

1710230

**UNITED STATES OF AMERICA
BEFORE**

1. Respondent CRH plc is a public limited company organized, existing, and doing business under, and by virtue of, the laws of Ireland, with its office and principal place of business located at Stonemason's Way, Rathfarnham, Dublin 16, D16KH51, Ireland. CRH's United States address for service of process, the complaint, and the Decision and Order is CRH Americas, Inc. (formerly Oldcastle, Inc.),

I. “Cement Assets” means all of Respondent’s right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Cement Business, including, but not limited to, the Designated Assets; provided, however, that the Cement Assets need not include any of (i) the Retained Assets or (ii) any assets that would otherwise be part of the Cement Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

J. “Cement Business” means all business activities conducted by CRH prior to the Merger Date at or relating to CRH’s Three Forks, Montana cement facility, including but not limited to researching, developing, manufacturing, and selling cement and other products.

K. “Confidential Information” means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;
2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
3. all information concerning the relevant business, including historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials; and

4. all notes, analyses, compilations, studies, summaries and other material to the

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CC. “Merger Date” means the date the Merger is completed.

HH. “Transitional Services” means any service relating to any Building Materials Business that CRH provides from a property or facility that is not included in the Building Materials Assets that is reasonably necessary for an Acquirer to operate any aspect of a Building Materials Business, including but not limited to, payroll, employee benefits, accounting, IT systems, distribution, warehousing, access to know-how, use of trademarks or trade names, or other logistical, administrative, or operational support or training; provided, however, Transition Services does not include providing cement terminal or throughput services.

II.

IT IS FURTHER ORDERED that:

- A. No later than 10 days from the Merger Date, Respondent shall divest the Cement Assets, absolutely and in good faith, to GCC pursuant to the Cement Acquisition Agreement; provided, however, that Respondent has divested the Cement Assets to GCC prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
1. GCC is not acceptable as the Acquirer of the Cement Assets, then Respondent shall immediately rescind the Cement Acquisition Agreement, and shall divest the Cement Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture to GCC was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Cement Acquisition Agreement) to the manner of divestiture of the Cement Assets as the Commission may determine are necessary to satisfy the requirements of this Order.
- B. No later than 10 days from the Merger Date, Respondent shall divest the Gravel Assets, absolutely and in good faith, to Martin Marietta pursuant to the Gravel Acquisition Agreement; provided, however, that if Respondent has divested the Gravel Assets to Martin Marietta prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
1. Martin Marietta is not acceptable as the Acquirer of the Gravel Assets, then Respondent shall immediately rescind the Gravel Acquisition Agreement, and shall divest the relevant assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

- (a) Purchase Cement from the Acquirer as a customer for 36 months after divestiture of the Cement Assets; and
 - (b) Provide terminaling and throughput services to the Acquirer at Respondent's cement terminals relating to the Cement Business in Lethbridge and Edmonton, Alberta, Canada for 36 months after divestiture of the Cement Assets; and
3. Provide the assistance set forth in Paragraphs II.E.1. and 2. (collectively "Transitional Assistance") on terms and conditions sufficient to conduct the applicable Building Materials Business in a manner consistent with the operation of such business prior to the Merger Date (including the ability to develop new products, increase sales of current products, and make reasonable modifications to and maintain the competitiveness of the applicable Building Materials Business);

Provided, however, that Respondent shall give priority to an Acquirer's requirements for Transitional Assistance over Respondent's own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transitional Assistance;

Provided further that (i) an Acquirer may terminate any or all Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty and (ii) at an

Provided further that Respondent shall give priority to an Acquirer's requirements for Transitional Assistance over Respondent's own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transitional Assistance;

III.

Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondent shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest any of the Building Materials Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within 10 days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Building Materials Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order;
 2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12 month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant

selected by Respondent from among those approved by the Commission;
provided further,

- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VII.

IT IS FURTHERED ORDERED that:

- A. If GCC, Martin Marietta, or Hamm do not acquire the Building Materials Assets as described in this Order, Respondent shall set forth the manner in which it will accomplish the relevant divestiture and other obligations under this Order in one or more agreements with one or more other Acquirers and submit such agreements to the Commission for prior approval.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondent to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; **provided, however, that** the Divestiture Agreement shall not limit, or be construed to limit, the terms of the Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondent cannot fully comply with both, Respondent shall comply with the Order.
- C. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

VIII.

- C. Respondent shall verify each Compliance Report with a notarized signature or sworn statement or in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondent shall submit an original and two copies of each Compliance Report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to

XI.

IT IS FURTHER ORDERED that this Order shall terminate on August 1, 2028.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 1, 2018