

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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In re:	) Chapter 11
	)
LIFE FUND 5.1, LLC, <i>et al.</i> , <sup>1</sup>	) Case No. 09 B 32672
	)
Debtors.	) Jointly Administered
	) <b>Hearing Date: July 14, 2010</b>
	) <b>Hearing Time: 10:00 a.m.</b>

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**NOTICE OF HEARING ON TRUSTEE'S MOTION TO COMPROMISE AND SETTLE  
ADVERSARY PROCEEDING WITH AVIVA LIFE AND ANNUITY COMPANY**

**PLEASE TAKE NOTICE** that on **Wednesday July 14, 2010, at 10:00 a.m. central time**, or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable A. Benjamin Goldgar, Judge for the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, in Courtroom 613 of the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, 60604, or any other Judge who may be sitting in his place and stead, and then and there present for hearing the **Trustee's Motion to Compromise and Settle Adversary Proceeding with Aviva Life and Annuity Company**, a copy of which is enclosed herewith and hereby served upon you.

Dated: June 21, 2010

Respectfully submitted,

**JEFF MARWIL**, not individually, but solely in his capacity as Trustee

/s/ Jeremy T. Stillings

Marc E. Rosenthal (ARDC #06202850)  
Jeremy T. Stillings (ARDC# 06279868)  
PROSKAUER ROSE LLP  
70 West Madison, Suite 3800  
Chicago, Illinois 60602-4342  
(312) 962-3550, (312) 962-3551 (Fax)

*Counsel to the Trustee*

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<sup>1</sup> The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

**CERTIFICATE OF SERVICE**

I, Jeremy T. Stillings, an attorney, hereby certify that on June 21, 2010, I caused copies of the foregoing **Notice of Hearing** and the following **Trustee's Motion to Compromise and Settle Adversary Proceeding With Aviva Life and Annuity Company** to be served upon those parties on the attached service list in the manner indicated therein.

Dated: June 21, 2010

By: /s/ Jeremy T. Stillings

Served Via Court ECF System	
LANGLEY & BANACK INC. David S. Gragg Trinity Plaza II, 9 <sup>th</sup> Floor 745 E. Mulberry San Antonio, TX 78212-3166	PERKINS COIE LLP Brian A. Audette David M. Neff 131 S. Dearborn St. Suite 1700 Chicago, IL 60603
OFFICE OF THE US TRUSTEE Richard C. Friedman Sandra Rasnak 219 S. Dearborn St. Room 873 Chicago, IL 60604-1702	ARNSTEIN & LEHR, LLP Michael Gesas Miriam Stein Barry Chatz Kevin Morse 120 South Riverside Plaza Suite 1200 Chicago, IL 60606-3910
CHAPMAN & CUTLER LLP David Audley Carly Jones 111 W. Monroe Suite 1600 Chicago, IL 60603	FUNKHOUSER VEGOSEN LIEBMAN & DUNN, LTD Daniel Graham Neil Rosenbaum 55 W. Monroe St. Suite 2300 Chicago, IL 60603

<b>Served Via Court ECF System</b>	
<p>GOULD &amp; RATNER LLP  Mark E. Leipold  222 N. LaSalle St.  Suite 800  Chicago, IL 60601</p>	<p>GROCHOCINSKI, GROCHOCINSKI &amp; LLOYD, LTD.  David E. Grochocinski  Ariane Holtschlag  1900 Ravinia Place  Orland Park, IL 60462</p>
<p>HIRSCH &amp; WESTHEIMER, P.C.  Michael J. Durrschmidt  Bank of America Center  25th Floor  700 Louisiana  Houston, TX 77002</p>	<p>JOHNSON, TRENT, WEST &amp; TAYLOR, LLP  Lori Hood  Deborah Fritsche  919 Milam  Suite 170  Houston, TX 77002</p>
<p>JONES, MORRIS, LLP  Erin E. Jones  2700 Post Oak  Suite 1120  Houston, TX 77056</p>	<p>KATTEN MUCHIN ROSENMAN LLP  Paige E. Barr  525 W. Monroe St.  Chicago, IL 60661</p>
<p>OFFICE OF THE TEXAS ATTORNEY GENERAL  Edith Stuart Phillips  Bankruptcy &amp; Collection Division  P.O. Box 12548, MC-008  Austin, TX 78711</p>	<p>SHAW GUSSIS FISHMAN  Gordon Gouveia  321 N. Clark  Suite 800  Chicago, IL 60654</p>
<p>SMITH AMUNDSEN LLC  Brian M. Graham  Ean L. Kryska  Bryan Minier  150 N. Michigan Ave.  Suite 3300  Chicago, IL 60601</p>	<p>VEDDER PRICE  Michael Eidelman  Arlene Gelman  222 N. LaSalle St.  Suite 2600  Chicago, IL 60601</p>

<b>Served Via United States First Class Mail</b>	
<p>NYMASTER &amp; GOODE                      John Clendenin                      700 Walnut Street                      Suite 1600                      Des Moines, IA 50309</p> <p><b>(Counsel for AVIVA )</b></p>	<p>CHITTENDEN, MURDAY &amp; NOVOTNY                      LLC                      David J. Novotny                      Craig M. Bargher                      303 W. Madison St.                      Suite 1400                      Chicago, IL 60606                      Joseph R. Jeffery</p> <p><b>(Counsel to Aviva)</b></p>
<p>BLALOCK, WALTERS, HELD &amp;                      JOHNSON, P.A.                      Mary Fabre Levine                      802 11th Street West                      Bradenton, FL 34205</p>	<p>GIBBS &amp; BRUNS LLP                      Ashley McKeand                      1100 Louisiana                      Suite 5300                      Houston, TX 77002</p>
<p>BRACEWELL &amp; GIULIANI LLP                      Dean Tillostson                      Tony Visage                      711 Louisiana Street                      Suite 2300                      Houston, TX 77002</p>	<p>FORIZS &amp; DOGALI, P.A.                      Zala Forizs                      4301 Anchor Plaza Pkwy                      Suite 300                      Tampa, FL 33634</p>
<p>GERSTNER &amp; GERSTNER                      J.Gerstner                      M. Gerstner                      Attorney For Nancy J. Groppi                      53 W. Jackson Blvd.                      Suite 1538                      CHICAGO, IL 60604</p>	<p>HAL F. MORRIS                      Assistant Attorney General                      Texas Attorney General's Office                      P.O. BOX 12548, MC-008                      Austin, TX 78711-2548</p>

<b>Served Via United States First Class Mail</b>	
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<p>Nancy J. Groppi 5837 Electric Avenue Berkeley, IL 60163-1522</p>	<p>US SECURITIES &amp; EXCHANGE COMM. Toby Galloway Fort Worth Regional Office 801 Cherry St. 19th Floor Fort Worth, TX 76102</p>
<p>WALDRON &amp; SCHNEIDER, LLP Marc H. Schneider Attorney to Troy Broussard &amp; Ivo Dabelic University Park 15150 Middlebrook Drive Houston, TX 77058</p>	<p>Patricia A. Navin 32 Mill Road Hampton, NH 03842</p>
<p>PHELAN HALLINAN &amp; SCHMIEG, LLP Judith T. Romano 1617 John F. Kennedy Boulevard Suite 1400 Philadelphia, PA 19103</p>	<p>PROVIDENT CAPITAL INDEMNITY LTD Minor Vargas Calvo Desarrollos Comerciales Ronim,SA Oficinas Ejecutivas San Rafael San Rafael-Heredia, Costa Rica</p>
<p>PROVIDENT CAPITAL INDEMNITY LTD C/O Texas Secretary of State as Agent For Service P.O. Box 12887 Austin, TX 78711-2887</p>	<p>Russell E. Mackert 5555 West Loop South Suite 605 Houston, TX 77401</p>
<p>Sumner Kai 11911 Pine Belt Dr. Cypress, TX 77429</p>	<p>Thomas G. Ferrell 3006 Carrie Cove Ct. Spring, TX 77386</p>
<p>THOMPSON &amp; KNIGHT LLP J. Brannon K. Richter 1722 Routh St. Suite 1500 DALLAS, TX 75201</p>	

<b>Served Via United States First Class Mail</b>	
Edward D. Hellekson 6889 Clearwater Rd. #104 Baxter, MN 56425	Gerald J. Milliken Living Trust c/o Gerald J. Milliken 2314 Central Blvd. Merrick, NY 11566-3719
John E. Spalding & Laura H. Spalding JTWROS 1561 Kirby Drive Houston, TX 77019	Dan Pascal Vincent 3400 Travis St. Houston, TX 77002
Linda M. Cox 15827 Mesa Gardens Drive Houston, TX 77095	Bonnie E. Bryant 951 Armour Rd. Oconomowoc, WI 53066-3935
Marilyn T. Wasson 921 E. Manzanita Dr. Union, WA 98592-9704	Alan Nordby 114 Camargo Lane Pasco, WA 99301-6114
Arturo C. Sapida 81870 Mountain View Lane LaQunita, CA 92253-7610	

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
LIFE FUND 5.1, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 09 B 32672
	)	
Debtors.	)	Jointly Administered
	)	<b>Hearing Date: July 14, 2010</b>
	)	<b>Hearing Time: 10:00 a.m.</b>

**TRUSTEE’S MOTION TO COMPROMISE AND SETTLE  
ADVERSARY PROCEEDING WITH AVIVA LIFE AND ANNUITY COMPANY**

Jeff Marwil, not individually, but solely in his capacity as chapter 11 trustee (the “Trustee”) to the bankruptcy estates (the “Estates”) of the above-captioned debtors (collectively, the “Debtors”), by and through his undersigned counsel, respectfully requests by this motion (the “Motion”) that the Court enter an order pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 105 of title 11 of the United States Code (11 U.S.C. §§ 101, *et. seq.*, the “Bankruptcy Code”) approving the Settlement Agreement (the “Settlement Agreement”) with Aviva Life and Annuity Company (“Aviva”) attached as **Exhibit A** to the proposed order submitted herewith and incorporated herein by reference. In support of the Motion, the Trustee respectfully states as follows:

**Jurisdiction**

1. This Court has jurisdiction over these cases pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b).

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<sup>1</sup> The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

3. Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and rule based predicates for the relief requested herein are Bankruptcy Rule 9019 and section 105 of the Bankruptcy Code.

### **Background**

5. In June of 2003, Aviva issued universal life policy number B05020454 with a face amount of \$5,000,000 (the "Policy"). Subsequently, in or around July of 2005, one or more of the Debtors acquired an ownership interest in the Policy.

6. Provident Capital Indemnity ("PCI") issued a bond related to the Policy (the "PCI Bond") in the face amount of \$5,000,000 and that was intended to secure the value of the Policy by paying the amount of the death benefit due under the Policy in the event that the insured under the Policy was still living as of the maturity date of the PCI Bond. The PCI Bond matured by its terms in May of 2009. The Trustee has evidence that, prior to the Petition Date, the Debtors demanded that PCI perform under the PCI Bond. The Trustee, however, believes that PCI did not pay the principal of the PCI Bond due.

7. On September 2, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases (the "Chapter 11 Cases"). On September 16, 2009, this Court granted a motion of the office of the United States Trustee (the "UST") requesting appointment of a chapter 11 trustee under section 1104(a) of the Bankruptcy Code. On September 21, 2009, this Court approved the appointment of Patrick Collins as chapter 11 trustee.

8. Subsequent to the Petition Date, a dispute arose between the Debtors and Aviva as to the status of the Policy. Aviva claimed that the Policy lapsed due to non-payment of

premiums and trustee Collins claimed that the Debtors and their estates had paid all required premiums.

9. On January 20, 2010, trustee Collins filed an adversary complaint naming Aviva as defendant (the “Adversary Complaint”), initiating in the Court adversary proceeding 10 A 104 (the “Adversary Proceeding”), and seeking, among other things, a declaration that the Policy was in full force and effect.

10. On March 8, 2010, after Mr. Marwil was elected Trustee by creditors of the Debtors, this Court entered an order certifying Mr. Marwil’s election as Trustee. Subsequent to his election, the Trustee and his professionals continued to prosecute the Adversary Proceeding, analyzed the value of the Policy and the merits of the Adversary Complaint, and engaged in settlement discussions with Aviva regarding a consensual resolution to the Adversary Proceeding.

11. Aviva answered the Adversary Complaint, denying that the Policy was in force and asserting various defenses. In addition, counsel for Aviva advised counsel to the Trustee that Aviva planned to file a counter-claim to rescind the Policy on the basis of lack of insurable interest and/or misrepresentation in the application for the Policy.

12. The Trustee, subject to approval of the Court, and Aviva have agreed to settle and compromise the Adversary Proceeding on the terms set forth in the Settlement Agreement. Under the Settlement Agreement, Aviva will pay \$539,039.63 (the “Settlement Amount”) to the Estates and the Policy will be deemed terminated and no longer in force and effect. The Settlement Amount is the total amount of all premiums that have been paid on the Policy. Under the Settlement Agreement, the Trustee, on behalf of the Estates, and Aviva will exchange general

mutual releases for all claims and causes of action related in any way to the Policy. The Estates do not release any claims they may have against PCI.

**Relief Requested**

13. By this Motion, the Trustee seeks entry of an order approving the Settlement and authorizing the Trustee to execute and perform under the Settlement Agreement.

14. The Trustee believes that the agreement memorialized by the Settlement Agreement is a fair compromise, as the Estates will essentially receive a refund of all premiums paid on the Policy to date. The settlement is warranted because the Settlement Amount: (a) is greater than what the Estates would receive if the Court were to determine the Adversary Proceeding in Aviva's favor, in which case the Policy would be deemed lapsed and the Debtors would receive no value for the Policy or premium payments made thereunder; and (b) is, the Trustee believes, likely greater than the value of Policy, taking into consideration the death benefits that would be paid upon maturity of the Policy, the life expectancy of the insured under the Policy (between 10 and 13 years, as projected by three independent sources obtained by the Trustee and his professionals), and the premium payments that would have to be made to maintain the Policy if the Trustee were to prevail in the Adversary Proceeding (approximately \$120,000 per year).

15. The Estates will maintain any rights to pursue PCI for any breach of the PCI Bond.

**Basis for Relief Requested**

16. Bankruptcy Rule 9019(a) authorizes a bankruptcy court to approve a settlement on motion after notice and a hearing. Bankruptcy courts have broad discretion to approve settlements that are in the best interests of a debtor's estate. See *In re Energy Co-op., Inc.*, 886

F.2d 921, 927 (7th Cir. 1989); *LaSalle Nat'l Bank v. Holland (In re American Reserve Corp.)*, 841 F.2d 159, 161 (7th Cir. 1987). The Seventh Circuit has held that in evaluating a proposed bankruptcy settlement, the bankruptcy court must apprise itself “of all facts necessary to evaluate the settlement and make an ‘informed and independent judgment’ about the settlement.” *In re Energy Co-op., Inc.*, 886 F.2d at 924-25 (quoting *American Reserve Corp.*, 841 F.2d at 162). Further, a court should approve a proposed settlement where, as here, a party demonstrates that the settlement does not “fall below the lowest point in the range of reasonableness.” *In re Energy Co-op., Inc.*, 886 F.2d at 929 (citations omitted).

17. The proposed settlement is in the best interests of the Estates and their creditors as it is fair, avoids the uncertainty and expense of litigation, and falls well within the “range of reasonableness.” Under the Settlement Agreement, the Debtors will receive over \$500,000 cash for the benefit of the Estates. This amount is greater than what the Debtors would receive if Aviva were to prevail in the Adversary Proceeding, which is nothing, and is likely greater than what the Estates would receive if they sold the Policy in an arms’ length transaction. Costs to the Estates of prosecuting the Adversary Proceeding and defending any counter-claim could be significant. Moreover, the Debtors and the Estates will not have to use valuable Estate funds to make premium payments under the Policy for an unknown time, which they would have to do if they prevailed in the Adversary Proceeding.

18. This settlement resulted from a careful analysis of the merits of the Adversary Proceeding and the value of the Policy.

#### **Notice**

19. A copy of this Motion has been served upon: (a) counsel to Aviva; (b) counsel to the UST; (c) all parties requesting notice in the Chapter 11 Cases; and (d) parties who filed

proofs of claim that specifically reference the Policy. The Trustee also has posted this Motion and the Settlement Agreement to the web site established for the benefit of investors of the Debtors and others in the Chapter 11 Cases. Although such notice is not recognized by the Bankruptcy Code and the Bankruptcy Rules, the Trustee believes that this notice is helpful and appropriate in light of the large numbers of creditors who actively monitor the website, the expense that the Trustee would incur to provide notice to such parties via United States Mail or other means, and the delay attendant with such parties receiving notice via United States Mail or means other than by electronic publication or service. Under the circumstances, the Trustee submits that the notice provided is adequate.

20. Pursuant to Bankruptcy Rule 2002(a)(3), twenty-one days notice to all creditors is required for a hearing on approval of a compromise or settlement of a controversy, unless the Court finds that cause has been shown for the notice not be sent to all creditors or shortened.

21. The Trustee requests that the Court find that notice of this Motion and the settlement proposed hereby is sufficient, due to the time and expense the Estates would incur in notifying all creditors of the settlement proposed hereby and by the Trustee's use of the website maintained in the Chapter 11 Cases. Under such circumstances, the Trustee asserts that providing notice as described above is appropriate and sufficient.

**WHEREFORE**, the Trustee respectfully requests that the Court enter an order in substantially in the form submitted herewith: (1) approving the Settlement Agreement pursuant to Bankruptcy Rule 9019(a); (2) authorizing the Trustee to execute and perform the Settlement Agreement; and (3) granting such other and further relief as the Court deems just and proper.

Dated: June 21, 2010

Respectfully submitted,

**JEFF MARWIL**, not individually, but solely in his capacity as Trustee

By: /s/ Jeremy T. Stillings

Marc E. Rosenthal (ARDC #06202850)  
Jeremy T. Stillings (ARDC# 06279868)  
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*Counsel to the Trustee*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<hr/>	)	Chapter 11
In re:	)	
LIFE FUND 5.1, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 09 B 32672
	)	
Debtors.	)	Jointly Administered

**ORDER AUTHORIZING TRUSTEE TO EXECUTE AND PERFORM UNDER  
SETTLEMENT AGREEMENT WITH AVIVA LIFE AND ANNUITY COMPANY**

Upon consideration of **Trustee's Motion to Compromise and Settle Adversary Proceeding With Aviva Life and Annuity Company** (the "Motion"),<sup>2</sup> this Court having considered the Motion and otherwise being fully advised in the premises; the Court finding and determining that: (A) it has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (B) venue is proper in this district pursuant to 28 U.S.C. § 1409, (C) this is a core proceeding pursuant to 28 U.S.C. § 157 (b), (D) granting the relief requested in the Motion is in the best interests of the Debtors, the Estates, and other parties-in-interest, (E) cause exists to limit notice as requested in the Motion, and (F) appropriate notice and opportunity for a hearing on the Motion was provided; and for sufficient cause shown,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted in its entirety.
2. The Trustee is authorized to execute and perform the Settlement Agreement.
3. This order shall be effective immediately upon entry by the Court.

<sup>1</sup> The Debtors in the cases are: (1) Life Fund 5.1, LLC; (2) Life Fund 5.2, LLC; (3) A&O Life Fund, LLC; (4) A&O Resource Management, Ltd.; (5) A&O Bonded Life Settlements, LLC; (6) A&O Bonded Life Assets, LLC; and (7) Houston Tanglewood Partners, LLC.

<sup>2</sup> Each capitalized term used but not defined herein shall have the meaning ascribed thereto in the Motion.

4. The Court shall retain jurisdiction to hear and determine any controversy arising from the implementation of this order.

ENTERED:

Dated: \_\_\_\_\_, 2010

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A to Proposed Order**

**Settlement Agreement**

attached hereto

## SETTLEMENT AGREEMENT

This settlement agreement (the “Settlement Agreement”) is entered into as of the 28th day of May, 2010, by and between the Chapter 11 estates of Houston Tanglewood Partners, LLC (“Houston Tanglewood”), A&O Resource Management, Ltd. (“A&O Management”), Life Fund 5.1, LLC (“5.1”), Life Fund 5.2, LLC (“5.2”), A&O Life Fund, LLC (“A&O Fund”), A&O Bonded Life Settlement, LLC (“A&O Bonded”), and A&O Bonded Life Assets, LLC (“A&O Life Bonded”), and together with Houston Tanglewood, A&O Management, 5.1, 5.2, A&O Fund, A&O Bonded, each a “Debtor” and, in groups or collectively, the “Debtors”) and Aviva Life and Annuity Company (“Aviva”) (Aviva, the Trustee (as defined below) and each of the Debtors, each a “Party” and collectively, the “Parties”).

## RECITALS

WHEREAS, on June 20, 2003, Aviva issued a universal life insurance policy, designated as Policy No. B05020454 with a face amount of \$5,000,000 (the “Policy”).

WHEREAS, on September 2, 2009 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (11 U.S.C. §§ 101, *et. seq.*, the “Bankruptcy Code”).

WHEREAS, the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “Court”) entered an order directing that the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”) be jointly administered under Case No. 09-32672 assigned to Debtor 5.1.

WHEREAS, on September 21, 2009, the Court approved the appointment of Patrick Collins as Chapter 11 trustee of the Debtors’ estates (collectively, the “Estates”) and on March 8, 2010, after Jeff Marwil was elected Chapter 11 trustee by creditors of the Debtors, the Court

entered an order certifying Mr. Marwil's election as Chapter 11 trustee ("Trustee") of the Estates.

WHEREAS, Houston Tanglewood is the owner of the Policy.

WHEREAS, prior to the Petition Date, one or more of the Debtors have paid certain premiums under the Policy.

WHEREAS, Aviva asserts that the Policy lapsed for failure of the owner of the Policy to timely pay premiums under the Policy.

WHEREAS, the Trustee asserts that Policy premiums were timely paid and, on January 20, 2010, then-trustee Collins filed an adversary complaint naming Aviva as defendant (the "Adversary Complaint"), initiating in the Court Adversary Proceeding No. 10 A 104 (the "Adversary Proceeding") and seeking, among other things, a declaration that the Policy remains in full force and effect.

WHEREAS, Aviva has answered the Adversary Complaint and asserts that it has valid defenses to the Adversary Complaint.

WHEREAS, Aviva believes that it has grounds to rescind the Policy, and intended to assert an action for rescission in the Adversary Proceeding if not for this Settlement Agreement.

WHEREAS, the Parties desire to avoid the uncertainties and expense of continued litigation with respect to the Adversary Complaint and any and all potential litigation and disputes regarding other claims or causes of action relating to the Policy that (1) any Debtor has or may have against Aviva and (2) Aviva has or may have against any Debtor, in each case for acts occurring prior to the date of this Settlement Agreement, and to settle and compromise the Adversary Proceeding and other actual, potential or unknown claims and causes of action related

in any way to the Policy on the terms set forth below, without any Party admitting any liability therefor.

WHEREAS, the Trustee and Aviva each have consulted with their respective counsel in connection with the matters related to the subject matter of this Settlement Agreement.

WHEREAS, each of the Parties agrees to bear its own costs and expenses, including but not limited to attorney, paralegal and expert witness fees, arising out of or related to this Settlement Agreement, including, without limitation, the Adversary Proceeding and any other disputed matters that are subject to and resolved by this Settlement Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals Incorporated.** The recitals, definitions and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Settlement Agreement.

2. **Approval of the Settlement Agreement.** As soon as practicable after execution of this Settlement Agreement by the Trustee and Aviva, the Trustee shall file with the Court in the Chapter 11 Cases, and seek timely approval of, a motion seeking approval of the Settlement Agreement and authority to perform under the Settlement Agreement.

3. **Settlement Payment and Rescission of Policy.** Within five (5) business days after a Final Order of the Court (as defined below) in the Chapter 11 Cases authorizing the Trustee to execute and perform under this Settlement Agreement, Aviva shall rescind the Policy and pay \$539,039.63 (the "Settlement Amount") to the Trustee on behalf of the estate of Houston Tanglewood via wire transfer using wire instructions provided to Aviva by the Trustee. For purposes of this Settlement Agreement, "Final Order" means an order of the Court, as

entered on the docket of the Court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order either: (a) no objection was filed prior to its entry; or (b) if an objection was filed and overruled, the time to appeal any such objection overruled by the Court has expired and as to which no appeal or motion for stay or other relief from such order was filed or, if filed, remains pending. For purposes of clarity, the possibility that a motion may be filed pursuant to rules 9023 or 9024 of the Federal Rules of Bankruptcy Procedure beyond the time to appeal shall not mean that an order is not a final order. The Trustee and Aviva hereby stipulate that the Settlement Amount is equal to the amount of premiums previously paid on the Policy.

**4. Dismissal of the Adversary Proceeding.** Within five (5) business days after receipt of the Settlement Amount, the Trustee shall cause the Adversary Complaint to be dismissed with prejudice and with each party thereto to bear its own costs and attorneys' fees.

**5. Survival of Settlement Agreement.** All of the terms and conditions of this Settlement Agreement as well as any rights and benefits inuring to the benefit of the Parties shall survive the Estates' receipt of the Settlement Amount from Aviva as specified in paragraph three (3) of this Settlement Agreement.

**6. Waiver/Release of Claims by Estate Parties.** Subject to and conditioned upon (a) an order of the Court in the Chapter 11 Cases approving the Settlement Agreement becoming a Final Order, and (b) receipt by the Trustee of the Settlement Amount from Aviva in the manner described in paragraph three (3) above, the Debtors and Estates, their collective predecessors, successors and assigns, and the Trustee and his agents, professionals, employees, legal representatives, predecessors, heirs, successors and assigns, each in its capacity as such, and each of the foregoing (collectively, the "Estate Parties"), shall be conclusively deemed to have

unconditionally, absolutely and irrevocably released Aviva and its officers, agents, professionals, employees, legal representatives, predecessors, heirs, agents, successors and assigns, each in its capacity as such, and each of them (collectively, the “Aviva Parties”) with respect to all manners of action, causes of action, suits, debts, accounts, promises, warranties, damages and consequential damages, demands, agreements, costs, expenses, claims or demands whatsoever of any kind or nature (“Claims”), whether known or unknown, liquidated or unliquidated, disputed or undisputed, contingent, inchoate or matured, in law or in equity, including but not limited to, those claims set forth in the Adversary Complaint, which the Estate Parties have or ever had against the Aviva Parties related to or arising out of the Policy (including any claim for death benefits thereunder), provided, however, that nothing contained in this paragraph shall be deemed or construed to be a covenant, release, waiver or discharge of the terms and conditions of this Settlement Agreement.

7. **Waiver/Release of Claims by Aviva Parties.** Subject to and conditioned upon an order of the Court in the Chapter 11 Cases approving the Settlement Agreement becoming a Final Order, the Aviva Parties shall be conclusively deemed to have unconditionally, absolutely and irrevocably released the Estate Parties with respect to all Claims, whether known or unknown, liquidated or unliquidated, disputed or undisputed, contingent, inchoate or matured, in law or in equity, including but not limited to, any counter claims or defenses that were raised or could have been raised in any response to the Adversary Complaint, which the Aviva Parties have or ever had against the Estate Parties related to or arising out of the Policy, provided, however, that nothing contained in this paragraph shall be deemed or construed to be a covenant, release, waiver or discharge of the terms and conditions of this Settlement Agreement.

**8. Waiver of California Civil Code 1542.** The Parties each hereby acknowledge that states may have laws that generally provide as follows and specifically waive the benefit of such laws, including, without limitation, California Civil Code section 1542, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Notwithstanding this statute, or any other similar state law, the Trustee, on behalf of the Estate Parties, and Aviva, on behalf of the Aviva Parties, each respectively, agrees to releases of the Claims described herein and as set forth in paragraphs six (6) and seven (7) above, in each case which Claims may be unknown or unsuspected at the time of the execution of this Settlement Agreement.

**9. Jurisdiction.** The Parties agree that the Court shall retain exclusive jurisdiction to the fullest extent possible over the interpretation and enforcement of this Settlement Agreement and over any dispute between them in any way related to this Settlement Agreement. The Parties further agree that this Settlement Agreement shall be construed and governed by the laws of the State of Illinois irrespective of its choice of law rules.

**10. Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Estate Parties and the Aviva Parties.

**11. Entire Agreement.** This Settlement Agreement constitutes the entire agreement of the Parties as to the subject matter hereof and is the final and complete expression of their intent. The undersigned acknowledge that there are no communications or understandings, oral or written, contrary, different or which in any way restrict this Settlement Agreement. The undersigned further acknowledge that all prior agreements, communications, and understandings

within the scope of the subject matter of this Settlement Agreement are, upon execution of this Settlement Agreement, superseded, null and void. This Settlement Agreement can only be changed, modified or discharged if consented to in a writing executed by the Trustee and an officer of Aviva and, if applicable with respect to the Debtors, approved by order of the Court.

**12. Counterparts.** This Settlement Agreement may be executed in one or more counterparts, by facsimile, electronic mail or other means acceptable to the Parties, with each counterpart to be considered an original portion of this Settlement Agreement.

**13. Segregation.** In the event that any one or more provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**14. Advice of Counsel.** The Parties acknowledge that each Party has made an investigation of the facts pertaining to the Settlement Agreement provided herein and all matters pertaining thereto, as it deems necessary. The Parties further acknowledge: (a) each Party is represented by experienced counsel; (b) each Party has read this Settlement Agreement and understands its contents; and (c) each Party is entering into this Settlement Agreement voluntarily and without duress, and with a full understanding of its terms. The Parties agree that no Party shall later seek to overturn or invalidate any aspect of this Settlement Agreement on grounds of unconscionability, oppression or any similar reason.

**15. No Admission of Liability.** Nothing contained in this Settlement Agreement shall be deemed to be an admission of any liability or lack of merit in any claim, by any Party, of any matter, claim or defense previously in dispute. The Settlement Agreement shall have no

precedential value, and shall not be used in any proceeding or litigation as evidence of the Parties' respective rights, duties or obligations under any policy of insurance.

**16. Ultimate Expression of Intent.** Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true. Nevertheless, it is the intention of the Parties to fully, finally and forever settle and release any and all controversies among themselves, and all claims relative thereto, that do now exist or heretofore have existed between them. In furtherance of such intention, each release given herein shall be and remain in effect as a full and complete release of all released matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

**17. Authority.** The Trustee, on behalf of the Estates and the Estate Parties, and the individual executing this Settlement Agreement on behalf of Aviva and the Aviva Parties, respectively, represent and warrant that they have the authority to execute, deliver and perform this Settlement Agreement on behalf of such entities and that when executed by the undersigned and after entry of a final order of the Court in the Chapter 11 Cases authorizing the Trustee to execute and perform under the Settlement Agreement, the Estate Parties and the Aviva Parties, respectively, shall be bound by the terms hereunder.

**18. Costs.** Each Party shall bear its own costs and attorneys' fees in connection with the preparation, negotiation, review and documentation of this Settlement Agreement and with respect to all matters subject to this Settlement Agreement.

**19. Notices.** Any and all notices required or permitted under this Settlement Agreement and any and all correspondence shall be in writing and shall be personally delivered or mailed by registered or certified mail, return receipt requested, or by overnight delivery to the

Parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notice to Estate Parties:

Proskauer Rose LLP  
70 W. Madison St.  
Suite 3800  
Chicago, IL 60602  
Attn: Jeremy T. Stillings  
Telephone: (312) 962-3529  
Facsimile: (312) 962-3551  
Email: jstillings@proskauer.com

Notice to Aviva Parties:

Nyemaster Goode, P.C.  
700 Walnut Street  
Suite 1600  
Des Moines, IA 50309  
Attn: John T. Clendenin  
Telephone: (515) 283-3138  
Facsimile: (515) 283-8045  
Email: jtc@nyemaster.com

IN WITNESS WHEREOF, the Parties, each by persons duly authorized, have caused the Settlement Agreement to be executed as of the day and year first written above.

**HOUSTON TANGLEWOOD PARTNERS, AVIVA LIFE AND ANNUITY COMPANY  
LLC  
A&O RESOURCE MANAGEMENT,  
LTD.  
LIFE FUND 5.1, LLC  
LIFE FUND 5.2, LLC  
A&O LIFE FUND, LLC  
A&O BONDED LIFE SETTLEMENT,  
LLC; and  
A&O BONDED LIFE ASSETS, LLC**

X: \_\_\_\_\_

**Jeff Marwil**, not individually, but solely in his capacity as Trustee

Dated: \_\_\_\_\_

X: Erik H. Askelsen

**Erik H. Askelsen**  
Vice President and Senior Counsel

Dated: 6-18-10