



# Confirmation of Co-operation and Representation

## Form 320

for use in the Province of Ontario

BUYER: DAVERT TOOLS INCSELLER: CITY OF PORT COLBORNEFor the transaction on the property known as: 142 FRASER Street Port Colborne ON L3K 1E5**DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Confirmation of Co-operation and Representation:

"Seller" includes a vendor, a landlord, lessor, or a prospective, seller, vendor, landlord or lessor and "Buyer" includes a purchaser, a tenant, lessee or a prospective, buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease.

Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

**DECLARATION OF INSURANCE:** The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002, (REBBA).

**1. LISTING BROKERAGE**

- a) ☐ The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
- 1) ☐ The Listing Brokerage is not representing or providing Customer Service to the Buyer.  
(If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
  - 2) ☐ The Listing Brokerage is providing Customer Service to the Buyer.
- b) ☒ **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
- That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
  - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
  - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
  - The price the Buyer should offer or the price the Seller should accept;
  - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.
- However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

Additional comments and/or disclosures by Listing Brokerage: (e.g. The Listing Brokerage represents more than one Buyer offering on this property.)

**2. PROPERTY SOLD BY BUYER BROKERAGE - PROPERTY NOT LISTED**

- ☐ The Brokerage .....represent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid  
(does/does not)
- ☐ by the Seller in accordance with a Seller Customer Service Agreement  
 or: ☐ by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: (e.g. The Buyer Brokerage represents more than one Buyer offering on this property.)

**INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)**

DS  
EM  
BUYER

CO-OPERATING/BUYER BROKERAGE

SL  
SELLER

BB  
LISTING BROKERAGE



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**3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.****CO-OPERATING BROKERAGE- REPRESENTATION:**

- a) ☐ The Co-operating Brokerage represents the interests of the Buyer in this transaction.
- b) ☐ The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
- c) ☐ The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

**CO-OPERATING BROKERAGE- COMMISSION:**

- a) ☐ The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property  
4.5% + HST to be paid from the amount paid by the Seller to the Listing Brokerage.  
 (Commission As Indicated In MLS® Information)
- b) ☐ The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations.

**SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)**

**ROYAL LEPAGE NRC REALTY**  
 (Name of Co-operating/Buyer Brokerage)  
368 King St. Port Colborne ON L3K4H4  
 Tel: (905) 834-9000 Fax: (905) 688-3178  
 (Authorized to bind the Co-operating/Buyer Brokerage) (Date)  
 (Print Name of Salesperson/Broker/Broker of Record)

**ROYAL LEPAGE NRC REALTY**  
 (Name of Listing Brokerage)  
368 King St. Port Colborne ON L3K4H4  
 Tel: (905) 834-9000 Fax: (905) 688-3178  
Bill Becskereki Jan 14/2021  
 (Authorized to bind the Listing Brokerage) (Date)  
**BILL - BECSKEREKI**  
 (Print Name of Salesperson/Broker/Broker of Record)

**CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction)**

The Buyer/Seller consent with their initials to their Brokerage representing more than one client for this transaction.

BS  
 EM

BUYER'S INITIALS

BS  
 SL

SELLER'S INITIALS

**ACKNOWLEDGEMENT**

I have received, read, and understand the above information.

DocuSigned by:  
ELISSA MAMPOU 1/16/2021  
 (Signature of Buyer) (Date)

DocuSigned by:  
Scott Wynn 1/17/2021  
 CITY OF PORT COLBORNE  
 E787E8EA1BC54C1... (Date)

(Signature of Buyer) (Date)

(Signature of Seller) (Date)

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# Agreement of Purchase and Sale

## Form 100

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 14 day of January, 2021

**BUYER:** DAVERT TOOLS INC, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER:** CITY OF PORT COLBORNE, the following  
(Full legal names of all Sellers)

### REAL PROPERTY:

Address 142 FRASER Street Port Colborne ON L3K 1E5

fronting on the North side of FRASER Street

in the

and having a frontage of 37.99 more or less by a depth of 90.00 more or less

and legally described as PT LT 17 N/S FRAZER ST PL 849 PORT COLBORNE AS IN R0658896 ; PORT COLBORNE

(Legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** Dollars (CDN\$) 50,000.00

Fifty Thousand Dollars

**DEPOSIT:** Buyer submits upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Three Thousand Dollars (CDN\$) 3,000.00

by negotiable cheque payable to ROYAL LEPAGE NRC REALTY "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 6:00 on the 21  
(Seller/Buyer) (a.m./p.m.)  
day of January, 2021, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 a.m. on the 19 day of February, 2021. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

DS  
EM

INITIALS OF SELLER(S):

as  
SL



- 3. NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance hereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: .....  
(For delivery of Documents to Buyer)

**4. CHATTELS INCLUDED:**  
-NA

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

**5. FIXTURES EXCLUDED:**  
NONE

- 6. RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:  
none

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

- 7. HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

EM

INITIALS OF SELLER(S):

SL

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 16 day of February, 2021, (Requisition Date) to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the property, and that its present use (residential building lot) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the Municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party or such other location agreeable to both lawyers.
12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

DS  
EM

INITIALS OF SELLER(S):

DS  
SL

- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990.
- 17. RESIDENCY:** (a) Subject to (a) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 20. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

EM

INITIALS OF SELLER(S):

SL



**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

DocuSigned by:

1/16/2021

(Witness)

(Buyer)

JERRY ROY

(Seal)

(Date)

774C1D0F2EFA410

(Witness)

(Buyer)

(Seal)

(Date)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

DocuSigned by:

1/17/2021

(Witness)

(Seller)

CITY OF PORT COLBORNE

(Seal)

(Date)

E787E8EA1BC54C1

(Witness)

(Seller)

(Seal)

(Date)

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal)

(Date)

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 12:00 PM this 17 day of JANUARY 2021.

(a.m./p.m.)

DocuSigned by:

CITY OF PORT COLBORNE

### INFORMATION ON BROKERAGE(S)

Listing Brokerage

ROYAL LEPAGE NRC REALTY

(905) 834-9000

(Tel. No.)

BILL - BECSKEREKI

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

DocuSigned by:

1/17/2021

(Seller)

CITY OF PORT COLBORNE

(Date)

E787E8EA1BC54C1

(Seller)

(Date)

Address for Service

(Tel. No.)

Seller's Lawyer

Address

Email

(Tel. No.)

(Fax No.)

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

DocuSigned by:

1/16/2021

(Buyer)

JERRY ROY

(Date)

(Buyer)

(Date)

Address for Service

(Tel. No.)

Buyer's Lawyer

Address

Email

(Tel. No.)

(Fax No.)

FOR OFFICE USE ONLY

### COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale

Acknowledged by:

[Authorized to bind the Listing Brokerage]

[Authorized to bind the Co-operating Brokerage]

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# Schedule A

## Agreement of Purchase and Sale

### Form 100

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** DAVERT TOOLS INC, and

**SELLER:** CITY OF PORT COLBORNE

for the purchase and sale of 142 FRASER Street Port Colborne

ON L3K 1E5 dated the 14 day of January, 2021

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

#### Conditions

This offer is conditional upon the Buyer completing due diligence at the Buyer's expense regarding obtaining of building permits, etc the subject property. Unless the Buyer, in the Buyer's sole and absolute discretion, gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule not later than 6:00 p.m. on the 23RD day of FEBRUARY, 2021 that this/these condition is/are fulfilled this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This/these condition is/are included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller within the time period stated herein. The Seller agrees to cooperate in providing access to the property for the purpose of any inspections. The Seller also consents to details of any work orders against the property being made available to the Buyer or the Buyer's agent. The Buyer or the Buyer's Agent shall not be liable for any work orders created as a result of any inspections carried out on the subject property.

#### Electronic Signatures

The parties hereto consent and agree to the use of electronic signature pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

#### Deposit

The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall place the deposit in the Deposit Holder's interest bearing real estate trust account, which earns interest at Bank Prime minus 1.9%, and the Deposit Holder shall pay any interest it earns or receives on the deposit to Buyer(s), provided the amount of the interest that the Deposit Holder earns or receives on the deposit is equal to or greater than \$100.00. The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall be entitled to retain any interest earned or retained on the deposit, which is less than \$100.00.

In addition to any other provision in this Agreement or any Schedule thereto the parties agree that any deposit to be delivered by the Buyer to the Deposit Holder may be delivered by Electronic Funds Transfer (EFT) to an account designated by the Deposit Holder. Provided further the Buyer making the EFT shall, with respect to the said EFT, provide such information to the Deposit Holder as required by the Deposit Holder to comply with the requirements of the Real Estate and Business Brokers Act, 2002, as amended from time to time or to comply with other relevant statutory requirements.

#### Notices (Multiple Representation)

If the listing broker represents both the Seller and Buyer in this transaction in multiple representation, the assigned Sales Representative/Broker to the Buyer in this transaction is authorized to receive any and all Notices/Waivers on behalf of the Buyer and the assigned Sales Representative/Broker to the Seller is authorized to receive any and all Notices/Waivers on behalf of the Seller. Said notices will be delivered in accordance with the terms of this agreement and communicated to the assigned Sales Representative.

The Sellers agree to provide any existing surveys, environmental paperwork to the Buyer on acceptance of this offer.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

EM

INITIALS OF SELLER(S):

SL



142 Fraser Street

**1. Vendor's Right to Re-Conveyance of the Property**

- (a) The Vendor reserves a right to a re-conveyance of the Property upon the terms and conditions contained in the Agreement substantially in the form attached as Schedule "B".
- (b) Upon execution of the Agreement of Purchase & Sale by both parties, and the final determination of the purchase price in accordance with Section 2(b) above, the Vendor will provide the completed "Right to Re-Conveyance Agreement" in the form of Schedule "B" to this Agreement to the Purchaser, and the Purchaser shall forthwith execute the said Agreement as provided, and deliver same to the Vendor.
- (c) On or before the Closing Date of this transaction, the Purchaser shall deliver to the Vendor a good and valid duly executed Acknowledgement & Direction authorizing the Vendor to electronically sign and register on its behalf a Transfer of the Property for the Purchase Price of \$50,000 as outlined in paragraph 2(d) of the Right to Re-Conveyance Agreement, in favour of The Corporation of the City of Port Colborne, which the Vendor shall hold in escrow and not register unless and until such time as it exercises its right to re-conveyance of the Property. This clause shall survive and not merge on the closing of this transaction.
- (d) The Right to Re-Conveyance Agreement or Notice of same shall be registered on title to the Property on the Closing Date, in priority to any mortgage/charge or other encumbrance, and, at the expense of the Purchaser.
- (e) The Purchaser shall not transfer the Property to a third party unless and until it has completed the actions described in Sections 2(a)(I) and (II) of the Right to Re-Conveyance Agreement. This clause shall survive and not merge on closing of this transaction.

**2. No Speculation**

- (a) It is the express intention and agreement of the Purchaser and Vendor that there shall be no speculation with respect to all or any portion of the Property, and, that the Vendor shall have for a period of 20 years from the date of registration of the Transfer to the Purchaser, the option to re-purchase at the price per acre paid by the Purchaser herein, any part of the Property which has not been built upon by the Purchaser and which the Purchaser is desirous of selling, leasing or otherwise disposing of.
- (b) Prior to entering into any agreement respecting a sale, lease or other disposition of all or any portion of the Property which has not been built upon by the Purchaser,

the Purchaser shall give notice thereof to the Vendor, and the Vendor shall have a period of thirty (30) days from actual receipt of such notice to notify the Purchaser of its intention to re-purchase that portion of the Property not built upon (the "**Unbuilt Lands**") referred to in the notice; failing such notification by the Vendor, the Purchaser shall be permitted to enter into such agreement within a period of six (6) months following receipt by the Vendor of the notice; and in the event such agreement is not completed, then the within option shall be deemed reinstated.

- (c) In the event that the Vendor exercises its option, there shall be constituted a binding agreement of purchase and sale between the parties to be completed thirty (30) days after such exercise. There shall be deducted from the re-purchase price any amount for taxes then due and owing against such lands, and upon payment of the re-purchase price, the Purchaser shall convey to the Vendor, free from all encumbrances whatsoever, all its right, title and interest in and to the said Unbuilt Lands.
- (d) In the event the Purchaser has substantially completed a building, the Plans for which have been approved by the Vendor, and such building has been built in accordance with such Plans, then the Purchaser may request a release respecting the provisions of this paragraph, and in the event that the Vendor determines, acting reasonably, that there remains no Unbuilt Lands on the Property, the Vendor shall execute an acknowledgment and release respecting the provisions of this paragraph.
- (e) The Purchaser acknowledges and agrees that the Vendor's right to a repurchase of the Property as contained herein shall be preserved by way of a Notice registered on the title to the entire Real Property on closing, or by such other instruments as may be determined by the Vendor prior to closing, and registered immediately after the Transfer on closing. The Purchaser further agrees to execute such documents as may be required by the Land Registry Office either before or after closing, to effect the registration of the said Notice or instruments.
- (f) Sections XX(a) to (c) inclusive herein, shall not merge on the closing of this transaction, but shall remain in full force and effect thereafter.
- (g) Unbuilt Lands shall not include lands without any structures that are ancillary to the use of a structure on the Property.

**SCHEDULE "B"**  
**RIGHT TO RE-CONVEYANCE AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PORT  
COLBORNE**  
(the "City")

- and -

(the "Purchaser") **DAVERT TOOLS INC**

**RECITAL:**

- A. By-law No. \_\_\_\_\_ passed by the Council for The Corporation of the City of Port Colborne on \_\_\_\_\_, 2020, authorized the acceptance of an Agreement of Purchase and Sale from the Purchaser for the lands described as 142 Fraser Street [NTD: Insert Legal Description], being PIN [NTD: Insert PIN] (the "Property"), and, subject to the City reserving the right to a re-conveyance of the Property.
- B. The Purchaser has agreed to enter into an Agreement with the City to secure the City's right to a re-conveyance of the Property.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

**1. DEFINITIONS**

The terms defined herein shall have, for all purposes of this Agreement, the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) "**Purchaser**" means Upstate Realty Corp;
- (b) "**Property**" means the lands and premises described in Recital A of this Agreement; and
- (c) "**City**" means The Corporation of the City of Port Colborne.

**2. RIGHT TO RE-CONVEYANCE**

- (a) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the entire Property in the event the Purchaser fails to:



I. enter into a Site Plan Agreement with the City for the development of the Property **[NTD: Details of what is to be constructed]** within one (1) year of registration of the Transfer of the Property from the City to the Purchaser, and, which Site Plan Agreement shall be registered on the title to the Property at the Purchaser's expense;

**OR**

II. construct and occupy the **[NTD: Details of what is to be constructed]** on the Property within two (2) years of registration of the Transfer of the Property from the City to the Purchaser.

Notwithstanding the foregoing, the conditions in Subsection (I) may be altered, and/or, the time limits set out in Subsections (I) and (II) may be extended to a mutually agreed upon date in the event that it cannot be completed due to circumstances beyond the control of the Purchaser, all of which is at the reasonable discretion of the City.

- (b) The Purchaser hereby grants to the City the irrevocable right to a re-conveyance of the entire Property in the event the Purchaser becomes insolvent or makes an assignment for the benefit of creditors, prior to the completion of the actions described in Sections 2(a)(I) and (II), at the reasonable discretion of the City.
- (c) The right to re-conveyance is exercisable by notice in writing from the City to the Purchaser.
- (d) In the event the City exercises its right to a re-conveyance of the Property as provided for in Sections 2(a) and (b), it shall do so for the sum of \$60,000, subject to adjustments for the amount of any taxes then due and owing against the Property and the amount of Land Transfer Tax payable by the City for registration of the Transfer of the Property. Despite any improvements or investments made by the Purchaser, the Purchaser shall be deemed to have forfeited any investment so made and shall not be entitled to any compensation for same whatsoever, including monies expended for installing services. Further, there shall be no adjustment in respect of monies drawn upon by the City in respect of securities provided by the Purchaser. Notwithstanding the foregoing, the Purchaser shall retain ownership of all studies, reports, drawings, plans and documents of any nature or kind, which have been commissioned, supplied or paid for solely by the Purchaser.
- (e) The City acknowledges having received in escrow a good and valid duly executed Acknowledgement and Direction authorizing the City and its solicitor to electronically sign and register on its behalf a Transfer of the Property for the consideration of \$60,000, in favour of the Corporation of the Port Colborne, which the City undertakes to hold in escrow and not register unless and until such time as it exercises its right to a re-conveyance of the Property, and in accordance with Section 2(f) below.

- (f) Within twenty-one (21) days of the City exercising its right to a re-conveyance as aforesaid, the Purchaser shall vacate the Property, and deliver to the City all keys to the Property, if any. Following the expiration of the twenty-one (21) day period, the City shall be at liberty to register the Transfer in favour of The Corporation of the City of Port Colborne. If the Purchaser does not vacate the Property in the time provided, the City shall take all steps necessary to take possession of the Property.
- (g) In addition to Section 2(f) above, the Purchaser undertakes to obtain and register good and valid Discharges and/or Releases of all Liens, Charges and any other encumbrances, which the Purchaser has caused to be registered against the title to the Property, forthwith following the City's notice of exercising its option. Notwithstanding the foregoing, the Purchaser shall at all times indemnify and save harmless the City against all actions, suits, claims and demands whatsoever, which may be brought against or made upon the City and from and against all losses, costs, damages, charges and expenses whatsoever which may be incurred, sustained or paid by the City for or by reason of or on account of such Liens, Charges or other encumbrances.

### **3. NON-ASSIGNMENT**

This agreement may not be assigned by the Purchaser without the express written consent of the City, which consent may be arbitrarily withheld.

### **4. SEVERABILITY**

If any provision contained herein shall be found by a Court of competent jurisdiction to be illegal or unenforceable, then such provision shall be considered separate and severable from the rest of this Agreement, and the remainder of this Agreement shall continue to be in full force and effect and shall continue to be binding upon the parties as though the illegal or unenforceable provision had never been included.

### **5. ARBITRATION**

The validity, construction and performance of this Agreement shall be governed by the laws of the Province of Ontario and any dispute that may arise under or in relation to this Agreement, including its validity, construction or performance, shall be determined by arbitration upon application to a single Judge in the Superior Court of Justice in accordance with and pursuant to the provisions of the *Arbitration Act 1991, S.O. 1991 c. 17* and the arbitrator's decision shall be final and binding upon the parties and upon their respective successors and assigns and shall not be subject to appeal.

### **6. NOTICES**

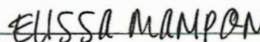
Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a "**Notice**") to be given under or in connection

with this Agreement shall be in writing and shall be given by personal delivery, facsimile transmission or email to the address set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) **City:**

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention:  
Facsimile:  
Telephone:

(b) **Purchaser:**

DocuSigned by:  
  
774C1D0F2EFA410...

Attention:  
Facsimile:  
Telephone:

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile transmission or email with confirmation of transmission prior to 5:00 p.m., shall be deemed to have been validly and effectively given and received on the business day it was sent unless the confirmation of transmission was after 5:00 p.m. in which case it shall be deemed to have been received on the next following business day.

7. **HEADINGS**

The headings used herein shall be for convenience of reference only, and shall not affect the interpretation of this Agreement.

8. **SUCCESSORS AND ASSIGNS**

All of the covenants and terms in this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

9. **COUNTERPARTS AND ELECTRONIC DELIVERY**



This Agreement may be executed and delivered by facsimile or electronic transmission and the parties may rely upon all such facsimile or electronic signatures as though such facsimile or electronic signatures were original signatures. This Right to Re-Conveyance Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

*/Signature page follows./*

**IN WITNESS WHEREOF** the Purchaser has executed this Agreement the \_\_\_\_ day of \_\_\_\_\_, 2021.

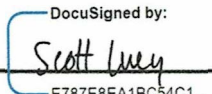
Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.

**IN WITNESS WHEREOF** the City has executed this Agreement the \_\_\_\_ day of \_\_\_\_\_, 2021.

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**

Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/We have authority to bind the Corporation.