

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

**IN RE NEWMARK GROUP, INC.  
DERIVATIVE LITIGATION**

**CONSOLIDATED  
C.A. No. 2022-0687-BWD**

**AMENDED NOTICE OF PENDENCY AND PROPOSED  
SETTLEMENT OF DERIVATIVE ACTION**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS  
OF COMMON STOCK OF NEWMARK GROUP, INC.  
("NEWMARK" OR THE "COMPANY"), ALONG WITH  
THEIR SUCCESSORS AND ASSIGNS, EXCLUDING  
THE SETTLING DEFENDANTS**

**IF YOU HELD COMMON STOCK FOR THE BENEFIT  
OF ANOTHER, PLEASE PROMPTLY TRANSMIT THIS  
DOCUMENT TO SUCH BENEFICIAL OWNER.**

The purpose of this Amended Notice of Pendency and Proposed Settlement of Derivative Action (this "Amended Notice") is to inform you of: (i) the pendency of the above-captioned action (the "Action"), which was brought in the Court of Chancery of the State of Delaware (the "Court") by stockholders of Newmark asserting claims on behalf of and for the benefit of Newmark; (ii) the proposed settlement of the Action (the "Settlement") as against all defendants, subject to Court approval and other conditions of the Settlement being satisfied, as provided for in a Stipulation and Agreement of Compromise, Settlement, and Release dated February 7, 2025 (the "Stipulation"), which was filed with the Court and is publicly available for review; and (iii) your right to participate in a hearing to be held on August 13, 2025, at 11:30 a.m., before The Honorable Bonnie W. David (the "Settlement Hearing").<sup>1</sup> The purpose of the Settlement Hearing to be held by the Court is to determine whether: (i) Plaintiffs have adequately represented Newmark's interests; (ii) the proposed Settlement of the Action should be approved by the Court as fair, reasonable, adequate and in the best interests of Newmark; (iii) the Action should be dismissed with prejudice as against the Settling Defendants and all of the Released

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<sup>1</sup> Capitalized terms not defined in this Amended Notice have the meanings set forth in the Stipulation, which is publicly available as indicated below.

Claims against the Released Persons should be fully, finally, and forever released, settled, and discharged; (iv) whether and in what amount any Fee and Expense Award should be paid to Plaintiffs' Counsel out of the Cash Settlement Amount; (v) whether and in what amount any Plaintiff incentive award should be paid to any Plaintiff out of the Cash Settlement Amount; and (vi) Judgment approving the Settlement of the Action should be entered in accordance with the terms of the Stipulation.

**PLEASE READ THIS AMENDED NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS AMENDED NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE LITIGATION REFERRED TO IN THE CAPTION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS, OR ADEQUACY OF THE SETTLEMENT, AND FROM PURSUING THE SETTLED PLAINTIFF CLAIMS.**

The Stipulation was entered into as of February 7, 2025, by and among: (i) Plaintiffs Cardinal Capital Management, L.L.C. ("Cardinal"), Robert Garfield ("Garfield"), and Laborers Local No. 231 Pension Fund ("Local No. 231" and, collectively, "Plaintiffs"), derivatively on behalf of Newmark; (ii) Nominal Defendant Newmark; and (iii) Defendants Howard Lutnick ("Lutnick"), Barry Gosin ("Gosin"), Michael Rispoli ("Rispoli"), Virginia Bauer, Michael Snow, and Kenneth McIntyre (collectively the "Settling Defendants" and together with Plaintiffs and Newmark, the "Settling Parties").

This Amended Notice describes the rights you may have in the Action and pursuant to the Stipulation and what steps you may take, but are not required to take, in relation to the Settlement. If the Court approves the Settlement, the Settling Parties will ask the Court at the Settlement Hearing to enter Judgment dismissing the Action with prejudice as against the Settling Defendants in accordance with the terms of the Stipulation.

### **WHAT IS THE PURPOSE OF THIS AMENDED NOTICE?**

The purpose of this Amended Notice is to explain the Action, the terms of the proposed Settlement, and how the Settlement affects the legal rights of Newmark

stockholders. In a derivative action, one or more persons or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation's legal rights.

As described more fully below, Newmark stockholders have the right to object to the proposed Settlement, the Fee Application by Plaintiffs' Counsel for an award of reasonable fees and expenses (the "Fee and Expense Award"), and/or any Plaintiff incentive award. Newmark stockholders have the right to appear and be heard at the Settlement Hearing, which will be held before The Honorable Bonnie W. David on August 13, 2025, at 11:30 a.m., at the Court of Chancery of the State of Delaware, Sussex County, 34 The Circle, Georgetown, DE 19947.

The Court has reserved the right to adjourn and reconvene the Settlement Hearing, including consideration of the Fee Application, without further notice of any kind other than oral announcement at the Settlement Hearing or any adjournment thereof, or notation on the docket in the Action. The Court has further reserved the right to approve the Settlement, according to the terms and conditions of the Stipulation, with such modifications as may be consented to by the Settling Parties, or as otherwise permitted pursuant to the Stipulation, with or without future notice to Newmark stockholders. The Court may enter Judgment, and order the payment of the Fee and Expense Award, all without future notice to Newmark stockholders.

#### **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

**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 BY ANY OF THE SETTLING PARTIES. IT IS BASED ON STATEMENTS OF THE SETTLING PARTIES AND IS SENT FOR THE SOLE PURPOSE OF INFORMING YOU OF THE EXISTENCE OF THE ACTION AND OF A HEARING ON A PROPOSED SETTLEMENT SO THAT YOU MAY MAKE APPROPRIATE DECISIONS AS TO STEPS YOU MAY OR MAY NOT WISH TO TAKE IN RELATION TO THIS LITIGATION.**

Newmark is a publicly traded company that is a full commercial real estate services firm. In 2013, Nasdaq entered into an agreement (the “Nasdaq Transaction”) with Newmark’s former parent company, BGC Group, Inc. (“BGC”), to purchase BGC’s electronic trading platform, eSpeed, Inc. (“eSpeed”). Nasdaq agreed to pay BGC \$750 million in cash and 14,883,705 shares of Nasdaq stock. The cash component was paid up front, but the shares were to be paid in fifteen annual installments of 992,247 shares each. The agreement further provided that, if Nasdaq were to sell eSpeed before the final payment of Nasdaq shares in 2027, all remaining payments of Nasdaq shares would accelerate with a slight discount.

In late 2017, BGC spun off Newmark and assigned Newmark the right to receive the Nasdaq shares from the Nasdaq Transaction.

On June 25, 2021, Nasdaq completed a resale of eSpeed, thereby triggering the accelerated payment of Nasdaq shares to Newmark. This accelerated payment resulted in the transfer of 6,222,342 shares of Nasdaq stock to Newmark, worth approximately \$940 million as of June 25, 2021.

On June 28, 2021, in connection with Newmark’s accelerated receipt of common shares of Nasdaq, Newmark’s Compensation Committee approved the redemption of a substantial number of limited partnership units held by partners of the Company (the “2021 Equity Event”), including the exchange of 16.6 million partnership units held by Newmark officers Lutnick, Gosin, Rispoli, and Stephen Merkel for \$146 million.

On December 27, 2021, the Compensation Committee approved a one-time bonus award to Lutnick of \$50 million (the “Bonus”). The award agreement, dated December 28, 2021 (the “Bonus Effective Date”), provided for an aggregate cash payment of \$50 million, payable as follows: \$20 million within three days of the Bonus Effective Date, and \$10 million within thirty days following vesting on each of the first, second, and third anniversaries of the Bonus Effective Date.

On February 7, 2022, Cardinal served a Delaware General Corporation Law Section 220 (“Section 220”) demand on the Company seeking books and records to investigate suspected wrongdoing in connection with the 2021 Equity Event and the Bonus. On February 24, 2022, Garfield served a similar Section 220 demand on the Company.

On August 5, 2022, Garfield filed a derivative complaint on behalf of Newmark in the Court of Chancery of the State of Delaware. On October 7, 2022, Cardinal filed its derivative complaint on behalf of Newmark in the Court of

Chancery of the State of Delaware. On December 13, 2022, the actions filed by Garfield and Cardinal were consolidated and Robbins Geller Rudman & Dowd LLP was appointed as Lead Counsel.

On January 10, 2023, Cardinal and Garfield filed a Verified Consolidated Amended Stockholder Derivative Complaint (the “Consolidated Complaint”). The Consolidated Complaint alleged that the 2021 Equity Event and the Bonus were not entirely fair, and asserted causes of action for waste, unjust enrichment, and breach of fiduciary duty.

On March 17, 2023, Defendants filed their respective answers to the Consolidated Complaint. Defendants denied any wrongdoing and asserted, among other things, that Plaintiffs would be unable to establish demand futility, that the business judgment rule applied to the 2021 Equity Event and the Bonus, and that, even if entire fairness applied, the challenged transactions were entirely fair.

Thereafter, the Parties commenced discovery. Plaintiffs served multiple sets of interrogatories and requests for production of documents on Defendants. Defendants likewise served interrogatories and requests for production of documents on Plaintiffs. Plaintiffs also served subpoenas on a number of third parties.

The Parties’ written discovery requests led to substantial meet-and-confer correspondence and numerous teleconferences, and resulted in two motions to compel by Plaintiffs: one filed in December 2023 and resolved in January 2024, and one filed in October 2024 (which remained pending as of the time the Parties reached an agreement to resolve this Action).

Plaintiffs ultimately received from Defendants and various third parties, and then reviewed, 48,704 documents, totaling 471,173 pages. Plaintiffs also reviewed and then produced to Defendants 26,741 documents, totaling more than 118,159 pages.

Subsequent to the substantial completion of document discovery, Plaintiffs took the deposition of Defendant Rispoli—Newmark’s Chief Financial Officer—on October 21, 2024. The Parties also scheduled, and Plaintiffs’ Counsel began preparing for, depositions of each of the remaining named Defendants in November 2024, plus certain other Newmark employees and third parties. These depositions were put on hold pending mediation.

On November 25, 2024, the Parties submitted a stipulation to add Local No. 231 as a Plaintiff to this Action. On November 26, 2024, the Court granted the stipulation.

On December 18, 2024, the Parties and Defendants' directors' and officers' insurance carriers participated in a day-long mediation session before David M. Murphy, Esq., of Phillips ADR. The Parties engaged in substantial briefing prior to this mediation session.

The December 18 mediation did not result in a settlement. However, after the mediation, Mr. Murphy continued to conduct negotiations with the Parties and Defendants' directors' and officers' insurance carriers.

On December 21, 2024, the Parties agreed to settle the Action, based on the mediator's recommendation, for a cash payment of \$50 million to Newmark, to be paid by Newmark's directors' and officers' insurance carriers.

Plaintiffs represent that they have owned at all relevant times and continue to own shares of Newmark common stock.

The Stipulation is intended to fully, finally, and forever release, resolve, compromise, settle and discharge the Released Claims and terminate the Action as against the Settling Defendants with prejudice. It is the intention of Plaintiffs and the Settling Defendants that the Settlement will release the Released Claims against the Released Persons upon Final Approval of the Stipulation.

The entry by the Settling Parties into the Stipulation is not, and shall not be construed as or deemed to be evidence of, an admission as to the merit or lack of merit of any Claims or defenses asserted in the Action.

Plaintiffs and Plaintiffs' Counsel have conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Action. Plaintiffs and Plaintiffs' Counsel have analyzed the evidence adduced during their investigation and through discovery, and have researched the applicable law with respect to Plaintiffs' claims on behalf of Newmark. In negotiating and evaluating the terms of the Stipulation, Plaintiffs and Plaintiffs' Counsel considered the legal and factual defenses to the Settled Plaintiff Claims. Plaintiffs and Plaintiffs' Counsel have received sufficient information to evaluate the merits of this Settlement. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable and adequate and in the best interests of Newmark, and that it confers substantial benefits upon Newmark.

The Settling Defendants deny any and all allegations of wrongdoing, fault, liability, or damage whatsoever. Specifically, the Settling Defendants deny that they acted contrary to the best interests of Newmark and its stockholders or breached any

duties. The Settling Defendants maintain that they have meritorious defenses to all claims alleged in the Action. Nothing in the Stipulation shall be construed as any admission by the Settling Defendants of wrongdoing, fault, liability, or damages whatsoever. Nothing in the Stipulation shall be construed as an allocation of fault or liability between or among the Settling Defendants.

The Settling Parties recognize that the Action has been filed and prosecuted by Plaintiffs in good faith and defended by the Settling Defendants in good faith and further that the terms of the Settlement as set forth herein were negotiated at arm's length, in good faith, and reflect an agreement that was reached voluntarily after consultation with experienced legal counsel.

### **WHAT ARE THE TERMS OF THE SETTLEMENT?**

In consideration for the full and final release, settlement, and discharge of any and all Released Claims against the Released Persons upon Final Approval, the Settling Defendants shall cause the Cash Settlement Amount (\$50,000,000.00 U.S.) to be paid into escrow by Newmark's directors' and officers' insurance carriers (who have committed to fund the Cash Settlement Amount), within 15 Business Days after entry of the Judgment. The Cash Settlement Amount shall be disbursed in the manner set forth in paragraph 2 of the Stipulation.

This Action was brought as a derivative action on behalf of and for the benefit of Newmark. Stockholders will not receive a direct payment of the Cash Settlement Amount but will indirectly benefit from the Cash Settlement Amount being paid to Newmark.

### **WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

If the Settlement is approved, the Court will enter Judgment, at which time the Action against the Settling Defendants shall be dismissed with prejudice. This dismissal is without fees or costs, except as expressly provided in the Stipulation.

Upon the Effective Date and the Settling Parties' compliance with all terms set forth in the Stipulation, Plaintiffs, on behalf of themselves and Newmark, and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns, shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Defendant Persons from and with respect to every one of the Settled Plaintiff Claims, and shall thereupon be forever barred and enjoined from

commencing, instituting, prosecuting, or continuing to prosecute any Settled Plaintiff Claims against any of the Released Defendant Persons.

Upon the Effective Date and the Settling Parties' compliance with all terms set forth in the Stipulation, the Settling Defendants and their respective legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest and assigns shall thereupon be deemed to have fully, finally, and forever released, settled, and discharged the Released Plaintiff Persons from and with respect to every one of the Settled Defendant Claims, and shall thereupon be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any Settled Defendant Claims against any of the Released Plaintiff Persons.

The contemplated releases given by the Settling Parties in the Stipulation extend to Released Claims that the Settling Parties did not know or suspect to exist at the time of the release, which if known, might have affected the decision to enter into this Settlement.

With respect to any and all Released Claims, the Settling Parties shall be deemed to have waived any and all provisions, rights, and benefits conferred by any law of the United States, any law of any state, or principle of common law which governs or limits a Person's release of unknown claims to the fullest extent permitted by law, and to have relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any similar, comparable or equivalent provision of any law of any state or territory of the United States, federal law, or principle of common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Settling Parties shall be deemed by operation of law to have acknowledged that the foregoing waiver was separately bargained for and is a key element of the Settlement.



The Settling Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims, but that it is their intention to fully, finally, and forever settle any and all such Released Claims, known or unknown, suspected or unsuspected, without regard to the subsequent discovery or existence of such additional or different facts, to the fullest extent permitted by law.

### **WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?**

The Settlement set forth in the Stipulation reflects the results of the Settling Parties' negotiations and the final terms of their agreement, which was reached only after arm's-length negotiations among the Settling Parties, who were all represented by counsel with extensive experience and expertise in stockholder derivative litigation.

This Settlement is not evidence of the validity or invalidity of any claims or defenses in the Action or any other actions or proceedings, or of any wrongdoing by any of Defendants or of any damages or injury to Newmark or Plaintiffs.

Plaintiffs believe that the Settled Plaintiff Claims had merit when filed and continue to have merit, and Plaintiffs are settling the Settled Plaintiff Claims because they believe that the Settlement will provide substantial value to Newmark and its stockholders. Plaintiffs have concluded that the Settlement is fair, reasonable, and in the best interests of Newmark, and that it is reasonable to pursue the Settlement based on the terms and procedures outlined herein.

The Settling Defendants have denied, and continue to deny, all allegations of wrongdoing, fault, liability or damage with respect to all claims asserted or that could be asserted in the Action or any other action, in any court or tribunal, relating to the Bonus and/or the 2021 Equity Event, including any allegations that Defendants have committed any violations of law, that they have acted improperly in any way, and that they have any liability or owe any damages of any kind to Newmark or Plaintiffs. The Settling Defendants maintain that their conduct was at all times proper and in compliance with applicable law, and that if the case proceeded to trial and a decision were issued by the Court, they would have prevailed on all claims asserted against them. The Settling Defendants further deny any breach of fiduciary duties, waste, unjust enrichment, or other harm to Newmark or its stockholders. Each of the Settling Defendants asserts that, at all relevant times, he or she acted in good faith. The Settling Defendants are entering into the Settlement in order to, among other things, terminate all claims that were or could have been asserted by Plaintiffs or any other Newmark stockholder on behalf of Newmark against the

Settling Defendants in the Action or in any other action, in any court or tribunal, relating to the Bonus and/or the 2021 Equity Event.

### **HOW WILL THE ATTORNEYS BE PAID?**

On March 21, 2025, Plaintiffs' Counsel submitted a Fee Application to the Court for 25% of the Cash Settlement Amount, plus expenses incurred. In addition, one of the Plaintiffs seeks an incentive award, not to exceed \$15,000, from the Cash Settlement Amount compensating it for its reasonable time, costs, and expenses directly relating to its prosecution of the Action. The Settling Parties have acknowledged and agree that any Fee and Expense Award in connection with the Settlement, and any Plaintiff incentive award, shall be paid from the Cash Settlement Amount and shall reduce the settlement consideration paid to Newmark accordingly.

### **WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

The Court will consider the Settlement and all matters related to the Settlement, including the Fee Application, at the Settlement Hearing. The Settlement Hearing will be held before The Honorable Bonnie W. David on August 13, 2025, at 11:30 a.m., at the Court of Chancery of the State of Delaware, Sussex County, 34 The Circle, Georgetown, DE 19947.

At the Settlement Hearing, any current Newmark stockholder who desires to do so may appear personally or by counsel, and show cause, if any, why the Settlement in accordance with and as set forth in the Stipulation should not be approved as fair, reasonable, and adequate and in the best interests of Newmark; why the Judgment should not be entered in accordance with and as set forth in the Stipulation; why the Court should not grant Plaintiffs' Counsel's Fee Application; or why the Court should not approve any requested Plaintiff incentive award; provided, however, that, unless the Court in its discretion otherwise directs, no Newmark stockholder, or any other Person, shall be entitled to contest the approval of the terms and conditions of the Settlement or (if approved) the Judgment to be entered thereon, or the Fee and Expense Award, and no papers, briefs, pleadings, or other documents submitted by any Newmark stockholder or any other Person (excluding a party to the Stipulation) shall be received or considered, except by order of the Court for good cause shown, unless, no later than fifteen (15) Business Days prior to the Settlement Hearing, such Person files with the Register in Chancery, Delaware Court of Chancery, Sussex County, 34 The Circle, Georgetown, DE 19947, and serves upon the attorneys listed below: (a) a written notice of intention

to appear that includes the name, address, and telephone number of the objector and, if represented by counsel, the name and address of the objector's counsel; (b) proof of current Newmark stockholding; (c) a detailed statement of objections to any matter before the Court; and (d) the grounds thereof or the reasons for wanting to appear and be heard, as well as all documents or writings the Court shall be asked to consider. These writings must also be served by File & ServeXpress, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than fifteen (15) Business Days prior to the Settlement Hearing:

Christopher H. Lyons  
Tayler D. Bolton  
Robbins Geller Rudman & Dowd LLP  
1521 Concord Pike, Suite 301  
Wilmington, DE 19803

Randall J. Baron  
A. Rick Atwood, Jr.  
Benny C. Goodman III  
Robbins Geller Rudman & Dowd LLP  
655 W. Broadway, Suite 1900  
San Diego, CA 92101

R. Bruce McNew  
Cooch & Taylor, P.A.  
The Nemours Building  
1000 N. West Street, Suite 1500  
Wilmington, DE 19801

Steven J. Purcell  
Robert H. Lefkowitz  
Stephen C. Childs  
Omer Kremer  
Purcell & Lefkowitz LLP  
600 Mamaroneck Avenue, Suite 400  
Harrison, NY 10528

C. Barr Flinn  
Paul J. Loughman  
Lauren Dunkle Fortunato  
Skyler A. C. Speed  
Young Conaway Stargatt & Taylor, LLP

100 North King Street  
Wilmington, DE 19801

Eric Leon  
Nathan Taylor  
Meredith Cusick  
Latham & Watkins LLP  
1271 Avenue of the Americas  
New York, NY 10020

Matthew D. Stachel  
Sabrina M. Hendershot  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1313 North Market Street, Suite 806  
Post Office Box 32  
Wilmington, DE 19899-0032

Andrew Gordon  
Staci Yablon  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

Kevin R. Shannon  
Jaclyn C. Levy  
Christopher D. Renaud  
Justin T. Hymes  
Potter Anderson & Corroon LLP  
1313 N. Market Street  
Hercules Plaza, 6th Floor  
Wilmington, DE 19801

Unless the Court otherwise directs, any Person who fails to object in the manner described above shall be deemed to have waived and forfeited any and all rights such Person may otherwise have to object to the Settlement, any Fee and Expense Award to Plaintiffs' Counsel, and/or any Plaintiff incentive award (including any right of appeal) and shall be forever barred from raising such objection in the Action or any other action or proceeding. Newmark stockholders who do not object need not appear at the Settlement Hearing or take any other action to indicate their approval.

**CAN I SEE THE COURT FILE?  
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

This Amended Notice does not purport to be a comprehensive description of the Action, the allegations related thereto, the terms of the Settlement, or the Settlement Hearing. For a more detailed statement of the matters involved in the Action, you may inspect the pleadings, the Stipulation, the Orders entered by the Court, and other papers filed in the Action at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Sussex County, 34 The Circle, Georgetown, DE 19947, during regular business hours of each business day. If you have questions regarding the Settlement, you may write or call Plaintiffs' Counsel: Investor Relations, Robbins Geller Rudman & Dowd LLP, 655 W. Broadway, Suite 1900, San Diego, CA 92101, 619-231-1058.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF  
THE REGISTER IN CHANCERY REGARDING THIS  
AMENDED NOTICE**

BY ORDER OF THE COURT OF CHANCERY OF THE STATE OF  
DELAWARE:

Dated: \_\_\_\_\_



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE NEWMARK GROUP, INC.  
DERIVATIVE LITIGATION

CONSOLIDATED  
C.A. No. 2022-0687-BWD

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT, AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement, and Release, dated as of February 7, 2025 (the “Stipulation”), is entered into by and among: (a) Plaintiffs Cardinal Capital Management, L.L.C. (“Cardinal”), Robert Garfield (“Garfield”), and Laborers Local No. 231 Pension Fund (“Local No. 231” and, collectively, “Plaintiffs”); (b) Nominal Defendant Newmark Group, Inc. (“Newmark” or the “Company”); and (c) Defendants Howard Lutnick (“Lutnick”), Barry Gosin (“Gosin”), Michael Rispoli (“Rispoli”), Virginia Bauer, Michael Snow, and Kenneth McIntyre (collectively, “Defendants,” and, together with Plaintiffs and the Company, the “Parties” and each a “Party”), by and through their respective undersigned counsel, and sets forth all of the terms and conditions of the settlement and resolution of the above-captioned action (the “Action”), and fully, finally, and forever resolves, discharges, and settles the Settled Plaintiff Claims (defined below) against the Released Defendant Persons (defined below), and the Settled Defendant Claims (defined below) against the Released Plaintiff Persons (defined below), upon approval by the Court of Chancery of the State of Delaware and subject to the terms and conditions hereof.

**WHEREAS:**

A. Newmark is a publicly traded company that is a full commercial real estate services firm;

B. In 2013, Nasdaq entered into an agreement (the “Nasdaq Transaction”) with Newmark’s former parent company, BGC Group, Inc. (“BGC”), to purchase BGC’s electronic trading platform, eSpeed, Inc. (“eSpeed”). Nasdaq agreed to pay BGC \$750 million in cash and 14,883,705 shares of Nasdaq stock. The cash component was paid up front, but the shares were to be paid in fifteen annual installments of 992,247 shares each. The agreement further provided that, if Nasdaq were to sell eSpeed before the final payment of Nasdaq shares in 2027, all remaining payments of Nasdaq shares would accelerate with a slight discount;

C. In late 2017, BGC spun off Newmark and assigned Newmark the right to receive the Nasdaq shares from the Nasdaq Transaction;

D. On June 25, 2021, Nasdaq completed a resale of eSpeed, thereby triggering the accelerated payment of Nasdaq shares to Newmark. This accelerated payment resulted in the transfer of 6,222,342 shares of Nasdaq stock to Newmark, worth approximately \$940 million as of June 25, 2021;

E. On June 28, 2021, in connection with Newmark’s accelerated receipt of common shares of Nasdaq, Newmark’s Compensation Committee approved the redemption of a substantial number of limited partnership units held by partners of

the Company (the “2021 Equity Event”), including the exchange of 16.6 million partnership units held by Newmark officers Lutnick, Gosin, Rispoli, and Stephen Merkel for \$146 million;

F. On December 27, 2021, the Compensation Committee approved a one-time bonus award to Lutnick of \$50 million (the “Bonus”). The award agreement, dated December 28, 2021 (the “Bonus Effective Date”), provided for an aggregate cash payment of \$50 million, payable as follows: \$20 million within three days of the Bonus Effective Date, and \$10 million within thirty days following vesting on each of the first, second, and third anniversaries of the Bonus Effective Date;

G. On February 7, 2022, Cardinal served a Delaware General Corporation Law Section 220 (“Section 220”) demand on the Company seeking books and records to investigate suspected wrongdoing in connection with the 2021 Equity Event and the Bonus. On February 24, 2022, Garfield served a similar Section 220 demand on the Company;

H. On August 5, 2022, Garfield filed a derivative complaint on behalf of Newmark in the Court of Chancery of the State of Delaware. On October 7, 2022, Cardinal filed its derivative complaint on behalf of Newmark in the Court of Chancery of the State of Delaware. On December 13, 2022, the actions filed by Garfield and Cardinal were consolidated and Robbins Geller Rudman & Dowd LLP was appointed as Lead Counsel;



I. On January 10, 2023, Cardinal and Garfield filed a Verified Consolidated Amended Stockholder Derivative Complaint (the “Consolidated Complaint”). The Consolidated Complaint alleged that the 2021 Equity Event and the Bonus were not entirely fair, and asserted causes of action for waste, unjust enrichment, and breach of fiduciary duty;

J. On March 17, 2023, Defendants filed their respective answers to the Consolidated Complaint. Defendants denied any wrongdoing and asserted, among other things, that Plaintiffs would be unable to establish demand futility, that the business judgment rule applied to the 2021 Equity Event and the Bonus, and that, even if entire fairness applied, the challenged transactions were entirely fair;

K. Thereafter, the Parties commenced discovery. Plaintiffs served multiple sets of interrogatories and requests for production of documents on Defendants. Defendants likewise served interrogatories and requests for production of documents on Plaintiffs. Plaintiffs also served subpoenas on a number of third parties;

L. The Parties’ written discovery requests led to substantial meet-and-confer correspondence and numerous teleconferences, and resulted in two motions to compel by Plaintiffs: one filed in December 2023 and resolved in January 2024, and one filed in October 2024 (which remained pending as of the time the Parties reached an agreement to resolve this Action);

M. Plaintiffs ultimately received from Defendants and various third parties, and then reviewed, 48,704 documents, totaling 471,173 pages. Plaintiffs also reviewed and then produced to Defendants 26,741 documents, totaling more than 118,159 pages;

N. Subsequent to the substantial completion of document discovery, Plaintiffs took the deposition of Defendant Rispoli—Newmark’s Chief Financial Officer—on October 21, 2024. The Parties also scheduled, and Plaintiffs’ Counsel began preparing for, depositions of each of the remaining named Defendants in November 2024, plus certain other Newmark employees and third parties. These depositions were put on hold pending mediation;

O. On November 25, 2024, the Parties submitted a stipulation to add Local No. 231 as a Plaintiff to this Action. On November 26, 2024, the Court granted the stipulation;

P. On December 18, 2024, the Parties and Defendants’ directors’ and officers’ insurance carriers participated in a day-long mediation session before David M. Murphy, Esq., of Phillips ADR. The Parties engaged in substantial briefing prior to this mediation session;

Q. The December 18 mediation did not result in a settlement. However, after the mediation, Mr. Murphy continued to conduct negotiations with the Parties and Defendants’ directors’ and officers’ insurance carriers;

R. On December 21, 2024, the Parties agreed to settle the Action, based on the mediator's recommendation, for a cash payment of \$50 million to Newmark, to be paid by Newmark's directors' and officers' insurance carriers;

S. Plaintiffs represent that they have owned at all relevant times and continue to own shares of Newmark common stock;

T. Plaintiffs and Plaintiffs' Counsel have concluded that it is reasonable to pursue a settlement of the Action based upon the terms, conditions, and procedures outlined herein, and that the terms of the Settlement are fair and adequate to Newmark and its stockholders;

U. Each of the Defendants has denied, and continues to deny, that he or she committed any breach of duty, breached any other law, or engaged in any of the wrongful acts alleged in the Action, expressly maintains that he or she diligently and scrupulously complied with his or her fiduciary and other legal duties, to the extent that such duties exist, and further believes that the Action is without merit, and is entering into this Stipulation solely to eliminate the burden, expense, and uncertainties inherent to further litigation;

V. In connection with settlement discussions and negotiations leading to the proposed Settlement, counsel for the Parties did not discuss the appropriateness or amount of any applications by Plaintiffs' Counsel for an award of attorneys' fees

and expenses until after the substantive terms of the Settlement were negotiated at arm's length and agreed upon; and

W. The Parties wish to settle and resolve the claims asserted by Plaintiffs, and have, following arm's length negotiations with the assistance of the mediator, reached an agreement as set forth in this Stipulation, providing for the settlement of the Action on the terms and conditions set forth below, and the Parties believe the Settlement is in the best interests of the Parties and Newmark and its stockholders.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,** in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

### **DEFINITIONS**

1.1 In addition to the terms defined elsewhere in this Stipulation, the following capitalized terms used in this Stipulation and any exhibits attached hereto shall have the meanings specified below:

1.2 "Business Day" means any day other than a weekend or a day that is a legal holiday in Delaware as set forth in 1 *Del. C.* § 501.

1.3 "Cash Settlement Amount" means a total of \$50 million (\$50,000,000) in cash.

1.4 "Court" means the Court of Chancery of the State of Delaware.

1.5 “Effective Date” means the first date upon which all the following conditions precedent of the Settlement have been met and occurred: (i) payment of the Cash Settlement Amount in accordance with ¶ 2.a. herein; and (ii) Final Approval of the Settlement.

1.6 “Fee and Expense Award” means an award to Plaintiffs’ Counsel of fees and expenses to be paid from the Cash Settlement Amount, approved by the Court and in full satisfaction of all claims for attorneys’ fees and any other expenses or costs, including any incentive awards to Plaintiffs, that have been, could be, or could have been asserted by Plaintiffs’ Counsel or any other counsel, or any stockholder in connection with the Settled Plaintiff Claims and the Settlement.

1.7 “Final Approval,” when referring to the Judgment, means upon the later of (i) the expiration of the time for the filing or noticing of an appeal or motion for reargument or rehearing from the Court’s Judgment approving the material terms of the Settlement without such appeal or motion having been made; (ii) the date of final affirmance of the Court’s Judgment on any appeal or reargument or rehearing; or (iii) the final dismissal of any appeal; *provided, however*, that any disputes or appeals relating solely to the amount, payment, or allocation of the Fee and Expense Award shall have no effect on finality for purposes of determining the date on which the Judgment becomes Final and shall not otherwise prevent, limit, or otherwise affect the Judgment, or prevent, limit, delay, or hinder entry of Judgment.

1.8 “Judgment” means the Order and Final Judgment to be entered in the Action, in all material respects in the form attached as Exhibit C hereto.

1.9 “Lead Counsel” means Robbins Geller Rudman & Dowd LLP.

1.10 “Net Settlement Amount” means the Case Settlement Amount less all payments and expenses incurred by Plaintiffs and Plaintiffs’ Counsel in connection with prosecuting the Action that are awarded by the Court.

1.11 “Party” means any one of, and “Parties” means, collectively, the Settling Defendants and Plaintiffs, on behalf of themselves and Nominal Defendant Newmark.

1.12 “Person” means a natural person, individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity.

1.13 “Plaintiffs’ Counsel” means the law firms of Robbins Geller Rudman & Dowd LLP, Purcell & Lefkowitz LLP, Cooch and Taylor, P.A., Smith, Katzenstein & Jenkins LLP, and Cavanagh O’Hara LLP.

1.14 “Settlement” means the settlement contemplated by this Stipulation.

1.15 “Settling Defendants” means Nominal Defendant Newmark Group, Inc., and Defendants Howard Lutnick, Barry Gosin, Michael Rispoli, Virginia Bauer, Michael Snow, and Kenneth McIntyre.

1.16 “Settling Defendants’ Counsel” means the law firms of Latham & Watkins LLP, Paul, Weiss, Rifkind Wharton & Garrison LLP, Potter Anderson & Corroon LLP, and Young Conaway Stargatt & Taylor, LLP.

1.17 “Settlement Hearing” means the hearing to be held by the Court to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether the Judgment approving the Settlement should be entered in accordance with the terms of this Stipulation, and whether and in what amount a Fee and Expense Award should be approved.

1.18 “Settlement Notice” means the Notice of Pendency and Proposed Settlement of Derivative Action, substantially in the form attached hereto as Exhibit B.

### **SETTLEMENT CONSIDERATION**

2. In consideration for the full settlement and release of all Settled Plaintiff Claims (defined in ¶ 7 below) against the Released Defendant Persons (defined in ¶ 7 below) and the dismissal with prejudice of the Action, Defendants and Newmark have agreed to the following:

(a) No later than fifteen (15) Business Days following entry of the Judgment, and notwithstanding the existence of any timely filed objections to the Settlement, or potential for appeal from the Judgment, or collateral attack on the Settlement or any part thereof, Newmark's directors' and officers' insurance carriers shall cause the Cash Settlement Amount to be deposited in a segregated, U.S.-based interest-bearing account to be established by Newmark and held in escrow (the "Account") for prompt payment as set forth below pending Final Approval.

(b) Neither Defendants, Newmark, nor any other person other than Newmark's directors' and officers' insurance carriers will have any obligation to pay the Cash Settlement Amount, in whole or in part. Defendants will not be responsible for personally funding, contributing to, or indemnifying any part of the Cash Settlement Amount, and will have no personal monetary obligations to Plaintiffs, Plaintiffs' Counsel, Newmark, or Newmark's stockholders in connection with the Action or the Settlement.

(c) In the event that the Court grants a Fee and Expense Award, the full amount of any resulting Fee and Expense Award granted by the Court shall be paid to Lead Counsel from the Account within five (5) Business Days after the Cash Settlement Amount is settled in the Account. In the event that the Court grants a Plaintiff incentive award, the full amount of any resulting Plaintiff incentive award



granted by the Court shall be paid to Lead Counsel from the Account within five (5) Business Days after the Cash Settlement Amount is settled in the Account.

(d) At least fifteen (15) Business Days prior to the Settlement Hearing, Lead Counsel shall provide to Settling Defendants' Counsel complete payment instructions (with a contact person who can verify those instructions) and a complete W-9 form (the "Payment Instructions"). Lead Counsel's failure to provide the Payment Instructions as required herein shall have the effect of modifying ¶ 2.c such that Newmark will be obligated to cause the Fee and Expense Award to be paid from the Account to Lead Counsel no later than fifteen (15) Business Days following receipt of the Payment Instructions.

(e) Upon the Effective Date, all Parties consent to the release of the Cash Settlement Amount plus all interest accrued or accumulated (less the Fee and Expense Award) to Newmark.

### **SUBMISSION AND APPLICATION TO THE COURT**

3. As soon as practicable after this Stipulation has been executed, the Parties shall apply jointly for a scheduling order (the "Scheduling Order"), substantially in the form attached hereto as Exhibit A, establishing the procedure for: (i) providing notice of the Settlement to Newmark's stockholders; and (ii) the Court's consideration of the proposed Settlement and Plaintiffs' application for attorneys' fees and expenses, including the scheduling of the Settlement Hearing.

## **NOTICE**

4. As soon as practicable after the date of entry of the Scheduling Order, and in no event fewer than sixty (60) calendar days before the Settlement Hearing, Newmark shall (i) post a copy of this Stipulation and the Settlement Notice, substantially in the form attached hereto as Exhibit B, on the “Investors” section of the Company’s website, <https://ir.nmrk.com>, and such documents shall remain posted to that website through the Effective Date of the Settlement; (ii) file with the U.S. Securities and Exchange Commission a Current Report on Form 8-K briefly describing the Settlement and stating where stockholders can locate the Stipulation and Settlement Notice on Newmark’s website; and (iii) cause the Settlement Notice to be mailed, by first class U.S. mail, or other mail service if mailed outside the U.S., to all Newmark stockholders who are record holders of Newmark stock as of the date of the Stipulation at their last known address appearing in the stock transfer records maintained by or on behalf of Newmark. All stockholders who are record holders of Newmark common stock on behalf of beneficial owners of those securities shall be requested to forward such Settlement Notice on to the beneficial owners. Additionally, Newmark shall use reasonable efforts to give notice to all beneficial owners of common stock of Newmark by (i) sending copies of the Settlement Notice to any beneficial owners that have opted to receive electronic notifications; and (ii) providing additional copies of the Settlement Notice to any

record holder requesting the Settlement Notice for purposes of distribution to such beneficial owners.

5. Newmark shall, at least ten (10) Business Days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the dissemination of the Settlement Notice. Newmark shall assume all administrative responsibility for, and will pay any and all costs and expenses related to, providing notice. The Parties acknowledge and agree that no Defendant shall bear any cost or expense in connection with providing notice. The Parties also acknowledge and agree that neither Plaintiffs nor Plaintiffs' Counsel shall be responsible for any notice costs, nor shall any notice costs be paid from the Cash Settlement Amount.

### **ORDER AND FINAL JUDGMENT**

6. If the Settlement (including any modification thereto made with the consent of the Parties as provided for herein) shall be approved by the Court following the Settlement Hearing as fair, reasonable, and adequate and in the best interest of the Company and its stockholders, the Parties shall jointly request that the Court enter the Judgment.

7. The Judgment shall, among other things, provide for the full and complete dismissal of the Action with prejudice, and, upon the Effective Date of the Settlement:

(a) the settlement and release of any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Plaintiffs or any Newmark stockholder derivatively on behalf of Newmark, or by Newmark (collectively, the “Releasing Plaintiff Persons”), against the Defendants, any current or former Newmark director or officer, or any of their families, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their respective past or present officers, directors, stockholders, principals, representatives, employers, employees, attorneys, insurers, reinsurers, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-

interest, and assigns of any of the foregoing (collectively, the “Released Defendant Persons”) which the Releasing Plaintiff Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the acts, events, facts, matters, transactions, occurrences, statements, or representations, or any other matter whatsoever alleged or set forth in the Consolidated Complaint (the “Settled Plaintiff Claims”); *provided, however*, that the Settled Plaintiff Claims shall not include (i) claims to enforce the Settlement; or (ii) claims against Newmark’s insurers by Newmark or any other insureds under Newmark’s insurance policies. For the avoidance of doubt, the Settled Plaintiff Claims do not include any direct claims of any Newmark stockholder, including any claims arising out of, based upon, or relating to the federal or state securities laws; the Settled Plaintiff Claims also do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof; the Settled Plaintiff Claims also do not include any claims that Newmark’s directors’ and officers’ insurance carriers may assert, as subrogee, against non-parties to this Action after Final Approval of the Judgment and nothing in this Stipulation shall be construed to waive any subrogation rights such insurers have to the extent of their respective payments. Further, for the avoidance of doubt, Settled Plaintiff Claims do not include any claims arising out of, relating to, or based upon conduct or actions occurring after the date of this Stipulation; and

(b) the settlement and release of any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be asserted in any court, tribunal or proceeding, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, by or on behalf of Defendants or Newmark (collectively, the “Releasing Defendant Persons”) against Plaintiffs or their respective counsel, and each and all of their respective past or present officers, directors, stockholders, families, parent entities, controlling persons, associates, affiliates, subsidiaries, principals, representatives, employers, employees, attorneys, financial or investment advisors, consultants, accountants, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, advisors or agents, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors and assigns; and the legal representatives, heirs, executors, administrators, predecessors, successors, predecessors-in-interest, successors-in-interest, and assigns of any of the foregoing (collectively, the “Released Plaintiff Persons” and, together with Released

Defendant Persons, “Released Persons”) which the Releasing Defendant Persons ever had, now have, or may have had by reason of, arising out of, relating to, or in connection with the institution, prosecution, or settlement of the claims asserted in the Action (the “Settled Defendant Claims” and, together with the Settled Plaintiff Claims, the “Released Claims”); *provided, however*, that the Settled Defendant Claims shall not include claims to enforce the Settlement. For the avoidance of doubt, the Settled Defendant Claims do not include claims, if any, that any party may have against any insurer with respect to obligations to fund the Cash Settlement Amount or any portion thereof.

### **CONDITIONS OF SETTLEMENT**

8. Each of the Defendants denies and continues to deny that he or she committed or aided and abetted the commission of any unlawful or wrongful acts alleged in the Action and expressly maintains that he or she diligently and scrupulously complied with his or her fiduciary duties and other legal duties, to the extent such duties exist. Defendants are entering into the Stipulation solely because the proposed Settlement will eliminate the burden and expense of further litigation.

9. Plaintiffs and Plaintiffs’ Counsel believe that Plaintiffs’ claims have merit, but recognize that Defendants will continue to assert legal and factual defenses to Plaintiffs’ claims. Plaintiffs and Plaintiffs’ Counsel have concluded that

the Settlement is fair, reasonable, and adequate, and that it is reasonable to pursue the Settlement based upon the terms and procedures outlined herein.

10. The Settlement is conditioned upon the fulfillment of each of the following:

(c) Defendants shall have paid or caused to be paid the Cash Settlement Amount into the Account as specified in ¶ 2.a. above;

(d) the dismissal with prejudice of the Action without the award of any damages, costs, or fees, or the grant of any further relief except as expressly provided for in this Stipulation and except for any Fee and Expense Award the Court may make pursuant to ¶¶ 15-21 below;

(e) the entry of the Judgment approving the proposed Settlement, providing for the dismissal with prejudice of the Action, and approving the grant of (i) a release by the Releasing Plaintiff Persons to the Released Defendant Persons of the Settled Plaintiff Claims; and (ii) a release by the Releasing Defendant Persons to the Released Plaintiff Persons of the Settled Defendant Claims; and

(f) the Judgment being finally affirmed on appeal or such final judgment and dismissal not being subject to appeal (or further appeal) by lapse of time or otherwise.

11. In the event that any of the Settled Plaintiff Claims are commenced against any of the Released Defendant Persons prior to Final Approval of the



Settlement, as defined herein, Plaintiffs agree to cooperate and use their reasonable best efforts to assist Defendants and Newmark in securing the dismissal (or a stay in contemplation of dismissal following Final Approval of the Settlement) of such claims.

12. This Stipulation shall be null and void and of no force and effect if the Settlement does not obtain Final Approval. In any such event, this Stipulation shall not be deemed to prejudice in any way the respective positions of the Parties with respect to the Action or to entitle any Party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement; *provided, however*, that, within five (5) Business Days, the Cash Settlement Amount shall be remitted to the insurers plus all interest accrued or accumulated. Newmark shall be responsible for paying the costs of providing notice to Newmark stockholders regardless of whether the Settlement is approved.

13. In the event that the proposed Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation shall not be deemed to prejudice in any way the respective positions of Plaintiffs, Defendants, or Newmark with respect to the Action; nor shall they be deemed a presumption, a concession, or an admission by Plaintiffs, any of Defendants, or Newmark of any fault, liability, or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Action, or any other action or proceeding;

nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding.

14. In the event that any of Newmark's directors' and officers' insurance carriers assert, as subrogee, any claims against non-parties to this Action after Final Approval of the Judgment, such action(s) shall have no legal effect on the validity or enforceability of this Settlement. Nor shall such action(s) have any legal effect on any advancement or indemnification rights of any Party to this Settlement.

#### **ATTORNEYS' FEES AND EXPENSES**

15. Plaintiffs' Counsel intend to apply for an award of attorneys' fees and expenses based on the benefits provided to Newmark and its stockholders from this Settlement. Plaintiffs' Counsel reserve the right to apply for a Fee and Expense Award in this Court (the "Fee Application"). The Fee Application shall be the only petition for attorneys' fees and expenses to Plaintiffs' Counsel or counsel purporting to represent any other stockholder of Newmark in connection with the Action or the Settlement. Any Fee and Expense Award will be paid solely from the Cash Settlement Amount. Defendants and Newmark also agree that one or more Plaintiffs may apply, as part of the Fee Application, to the Court for an incentive award, to be paid solely from the Cash Settlement Amount, compensating them for their reasonable time, costs, and expenses directly relating to their prosecution of the

Action. Defendants and Newmark reserve the right to oppose any part or all of the Fee Application.

16. Lead Counsel, in their sole discretion, shall be responsible for distributing the Fee and Expense Award in compliance with Del. Ch. Ct. R. 23.1(e). Any fees or expenses associated with Lead Counsel's distribution of the Fee and Expense Award shall be borne solely by Plaintiffs' Counsel.

17. In the event that any order approving the Fee and Expense Award is reversed or modified on appeal and such order reversing or modifying the Fee and Expense Award has become final and no longer subject to appeal, Plaintiffs' Counsel and Plaintiffs, as appropriate, shall severally remit to Newmark the amount by which the fees and expenses were reduced and all interest accrued or accumulated thereon at the same net rate as is earned by the Cash Settlement Amount.

18. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any Fee and Expense Award. The failure of the Court to approve any requested Fee and Expense Award, in whole or in part, shall have no effect on the Settlement, and final resolution by the Court of any requested Fee and Expense Award shall not be a precondition to the dismissal of the Action.

19. No fees or expenses shall be paid to Plaintiffs' Counsel pursuant to the Settlement in the absence of the Court's entry of the Judgment finally approving the Settlement, substantially in the form attached hereto as Exhibit C.

20. Except as provided above, Newmark and Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by Plaintiffs or by their attorneys, experts, advisors, or representatives with respect to the Settled Plaintiff Claims. Newmark and Defendants shall have no responsibility or liability with respect to any allocation of any Fee and Expense Award among Plaintiffs' Counsel.

#### **EFFECT OF RELEASE**

21. Plaintiffs acknowledge, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Plaintiff Claims, but that it is the intention of the Releasing Plaintiff Persons to completely, fully, finally, and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Plaintiff Claims, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Settled Plaintiff Claims do not include

any claims arising out of, relating to, or based upon conduct or actions occurring after the date of this Stipulation. Similarly, Defendants and Newmark acknowledge that they may discover facts in addition to or different from those now known or believed to be true by them with respect to the Settled Defendant Claims, but that it is the intention of the Releasing Defendant Persons to completely, fully, finally, and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Settled Defendant Claims, known or unknown, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. Plaintiffs, Defendants, and Newmark acknowledge, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that “Unknown Claims” are expressly included in the definition of “Settled Plaintiff Claims” and “Settled Defendant Claims.” “Unknown Claims” means any claims that the Releasing Plaintiff Persons do not know or suspect to exist in their favor at the time of the release of the Settled Plaintiff Claims as against the Released Defendant Persons, and any claims that the Releasing Defendant Persons do not know or suspect to exist in their favor at the time of the release of the Settled Defendant Claims as against the Released Plaintiff Persons, including, without limitation, those which, if known, might have affected the decision to enter into the Settlement.

22. The Settlement is intended to extinguish all of the Settled Plaintiff Claims and Settled Defendant Claims and, consistent with such intention, upon the Effective Date of the Settlement, the Releasing Plaintiff Persons and Releasing Defendant Persons shall waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the release set forth above. This shall include a waiver by the Releasing Plaintiff Persons and Releasing Defendant Persons of any rights pursuant to section 1542 of the California Civil Code (or any similar, comparable, or equivalent provision of any federal, state, or foreign law, or principle of common law), which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiffs, Defendants, and Newmark acknowledge, and the other Releasing Plaintiff Persons shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of Plaintiffs, Defendants, and Newmark in entering into the Settlement.

23. The releases provided in this Stipulation are not intended to limit any claims that Newmark's directors' and officers' insurance carriers may be able to assert, as subrogee, against non-parties to this Action after Final Approval of the Judgment.

### **BEST EFFORTS**

24. The Parties and their attorneys agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for hereunder (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Action with prejudice and without costs, fees, or expenses to any Party (except as provided for by ¶¶ 4-5 and ¶¶ 15-20 above).

25. Without further order of the Court, the Parties may agree to reasonable extensions of time not expressly set forth by the Court to carry out any provisions of this Stipulation.

### **STAY OF PROCEEDINGS**

26. Pending Final Approval of the Settlement, the Parties agree to stay this Action and not to initiate any and all other proceedings other than those incident to the Settlement itself.

27. The Parties will request the Court to order (in the Scheduling Order) that, pending final determination of whether the Settlement should be approved, (i) Plaintiffs and all other Newmark stockholders are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Settled Plaintiff Claims, either directly, representatively, derivatively, or in any other capacity, against Newmark, Defendants, or any of the other Released Defendant Persons; and (ii) Newmark and Defendants are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Settled Defendant Claims, either directly, representatively, derivatively, or in any other capacity, against Plaintiffs or any of the other Released Plaintiff Persons.

### **STIPULATION NOT AN ADMISSION**

28. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or admission by Newmark or Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action,



nor shall they be deemed a presumption, concession, or admission by Plaintiffs of any lack of merit of the claims alleged or asserted in the Action. Neither this Stipulation, nor any of the terms and provisions of this Stipulation, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statements in connection therewith, nor the Judgment, (i) shall be argued to be, used, or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury, or damages, of any wrongful conduct, acts, or omissions on the part of any of the Released Defendant Persons, of any infirmity of any defense on the part of any of the Released Defendant Persons, or of any damage to the Releasing Plaintiff Persons or any other party or entity, or otherwise be used to create or give rise to any inference or presumption against any of the Released Defendant Persons concerning any purported liability, fault, or wrongdoing of the Released Defendant Persons; (ii) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any lack of merit of the claims asserted in the Action, that any of the Released Defendant Persons had meritorious defenses, that the damages recoverable in the Action would not have exceeded the Cash Settlement Amount, or with respect

to any purported liability, fault, or wrongdoing of the Released Plaintiff Persons; (iii) shall be argued to be, used, or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding that the cash consideration to be given under this Stipulation represents the amount that could or would have been recovered after trial; or (iv) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; *provided, however*, that the Stipulation and/or the Judgment may be introduced in any proceeding, whether in this Court or otherwise, as may be necessary to argue and establish that the Stipulation and/or the Judgment has *res judicata*, collateral estoppel, or other issue or claim preclusion effect or to otherwise consummate or enforce the Settlement and/or the Judgment or to secure any insurance rights or proceeds of any of the Released Defendant Persons.

**ENTIRE AGREEMENT; AMENDMENTS; WAIVER**

29. This Stipulation and the exhibits attached hereto constitute the entire agreement among the Parties with respect to the subject matter hereof, and may be modified or amended only by a writing signed by the Parties. In the event of any conflict or inconsistency between the terms and conditions of this Stipulation and the terms and conditions of any exhibits attached hereto, the terms and conditions of this Stipulation shall prevail. No representations, warranties, or inducements have been made to or relied upon by any party concerning this Stipulation or its exhibits,

other than the representations, warranties, and covenants expressly set forth in such documents.

30. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of any provision of this Stipulation by any other Party.

### **COUNTERPARTS**

31. This Stipulation may be executed in multiple counterparts by any of the signatories hereto, including by signature transmitted via facsimile, or by a .pdf/.tiff image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

### **GOVERNING LAW AND DISPUTE RESOLUTION**

32. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action or proceeding arising out of or relating in any way to this Stipulation or the Settlement, or to enforce any of the terms of the Stipulation or Settlement, shall (i) be brought, heard, and determined exclusively in this Court (or, if subject matter jurisdiction is unavailable in this Court, then in any other state or federal court sitting in Wilmington, Delaware); and (ii) not be litigated or otherwise pursued in any forum or venue other than this Court (or, if subject matter jurisdiction is unavailable in this Court, then in any other state

or federal court in Wilmington, Delaware). Each Party: (i) consents to personal jurisdiction in any such action (but in no other action) brought in this Court; (ii) consents to service of process by registered mail upon such party and/or such party's agent; (iii) waives any objection to venue in this Court and any claim that Delaware or this Court is an inconvenient forum; and (iv) expressly waives any right to demand a jury trial as to any dispute described in this paragraph.

### **NO CONTRA PROFERENTEM**

33. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Stipulation is the result of arm's length negotiations between and among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.

### **SUCCESSORS AND ASSIGNS**

34. This Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, executors, administrators, transferees, successors, agents, and assigns of all such foregoing persons and entities and upon any corporation, partnership, or other entity into or with which any Party may merge, consolidate, or reorganize.

### **REPRESENTATION AND WARRANTY**

35. Plaintiffs represent and warrant that (i) Plaintiffs are Newmark stockholders and have been Newmark stockholders at all relevant times, continue to hold their stock in Newmark as of the date this Stipulation is signed, and will continue to hold their stock in Newmark through the Effective Date, and (ii) none of Plaintiffs' claims or causes of action referred to in the Complaint, or this Stipulation, or any claims Plaintiffs could have alleged, has been assigned, encumbered, or in any manner transferred in whole or in part.

### **SEVERABILITY**

36. If any provisions of this Stipulation are determined to be invalid or unenforceable, in whole or in part, the remaining provisions, and any partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

### **KNOWING AND VOLUNTARY**

37. Each of the Parties certifies that he, she, or it has carefully read and fully understands all of the provisions and effects of this Stipulation; that he, she, or it has been advised to consult and thoroughly discuss all aspects of this Stipulation with his, her, or its attorneys; that he, she, or it is voluntarily entering into this Stipulation; and that he, she, or it is not relying on any representations concerning the terms or effects of this Stipulation, other than those contained in this Stipulation.

### **CONFIDENTIALITY**

38. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information, including, without limitation, the Stipulation and Order for the Production and Exchange of Confidential Information so-ordered by the Court on September 19, 2023, shall survive this Stipulation.

### **AUTHORITY**

39. The undersigned attorneys represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their client(s) thereto.

Dated: February 7, 2025

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