

Agreement,

made this

day of

19

between ELIOT PORTER

of c/o Diarmuid Russell - Russell & Volkening, inc.
551 Fifth Avenue, New York, N. Y. 10017

herein termed the Proprietor and referred to as "He", of the first part and E. P. DUTTON & CO., INC., a corporation of the State of New York, herein termed the Publishers, of the second part.

WHEREAS, the Proprietor is Proprietor of a work at present known as

BIRDS OF NORTH AMERICA

of approximately 40,000 words - 100 four-color photos (4X5 transparencies) and 100 black and white glossy photos (positives).

which work the Publishers agree to publish on the terms and conditions specified hereinafter:

PROPRIETOR'S DECLARATION AND GUARANTEE. 1. (a) The Proprietor represents and guarantees to the Publishers that he is the legal Proprietor of the above mentioned work and that he has the power to grant the rights conferred by him in this Agreement and that the said work is free of any lien, claim, charge or debt of any kind, and that none of it is in any way a violation of a copyright, or common law right, or right of privacy belonging to any other party and that it contains nothing of a libellous, obscene or illegal character, and that he and his legal representative will hold harmless and keep indemnified the Publishers from all manner of claims, proceedings and expenses which may be taken or incurred on the ground that the said work is subject to any such lien, claim, charge or debt or is such violation or that it contains anything libellous, obscene or illegal.

(b) The Proprietor further declares that the said work has not hitherto been published in its entirety in the territories covered by this agreement, and agrees that it shall not be so published before the date of book publication.

(c) The Proprietor undertakes that, until the expiration of six (6) months after the publication date of the above work or of the publication date of the last work covered by this Agreement, he will not publish, nor permit to be published by any other Publisher, in the territories covered by this agreement, any work of his in book form, whether under his own legal name or under a pseudonym, in the category of the work or works covered by this Agreement.

PROPRIETOR'S GRANT. 2. (a) The Proprietor grants and assigns to the Publishers during the full term of United States copyright and of all renewals thereof, the exclusive right to publish, sell, or export, or cause to be published, sold, or exported the above work in book form in the United States of America, its Dependencies, the Philippine Islands, and in the Dominion of Canada; and the exclusive right to arrange for the publication of the above work in book form in the British Empire and Commonwealth and in all other foreign countries, and/or to export copies to these territories and countries.

(b) It is further understood that the territories other than the United States of America, its Dependencies, the Philippine Islands, the Dominion of Canada, and the British Empire and Commonwealth, shall be an open market for copies of the American and English editions.

(c) The Proprietor also grants to the Publishers such rights as are set forth in Clause Eight (8) (a) and (b) hereof.

DELIVERY OF COMPLETE MANUSCRIPT. 3. The Proprietor agrees to deliver to the Publishers, together with written authorization issued by the Proprietor of any copyrighted material contained in the said work, on or before March 1, 1972 two complete copies of the said work, in English, in its final form, in perfect order for printing, with all necessary originals for illustrations (if any), and to provide at his own expense an index if the Publishers request it; and that if the Proprietor fails to deliver the complete material within the specified time, unless extended by the Publishers in writing, they may decline to publish the work, and recover any and all amounts which may have been advanced to the Proprietor; but the Proprietor shall not be free to cause its publication elsewhere until he shall have re-offered it to the Publishers on the terms of this Agreement.

PROPRIETOR'S ALTERATIONS. 4. The Proprietor agrees to correct all printers' proofs, (if any), submitted by the Publishers within a reasonable time after receipt thereof, and to pay the Publishers any sum in excess of 10% of composition cost which may become due the printer for press corrections necessitated by the Proprietor's alterations or additions (other than corrections of printers' errors), the account for which the Publishers agree to render promptly.

PUBLISHERS' AGREEMENT TO PUBLISH AND COPYRIGHT. 5. The Publishers, in consideration of the rights herein granted, agree to publish the work at their own expense within twelve (12) months from the date of the receipt of the finally completed work from the Proprietor, and its approval by the Publishers in writing, in such form and manner and at such a price as the Publishers may consider best calculated to advance its sale, provided they are not hindered by causes beyond their own control; and to take out copyright for the said work in the name of the Author in the United States and to use their best judgment in protecting said copyright. Any sums received as damages for infringement of copyright shall, after all legal and other expenses have been deducted, be divided equally between the Proprietor and the Publishers, but the question as to what constitutes an infringement of the copyright shall be left to the sole decision of the Publishers. The Proprietor grants the Publishers the right to obtain renewals of the copyright in the author's or other appropriate name, but the Publishers shall have no obligation to obtain such renewal unless requested in writing.

ADVANCE ROYALTY. 6. (a) The Publishers shall pay to the Proprietor as an advance against and on account of all moneys accruing to the Proprietor under this agreement the sum of Fifteen Thousand Dollars----- payable as follows:

\$2,500. on signing - \$2,500. May 1, 1972 - \$2,500. June 1, 1972 -

\$2,500. August 15, 1972 - \$5,000. October 15, 1972.

~~(b) In the event said work or any portion thereof is deemed, for any reason, to be unacceptable by the Publishers herein, and is declined by the Publishers in writing, the Proprietor shall in such event be free to offer the work to another publisher, and in the further event the work is accepted by such other publisher, any advance previously paid the Proprietor by the Publishers herein, shall be refunded to such Publishers by (1) such other publisher, or (2) the Proprietor, upon receipt of any advance or other earnings, but in no event shall such refunding be later than the day of publication.~~

ROYALTY TERMS. 7. The Publishers agree to pay to the Proprietor on copies of the said work actually sold the following royalties:

- (a) On regular sales in the territories covered by this Agreement a basic royalty rate of \$2.25 on copies sold from ~~(----- %)~~ of the retail price Dutton's first printing, thereafter 8% of the retail price unless Dutton's reprintings are 10,000 copies, or more, in which event the royalty will be 10% of retail price.

~~Except that, after the sale of ----- copies, where copies are sold from reprintings of ----- copies, or less, the basic royalty rate of ----- will apply on copies sold from such reprintings.~~

Except that where the discount is forty-eight per cent (48%) or more from the retail price, the stipulated royalty shall be reduced by an amount equal to one-half ($\frac{1}{2}$) the difference between forty-four per cent (44%) and the discount granted, for example:

If discount 48% — The difference between 44% and 48% is 4%; royalty reduction 2%
“ “ 49% — The difference between 44% and 49% is 5%; royalty reduction 2½%
“ “ 50% — The difference between 44% and 50% is 6%; royalty reduction 3%

Where the discount is more than fifty per cent (50%) from the retail price, the stipulated royalty shall be calculated on the basis of the price actually received by the Publishers.

- (b) No royalties shall be paid by the Publishers to the Proprietor on copies of the said work given away by the Publishers; on copies used as travelers' samples, on damaged copies, on copies destroyed by fire, water or otherwise, on copies given to the Proprietor, or on copies either sold or remaindered below the cost of manufacture. The matter of remaindering shall be left to the sole discretion of the Publishers.
- (c) On all copies sold through the medium of mail-order or coupon advertising, the royalty shall be one-half the prevailing rate.

OTHER RIGHTS. 8. (a) The Publishers shall have the exclusive right, in the territories covered by this agreement, to arrange, execute contracts in its own name and receive payments, for the sale of the following rights, and if any of such rights are sold, the net proceeds shall be divided equally between the Proprietor and the Publishers:

ANTHOLOGY OR QUOTATION
BOOK CLUB
DIGEST, ABRIDGMENT OR CONDENSATION

ONE-SHOT POST-PUBLICATION
REPRINT EDITION THROUGH ANOTHER PUBLISHER
SECOND SERIAL AND SYNDICATION

Electronic or mechanical, including filmstrips, transparencies, microfilming, programming, and any method now or hereafter known or devised for information storage, reproduction and retrieval.

(b) The Publishers shall have the exclusive right, in the territories covered by this agreement, to arrange in its own name on behalf of the Proprietor and/or Publishers for the sale of the other rights listed below, and if such rights are sold, the net proceeds shall be divided between the Proprietor and the Publishers as specified:

<u>Rights</u>	<u>% to Proprietor</u>	<u>% to Publishers</u>
FIRST SERIAL	++ Reserved	by Proprietor
MOTION PICTURE (SIGHT AND SOUND)	Reserved	by Proprietor
DRAMATIC	Reserved	by Proprietor
RADIO BROADCASTING	Reserved	by Proprietor
TELEVISION	Reserved	by Proprietor
TRANSLATION AND/OR FOREIGN LANGUAGE PUBLICATION	80	20
BRITISH PUBLICATION, EXCLUSIVE OF CANADA	80	20

And in the event of any proceeds accruing from the sale of any other rights whatsoever, including the use of the title of the said work for commercial purposes, whether now existing or which may come into existence hereafter, in any language and in any territory covered by the Proprietor's grant to the Publishers in Clause Two (2) of this Agreement, any such proceeds shall be divided between the Proprietor and the Publishers as follows: ~~equally~~. Reserved by Proprietor.

++It is understood that the Proprietor shall not sell first serial rights without first obtaining the approval of the Publishers, and the Publishers agree that said approval shall not be unreasonably withheld.

STATEMENTS AND PAYMENTS. 9. Statements of sales and earnings shall be rendered and paid semi-annually as follows:

<u>Period Covered</u>	<u>Statements Rendered and Paid</u>
Earnings from May 1st. through October 31st.	Following February.
Earnings from November 1st. through April 30th.	Following August.

In the event that the earnings of the said work, for any six months period, shall be less than fifty dollars (\$50.00) the Proprietor agrees to accept thereafter annual statements and payments as follows:

<u>Period Covered</u>	<u>Statements Rendered and Paid</u>
Earnings from May 1st. through April 30th.	Following August.

PROPRIETOR'S COPIES. 10. The Publishers agree to give to the Proprietor free, twenty (20) copies of the said work when published, and to sell to the Proprietor, but not for re-sale, further copies at a discount of forty per cent (40%) from the retail price, payment to be made within thirty (30) days from the date of invoice.

OVERPAYMENTS TO THE PROPRIETOR. 11. Any overpayments, (excluding any unearned advance), made by the Publishers to the Proprietor, may be deducted from any sums due the Proprietor from the Publishers.

PROPRIETOR'S PROPERTY. 12. The Publishers shall not be responsible for loss of or damage to any manuscript, illustrations or other property of the Proprietor, except such loss or damage due to the Publishers' negligence.

REVERSION OF RIGHTS. 13. If the said work be allowed to go out of print and the Publishers fail to issue a new edition within six (6) months of written notice from the Proprietor, then and in such event all rights in and to the said work granted to the Publishers under this Agreement shall revert to the Proprietor, without, however, in any way affecting the rights of the Publishers in the matter of options, specified below in Clause Sixteen (16). It is agreed that the work shall be considered to be in print if it is available in a cheap edition.

BANKRUPTCY OR LIQUIDATION. 14. In the event of the bankruptcy or the liquidation of the Publishers through any cause whatsoever, the Proprietor shall, for ninety (90) days thereafter, have the option of buying back the rights granted to the Publishers in this Agreement, together with any plates and remaining copies bound or unbound, at the fair market value thereof, this value to be determined by agreement or by arbitration; and thereupon all rights granted to the Publishers in this Agreement shall revert to the Proprietor.

ARBITRATION. 15. Any controversy or claim arising out of or relating to this agreement or a breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and the judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The designation of such arbitrators and the conduct of such arbitration shall be subject to the Arbitration Law of the State of New York. The expense of the arbitration shall be borne equally by the parties, unless otherwise determined by the arbitrators.

OPTION. 16. In consideration of the covenants of this Agreement, the Proprietor agrees to give to the Publishers the option of publishing his next work, on terms to be agreed upon, which shall be fair and reasonable.

AGENT. 17. The Proprietor hereby authorizes and empowers his Agent, Russell & Volkening, Inc., of 551 Fifth Avenue, New York, N. Y. 10017, to collect and receive all sums of money due under this agreement, the said Agent having a commission interest in the said moneys, and declares that the said Agent's receipt shall be a good and valid discharge for all such moneys due the Proprietor. The Proprietor also authorizes and empowers the Publishers to treat with the said Agent on his behalf in all matters concerned in this agreement.

IN WITNESS WHEREOF the parties have duly executed this agreement the day and year first above written, and its provisions shall apply to and bind the executors, administrators and assigns of the Proprietor, and the successors and assigns of the Publishers.

(Witness)

Dorothy Menzies
(Witness)

(Proprietor)

E. P. DUTTON & CO., INC.

(L. S.)

John Holwell
John Holwell (Publishers) Vice-President (L. S.)

Contract

for the Publication

of

between

and

E. P. Dutton & Co., Inc.
New York, N. Y.