ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit to take the federally listed Delhi Sands flower-loving fly under the Endangered Species Act (ESA). The permit application includes a proposed low-effect habitat conservation plan (HCP). In accordance with the requirements of the National Environmental Policy Act (NEPA), we have prepared a draft low-effect screening form supporting our preliminary determination that the proposed action qualifies as a categorical exclusion under NEPA. We invite comments from the public and Federal, Tribal, State, and local governments on the permit application, proposed low-effect HCP, and draft NEPA compliance documentation.

DATES: To ensure consideration, please send your written comments on or before November 24, 2021.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R8–ES–2021–0071 at *http://www.regulations.gov*.

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2021–0071.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0071; U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92262.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Cleary-Rose, Division Supervisor, Carlsbad Fish and Wildlife Office, 760–322–2070. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, received an application from Rialto Project Owner, Marshall P. Wilkinson (applicant), for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permit would authorize take of the federally endangered Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), incidental to grading and paving, on approximately 4 acres in the City of Rialto in San Bernardino County, California.

The proposed project will impact an estimated 0.67 acres of habitat occupied by Delhi Sands flower-loving fly. We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our draft NEPA compliance documentation, which is also available for public review.

Project

The project area is located on a 4-acre site in the City of Rialto in San Bernardino County, California. The applicant requests a 5-year incidental take permit for permanent impacts to 0.67 acres of occupied Delhi Sands flower-loving fly habitat. The applicant proposes to mitigate impacts through the conservation of 1 acre of occupied Delhi Sands flower-loving fly habitat off site at the Colton Dune Conservation Bank in San Bernardino County, or other Service-approved entity. The off-site mitigation area provides higher quality habitat than that found on the project site and will be conserved, managed, and monitored in perpetuity.

Our Preliminary Determination

The Service has made a preliminary determination that the project, including grading, paving, and the proposed mitigation, would individually and cumulatively have a minor or negligible effect on the Delhi Sands flower-loving fly and the human environment. Therefore, we have preliminarily concluded that the incidental take permit for this project would qualify for categorical exclusion, and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210.

A low-effect HCP is one that would result in:

- Minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- Minor or negligible effects on other environmental values or resources; and
- Impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

We will evaluate the proposed HCP and any comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, we will issue the permit to the applicant for incidental take of the Delhi Sands flower-loving fly.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) (16 U.S.C. 1539 *et seq.*) of the ESA and NEPA regulations at 40 CFR 1506.6.

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2021–23163 Filed 10–22–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Wieneberger AG, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Wienerberger AG, et al.,* Civil Action No. 1:21–cv–02555. On October 1, 2021, the United States filed a Complaint alleging that General Shale's proposed acquisition of Meridian's manufacturing and distribution assets would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires General Shale to divest three

manufacturing plants and 14 distribution yards.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Jay Owen, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite8 700, Washington, DC 20530 (email address: *jay.owen@usdoj.gov*).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *Wienerberger AG, Wienerbergerplatz 1, 1100 Wien, Austria, General Shale Brick, Inc., 3015 Bristol Hwy., Johnson City, Tennessee 37601, LSF9 Stardust Super Holdings, L.P., Washington Mall, 7 Reid Street, Suite 304, Hamilton, Bermuda HM 11, Boral Limited, Level 18, 15 Blue Street, North Sydney, NSW 2060, Australia,* and *Meridian Brick LLC, 6455 Shiloh Rd., Alpharetta, Georgia 30005,* Defendants.

Civil Action No.: 1:21–cv–02555 (CRC)

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Wienerberger AG, its North American subsidiary General Shale Brick, Inc. (''General Shale''), Meridian Brick LLC (''Meridian''), and Meridian's parent companies Boral Limited and LSF9 Stardust Super Holdings, L.P. to enjoin General Shale's proposed acquisition of Meridian. The United States alleges as follows:

I. Nature of the Action

1. General Shale's proposed acquisition of its rival, Meridian, would combine two of the largest residential brick manufacturers in numerous markets across the midwestern and southern United States. General Shale and Meridian compete daily to supply a variety of residential brick to customers ranging from local homebuilders to national construction companies. As a result of the transaction, homebuilders of all types likely will pay higher prices, face reduced innovation, and receive lower quality products for their residential brick supply.

2. In numerous markets across the United States, General Shale and Meridian are the two most significant suppliers of residential brick or two of only a few such suppliers. Homebuilders, particularly in certain areas of Alabama, Indiana, Kentucky, Michigan, Ohio, and Tennessee depend on competition between General Shale and Meridian to ensure a supply of quality brick at competitive prices.

3. Not only has competition between General Shale and Meridian driven residential brick prices down, it has also fostered product innovation that has resulted in new products and the broad portfolio that each firm offers today. For example, competition between these firms has resulted in the introduction of new color mixes, textures, and facing styles, as well as more efficient and environmentally sustainable production processes.

4. By eliminating competition between General Shale and Meridian, the proposed acquisition would result in higher prices, reduced innovation, and lower quality in the markets for the design, manufacture, and sale of residential brick. Accordingly, General Shale's acquisition of Meridian would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and therefore should be enjoined.

II. The Parties and the Transaction

5. General Shale is a Delaware corporation headquartered in Johnson City, Tennessee. It is a leading U.S. producer of building material solutions and one of North America's largest brick, stone, and concrete block manufacturers. General Shale operates 11 production facilities in 10 states and provinces. It also has a network of 21 sales locations and more than 200 affiliated distributors in North America.

6. Wienerberger AG, an Austrian corporation, is General Shale's parent company. Based in Vienna, Austria, it is one of the world's largest building materials manufacturers. Wienerberger AG operates manufacturing and distribution facilities for brick and other construction materials in three continents, including in North America through General Shale. In 2020, Wienerberger AG's North American business generated revenues of approximately $370 million, 78% of which was derived from brick sales, including residential brick sales.

7. Meridian is a Delaware limited liability company. Headquartered in Alpharetta, Georgia, Meridian manufactures and sells construction materials, including commercial and residential brick and masonry materials. Meridian is the largest brick supplier in the United States. During fiscal year 2020, it generated revenues of over $400 million, which primarily came from brick sales, including residential brick sales. Meridian and its sister company Meridian Brick Canada Ltd. make up the Meridian Group, which operates 20 manufacturing facilities and 27 distribution centers throughout North America. The Meridian Group is directly and indirectly owned by Boral Limited (''Boral'') and LSF9 Stardust Super Holdings, L.P. Boral is an Australian public company that produces and supplies building and construction materials primarily in North America and Australia. Boral and LSF9 Stardust Super Holdings, L.P. formed Meridian as a joint venture in 2016.

8. On December 18, 2020, General Shale announced its intention to acquire Meridian from Boral and LSF9 Stardust Super Holdings, L.P. as part of a total transaction valued at approximately $250 million.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Defendants' activities substantially affect interstate commerce. They manufacture and sell residential brick directly to customers and through third-party distributors throughout the southern and midwestern United States. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(3) and (c)(2) for Meridian and

General Shale, and venue is proper for LSF9 Stardust Super Holdings, L.P., Boral Limited, and Wienerberger AG under 28 U.S.C. 1391(c)(3).

IV. Relevant Markets

A. Product Market: Residential Brick

12. Residential brick is a type of exterior cladding that is used to protect homes and other buildings from weather and the elements. It comes in various sizes and colors and is primarily comprised of shale or red clay that has been fired in a kiln. Residential brick of each color and size is manufactured in a substantially similar process, with minor adjustments in the amount of clay or type of color additives used to make a particular brick model. Indeed, although residential brick comes in varying sizes (*e.g.,* modular, queen, and king) and colors (*e.g.,* red, white, or grey), all residential brick volumes are measured in Standard Brick Equivalents (''SBE'').[1]

13. Residential brick is distinct from commercial brick. Residential brick is less expensive than commercial brick due to different manufacturing processes. In particular, commercial brick is made by a process called through-body extrusion. Through-body extrusion entails a rigorous coloring process that ensures uniform coloring throughout the body of the brick. This achieves the higher color quality required of commercial brick. By contrast, residential brick is often colored only on the outer portion of the brick, and the residential brick manufacturing process requires fewer additives and other costly inputs.

14. Residential brick must meet standard specifications for residential use that are set by the American Society for Testing and Materials (''ASTM''). These standards require certain durability and load capabilities that differentiate residential brick from decorative paving brick as well as ''thin'' brick, which is a fraction of the thickness of residential brick and has lower structural requirements because it is ornamental.

15. Residential brick is distinct from other types of exterior cladding. It has both performance characteristics (such as durability and structural integrity) and aesthetic traits that distinguish it from products such as siding and other exterior claddings. Customers who prefer the look of residential brick, or whose projects require the unique properties of residential brick, cannot reasonably turn to alternative exterior cladding solutions.

16. Because of these unique characteristics, substitution away from residential brick in the event of a small but significant increase in price by a hypothetical monopolist of residential brick would be insufficient to make such a price increase unprofitable. Accordingly, residential brick is a line of commerce, or relevant product market, for purposes of analyzing the effects of the proposed acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Markets Are Local

17. Residential brick is generally transported by truck. Transportation costs can be substantial and typically range from 15% to 30% of the total price of residential brick. As a result, the geographic markets for residential brick tend to be local, with the specific geographic boundaries of any local market also determined by road infrastructure, traffic conditions, and natural conditions, such as mountain ranges that impose significantly higher fuel costs on the transportation of residential brick to customers in local markets.

18. The transaction would likely harm competition for residential brick in the following Metropolitan Statistical Areas (''MSAs'')[2]: (1) Nashville, Tennessee; (2) Memphis, Tennessee; (3) Huntsville, Alabama; (4) Lexington, Kentucky; (5) Louisville, Kentucky; (6) Indianapolis, Indiana; (7) Detroit, Michigan; and (8) Cincinnati, Ohio.

19. In each of these relevant markets, a small but significant increase in price by a hypothetical monopolist of residential brick would not be defeated by substitution to commercial brick or other claddings, other construction materials, or by arbitrage—*i.e.,* a buyer cannot purchase outside the MSA and transport the residential bricks itself without incurring prohibitive transportation costs. Accordingly, the sale of residential brick in each of these MSAs constitutes a relevant market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

V. Anticompetitive Effects

20. The proposed transaction would significantly increase concentration in the relevant markets and harm consumers by eliminating the substantial head-to-head competition that currently exists between General Shale and Meridian.

21. For each relevant market, General Shale and Meridian are among the top suppliers of residential brick by volume sold and have a competitive advantage because of the proximity of their manufacturing facilities to customers in each relevant market. Further, only two or three significant competitors, including General Shale and Meridian, supply each relevant market. Other residential brick suppliers face significantly higher transportation costs to serve these markets and thus have limited competitive significance. Competition between General Shale and Meridian has also spurred product innovation that has yielded higher quality and a variety of innovative residential brick products, including new colors, textures, and facing styles.

22. Homebuilders and other customers in the relevant markets thus rely on competition between General Shale and Meridian to supply a variety of quality residential brick at competitive prices. By eliminating this competition, the proposed transaction would likely lead to higher prices and reduced investment in innovation and quality.

A. The Nashville, Tennessee MSA

23. In 2020, Tennessee was the second-largest brick consuming state in the United States. General Shale and Meridian supplied approximately 54% of the total brick volume sold in Tennessee in 2020. General Shale and Meridian are particularly important suppliers for the Nashville MSA, where they are the top two suppliers of residential brick by volume and face only each other as significant competitors. General Shale and Meridian are the only significant suppliers of residential brick that operate brick manufacturing facilities located within 150 miles of Nashville, and no other significant supplier has a manufacturing facility located within 200 miles.

B. The Memphis, Tennessee MSA

24. General Shale and Meridian are also important suppliers of residential brick for the Memphis MSA, where they face only one other significant competitor. These three firms are the only significant suppliers that operate brick manufacturing facilities within

[1] The American Society for Testing and Materials has established a standard brick size for construction uses, which is referred to as the standard brick equivalent or ''SBE.'' Residential brick of different sizes is converted to SBE units when sold for purposes of measuring the volume sold.

[2] An MSA is a geographical region defined by the Office of Management and Budget for use by federal statistical agencies, such as the Census Bureau. It is based on the concept of a core area with a large concentrated population, plus adjacent communities having close economic and social ties to the core. For the purposes of this Complaint, it includes the dense central business districts in the named cities as well as the adjacent, connected communities.

200 miles of Memphis, and no other significant supplier of residential brick has a facility located within 350 miles.

C. The Huntsville, Alabama MSA

25. Alabama consumed the fifth most bricks of any state in the nation in 2020. General Shale and Meridian are two of the top three residential brick suppliers in Alabama and combined supplied over 43% of the total brick volume sold in Alabama in 2020. General Shale and Meridian are particularly important suppliers for the Huntsville MSA, where they are two of the top three residential brick suppliers by volume and face only one other significant competitor. These three firms are the only significant suppliers that operate a residential brick manufacturing facility located within 125 miles of Huntsville.

D. The Lexington, Kentucky MSA

26. General Shale and Meridian supplied over 50% of the total brick volume sold in Kentucky in 2020. General Shale and Meridian are particularly important suppliers for the Lexington MSA, where they are the two largest suppliers of residential brick by volume and face only each other as significant competitors. General Shale and Meridian are the only significant residential brick suppliers located within 50 miles of Lexington; the next closest residential brick manufacturer is over 230 miles away.

E. The Louisville, Kentucky MSA

27. General Shale and Meridian are also important residential brick suppliers for the Louisville MSA. In the Louisville MSA, the proposed acquisition would reduce the number of significant competitors for residential brick from three to two, as the merging parties own two of the three brick manufacturing facilities located within 200 miles of Louisville. Following the transaction, the third-closest significant residential brick manufacturer would be located over 300 miles away.

F. The Indianapolis, Indiana MSA

28. General Shale and Meridian are the top two suppliers of residential brick to customers in Indiana. In 2020, they combined to supply over 45% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers of residential brick for the Indianapolis MSA, where they face only one other significant competitor. These three firms are the only significant suppliers that operate a residential brick manufacturing facility located within 100 miles of Indianapolis, with the next closest competitor located almost 350 miles away.

G. The Detroit, Michigan MSA

29. General Shale and Meridian are the first and third largest suppliers of brick to customers in Michigan. In 2020, General Shale and Meridian supplied 45% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers for the Detroit MSA, where they are the top two competitors for residential brick by volume. In this market, the proposed acquisition would reduce the number of significant suppliers for residential brick from three to two with these three firms being the only significant suppliers that operate residential brick manufacturing facilities within 375 miles of Detroit.

H. The Cincinnati, Ohio MSA

30. General Shale and Meridian are the top two residential brick suppliers to customers in Ohio. In 2020, General Shale and Meridian supplied 28% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers for the Cincinnati MSA, where they are the top two competitors for residential brick by volume and face only one other significant supplier. These three firms are the only significant suppliers with residential brick manufacturing facilities located within 200 miles of Cincinnati, and no other significant manufacturer has a facility within 350 miles.

VI. Entry

31. Entry into the relevant markets would be costly and time-consuming and is unlikely to prevent the harm to competition that is likely to result from the proposed transaction. The time and expense required to construct manufacturing facilities, acquire necessary equipment, develop product formulas, and overcome regulatory obstacles, such as obtaining building and usage permits and ensuring environmental and workplace safety compliance, would take years of planning and significant financial investment.

32. Additionally, repositioning by a commercial brick manufacturer is unlikely to mitigate the harm that would result from the proposed transaction. Switching from producing commercial brick to producing residential brick would come at a significant opportunity cost as commercial brick sales generally yield a higher profit margin than residential brick. Accordingly, it is unlikely that a manufacturer of commercial brick would be incentivized to switch to supplying residential brick.

VII. Violations Alleged

33. General Shale's proposed acquisition of Meridian is likely to substantially lessen competition in each of the relevant markets for the design, manufacture, and sale of residential brick set forth above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

34. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others, in the relevant markets:

(a) Actual and potential competition between General Shale and Meridian would be eliminated;

(b) competition generally would be substantially lessened; and

(c) prices for the relevant products would likely increase, and innovation and the quality of those products likely would decline.

VIII. Request for Relief

35. The United States request that this Court:

(a) Adjudge and decree General Shale's proposed acquisition of Meridian to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin Defendants and all persons acting on their behalf from consummating the proposed acquisition by General Shale of Meridian or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Meridian with the operations of General Shale;

(c) award the United States the costs for this action; and

(d) grant the United States such other relief as the Court deems just and proper.

Dated: October 1, 2021.

Respectfully Submitted,

For Plaintiff United States:

Richard A. Powers,
Acting Assistant Attorney General, Antitrust Division.

Kathleen S. O'Neill,
Senior Director of Investigations and Litigation, Antitrust Division.

Jay D. Owen,
Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division.

Soyoung Choe,
Acting Assistant Chief, Defense, Industrials, and Aerospace Section, Antitrust Division.

Daniel J. Monahan, Jr.*
Stephen A. Harris,

Matthew C. Fellows (D.C. Bar #1736656), *Trial Attorneys, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Telephone: (202) 598–8774, Facsimile: (202) 514–9033, Email: Daniel.Monahan@usdoj.gov*.
*Lead Attorney to be Noticed.

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., Meridian Brick LLC,* Defendants.

Civil Action No.: 1:21–cv–02555 (CRC)

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on October 1, 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 websites and internet domain names.

Provided, however, that the assets specified in Paragraphs II.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,'' ''Watsontown,''

''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, 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 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 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 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 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

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Wienerberger AG, General Shale Brick, Inc., LSF9 Stardust Super Holdings, L.P., Boral Limited*, and *Meridian Brick LLC*, Defendants.

Civil Action No.: 1:21–cv–02555 (CRC)

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On December, 18, 2020, General Shale Brick, Inc. (''General Shale''), a subsidiary of Wienerberger AG, announced its intention to acquire Meridian Brick LLC (''Meridian'') from Meridian's parent companies, Boral Limited and LSF9 Stardust Super Holdings, L.P. as part of a total transaction valued at approximately $250 million. The United States filed a civil antitrust Complaint on October 1, 2021, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the design, manufacture, and sale of residential brick in eight geographic markets in the midwestern and southern United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a proposed Final Judgment and an Asset Preservation Stipulation and Order (''Stipulation and Order''), which are designed to remedy the loss of competition alleged in the Complaint.

Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest specified residential brick manufacturing and sales assets located within seven states.

Under the terms of the Stipulation and Order, Defendants must take certain steps to ensure that the assets that must be divested are operated as ongoing, economically viable, competitive assets for the design, manufacture, and sale of residential brick and must take all other actions to preserve and maintain the full economic viability, marketability, and competitiveness of the assets to be divested. On October 5, 2021, the Court entered the Stipulation and Order.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

On December 18, 2020, General Shale announced its intention to acquire Meridian from Boral Limited and LSF9 Stardust Super Holdings, L.P. in a total transaction valued at approximately $250 million.

General Shale is a Delaware corporation headquartered in Johnson City, Tennessee. It is a leading U.S. producer of building material solutions and one of North America's largest brick, stone, and concrete block manufacturers. General Shale operates 11 production facilities in 10 states and provinces. It also has a network of 21 sales locations and more than 200 affiliated distributors in North America.

Wienerberger AG is General Shale's parent company. Based in Vienna, Austria, it is one of the world's largest building materials manufacturers. Wienerberger AG operates manufacturing and distribution facilities for brick and other construction materials in three continents, including in North America through its subsidiary General Shale. In 2020, Wienerberger AG's North American business generated revenues of approximately $370 million, 78% of which was derived from brick sales, including residential brick sales.

Meridian is a Delaware limited liability company headquartered in Alpharetta, Georgia. Meridian manufactures and sells construction materials, including commercial and residential brick and masonry materials. Meridian is the largest brick supplier in the United States. During the fiscal year 2020, Meridian generated over $400 million in revenues, primarily from brick sales, including residential brick sales. Meridian and its sister company Meridian Brick Canada Ltd. make up the Meridian Group. The Meridian Group is directly and indirectly owned by Boral Limited and LSF9 Stardust Super Holdings, L.P. Boral Limited and LSF9 Stardust Super Holdings, L.P. formed Meridian as a joint venture in 2016.

B. Relevant Product Market: Residential Brick

Residential brick is a type of exterior cladding that is used to protect homes and other buildings from weather and the elements. It comes in various sizes and colors and is primarily comprised of shale or red clay that has been fired in a kiln. Residential brick of each color and size is manufactured in a substantially similar process, with minor adjustments in the amount of clay or type of color additives used to make a particular brick model. Indeed, although residential brick comes in varying sizes (*e.g.,* modular, queen, and king) and colors (*e.g.,* red, white, or grey), all residential brick volumes are

measured in Standard Brick Equivalents (''SBE'').[3]

Residential brick is distinct from commercial brick. Residential brick is less expensive than commercial brick due to different manufacturing processes. In particular, commercial brick is made by a process called through-body extrusion. Through-body extrusion entails a rigorous coloring process that ensures uniform coloring throughout the body of the brick. This achieves the higher color quality required of commercial brick. By contrast, residential brick is often colored only on the outer portion of the brick, and the residential brick manufacturing process requires fewer additives and other costly inputs.

Residential brick must meet standard specifications for residential use that are set by the American Society for Testing and Materials (''ASTM''). These standards require certain durability and load capabilities that differentiate residential brick from decorative paving brick as well as ''thin'' brick, which is a fraction of the thickness of residential brick and has lower structural requirements because it is ornamental.

Residential brick is distinct from other types of exterior cladding. It has both performance characteristics (such as durability and structural integrity) and aesthetic traits that distinguish it from products such as siding and other exterior claddings. Customers who prefer the look of residential brick, or whose projects require the unique properties of residential brick, cannot reasonably turn to alternative exterior cladding solutions.

As alleged in the Complaint, because of these unique characteristics, substitution away from residential brick in the event of a small but significant increase in price by a hypothetical monopolist of residential brick would be insufficient to make such a price increase unprofitable. Accordingly, residential brick is a line of commerce, or relevant product market, for purposes of analyzing the effects of the proposed acquisition under Section 7 of the Clayton Act.

C. The Relevant Geographic Markets Are Local

Residential brick is generally transported by truck. Transportation costs can be substantial and typically range from 15% to 30% of the total price of residential brick. As a result, the Complaint alleges the geographic markets for residential brick tend to be local, with the specific geographic boundaries of any local market also determined by road infrastructure, traffic conditions, and natural conditions, such as mountain ranges that impose significantly higher fuel costs on the transportation of residential brick to customers in local markets.

As alleged in the Complaint, the transaction would likely harm competition for residential brick in the following Metropolitan Statistical Areas (''MSAs''):[4] (1) Nashville, Tennessee; (2) Memphis, Tennessee; (3) Huntsville, Alabama; (4) Lexington, Kentucky; (5) Louisville, Kentucky; (6) Indianapolis, Indiana; (7) Detroit, Michigan; and (8) Cincinnati, Ohio.

In each of these relevant markets, the Complaint alleges a small but significant increase in price by a hypothetical monopolist of residential brick would not be defeated by substitution to commercial brick or other claddings, other construction materials, or by arbitrage—*i.e.,* a buyer cannot purchase outside the MSA and transport the residential bricks itself without incurring prohibitive transportation costs. Accordingly, the sale of residential brick in each of these MSAs constitutes a relevant market for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

D. Anticompetitive Effects of the Proposed Transaction

The Complaint alleges the proposed transaction would significantly increase concentration in the relevant markets and harm consumers by eliminating the substantial head-to-head competition that currently exists between General Shale and Meridian.

For each relevant market, General Shale and Meridian are among the top suppliers of residential brick by volume sold and have a competitive advantage because of the proximity of their manufacturing facilities to customers in each relevant market. Further, only two or three significant competitors, including General Shale and Meridian, supply each relevant market. Other residential brick suppliers face significantly higher transportation costs to serve these markets and thus have limited competitive significance. Competition between General Shale and Meridian has also spurred product innovation that has yielded higher quality and a variety of innovative residential brick products, including new colors, textures, and facing styles.

As alleged in the Complaint, homebuilders and other customers in the relevant markets thus rely on competition between General Shale and Meridian to supply a variety of quality residential brick at competitive prices. By eliminating this competition, the proposed transaction would likely lead to higher prices and reduced investment in innovation and quality.

1. The Nashville, Tennessee MSA

In 2020, Tennessee was the second-largest brick consuming state in the United States. General Shale and Meridian supplied approximately 54% of the total brick volume sold in Tennessee in 2020. General Shale and Meridian are particularly important suppliers for the Nashville MSA, where they are the top two suppliers of residential brick by volume and face only each other as significant competitors. General Shale and Meridian are the only significant suppliers of residential brick that operate brick manufacturing facilities located within 150 miles of Nashville, and no other significant supplier has a manufacturing facility located within 200 miles.

2. The Memphis, Tennessee MSA

General Shale and Meridian are also important suppliers of residential brick for the Memphis MSA, where they face only one other significant competitor. These three firms are the only significant suppliers that operate brick manufacturing facilities within 200 miles of Memphis, and no other significant supplier of residential brick has a facility located within 350 miles.

3. The Huntsville, Alabama MSA

Alabama consumed the fifth most bricks of any state in the nation in 2020. General Shale and Meridian are two of the top three residential brick suppliers in Alabama and combined supplied over 43% of the total brick volume sold in Alabama in 2020. General Shale and Meridian are particularly important suppliers for the Huntsville MSA, where they are two of the top three residential brick suppliers by volume and face only one other significant competitor. These three firms are the only significant suppliers that operate a residential brick manufacturing facility located within 125 miles of Huntsville.

[3] The American Society for Testing and Materials has established a standard brick size for construction uses, which is referred to as the standard brick equivalent or ''SBE.'' Residential brick of different sizes is converted to SBE units when sold for purposes of measuring the volume sold.

[4] An MSA is a geographical region defined by the Office of Management and Budget for use by federal statistical agencies, such as the Census Bureau. It is based on the concept of a core area with a large concentrated population, plus adjacent communities having close economic and social ties to the core. For the purposes of the Complaint, it includes the dense central business districts in the named cities as well as the adjacent, connected communities.

4. The Lexington, Kentucky MSA

General Shale and Meridian supplied over 50% of the total brick volume sold in Kentucky in 2020. General Shale and Meridian are particularly important suppliers for the Lexington MSA, where they are the two largest suppliers of residential brick by volume and face only each other as significant competitors. General Shale and Meridian are the only significant residential brick suppliers located within 50 miles of Lexington; the next closest residential brick manufacturer is over 230 miles away.

5. The Louisville, Kentucky MSA

General Shale and Meridian are also important residential brick suppliers for the Louisville MSA. In the Louisville MSA, the proposed acquisition would reduce the number of significant competitors for residential brick from three to two, as the merging parties own two of the three brick manufacturing facilities located within 200 miles of Louisville. Following the transaction, the third-closest significant residential brick manufacturer would be located over 300 miles away.

6. The Indianapolis, Indiana MSA

General Shale and Meridian are the top two suppliers of residential brick to customers in Indiana. In 2020, they combined to supply over 45% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers of residential brick for the Indianapolis MSA, where they face only one other significant competitor. These three firms are the only significant suppliers that operate a residential brick manufacturing facility located within 100 miles of Indianapolis, with the next closest competitor located almost 350 miles away.

7. The Detroit, Michigan MSA

General Shale and Meridian are the first and third largest suppliers of brick to customers in Michigan. In 2020, General Shale and Meridian supplied 45% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers for the Detroit MSA, where they are the top two competitors for residential brick by volume. In this market, the proposed acquisition would reduce the number of significant suppliers for residential brick from three to two with these three firms being the only significant suppliers that operate residential brick manufacturing facilities within 375 miles of Detroit.

8. The Cincinnati, Ohio MSA

General Shale and Meridian are the top two residential brick suppliers to customers in Ohio. In 2020, General Shale and Meridian supplied 28% of the total brick volume sold in the state. General Shale and Meridian are particularly important suppliers for the Cincinnati MSA, where they are the top two competitors for residential brick by volume and face only one other significant supplier. These three firms are the only significant suppliers with residential brick manufacturing facilities located within 200 miles of Cincinnati, and no other significant manufacturer has a facility within 350 miles.

E. Difficulty of Entry

As alleged in the Complaint, entry of new competitors into the relevant residential brick markets would be costly, time consuming, and is unlikely to prevent the harm to competition that is likely to result if the proposed transaction were to proceed unremedied. The time and expense required to construct manufacturing facilities, acquire necessary equipment, develop product formulas, and overcome various regulatory hurdles would take years of planning and significant financial investment.

Additionally, repositioning by a commercial brick manufacturer is also unlikely to lessen the harm that would likely result from the proposed transaction. This is because commercial brick yields higher profit margin than residential brick, and, accordingly, such a switch would come at a significant opportunity cost that commercial brick manufacturers are unlikely to be incentivized to make.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing an independent and economically viable competitor in the design, manufacture, and sale of residential brick in the eight geographic markets alleged in the Complaint.

A. The Divestiture Assets

Paragraph IV(A) of the proposed Final Judgment requires Defendants, within 30 days after the entry of the Stipulation and Order by the Court, to divest the Divestiture Assets (capitalized terms are defined in the proposed Final Judgment) to RemSom, LLC or an alternative acquirer acceptable to the United States, in its sole discretion. The assets must be divested in such a way as to satisfy the United States in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business that can compete effectively in the design, manufacture, and sale of residential brick in the eight geographic markets alleged in the Complaint (proposed Final Judgment Paragraphs IV(C) and (D)). Defendants Wienerberger AG, General Shale, and Meridian must use best efforts to divest the Divestiture Assets expeditiously and may not take actions that would jeopardize the completion of the divestiture (proposed Final Judgment Paragraph IV(B)).

The Divestiture Assets are defined at Paragraph II(H) of the proposed Final Judgment. The Divestiture Assets are defined to include three manufacturing facilities, 14 Distribution Yards, and six mines, identified in Appendices A and B. The Divestiture Assets also include all tangible and intangible property and assets related or used in connection with the manufacturing facilities, mines, and Distribution Yards, except for the assets identified in Appendix C of the proposed Final Judgment and any trademarks, trade names, service marks, or service names containing the names ''General Shale,'' ''Meridian,'' ''Watsontown,'' ''Columbus,'' ''Arriscraft,'' or ''Wienerberger.'' The Divestiture Assets include all of the assets necessary for the Acquirer to operate an economically viable business that will remedy the harm that the United States allege would otherwise result from the transaction.

B. Divestiture Provisions

The proposed Final Judgment contains several provisions to facilitate the transition of the Divestiture Assets to the Acquirer. First, Paragraph IV(J) of the proposed Final Judgment facilitates the transfer of customers and other contractual relationships to the Acquirer. Defendants Wienerberger AG, General Shale, and Meridian must transfer all contracts, agreements, and relationships included in the Divestiture Assets to the Acquirer and must make best efforts to assign, subcontract, or otherwise transfer contracts or agreements that require the consent of another party before assignment, subcontracting, or other transfer.

Second, Paragraph IV(K) requires Defendants Wienerberger AG, General Shale, and Meridian to use their best efforts to assist the Acquirer in obtaining all of the licenses, registrations, and permits necessary to operate the Divestiture Assets. Paragraph IV(K) further requires Defendants Wienerberger AG, General Shale, and Meridian to provide the Acquirer with the benefit of Defendants

Wienerberger AG's, General Shale's, and Meridian's licenses, registrations, and permits to the full extent permissible by law until the Acquirer obtains the necessary licenses, registrations, and permits.

Third, Paragraph IV(L) of the proposed Final Judgment requires Defendants Wienerberger AG, General Shale, and Meridian, at the option of the Acquirer, and subject to the approval by the United States in its sole discretion, on or before the date of the divestiture, to enter into an agreement to provide transition services for back office, human resources, accounting, employee health and safety, and information technology services and support for the Divestiture Assets for a period of up to 12 months. The Acquirer may terminate the transition services agreement, or any portion of it, without cost or penalty at any time upon commercially reasonable written notice. The paragraph further provides that if the Acquirer seeks an extension of the term of any contract for transition services, Defendants Wienerberger AG, General Shale, and Meridian must notify the United States in writing at least three months prior to the date the contract expires. Paragraph IV(L) also provides that employees of Defendants Wienerberger AG, General Shale, and Meridian tasked with supporting this agreement must not share any competitively sensitive information of the Acquirer with any other employee of Defendants Wienerberger AG, General Shale, and Meridian.

The proposed Final Judgment also contains provisions intended to facilitate efforts by the Acquirer to hire certain employees. Specifically, Paragraph IV(H) of the proposed Final Judgment requires Defendants Wienerberger AG, General Shale, and Meridian to provide the Acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that all Defendants must not interfere with any negotiations by the Acquirer to hire these employees. In addition, for employees who elect employment with the Acquirer, Defendants must waive all non-compete and non-disclosure agreements, vest and pay on a prorated basis any bonuses, incentive, other salary, benefits or other compensation fully or partially accrued at the time the employee transfers to the Acquirer, vest any unvested pension and other equity rights, and provide all other benefits that those employees otherwise would have been provided had those employees continued employment with Defendants, including but not limited to any retention bonuses or payments. This paragraph further provides that the Defendants Wienerberger AG, General Shale, and Meridian may not solicit to hire any employees who elect employment with the Acquirer, unless that individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that the Defendants Wienerberger AG, General Shale, and Meridian may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture. This paragraph does not prohibit Defendants Wienerberger AG, General Shale, and Meridian from advertising employment openings using general solicitations or advertisements and rehiring employees who apply for a position through a general solicitation or advertisement.

C. Divestiture Trustee

If Defendants Wienerberger AG, General Shale, and Meridian do not accomplish the divestiture within the period prescribed in Paragraph IV(A) of the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants Wienerberger AG, General Shale, and Meridian must pay all costs and expenses of the trustee. The divestiture trustee's compensation must be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee must provide monthly reports to the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished within six months of the divestiture trustee's appointment, the United States may make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the Final Judgment, including by extending the trust or the term of the divestiture trustee's appointment by a period requested by the United States.

D. Other Provisions

Section XI of the proposed Final Judgment requires Defendants Wienerberger AG, General Shale, and Meridian, 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''), to not 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, and sale of residential brick in Alabama, Indiana, Kentucky, Michigan, Ohio, or Tennessee without first providing at least 30 calendar days advance notification to the United States. Pursuant to the proposed Final Judgment, during the term of the proposed Final Judgment, Defendants Wienerberger AG, General Shale, and Meridian must notify the United States of such acquisitions as it would for a required HSR Act filing, as specified in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations. The proposed Final Judgment further provides for waiting periods and opportunities for the United States to obtain additional information analogous to the provisions of the HSR Act before such acquisitions can be consummated. Requiring notification of any such acquisition will permit the United States, as relevant, to assess the competitive effects of that acquisition before it is consummated and, if necessary, seek to enjoin the transaction.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XIV(A) provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Paragraph XIV(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment is intended to remedy the loss of competition the United States alleges would otherwise be caused by the transaction. Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated

specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIV(C) provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XIV(C) provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph XIV(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XV of the proposed Final Judgment provides that the Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, the 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 the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Jay D. Owen, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against General Shale's acquisition of Meridian. The United States is satisfied, however, that the relief required by the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the design, manufacture, and sale of residential brick in the eight geographic markets alleged in the Complaint. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney

Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October19, 2021

Respectfully submitted,

For Plaintiff United States of America:

Daniel J. Monahan, Jr.,
Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Telephone: (202) 598–8774, Daniel.Monahan@usdoj.gov.

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. Meridian's Bessemer, AL manufacturing facility at 8250 Hopewell Road SE, Bessemer, AL 35022;
8. Meridian's Vulcan Mine at Vulcan Road SE, Bessemer, AL 35022; and
9. 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

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.

[FR Doc. 2021–23205 Filed 10–22–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Neenah Enterprises, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Neenah Enterprises, Inc., U.S. Holdings, Inc., and U.S. Foundry and Manufacturing Corporation,* Civil Action No. 1:21–cv–02701. On October 14, 2021, the United States filed a Complaint alleging that Neenah Enterprises' proposed acquisition of substantially all of the assets of U.S. Holdings' subsidiary US Foundry would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Defendants to divest all rights, titles, and interests in over 500 gray iron municipal casting patterns used across eleven states.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Jay Owen, Acting Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *Neenah Enterprises, Inc., 2021 Brooks Avenue, Neenah, WI 54956; U.S. Holdings, Inc., 3200 W 84th Street Hialeah, FL 33018*; and *U.S. Foundry and Manufacturing Corporation 8351 NW 93rd Street, Medley, FL 33166*, Defendants.

Case No. 1:21-cv-02701

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants Neenah Enterprises, Inc. (''NEI''), U.S. Holdings, Inc., and its wholly-owned subsidiary U.S. Foundry and Manufacturing Corporation (''US Foundry''), to enjoin the proposed acquisition of US Foundry by NEI. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to a purchase agreement dated March 9, 2021, NEI proposes to acquire substantially all of the assets of U.S. Holdings' subsidiary US Foundry for approximately $110 million. Today, the Defendants compete vigorously across several states in the design, production, and sale of gray iron municipal castings that are used as manhole covers and frames, grates, and drains.

2. NEI and US Foundry are two of only three significant suppliers of gray iron municipal castings in eleven eastern and southern states (collectively, and as defined in paragraph 15, *infra,* the ''overlap states''). Competition between NEI and US Foundry has driven down prices, increased the quality, and reduced the delivery times for gray iron municipal castings sold in the overlap states. The proposed acquisition would eliminate this competition and likely lead to higher prices, lower quality, and slower delivery times.

3. As a result, the proposed acquisition would substantially lessen competition for the design, production, and sale of gray iron municipal castings in the overlap states in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Defendants and the Transaction

4. NEI is a corporation headquartered in Neenah, Wisconsin, that specializes in the design, production, and sale of gray and ductile iron castings at two foundries in Neenah, Wisconsin, and Lincoln, Nebraska. NEI's Lincoln foundry produces exclusively gray iron municipal castings. NEI also offers forging, machining, and assembly of key components for heavy truck, agriculture, and industrial uses. NEI had 2020 revenues of $343.3 million, of which approximately $152 million was derived from gray iron municipal castings.

5. U.S. Holdings, based in Hialeah, Florida, is a holding company with two major subsidiaries, US Foundry and Eagle Metal Processing and Recycling, Inc. US Foundry has one iron foundry located in Medley, Florida, that makes gray iron municipal castings. US Foundry had 2020 revenues of approximately $90 million, of which approximately $73 million was derived from gray iron municipal castings.

6. On March 9, 2021, NEI and U.S. Holdings signed an agreement under which NEI will acquire US Foundry and