

# Building products

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AGREEMENT made as of May 16, 1964.

B E T W E E N :

BUILDING PRODUCTS LIMITED  
(hereinafter called the "Vendor")

— and —

IMPERIAL OIL LIMITED  
(hereinafter called the "Purchaser")

WHEREAS the Vendor and the Purchaser entered into a memorandum of agreement dated May 16, 1964, with respect to the sale to the Purchaser of the undertaking, property and assets of the Vendor, which provided that the terms of the agreement of purchase and sale shall be evidenced by a formal agreement of purchase and sale;

AND WHEREAS this agreement is the aforementioned formal agreement of purchase and sale and completely supersedes in every respect the said agreement dated May 16, 1964;

NOW THEREFORE it is agreed between the Vendor and the Purchaser as follows:

**1. Effective Date and Purchase Price.** The Vendor agrees to sell and the Purchaser agrees to purchase as at the opening of business June 1, 1964, (the "Effective Date") as a going concern, all the undertaking, property and assets of the Vendor of every kind or nature whatsoever and wheresoever situate (save as hereinafter excepted in paragraph 2) and the Purchaser agrees to assume all the liabilities of the Vendor as at the close of business May 31, 1964, of every kind or nature whatsoever that are disclosed by the Report hereinafter mentioned (save as otherwise provided in paragraph 16). The purchase price for the said assets shall be an aggregate of nineteen million dollars (\$19,000,000) and the assumption of the said liabilities, subject to adjustment as hereinafter provided. Unless the context otherwise requires the term "Purchase Price" means the said sum of nineteen million dollars (\$19,000,000) as adjusted pursuant to the provisions of paragraph 11.

**2. The Property.** The undertaking, property and assets covered by this agreement of purchase and sale shall be all the undertaking, property and assets owned by the Vendor of every kind or nature whatsoever and wheresoever situate which shall be owned or held by the Vendor as at May 31, 1964, except only for the Vendor's minute books, share ledgers and account books

of original entry and such general ledgers and similar documents and records as the Vendor is required by law or by governmental regulation to keep in its possession, provided that the Vendor shall keep all books and records retained by it available for reference by the Purchaser, and the Purchaser agrees that after the Closing Date the Vendor shall have access at any reasonable time to such records delivered by the Vendor hereunder to the Purchaser to the extent that it is necessary for the Vendor to comply with the due filing of returns required of it by law or governmental regulation. All such undertaking, property and assets being sold by the Vendor to the Purchaser is herein referred to as the "Property" particulars of certain of which are included in a certificate of the officers of the Vendor (hereinafter called the "Property Certificate") delivered to the Purchaser on or prior to the execution and delivery hereof.

**3. Closing Date.** The closing herein shall take place at the offices of the Purchaser, 111 St. Clair Avenue West, Toronto, at 10.00 o'clock a.m. (E.D.S.T.) on August 1, 1964, or such other date and other place as the Vendor and the Purchaser may agree upon, the same being herein referred to as the "Closing Date".

**4. Representations and Warranties.**

I The Vendor represents and warrants that:

(a) Vendor is now and on the Closing Date will be a corporation duly organized and validly existing in good standing under the laws of Canada and the jurisdiction in which it is carrying on business with full power and authority to own and hold its properties in the jurisdictions in which it owns or leases properties and has power and authority to carry on the business in which it is engaged.

(b) The only subsidiaries of the Vendor at December 31, 1963, were and until the Closing Date will be Bermico Products Limited, Midwest Fibreboard Ltd. and Robbins Floor Products of Canada Ltd., herein referred to collectively as the "Subsidiaries", none of which at December 31, 1963, had or on the Closing Date will have any liabilities, and during the period between December 31, 1963, and the Closing Date none of them shall have carried on any business, or incurred any liability. Except as set forth in the Property Certificate, the only asset of each on December 31, 1963, was and on the Closing Date will be indebtedness of the Vendor in the amount set forth in their respective balance sheets as at December 31, 1963. Each such Subsidiary is now and on the Closing Date will be a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation with only those shares of its capital stock issued as set forth on its balance sheet dated as at December 31, 1963, all of which are validly issued and outstanding as fully paid and non-assessable and no rights will exist on the Closing Date in any person with respect to any unissued shares of its capital stock.

(c) There is no provision in the letters patent, supplementary letters patent or by-laws of the Vendor or any agreement or instrument to which Vendor is a party or by which it is bound that will be violated by the execution and delivery of this agreement or prevent performance or satisfaction of any

agreement or condition herein contained on the part of the Vendor to be performed or satisfied and all requisite corporate or other authorization for such execution, delivery, performance and satisfaction shall have been duly obtained prior to the Closing Date.

(d) The consolidated balance sheet of the Vendor and Subsidiaries and the unconsolidated balance sheets of the Vendor and each of the Subsidiaries all dated as of December 31, 1963, attached as Schedule A to this agreement were prepared in accordance with generally accepted accounting principles applied on a basis consistent with those of prior years and fairly present true and correct statements of the financial position of the Vendor and the Subsidiaries separately and on a consolidated basis as of December 31, 1963, and the Vendor had not on December 31, 1963, any obligations or liabilities which are not disclosed on its balance sheet except normal and usual obligations and liabilities of the type included in the obligations and liabilities shown on said consolidated balance sheet arising from and necessarily incident to the conduct of its business in the ordinary and usual course and which in the aggregate do not exceed \$150,000 plus any amount provided in the consolidated balance sheet of the Vendor as at May 31, 1964 for the payment of income tax assessments for taxation years ending prior to January 1, 1964 and not included in the amount of \$525,088 set out as a current liability for income and other taxes payable in the balance sheet of the Vendor as at December 31, 1963; and until closing there have been and will be no material adverse changes in the condition financial or otherwise of the Vendor and Subsidiaries.

(e) The Property Certificate is a substantial disclosure of all the material items of the Property and also discloses

- (i) all material mortgages, liens, encumbrances and agreements affecting the Property,
- (ii) all material pending or threatened litigation or governmental proceedings involving the Vendor,
- (iii) the forms of written product guarantees and products covered thereby,
- (iv) employment contracts showing in each case the notice required to terminate employment, collective bargaining agreements, pension and retirement plans, profit-sharing schemes, other employee benefit plans and other material contracts or agreements with or affecting employees, and
- (v) such advertising and service contracts, contracts for sale and purchase of material, equipment, products and supplies and other contracts as are material, showing in each case notice required to terminate.

(f) The Vendor owns and on the Closing Date will own and will have good and marketable title to the Property free and clear of all liens, encumbrances, equities, claims and obligations to other persons of whatsoever character save only:

- (i) such as are disclosed in the Property Certificate, and
- (ii) defects or irregularities which are of a minor nature and in the aggregate would not materially impair the use of the particular portion of the Property for the purpose for which it is held.

Without limiting the generality of the foregoing representation and warranty, the Vendor has and will have at the Closing Date the full and unrestricted right to make, have made for it, and sell in the areas where presently sold, products presently produced by or for the Vendor under all patents, formulae, franchises, processes, techniques and know-how employed in the manufacturing and packaging of such products, and the full and unrestricted right to use in the areas where products are presently produced by or for the Vendor and are sold, the trade marks, trade names and copyrights used in connection with the products sold by Vendor subject only to defects or irregularities which in the aggregate are not material and are of a character usually found in a business of the nature and extent similar to that of the Vendor.

(g) Except as set forth in the Property Certificate the Vendor does not now have and will not have on the Closing Date any obligations under any employment contract, collective bargaining agreement, pension or retirement plan, bonus or profit-sharing scheme, other employee benefit plan or other material contract or arrangement with or affecting employees. The Vendor is not and on the Closing Date will not be in default under any such contract, plan, scheme or agreement and those pension plans and other employee benefit plans which provide for funding thereof were as at December 31, 1963, fully funded and otherwise in good standing in accordance with sound actuarial practices and those which so provide are accepted for registration and will be on Closing Date in good standing under all applicable taxation acts and regulations.

(h) Since December 31, 1963, and up to the Effective Date the Vendor has managed and operated the Property only in the normal course of business being the purchase, manufacture, distribution and sale of the products in which it deals, making or incurring only those outlays and liabilities as were necessary to maintain the Vendor's plant, machinery and equipment, except that the Vendor has in such period made capital commitments aggregating not in excess of \$1,000,000 to expand the capacity and improve the efficiency of its plant, to improve the quality of its products and with respect to certain research facilities; and without the prior written consent of the Purchaser the Vendor will not during the period from the Effective Date to the Closing Date:

- (i) conduct the business or dispose of any assets or property or enter into any contracts or agreements other than in the normal course of business;
- (ii) make or incur capital outlays or liabilities, in addition to those herein-before referred to in this paragraph (h), other than those necessary for the maintenance of the plant, machinery and equipment included in the Property and in any event none in excess of \$25,000 or in the aggregate \$100,000;
- (iii) grant any increase in wages, salaries, bonus or other compensation to employees except as may be required under regular salary administration or the terms of collective bargaining agreements now in force or enter into any written contracts with collective bargaining agents, or

any employees or prospective employees providing for or relating to employment, compensation, retirement or other benefits;

(iv) enter into contracts, assignments, licences or franchise agreements or release rights with respect to franchises or with respect to trade names, trade marks, patents or formulae except as has been customarily involved in the sale of the Vendor's products;

(v) expend any moneys for its own account in excess of \$50,000 other than for the payment of the dividend permitted by the next succeeding clause hereof; or

(vi) make any distribution to shareholders whether by way of dividend, reduction in capital stock or otherwise except the payment of a dividend not exceeding 25¢ per share.

(i) The leases referred to in the Property Certificate are valid and subsisting leases in good standing and each is fully assignable or any necessary consent to assignment will be delivered on the Closing Date.

(j) The inventories of Vendor disclosed by the Report will, on the Closing Date, be of good and marketable quality to the extent of the valuation thereof in the Report and to that extent will meet the current specifications and standards of Vendor.

(k) All plant, machinery and equipment included in the Property is now and at Closing Date will be in good operating condition and repair, normal wear and tear excepted.

(l) All the patents, patent rights, formulae, processes, trade marks, trade names, distinguishing guises and copyrights owned or used by the Vendor or to which it may be entitled are disclosed in the Property Certificate and each of them is valid and subsisting and in good standing and, except as set forth in the Property Certificate, each is fully assignable.

(m) All the franchises and licensing agreements to which the Vendor is a party are disclosed in the Property Certificate and each of them is valid and subsisting in good standing and, except as set forth in the Property Certificate, each is fully assignable.

(n) There will be on Closing Date no contingent liabilities except (i) those under written product guarantees including roofing bonds, (ii) those for defective products, (iii) such as may be shown in the consolidated balance sheet of the Vendor and its Subsidiaries as at May 31, 1964, and (iv) other contingent liabilities incurred in the normal course of business and in the aggregate amounting to no more than \$100,000.

II The Purchaser represents and warrants that:

(a) The Purchaser is and it and its nominee on the Closing Date will be corporations duly organized and validly existing in good standing under the laws of Canada and the Purchaser has full power and authority to enter into this agreement, and it and its nominee have full power and authority to carry

out the obligations on the part of the Purchaser or the nominee to be performed hereunder.

(b) All requisite corporate and other authorization for the execution and delivery of the agreement and the performance and satisfaction thereof by the Purchaser or its nominee as the case may be has been or will be duly obtained.

## 5. Conditions Precedent

I It shall be a condition precedent to the obligations of the Purchaser under this agreement that on or prior to the Closing Date the following be satisfied, but satisfaction of all or any part thereof may be waived by the Purchaser:

(a) **Shareholders' Approval.** A special general meeting of the shareholders of the Vendor shall have duly approved of the execution and delivery of this agreement and the carrying out of the transactions contemplated hereby including, without limitation, the change of the name of the Vendor required by this agreement.

(b) **Validity of Transaction.** The transaction herein contemplated, as well as the form and substance of all opinions, certificates, instruments of transfer and other documents hereunder shall be valid in all respects to the satisfaction of the Purchaser and its counsel.

(c) **No Material Adverse Change; Officers' Certificate.** During the period from December 31, 1963, to the Closing Date there shall not have been any material adverse change in the condition, financial or otherwise, of the Vendor and the Vendor shall not have sustained any material loss or damage to its properties, whether or not insured, which shall have materially affected the ability of the Vendor to conduct the business; there shall have been no change in the condition, financial or otherwise, of any of the Subsidiaries; and the Purchaser shall have received a certificate (dated the Closing Date signed by the President and a principal financial or accounting officer of the Vendor stated to be to the best of their knowledge and to be based on reasonable investigation by them) to the foregoing effect and to the further effect that any liabilities (absolute or contingent) of the Vendor at the Closing Date, which were not reflected in the consolidated balance sheet of the Vendor and its Subsidiaries as at May 31, 1964, are liabilities incurred only in the normal course of business subsequent to December 31, 1963, or as otherwise contemplated by this agreement.

(d) **Obtaining of Consents.** All necessary agreements and consents of any parties other than the Vendor to any of the transfers, assignments or covenants from the Vendor contemplated by this agreement shall have been obtained by the Vendor including the assignment to the Purchaser of incomplete contracts referred to in the Property Certificate on the Closing Date.

(e) **Continued Accuracy of Representations.** All representations of the Vendor contained in this agreement shall be true on and as of the Closing Date with the same effect as though such representations had been made on and as of the Closing Date except as otherwise contemplated by this agreement or consented to by the Purchaser; the Vendor shall have performed and satisfied all covenants and conditions required by this agreement to be performed and

satisfied by it at or prior to the Closing Date; and there shall have been delivered to the Purchaser on the Closing Date such certificates and other documents with respect to the foregoing and to evidence compliance with the terms and conditions of this agreement as the Purchaser may reasonably request.

(f) **Opinion of Counsel.** The Vendor shall have furnished the Purchaser with an opinion dated the Closing Date of Messrs. Howard, Cate, Ogilvy, Bishop, Cope, Porteous & Hansard, Montreal, counsel for the Vendor, in form and substance satisfactory to the Purchaser and its counsel, with respect to the transactions contemplated by this agreement of sale and purchase; and such other matters incident to the matters herein contemplated as the Purchaser or its counsel may reasonably request, including the form and sufficiency of all papers and the validity of all proceedings under applicable laws. It is understood that the opinion of counsel for the Vendor may be rendered in reliance upon the opinions of local counsel or, in the Province of Quebec, notaries satisfactory to the Purchaser and its counsel.

II It shall be a condition precedent to the obligations of the Vendor on closing that the Purchaser shall have furnished the Vendor with an opinion dated the Closing Date of Messrs. Osler, Hoskin & Harcourt, counsel for the Purchaser, in form and substance satisfactory to the Vendor and its counsel to the effect that

- (a) the Purchaser is a corporation duly organized and validly existing in good standing under the laws of Canada and has full power and authority to enter into this agreement and carry out the obligations on its part to be performed thereunder;
- (b) the Purchaser's nominee is a corporation duly incorporated prior to June 1, 1964, and is organized and validly existing in good standing under the laws of Canada and has full power and authority to carry out the obligations on its part to be performed thereunder;
- (c) this agreement has been duly authorized, executed and delivered by the Purchaser and is a valid and legally binding obligation of the Purchaser in accordance with its terms subject to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights;
- (d) upon assignment of this agreement by the Purchaser to its nominee this agreement is a valid and legally binding obligation of the nominee in accordance with its terms subject to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights and such assignment shall not relieve the Purchaser from its obligations under the Agreement if the same are not satisfied by such nominee; and
- (e) the instrument of assumption by which the Purchaser or its nominee assumes those liabilities of the Vendor to be assumed by the Purchaser or its nominee under this agreement will on delivery on the Closing Date constitute a valid and legally binding obligation of the Purchaser and its nominee enforceable in accordance with its terms subject to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights.

**6. Use of Name.** The Vendor agrees to deliver to the Purchaser immediately following approval of this agreement by its shareholders as herein referred to, a consent to the use of the name "Building Products of Canada Limited", or any similar name that may be selected by the Purchaser, by a corporation incorporated by the Purchaser for the purpose of taking delivery of the Property, and the Vendor agrees that such consent will contain an undertaking to change its name to some name that will not contain either of the words "building products" or be in any way likely to cause confusion with the name selected by the Purchaser and that the aforesaid meeting of shareholders shall have approved such change of name. The Purchaser agrees that it will not file such consent with any governmental authority for the purpose of enabling such corporation to use the name consented to prior to the Closing Date other than for the purpose of enabling prompt change of name by said corporation on or after the Closing Date.

**7. Access to Premises and Information.** After its shareholders have approved this agreement as aforesaid the Vendor will permit the Purchaser and its authorized representatives and designees to have full access to the premises and books and records of the Vendor and its Subsidiaries and will furnish the Purchaser with such financial, operating data and other information with respect to the business and properties of the Vendor and its Subsidiaries as the Purchaser shall reasonably request or may require for the purpose of the carrying out of this agreement; and the Vendor agrees that any investigation or enquiry made by the Purchaser pursuant to this agreement shall not affect or lessen in any way the Vendor's representations and warranties.

**8. Corporate and Other Approvals.** The Vendor agrees to call forthwith a special general meeting of its shareholders for the purpose of considering and approving this agreement and the transactions contemplated thereby including the transfer of the Property and the change of the Vendor's corporate name. The Vendor agrees to use its best efforts to obtain such approval from its shareholders. The Vendor agrees to take all such other steps and do all such other things as may be required or the Purchaser may reasonably request to carry out the terms and conditions of this agreement and to transfer and deliver the Property to the Purchaser or its nominee.

**9. The Report.** For the purpose of determining the adjusted amount of the Purchase Price to be paid by the Purchaser for the Property, the Vendor and Purchaser shall cause Price, Waterhouse & Co. with all reasonable dispatch to prepare and deliver to each of them a report (herein called the "Report"), the cost whereof shall be borne equally by the Vendor and the Purchaser, to include:

- (i) (1) the consolidated balance sheet of the Vendor and its Subsidiaries and unconsolidated balance sheets of the Vendor and its Subsidiaries in each case as at December 31, 1963, copies of which balance sheets are annexed hereto as Schedule A and in each case shall contain the auditors' opinion thereon, and
- (2) a consolidated balance sheet and unconsolidated balance sheets of

the Vendor and its Subsidiaries as at May 31, 1964, and profit and loss statements for the period from January 1, 1964, to May 31 1964, prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior periods including without limitation usual allowances for depreciation to May 31, 1964, and in each case shall contain the auditors' opinion thereon;

(ii) a statement showing:

- (1) as shown on the unconsolidated balance sheet of the Vendor as at May 31, 1964:
  - (a) the amount of cash and undeposited receipts on hand and cash in bank;
  - (b) the book value of accounts receivable after adequate provision for doubtful accounts;
  - (c) the book value of inventory including without limitation raw material, supplies and finished products, valued at the lower of cost or market; and
  - (d) the book value of unexpired insurance, prepaid taxes and other current assets;
- (2) value of fixed assets consisting of roads and sidings, concrete buildings, wood buildings, machinery and equipment, automotive equipment and franchises at their undepreciated capital cost at December 31, 1963, as set forth in a statement heretofore delivered to the Purchaser, adjusted for additions and disposals for the period January 1, 1964, to May 31, 1964, which adjustments shall be computed in accordance with the Income Tax Act and Regulations made thereunder and in a manner consistent with computations for prior years;
- (3) all other assets of the Company in reasonable detail by general classifications but which need not have any values assigned thereto;
- (4) the book amount of obligations and liabilities due or owing on May 31, 1964, by major classifications and stating separately any obligation or liability referred to in subparagraphs (i) to (v) inclusive of paragraph **16** (a);

(iii) an estimate of certain income taxes of the Vendor computed in accordance with the provisions of paragraph **15**;

(iv) the amounts, if any, paid by the Vendor during the period January 1, 1964, to May 31, 1964:

- (1) on account of taxes on income whether federal, provincial or otherwise,
- (2) on account of any amount that may be found necessary to fully fund as at December 31, 1963, any pension or other employee benefit plan which provides for funding thereof, computed in accordance with sound actuarial practices, and

- (3) in excess of \$100,000 on account of liabilities incurred in the normal course of business (but not including any taxes on income) for or with respect to any matters or things done or omitted to be done on or prior to December 31, 1963, which were not included in the liabilities disclosed by the said balance sheets as of December 31, 1963;
- (v) the amount, if any, paid by the Vendor prior to June 1, 1964, in connection with this transaction of purchase and sale; and
- (vi) the amount, if any, by which:
  - (a) the aggregate value of the assets of the Vendor as disclosed in the consolidated balance sheet of December 31, 1963, after adding thereto the amount of all refunds of income taxes received in the period January 1, 1964, to May 31, 1964, and after deduction from such aggregate value of assets (x) the aggregate of the liabilities disclosed in such balance sheet other than those for deferred income taxes and shareholders' equity and (y) any amount provided in the consolidated balance sheet of the Vendor as at May 31, 1964 for the payment of income tax assessments for taxation years ending prior to January 1, 1964 and not included in the amount of \$525,088 referred to in clause (b) below

exceeds

- (b) the aggregate value of the assets of the Vendor, as disclosed on the consolidated balance sheet of May 31, 1964, after adding thereto the amount paid since December 31, 1963, on account of income taxes except those included in the amount of \$525,088 set out as a current liability for income and other taxes payable in the balance sheet of the Vendor as at December 31, 1963, and after deduction from such aggregate value of assets the aggregate of the liabilities disclosed in such balance sheet other than those for deferred income tax and shareholders' equity, which amount is herein referred to as the "Deficiency in Value of the Property".

#### **10. Allocation of Purchase Price.**

(a) The price to be paid hereunder for the assets comprised in each of the statement categories set forth in subclauses (a), (b), (c) and (d) of clause (1) of subparagraph (ii) of paragraph 9 to which the said assets of the Vendor respectively belong shall be the respective values thereof to be set forth as provided in clause (1) of such subparagraph (ii).

(b) The price to be paid hereunder for the assets comprised in each of the classes stated separately in the balance sheet category set forth in clause (2) of subparagraph (ii) of paragraph 9 to which said assets of the Vendor respectively belong shall be the value set forth in clause (2) of such subparagraph (ii).

(c) The aggregate price to be paid hereunder for all assets not included in subparagraphs (a) and (b) of this paragraph 10 shall be the sum of the Purchase Price as determined by paragraph 11 and the liabilities to be assumed by the Purchaser pursuant to paragraph 16 less the aggregate of the price of the assets determined pursuant to subparagraphs (a) and (b) of this paragraph 10.

**11. Provisions for Adjustment of Purchase Price.** From the sum of \$19,000,000 referred to in paragraph 1 there shall be deducted the aggregate of:

- (a) the amount of the dividends, if any, paid by the Vendor after May 16, 1964, and on or before Closing Date,
- (b) Deficiency in Value of the Property,
- (c) the amount, if any, determined in the Report in accordance with clause (1) of subparagraph (iv) of paragraph 9, except for the amount reserved for payment of income taxes by the Vendor and included in the sum of \$525,088 set out as a current liability for income and other taxes payable in the balance sheet of the Vendor as at December 31, 1963,
- (d) the aggregate of the amounts, if any, determined in the Report in accordance with clauses (2) and (3) of subparagraph (iv) of paragraph 9,
- (e) the amount, if any, determined in the Report in accordance with subparagraph (v) of paragraph 9, and
- (f) the aggregate of such other amounts as the Vendor has expended in the period from May 31, 1964, to the Closing Date for its own account.

**12. Income Tax Elections and Agreements.** Upon the Closing Date the Vendor and the Purchaser shall (i) execute jointly and file in the forms respectively prescribed by the Income Tax Act of Canada and the applicable corporations tax acts of the Provinces of Canada election to have section 85D of the Income Tax Act and applicable sections of each provincial act respectively of such statutes applied to the transaction of sale and purchase hereby contemplated which election shall evidence the portion of the Purchase Price paid pursuant to the provisions of subparagraph (a) of paragraph 10 for the accounts receivable of the Vendor, and (ii) execute and deliver an agreement evidencing the portion of the Purchase Price paid pursuant to the provisions of subparagraph (a) of paragraph 10 for the inventory of the Vendor and duly file such agreement under the provisions of section 85E of the Income Tax Act of Canada and applicable sections of the corporation tax acts of the Provinces of Canada.

**13. Management and Insurance.** The Vendor undertakes and agrees that:

- (i) from the date hereof to the Closing Date it will manage and operate the Property in the normal course of business and without limiting the generality of the foregoing operate the Property in accordance with the provisions set out in subparagraph (h) of paragraph 4 I, and such operations from the Effective Date to the Closing Date shall be on behalf of and for the account of the Purchaser or its nominee as the case may be, and the Purchaser agrees that it, or its nominee if it has assigned this agreement to its nominee will pay to the Vendor on closing a management fee at the rate of \$1,800 a day for each day elapsed from the Effective Date to the Closing Date;
- (ii) that until the Closing Date the Property will be at the risk of the Vendor and the Vendor will maintain the existing insurance, which after the Effective Date shall be for the account of the Purchaser,

against loss by fire and other hazards usually insured against in business of a similar type and magnitude and if prior to the Closing Date any part of the assets are destroyed or damaged by fire or other hazards this agreement shall not terminate but in such event notwithstanding any other provisions of this agreement to the contrary the Purchaser shall be entitled to receive the insurance proceeds; and

- (iii) that from the date hereof it will not enter into any new supply contracts unless the same are terminable on not more than 30 days' notice and not in excess of the reasonable requirements of the Vendor in the normal course of its business except with the Purchaser's prior written consent.

**14. Provision for Payment of Purchase Price and Holdback.** The Purchaser shall be entitled to hold back on the Closing Date from the Purchase Price a sum of \$600,000 which may be applied (i) to discharge any liabilities including without limitation income taxes of the Vendor not assumed by the Purchaser and that the Purchaser may be called upon to pay, (ii) to clear up any title defects or mortgages, liens or encumbrances not permitted by the terms of this agreement against any of the Property, (iii) to reimburse the Purchaser for any deficiency in value from the value as shown by the Report of the aggregate value of inventories and accounts receivable included in the Property provided that the Purchaser notifies the Vendor in writing of such deficiencies within 90 days following the Closing Date, (iv) to reimburse the Purchaser for any amount deductible pursuant to paragraph 11 and not so deducted on Closing Date, and (v) to reimburse the Purchaser for any loss, costs or damages suffered by it as a result of a breach of the Vendor's representations or warranties or the failure of the Vendor to perform any of its obligations under this agreement.

Any portion of the holdback duly used for any of the foregoing purposes shall not be payable to the Vendor. Any portion of the Purchase Price so held back and not so used by the later of December 30, 1964, or within three days following the delivery to the Purchaser of copies of the final tax clearance certificates with respect to 1964 and prior years income (but not later than August 1, 1965) shall be paid forthwith to the Vendor. Interest shall accrue to the Vendor on the amount of the said holdback remaining from time to time in the hands of the Purchaser or its nominee at the rate of 4% per annum from the Closing Date until the date of payment as aforesaid and such interest shall be paid by the Purchaser or its nominee to the Vendor on the date of payment of the holdback or the balance thereof.

The balance of the Purchase Price adjusted as set forth in paragraph 11 and after deduction of the holdback shall subject to the other terms and conditions hereof be paid on the Closing Date by certified cheque or bank draft payable to or to the order of the Vendor.

**15. Income Tax on 1964 Profits.** The Purchaser agrees on closing to pay to the Vendor as an addition to the Purchase Price the sum disclosed in the Report as being the amount of income tax estimated by Price, Waterhouse &

Co. pursuant to paragraph 9 (iii) that would be payable by the Vendor on its taxable income computed in accordance with the applicable taxing statutes and regulations from its normal operations during the period from January 1, 1964, to May 31, 1964, assuming that it had no income other than from its manufacturing and selling operations conducted in the normal course of its business and from short term investments of surplus funds and that it had conducted no business other than such normal operations during such time and provided that the computation of taxable income and the computation of tax payable will be calculated on a basis consistent as to methods, assumptions and valuations with that employed by the Company in prior years except that no allowance or adjustment shall be made for capital cost of depreciable property other than for the terminal allowance or adjustment available under section 2 subsection 2 of Quebec Order-in-Council 838 of 1962.

**16. Assumption of Liabilities.** On the Closing Date the Purchaser agrees that it or its nominee, will deliver to the Vendor an assumption of

- (a) all liabilities of the Vendor as at May 31, 1964, disclosed by the Report, other than
  - (i) any liability howsoever occurring for income tax, whether federal, provincial or otherwise;
  - (ii) liabilities in excess of an aggregate of \$50,000 for or with respect to any matters or things done or omitted to be done on or prior to December 31, 1963, which were not included in the liabilities disclosed by the said balance sheets as of December 31, 1963;
  - (iii) any contingent liabilities except (a) those under written product guarantees including liabilities under roofing bonds issued by the Vendor prior to May 31, 1964, which the Purchaser or its nominee agrees to assume provided the benefits thereunder are duly and effectively assigned to the Purchaser or its nominee and (b) other contingent liabilities incurred in the normal course of business up to but not exceeding in the aggregate \$100,000;
  - (iv) liabilities incurred by the Vendor in connection with the sale of the Property; and
  - (v) liabilities incurred in the period January 1, 1964, to May 31, 1964, otherwise than in the normal course of the Vendor's business except liabilities incurred in connection with the expansion of the capacity and improvement in the efficiency of its plant, improvement in the quality of its products and with respect to certain research facilities but only to the extent included in the sum of \$1,000,000 referred to in paragraph 4 I (h);
- (b) up to a net aggregate of \$150,000 for liabilities incurred by the Vendor in the normal course of business (other than any taxes on income and any liabilities referred to in subparagraph (c) below) during the period January 1, 1964, to May 31, 1964, and not disclosed by the Report;
- (c) all liabilities for defective products howsoever occurring whether or not disclosed by the Report; and
- (d) all sales and other transfer taxes (but not taxes on income) payable by the Purchaser arising from the sale of the Property that may by operation

of law become an obligation of the Vendor and also all stock transfer taxes payable in respect of the transfer of the shares of the Subsidiaries.

The Vendor agrees on closing to deliver to the Purchaser an indemnity in form and substance satisfactory to the Purchaser indemnifying and saving the Purchaser harmless from (i) all charges, costs and expenses that it may reasonably incur in connection with any unassumed liabilities whether or not the Purchaser may be held responsible therefor and (ii) any deficiency in the holdback. Such indemnity shall provide that it shall expire on the close of business on the later of December 30, 1964, or on the third day following the delivery to the Purchaser of copies of the final tax clearance certificates with respect to 1964 and prior years income (but not later than August 1, 1965) except as to any deficiency in the holdback of which the Vendor shall have theretofore been notified in writing by the Purchaser.

**17. Non-competition.** The Vendor agrees that it will not after the Closing Date compete directly or indirectly through one or more subsidiaries or otherwise with the Purchaser or its nominee, as the case may be, for a period of 5 years anywhere in Canada in the types of business or any part thereof being carried on by the Vendor immediately prior to the Effective Date.

**18. Employee Contracts and Benefit Plans.** The Purchaser agrees that on closing it will assume the obligations of the Vendor under the employee contracts, pension plans, collective bargaining agreements and other contracts and agreements referred to in the Property Certificate. The Purchaser further agrees to make available to all salaried officers and all employees, employed by the Vendor on the Effective Date, employment with the Purchaser or its nominee upon the same terms and conditions presently enjoyed by them provided the same are disclosed in the said benefit plans, collective agreements and other contracts and agreements referred to above or otherwise in terms consistent with the salaries presently being paid to such officers and employees.

**19. Finder's or Broker's Fees.** Each of the Vendor and the Purchaser represents that it has not retained any broker or any representative or agreed to pay any fee or amount to any agent, finder or broker in the nature of a finder's or broker's fee for the subject matter of this agreement.

**20. Bulk Sales Laws.** The Purchaser hereby agrees not to require the Vendor to comply with the bulk sales laws of any Province.

**21. Notices.** Any notices or other communication required or permitted hereunder shall be sufficiently given, if sent in Canada, by registered mail postage prepaid addressed as follows:

to the Vendor at

Building Products Limited,  
P.O. Box 6063, Montreal, Canada.  
Attention: J. E. MITCHAM.

to the Purchaser at

Imperial Oil Limited,  
111 St. Clair Avenue West, Toronto 7, Ontario.  
Attention: W. O. TWAITS.

or such other address as shall be furnished in writing by either party to the

other; and shall be deemed to have been given as of the date following the date so mailed.

**22. Successors and Assigns.** The terms and provisions of this agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns. This agreement may not be assigned by either party without the written consent of the other, except that the Purchaser may assign its rights under this agreement to a wholly-owned subsidiary of the Purchaser, such subsidiary being herein sometimes referred to as the "nominee of the Purchaser" provided that the assumption of the obligations and liabilities of the Purchaser by its nominee shall not release the Purchaser therefrom should default be made by its nominee.

**23. Further Assurances.** At any time and from time to time on and after the Closing Date, the Vendor will at the expense of the Purchaser execute and deliver to the Purchaser such further instruments of title and other written assurances as the Purchaser may reasonably request in order to vest and affirm in the Purchaser or its nominee or assignee or in a nominee or assignee of the nominee of the Purchaser title to the Property and the Purchaser will at the expense of the Vendor execute and deliver to the Vendor such further instruments and such written assurances as the Vendor may reasonably request in order to evidence the assumption by the Purchaser or its nominee of the obligations and liabilities of the Vendor to be and intended to be assumed by the Purchaser or its nominee hereunder.

**24. Survival of Representations and Warranties.** The representations and warranties of the Vendor and the Purchaser contained in this agreement shall survive the closing hereof but shall expire on the date specified for the expiration of the indemnity referred to in paragraph 16 hereof at which time the Vendor shall be released from its representations and warranties except as to those which have been theretofore notified in writing by the Purchaser that there is a breach and for which the Purchaser is entitled to recovery.

**25. Entire Agreement—Modification—Waivers—Headings.** This agreement including the Schedule hereto which forms part hereof constitutes the entire agreement between the Vendor and the Purchaser pertaining to the subject matter hereof and supersedes all prior contracts, agreements and understandings of the parties in connection therewith. No modification or alteration of this agreement shall be binding unless executed in writing by the parties hereto. No waiver of any provision of this agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall a waiver constitute a continuing waiver unless expressly stated so to be. The clause or paragraph headings are not to be considered part of this agreement, are solely for convenience of reference, and are not intended to be full or accurate descriptions of the contents of any such clauses or paragraphs.

**26. Time of the Essence.** Time shall be of the essence of this agreement.

**27. Counterparts.** This agreement may be executed in two or more counterparts all of which shall constitute one and the same instrument.

**28. Law of Contract.** This agreement shall be construed in accordance with the laws of the Province of Ontario and shall be treated in all respects as an Ontario contract.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the date and year first above written.

BUILDING PRODUCTS LIMITED

J. E. MITCHAM  
*President*

R. W. JONES  
*Secretary-Treasurer*

IMPERIAL OIL LIMITED

W. O. TWAITS  
*President*

N. A. BODRUG  
*Assistant Secretary*

**SCHE**DULE A

to and forming part of the agreement between Building Products  
Limited and Imperial Oil Limited made as of May 16, 1964.

**BUILDING PRODUCTS LIMITED**  
**and Subsidiary Companies**

**Consolidated Balance Sheet — December 31 1963**

**Assets**

**CURRENT ASSETS:**

Cash.....	\$ 547,987
Accounts receivable, less allowance for doubtful accounts \$270,000.....	5,583,276
Raw materials, supplies and finished products, valued at the lower of cost or market.....	6,526,238
Unexpired insurance, prepaid taxes, etc.....	<u>80,203</u>
Total current assets.....	<u>\$12,737,704</u>

**FIXED ASSETS:**

Land, buildings, equipment, franchises, etc. at cost.....	\$22,559,360
<i>Less: Accumulated depreciation.....</i>	<u>12,502,954</u>
	<u>\$10,056,406</u>
	<u><u>\$22,794,110</u></u>

**Liabilities**

**CURRENT LIABILITIES:**

Short-term and demand notes payable.....	\$ 3,050,000
Accounts payable and accrued liabilities.....	2,813,276
Income and other taxes payable.....	<u>525,088</u>
Total current liabilities.....	<u>\$ 6,388,364</u>

PROVISION FOR PRODUCT GUARANTEES.....	\$ 243,676
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DEFERRED INCOME TAXES (note 1).....	\$ 788,483
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**SHAREHOLDERS' EQUITY:**

Capital stock (note 2)

Authorized —

650,000 shares without nominal or par value

Issued —

484,184 shares..... \$ 1,509,110

Reserve for contingencies..... 500,000

Retained earnings..... 13,364,477

Total shareholders' equity.....	<u>\$15,373,587</u>
	<u><u>\$22,794,110</u></u>

Signed on behalf of the Board:

L. F. LONG, *Director*

J. D. JOHNSON, *Director*

*See notes on following page.*

**BUILDING PRODUCTS LIMITED**  
**and Subsidiary Companies**  
**Notes to Consolidated Financial Statements**  
**December 31 1963**

1. Maximum capital cost allowances, which differ from depreciation recorded in the accounts, are claimed for income tax purposes. Reductions in current income taxes obtained in those years in which capital cost allowances exceed depreciation recorded in the accounts are set aside as deferred income taxes. In those years in which capital cost allowances are less than the depreciation recorded in the accounts, income taxes applicable to the difference are transferred out of deferred income taxes.
2. Options to purchase 12,950 unissued shares of the company have been granted to officers and employees out of a total of 23,200 shares available for options under the provisions of a plan adopted in 1962 which fixed the option price at 90% of the market price ruling on the business day next preceding that on which the options were granted. None of these options had been exercised at December 31, 1963.

**Auditors' Report**

To the Directors of  
**BUILDING PRODUCTS LIMITED:**

We have examined the consolidated balance sheet of Building Products Limited and subsidiary companies as at December 31, 1963 and have obtained all the information and explanations we have required. Our examination included a general review of the accounting procedures and such tests of accounting records and other supporting evidence as we considered necessary in the circumstances.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the companies, the accompanying consolidated balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of Building Products Limited and subsidiary companies as at December 31, 1963, in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Montreal 2, Canada  
January 31, 1964.

**PRICE WATERHOUSE & Co.**  
**Chartered Accountants.**

**BUILDING PRODUCTS LIMITED**  
**Balance Sheet — December 31 1963**

**Assets**

**CURRENT ASSETS:**

Cash.....	\$ 547,987
Accounts receivable, less allowance for doubtful accounts \$270,000.....	5,583,276
Raw materials, supplies and finished products, valued at the lower of cost or market.....	6,526,238
Unexpired insurance, prepaid taxes, etc.....	<u>80,203</u> \$12,737,704

INVESTMENT IN SHARES OF SUBSIDIARY COMPANIES, at cost.....	1,176,246
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**FIXED ASSETS (note 1):**

Land, buildings, equipment, franchises, etc....	\$22,417,277
Less: Accumulated depreciation.....	<u>12,502,954</u> 9,914,323
	<u><u>\$23,828,273</u></u>

**Liabilities**

**CURRENT LIABILITIES:**

Short-term and demand notes payable.....	\$ 3,050,000
Accounts payable and accrued liabilities.....	2,813,276
Income and other taxes payable.....	<u>525,088</u> \$ 6,388,364

OWING TO SUBSIDIARY COMPANIES.....	1,007,494
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PROVISION FOR PRODUCT GUARANTEES.....	243,676
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DEFERRED INCOME TAXES (note 2).....	788,483
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**SHAREHOLDERS' EQUITY:**

Capital stock (note 3) —

Authorized —  
650,000 shares without nominal  
or par value

Issued —  
484,184 shares..... \$ 1,509,110

Reserve for contingencies..... 500,000

Surplus resulting from revaluation of fixed  
assets..... 408,037

Retained earnings..... 12,983,109 15,400,256  
\$23,828,273

Signed on behalf of the Board:

L. F. LONG, *Director*

J. D. JOHNSON, *Director*

*See notes on following page.*

**BUILDING PRODUCTS LIMITED**  
**Notes to Financial Statements**  
**December 31 1963**

1. Fixed assets are stated at cost except for certain assets purchased from subsidiaries which have been restated at their previous book value to the subsidiaries. Accumulated depreciation provided thereon by the subsidiary has been reinstated.
2. Maximum capital cost allowances, which differ from depreciation recorded in the accounts, are claimed for income tax purposes. Reductions in current income taxes obtained in those years in which capital cost allowances exceed depreciation recorded in the accounts are set aside as deferred income taxes. In those years in which capital cost allowances are less than the depreciation recorded in the accounts, income taxes applicable to the difference are transferred out of deferred income taxes.
3. Options to purchase 12,950 unissued shares of the company have been granted to officers and employees out of a total of 23,200 shares available for options under the provisions of a plan adopted in 1962 which fixed the option price at 90% of the market price ruling on the business day next preceding that on which the options were granted. None of these options had been exercised at December 31, 1963.

**Auditors' Report**

To the Directors of  
**BUILDING PRODUCTS LIMITED:**

We have examined the balance sheet of Building Products Limited as at December 31, 1963 and have obtained all the information and explanations we have required. Our examination included a general review of the accounting procedures and such tests of accounting records and other supporting evidence as we considered necessary in the circumstances.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the company, the accompanying balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company as at December 31, 1963, in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Montreal 2, Canada  
January 31, 1964.

**PRICE WATERHOUSE & Co.**  
Chartered Accountants.

**ROBBINS FLOOR PRODUCTS OF CANADA LTD.**  
(a wholly-owned subsidiary of Building Products Limited)

**Balance Sheet — December 31 1963**

	<b>Asset</b>
Building Products Limited .....	\$86,081.29
<b>Shareholders' Equity</b>	
Capital stock:	
Authorized —	
500 common shares of \$100 each	
Issued —	
100 common shares.....	\$10,000.00
Contributed surplus.....	67,555.00
Retained earnings (unchanged from December 31, 1962).....	8,526.29
	<u><u>\$86,081.29</u></u>

Signed on behalf of the Board:

L. F. LONG, *Director*      R. W. JONES, *Director*

**Auditors' Report**

To the Directors of  
**ROBBINS FLOOR PRODUCTS OF CANADA LTD.:**

We have examined the balance sheet of Robbins Floor Products of Canada Ltd. as at December 31, 1963 and have obtained all the information and explanations we have required.

In our opinion, and according to the best of our information and the explanations given us and as shown by the books of the company, the above balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company as at December 31, 1963.

Montreal 2, Canada  
January 31, 1964.

PRICE WATERHOUSE & Co.  
Chartered Accountants.

**MIDWEST FIBREBOARD LTD.**  
(a wholly-owned subsidiary of Building Products Limited)

**Balance Sheet — December 31 1963**

	<b>Asset</b>
Building Products Limited.....	<u>\$456,962.36</u>
<b>Shareholders' Equity</b>	
Capital stock:	
Authorized —	
550 common shares of \$100 each	
Issued —	
519 common shares.....	\$ 51,900.00
Surplus resulting from amalgamation as at December 31, 1962 of predecessor companies.....	\$677,096.43
Less: Loss on sale of fixed assets to parent company, January 1, 1963.....	<u>272,034.07</u> <u>405,062.36</u>
	<u><u>\$456,962.36</u></u>

Signed on behalf of the Board:

L. F. LONG, *Director*      R. W. JONES, *Director*

**Auditors' Report**

To the Directors of  
**MIDWEST FIBREBOARD LTD.:**

We have examined the balance sheet of Midwest Fibreboard Ltd. as at December 31, 1963 and have obtained all the information and explanations we have required.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the company, the above balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company as at December 31, 1963.

Montreal 2, Canada  
January 31, 1964.

PRICE WATERHOUSE & Co.  
Chartered Accountants.

BERMICO PRODUCTS LIMITED  
(a wholly-owned subsidiary of Building Products Limited)

Balance Sheet — December 31 1963

	Asset	
Building Products Limited . . . . .		<u>\$464,450.85</u>
Shareholders' Equity		
Capital stock:		
Authorized —		
20,000 shares without nominal or par value		
Issued —		
12,000 shares, fully paid . . . . .		\$550,000.00
<i>Less:</i> Deficit —		
Loss on sale of fixed assets to parent company, January 1, 1963 . . . . .		\$136,003.00
<i>Less:</i>		
Retained earnings, December 31, 1962 . . .	<u>50,453.85</u>	85,549.15
		<u>\$464,450.85</u>

Signed on behalf of the Board:

L. F. LONG, *Director*      R. W. JONES, *Director*

Auditors' Report

To the Directors of  
BERMICO PRODUCTS LIMITED:

We have examined the balance sheet of Bermico Products Limited as at December 31, 1963 and have obtained all the information and explanations we have required.

In our opinion, and according to the best of our information and the explanations given to us and as shown by the books of the company, the above balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company as at December 31, 1963.

Montreal 2, Canada  
January 31, 1964.

PRICE WATERHOUSE & Co.  
Chartered Accountants.