

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WIENERBERGER AG,

GENERAL SHALE BRICK,  
INC.,

BORAL LIMITED,

LSF9 STARDUST SUPER  
HOLDINGS, L.P.,

and,

MERIDIAN BRICK LLC,

Defendants.

**PROPOSED FINAL JUDGMENT**

WHEREAS, Plaintiff, United States of America, filed its Complaint on September X, 2021;

AND WHEREAS, the United States and Defendants, Wienerberger AG, General Shale Brick, Inc., Boral Limited, LSF9 Stardust Super Holdings, L.P., and Meridian Brick LLC, have consented to entry of this Final Judgment without the taking of testimony, without trial or

adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

AND WHEREAS, Defendants agree to make a divestiture to remedy the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants represent that the divestiture and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED:

## **I. JURISDICTION**

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

## **II. DEFINITIONS**

As used in this Final Judgment:

A. “Boral” means Defendant Boral Limited, an Australian public company with its headquarters in North Sydney, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “General Shale” means Defendant General Shale Brick, Inc, a subsidiary of Wienerberger and a Delaware corporation with its headquarters in Johnson City, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Meridian” means Defendant Meridian Brick LLC, a joint venture between Boral and LSF9 and a Delaware limited liability company with its headquarters in Alpharetta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “LSF9” means Defendant LSF9 Stardust Super Holdings L.P., a Bermuda limited partnership with its principal place of business in Hamilton, Bermuda, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Wienerberger” means Wienerberger AG, an Austrian corporation with its headquarters in Wien, Austria, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. “RemSom” means RemSom LLC, a South Carolina limited liability company with its headquarters in Columbia, South Carolina, its successors and assigns, and its subsidiaries (including US Brick, LLC), divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. “Acquirer” means RemSom or another entity approved by the United States in its sole discretion to which Defendants divest the Divestiture Assets.

H. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to:

1. the manufacturing facilities and mines listed in Appendix A;
2. the distribution yards and stores listed in Appendix B;

3. all property and assets, tangible and intangible, wherever located, relating to or used in connection with the manufacturing facilities and mines listed in Appendix A or the distribution yard and stores listed in Appendix B, including:

a. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

b. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

c. all contracts, contractual rights, and customer and distributor relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, leases, and all outstanding offers or solicitations to enter into a similar arrangement;

d. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

e. all records and data, including (a) customer and distributor lists, accounts, sales, and credits records, (b) production, repair, maintenance, and performance records, (c) manuals and technical information Defendants provide to their own employees, customers, distributors, suppliers, agents, or licensees, (d) records and research data concerning historic and current research and development activities, including designs of experiments and

the results of successful and unsuccessful designs and experiments, and (e) drawings, blueprints, and designs;

f. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (a) patents, patent applications, and inventions and discoveries that may be patentable, (b) registered and unregistered copyrights and copyright applications, and (c) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

g. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (e.g., for the handling of materials and substances), quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

*Provided, however,* that the assets specified in Paragraphs H(3)(a)–(g) above do not include the assets identified in Appendix C or any trademarks, trade names, service marks, or service names containing the names “General Shale,” “Meridian,” “Watson town,” “Columbus,” “Arriscraft,” or “Wienerberger”.

I. “Divestiture Date” means the date on which the Divestiture Assets are divested to Acquirer pursuant to this Final Judgment.

J. “Including” means including, but not limited to.

K. “Relevant Personnel” means all full-time, part-time, or contract employees of General Shale or Meridian, located at one of the facilities, mines, yards, or stores included in the Divestiture Assets at any time between January 1, 2019, and the Divestiture Date. *Provided,*

*however*, Relevant Personnel does not include employees of Defendants that the United States, in its sole discretion, deems to be primarily engaged in human resources, legal, or other general or administrative support functions. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Relevant Personnel.

L. “Transaction” means the proposed acquisition of Meridian by General Shale.

### **III. APPLICABILITY**

A. This Final Judgment applies to Boral, General Shale, Meridian, LSF9, and Wienerberger AG, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

### **IV. DIVESTITURE**

A. Defendants Wienerberger, General Shale, and Meridian are ordered and directed, within 30 calendar days after the Court’s entry of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to RemSom or another Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 60 calendar days in total and will notify the Court of any extensions.

B. Defendants Wienerberger, General Shale, and Meridian must use best efforts to divest the Divestiture Assets as expeditiously as possible. Defendants must take no action that

would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Divestiture Assets.

C. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business of the design, manufacture, and sale of residential bricks and that the divestiture to Acquirer will remedy the competitive harm alleged in the Complaint.

D. The divestiture must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including the necessary managerial, operational, technical, and financial capability, to compete effectively in the design, manufacture, and sale of residential bricks.

E. The divestiture must be accomplished in a manner that satisfies the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants Wienerberger, General Shale, and Meridian gives those Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise interfere in the ability of Acquirer to compete effectively in the design, manufacture, and sale of residential bricks.

F. In the event Defendants Wienerberger, General Shale, and Meridian are attempting to divest the Divestiture Assets to an Acquirer other than RemSom, Defendants Wienerberger, General Shale, and Meridian promptly must make known, by usual and customary means, the availability of the Divestiture Assets. Defendants Wienerberger, General Shale, and Meridian must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final

Judgment and must provide that person with a copy of this Final Judgment. Defendants Wienerberger, General Shale, and Meridian must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however*, that Defendants Wienerberger, General Shale, and Meridian need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants Wienerberger, General Shale, and Meridian must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

G. Defendants Wienerberger, General Shale, and Meridian must provide prospective Acquirers with (1) access to make inspections of the Divestiture Assets; (2) access to all environmental, zoning, and other permitting documents and information relating to the Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Divestiture Assets that would customarily be provided as part of a due diligence process. Defendants Wienerberger, General Shale, and Meridian also must disclose all encumbrances on any part of the Divestiture Assets, including on intangible property.

H. Defendants Wienerberger, General Shale, and Meridian must cooperate with and assist Acquirer in identifying and, at the option of Acquirer, in hiring all Relevant Personnel, including:

1. Within 10 business days following the filing of the Complaint in this matter, Defendants Wienerberger, General Shale, and Meridian must identify all Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, Defendants Wienerberger, General Shale, and Meridian must provide to Acquirer and the United States additional information relating to Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. Defendants Wienerberger, General Shale, and Meridian must also provide to Acquirer and the United States information relating to current and accrued compensation and benefits of Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, current target or guaranteed bonus, if any, any retention agreement or incentives, and any other payments due, compensation or benefit accrued, or promises made to the Relevant Personnel. If Defendants Wienerberger, General Shale, and Meridian are barred by any applicable law from providing any of this information, those Defendants must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation of the inability of Defendants Wienerberger, General Shale, and Meridian to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, Defendants Wienerberger, General Shale, and Meridian must promptly make Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any effort by Acquirer to employ any Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Relevant Personnel unless (a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to the December 18, 2020, or

(b) the offer is approved by the United States in its sole discretion. Defendants' obligations under this Paragraph will expire 180 days after the Divestiture Date.

5. For Relevant Personnel who elect employment with Acquirer within 180 days of the Divestiture Date, Defendants must waive all non-compete and non-disclosure agreements; vest and pay to the Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Relevant Personnel otherwise would have been provided had the Relevant Personnel continued employment with Defendants, including any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Relevant Personnel of Defendants' proprietary non-public information that is unrelated to the design, manufacture, and sale of residential bricks and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 12 months from the Divestiture Date, Defendants Wienerberger, General Shale, and Meridian may not solicit to rehire Relevant Personnel who were hired by Acquirer within 180 days of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that Defendants Wienerberger, General Shale, and Meridian may solicit to re-hire that individual. Nothing in this Paragraph prohibits Defendants Wienerberger, General Shale, and Meridian from advertising employment openings using general solicitations or advertisements and re-hiring Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

I. Defendants Wienerberger, General Shale, and Meridian must warrant to Acquirer that (1) the Divestiture Assets will be operational and without material defect on the date of their

transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Divestiture Assets; and (3) all encumbrances on any part of the Divestiture Assets, including on intangible property, have been disclosed. Following the sale of the Divestiture Assets, Defendants must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. Defendants Wienerberger, General Shale, and Meridian must assign, subcontract, or otherwise transfer all contracts, agreements, and customer and distributor relationships (or portions of such contracts, agreements, and relationships) included in the Divestiture Assets, including all supply and sales contracts to Acquirer; *provided, however*, that for any contract or agreement that requires the consent of another party to assign, subcontract, or otherwise transfer, Defendants Wienerberger, General Shale, and Meridian must use best efforts to accomplish the assignment, subcontracting, or transfer. Defendants must not interfere with any negotiations between Acquirer and a contracting party.

K. Defendants Wienerberger, General Shale, and Meridian must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Divestiture Assets. Until Acquirer obtains the necessary licenses, registrations, and permits, Defendants Wienerberger, General Shale, and Meridian must provide Acquirer with the benefit of the licenses, registrations, and permits of Defendants Wienerberger, General Shale, and Meridian to the full extent permissible by law.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, Defendants Wienerberger, General Shale, and Meridian must enter into a contract to provide transition services for back office, human resources, accounting, employee health and safety, and information technology services and

support for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional six months. If Acquirer seeks an extension of the term of any contract for transition services, Defendants Wienerberger, General Shale, and Meridian must notify the United States in writing at least three months prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty at any time upon commercially reasonable written notice. The employee(s) of Defendants Wienerberger, General Shale, and Meridian tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of Defendants Wienerberger, General Shale, and Meridian.

M. If any term of an agreement between Defendants Wienerberger, General Shale, and Meridian and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment, to the extent that Defendants Wienerberger, General Shale, and Meridian cannot fully comply with both, this Final Judgment determines the obligations of Defendants Wienerberger, General Shale, and Meridian.

## **V. APPOINTMENT OF DIVESTITURE TRUSTEE**

A. If Defendants Wienerberger, General Shale, and Meridian have not divested the Divestiture Assets within the period specified in Paragraph IV.A, Defendants Wienerberger, General Shale, and Meridian must immediately notify the United States of that fact in writing. Upon application of the United States, which Defendants may not oppose, the Court will appoint

a divestiture trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a divestiture trustee by the Court, only the divestiture trustee will have the right to sell the Divestiture Assets. The divestiture trustee will have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at a price and on terms obtainable through reasonable effort by the divestiture trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and will have other powers as the Court deems appropriate. The divestiture trustee must sell the Divestiture Assets as quickly as possible.

C. Defendants Wienerberger, General Shale, and Meridian may not object to a sale by the divestiture trustee on any ground other than malfeasance by the divestiture trustee. Objections by Defendants Wienerberger, General Shale, and Meridian must be conveyed in writing to the United States and the divestiture trustee within 10 calendar days after the divestiture trustee has provided the notice of proposed divestiture required by Section VI.

D. The divestiture trustee will serve at the cost and expense of Defendants Wienerberger, General Shale, and Meridian pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The divestiture trustee may hire at the cost and expense of Defendants Wienerberger, General Shale, and Meridian any agents or consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the divestiture trustee's judgment to assist with the divestiture trustee's duties. These agents or consultants will be accountable solely to the divestiture trustee and will serve on terms and conditions, including

confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the divestiture trustee and agents or consultants hired by the divestiture trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the divestiture trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished. If the divestiture trustee and Defendants Wienerberger, General Shale, and Meridian are unable to reach agreement on the divestiture trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the divestiture trustee by the Court, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within three business days of hiring an agent or consultant, the divestiture trustee must provide written notice of the hiring and rate of compensation to Defendants Wienerberger, General Shale, and Meridian and the United States.

G. The divestiture trustee must account for all monies derived from the sale of the Divestiture Assets sold by the divestiture trustee and all costs and expenses incurred. Within 30 calendar days of the Divestiture Date, the divestiture trustee must submit that accounting to the Court for approval. After approval by the Court of the divestiture trustee's accounting, including fees for unpaid services and those of agents or consultants hired by the divestiture trustee, all remaining money must be paid to Defendants Wienerberger, General Shale, and Meridian and the trust will then be terminated.

H. Defendants Wienerberger, General Shale, and Meridian must use best efforts to assist the divestiture trustee to accomplish the required divestiture. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial

information, or any applicable privileges, Defendants Wienerberger, General Shale, and Meridian must provide the divestiture trustee and agents or consultants retained by the divestiture trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. Defendants Wienerberger, General Shale, and Meridian also must provide or develop financial and other information relevant to the Divestiture Assets that the divestiture trustee may reasonably request. Defendants must not take any action to interfere with or to impede the divestiture trustee's accomplishment of the divestiture.

I. The divestiture trustee must maintain complete records of all efforts made to sell the Divestiture Assets, including by filing monthly reports with the United States setting forth the divestiture trustee's efforts to accomplish the divestiture ordered by this Final Judgment. The reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and must describe in detail each contact.

J. If the divestiture trustee has not accomplished the divestiture ordered by this Final Judgment within six months of appointment, the divestiture trustee must promptly provide the United States with a report setting forth: (1) the divestiture trustee's efforts to accomplish the required divestiture; (2) the reasons, in the divestiture trustee's judgment, why the required divestiture has not been accomplished; and (3) the divestiture trustee's recommendations for completing the divestiture. Following receipt of that report, the United States may make additional recommendations to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which may include extending the

trust and the term of the divestiture trustee's appointment by a period requested by the United States.

K. The divestiture trustee will serve until divestiture of all Divestiture Assets is completed or for a term otherwise ordered by the Court.

L. If the United States determines that the divestiture trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute divestiture trustee.

## **VI. NOTICE OF PROPOSED DIVESTITURE**

A. Within two business days following execution of a definitive agreement with an Acquirer other than RemSom to divest the Divestiture Assets, Defendants Wienerberger, General Shale, and Meridian or the divestiture trustee, whichever is then responsible for effecting the divestiture, must notify the United States of the proposed divestiture. If the divestiture trustee is responsible for completing the divestiture, the divestiture trustee also must notify Defendants Wienerberger, General Shale, and Meridian. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets.

B. Within 15 calendar days of receipt by the United States of the notice required by Paragraph VI.A, the United States may request from Defendants Wienerberger, General Shale, and Meridian, the proposed Acquirer, other third parties, or the divestiture trustee additional information concerning the proposed divestiture, the proposed Acquirer, and other prospective Acquirers. Defendants Wienerberger, General Shale, and Meridian and the divestiture trustee

must furnish the additional information requested within 15 calendar days of the receipt of the request unless the United States provides written agreement to a different period.

C. Within 45 calendar days after receipt of the notice required by Paragraph VI.A or within 20 calendar days after the United States has been provided the additional information requested pursuant to Paragraph VI.B, whichever is later, the United States will provide written notice to Defendants Wienerberger, General Shale, and Meridian and any divestiture trustee that states whether the United States, in its sole discretion, objects to the proposed Acquirer or any other aspect of the proposed divestiture. Without written notice that the United States does not object, a divestiture may not be consummated. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to the limited right to object to the sale under Paragraph V.C of this Final Judgment. Upon objection by Defendants Wienerberger, General Shale, and Meridian pursuant to Paragraph V.C, a divestiture by the divestiture trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to this Section may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the United States Department of Justice's Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Persons submitting information to the Antitrust Division should designate the confidential

commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, “unless the submitter requests and provides justification for a longer designation period.” *See* 28 C.F.R. § 16.7(b).

F. If at the time that a person furnishes information or documents to the United States pursuant to this Section, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” the United States must give that person ten calendar days’ notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

## **VII. FINANCING**

Defendants may not finance all or any part of Acquirer’s purchase of all or part of the Divestiture Assets.

## **VIII. ASSET PRESERVATION**

Defendants must take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by the Court.

## **IX. AFFIDAVITS**

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendant Wienerberger must deliver to the United States an affidavit, signed by Defendant Wienerberger’s Chief Executive Officer and General Counsel, Defendant General Shale must deliver to the United States an affidavit, signed by Defendant General Shale’s Chief Executive Officer and Chief Financial Officer, and Defendant Meridian must deliver to the United States an

affidavit signed by Defendant Meridian's Chief Executive Officer and Chief Financial Officer, describing in reasonable detail the fact and manner of that Defendant's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. In the event Defendants Wienerberger, General Shale, and Meridian are attempting to divest the Divestiture Assets to an Acquirer other than RemSom, each affidavit required by Paragraph IX.A must include: (1) the name, address, and telephone number of each person who, during the preceding 30 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets and describe in detail each contact with such persons during that period; (2) a description of the efforts Defendants Wienerberger, General Shale, and Meridian have taken to solicit buyers for and complete the sale of the Divestiture Assets and to provide required information to prospective Acquirers; and (3) a description of any limitations placed by Defendants Wienerberger, General Shale, and Meridian on information provided to prospective Acquirers. Objection by the United States to information provided by Defendants Wienerberger, General Shale, and Meridian to prospective Acquirers must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. Defendants Wienerberger, General Shale, and Meridian must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of the filing of the Complaint in this matter, Defendant Wienerberger, Defendant General Shale, and Defendant Meridian must deliver to the United States an affidavit signed by each Defendant's Chief Executive Officer and Chief Financial

Officer, that describes in reasonable detail all actions that Defendants have taken and all steps that Defendants Wienerberger, General Shale, and Meridian have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If a Defendant makes any changes to the actions and steps described in affidavits provided pursuant to Paragraph IX.D, the Defendant must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. Defendants Wienerberger, General Shale, and Meridian must keep all records of any efforts made to comply with Section VIII until one year after the Divestiture Date.

## **X. COMPLIANCE INSPECTION**

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters

contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

C. No information or documents obtained by the United States pursuant to this Section may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand jury proceedings, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. § 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 C.F.R. part 16, including the provision on confidential commercial information, at 28 C.F.R. § 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 C.F.R. § 16.7. Designations of confidentiality expire ten years after submission, “unless the submitter requests and provides justification for a longer designation period.” *See* 28 C.F.R. § 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to this Section, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,”

the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

## **XI. NOTIFICATION**

A. Unless a transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendants Wienerberger, General Shale, and Meridian may not, without first providing at least 30 calendar days advance notification to the United States, directly or indirectly acquire any assets of or any interest, including a financial, security, loan, equity, or management interest, in an entity involved in the design, manufacture, or sale of residential bricks in Alabama, Indiana, Kentucky, Michigan, Ohio, or Tennessee during the term of this Final Judgment.

B. Defendants Wienerberger, General Shale, and Meridian must provide the notification required by this Section in the same format as, and in accordance with the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended, except that the information requested in Items 5 through 8 of the instructions must be provided only about the design, manufacture, and sale of residential bricks in the United States.

C. Notification must be provided at least 30 calendar days before acquiring any assets or interest and must include, beyond the information required by the instructions, the names of the principal representatives who negotiated the transaction on behalf of each party, and all management or strategic plans discussing the proposed transaction. If, within the 30 calendar days following notification, representatives of the United States make a written request for additional information, Defendants Wienerberger, General Shale, and Meridian may not

consummate the proposed transaction until 30 calendar days after submitting all requested information.

D. Early termination of the waiting periods set forth in this Section may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section must be broadly construed, and any ambiguity or uncertainty relating to whether to file a notice under this Section must be resolved in favor of filing notice.

## **XII. NO REACQUISITION**

Defendants Wienerberger, General Shale, and Meridian may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization of the United States.

## **XIII. RETENTION OF JURISDICTION**

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

## **XIV. ENFORCEMENT OF FINAL JUDGMENT**

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a

preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt

remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section.

**XV. EXPIRATION OF FINAL JUDGMENT**

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

**XVI. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16]

\_\_\_\_\_  
United States District Judge

**APPENDIX A**

1. General Shale's Mooresville, IN manufacturing facility at 148 Sycamore Lane, Mooresville, IN 46158;
2. General Shale's Edwards Mine, at West Merriman Road, Mooresville, IN;
3. Meridian's Gleason, TN manufacturing facility at 4970 Old State Highway 22, Gleason, TN 38229;
4. Meridian's Rich Mine at 179 Cypress Lane, Gleason TN;
5. Meridian's Collins Mine at 1300 Finch Road, Gleason, TN;
- ~~6. Meridian's Lease agreement for the Wingo Mine, Humphrey Road, Hickman, KY;~~
- 7.6. Meridian's Bessemer, AL manufacturing facility at 8250 Hopewell Road SE, Bessemer, AL 35022;
- ~~8.7.~~ Meridian's Vulcan Mine at Vulcan Road SE, Bessemer, AL 35022; and
- 9.8. Meridian's Centreville Mine, Parcel 1 and Parcel 2 Highway 5, Brent, AL 35034.

**APPENDIX B**

1. General Shale's Mooresville, IN distribution yard located at 148 Sycamore Lane, Mooresville, IN 46158;
2. General Shale's Evansville, IN distribution yard located at 3401 Mt Vernon Ave, Evansville, IN 47712;
3. General Shale's Sterling Heights, MI distribution yard located at 42374 Mound Rd, Sterling Heights, MI 48314;
4. General Shale's Whitmore Lake, MI distribution yard located at 6556 Whitmore Lake Rd, Whitmore Lake, MI 48189;
5. Meridian's Bessemer AL distribution yard located at 8250 Hopewell Road SE, Bessemer, AL 35022;
6. Meridian's Clarksville, TN distribution yard located at 181 Terminal Road, Clarksville, TN 37040
7. Meridian's Florence, AL distribution yard located at 3309 Hough Road, Florence, AL 35630;
8. Meridian's Huntsville, AL distribution yard located at 154 Slaughter Rd, Madison, AL 35758;
9. Meridian's Knoxville, TN distribution yard located at 641 Corporate Point Way, Knoxville, TN 37932
10. Meridian's Memphis, TN distribution yard located at 9525 Macon Road, Cordova, TN 38016;
11. Meridian's Nashville, TN distribution yard located at 7140 Centennial Place, Nashville, TN 37209;
12. Meridian's Nashville, TN leased property located at 7230 Centennial Place, Nashville, TN 37209;
13. Meridian's Pelham Store located at Pelham Town Center, 381 Huntley Pkwy, Pelham, AL 35124; and
14. Meridian's Tupelo, MS distribution yard located at 1735 McCullough Blvd, Tupelo, MS 38801.

**APPENDIX C: List of Retained Assets (Paragraph H(3)(g))**

1. With respect to the Centennial (Nashville), Tennessee Distribution Yard only, all equipment used in or related to Meridian's "tint center" operations for its stucco business;
2. With respect to the Whitmore Lake (Detroit), Michigan Distribution Yard, one trailer with a purchase order dated February 11, 2021; and
3. With respect to the Mooresville Plant, the non-essential real property, being approximately 78+/- acres, Parcel 55-05-12-400-003.000-005, Morgan County, Indiana.