

**EXHIBIT 5**

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (hereinafter "**Agreement**"), is entered into this 24<sup>th</sup> day of September 2015, by and between **Daniel Phoenix and Julie Phoenix** (hereinafter, the "**Buyers**") and **Burton W. Wiand, in his capacity as Receiver** (hereinafter, the "**Receiver**" or "**Seller**", and collectively with Buyer, the "**Parties**") appointed in Securities and Exchange Commission v. Arthur Nadel et al., U.S.D.C., M.D. Fla., Tampa Division, Case No. 8:09-cv-87-T-26TBM (hereinafter, the "**Receivership Action**").

### BACKGROUND

WHEREAS, the Receiver was appointed pursuant to a certain Order Appointing Receiver entered on January 21, 2009, in the Receivership Action; and

WHEREAS, the Receiver took possession of real property located at 3343 U.S. Route 2, Marshfield, Vermont 05658 and 3353 U.S. Route 2, Marshfield, Vermont 05658 (hereinafter the "**Property**") on or about July 9, 2013, and has full power and authority to market and enter into an agreement to sell the Property, subject to court-approval and as otherwise defined below; and

WHEREAS, the Buyers desire to purchase the Property and Seller desires to sell the Property, all on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the Parties agree as follows:

### AGREEMENT

**1. Property:** The Seller agrees to sell and convey and Buyers agree to purchase and pay for, all pursuant to the terms and conditions hereinafter set forth, the property consisting of all of Seller's right, title, and interest in and to the Property, more particularly described on Exhibit "A" attached hereto, together with any of the following items or fixtures which may be now located in or which may be a part of the Property: all appliances and fixtures presently located on the Property, the window unit and heat monitor in the cottage and the hot tub. The Property shall include all appurtenant rights, privileges, and easements, all buildings and improvements, free from all encumbrances whatsoever, except restrictions and easements of record, zoning ordinances, and taxes and assessments, both general and special, not currently due and payable.

**2. Purchase Price:** The Purchase Price shall be Ninety Thousand and no/100 Dollars (\$90,000.00).

**3. Escrow Agent and Earnest Money:** An escrow shall be opened pursuant to this Agreement with the Escrow Agent. Seller and Buyers mutually agree that Harrington Realty shall serve as the Escrow Agent. Within three (3) days after the execution of this Agreement by both Parties, the Buyers will deposit with the Escrow Agent the sum of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00) in readily available funds as an earnest money deposit ("**Earnest Money Deposit**"). The Earnest Money Deposit shall be credited at Closing towards the Purchase Price to be paid to Seller by Buyers for the Property under the terms of this Agreement. The terms of

this Agreement shall serve as the escrow instructions for this transaction.

4. **Conditions of Escrow:** Seller shall, on or before the date of Closing, make reasonable efforts to obtain approval from the United States District Court for the Middle District of Florida to sell the Property pursuant to the terms of this Agreement. If the Court approves the sale of the Property pursuant to the terms of this Agreement and the Buyers fail to perform under this Agreement except as to any rights the Buyers may have under paragraphs 8, 9, and 10, the Earnest Money Deposit shall be delivered immediately to Seller as liquidated damages for Buyer's failure to perform. In the event that the Court fails to approve this Agreement or the Buyers terminate the Agreement pursuant to paragraphs 8, 9, or 10, this Agreement shall be null and void and of no further force and effect and neither Seller nor the Buyers shall have any further obligations hereunder to the other and the Earnest Money Deposit shall be delivered immediately to Buyer. Should Seller fail to perform any obligation under this Agreement for any other reason, the Buyer's sole remedy shall be to seek return of all funds deposited in connection with this Agreement.

5. **Financing Contingency:** Buyers shall have thirty (30) days from the date of this Agreement to obtain a written loan commitment for a conventional loan in the principal amount of at least eighty percent (80%) of the Purchase Price with an interest rate not to exceed the then prevailing rate based upon the Buyer's creditworthiness (collectively the financial terms in this sentence shall be referred to as "Loan Terms"). In the event that the Buyers fail to obtain a loan commitment consistent with the Loan Terms, this Agreement shall be null and void and of no further force and effect and neither Seller nor the Buyers shall have any further obligations hereunder to the other and the Earnest Money Deposit and Additional Earnest Money Deposit shall be delivered immediately to Buyers. If the Buyers obtain a loan commitment consistent with the Loan Terms herein and then the Buyers fail to perform under this Agreement, the Earnest Money Deposit and Additional Earnest Money Deposit shall be delivered immediately to Seller as liquidated damages for Buyers' failure to perform.

6. **Closing and Closing Agent:** Unless extended by mutual agreement of the Parties, Closing shall take place within a reasonable time after the United States District Court's approves the sale of the Property, but in no event shall the closing take place later than December 31, 2015. All funds and documents required to be deposited hereunder shall be deposited into escrow prior to Closing. The term "Closing" as used herein shall mean the date all contingencies provided in this Agreement shall be satisfied or waived by written instrument and the date the Receiver's Deed in substantially the form as Exhibit "B" attached hereto has been recorded by the escrow agent as provided herein. The Closing will be held in Washington County, Vermont. \_\_\_\_\_ shall serve as the Closing Agent.

7. **Conveyance of Title:** When the funds to be paid by Buyers together with all documents required to be deposited by Buyers pursuant to this Agreement have been deposited into escrow, then Seller shall deliver into escrow title to the Property. Seller will convey title via Receiver's Deed in substantially the form as Exhibit "B" attached hereto.

8. **Evidence of Title, Survey and Closing Costs:** Buyers, at Buyers' cost and expense, may obtain evidence of title, a title abstract, title insurance and/or a survey of the Property. At Closing, Buyers shall pay: (i) all title examination fees; (ii) survey costs or any costs to update surveys; (iii) to update recording costs on documents necessary for Seller to clear title (to the extent such action is required); (iv) any premiums for a title insurance policy; (v) all transfer taxes payable in connection with the delivery for recording of any title transfer instrument or document by Seller provided in or contemplated by this Agreement; (vi) all charges by the Escrow Agent for escrow services; (vii) all survey and appraisal costs; (viii) mortgage taxes (if any); (ix) the cost of any environmental reports; and (x) Buyers' legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Buyers hereunder, including without limitation, the cost of performance by Buyers of their obligations hereunder.

At Closing, Seller shall pay: (i) Seller's legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Seller hereunder, including without limitation, the cost of performance by Seller of its obligations hereunder.

Except as otherwise expressly provided for in this Agreement, Buyers shall be responsible for any and all other costs and expenses, regardless of custom or practice in the county where the Property is located, in connection with the consummation of this Agreement.

9. **Condition of Premises and Inspection Period:** Buyers acknowledge and agree to purchase the property on an "As Is" "Where Is" basis, with all faults and without representations, express or implied, of any type, kind, character or nature, including but not limited to the suitability of the Property for any use, and without warranties, express or implied, of any type, kind, character or nature, including but not limited to, suitability of the Property for any use, and without recourse, express or implied, of any type, kind, character or nature.

With prior notice to and approval from Seller, Seller does hereby grant to Buyers and their authorized agents the right, at Buyers' sole risk, cost and expense, for a period of thirty (30) days from the date of this Agreement (the "**Inspection Period**") to enter the Property to inspect, examine, and survey the Property and otherwise do that which, in the opinion of Buyers, is reasonably necessary to determine the boundaries and acreage of the Property, the suitability of the Property for the uses intended by Buyers, and to determine the physical condition of the Property. Buyers agree to indemnify and hold Seller harmless from and against any and all liabilities, claims, losses or damages arising directly or indirectly from negligence in conducting Buyer's inspection and examination of the Property (but not from any effect upon value or marketability of the Property), and this indemnity and hold harmless provision shall survive Closing or the termination of this Agreement. Buyers shall promptly deliver to Seller copies of the results of all of Buyers' inspections, appraisals and/or examinations. If, at the conclusion of the Inspection Period, Buyers should notify Seller in writing that Buyers, for whatever reason, desires not to proceed with this purchase, this Agreement shall be deemed null and void, escrow shall be canceled, and the full Earnest Money Deposit with no deductions shall be returned to Buyers without any interference or

further instruction or authorization from Seller. After the thirtieth (30<sup>th</sup>) day, the Earnest Money Deposit is non-refundable except as otherwise provided for in this Agreement.

**10. Damage or Destruction:** In the event the Property, or any portion thereof, is damaged or destroyed by fire or other cause prior to the date of transfer of title, Buyers may declare this Agreement null and void or Buyers may complete the purchase and receive the proceeds from any insurance otherwise payable to or for the benefit of Seller with respect to such destruction, together with a credit against the purchase price for any "deductible" under such insurance. If Buyers declare this Agreement null and void due to damage or destruction as described in this paragraph 9, the Earnest Money Deposit shall be delivered immediately to Buyers.

**11. Taxes, Assessments & Utilities:** Real Estate Taxes, assessments, if any, and any assessments, insurance premiums, charges, and other items attributable to the Property shall be prorated as of the date of Closing, based upon an actual three hundred and sixty five (365) day year, as is customary. Meters for all public utilities (including water) being used on the Property shall be ordered read on the day prior to closing and all charges to said date shall be paid by Seller.

**12. Real Estate Brokers:** Seller and Buyers represent and warrant each to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction, except for Beth Harrington-McCullough of Harrington Realty. At Closing, Seller agrees to an eight percent (8%) commission to Beth Harrington-McCullough of Harrington Realty pursuant to a separate written agreement by and between Beth Harrington-McCullough of Harrington Realty. In no event shall the total sales commission owed by the Seller exceed eight percent (8%) of the Purchase Price.

**13. General Provisions:**

- (a) This Agreement shall be governed by the laws of Vermont.
- (b) Buyers and Seller hereby (i) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be exclusively litigated as a summary proceeding in *SECURITIES AND EXCHANGE COMMISSION V. ARTHUR NADEL, ET AL.*, CASE NO: 8:09-CV-87-T-26TBM, IN AND BEFORE THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, in Hillsborough County in the State of Florida, to the exclusion of the courts of or in any other state or country, and (ii) irrevocably submit to the exclusive jurisdiction of the UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, in Hillsborough County in the State of Florida, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably waive any objection to the laying of venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.


- (c) Captions of the several items of this Agreement are not a part of the context hereof and shall not be used in construing this Agreement, being intended only as aids in locating the various provisions hereof.
- (d) This Agreement shall inure to the benefit of, and be binding upon, the Seller's successors and assigns, executors and administrators.
- (e) In the event that this Agreement shall terminate in accordance with the provisions hereof, and in the absence of breach, all funds and documents deposited shall be returned to the depositor thereof and neither party shall be under any further obligation to the other by reason of this Agreement.
- (f) This offer is open for acceptance by delivery of a fully executed original hereof, up to and including 5:00 p.m. EST on Friday, September 25, 2015, and shall thereafter be withdrawn without notice. This Agreement, and any notices required or permitted to be given pursuant to this Agreement, shall be in writing and sent by overnight courier, prepaid, or hand delivered, transmitted by facsimile or e-mail, delivered personally or served by certified or registered mail, return receipt requested. Any facsimile or electronic signature shall be deemed to be an original.
- (g) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained. Notices to Seller may be mailed to 5505 West Gray Street, Tampa, Florida 33609 and to Buyers at 144 Creamery Street, Marshfield, Vermont 05658.

**BUYERS**

**SELLER**

  
Daniel Phoenix

\_\_\_\_\_  
Burton W. Wiand, Receiver

  
Julie Phoenix

**BROKERS' ACKNOWLEDGEMENT**

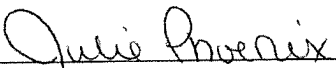
Beth Harrington-McCullough of Harrington Realty hereby acknowledges receipt of this Agreement and agrees to be joined to this Agreement to the extent the compensation structure is discussed. Beth Harrington-McCullough of Harrington Realty hereby agrees to the compensation structure set forth in a separate written agreement between Beth Harrington-McCullough of Harrington Realty and the Seller. Any dispute concerning the

judgment or in any other manner provided by law.

- (c) Captions of the several items of this Agreement are not a part of the context hereof and shall not be used in construing this Agreement, being intended only as aids in locating the various provisions hereof.
- (d) This Agreement shall inure to the benefit of, and be binding upon, the Seller's successors and assigns, executors and administrators.
- (e) In the event that this Agreement shall terminate in accordance with the provisions hereof, and in the absence of breach, all funds and documents deposited shall be returned to the depositor thereof and neither party shall be under any further obligation to the other by reason of this Agreement.
- (f) This offer is open for acceptance by delivery of a fully executed original hereof, up to and including 5:00 p.m. EST on Friday, September 30, 2015, and shall thereafter be withdrawn without notice. This Agreement, and any notices required or permitted to be given pursuant to this Agreement, shall be in writing and sent by overnight courier, prepaid, or hand delivered, transmitted by facsimile or e-mail, delivered personally or served by certified or registered mail, return receipt requested. Any facsimile or electronic signature shall be deemed to be an original.
- (g) This Agreement contains the entire agreement between the parties hereto and they shall not be bound by any terms, warranties or representations, oral or written, not herein contained. Notices to Seller may be mailed to 5505 West Gray Street, Tampa, Florida 33609 and to Buyers at 144 Creamery Street, Marshfield, Vermont 05658.

**BUYERS**

  
\_\_\_\_\_  
Daniel Phoenix

  
\_\_\_\_\_  
Julie Phoenix

**SELLER**

  
\_\_\_\_\_  
Burton W. Wiand, Receiver

compensation shall be resolved pursuant to paragraph 13(b) herein.

*Beth Harrington McCullough 9/24/15*  
Beth Harrington-McCullough  
Harrington Realty

**EXHIBIT A TO PURCHASE AND SALE AGREEMENT**

**LEGAL DESCRIPTION**

Being all and the same lands and premises conveyed to Geoffrey Nadel and Anne Nadel, Husband and Wife, as Tenants by the Entirety, by Warranty Deed of Arthur Nadel, Trustee to The Clark Nadel Revocable Trust Dated September 2, 2004 dated November 7, 2008 and recorded December 18, 2008 in Book 82 at Page 92 – 93 of the Town of Marshfield Land Records.

Parcel Identification Number: RT 114.A

The 9-1-1 address of the real property is: 3343 US Route 2 Marshfield, Vermont and 3353 US Route 2, Marshfield, Vermont.