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Agreement

between

LAURA GILPIN

and

DUELL, SLOAN & PEARCE, Inc.

for the publication of

NAVAHO BOOK

Dated April 20 ~~194~~ 1950

(2)

XVIII. **Force Majeure:** Neither party shall be liable to the other for any delay in performance or failure to perform hereunder due to any cause beyond the control of such party or to any cause usually described as "force majeure", such as strikes or other labor troubles, fire, war, etc.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

Elizabeth W. Forster
Witness to signature of
Author or Proprietor

Laura Gilpin
Author or Proprietor

ATTEST:
Lucille M. Heerman

DUELL, SLOAN & PEARCE, INC.
By Charles A. Pearce
Vice-President

(2)

AGREEMENT, made this 20 day of April , 19 50, by and between
Laura Gilpin, Box 1173, Santa Fe, New Mexico
(hereinafter referred to as "the Author"), and DUELL, SLOAN & PEARCE, Inc., a corporation duly organized and existing under the laws of the State of New York, having its principal place of business in New York, N. Y. (hereinafter referred to as "the Publisher");

In consideration of the mutual covenants and agreements herein contained, the parties hereby agree for themselves and for, and for the benefit of, their respective successors, assignees, executors and administrators, as follows:

I. Rights Granted to Publisher: The Author hereby grants to the Publisher the following exclusive rights and privileges in, to, and in connection with the work now entitled NAVAHO BOOK (hereinafter sometimes referred to as "the Work"), the title to which may be changed only by mutual consent of the parties:

1. The sole and exclusive book publication rights in the United States, its territories and dependencies, the Philippine Islands, and the Dominion of Canada; and the right to sell copies of the Work in the open market throughout the world.
2. Second and third serial rights, abridgment, condensation, selection, and other serial and publication rights following book publication, in the United States, its territories and dependencies and in the Dominion of Canada.
3. The right to lease or to sell plates of the Work to others for reprint publication or otherwise to license reprint publication.
4. The right to license others to publish the Work or any portions thereof in the English language outside of the United States and Canada or to translate into and/or publish the work in foreign languages, and the right to license others to exercise in any foreign country any of the rights granted to the Publisher under this Article I.
5. All rights relating to the work of dramatization, motion picture rights, rights of mechanical recording, transmission or reproduction by radio, telephone, television or other means of recording, transmission or projection, or other medium now existing or which hereafter may be developed, in the United States, its territories and dependencies and in all foreign countries.

II. Warranty of Author: The Author guarantees and represents that the Work is original and innocent and contains no matter libelous, scandalous or otherwise unlawful, that it has not heretofore been published in book form, that he is the sole author and proprietor of the Work and has full power to make this agreement, and that he will defend, indemnify and hold harmless the Publisher against any claims, demands, suits, loss, cost, expense, damage or recovery by reason of any claim of violation of proprietary right or copyright, or of any claim of injurious or libelous matter contained in the Work.

III. Copyright: The Author hereby authorizes the Publisher to take all steps necessary and appropriate to procure in the name of ~~either~~ the Author ~~or the Publisher~~ a copyright to the said Work in the United States of America and in such other countries as may be covered by this agreement. In the event that the copyright is in the name of the Author, then upon the expiration of the first term thereof the Author agrees to take such steps as may be necessary to procure a renewal of the said copyright and to assign to the Publisher the sole and exclusive right to publish the Work as herein provided during the full term of said copyright renewal, on the same terms and conditions as for the original copyright term. The Publisher agrees to imprint an appropriate copyright notice on each copy of the Work for the protection of the said copyright.

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L.G.

IV. Delivery of Complete Manuscript: The Author agrees to deliver to the Publisher on or before April 1, 1951 a complete manuscript copy of the Work, satisfactory to the Publisher, of approximately 192 pages of text and illustration ~~words~~ in length, in its final revised form, including all drawings, charts, designs and illustrations which are to be included in the text, and if mutually agreed upon by the Author and the Publisher an index shall be delivered by the Author to the Publisher as soon as possible after proof is available for making such index.

If in the opinion of the Publisher the manuscript when delivered to it is not properly prepared and in final form for the press, the Author shall, upon receipt of notice to such effect from the Publisher, either revise the work and place it in final form within an additional period of thirty days or commission the Publisher to put the manuscript in final form at the Author's expense.

If the Author fails to deliver the manuscript of the Work in final revised form satisfactory to the Publisher within the times above specified, the Publisher shall have the right to terminate this agreement. In the event of such termination the Author agrees to repay to the Publisher any and all amounts which may have been advanced by the Publisher to the Author in connection with the Work, and not to cause the Work to be published by any other person or persons until the Author has repaid to the Publisher in full the amount of such advances.

V. Revision of Manuscript and Proof-Reading: The Publisher agrees to submit proofs of the Work to the Author, which proofs the Author agrees to correct and to return promptly. The Author agrees to pay the amount of the expense incurred by the Publisher because of changes and additions in the proof made by the Author (other than correction of printer's or Publisher's errors) to the extent that said expense shall exceed ten per cent (10%) of the original cost of composition, and to pay in full for the correction of any errors other than printer's errors in the plates after they have been made in conformity with the final proof as corrected by the Author. Any payments to be made by the Author to the Publisher under this Article shall be made in cash unless the Publisher shall elect to debit the amount of such payments against any sums otherwise accruing to the Author hereunder. The Publisher agrees to advise the Author of any amounts which may be owing to the Publisher under this Article within one month after the publication of the Work.

VI. Publication of Work: The Publisher agrees to publish the Work at its own expense in such style or styles as it may deem advisable not later than 12 months after the receipt by the Publisher of the complete manuscript in its final revised form, including all drawings, charts, etc. which are to be included therewith. Should the Publisher fail to publish the Work on or before such date this agreement shall at the option of the Author terminate upon payment by the Author to the Publisher of any royalties advanced and the expenses of manufacture already incurred by the Publisher.

VII. Author's Copies: The Publisher shall present to the Author ten (10) free copies of the Work upon publication and shall permit the Author to purchase further copies for his own personal use at a forty per cent (40%) discount from the catalogue or retail price.

VIII. A. Royalties and Other Payments: The Publisher agrees to pay to the Author, or his duly authorized representative, royalties computed as hereinafter set forth:

1. On all copies of the Work in the regular trade edition sold by the Publisher in the United States at discounts of less than forty-eight per cent (48%) from the catalogue price, a royalty computed on the catalogue price as follows:

   Ten per cent (10%) on all copies so sold from one (1) to ten thousand (10,000) copies; and twelve and one half per cent (12½%) thereafter.

2. On all sales in the United States of more than 250 copies of the Work in the regular trade edition sold to jobbers or to wholesale or retail distributors or booksellers, at discounts of forty-eight per cent (48%) or more on the catalogue price, a royalty which shall be equal to the royalty specified in 1 above, less an amount equal to one-half the difference between a discount of forty-four per cent (44%) and the discount granted. The rate of royalty specified in this paragraph shall also apply to any sales, regardless of quantity, made on a returnable basis at a discount of fifty per cent (50%) or more to news-dealers, reading circles or wholesale distributors. In no case shall the royalty paid pursuant to the provisions of this paragraph be less than ten per cent (10%) of the net proceeds of the sale received by the Publisher.
3. On all copies of the Work sold in Canada or exported elsewhere, a royalty of ten per cent (10%) of the net proceeds of the sale received by the Publisher.
4. On all copies of the Work sold in the United States at a price of not less than the cost price to the Publisher and not more than two-fifths of the catalogue price, a royalty of ten per cent (10%) of the net proceeds of the sale received by the Publisher.
5. On all copies of the Work sold from editions comprising not more than 2500 copies each and printed two years or more after publication royalties which shall be equal to one-half of the royalties enumerated in 1, 2, 3 or 4, above, as the case may be.
6. On all sales, subsequent to publication, to publishers, newspapers or periodicals of the right to publish or reprint all or parts of or digests of the Work, fifty per cent (50%) of the net proceeds of such sales received by the Publisher.
7. On the sale to a recognized book club of the right to publish an edition or editions of the Work for distribution to its members, fifty per cent (50%) of the net proceeds of such sale received by the Publisher.
8. On all copies of the Work in a cheap edition, sold by the Publisher in the United States at one-half or less of the original catalogue price, a royalty of seven and one-half per cent (7½%) of the cheap edition catalogue price; if, however, the rights are leased to a reprint publisher, fifty per cent (50%) of the amount of royalty received by the Publisher.
9. (a) On the sale of any of the rights herein granted the Publisher in England, or other foreign countries and on the sale of translation rights, sixty per cent (60%) of the net proceeds of such sale received by the Publisher after deduction among other proper items, of agents' fees, taxes withheld abroad and other costs of the Publisher in connection with such sale, if any.

   (b) In the event, however, that the sale of rights abroad is in the form of the sale by the Publisher of sheets or bound copies of the Work for foreign publication, the Publisher shall pay to the Author fifty per cent (50%) of the net proceeds of such sale after deduction, among other proper items, of agents' fees and taxes withheld abroad, if any, and production cost of such sheets or bound copies, including in such production cost an allocable part of the cost of composition and plate amortization costs.
10. On the sale of rights of dramatization, motion picture, radio, television or any other rights granted to the Publisher by clause 5 of Article I of this contract, seventy-five per cent (75%) of the net proceeds of the sale received by the Publisher, after deduction among other proper items, of agents' fees if any.
11. As an advance against and on account of all monies accruing to the Author under the terms of this agreement, the sum of Seven Hundred and Fifty Dollars ($750.) payable as follows: $250. on signature of this agreement, and $500. within thirty days of publication date.

B. Copies of the Work given to booksellers, and bookdealers in payment for trade advertising shall be deemed to be copies sold at a price equal to the value at which such books are accepted in payment for such advertising.

C. No royalties shall be payable on copies of the Work given by the Publisher to the Author or to any other person for purposes other than resale, nor on review copies or samples used in promoting the Work, nor on copies damaged or destroyed, nor on copies sold by the Publisher at less than cost.

D. ~~If rights of dramatization, motion picture rights, rights of mechanical recording, transmission or reproduction by radio, telephone, television or otherwise have been retained by the Author, the Author shall pay to the Publisher xxxxxxxxxxxxxx per cent (xx%) of the net proceeds of the sale of any such rights to any third party received by the Author, after deductions of agents' fees, if any.~~

IX. Accounts and Payments: Semi-annual statements of account for the six-month period ending January 31st and July 31st of each year (hereinafter referred to as "accounting periods") shall be furnished by the Publisher to the Author on the succeeding May 1st and November 1st, respectively, and settlements of such accounts shall be made on or before the following June 15th and December 15th, respectively; provided, however, that if during any semi-annual accounting period less than twenty-five copies of the Work have been sold by the Publisher, the Publisher shall not be required to account to the Author until the next semi-annual accounting date upon which unaccounted for sales aggregate twenty-five copies or more.

No statement will be rendered by the Publisher to the Author covering sales on consignment until the consigned copies have been sold outright. Royalties paid to the Author on copies reported sold but subsequently returned may be deducted by the Publisher from any subsequent royalties on the Work or any other book of the Author, which may become due to him.

In the event of the failure on the part of the Publisher to account in accordance with the provisions of this Article and if within thirty days after receipt of a written demand from the Author for such accounting the Publisher fails to account and to make any payments which may be due to the Author thereunder, this contract shall at the option of the Author terminate.

X. Overstock: If at any time after one year from the date of publication the Publisher has on hand a number of copies of the Work which in the opinion of the Publisher is in excess of the stock necessary to supply the anticipated demand for the Work for a period of the next two years, such overstock may be disposed of by the Publisher in the manner hereinafter set forth. The Publisher shall notify the Author of its intention to dispose of such overstock and within thirty days after receipt of such notice the Author may purchase from the Publisher all or any part of such overstock at a price of twenty-five (25%) of the catalogue price of the Work; any part of such overstock not thus purchased by the Author may be disposed of by the Publisher, subject to the payment of royalties as specified under Article VIII hereof.

XI. Discontinuance of Publication: The Publisher may at any time during the term of this agreement permanently discontinue the publication of the Work by giving to the Author thirty days notice in writing of its intention so to do. During such thirty-day period the Author may purchase from the Publisher all copies of the Work which the Publisher has on hand, at cost to the Publisher, together with all dies, electrotype plates and engravings at one-third of the cost thereof to the Publisher. Upon the expiration of said thirty-day period this contract shall cease and terminate and the Publisher may dispose of all copies of the Work in its possession, and all plates, dies and engravings without paying to the Author any part of the proceeds of such disposition.

XII. Failure of Publisher to Keep Work in Print: In the event that the Work is at any time out of print in both regular and cheap editions, and if within six months after receipt of notice from the Author requesting the publication of a new edition, the Publisher fails to comply with such request, the Author may at his option terminate this agreement upon reimbursing the Publisher in full for any unearned advances, over-payment of royalties and any other sums which may be owing to it under the terms of this agreement, and upon purchase from the Publisher of all dies, electrotype plates and engravings at one-half of the cost thereof to the Publisher.

XIII. Destruction of Plates: If at any time the plates or type forms of the Work are destroyed or rendered valueless by fire or otherwise, the Publisher may at its own expense reproduce them; and if the Publisher fails so to do within a reasonable period of time after their destruction, the Author may at his option terminate this agreement, subject, however, to the continuing right of the Publisher to sell or otherwise dispose of copies of the Work on hand at the time of such termination.

XIV. Option on Future Work: The Author agrees to grant to the Publisher an option on the publication rights pertaining to the next photographic book to be written by the Author, to be exercised within sixty days after the complete manuscript thereof is delivered to the Publisher, on the following terms:

On terms to be arranged.

The above option shall be applicable to each successive work of the Author specified above, even though the Publisher shall fail to exercise it as to the previous work, unless any work as to which the Publisher shall fail to exercise its option shall thereafter be accepted for publication by any other American publisher within twelve months after such failure, in which event the above option shall terminate as to all succeeding works.

XV. Bankruptcy: In case of bankruptcy, assignment for benefit of creditors, or liquidation for any cause whatever, of the Publisher, or if a receiver is appointed of all or substantially all the assets of the Publisher and such appointment is not vacated within sixty days, the Author may at his option terminate this contract and the Author shall thereupon have the right to buy from the Publisher any plates and remaining copies or sheets at a fair market value, to be determined by agreement or arbitration.

XVI. Arbitration: Any controversy or claim arising out of a dispute relating to this contract or the breach thereof shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, by one arbitrator to be appointed by the American Arbitration Association, unless the parties shall agree on a mutually satisfactory arbitrator; judgment upon the award of such arbitrator may be entered in the highest court of the forum, State or Federal, having jurisdiction. This arbitration shall be held in New York City.

XVII. Notices and Method of Exercising Options to Terminate: All notices to either of the parties to this contract, if sent by registered mail, shall be deemed delivered upon mailing. All notices to the Publisher shall be addressed to the Publisher at its principal place of business in New York, N. Y., and all notices to the Author shall be addressed to him at his latest address as it appears on the books of the Publisher. Except as otherwise specifically provided herein, any option herein granted to terminate this agreement shall be exercised by a thirty day notice in writing.