

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

DCG&T f/b/o JACK BATTAGLIA/IRA; JACK
BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S. WATERS,
ROBERT M. WILY, BRUCE H. MATSON, JAMES
C. BARDEN and DOES 1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No: 3:14-CV-00067

**NOTICE OF PENDENCY AND PARTIAL
SETTLEMENT OF SHAREHOLDER DERIVATIVE ACTION**

TO: ALL HOLDERS OF APPLE HOSPITALITY REIT, INC. ("AHR") COMMON STOCK

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. YOUR RIGHTS WILL BE AFFECTED.

THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A SHAREHOLDER DERIVATIVE ACTION AND CLAIMS ASSERTED THEREIN ON BEHALF OF AHR. YOUR RIGHTS MAY BE AFFECTED BY THIS NOTICE.

PURPOSE OF THIS NOTICE

1. This Notice is given pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and by an Order of the United States District Court for the Eastern District of Virginia following the execution of a Stipulation of Settlement signed by the parties on July 22, 2015 (the "Stipulation"). The purpose of this Notice is to advise you that (1) a shareholder derivative lawsuit is pending in this Court; (2) the parties thereto have reached a proposed settlement (the "Settlement"), which would resolve these claims and any claims related thereto as set forth in the Stipulation, against Defendants Glade M. Knight, Michael S. Waters, Robert M. Wily, Bruce H. Matson, and James C. Barden (collectively, "Director Defendants"), previously named Defendants Justin Knight, David McKenney, Kristian Gathright, and Bryan Peery (collectively "Officer Defendants"), and Nominal Defendant AHR (collectively, for purposes of this settlement only, the "Defendants") on the terms and conditions summarized in this Notice and set forth in the Stipulation, and (3) a Final Settlement Hearing will be held on September 14, 2015, at 10:00 a.m., before the Honorable John A. Gibney, Jr., United States District Court for the Eastern District of Virginia, 701 East Broad Street, Richmond, Virginia 23219, to consider the fairness, reasonableness, and adequacy of the Settlement, the request for payment of attorneys' fees and expenses to Plaintiffs' counsel, and case contribution award.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF ANY CLAIMS OR ANY DEFENSES ASSERTED BY ANY PARTY IN THE ACTION, OR OF THE FAIRNESS, REASONABLENESS, OR ADEQUACY OF THE PROPOSED SETTLEMENT.

DEFINITIONS

2. "Court" means the United States District Court for the Eastern District of Virginia.
3. "Defendants' Counsel" means the law firm of McGuireWoods LLP.
4. "Effective Date" means the date upon which the Settlement contemplated by the Stipulation shall become effective, as set forth below.
5. "Final" means that an Order is no longer subject to reversal, modification, or amendment. For the purposes hereof an Order shall become "Final" upon the expiration of any time for appeal or review of such Order, or, if any appeal, motion for re-argument or reconsideration is timely filed and not dismissed, after such appeals or motions are

decided without causing a material change in the Order, or after such Order is upheld on appeal and is no longer subject to review upon appeal or review by writ of certiorari.

6. "Notice" means this Notice of Pendency of Shareholder Derivative Action and Hearing On Proposed Settlement.

7. "Order and Final Judgment" means the Order to be entered approving the Settlement substantially in the form attached to the Stipulation as Exhibit B.

8. "Person" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

9. "Plaintiffs' Counsel" mean the law firms of Squitieri & Fearon LLP, Wilentz Goldman & Spitzer, P.A., and Sands Anderson, P.C.

10. "Preliminary Approval Order" means the Order preliminarily approving the Settlement and directing notice thereof, substantially in the form attached to the Stipulation as Exhibit D.

11. "Releases" means: Upon the effective date of the Settlement, the Releasing Parties, as defined below, shall release, be deemed to release, dismiss, compromise, settle, forever discharge, and forever be enjoined from prosecuting, causing to be prosecuted, or authorizing the prosecution of, the Settled Claims against any of the Released Parties, as defined below.

12. "Releasing Parties" means Old A-9, AHR, AHR shareholders, and Plaintiffs, either derivatively on behalf of AHR or directly, and their former, current, or future respective heirs, executors, administrators, successors, assigns, agents, servants, attorneys, advisors, underwriters, officers, directors, employees, partners, predecessors, successors, parents, subsidiaries, affiliates, stockholders, representatives, trusts, committees, and all persons or entities acting in concert with such person.

13. "Released Parties" means Old A-9, AHR, the Officer Defendants, the Director Defendants, and Old A-9's and AHR's former, current, or future respective heirs, executors, administrators, successors, assigns, agents, servants, insurers, attorneys, advisors, underwriters, officers, directors, employees, partners, predecessors, successors, parents, subsidiaries, affiliates, stockholders, representatives, trusts, committees, and all persons or entities acting in concert with such person.

14. "Settled Claims" means any and all claims, rights, demands, suits, matters, proceedings, charges, allegations, complaints, issues, or causes of action that were or could have been asserted in the Action either derivatively, directly, or in any other capacity (whether or not raised or known) or otherwise relate to the subject matter of the allegations and claims as described in the Complaint or Amended Complaint that were or could have been asserted in the Action either derivatively, directly, or in any other capacity (whether or not raised or known).

15. "Settlement" means the Settlement contemplated by the Stipulation.

16. "Final Settlement Hearing" means a hearing that will be held by the Court to consider whether the Settlement should be approved by the Court as fair, reasonable, adequate, and in the best interests of AHR and its shareholders, including Plaintiffs, whether to award the requested fees and expenses, whether to rule upon any other matters that come before the Court, and whether the Order and Final Judgment should be entered.

BACKGROUND OF THE SHAREHOLDER DERIVATIVE LITIGATION

17. The derivative action pending in the United States District Court for the Eastern District of Virginia, Richmond Division (the "Action") arises out of the merger in March 2014 (the "Merger") of Apple REIT Seven, Inc. ("A-7"), Apple REIT Eight, Inc. ("A-8"), and Apple REIT Nine, Inc. ("Old A-9"). The Old A-9 Board unanimously approved the Merger agreement based upon the recommendation of the Old A-9 Special Committee. Plaintiffs allege that the Merger exchange ratio of the shares of the three merging Apple REITs is unfair and seek to recover damages to Old A-9.

18. On December 18, 2014, Judge Gibney issued a Memorandum Opinion (Dkt. No. 67) on Defendants' Motion to Dismiss, dismissing Plaintiffs' class claims against Old A-9 officers Justin Knight, David McKenney, Bryan Peery, and Kristian Gathright, but allowing the shareholder derivative claim on behalf of AHR against Defendants Glade

Knight, James C. Barden, Michael S. Waters, Robert M. Wily, and Bruce H. Matson (collectively, "Remaining Defendants") to go forward. *Battaglia v. Knight*, 2014 U.S. Dist. LEXIS 174996 (E.D. Va. Dec. 18, 2014).

19. In their remaining claim, Count II of their First Amended Complaint (Dkt. No. 23), Plaintiffs assert a shareholder derivative claim under Virginia law against the Remaining Defendants for an alleged breach of the duty of loyalty and care in connection with their approval of the Merger.

20. Defendants deny the truth of the allegations in Plaintiffs' Complaint and Amended Complaint and maintain that Plaintiffs' claim has no merit.

21. The parties have engaged in extensive litigation of the claims, including the production of documents, responses to interrogatories, the class action deposition of Plaintiff Jack Battaglia, and the depositions of almost every key person involved in the planning and execution of the Merger, including Glade Knight, Citigroup (Old A-9's Special Committee financial advisor), Bruce Matson, Michael Waters, and certain officers of the Apple REITs.

22. After mediation before the Honorable David Novak, Magistrate Judge of the United States District Court for the Eastern District of Virginia, the parties entered into an agreement in principle that is now reflected in the Stipulation.

23. Plaintiffs, by and through their Counsel, have conducted protracted and substantively difficult discussions and arm's-length negotiations with Defendants' Counsel with respect to a compromise and settlement of this Action with a view to settling certain of the issues in dispute and achieving the best relief possible, under prevailing circumstances, consistent with the interests of the Company and its shareholders.

24. Plaintiffs' Counsel have concluded, based upon their investigation, discovery, and analysis, that the terms and conditions of the Stipulation are fair, reasonable, and adequate to Plaintiffs, AHR, and its shareholders, and have agreed to settle the claims raised in this Action pursuant to the terms and provisions of the Stipulation, after considering (a) the substantial benefits that the Company will receive from settlement of the litigation, (b) the attendant risks of the litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation.

25. The Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever. The Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession by the Settling Parties, as defined below, of any infirmity in the claims or defenses asserted in the Action.

26. The parties have authorized their respective counsel to file a Stipulation of Dismissal, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), that includes the condition that the Court shall retain jurisdiction to enforce the terms of the Stipulation. The Stipulation of Dismissal is to be filed within ten (10) business days of any Court approval pursuant to Rule 23.1 of the Federal Rules of Civil Procedure. Pursuant to *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375 (1994), the Stipulation of Dismissal shall explicitly reserve such jurisdiction in this Court.

27. By operation of the Order and Final Judgment, upon the Effective Date of this Settlement, the Releasing Parties with respect to each and every Settled Claim, waive, release, forever discharge, dismiss, and agree not to institute, maintain, or prosecute any or all Settled Claims against any or all of the Released Parties, and shall be permanently and finally enjoined, without the necessity of posting a bond, from commencing, prosecuting, causing to be commenced or prosecuted, authorizing or assisting anyone else in commencing or prosecuting, any claims, actions, or other proceedings asserting any of the Settled Claims either directly, representatively, derivatively, or in any other capacity against any of the Released Parties.

TERMS OF THE SETTLEMENT

28. The obligations incurred pursuant to the Stipulation of Settlement shall be in full and final disposition of the Action and any and all Settled Claims as against any and all Released Parties.

29. Within 20 days after the Court enters the Order Regarding Preliminary Approval, Plaintiffs' Counsel shall establish at a federally-insured financial institution (the "Financial Institution") a settlement fund account (the "settlement fund account") and shall direct the Financial Institution to make distributions from the settlement fund account only in accordance with an Order from the Court. Plaintiffs' Counsel shall promptly notify Defendants' Counsel of the identity of the Financial Institution. The settlement fund account shall bear interest, and shall be structured and managed to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder. The settlement fund account will pay any federal, state, and local taxes that may apply to the income of the

settlement fund account. The Financial Institution shall arrange for the preparation and filing of all tax reports and tax returns required to be filed by the settlement fund account and for the payment from the settlement fund account of any taxes owed. All taxes on the income of the settlement fund account and tax-related expenses incurred in connection with the taxation of the settlement fund account shall be paid solely out of the settlement fund account and shall be considered a cost of administration. The Financial Institution shall arrange for the preparation and issuance of any required Forms 1099 to persons receiving payments from the settlement fund account, and costs incurred in connection therewith also shall be paid solely out of the settlement fund account and shall be considered a cost of administration.

30. In consideration of all of the promises and agreements set forth in the Stipulation of Settlement, the Remaining Defendants will cause to be deposited into the settlement fund account within 90 days after the entry of the Order regarding Preliminary Approval, the aggregate sum of twelve million dollars in United States currency (\$12,000,000.00), inclusive of all attorneys' fees and costs, in full satisfaction of the Settled Claims brought or that could have been brought arising out of or related to the allegations set forth in the Complaint and Amended Complaint filed in the Action.

31. The consideration deposited into the settlement fund account, subject to the payments in Paragraph 33 hereof, shall be distributed pursuant to the Plan of Allocation approved by the Court.

32. No Defendant, executive officer of any of the Apple REIT companies, advisers, or Apple Fund Management shall be included in the distribution set forth in the Plan of Allocation.

33. All amounts for attorneys' fees, costs of settlement, and administration and case contribution (incentive) awards to Plaintiffs as approved by this Court after notice and an opportunity to be heard under Rule 23.1 of the Federal Rules of Civil Procedure shall be deducted from the settlement fund account.

34. Defendants have not and will not have any involvement or role in the preparation, formulation, methodology, calculations, or execution of the Plan of Allocation or the petition for approval thereof by the Court as part of the approval of this proposed Settlement, and the preparation, formulation, methodology, calculations, and execution of the method and Plan of Allocation are solely Plaintiffs' responsibilities. If any claim is brought against any of the Released Parties with respect to the Plan of Allocation, the Releasing Parties agree to indemnify and hold harmless the Released Parties and pay out of the settlement funds any and all costs, fees, and expenses incurred in connection with the defense of any such claim.

35. Defendants shall not oppose Plaintiffs' motion for approval of the Settlement and award of attorneys' fees, expenses, and case contribution award to Plaintiffs, provided that such application shall be in accordance with the Federal Rules of Civil Procedure and applicable case law, and Defendants take no position with respect to the Plan of Allocation.

36. AHR and Defendants shall reasonably cooperate with consummation of the Settlement, except that Defendants have not and will not have any involvement or role in the preparation, formulation, methodology, calculations, or execution of the Plan of Allocation or the petition for approval thereof by the Court as part of the approval of this proposed Settlement, and the preparation, formulation, methodology, calculations, and execution of the method and Plan of Allocation are solely Plaintiffs' responsibilities.

PLAINTIFFS' COUNSEL'S POSITION CONCERNING SETTLEMENT

37. Counsel for Plaintiffs have carefully considered and evaluated, among other things, the interests of AHR in resolving the Action with as little disruption to the corporation's affairs as is consistent with securing relief, the relevant legal authorities and evidence to support the claims asserted against the Remaining Defendants, the likelihood of prevailing on those claims, the Remaining Defendants' respective abilities to pay any judgment, and the likely appeals and subsequent proceedings necessary if Plaintiffs were to prevail against the Remaining Defendants. Plaintiffs' Counsel have concluded that the proposed Settlement is fair, reasonable, adequate and in the overall best interests of AHR and its shareholders.

DEFENDANTS' POSITION CONCERNING SETTLEMENT

38. The Defendants have denied and continue to deny the allegations and claims set forth in Plaintiffs' Complaint and Amended Complaint and that they have liability as a result of any or all of the allegations contained in the Action. The Defendants have considered the additional expenses that would be incurred and the burden to AHR Shareholders and are entering into the Settlement in order to eliminate the burden, distraction, expenses, and uncertainty of further litigation. The Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever.

ATTORNEYS' FEES AND EXPENSES OF PLAINTIFFS' COUNSEL

39. Plaintiffs' Counsel have not received any payment for work in connection with the Derivative Action, nor been reimbursed for out-of-pocket expenses. Counsel for Plaintiffs intends to apply to the Court for approval of an award of fees and expenses in an amount not to exceed \$4,300,000 (the "Fees and Expenses"). The Defendants have agreed not to oppose a reasonable request for Fees and Expenses within applicable precedent if the proposed Settlement is approved by the Court.

CONDITIONS TO SETTLEMENT

40. The Stipulation contains conditions, which must be satisfied for the parties to be required to complete the Settlement.

NOTICE OF HEARING ON PROPOSED SETTLEMENT

41. A Final Settlement Hearing will be held on September 14, 2015, at 10:00 a.m. before the Honorable John A. Gibney, Jr. in Courtroom 6000, U.S. Courthouse, 701 East Broad Street, Richmond, Virginia 23219. The purpose of the Final Settlement Hearing will be to: (a) determine whether the Settlement should be approved as fair, reasonable, and adequate; (b) hear Plaintiffs' application for an award of attorneys' fees and expenses and Plaintiffs' case contribution award; and (c) rule upon any other matters that come before the Court.

42. The Court may adjourn the Final Settlement Hearing by oral announcement at such hearing or any adjournment without further notice of any kind. The Court may approve the Settlement with or without modification, enter an Order and Final Judgment, and order the payment of the Fees and Expenses without further notice of any kind.

THE RIGHT TO BE HEARD AT THE SETTLEMENT HEARING

43. Any AHR shareholder may appear and show cause, if he, she, or it has any reason why the Settlement of the Action embodied in the Stipulation should not be approved as fair, reasonable, and adequate, or why a judgment should or should not be entered hereon, or why the Fees and Expenses should not be awarded; provided, however, that no AHR shareholder shall be heard or entitled to contest the approval of the proposed Settlement, or, if approved, the Order and Final Judgment to be entered hereon, unless that AHR shareholder has caused to be filed written objections, stating all supporting bases and reasons for the objection; setting forth proof of current ownership of AHR stock as well as documentary evidence of when such stock ownership was acquired; clearly identifying any and all witnesses, documents and other evidence of any kind that are to be presented at the Final Settlement Hearing in connection with such objections; and further setting forth the substance of any testimony to be given by such witnesses, with:

CLERK OF THE COURT
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, Virginia 23219

on or before ten (10) business days prior to the Final Settlement Hearing and has served copies of all such papers at the same time upon the following by first-class mail:

Lee Squitieri, Esq. (Admitted *Pro Hac Vice*)
SQUITIERI & FEARON, LLP
32 East 57th Street
12th Floor
New York, New York 10022

SANDS ANDERSON, P.C.
Jeffrey Hamilton Geiger
1111 East Main Street
Suite 2400
Richmond, Virginia 23219

Kevin Roddy (Admitted *Pro Hac Vice*)
WILENTZ, GOLDMAN & SPITZER P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, New Jersey 07095
Plaintiffs' Co-Lead Counsel

Charles Wm. McIntyre
MCGUIREWOODS LLP
2001 K Street NW, Suite 400
Washington, D.C. 20006-1040

Elizabeth F. Edwards
McGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, Virginia 23219

Defendants' Counsel

Any AHR shareholder wishing to be heard at the Final Settlement Hearing is required to include a notice of intention to appear at the Final Settlement Hearing together with their written objection.

44. Any AHR shareholder who does not make his, her, or its objection in substantially the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from: (a) making any objections to the fairness, adequacy, or reasonableness of the Settlement; and (b) making any objections to the fairness and reasonableness of the Fees and Expenses.

FURTHER INFORMATION

45. Further information regarding the Action and this Notice may be obtained by writing to Plaintiffs' Co-Lead Counsel: Lee Squitieri, Esq., Squitieri & Fearon, LLP, 32 East 57th Street, 12th Floor, New York, New York 10022; Kevin Roddy, Esq., Wilentz Goldman & Spitzer, P.A., 90 Woodbridge Center Drive, Suite 900, Woodbridge, New Jersey 07095; and Jeffrey Hamilton Geiger, Esq., Sands Anderson, P.C., 1111 East Main Street, Suite 2400, Richmond, Virginia 23219; or counsel for AHR and Defendants: Charles Wm. McIntyre, Esq., McGuireWoods LLP, 2001 K Street, N.W., Suite 400, Washington, D.C. 20006-1040, and Elizabeth F. Edwards, Esq., McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, Richmond, Virginia 23219. You may also visit www.gardencitygroup.com.

46. The pleadings and other records of the Derivative Action as well as the Stipulation filed with the Court may be examined and copied at any time during regular office hours at the Office of the Clerk, United States District Court, Eastern District of Virginia, U.S. Courthouse, 701 East Broad Street, Richmond, Virginia 23219.

Please Do Not Telephone The Court or The Clerk's Office Regarding This Notice.

Dated: July 31, 2015

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA