

# AGREEMENT

**THIS AGREEMENT is made** as of March 21, 2019 (the "Effective Date") by and between Alan Elliott ("Elliott"), Al's Records & Tapes ("Al's"), and Amazing Grace Movie, LLC ("AGLLC") (all collectively and jointly and severally bound hereunder as "AE," except as otherwise provided in par.10A below), 1633 N. Stanley Avenue, Los Angeles, CA 90046 and the Estate of Aretha Franklin (the "Estate") c/o David J. Bennett, Thav Gross PC, 30150 Telegraph Road, Suite 444, Bingham Farms, Michigan 48025, each of whom may be referred to as a "Party" and/or collectively as "Parties".

**WHEREAS**, in January, 1972 Warner Bros.- Seven Arts, Inc. (such entity and its affiliates, successors and assigns, collectively "Warner") filmed with sound the featured musical performances of Franklin in two concerts (the "Concerts") of primarily gospel songs in front of a live congregation at the New Temple Missionary Church of Los Angeles;

**WHEREAS**, although the Concerts were filmed and recorded (the audio and visual recordings thereof, collectively, the "Concert Footage") and the record album of the concerts was released in 1972 by Warner's affiliate, Atlantic Recording Corporation, under the title "Amazing Grace" and went on to be a very successful album, creation of any movie or broadcast of the Concerts was not completed because of technical problems;

**WHEREAS**, in 2007 Elliott and Al's entered into an agreement with Warner, which agreement was subsequently amended (said agreement, as amended, the "Quitclaim Agreement"), whereby Elliott and Al's acquired all of Warner's right, title and interest in and to the Concert Footage, associated sound and other film elements and documents related to the above-mentioned Concerts in return for certain consideration, including deferred compensation of US\$35,000 and a net proceeds participation to Warner to be negotiated in good faith between AE and Warner ( "Warner Participation");

**WHEREAS**, Elliott created the documentary film entitled "Amazing Grace" from the Concert Footage he acquired from Warner. Elliott completed post-production of the documentary at his expense and attempted to exhibit "Amazing Grace" at the Telluride Film Festival in 2015, believing with the permission from Warner that the assignment from Warner established AE's right to do so and that no further permission from Franklin was needed;

**WHEREAS**, Aretha Franklin ("Franklin"), who was still living at the time, disputed Elliott's and Al's rights to exhibit the documentary film and otherwise exploit it and the unused footage and sound without Franklin's additional written consent (the "Dispute") and obtained a temporary injunction against the exhibition of the documentary at the Telluride Film Festival in 2015;

**WHEREAS**, Aretha Franklin passed away on August 16, 2018 and any existing rights of hers to the subject performances passed to her Estate, whose Personal Representative is Sabrina Owens, and;

**WHEREAS**, AE represents and warrants to the Estate that it possesses rights to create, distribute and exploit a documentary film of the Concerts and related Concert Footage elements (presently entitled "Amazing Grace" with a running time of approximately 88 minutes and as initially released in the fall of 2018 for Academy Award consideration and shown to the Franklin family (the "Film")), and to otherwise exploit the Film and Concert Footage assigned to AE by Warner, subject to the terms and conditions of this Agreement;

**WHEREAS**, AE desires to release, distribute, present, and fully exploit the Film and the Concert Footage with the participation of the Estate in accordance with and subject to the terms and conditions set forth in this Agreement;

**WHEREAS**, each Party comprising AE represents and warrants that all right, title and interest it owns, controls or is the beneficial owner of directly or indirectly through any entity or other third party has been irrevocably transferred to AGLLC; and

**WHEREAS**, the Estate desires to join in the exploitation of the Film and the related Concert Footage under the terms and conditions expressly set forth herein;

**NOW THEREFORE**, in consideration of the covenants and promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties do hereby acknowledge, they hereby agree to the following:

**1. CONDITIONS / CLOSING:** As express conditions precedent to the payment of the Estate Guarantee as defined below, it is required that the following occur, it being the Parties' intention to have the initial US\$250,000 payment of the Estate Guarantee as set forth in par. 3.1(a)i below, dismissal of litigation and mutual releases made, executed and delivered not later than March 25, 2019:

**END OF LITIGATION AND MUTUAL RELEASE:** Following receipt of payment by the Estate as set forth below in par. 3(a)i, the Parties agree that litigation between them in the United States District Court for the District of Colorado, styled as: Aretha Franklin, Plaintiff v. Alan Elliott, D/B/A Al's Records & Tapes, Defendant, as Civil Action No. 15-cv-01921-JLK, which has been closed administratively subject to reopening, shall remain closed and not be reopened by either Party hereto, it being the intent of the Parties hereto to end that litigation definitively by executing the mutual release of all claims attached hereto as Appendix 1. Except for the obligations expressly set forth herein, such mutual release is intended to fully resolve all past disputes and disagreements between the Parties relating in any way to the Dispute, including but not limited to any and all court filings, or court orders.

**2. GRANT OF RIGHTS:**

- (a) Subject to payment in full of the Estate Guarantee (as defined below) the Estate hereby sells, grants, sets over, and assigns exclusively to AE, all rights of each and every kind, nature, and character whatsoever that the Estate possesses in and to the name, image and performance of Aretha Franklin solely as embodied in the Film and Concert Footage (individually and collectively, the "Appearance") including, but not limited to, all rights to distribute, display, market, advertise, promote and publicize the Appearance and otherwise exploit the Appearance solely as comprised within the Film and Concert Footage, in all media, whether now known or hereafter devised, including, without limitation, all theatrical, non- theatrical, home entertainment, television and digital media and methods of distribution whether existing now or in future, including, but not limited to, by means of the internet and mobile technologies, in any and all languages, subject in all instances to the terms and conditions of this Agreement including without limitation the terms of the Ancillary Rights Exhibit "R" attached hereto and incorporated herein, and further provided AE agrees not to permit any re-recording, digitization and/or other alteration of any songs so as to dub the singing voice of Aretha Franklin, it being agreed that AE, its licensees and assignees shall

have the right to dub Aretha Franklin's voice only when she is speaking (and not when she is singing), throughout the world (the "Territory"). The exclusive rights granted to AE in and to the Appearance as set forth herein shall be collectively referred to as the "Appearance Rights" which, without limiting the foregoing, the Estate hereby quitclaims to AE, including, without limitation, any and all distribution rights of each and every kind, nature and character whatsoever in and to the Appearance as incorporated in the Film including, without limitation, all theatrical rights, non-theatrical rights, home entertainment rights, television and cable rights, exclusively, in the Territory (the world), including, without limitation, the exclusive right to reproduce, distribute, display, exhibit, promote, market, advertise, broadcast, sell, rent, give-away, sub-distribute and otherwise exploit the Film in all media whether now known or hereafter devised, in any and all languages, provided AE shall not permit any re-recording, digitization and/or other alteration of any songs so as to dub the singing voice of Aretha Franklin, it being agreed that AE and its licensees and assignees shall have the right to dub Aretha Franklin's voice only when she is speaking, through any and all means, methods, and manners of exhibition, distribution and exploitation, whether now known or existing or hereafter devised or invented including, but not limited to, distribution through the internet, collectively, the "Distribution Rights". The Appearance Rights and the Distribution Rights are individually and collectively referred to herein as the "Rights".

- (b) Notwithstanding any other provision hereof, except to the extent expressly set forth in (and subject in all instances to) Exhibit R hereto, the Rights expressly include the right to use the Appearance, Aretha Franklin's name, voice, likeness, biography and/or any portion or element thereof in connection with any and all ancillary and subsidiary rights in connection with the Film, the Concert Footage and/or Appearance, including but not limited to merchandising; commercial tie-in rights; performance rights; print and/or text publication rights; electronic game rights (including but not limited to videogame rights); music video rights; soundtrack rights, publishing rights, music publishing rights, Subsequent Production Rights (as defined below); and Clip Rights (as defined and subject to the terms below) (collectively the "Reserved Rights").
- (c) "Subsequent Production Rights" means the right to develop and/or exploit any production that is derivative of the Concert Footage, including but not limited to any remake, sequel, television production, spin-off, interactive production rights, live stage production (whether musical or not), and productions produced for any other medium or channel of distribution now or hereafter known or devised).
- (d) "Clip Rights" means the right to exploit, in any medium, whether now known or hereafter devised, all still photographs, footage, trims and outtakes (including but not limited to "bloopers", behind-the-scenes and "B-roll" footage) of, from and/or relating to the Film, and any portion thereof or of the Concert Footage (collectively, "Clip Material"), in connection with the creation of other motion pictures, television programs, Internet programs and/or other audiovisual works, and/or to license any Clip Material as "stock footage" (as that term is commonly understood in the entertainment industry) or for other use other than in the Film and Concert Footage and the right to license footage from the Film and Concert Footage.
- (e) The Estate will cause music publisher Springtime Music ("Springtime") to issue a gratis synchronization license (the "AG Synch License") to AE for use of Aretha Franklin's arrangement of AMAZING GRACE (the "AF Arrangement") in the Film and in any and all trailers for the Film and

other customary promotion and advertising for the Film. The Estate represents and warrants that it has the unilateral right and power to cause Springtime to issue the AG Synch License for the AF Arrangement.

(f) The duration of all rights set forth above in this par. 2 shall be perpetual except as provided below.

### **3. COMPENSATION:**

#### **3.1 ESTATE GUARANTEE:**

- (a) The Estate shall receive a guaranteed payment of US\$1,100,000 (the "Estate Guarantee") which for avoidance of doubt will not be an advance against the Estate's Contingent Compensation nor any participation to the Estate pursuant to Exhibit R hereto (but will be included as a recoupable cost in calculating AE Net Proceeds as defined below) and shall be paid to the Estate as follows:
- i. AE will cause payment to the Estate in the amount of US\$250,000 to be made by wire transfer to the ICM client trust account set forth in par. 3.1(a)ii below within two (2) business days of delivery to AE (which delivery may be by means of electronic transmission and / or electronic signature) of a copy of this Agreement signed by the Estate (but in any event not later than 3 PM Los Angeles time on March 22, 2019). The foregoing US\$250,000 payment to the Estate is nonrefundable and the Estate will have the unconditional right to retain it even if there is never a distribution deal for the Film with Neon or any other third party. The US\$250,000, however, shall have reduced the guaranteed payment of US\$1,100,000 to US\$850,000 under all circumstances.
  - ii. AE will cause 100% of all first proceeds from exploitation of the Film including 100% of all AR Income (as defined in Exhibit R hereto) and all amounts payable by Neon and/or any and all other distributors of the Film otherwise payable to AE or any affiliate, assignee or designee of AE with respect to the Film (after the first US\$250,000, which is to be paid to Robert Johnson to reimburse him for the amount paid by him to fulfill AE's obligation in par. 3.1 (a)i) to be paid directly to the Estate dollar-for-dollar up to the additional amount of US\$850,000 from any such proceeds. All such payments by the Estate shall be by wire transfer to the ICM Partners client trust account as follows:

City National Bank  
Beverly Hills, CA 90210  
ABA #122016066  
Swift #CINAUS6L  
Account #112363173  
Account Name: ICM LLC Client Account  
Re: Aretha Franklin Estate / AMAZING GRACE

- (b) It is understood by the parties that the minimum payment to the Estate is to be derived from the proceeds of any sale, distribution or other agreements for exploitation of the Film between AE and any third party, and not from the assets of AGLLC or Elliott, and that any such agreement (whether "distribution", lease, sale or other) is subject to the requirement that first dollars derived therefrom will be paid to the Estate until the total Estate Guarantee of US\$1,100,000 has been paid to the Estate. Accordingly, it is the understanding of the parties that, after Johnson is

reimbursed, the first dollars derived from the exploitation of the Film and/or concert footage shall be devoted to payment of the US\$1,100,000 to which the Estate will be entitled under this Agreement.

- (c) No additional compensation of any type shall be due the Estate with respect to the grant of rights specified in par. 2 above except as expressly specified in this Agreement (including the Estate's Contingent Compensation and Estate's share of AR Income under Exhibit R hereto).

**3.2 CONTINGENT FUTURE PARTICIPATION:** In addition to the amount of fixed compensation the Estate shall receive under the terms of par. 2.1 above, AE shall cause payment to the Estate by direct accounting from a CAMA (pursuant to which the Estate will be a direct beneficiary) of an amount equal to Ten Percent (10%) of One Hundred Percent (100%) of all net proceeds to AE ("AE Net Proceeds") from all forms of exploitation of the Film throughout the Territory (excluding AR Income [as defined in Exhibit R hereto], the "Estate's Contingent Compensation"). For the avoidance of doubt all net income derived by AE from exploitation of the Film anywhere in the Territory (other than AR Income) that predates and/or is not accounted through the CAMA will be included in the calculation of AE Net Proceeds and the Estate's Contingent Compensation. The definition, accounting and audit terms for AE Net Proceeds and the Estate's Contingent Compensation will be negotiated in good faith between the Parties within customary US industry parameters taking into account the terms of the Warner Participation and the terms of the distribution agreements for the Film including but not limited to the distribution agreement between AE and Neon. Other than AE and Warner, no other person or entity shall be accorded more favorable contingent future participation than the Estate.

#### **4. CREDIT / ESTATE PERQUISITES:**

4.1 Aretha Franklin shall be accorded on-screen credits in the Film in substantially the following forms:

- (a) Starring Credit: Above the title, but after the "presentation" credits, on a separate card: "ARETHA FRANKLIN" (the "Starring Credit"); and
- (b) Producer Credit: In the same section of the credits as other "Produced By" or "Producer" credits are given and in no less size or prominence than the "Produced By" or "Producer" credit given to Elliott: "Produced by Aretha Franklin" (the "Producer Credit").

Such credits shall also be given to Franklin in all ads, trailers and promotional materials for the Film except for small-sized ads and materials where the Film's billing block is not reproduced, awards ads and other customarily exceptions. No casual or inadvertent failure by Producer, or any third party, to comply with the provisions of this par. 4 shall constitute a breach of this Agreement, but Producer shall use reasonable efforts to prospectively cure any such failure.

4.2 Sabrina Owens shall be accorded on-screen credits in the Film in substantially the following forms:

- (a) Producer Credit: In the same section of the credits as other "Executive Produced By" or "Executive Producer" credits are given and in no less size or prominence than the "Executive Produced By" or "Executive Producer" credit given to any others:

Such credits shall also be given to Sabrina Owens in all ads, trailers and promotional materials for the Film except for small-sized ads and materials where the Film's billing block is not reproduced, awards ads and other customarily exceptions. No casual or inadvertent failure by Producer, or any third party, to comply with the provisions of this par. 4 shall constitute a breach of this Agreement, but Producer shall use reasonable efforts to prospectively cure any such failure.

4.3 Other than the Approved AF Material (as defined below) all images of Aretha Franklin and all quotes attributed to Aretha Franklin, the Estate, and/or any family member of Aretha Franklin used in and/or in connection with the exploitation of the Film and/or Concert Footage will be subject to the prior written approval of the Estate, such approval not to be unreasonably withheld or delayed, but the Approved AF Material and the key art and other images set forth in Exhibit A hereto are deemed pre-approved by the Estate. "Approved AF Material" means (i) all images of Aretha Franklin taken from the Film (but not from any Concert Footage not incorporated in the Film); and (ii) all quotes attributed to Aretha Franklin and / or the Estate and / or any family member of Aretha Franklin previously either (x) made by them publicly (e.g. in interviews or through statements made on social media by the person(s) to whom the applicable quote is attributed) or (y) previously approved by the Estate in writing.

4.4 (a) AE will make best efforts to cause Sabrina Owens and all children of Aretha Franklin (plus one guest each if they so elect) to receive written invitations, business class travel, 1<sup>st</sup> class hotel, ground transportation and reasonable and customary expenses to attend each premiere, festival screening and award event with respect to the Film, all on a no less favorable basis than any other person attending the same event.

(b) In addition, AE will cause invitations, travel, lodging and expenses to be provided to Sabrina Owens and all of Aretha Franklin's children (plus one guest each) to the Detroit premiere of the Film, and invitations, travel, lodging and expenses for up to four (4) persons (to be allocated among Sabrina Owens and Aretha Franklin's children as they may elect amongst themselves) for the 2019 NAACP Image Awards, at AE's distributor, NEON's, expense.

**5. CONFIDENTIALITY AND NONDISCLOSURE OF SETTLEMENT AGREEMENT:** If a Party is asked to comment on the resolution of the Denver litigation and its related Dispute, such Party agrees to respond with a statement substantially similar to: "The parties have amicably resolved the matter." Except as necessary to carry out the terms of this Agreement, or with the other Party's written consent, the terms of this Agreement shall not be disclosed except to family members, beneficiaries, lawyers, accountants, banks, insurers, financing sources or otherwise as may be reasonably necessary in the conduct of a Party's or beneficiary's business affairs.

**6. INTENTIONALLY DELETED.**

**7. MUTUAL REPRESENTATIONS, WARRANTIES, AND COVENANTS:** Each Party to this Agreement acknowledges, represents, warrants, and covenants as to itself and no other party:

7.1 That the Party has carefully read and reviewed this Agreement, knows and understands the Agreement fully and, further, has reviewed the terms of this Agreement with one or more attorneys of the Party's choice prior to executing this Agreement;

7.2 That the Party understands the meaning, validity, effectiveness and consequences of this Agreement, and of each and every provision, covenant, condition, term, paragraph, subparagraph and sentence thereof;

7.3 That the Party waives any right to argue or otherwise assert that such Party did not, prior to their execution, fully understand this Agreement, each and every provision, covenant, condition, term, paragraph, subparagraph and sentence thereof, or the meaning, effectiveness and consequences thereof;

7.4 Except for the payment of the monies referenced in Sections 2 and 3 the Parties specifically do not rely upon any statement, representation, legal opinion, accounting opinion or promise of any other Party to this Agreement or of any person representing any such other Party in executing the Agreement, except as expressly stated in this Agreement;

7.5 That the Party has not granted the rights hereunder to any other third party, nor has made any agreement with a third party to do so in the future;

7.6 That the Party is signing this Agreement freely and voluntarily and without any unlawful or improper coercion;

7.7 That the Party will not, either directly or indirectly, take any action that would interfere with the performance of this Agreement by any other Party which would adversely affect any of the rights provided for in this Agreement;

7.8 That the execution, delivery and performance by such Party will not conflict with or violate any of such Party's organizational documents, or court orders, and do not and will not conflict with, violate, result in a breach of, cause a default under, or be unenforceable, void or voidable, in whole or in part, under (i) any applicable law, (ii) any provision of any order, arbitration award, judgment or decree or (iii) any contract or other agreement as to which such Party is a party or is otherwise bound.

7.9 The Estate and AE (each of them, in such capacity, the "Indemnifying Party") each hereby agree to defend, indemnify and hold harmless the other party (each of them, in such capacity, the "Indemnified Party"), and its and their affiliates, successors, licensees, and assigns against any liabilities, losses, claims, demands, costs and expenses (collectively, "Claims") arising out of any breach of any representation, warranty or agreement made by the Indemnifying Party herein, which Claim has been reduced to a final, non-appealable judgment or settled with the written consent of the Indemnifying Party, such consent not to be unreasonably withheld.

## **8. REPRESENTATION AND WARRANTY OF AUTHORITY.**

8.1 Each person who signs below represents and warrants that s/he has the necessary authority to bind the entity for which he is signing; and that s/he has read this Agreement in its entirety, and had the opportunity to consult with their own counsel before signing. Each entity to this Agreement represents and warrants that the person executing this Agreement on its behalf has the authority to execute this Agreement on such Party's behalf.

8.2 The Estate is the sole, exclusive and absolute owner of the rights granted herein, and has the sole, exclusive and absolute right to grant or vest in AE, all rights, licenses and privileges granted to or vested in

AE under this Agreement. The Estate, and its lawful representatives, further warrant and covenant that through valid court orders it possesses the authority and right to enter into and fully comply with this Agreement.

8.3 AE represents, warrants and agrees that it (i) has the unfettered right to enter into and perform this entire Agreement; (ii) is not subject to any conflicting obligation or disability which will or might interfere with its execution and performance of this Agreement; (iii) has obtained or prior to the release of the Film will obtain all of the necessary rights clearances from all persons appearing in or rendering services on behalf of the Film including without limitation, if necessary, the Estate of the Rev. James Cleveland, the church choirs appearing in the Film; and (iv) that it shall pay any guild residual payments that might be required. Likewise, the Estate represents, warrants and agrees that it has the unfettered right to enter into and perform this Agreement, to grant all rights under this Agreement and is not subject to any conflicting obligation or disability which will or might interfere with its execution and performance.

**9. GOVERNING LAW:** The Parties stipulate and agree that this Agreement shall be deemed for all purposes to have been made and entered into entirely in the State of California and shall be construed and interpreted in accordance with, and shall be governed by, the substantive and procedural laws (other than choice of law provisions, as to which no state's laws shall apply in light of the agreed upon application of California substantive law) of the State of California. If there is any conflict between any provision of this Agreement and any present or future statute, law, ordinance, regulation, or collective bargaining agreement, the latter shall prevail; provided, that the provision hereof so affected shall be limited only to the extent necessary and no other provision shall be affected.

**10. DISPUTE RESOLUTION/NO EQUITABLE RELIEF:**

Any and all disputes arising under or related to this Agreement shall be resolved by final and binding arbitration under the auspices of JAMS. Any such arbitration shall be held within thirty (30) miles of Ann Arbor, Michigan and arbitrated by a lawyer with a minimum of fifteen (15) years of experience in the entertainment industry. With respect to disputes regarding the reasonableness of a refusal by the Estate to approve an ancillary rights project falling under Category II of the ancillary rights provisions, the dispute shall be subject to expedited arbitration under the rules of JAMS regarding expedited arbitrations. In either type of arbitration, the Parties will request the appointment of an arbitrator with a minimum of fifteen (15) years of experience in the entertainment industry and with at least five (5) years of experience as a professional arbitrator. Except by agreement of the Parties, the arbitrator must conduct the arbitration, if in person, in Detroit, Michigan. Costs and reasonable attorneys' fees shall be awarded by the arbitrator to the prevailing party. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

10A. AE PARTIES BOUND. Notwithstanding any other provision of this Agreement to the contrary, from and after the date on which the Estate has received the full Estate Guarantee in accordance with par. 3.1(a) above (the "Trigger Date"), neither Elliott individually nor Al's will have any further liability to the Estate under this Agreement and from and after the Trigger Date AGLLC will be liable for the performance of all obligations of the AE Parties under this Agreement, except that:

- (a) Elliott is and will at all times remain jointly and severally liable with AGLLC for the performance of all AE obligations with respect to Ancillary Rights and AR Income, in accordance with Exhibit R hereto; and

(b) Elliott is and will at all times remain subject to and bound by the terms of par. 10 above as to the resolution of any dispute relating to this Agreement.

**11. NO WAIVER:** No provision hereof may be waived unless in writing and signed by the Party whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein (whether similar or not), nor shall such waiver constitute a continuing waiver unless otherwise expressly so provided.

**12. COUNTERPARTS:** This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery and said counterparts together shall constitute one and the same. True and correct facsimile or pdf copies of signed counterparts shall be deemed originals for any purpose.

**13. HEADINGS AND RECITALS:** The headings in this Agreement are inserted for convenience and reference, and in no way define, limit, extend or otherwise describe the scope or intent of this Agreement or any provision hereof, and shall not affect in any way the meaning or interpretation of this Agreement. The recitals contained herein are incorporated in and are a part of this Agreement.

**14. SEVERABILITY:** In the event that any term or provision of this Agreement contradicts any term or provision of any other document, instrument or agreement between the Parties, the terms of this Agreement shall control. In the event that any of this Agreement is found to be void, voidable, illegal or otherwise unenforceable in any respect, such provision shall be severable from all other provisions thereof, and the validity, legality and enforceability of the remaining portions and provisions of this Agreement shall not be adversely affected or impaired, and shall thereby remain in full force and effect as if such void, voidable or unenforceable provision had never been contained therein.

**15. BINDING EFFECT:** This Agreement, and all of its terms and conditions, shall be binding upon and inure to the benefit of the Parties and their respective agents, representatives, officers, directors, shareholders, employees, heirs, executors, administrators, descendants, subsidiaries, successors, assigns and legal representatives, whether a signatory hereto or not. Notwithstanding any other provision hereof: (a) the \$250,000 payment due to the Estate under par. 3.1(a)i above (the "\$250K Estate Payment") will be payable as set forth therein (i.e. by wire transfer to the ICM client trust account within two (2) business days after delivery to AE [by any means of delivery as set forth in par. 3.1(a)i above] of a copy of this Agreement and the Mutual Release signed by the Estate) without requirement of any other signature to this Agreement including for avoidance of doubt that of David Bennett as attorney for the Estate; and (b) this Agreement and the Mutual Release will be fully binding between the Parties (i.e. the Estate and AE) upon payment of the \$250K Estate Payment and signature of this Agreement and the Mutual Release by the Estate and AE, even if the acknowledgement signature of David Bennett and/or Neon is not secured.

**16. NOTICES:** All notices, consents, demands, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given and received on the day on which delivered personally or via facsimile or messenger during regular business hours at the location of receipt to the appropriate locations listed below:

If to AE: Alan Elliott  
1633 N. Stanley Avenue  
Los Angeles, CA 90046  
Telephone: 323 988 9692  
alan@alanelliott.net

With a copy to: John W. Boyd  
Freedman Boyd Hollander Goldberg Urias & Ward P.A.  
20 First Plaza  
Suite 700  
Albuquerque, NM 87102  
Telephone: 505 244 7518  
JRB@FBDLAW.com

If to the Estate: David J. Bennett  
Thav Gross PC  
30150 Telegraph Road  
Suite 444  
Bingham Farms. Michigan 48025  
Telephone: 248 645 8203  
[Dbennett@thavgross.com](mailto:Dbennett@thavgross.com)

With a courtesy copy to: Richard B. Levy  
ICM Partners  
10250 Constellation Boulevard  
Los Angeles, California 90067  
Telephone: 310 550 4046  
[rlevy@icmpartners.com](mailto:rlevy@icmpartners.com)

Any Party may change his or its address upon written notice to the other Party.

**17. ENTIRE AGREEMENT:** This Agreement and its attachments constitutes the full and final agreement of and among the Parties with respect to the subject matter hereof and supersedes all prior discussions, agreements or understandings regarding the subject matter hereof. Each Party acknowledges, warrants, promises and represents that it has not executed this Agreement in reliance upon any promise, statement, representation or warranty, whether oral or written, not expressly set forth herein and that he, she or it has had the opportunity to consult with counsel concerning this Agreement.

**18. WRITTEN, SIGNED AMENDMENT REQUIRED:** This Agreement may not be altered, modified or amended in any respect except by a written instrument signed by each Party.

**19. SURVIVAL:** The representations and warranties set forth in this Agreement are deemed to and shall each survive the execution of this Agreement and, unless any such representation or warranty is temporally limited in which event such temporal limitation shall control, shall each constitute continuing and ongoing representations and warranties of the Parties.

**20. FURTHER DOCUMENTS:** The Parties agree to cooperate with each other in carrying out the intent of this Agreement and executing all documents, and agreements as are reasonably required to effectuate the terms of this Agreement. From time to time, at the request of any Party, at its expense and within a reasonable period of time after request hereunder is made, the Parties hereby agree to execute and deliver any and all further documents and instruments, and shall do all acts, as any Party may reasonably request which may be necessary or appropriate to fully implement the provisions of this Agreement; provided that compliance with such requests do not involve any undue burden or more than nominal out of pocket expenses.

**21. ASSIGNMENT:** The rights granted by any Party to the other Party under this Agreement include the unrestricted right to assign, license, transfer and otherwise convey the same to third parties on such terms and conditions as the transferring Party deems appropriate and which is consistent with the terms of this Agreement, and such third party shall have the right to assume such rights, provided that notwithstanding any assignment by AE of this Agreement and / or any of its rights hereunder AE will remain primarily liable for the performance of all then-executory obligations under this Agreement.

**22. REPORTING PERIODS & AUDIT:** Customary detailed accounting statements with respect to all AE Net Proceeds, AR Income and the Estate's Contingent Compensation shall be calculated on not less than a semiannual basis. Statements and payments shall be delivered within ninety (90) days of the close of each reporting period. The Estate shall have the right to have a certified public accountant of its choice audit all books and records with respect to the Film once per year (and only once with respect to any particular records and/or statements) at the Estate's sole cost and expense; such audit shall take place at the applicable distributor's principal place of business during normal business hours and shall not unreasonably interfere with such distributor's regular course of business. All notices, statements and payments made pursuant to this Agreement shall be deemed valid and binding on the Estate and shall not be subject to dispute or audit unless disputed in writing within thirty-six (36) months after first issued. Without limiting the foregoing, AE shall contractually require each distributor of the Film to notify the Estate in writing of any request to audit such distributor with respect to the Film so as to provide the Estate the opportunity to participate in such audit in accordance with the terms of this Agreement.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereby acknowledge and represent that they have each read this Agreement, consisting of a total of 23 pages, and that they have executed this Agreement as of the day and year first set forth above.

Al's Records & Tapes



By: \_\_\_\_\_  
Alan Elliott

Amazing Grace Movie, LLC



By: \_\_\_\_\_  
Alan Elliott



\_\_\_\_\_  
Alan Elliott

Estate of Aretha Franklin

By: \_\_\_\_\_  
Sabrina Owens  
Personal Representative

ACKNOWLEDGED AND AGREED:

Attorney for the Estate of Aretha Franklin

By: \_\_\_\_\_  
David J. Bennett

ACKNOWLEDGED AND AGREED AS TO SUBPARAGRAPHS 3(a)ii and 4.4(b)

NEON

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **APPENDIX I**

### **MUTUAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("Agreement"), is effective as of March 21, 2019 (the "Effective Date"), and is by and between Alan Elliott, Al's Records & Tapes, and Amazing Grace Movie, LLC (individually and collectively, "AE" or "Party") and The Estate of Aretha Franklin ("Estate" or "Party"), collectively, "Parties."

#### **RECITALS:**

1. In January, 1972 Warner Bros.- Seven Arts, Inc. (such entity and its affiliates, successors and assigns, collectively "Warner") filmed with sound the featured musical performances of Franklin in two concerts (the "Concerts") of primarily gospel songs before a live congregation at the New Temple Missionary Church of Los Angeles;
2. Although the Concerts were filmed and recorded for film ("the Film"), creation of any movie or visual broadcast of the Concerts was not completed because of technical problems;
3. In 2007 Alan Elliott and Al's Records & Tapes entered into an agreement with Warner, whereby Elliott and Al's acquired all of Warner's right, title and interest in and to the Film and other, related film elements, along with sound associated with the film and its other elements;
4. Elliott thereafter created the documentary film entitled "Amazing Grace" from the Film's elements he had acquired from Warner and completed a documentary film of the concerts at his expense. Elliott attempted to exhibit "Amazing Grace" at the Telluride Film Festival in 2015, believing AE had the right to do so without further permissions;
5. Aretha Franklin ("Franklin"), who was still living at the time, disputed AE's rights to exhibit the documentary film and otherwise exploit it or the unused footage and sound without Franklin's additional written consent (the "Dispute") and obtained a temporary injunction from the Federal District Court in Denver, Colorado against the exhibition of the documentary at the Telluride Film Festival in 2015;
6. Aretha Franklin passed away on August 16, 2018 and any existing rights of hers to the subject performances passed to her Estate, whose Personal Representative is Sabrina Owens, and;
7. The parties to this Release of Claims desire and intend to resolve their prior differences (as of the date of this Release), end their disputes (as of the date of this

Release), settle and release all claims against each other (as of the date of this release) and cooperate in releasing the Film, entitled "Amazing Grace" and do and permit the other things that are set forth in the contract between them dated as of March 21, 2019.

8. NOW, THEREFORE, AS SET FORTH BELOW, THE PARTIES HEREBY RELEASE AND SETTLE THEIR CLAIMS FOR VALUABLE CONSIDERATION AND FOR THE MUTUAL PROMISES CONTAINED HEREIN, ON THE OCCASION OF THEIR REACHING A CONTRACTUAL AGREEMENT DATED MARCH 21, 2019 UNDER WHICH THE ESTATE OF ARETHA FRANKLIN HAS GRANTED TO AE THE RIGHTS SET FORTH IN THAT AGREEMENT IN RETURN FOR AE'S PROMISES CONTAINED THEREIN.

**A. Mutual Release:** Up to the date of this Release, but not thereafter, in consideration of the promises set forth in this Release the Parties for themselves and on behalf of any persons or entities who have or claim to have rights and/or claims by, through, or on behalf of any Party, hereby release the other Party, together with any agents, attorneys or accountants, insurers, representatives, administrators, or other successors in interest or assigns of any of the foregoing, and any other persons in privity with parties to this Release against whom claims or demands might have been made, from any and all claims, actions, claims for relief, demands, debts, covenants, contracts, obligations, liabilities, damages, costs and expenses (including attorney's fees), whether legal or equitable, common law or statutory, of whatever kind or nature in any manner arising out of but not limited to the matters set forth in the Lawsuit, up to the date of this Release. The mutual releases herein granted are and are intended to be as broad as may be lawful and include but are not limited to claims arising out of contract, tort, copyright and other statutory rights, common law rights, negligence, willful or wanton conduct, misrepresentation, fraud, or otherwise, and fully include but are not limited to, claims for injunctive relief, damages, for punitive or exemplary damages and attorneys fees; or for any other claims of whatsoever kind or nature that the Parties had, have or may have against any Party, whether known or unknown. Neither Party shall make any claim or bring any proceeding against the other based on any events predating this settlement and release.

**B. End of Litigation:** The Parties agree that litigation in the United States District Court for the District of Colorado styled as: Aretha Franklin, Plaintiff v. Alan Elliott, D/B/A Al's Records & Tapes, Defendant, Civil Action No. 15-cv-01921-JLK ("the Denver litigation"), which was closed administratively subject to reopening, shall remain closed and not be reopened by either Party hereto, it being the intent of the Parties hereto to end that litigation definitively, including any disputes that were or could have been brought by the parties or the Estate's Decedent, Aretha Franklin. This mutual release of all claims is intended to fully resolve all past disputes and disagreements between the Parties relating in any way to the Dispute and/or the Denver litigation, including but not limited to any and all court filings, or court orders. If it should become necessary to revive the Denver litigation in order to definitively conclude it by dismissal with prejudice, notwithstanding that the litigation between the Parties has been dismissed without prejudice, the Parties agree to cooperate in doing so.

- C. No Admission of Liability and No Reliance:** It is understood and agreed that execution of this Agreement is not to be construed in any way as an admission of liability or an admission of wrongdoing or the validity of any Party's claim against the other, but rather reflects the intent of the Parties to end their disputes entirely and to embark on the relationship reflected in the Agreement between them dated as of March 21, 2019. In making this Agreement the Parties have not relied on statements nor representations regarding their rights, claims for damages, facts or other information from the other Parties being released, their agents and representatives. On the contrary, they have considered all these matters themselves and have relied entirely on their own judgment, after seeking the advice of their respective independent legal counsel.
- D. Confidential Release:** The Parties agree that the terms of this Release are confidential. No Party shall disclose the terms or amount of this settlement to any party, other than his/her family members, business partners, tax advisors, professional advisors or other professionals with a need to know.
- E. Governing Law:** This Agreement shall be governed by and construed and enforced under the laws of the State of California, and the Parties agree to exclusive venue and jurisdiction of the courts within a thirty (30) mile radius of Detroit, Michigan.
- F. Counterpart Execution:** The Release may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by executing any such counterpart.

[EXECUTION PAGE FOLLOWS]



## **EXHIBIT A**

**Approved Key Art / AF Images. [AE TO SUPPLY AS A CONDITION SUBSEQUENT]**

## EXHIBIT R ANCILLARY RIGHTS

<p><b>R1. Estate Approval/ Consultation Categories</b></p>	<p><u>Category 1:</u> Absolute prior written Estate approval on case-by-case basis; Estate can approve or disapprove at sole discretion. No response period – approval only on written confirmation from Sabrina Owens as Estate-designated Personal Representative, or her successor.</p> <p><u>Category 2:</u> Estate has prior written approval on case-by-case basis, not to be unreasonably withheld. Seven (7) business day response period following written notice to the Estate of the material terms of the offer and any other additional information reasonably sufficient to allow the Estate to make an informed decision regarding the applicable approval; if no response, last specific proposal submitted in writing to Sabrina Owens as Estate-designated Personal Representative will be deemed approved. If Parties cannot agree with respect to any Category 2 opportunity presented by AE, AE or the Estate has right to submit the matter to binding expedited arbitration (per the arbitration provisions set forth par.10 of the Agreement.</p> <p><u>Category 3:</u> Meaningful advance consultation to Estate (which must actually take place so long as Sabrina Owens as Personal Representative is reasonably available to consult by phone, email, or in person within seven (7) business days following written notice of the applicable project).</p>
<p><b>R2. Term to Exploit AE Ancillary Rights</b></p>	<p>In perpetuity.</p>
<p><b>R3. Scope of Rights granted to AE generally (subject to restrictions on exploitation as set forth in this Exhibit R)</b></p>	<p>All rights reasonably to exploit Film as set forth in main agreement, plus the ancillary rights to exploit Film and Concert Footage per this Exhibit “R”.</p> <p>The Rights (as defined in par. 2 of this Agreement), which are worldwide, do not include Franklin’s person, image, career, performances, recordings etc., except those that are incorporated in the Film and/or Concert Footage.</p>

<p><b>R4. Music Video Rights (Category 3 and limited Category 2)</b></p>	<p>Solely with respect to Aretha Franklin’s appearance in Film, use of songs sung by her in Film and / or Concert Footage as stand-alone music videos, at 10% separate-pot merch to Estate (but only as complete songs and not abbreviated or medley versions or modified in any material way without Estate Category 2 Approval – with approved material at 25%).</p>
<p><b>R5. Customary Merchandising Items Related to Film (Category 3)</b></p>	<p>Use of the key art for Film (as set forth in exhibit to be included in final agreement for preapproved key art images) in connection with <u>only</u> T-shirts, jackets, posters, hats, coffee mugs key chains and such other customary merchandise items as the Parties may hereafter agree in writing after good faith negotiations relating to Film (the “Customary Merchandise Products”). Estate to participate from this pot at 25% out of 100%.</p>
<p><b>R6. Out-Takes/Behind-the-Scenes Footage/Images (Category 2)</b></p>	<p>Use of out-takes and / or behind-the-scenes footage from the Concert Footage and/or images from the Concert Footage to promote the Film (but not in connection with any of the other Ancillary Rights categories and/or uses set forth in pars. R11-R13 and R15).</p>
<p><b>R7. Clip Rights (Category 2)</b></p>	<p>Approved clips at 25% of 100% to Estate. Cannot infringe on R11 – R13, and R15.</p>

**R8. Live/Performance Rights (Categories 2 or 3)**

1. Without limiting any other provisions of this Exhibit R, live performances (other than as set forth in par. R8.2 and R8.3 below) in which AE has a financial interest (separate from AE Net Income from distribution of the Film by Neon and/or any other distributor) and using the complete, uninterrupted Film and an element of a live show are in Category 3 rights at a separate 10% participation to the Estate of any AR Income derived therefrom.
2. Live performances using portions of the Film, or which interrupt the Film, or use clips or outtakes and/or any other material from the Concert Footage are in Category 2 at 25%.
3. Exhibitions of the uninterrupted Film as licensed by NEON (or other authorized distributors of the Film) that include pre-display and/or post-display discussions, lectures, appearances by participants (including Alan Elliott) or others as may be customary at movie theaters or other locations where the Film may be shown which do not involve any Ancillary Rights and (other than within the Film itself and any Approved AF Material) do not use any image of Aretha Franklin and / or any quote attributed to Aretha Franklin, the Estate, and/or any family member of Aretha Franklin, provided that any income derived by AE from any such exhibition (other than reasonable, customary and market- rate expenses and producer fees) which is separate from income accountable through the applicable distributor(s) for exhibition of the Film as part of any such live event will be at 10% of AR Income to the Estate are freely permitted.

Notwithstanding the seven (7) business day requirement for other items under this Exhibit R, the Parties recognize that any live performances falling under Category 2 may, by their nature, require a longer period of consultation and may require ongoing consultation as any major project in this category is developed. The Parties agree to deal with each other in good faith in respect to the necessity for and timing of consultation in respect to such projects.

<b>R9. Subsequent Production Rights (Category 1)</b>	Except director’s cut(s) of the Film and “making of the Film” documentary films and/or documentary television programs which are Category 2.
<b>R10. Merchandising Rights (Other than Customary Related to Film) (Category 1)</b>	_____
<b>R11. Commercial Tie-In Rights (Category 1)</b>	_____
<b>R12. Product Placement Rights (Category 1)</b>	_____
<b>R13. Endorsement Rights (Category 1)</b>	_____
<b>R14. Publication Rights (Category 2)</b>	Including, but not limited to, making-of books, coffee-table books, all other electronic publishing formats, interactive books, and audio books.  No comics or graphic novels in any form including e-book (these are Category 1).
<b>R15. Game Rights (Category 1)</b>	Including but not limited to video, electronic and interactive games.
<b>R16. Music Publishing Rights (Category 1)</b>	_____
<b>R17. Hologram, animation, and similar technology uses and rights (Category 1)</b>	_____

<p><b>R18. Compensation to Estate for Ancillary Rights uses permitted per this Exhibit R</b></p>	<p>“Separate pot” participation to Estate of (i) 10% of 100% of net income to AE for “customary merchandising rights” and “Live Performance” Category 1 only; and (ii) 25% of 100% of net income to AE in all other categories.</p> <p>All income with respect to the disposition of Ancillary Rights (“AR Income”) will be accounted separately from income derived from the distribution of the Film itself and shall not be applied to the recoupment of any costs relating to the Film in calculating AE Net Proceeds. The definition, calculation and accounting of AR Income will be negotiated in good faith between the Estate and AE within customary US industry parameters.</p>
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