has or may have against the Released Parties that arise from, are based on, or are related in any way to the allegations, transactions, facts, events, matters, occurrences, acts, representations, statements or omissions that were or could have been alleged, set forth or referred to in the Action during the Class Period, except for claims related to the enforcement of the Settlement.

26. “Released Parties” shall mean Defendant, and its successor and subsidiaries, funds and their respective present and former officers, directors and shareholders.

27. “Releasing Parties” means the Class Representative and all Class Members that do not timely and properly exclude themselves from the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

28. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Settlement Agreement.

29. “Settlement Amount” means \$1,200,000.00 (One Million Two Hundred Thousand Dollars), plus any interest earned thereon while in an Escrow Account. The Settlement Amount represents the maximum amount that Defendant will pay towards this Settlement and shall constitute the exclusive source of payment for Class Members, any award of fees and expenses to Class Counsel, any Service Award to the Class Representative, and the costs of notice and administering the Settlement and any other Settlement Fund Deductions. There shall be no reversion to Defendant of any undistributed settlement amount.

30. “Settlement Fund Deductions” means the amount of attorney’s fees, costs and expenses of litigation and settlement administration and the Service Award, if any, to the Plaintiff for his service in the case approved by the Court at the Final Approval Hearing, which shall be paid from the Settlement Amount.

31. “Service Award” means a payment, subject to the Court’s approval, to the Class Representative from the Settlement Fund for the Class Representative’s role in this litigation and his service on behalf of the Class.

II. Preliminary Approval Motion

32. On or around November 12, 2021, after execution of this Agreement by all Parties, Class Counsel will move the Court for an Order of Preliminary Approval of this Settlement. The motion for preliminary approval will request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate, and reasonable terms, including the Plan of Allocation; (2) approve the Notice Plan set forth herein and approve the form and content of the Notice; (3) approve the procedures set forth in Section VI and in the Notice Plan by which Class Members may exclude themselves from the Class or object to the Settlement; (4) schedule a Final Approval Hearing for a time and date convenient for the Court; (5) authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement; and (6) issue related orders to effectuate the preliminary approval of the Settlement Agreement.

III. Settlement Payment; Attorneys’ Fees, Cost and Expenses

33. The Defendant shall transfer, and/or cause to be transferred, by wire transfer into the Escrow Account, at least ten (10) days prior to the final fairness hearing regarding the Settlement, the Settlement Amount of \$1,200,000.00. Class Counsel will ensure that the Escrow

Account is established for that purpose on or before December 10, 2021. The Settlement Amount is the total and exclusive amount that Defendant will pay under this Settlement Agreement for the benefit of the Class including without limitation funds to satisfy claims released in this Settlement by any Class Member, attorneys' fees and costs, any Court-approved Service Award to the Class Representative, payment of any and all estimated taxes, taxes, tax preparation fees, payment of any and all administrative and notice expenses associated with the Class Action or this Settlement, including the costs set forth in Section 39 below, and any other Settlement Fund Deductions.

34. If the Defendant fails to make the Settlement Payment when due, then Class Counsel, on ten days' written notice to counsel for the Defendant, during which ten-day period the Defendant shall have the opportunity to cure the default without penalty, may withdraw from this Settlement Agreement or elect to enforce it. The obligations of Defendant to pay may be enforced in the Class Action as provided by the Federal Rules of Civil Procedure.

IV. No Liability for Settlement Fund

35. Defendant and the Released Parties shall have no liability, obligation or responsibility for the investment, disbursement, or other administration or oversight of the Settlement Fund.

36. Any payments to the Class Members shall come from the Net Settlement Fund.

V. Settlement Administrator

37. The Settlement Administrator retained on behalf of the Class by Plaintiff's Counsel shall administer various aspects of the Settlement, including, but not limited, to providing notice to Class Members, processing claims, processing opt out requests, administering the Settlement and distributing the Net Settlement Fund. The Settlement

Administrator will also oversee the activities of the Escrow Agent as described in this Agreement.

38. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Implementing the Notice Plan required by this Agreement;
- b. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Class;
- c. Establishing and maintaining a toll-free telephone line for Class Members to call with Settlement-related inquiries, and answering the questions of Class Members that call with or otherwise communicate such inquiries;
- d. Responding to any mailed Class Member inquiries;
- e. Processing all written notifications of exclusion from the Class;
- f. Providing weekly reports and, no later than five business days after the Opt-Out Deadline, a final report to Class Counsel and Defendant's Counsel, that summarize the number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendant's Counsel;
- g. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Plan in accordance with the Preliminary Approval Order; and (ii) identifies each Class Member that timely and properly provided written notification of exclusion from the Class;
- h. After the Final Settlement Date, processing and transmitting distributions to Class Members in the form of a paper check, managing any tax-related issues with settlement payment to the Class, and managing any tax reporting matters on behalf of the parties; and
- i. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendant's Counsel, including, but not limited to, verifying that settlement payments have been distributed in accordance with this Agreement.

39. Costs associated with notice to the Class shall be paid out of the Settlement Fund.

The costs of notice and administration shall include any fees of and reasonable expenses incurred

by the Settlement Administrator; fees of the Escrow Agent and any other reasonable expenses relating to the establishment, maintenance, and distribution of the Settlement Fund; and reasonable expenses incurred in hiring outside experts for the purpose of performing services relating to the administration of the Settlement, such as identifying Class Members and calculating benefits under the Settlement.

40. The Parties agree to cooperate in good faith and to coordinate with each other and the Settlement Administrator to carry out the terms of the Settlement, including, without limitation, by providing reasonably available information about Class Members.

VI. Notice to Class Members, Exclusions, and Objections

41. Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Plan approved by the Court, using the Notice approved by the Court.

42. The Notice Plan shall consist of a direct mail notice which will be sent by the Settlement Administrator to each Class Member at its current or last known address in Defendant's records, the records of David Lerner Associates and/or Apple Hospitality REIT, Inc.'s records or any affiliates thereof, if that information can reasonably be obtained by the Settlement Administrator. The Settlement Administrator shall compile the Class Member list from the information provided. On or before the Notice Deadline, the Settlement Administrator will mail a Notice substantially in compliance with the form attached as Exhibit B to this Agreement to each Class Member. If a Notice is returned as undeliverable, the Settlement Administrator will use reasonable efforts to locate a current mailing address for the Class Member and re-mail the notice to the current address.

43. The Notice shall describe the procedure for Class Members to opt out of the Class by notifying the Settlement Administrator, in writing, of the intent to be excluded. Such written

notification must be postmarked no later than the Opt-Out Deadline, as specified in the Notice.

The written notification must identify the Class Member; state that the Class Member has chosen to opt-out or exclude itself from the Settlement; and contain the name, address, position, and signature of the individual who is acting on behalf of the Class Member.

44. The Notice must also describe the procedure for Class Members to object to the Settlement or any aspect of it. Objections to the Settlement must be filed electronically with the Court and served on Class Counsel and Defendant's Counsel. For an objection to be considered by the Court, the objection must be received by the Court on or before the Opt-Out Deadline and, the objection must be signed by the Class Member and must also set forth (subject to approval by the Court):

- a. The name of the Action;
- b. The objector's full name, address, and telephone number;
- c. The number of DRIP shares purchased by the objector during the Class Period and the number of A-9 shares redeemed or tendered during the Class Period;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. The number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. Any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- h. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- i. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- j. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;

45. Plaintiff and Defendant will work together in good faith to facilitate the Notice Plan and to address any issues that arise.

VII. Final Approval

46. Plaintiff's motion for preliminary approval of the Settlement shall include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. The Final Approval Hearing shall be scheduled no earlier than one hundred twenty days (120) days after the entry of the Order of Preliminary Approval.

47. At or following the Final Approval Hearing, the Court shall determine whether to enter the Final Approval Order granting final approval of the Settlement and Plan of Allocation, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses, and the Service Award. The proposed Final Approval Order shall be in substantially the form annexed hereto as Exhibit A. Such proposed Final Approval Order shall, among other thing:

- a. Determine that the Settlement and Plan of Allocation is fair, adequate, and reasonable;
- b. Determine that the Notice Plan satisfied Due Process requirements;
- c. Dismiss the Action with prejudice;
- d. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order;
- e. Release Defendant and the Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over Defendant and all Class Members (including any objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

VIII. Settlement Fund

48. Upon establishment of the Escrow Account on or before December 10, 2021, the Escrow Agent shall cause the Settlement Funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the "Instruments"). The Escrow Agent may thereafter reinvest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement

Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. All costs or fees incurred in connection with administration and/or investment of the Settlement Fund in the Instruments shall be paid out of the investment proceeds or the Settlement Fund.

49. The Parties intend that the Settlement Fund be treated as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B. Class Counsel and/or the Settlement Administrator shall ensure that the Settlement Fund at all times complies with Treasury Regulation § 1.468B in order to maintain its treatment as a qualified settlement fund. To this end, Class Counsel and/or the Settlement Administrator shall ensure that the Settlement Fund is approved by the Court as a qualified settlement fund and that any escrow agent or other administrator of the Settlement Fund complies with all requirements of Treasury Regulation § 1.468B-2. Any failure to ensure that the Settlement complies with Treasury Regulation § 1.468B-2, and the consequences thereof, shall be the responsibility of Class Counsel and/or the Settlement Administrator.

50. The Settlement Fund shall be used for the following purposes, to the extent such proposed purposes are approved by the Court:

- a. Distribution of payments to Class Members pursuant to Section X, paragraphs 52-53 hereof;
- b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section III and XIII hereof;
- c. Payment of the Court-ordered Service Award to the Class Representative pursuant to Section III and XIII hereof;

- d. Payment of the costs of notice and administration as provided in paragraph 39 above;
- e. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account; and
- f. Payment of other appropriate fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (e) of this paragraph.

IX. All Claims Satisfied by Settlement Fund

51. The Class and each Member of the Class is limited solely to the Settlement Fund for the satisfaction of all Released Claims against all Released Parties as provided herein. Except as provided by order of the Court pursuant to this Settlement Agreement, no Class Member shall have any direct interest in the Settlement Fund or any portion thereof.

X. Distribution of the Settlement Benefits

52. Defendant agrees to pay a maximum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) to settle the claims set forth by the Class and in exchange for the releases set forth in this Agreement (the "Settlement Fund"). The Settlement Fund shall be disbursed as follows: to the Class Administrator, the reasonable costs of class notice and settlement administration, expenses, and taxes; to the named Plaintiff, such Service Award as the Court may deem appropriate; to Class Counsel, subject to Court approval, attorneys' fees and costs and expenses of litigation; and the remainder to be net cash payments pursuant to the Plan of Allocation to Class Members who do not exclude themselves from the Class.

53. Each Class Member who does not exclude themselves from the Settlement will be mailed a check in the amount to be determined by the formula in the Plan of Allocation. All checks issued pursuant to this Settlement shall become stale after 90 days after issuance. No funds shall be returned to Defendant or any other source of funds for the Settlement Fund unless the Settlement is not finally approved. No distribution to any Class Member or disbursement of

any kind may be made from the Settlement Fund absent Court order until after the Final Settlement Date.

XI. Plan of Allocation

54. Class Counsel has formulated a Plan of Allocation (Exhibit A) that sets forth the basis for calculating Allowed Payment Amounts in a manner consistent with the terms of this Settlement Agreement.

55. The Defendant shall have no responsibility for the Plan of Allocation, including, but not limited to, its establishment and implementation.

56. The Settlement Administrator, under the supervision of Class Counsel, shall be responsible for allocating the Net Settlement Fund among Class Members *inter se* pursuant to the Plan of Allocation.

XII. Releases

57. In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, and provided that the Court approves this Settlement Agreement, effective upon the Final Settlement Date each and every Class Member, whether or not they object to the Settlement and whether or not they make a claim upon or participate in the Settlement Fund (the "Releasing Parties"), releases and forever discharges, to the fullest extent permitted by law, the Released Parties from and against any and all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature and kind whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that each and every Class Member (including any of their past, present or future parents, subsidiaries, divisions, affiliates, stockholders, and each and any of their respective stockholders, officers, directors, insurers, general or limited partners, agents, attorneys, employees, legal representatives, trustees,

associates, heirs, executors, administrators, purchasers, predecessors, successors and assigns, acting in their capacity as such) may have, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, against the Released Parties arising out of any conduct or claims alleged in any Complaint in this Action, including, without limitation, claims which have been asserted or could have been asserted in this litigation arising under any federal or state securities law or regulation, or common law, including, without limitation, any breach of contract, breach of good faith, breach of fiduciary duty, or any other tort (i.e., the “Released Claims”). Each Releasing Party hereby covenants and agrees that he/she/it shall not sue or otherwise seek to establish or impose liability against any Released Party based, in whole or in part, on any of the Released Claims. The Final Order and Judgment shall expressly enjoin the Releasing Parties from asserting any such claims against any of the Released Parties.

58. WITHOUT LIMITING THE FOREGOING, THE RELEASING PARTIES EXPRESSLY AND IRREVOCABLY WAIVE AND RELEASE ANY AND ALL DEFENSES, RIGHTS, AND BENEFITS THEY MAY HAVE IN RELATION TO THE RELEASES BY VIRTUE OF THE PROVISIONS OF CALIFORNIA CIVIL CODE § 1542 OR SIMILAR LAW OR RULE OF ANY OTHER STATE OR JURISDICTION. CALIFORNIA CIVIL CODE § 1542 PROVIDES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

59. Each Releasing Party also hereby expressly waives and releases any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States

or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Section 12, but each Releasing Party, through this Settlement Agreement, and with the ability to seek independent advice of counsel, hereby expressly waives and fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The releases herein given by the Releasing Parties shall be and remain in effect as full and complete releases of the claims set forth in the Class Action, notwithstanding the later discovery or existence of any such additional or different facts relative hereto or the later discovery of any such additional or different claims that would fall within the scope of the release provided in this Section 57 of this Settlement Agreement, as if such facts or claims had been known at the time of this release

60. In the event that an order approving the Settlement is overturned on appeal, the releases contained in this Agreement will be null and void.

XIII. Payment of Attorneys' Fees, Costs, and Service Awards

61. Class Counsel will apply to the Court for an award of fees and expenses and a Service Award to the Class Representative. These amounts, as approved, will be paid from the Settlement Fund.

62. Defendant agrees not to oppose Class Counsel's request for reimbursement of reasonable costs and expenses upon proper presentation of substantiation thereof. Any award of

attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund.

63. Plaintiff's attorneys' fees and litigation expenses, as awarded by the Court, shall be paid from the Settlement Fund on the date of entry of any order of attorney's fees and costs if there are no filed objections to the Settlement, otherwise they shall be payable on the Final Settlement Date. Any court order that reduces the award of attorneys' fees or litigation expenses on appeal or otherwise shall not provide a basis for Plaintiff or Class Counsel to terminate the Settlement.

64. Class Counsel will ask the Court to approve a Service Award of up to \$10,000.00 for the Class Representative. The Service Award shall be payable solely out of the Settlement Fund. The Service Award shall be paid to the Class Representative in addition to the benefit it is entitled to receive under this Agreement as a Class Member. Defendant agrees not to oppose Class Counsel's request for the Service Award upon proper presentation of substantiation thereof.

XV. Effect of a Termination

65. In the event of a termination of the Settlement if preliminary approval is not granted or final approval is not granted as provided above, this Agreement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect; the amount in the Settlement Fund shall be returned to Defendant (except to the extent reasonable costs of notice and claims administration have been incurred or expended by the Settlement Administrator and taxes have been paid or are due on interest earned); the Releases will be null and void; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination,

all of the Parties' respective pre-Settlement claims and defenses will be preserved, and the Parties will work cooperatively to set a new schedule for the litigation of this Action.

66. In the event of a termination as provided above, and after payment of any reasonable costs of notice and administration that have been incurred by the Settlement Administrator and are due to be paid from the Escrow Account, the Escrow Agent shall return the balance of the Settlement Fund to Defendant. Defendant shall have no right to seek reimbursement from Plaintiff, the Settlement Administrator, the Escrow Agent, or Class Counsel for any funds properly disbursed from the Escrow Account for any invoices or other fees (excluding attorneys' fees) or expenses pursuant to this Agreement that have been incurred and are due to be paid from the Settlement Fund or the Escrow Account.

67. The Settlement shall become effective on the Final Settlement Date unless earlier terminated in accordance with this Agreement.

68. In the event the Settlement is terminated in accordance with this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability

69. Defendant disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Defendant has agreed to enter into this Agreement and to pay the Settlement Amount to avoid the further expense, risk, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

70. Class Counsel believes that the claims asserted in the Action have merit, and it has examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel has investigated the facts and law relevant to the merits of the claims, has conducted discovery, and has conducted an independent investigation of the allegations in the Complaint. Class Counsel has concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Class Members.

71. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with the Settlement or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

72. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal; or construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted in this action or that Plaintiff has waived any allegation or claim asserted in the Action.

73. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

74. The Parties shall in good faith endeavor to communicate the terms of the Settlement in a manner that is respectful of the fact that no final adjudication of fault was determined by a court or jury.

XVII. Motion for Entry of Final Order and Judgment

75. In connection with the hearing to be set by the Court on the motion for final approval of this Settlement Agreement, the Parties hereto shall jointly seek entry of the Final Order and Judgment, substantially in the form attached as Exhibit "B," which shall:

- (a) finally approve this Settlement as being a fair, reasonable and adequate settlement of the Class' claims under Rule 23 of the Federal Rules of Civil Procedure;
- (b) direct the Parties to execute the terms of the Settlement Agreement, including, if appropriate, any termination rights;
- (c) direct that the Class Action be dismissed with prejudice as to the Defendant and without costs as against the Plaintiff;
- (d) incorporate the Releases contained in Section 57 of this Settlement Agreement;
- (e) determine pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and direct that the judgment of dismissal shall be final and appealable; and
- (f) otherwise reserve continuing and exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement, and also including Class Counsel's application for the award of fees and reimbursement of expenses.

76. In connection with the motion for final approval of this Settlement Agreement, Class Counsel will request an award of Class Counsel's attorneys' fees and reimbursement of Class Counsel's expenses. If such motion for an award of attorneys' fees and reimbursement of expenses is not approved, in whole or in part, it will have no effect on any order approving the Settlement.

77. The Final Order and Judgment will also contain a provision ruling on the Plan of Allocation. However, the Court may modify the Plan of Allocation or reject it, in whole or in part, and this will have no effect on any order approving the Settlement.

XVIII. Best Efforts to Effectuate This Settlement

78. The Parties hereto and their counsel agree to recommend approval of this Settlement Agreement by the Court and to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may reasonably be necessary or appropriate, to obtain Court approval of this Settlement and to carry out the terms of this Settlement Agreement (*e.g.*, taking no action which would diminish the size of the Class).

XIX. Miscellaneous Provisions

79. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

80. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

81. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to

do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect so long as this Settlement has not been terminated in accordance with its terms, regardless of events that may occur or court decisions that may be issued in this case or in any other case in any court.

82. Exhibits. Each and every exhibit to this Agreement is an integral and material part of this Agreement and is incorporated herein by this reference as though fully set forth herein.

83. No Limitation on Class Counsel's Communications. Nothing in this Agreement shall limit the ability of Class Counsel to communicate orally or in writing with Class Members regarding the provisions of this Settlement and, in fact, Class Counsel are authorized to do so.

84. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

85. Integration. This Agreement (along with the exhibits thereto, which are incorporated herein) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

86. Return of Confidential Information. Provided the Final Settlement Date has occurred, Plaintiff and Class Counsel in possession of material that has been produced by Defendant and marked on its face or otherwise designated as "Confidential" or "Attorneys' Eyes Only," including but not limited to the data and documents exchanged by the Parties during formal and informal discovery in the Action, shall either: (a) return such matter no later than

sixty (60) days after the Final Settlement Date to counsel for Defendant, or (b) destroy such matter upon consent of Defendant's counsel and certify in writing within sixty (60) days after the Final Settlement Date that the matter has been destroyed.

87. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

88. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of New York, without regard to the principles thereof regarding choice of law, except to the extent federal law controls the issue in dispute.

89. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through emailed scan shall be deemed an original.

90. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement or related in any way thereto that cannot be resolved by negotiation and agreement. The Court shall specifically retain jurisdiction over all questions and/or disputes related to the Notice Plan, the distribution of the Settlement Fund, and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

91. Notices. All notices to Plaintiff and Class Counsel provided for herein shall be sent by email, with a hard copy sent by overnight mail, to:

Lee Squitieri
Squitieri & Fearon, LLP
424 Madison Avenue
3rd Floor
New York, New York 10017
lee@sfcclasslaw.com

All notices to Defendant provided for herein shall be sent by email, with a hard copy sent by overnight mail, to:

Stanley Roberts
McGuireWoods LLP
800 East Canal Street
Richmond, Virginia 23219
sroberts@mcguirewoods.com

The notice recipients and addresses designated above may be changed by written notice.

Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Plan.

92. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for Defendant and Class Counsel and, if the Settlement has been preliminarily approved by the Court, with the approval of the Court.

93. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

94. Authority. Class Counsel (for Plaintiff), and counsel for Defendant (for Defendant), represent and warrant that the persons signing this Agreement on behalf of their clients have full power and authority (including, if necessary, Board of Directors approval) to

bind every person, partnership, corporation, or entity included within the definitions of Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

95. Agreement Mutually Prepared. Neither Defendant nor Plaintiff shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

96. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any, changes or differences in facts or law, subsequently occurring or otherwise.

97. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the releases contained above, received legal advice with respect to the advisability of entering into this Agreement and the

FOR PLAINTIFF:

Date:

11.12.21


Lee Squitieri

Counsel for Plaintiff and Class

FOR DEFENDANT:

Date:

11/12/21


Stanley Roberts

Counsel for Defendant

EXHIBIT A

PLAN OF ALLOCATION

1. 100% of the “Net Settlement Fund”¹ will be allocated to Apple REIT Nine, Inc. DRIP shares purchased during the Class Period.
2. (a) The Net Settlement Fund will be distributed among “Class Members” pro-rata based upon the formula herein:
 - (b) Class Members’ total class period DRIP purchases will be netted against the total Class A shares redeemed by that Class Member during the class period. That number shall be known as the “Member’s Net Shares Eligible for Recovery.”
 - (c) Each Net Share Eligible for Recovery shall receive his/her/its proportionate share of the Net Settlement Fund in the proportion which his/her/its aggregate number of Shares Eligible For Recovery bears to the total number of all Shares Eligible for Recovery.

¹ The Italicized terms herein have the same meaning as used in the body of the Notice to which this is attached.

EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVE VERGARA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

APPLE REIT NINE, INC. now known as
APPLE HOSPITALITY REIT, INC.,

Defendant.

Civil Action No.: 1:19-cv-02027-DLI-RML

***PROPOSED* FINAL ORDER AND JUDGMENT CERTIFYING CLASS, APPROVING
SETTLEMENT AND APPROVING PLAN OF ALLOCATION**

WHEREAS:

A. On November 12, 2021, Plaintiff Steve Vergara (“Plaintiff”) entered into a Settlement Agreement (the “Settlement Agreement”)¹, in the above-captioned action (the “Litigation” or the “Class Action”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed Settlement of the claims alleged in the Litigation (the “Settlement”).

B. Pursuant to the Court’s Order dated (ECF No. __, entered _____) (the “Preliminary Approval Order”), the Court held a hearing on _____ (the “Final Fairness Hearing”) for the following purposes:

¹ Unless otherwise stated, all capitalized terms used herein have the meanings defined in the Settlement Agreement.

(1) to finally determine whether the Settlement should be approved by the Court as fair, reasonable and adequate and in the best interests of the Class;

(2) to determine whether a Final Order and Judgment should be entered pursuant to the Settlement Agreement, dismissing the Class Action with prejudice as against the Plaintiff and the Class and effectuating the Releases described below;

(3) to determine whether the proposed Plan of Allocation of the Settlement Fund set forth in the Notice is fair and reasonable, and should be approved by the Court;

(4) to consider any request by Class Counsel for an award of attorneys' fees, reimbursement of litigation expenses and a service award to Plaintiff Steve Vergara;

(5) to consider any objections to the Settlement; and

(6) to rule on such other matters as the Court may deem appropriate.

C. The Court ordered that the Notice be mailed by first-class mail, postage prepaid, on or before _____, 2021 (the "Notice Deadline"), to all Class Members who could be identified with reasonable effort by the Claims Administrator.

D. The Class Notice advised Class Members of the date, time, place, and purpose of the Final Approval Hearing. The Notice further advised that any objection to the Settlement was required to be filed with the Court and served on counsel on or before _____, 2021.

E. The Court finds that the provisions of the Preliminary Approval Order as to notice were complied with.

F. On _____, 2021, Plaintiff moved for Final Approval of the Settlement, as directed in the Preliminary Approval Order. Docket No. _____. The Final Approval Hearing was duly held before this Court on _____ 2021, at which time all interested persons were afforded the opportunity to be heard.

G. This Court has duly considered Plaintiff's motion, the affidavits, declarations, and memoranda of law submitted in support thereof, the Settlement Agreement and the Release contained therein, the Plan of Allocation the proposed terms of the Final Order and Judgment, and all of the submissions and arguments presented with respect to the proposed Settlement.

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. This Final Order and Judgment incorporates by reference the definitions in the Settlement Agreement and all capitalized terms used in this Judgment that are not otherwise defined herein shall have the same meanings as set forth therein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all members of the Class.

3. The Court hereby re-affirms its determinations in the Preliminary Approval Order and certifies, pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Class defined as:

All persons and entities that elected to participate in the A-9 DRIP between April 8, 2013, through the end of the A-9's Dividend Reinvestment Plan and received A-9 common stock in lieu of the declared cash dividend at a value of \$10.2 per share. Any person in the United States who acquired shares of Apple REIT Nine, Inc. pursuant to the DRIP for Apple REIT Nine, Inc. from April 8, 2013 to June 27, 2013 inclusive. Excluded from the Class are: (a) Defendant; (b) its parents or any subsidiaries of Defendant; any entity in which Defendant has a controlling interest; any former executive officers or directors of Defendant and their legal representatives, predecessors, successors, and assigns; the Court and any employees of the Court; any persons or entities who validly and timely exclude themselves from the Class pursuant to the procedures described in the Notice.²

² Any Class Member who does not timely and validly exclude himself/herself and/or itself from the Settlement shall be bound by the terms of the Settlement and Preliminary Approval

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of this Settlement only, the Court hereby re-affirms its prior class certification ruling that: (a) Plaintiff is certified as Class Representative for the Class; and (b) the law firm of Squitieri & Fearon, LLP is appointed as Class Counsel.

5. The Notice provided for and given to the Settlement Class: (i) was in compliance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) was directed to the potential class members of the certified class; (iv) constituted notice that was reasonably calculated to apprise Class Members of (a) the effect of the Settlement, (b) of the proposed Plan of Allocation, (c) of Class Counsel's request(s) for awards of attorneys' fees, and payment(s) of expenses incurred in connection with the prosecution of the Action, (d) an award to Plaintiff ("Service Award"), (e) of Class Members' right to object to the Settlement, the Plan of Allocation, and/or Class Counsel's request(s) for awards of attorneys' fees and expenses incurred in connection with the prosecution of the Action and a Service Award payment to Plaintiff, and (f) of their right to appear at the Final Fairness Hearing; (v) constituted due, adequate, and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (vi) satisfied the notice requirements of Rule 23 and specifically 23(b)(2)(c)(B) of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

Order. If Final Judgment is entered, any Class Member that has not submitted a timely, valid written notice of exclusion from the Action shall be bound by all subsequent proceedings, orders, and judgment in this matter, including but not limited to the Release set forth in the Settlement and Order of Final Judgment.

6. The Court (has/has not) made aware of any objections to the Settlement submitted pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure or otherwise. The docket (does/does not) reflect any objections nor any opt-outs.

7. In light of the benefits to the Class, the complexity, expense and possible duration of further litigation of the Action, the risks of establishing liability and damages, the Court hereby fully and finally approves the Settlement as set forth in the Settlement Agreement in all respects and finds that the Settlement and the Plan of Allocation is, in all respects fair, reasonable and adequate, and in the best interests of Plaintiff and Class Members. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties. The Settlement is hereby approved and shall be consummated in accordance with the terms and provisions of the Settlement Agreement and Plan of Allocation.

8. The Plan of Allocation treats class members equitably relative to each other pursuant to 23(e)(2)(D) and is hereby approved.

9. The Class Action is hereby dismissed in its entirety, with prejudice, and without costs to any party, except as otherwise provided in the Settlement Agreement.

10. Upon the Effective Date, Plaintiff and each and every other Class Member, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Claims, as defined in Section I and as set forth in Paragraph 59 of the Settlement Agreement, against each and every one of the Released Parties, as defined in Section I of the Settlement Agreement, and shall forever be BARRED, ENJOINED AND RESTRAINED from commencing, instituting,

prosecuting or maintaining any and all such Released Claims against any and all of the Released Parties.

11. Each Member of the Class is bound by this Judgment, including, without limitation, the releases of claims as set forth above.

12. This Final Order and Judgment and the Settlement Agreement, whether or not consummated, and any discussions, negotiations, proceedings or agreements relating to the Agreement, the Settlement, and any matters arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties, or their respective counsel, for any purpose other than in an action to enforce the terms hereof, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of Defendant, construed as, or deemed to be evidence of any presumption, concession, or admission by Defendant with respect to the truth of any allegation by Plaintiff and the Class, or the validity of any claim that has been or could have been asserted in the Litigation or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendant;

(b) do not constitute, and shall not be offered or received against or to the prejudice of Defendant as, evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by them, or against or to the prejudice of Plaintiff or any other Class Member(s) as evidence of any infirmity in the claims of Plaintiff or other Class Members;

(c) do not constitute, and shall not be offered or received against or to the prejudice of Defendant, Plaintiff, any other member of the Class, or their respective counsel,

as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Defendant, Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement;

(d) do not constitute, and shall not be construed against Defendant, Plaintiff, or any other Class Member, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) do not constitute and shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiff or any other Class Member that any of their claims are without merit or infirm or that damages recoverable in the Litigation would not have exceeded the Settlement Amount.

13. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of this Court.

14. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated; and in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

15. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement as circumstances warrant.

16. The Parties are hereby directed to perform the Settlement Agreement and to perform its terms.

17. A separate order shall be entered regarding Class Counsel's application for attorneys' fees and payment of expenses as allowed by the Court. Such order shall in no way disturb or affect this Judgment once entered and shall be considered separate from this Judgment.

18. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement Agreement and Settlement; (ii) the allowance, disallowance or adjustment of any Class Member's claim on equitable grounds and any award or distribution of the Net Settlement Fund; (iii) disposition of the Net Settlement Fund according to the Plan Of Allocation; (iv) hearing and determining applications for attorneys' fees, costs, interest and payment of expenses in the Litigation; (v) all Parties for the purpose of construing, enforcing and administering the Settlement Agreement, Settlement and this Judgment; and (vi) other matters related or ancillary to the foregoing. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: Brooklyn, New York
_____, 2021

Judge Dora L. Irizarry

EXHIBIT C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVE VERGARA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

APPLE REIT NINE, INC. now known as
APPLE HOSPITALITY REIT, INC.,

Defendant.

Civil Action No.: 1:19-cv-02027-DLI-RML

Honorable Dora L. Irizzary
Honorable Robert M. Levy

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

To: All persons and entities who, from April 8, 2013 through June 27, 2013, inclusive (the “Class Period”), purchased or otherwise acquired units of Apple REIT Nine Inc. in the Dividend Reinvestment Plan (“DRIP”).

*A federal court has authorized this notice. This is not
a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE
CAREFULLY AND IN ITS
ENTIRETY.
YOUR RIGHTS WILL BE AFFECTED BY A CLASS
ACTION LAWSUIT PENDING IN THIS COURT.**

I. THE PURPOSE OF THIS NOTICE

This Notice is being sent pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of New York (the “Court”) to inform you (a) of a proposed settlement of this certified class action lawsuit pending in the Court under the above caption (the “Action”) against Apple REIT, Nine, Inc. n/k/a Apple Hospitality REIT Inc. (the “Defendant”), and (b) procedures for class members to exercise their rights to opt-out, object or remain a part of the class and deadlines to exercise rights and for a final approval hearing.

**YOUR RIGHTS MAY BE AFFECTED BY THE LEGAL PROCEEDINGS IN
THIS ACTION.**

**IF YOU WISH TO COMMENT IN FAVOR OF THE SETTLEMENT OR
OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS
IN THIS NOTICE.**

YOU MAY BE ELIGIBLE TO RECEIVE MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

TO DETERMINE YOUR ELIGIBILITY TO RECEIVE MONEY FROM THIS LAWSUIT, YOU NEED TO SUBMIT THE ATTACHED.

IF YOU DO NOT WISH TO PARTICIPATE IN THE SETTLEMENT, YOU MAY REQUEST TO BE EXCLUDED FROM THE SETTLEMENT BY SUBMITTING A VALID REQUEST FOR EXCLUSION THAT MUST BE POSTMARKED ON OR BEFORE _____, 2021. IF YOU RECEIVED THIS NOTICE ON BEHALF OF A SETTLEMENT CLASS MEMBER WHO IS DECEASED, YOU SHOULD PROVIDE THE NOTICE TO THE AUTHORIZED LEGAL REPRESENTATIVE OF THAT SETTLEMENT CLASS MEMBER.

The District Court has preliminarily approved the Settlement, whose terms are set forth in the Settlement Agreement, which is available at www.AppleReitNineSettlement.com. You have received this Notice because records indicate that you may be a member of the Class ("Class Member"). This Notice is designed to inform you of your rights, and how you can comment in favor of the Settlement, or object to the Settlement.

If the Settlement is finally approved by the District Court, the Settlement will be binding upon all Class Members, unless you exclude yourself, and even if you object to the Settlement. If finally approved, the Settlement resolves the Class's claims asserted against the Defendant.

There will be a hearing to consider Final Approval of the Settlement (the "Final Approval Hearing") before the Honorable Dora L. Irizarry, United States Judge, at ____ p.m. on _____, 2022 in Courtroom ____ of the United States Courthouse, 225 Cadman Plaza East. Brooklyn, New York.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY CLAIMS OR DEFENSES ASSERTED BY ANY OF THE PARTIES. IT IS BASED ON STATEMENTS OF THE PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE LAWSUIT AND OF THE UPCOMING SETTLEMENT HEARING CONCERNING THE SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY, OR MAY NOT, WISH TO TAKE IN RELATION TO THE CLASS ACTION.

1. The "Class," as previously certified by the Court, consists of:

All persons and entities who, from April 8, 2013 through June 27, 2013, inclusive (the "Class Period"), purchased units of Apple REIT Nine Inc. in the DRIP (the "Class") in lieu of the declared cash dividend at a value of \$10.25 per unit.

Excluded from the Class by definition are:

- (a) Defendant; (b) Apple REIT Nine Inc.'s affiliates and subsidiaries; (c) the officers and directors of Apple REIT Nine Inc. and its subsidiaries and affiliates at all relevant times; (d) members of the immediate family of any excluded person; (e) the legal representatives, heirs, successors, and assigns of any excluded person or entity; and (f) any entity in which any excluded person or entity has or had a controlling interest.
- 2. Defendants deny any wrongdoing in this Action and maintain that they are not liable for the harm alleged by Plaintiff. This Notice is not an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by Plaintiff in this case are valid. This Notice is intended solely to advise you of your rights in connection with the Proposed Settlement.

II. OVERVIEW AND STATUS OF THIS ACTION

- 3. Plaintiff Steve Vergara filed this case on April 8, 2019 asserting claims against Defendant Apple REIT Nine, Inc., now known as Apple Hospitality REIT Inc., a real estate investment trust or REIT. Plaintiff originally asserted claims for breach of contract and for breach of the implied duty of good faith and fair dealing under Virginia law. By Memorandum and Order dated March 31, 2020 the Court dismissed Plaintiff's breach of contract claim.
- 4. During the Class Period, Apple REIT Nine, Inc. contracted with its unitholders to provide consenting DRIP participants with units in lieu of cash dividends. The DRIP units were priced at \$10.25 per unit throughout the Class Period. Plaintiff alleges that Apple REIT Nine, Inc. breached the implied covenant of good faith and fair dealing by exercising its discretion unfairly, arbitrarily and in bad faith in maintaining the \$10.25 price when the actual fair market value of the DRIP was considerably less and by failing to establish any procedures to re-evaluate the DRIP unit price. Plaintiff alleges that as a result of Defendant's continued overvaluation of the unit prices of Apple REIT Nine, Inc., participants in the DRIP were shortchanged each time they received A-9 units in lieu of the cash dividends declared and paid by A-9.
- 5. On May 15, 2020, Plaintiff filed his motion to certify the Action as a class action. On February 5, 2021, and following discovery into class certification-related issues, the Court by Magistrate Judge Robert M. Levy issued a Report and Recommendation recommending to the District Court the Plaintiff's motion for class certification be granted in its entirety. On February 19, 2021, the Court by Honorable Judge Irizarry adopted the report and recommendation in total granting Plaintiff's motion for class certification, certifying the Class as set forth above, and appointing Plaintiff as Class representatives and Lead Counsel as Class Counsel.

III. SUMMARY OF SETTLEMENT TERMS AND FREQUENTLY ASKED QUESTIONS (FAQS)

Defendant will pay \$1,200,000 million in cash to resolve the claims of Plaintiff and the Class and for attorney's fees and other costs ("Settlement Fund Deduction"). After deduction of the Settlement Fund Deductions, the balance ("Net Settlement Fund") will be available for distribution to Eligible Class Members pursuant to the Plan of Allocation annexed hereto. The Class (and each member of the Class) is limited solely to the Settlement Fund for the satisfaction of all Released Claims against all Released Parties (which include, *inter alia*, Defendant and its predecessor Apple REIT Nine, Inc., funds and partnerships and for each of the foregoing entities, their present and former partners, employees, general partners, limited partners, directors, officers, attorneys, parents, subsidiaries, and members, shareholders, agents, insurers and/or representatives assigns and A-6's former directors, officers, attorneys, parents, subsidiaries, and assigns).

Under the proposed Plan of Allocation, the Settlement Administrator will calculate each Eligible Class Member's "Allowed Payment Amount" (share of the Net Settlement Fund) in the following manner:

100% of the Net Settlement Fund will be allocated among the Eligible Class Members according to the Plan of Allocation. Class Members who made purchases during the Class Period shall receive a *pro rata* share of this sum based on the Plan of Allocation.

The Plan of Allocation is not a part of or a condition of approval of the Settlement. Under the Agreement, the Net Settlement Fund may be distributed in accordance with the proposed Plan of Allocation or such other plan as the Court may approve.

Why Did I Get This Notice?

This Notice is being sent to you pursuant to the Preliminary Approval Order of the District Court because you, someone in your family, or an investment account for which you serve as a custodian may have acquired shares of Apple REIT Nine, Inc. pursuant to Apple REIT Nine, Inc.'s DRIP between April 8, 2013 and June 27, 2013. The District Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the District Court rules on the proposed Settlement. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the District Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Settlement Administrator selected by the Plaintiff and approved by the Court, will make payments pursuant to the Settlement Agreement and the court- approved Plan of Allocation after any objections and appeals are resolved. This Notice is also being sent to inform you of a hearing to be held by the District Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the Fee and Expense Application.

In a class action lawsuit, the court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. A class action lawsuit is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Once the class is certified, the court must resolve all issues on behalf of the class members, except for any Persons who choose to exclude themselves from the class. In this case, the District Court has certified the Class, appointed Steve Vergara to serve as Class Representative, and has appointed the law firm of Squitieri & Fearon, LLP to serve as Class Counsel.

This Notice does not express any opinion by the District Court concerning the merits of any claim in the Class Action. The District Court must decide whether to approve the Settlement. If the Court approves the Settlement and the Plan of Allocation, payments to Eligible Class Members will be made after appeals if any are resolved.

What Does The Settlement Provide?

In advance of the Final Approval Hearing Defendant shall cause to be delivered to Class Counsel, a check or wire transfer in the amount of \$1.2 million, which will earn interest to add to the Settlement Fund. If the settlement amount is approved, the claims of all Class Members who do not timely exclude themselves will be released. Certain expenses and fees will be deducted from the Settlement Fund and the balance, the Net Settlement Fund, will be distributed among Eligible Class Members according to the Plan of Allocation.

Am I Included In The Settlement?

You are included in the Class if you, or an investment account for which you serve as a custodian, acquired shares of the Apple REIT Nine, Inc, pursuant to the Apple REIT Nine, Inc.'s DRIP between April 8, 2013 and June 27, 2013, inclusive.

All Class Members are included in the Settlement unless he/she/it exercise his/her/their right to opt-out (*see* page __ herein). However, only Eligible Class Members will receive a share of the Net Settlement Fund. As explained in the Settlement Agreement, an Eligible Class Member is a Class Member whose number of DRIP Shares purchased by such Class Member was greater than the number of shares redeemed by A-9 from such Class Member during the Class Period, if any.

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR ELIGIBLE CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT FUND. IF YOU ARE A CLASS MEMBER, YOU SHOULD COMPLETE THE VERIFICATION ANNEXED HERETO. TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU NEED TO FORWARD THE VERIFICATION TO THE CLAIMS ADMINISTRATOR. IF YOU DO NOT YOU WILL BE DEEMED TO HAVE CONSENTED TO THE TERMS OF THE SETTLEMENT.

What Might Happen If There Were No Settlement?

If there were no Settlement, the litigation may proceed to judgment or some other disposition. If Plaintiff failed to establish any essential legal or factual element of her claims against the Defendant, neither she nor the Class would recover anything from the Defendant. Also, if the Defendant were successful in proving any of its defenses, the Class could recover substantially less than the amounts provided in the Settlement, or nothing at all.

What Is The Legal Effect Of The Settlement On My Rights?

If you are a member of the Class, the Settlement will affect you. If the District Court grants final approval of the Settlement, the Class Action will be dismissed with prejudice and all Class Members will fully release and discharge the Defendant (and the other Released Parties) from all claims for relief arising out of or based on Plaintiff's allegations. When a Party to the litigation "releases" claims that means that Party cannot sue the Defendant or the other Released Parties for any of the claims covered by the release. If you are an Eligible Class Member and you submit the Verification, you will receive a payment based upon the distribution formula described in the Plan of Allocation or as otherwise approved by the Court.

What If I Purchased Shares under the DRIP Before or After The Class Period or Purchased Shares Outside of the DRIP?

The Class Period covered by the Settlement covers only DRIP purchasers from April 8, 2013 until June 27, 2013 inclusive, and the claims of all Settlement Class members concerning DRIP purchases of Apple REIT Nine, Inc. during that period will be released under the terms of the Settlement unless Settlement Class Members affirmatively exclude themselves from the Settlement Class.

What Will I Receive From The Settlement?

Pursuant to the Settlement, Defendant shall cause to be delivered to Interim Class Counsel a check or wire transfer in the amount of \$1.2 million, which will be deposited into an interest-bearing escrow account.

At this time, it is not possible to determine precisely how much each Eligible Class Member may receive from the Settlement. However, using a conservative estimate assuming that every Eligible Class Member participates, and assuming that a request for attorneys' fees not to exceed the maximum potential sum permitted under the Settlement Agreement (\$400,000.00) is granted, and that an application for reimbursement of expenses in the amount not to exceed \$ _____ is granted, and assuming the Eligible Class Member did not have any shares redeemed by A-9 during the Class Period, then the Eligible Class Member could receive at least \$.50 per share for the Net DRIP shares purchased during the Class Period.

If the Settlement is approved by the District Court, the Net Settlement Fund (*i.e.*, the Settlement Fund less: (a) all federal, state, and local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes

owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing Notice to Class Members and administering the Settlement on behalf of Class Members; and (c) any attorneys' fees and expenses awarded by the District Court) ("Settlement Fund Deduction") will be distributed to Eligible Class Members as set forth in the proposed Plan of Allocation, or such other plan as the District Court may approve.

The Net Settlement Fund will not be distributed until the District Court has approved a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, concerning the terms of the Settlement and the District Court's approval thereof, has expired and the distribution calculations concluded by the Settlement Administrator.

Approval of the Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the Settlement, if approved.

The District Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Each Class Member shall be deemed to have submitted to the jurisdiction of the District Court with respect to his, her, or its Verification Form. Upon request of the Settlement Administrator, each Person that submits a Verification Form shall subject his, her, or its Claim to investigation as to his, her, or its status as a Claimant and the allowable amount of his, her, or its Claim. Disputes will be handled by the Settlement Administrator upon proof submitted supporting that dispute.

Persons that are excluded from the Class by definition or that exclude themselves from the Class or who have zero (or fewer) Net DRIP shares will not be eligible to receive a distribution from the Net Settlement Fund.

Proposed Plan of Allocation

100% of the Net Settlement Fund will be allocated to net DRIP shares purchased between April 8, 2013 and June 27, 2013 for Apple REIT Nine, Inc. according to the Plan of Allocation. Class Members who made net purchases (*i.e.*, net of redemptions during the Class Period) during the Plan of Allocation Class Period and submit the verification form shall receive a *pro rata* share of this sum based on the Plan of Allocation.

Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the District Court, shall be deemed conclusive against all Eligible Class Members. No Person shall have any claim against Plaintiff, Interim Class Counsel, Defendant, or any of the other Released Parties, or the Settlement Administrator arising from distributions made substantially in accordance with the Settlement Agreement, the Plan of Allocation approved by the District Court, or further orders of the District Court. Except as otherwise provided in the Settlement Agreement, Plaintiff, Defendant, and their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Funds, the Net Settlement Fund, the Plan of Allocation, or the determination, administration,

calculation, or payment of any Verification Form or nonperformance of the Settlement Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

The Plan of Allocation set forth herein is the plan that is being proposed by Plaintiff to the District Court for approval. The District Court may approve this Plan of Allocation as proposed or it may modify the Plan of Allocation without further notice to the Class. Any orders regarding a modification of the Plan of Allocation will be posted on the Settlement website, www.AppleReitNineSettlement.com.

What If I Do Not Wish To Be Included In This Settlement?

If you do not wish to be included in the Class and you do not wish to participate in the Settlement, you may request to be excluded. To do so, you must timely submit a valid Request for Exclusion that must (a) be properly completed and postmarked on or before _____, 2021, and (b) be signed by you. The Court may request further documentation evidencing your holdings of and transactions in, Apple REITs Nine DRIP shares if deemed necessary. The Request for Exclusion should be mailed to the address set forth in this Notice.

If you timely and validly request exclusion from the Class, (a) you will be excluded from the Class, (b) you will not share in the proceeds of the Settlement described herein, (c) you will not be bound by any judgment entered in the Action, and (d) you will not be precluded, by reason of your decision to request exclusion from the Class, from otherwise prosecuting an individual claim, if timely, against the Defendants (or the Released Parties) based on the matters complained of in the Action.

What If A Settlement Class Member Is Deceased?

The authorized legal representative(s) of a Class Member may receive a recovery on behalf of the Class Member, if otherwise eligible.

What If I Held Apple REIT Nine, Inc. DRIP Shares On Someone Else's Behalf?

If you held Apple REIT Nine DRIP shares for the beneficial interest of a Class Member, you are requested to provide the names and addresses of such persons or entities to the Settlement Administrator. If you notify the Settlement Administrator of this information, the Settlement Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with this request, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Settlement Administrator with proper documentation supporting the out-of-pocket expenses for which reimbursement is sought.

How And What Do I Do To Make Sure The Settlement Administrator Has My Correct Address?

If your address changes from the address to which this Notice was directed, you must notify the Settlement Administrator of your new address as soon as possible. Failure to keep the Settlement

Administrator informed of your address may result in the loss of any monetary award you might be eligible to receive. Please send your new contact information to the Settlement Administrator at the address listed below and include your old address, new address, new telephone number, date of birth (for natural persons), and appropriate tax identification number. These last two items are required so that the Settlement Administrator can verify that the address change is from an actual Class Member.

What Are The Plaintiff's and Counsels' Fees And Costs?

At the Settlement Hearing, Class Counsel will request that the District Court award attorneys' fees to Plaintiff's counsel, plus expenses in an amount not to exceed approximately \$_____ (inclusive of notice and administration costs) (collectively "Settlement Fund Deductions") which were incurred in connection with the litigation of the Class Action. Whatever amount is approved by the Court as legal fees and expenses will be paid from the Settlement Fund. To date, Class Counsel has not received any payment for their services in conducting the Class Action, nor have Class Counsel been reimbursed for their expenses. Class Counsel will request case contribution award to the class representative in recognition of his time, effort, and expense on behalf of the Class, in a sum not to exceed a total of \$10,000 which amount has been included in the Settlement Fund Deductions described above.

How Will the Notice Costs and Expenses Be Paid?

Class Counsel are authorized by the Settlement Agreement, as approved by the District Court, to use the Settlement Fund to pay the Settlement Administrator's fees and expenses incurred in connection with giving notice, administering the Settlement, and distributing the Net Settlement Fund to Class Members.

IV. REASONS FOR THE SETTLEMENT

Class Counsel have conducted a thorough investigation of the claims and allegations asserted in the Class Action, as well as the underlying events relevant to the Class Action.

In evaluating the Settlement, Plaintiff and his counsel have considered: (a) the substantial benefits to the members of the Class from the Settlement; (b) the facts developed during Plaintiff's investigation and discovery including depositions of Defendant's current and former officers and directors; (c) the attendant risks of continued litigation and the uncertainty of the outcome of the Class Action; (d) the probability of success on the merits; and (e) the conclusion of Plaintiff's counsel that the terms and conditions of the Settlement are fair, reasonable, adequate and in the best interests of Plaintiff and the Class.

Defendant has denied, and continues to deny, that it or Apple REIT Nine, Inc. committed any breach of any contract duty, or any other law, or engaged in any of the wrongful acts alleged in the Class Action, and expressly maintains that the Class Action is without merit and that Defendant is entering into the Settlement solely to eliminate the burden, expense, distraction and uncertainties inherent in further litigation.

Plaintiff has stated, and continues to state, that he brought these claims in good faith, that he believes that the claims had substantial merit at all relevant times, and that he is agreeing to the terms of the Settlement only because he believes that the Settlement provides a substantial benefit to the Class and has concluded that the terms of the Settlement are fair, reasonable and adequate and in the best interests of the Class.

The \$1.2 million in consideration payable by Defendant under the Settlement provides a substantial and immediate benefit to the Class. Although Interim Class Counsel believes that Plaintiff would be able to prove merit to the claims asserted in the case, there is a substantial risk that Class Members would not recover anything at all if the case were not settled. If the case were to continue to be litigated, the Class would still need to establish the merits of the claims and the amount of damages, if any, by a preponderance of the evidence, and would also need to overcome various legal defenses in order to survive any dispositive summary judgment motions or recover at trial.

V. SUMMARY OF CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:

EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A REQUEST FOR EXCLUSION FORM POSTMARKED NO LATER THAN _____, 2021	If you are an Eligible Class Member and exclude yourself from the Class, you will not be eligible to get any payment from the Net Settlement Fund. This is the only option that allows you to be part of any other lawsuit against the Defendant or the other Released Parties concerning the Released Claims.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION NO LATER THAN _____, 2021	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the Fee and Expense Application, you may write to the District Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the Fee and Expense Application unless you are a Class Member and do not exclude yourself.
GO TO THE SETTLEMENT HEARING ON _____ AT _____ P.M. AND FILE A NOTICE OF INTENTION TO APPEAR NO LATER THAN _____, 2021	Filing a written objection and notice of intention to appear allows you to speak in the District Court about the fairness of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application. If you submit a written objection, you may (but do not have to) attend the hearing and speak to the District Court about your objection.

VI. YOUR RIGHT TO OPT OUT OF THE CLASS ACTION AND FILE YOUR OWN LAWSUIT

How Can I Exclude Myself from the Settlement?

If you do not want to be legally bound by the settlement, you must exclude yourself by _____, 2021. To do so, you must mail your written request for exclusion to the Settlement Administrator at the address below. Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be personally signed by you. If you exclude yourself, you will not receive money from this settlement, but you will retain your legal rights regarding any claims that you may have against the Released Parties regarding the claims asserted in this case.

How Can I Object To The Settlement, Plan of Allocation, and Fee and Expense Application?

Any Class Member who does not request exclusion may object to the Settlement, the proposed Plan of Allocation, and/or the Fee and Expense Application. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Eastern District of New York at the address set forth below on or before _____, 2021. Your written objection should include all reasons for the objection, including any legal and evidentiary support you wish to bring to the Court's attention. The objection must also include your name, address, telephone number, the number and Apple REIT Nine, Inc. shares you held, and the number of Apple REIT Nine, Inc. shares that you purchased in the DRIP. You must also serve the papers on designated representative Lead Counsel and Defendant's counsel at the addresses set forth below.

To be considered, your objection must be filed with the Office of the Clerk's Office no later than _____, 2021, and sent to:

<u>Clerk's Office</u>	<u>Defendant's Counsel</u>	<u>Lead Counsel</u>
United States Court Eastern Clerk of the Court District of New York 225 Cadman Plaza East Brooklyn, New York 11201	MCGUIREWOODS LLP Stanley Roberts, Esq. 901 East Cary Street Richmond, Virginia 23219	SQUITIERI & FEARON, LLP Lee Squitieri 424 Madison Avenue 3rd Floor New York, New York 10017
Re: <i>Vergara v. Apple REIT Nine, Inc.</i> , 1:19-cv-0207-DLI-RML		

You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed

and served a written objection in accordance with the procedures described above, unless the District Court orders otherwise.

If you file an objection to the Settlement, Plan of Allocation, and/or the Fee and Expense Application you also have a right to appear at the Settlement Hearing either in person or through counsel hired by you at your own expense. You are not required, however, to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or the Fee and Expense Application, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on the Settlement Administrator at the address set forth above. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance, the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

Unless the District Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation and the Fee and Expense Application. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

What Rights Am I Giving Up By Remaining In The Class?

If you remain in the Class, you will be bound by any orders issued by the District Court. For example, if the District Court approves the Settlement, the District Court will enter the Final Order and Judgment. The Final Order and Judgment will dismiss with prejudice the claims against the Defendant, and will provide that, upon the Effective Date of the Settlement, Plaintiff and each of the other members of the Class on behalf of themselves, their respective heirs, executors, administrators, predecessors, successors, and assigns, among others, shall be deemed by operation of law to have fully granted and completely discharged, dismissed with prejudice, settled and released, and agreed to be barred by a permanent injunction from the assertion of, Released Claims against any of the Released Parties and their attorneys.

"Released Claims" shall mean any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, whether asserted directly, indirectly, derivatively, representatively, or in any other capacity, including, without limitation, any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, and any claims for gross negligence, fraud or negligent misrepresentation that a Class Member has or may have against the Released Parties that arise from, are based on, or are related in any way to the allegations, transactions, facts, events, matters, occurrences, acts, representations, statements or omissions that were or could have been alleged, set forth or referred to in the Action during the Class Period, except for claims related to the enforcement of the Settlement.

"Released Parties" shall mean Defendant and its predecessor, A-9, Defendant's present and former directors, officers, attorneys, parents, subsidiaries, and assigns and A-9's former directors, officers, attorneys, parents, subsidiaries, and assigns.

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

VIII. THE SETTLEMENT HEARING

The Court has scheduled the Settlement Hearing to be held _____, 2022 at the time identified in Section I above to determine: (a) whether the Court should finally approve the Settlement as fair, reasonable and adequate to the Class; (b) whether to enter judgment dismissing the Class Action with prejudice and extinguishing and releasing the Released Claims; (c) if the Court approves the Settlement, whether the Court should grant Plaintiffs application for payment of attorneys' fees and reimbursement of expenses; and (d) to consider such other matters as may properly come before the Court.

The Court may postpone, reschedule or adjourn the Settlement Hearing without further notice to the Class other than by filing a notice on the docket in the Class Action in advance of the Settlement Hearing, or by making an announcement at the Settlement Hearing or any adjournment thereof. The Court also has reserved the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties and without further notice to the Class.

IX. YOUR RIGHT TO APPEAR AND OBJECT

Any member of the Class who objects to any aspect of the Settlement, certification of the Class, entry of the Final Order and Judgment, and/or Plaintiff's counsel's application for payment of attorneys' fees and expenses, or who otherwise wishes to be heard, may appear in person by his, her or its attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the judgment to be entered thereon, and no papers or briefs submitted by any member of the Class or any other person shall be received and considered by the Court, unless, not later than _____, 2021, such person files with the Court and serves upon all of the counsel listed below, at the addresses listed below, a written objection. The objection shall be served upon:

Lee Squitieri
Squitieri & Fearon, LLP
424 Madison Avenue
3rd Floor
New York, New York 10017
lee@sfclasslaw.com

Stanley Roberts, Esq.
McGuireWoods LLP
901 East Cary Street
Richmond, Virginia 23219-4030
sroberts@mcquirewoods.com

X. FINAL ORDER AND JUDGMENT OF THE COURT

If following the Settlement Hearing the Settlement is approved by the Court as fair, reasonable and adequate, the Parties will jointly request that the Court enter a Final Order and Judgment which will, among other things: (a) determine that the requirements of the Federal Rules of Civil Procedure and due process have been satisfied in connection with the Notice provided to the Class;; (b) approve the Settlement as fair, reasonable and adequate to the Class; (c) dismiss the Class Action with prejudice on the merits, as against Defendant, without costs except as herein provided, and release Defendant and any other of the Released Parties from the Released Claims; and (d) determine any payment of attorneys' fees and expenses incurred by Plaintiff.

XI. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

At the Settlement Hearing, Lead Counsel will request that the District Court award attorneys' fees not to exceed one-third of the Settlement Fund (or \$400,000 million) plus expenses – in an amount not to exceed approximately \$ _____ (inclusive of administration costs) which were incurred in connection with the litigation of the Class Action. Whatever amount is approved by the Court as legal fees and expenses will be paid from the Settlement Fund. To date, Class Counsel has not received any payment for their services in conducting the Class Action, nor have they been reimbursed for their expenses. Plaintiff will also request an incentive award to the class representative in recognition of his time, effort, and expense on behalf of the Class not to exceed \$10,000.00.

XII. SCOPE OF THIS NOTICE

This Notice is not all-inclusive. The references in this Notice to the pleadings in the Class Action, the Settlement Agreement and all other papers or proceedings herein are only summaries and do not purport to be comprehensive. For the full details of the Class Action, the claims that have been asserted in the Class Action and the terms and conditions of the Settlement, including a complete copy of the Settlement Agreement and related Orders and proposed forms of Orders, you are referred to the Court file for the Class Action (accessible at www.AppleReitNineSettlement.com).

You may also review the Settlement Agreed filed with the District Court, as well as the other pleadings and records of this litigation, which may be inspected during business hours, at the office of the Clerk of the Court, Eastern District of New York, 225 Cadman Plaza East, Room 130, Brooklyn, New York 11201.

If you have any questions about the settlement of the Class Action, you may contact Interim Class Counsel at the addresses and telephone numbers below.

DO NOT TELEPHONE OR WRITE THE DISTRICT COURT OR THE OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE

BY ORDER OF THE U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

SQUITIERI & FEARON, LLP

Lee Squitieri

424 Madison Avenue

3rd Floor

New York, New York 10017

lee@sfclasslaw.com

(212) 421-6492

(212) 421-6553 (fax)

PLEASE DO NOT CALL OR WRITE THE COURT WITH GENERAL INQUIRIES.

EXHIBIT D

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STEVE VERGARA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

APPLE REIT NINE, INC. now known as
APPLE HOSPITALITY REIT, INC.,

Defendant.

Civil Action No.: 1:19-cv-02027-DLI-RML

PRELIMINARY APPROVAL ORDER

WHEREAS, the above-titled class action (the “Class Action” or the “Litigation”) is pending before the Court;

WHEREAS, this matter is before the Court for consideration of (a) whether the proposed Settlement reached by the parties should be preliminarily approved, (b) and the proposed plan for notifying the class and establishing procedures for class members to participate in the settlement and/or object to the settlement or exclude themselves from the settlement (the “Notice Plan”) be adopted.

WHEREAS, this action was commenced on April 8, 2019 by filing of a Summons and Complaint in this Court (ECF No. 1). Thereafter Plaintiff filed an Amended Complaint (ECF No. 6);

WHEREAS, Defendant filed a motion to dismiss the action in its entirety. ECF No. 9;

WHEREAS, the Plaintiff filed Memorandum of Law in Opposition to Defendant’s Motion to Dismiss;

WHEREAS, on March 31, 2020, this Court granted in part and denied in part Defendant's Motion to Dismiss (ECF No. 19);

WHEREAS, on April 20, 2021 Defendant filed its Answer and Affirmative Defenses (ECF No. 21);

WHEREAS, on May 15, 2021, Plaintiff filed a Motion for Class Certification pursuant to Fed. R. Civ. P. 23 (ECF No. 23) and Defendant filed its opposition thereto (ECF No. 26). On February 5, 2021, Magistrate Judge Levy recommended that a class as described below be certified (ECF No. 31);

WHEREAS, on March 1, 2021, this court adopted the Report and Recommendation of Magistrate in a docket entry order on March 1, 2021;

WHEREAS, the Court has certified the following class:

All persons and entities that elected to participate in the A-9 DRIP between April 8, 2013 through the end of the A-9's Dividend Reinvestment Plan and received A-9 common stock in lieu of the declared cash dividend at a value of \$10.2 per share. Any person in the United States who acquired shares of Apple REIT Nine, Inc. pursuant to the DRIP for Apple REIT Nine, Inc. from April 8, 2013 to June 27, 2013 inclusive. Excluded from the Class are: (a) Defendant; (b) its parents or any subsidiaries of Defendant; any entity in which Defendant has a controlling interest; any former executive officers or directors of Defendant and their legal representatives, predecessors, successors, and assigns; the Court and any employees of the Court; any persons or entities who validly and timely exclude themselves from the Class.

WHEREAS, the parties engaged in further fact discovery which was concluded in accordance with the Schedule set by the Court;

WHEREAS, upon completion of fact discovery but prior to designation of experts under Rule 26, the parties mutually agreed to attempt to mediate towards a settlement and thereafter with the assistance of Judge Levy chose a mediator and after a full day of mediation presided by

mediator David Berger, Esq., selected from this Court's panel of mediators, the parties agreed in principle to the settlement presented now for Preliminary Approval;

WHEREAS, Plaintiff and Defendant have entered into a Settlement Agreement dated November 12, 2021, which is subject to review and approval under Rule 23(e) of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the Litigation (the "Settlement") and the dismissal of the Litigation with prejudice;

WHEREAS, the Counsel for Plaintiff have submitted a motion for preliminary approval of settlement pursuant to Rule 23(e), declaration of counsel and accompanying memorandum of law in support of preliminary approval of the proposed Settlement;

WHEREAS, the Court has read and considered the proposed Settlement Agreement¹ and exhibits thereto, and the accompanying documents;

WHEREAS, the Parties to the Settlement have consented to the entry of this Order; and

Accordingly, good cause appearing in the record, now

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT:

Preliminary Approval of the Proposed Settlement And Notice Plan

1. Having reviewed the proposed Settlement Agreement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval under Rule 23(e), Fed. R. Civ. P. and therefore the proposed Settlement Class should be preliminarily certified, and the proposed Notice Plan approved.

¹ Unless otherwise stated, all capitalized terms used herein have the meanings defined in the Settlement Agreement.

2. Upon review of the submissions of counsel, the Court finds that the proposed Settlement appears to offer a level of consideration to class members in exchange for release of claims that is within the range of fairness and which therefore warrants issuance of Notice to the Settlement Class; the Court further finds that the proposed settlement was reached through an arms-length negotiating process presided over by David Berger, Esq., mediator through this Court's mediation program; the Court further finds that the form, content and procedures for providing class members with Notice of Settlement and right to be heard, will, if executed as ordered, satisfy due process requirements under Rule 23. Accordingly the proposed Settlement is preliminarily approved, subject to Final Approval.

3. The Court approves the substance of the Notice Plan, in the form annexed as Exhibit "A" hereto, the "Notice of Proposed Settlement of Class Action" ("Notice") to be mailed and/or emailed to all potential class members, including a proposed Plan of Allocation ("POA").

4. The Court also approves the procedures for implementation of the Notice Plan and procedures for participation in the Settlement and/or objection or exclusion by Class Members as described herein.

Notice To The Class

5. The Court finds that the form, content, and method of giving Notice to the Settlement Class as described in the Settlement Agreement and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other

legal requirements. The Court further finds that the Notice is written in plain language and is designed to be readily understandable by Class Members.

6. The Notice Plan Procedures set forth in the Settlement Agreement satisfies the requirements of Federal Rule of Civil Procedure 23 and is thus approved. Non-material modifications to the exhibits to the Notice may be made without further order of the Court as mutually agreed by the parties hereto. The Settlement Administrator and Class Counsel are directed to carry out the Notice Plan in conformance with the Settlement Agreement and to perform all other tasks that the Settlement Agreement requires and as may be required by the terms of its engagement.

7. No later than 30 days after entry of this Preliminary Approval Order, Class Counsel shall cause the Notice to be emailed and mailed by the Settlement Administrator to those Class Members who can be identified from records maintained by Apple REIT Nine, Inc. and/or David Lerner Associates and/or Apple Hospitality REIT, Inc. Follow-up efforts by the Claims Administrator to locate current addresses for any undeliverable Notices shall continue as needed. Not later than 10 business days after entry of this Preliminary Approval Order, Class Counsel shall cause the Claims Administrator to establish a website that will provide Class Members with access to this Order, the Settlement Agreement, the Notice, and all of the papers before the Court on this motion and the motion for Final Approval of Proposed Settlement.

Final Approval Hearing

8. A final approval hearing shall take place before the Court on or after (120 days after entry of Preliminary Approval Order) at ____ a.m./p.m. in the United States District Court for the Eastern District of New York at the Courthouse at 225 Cadman Plaza East, Brooklyn, New York 11201, before the Honorable Judge Dora L. Irizzary in Courtroom __ (“Final Approval Hearing”),

Objections

15. The Court will consider any objections, and comments in support of, or in opposition to, the proposed Settlement, the Plan of Allocation, or any request for counsel for an award of attorneys' fees, reimbursement of litigation expenses, and an award to Plaintiff only if such comments and any supporting papers are in writing and filed electronically with the Court or with the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Room 130, Brooklyn, New York 11201, and copies of all such papers are served, on or before 60 days after mailing notice to the Class ("Objection Deadline") upon each of the following by U.S. Mail and e-mail:

Lee Squitieri
Squitieri & Fearon, LLP
424 Madison Avenue
3rd Floor
New York, New York 10017
lee@sfcclasslaw.com

Stanley A. Roberts
McGuireWoods LLP
800 E. Canal St.
Richmond, VA 23219
sroberts@mcguirewoods.com

16. A class member who complies with the requirement of this Order may assert an objection to the proposed Settlement, Class Counsel's request for fees and expenses, or the request for a service award to the class representative.

17. No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is (a) electronically filed with the Court by the Objection Deadline on or before; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Defendant's Counsel, at the addresses listed in the Notice, and postmarked no later than the Objection Deadline,

as specified in the Notice. Objections shall not exceed twenty-five (25) pages. For the objection to be considered by the Court, the objection shall set forth:

- (a) The name of this action;
- (b) The name of the objector and the name of the account in which the objector's shares are held, and the full name, address, email address, and telephone number of any person acting on its behalf with respect to the objection;
- (c) An explanation of the basis upon which the objector claims to be a class member, *i.e.* number of DRIP shares purchased, and A-9 redeemed during the Class Period verified by the Objector, not the Objector's representative, unless accompanied by duly executed Power of Attorney;
- (d) All grounds for the objection, accompanied by any legal support for the objection;
- (e) The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the settlement, the fee application, or the application for service awards;
- (f) The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- (g) The title and/or caption of each case in which the objector has made an objection to a class action settlement in the preceding five years;
- (h) If the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objector he or she represents, the objection should also include (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector

representative or any other class member that its claims lack merit or that the relief requested is inappropriate, improper, or unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this litigation or in any other lawsuit.

Stay of Proceedings

24. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended. Any and all class members who do not opt-out are enjoined from any litigation against Plaintiff or Defendant arising out of the claims to be settled in this action except as permitted herein pending the Final Approval Hearing and issuance of Order of Final Judgment, or until further order.

Continuance of Final Approval Hearing

25. The Court may change the setting of the hearing from in-person to remote or vice versa and reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the class but notice shall be provided on the docket for this action maintained by the Court.

**Schedule For Providing Notice, Opportunity
To Opt-Out Or Object And The Date of Final Approval Hearing**

26. The settlement agreement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the settlement agreement and this Order include but are not limited to the following:

Notice Deadline: 30 days after entry of this Order]

Objection and Opt-Out Deadline: [60 days after the Notice Deadline]

Filing Motion for Final Approval: [14 days before Final Approval Hearing]

Final Approval Hearing: [a date to be set by the Court no earlier than 120 days after
the date of the entry of the preliminary approval order]

IT IS SO ORDERED this ____ day of _____, 2021.

The Honorable Dora L. Irizzary
United States District Court Judge