

THE STATE OF TEXAS §
COUNTY OF TARRANT §

PUBLISHER-BINDER AGREEMENT

THIS AGREEMENT is made on February 8th, 1985, by and between The Gentling Book of Texas Birds, a Texas joint venture having its place of business at 902 Boland Street, Fort Worth, Texas 76107 (hereinafter referred to as "Publisher"), and Craig Jensen, an individual whose business address is 1403 Justin Lane, Austin, Texas 78757 (hereinafter referred to as "Binder").

RECITALS

A. Publisher is a joint venture formed under and governed by the Texas Uniform Partnership Act between two individual artists, Scott G. Gentling and Stuart W. Gentling, of Fort Worth, Texas.

B. Publisher plans to publish a boxed and unbound, limited, single edition book containing color prints of Texas birds and landscapes titled "Of Birds and Texas" accompanied with a text, which will include a foreword by Harry Tennison, an introduction and commentaries to the plates written by Publisher, and a text by John Graves which is an essay titled "Recollections of a Texas Bird Glimpser." This book is hereinafter referred to as the "Book."

C. Binder desires to make the portfolios and boxes for the Book, and Publisher desires to so make them.

NOW, THEREFORE, the parties hereto agree as follows:

1. BINDER'S RESPONSIBILITIES AND COVENANTS.

1.1. Binder's Promise to Construct. Binder promises to undertake and to complete the construction of the special box and the two portfolios necessary to safely store the pages of text and

color plates of the Book pursuant to the specifications in Paragraph 1.2.

1.2. Description and Specifications of the Portfolio and Box.

1.21. Number and Size of Portfolios. There shall be two (2) portfolios as follows:

(i) One shall contain the text authored by John Graves, the introduction, the foreword, and ten (10) landscape prints. It shall measure approximately 22 inches by 28 inches by 1-3/4 inches.

(ii) The other shall contain 40 color prints of birds, one color print of a portrait of Audubon, and approximately 50 pages of commentary. It also shall measure approximately 22 inches by 28 inches by 1-3/4 inches.

1.22. Materials for Portfolios. The portfolios shall be constructed of Archivart Supreme Binders' Board, covered with "Commodore Halflinnen" book cloth, and lined with Archivart 100XL printmaking paper. Archivart Supreme Binders' Board is made of 42% cotton fibers, 25% denim rags, and 33% chemical pulp; it is buffered against acid deterioration with 3% calcium carbonate. "Commodore Halflinnen" is a natural finish, Dutch book cloth with a cotton warp and a linen weft. Archivart 100XL is a 100% cotton fiber, acid-free, buffered, and white printmaking paper with a vellum finish.

1.23. Size of Box; Size of Portfolios. The box containing the portfolios and their contents shall be large enough to contain them. The needed size is expected to be approximately 29-1/2 inches by 23 inches by 3-1/2 inches exterior measurements. When the final number of pages in the Book and each portfolio are determined by Publisher, Publisher will inform Binder. Binder will then determine the precise measurements of portfolios and the box that Binder recommends to Publisher. Publisher then will promptly approve such recommendation or instruct Binder to use another set of measurements. Publisher reserves the right to make

a determination of the final number of pages of the Book and each portfolio for purposes of this contract even though an actual final number is later determined. Binder shall have no responsibility for any changes in the box or portfolio sizes caused by any erroneous determination or estimate of pages by Publisher.

1.24. Materials and Construction of Box. The box shall be double tray, double wall construction with step joints in the corners, made of Archivart Supreme Binders' Board throughout, covered with "Commodore Halflinnen" book cloth and lined with Archivart 100XL printmaking paper.

1.25. Quality of Portfolios and Boxes. Binder shall insure that, to the best of his knowledge and belief, the portfolios and boxes are of the finest archival quality.

1.26. Number of Each Portfolio and Each Box to be Produced. Binder shall make for Publisher 525 of the portfolios described under 1.21(i), above, and 525 of the portfolios described under 1.21(ii), above. Binder shall make for Publisher 525 of the boxes heretofore described.

1.27. Acquisition and Security of Materials. Binder shall be responsible for the purchase and the storing of all materials for making the box and the portfolios. Binder shall store and maintain all necessary materials in safe quarters at Binder's own expense and shall be liable for their safety and security. Binder shall obtain insurance necessary to adequately cover the value of said materials and Publisher agrees to reimburse Binder for the cost of said insurance. Binder shall provide to Publisher proof of purchase of said insurance.

1.28. Shipment. Binder shall deliver the boxes and portfolios at Binder's place of business in Austin, Texas. All costs of shipping and insurance for shipping of said boxes and portfolios shall be Publisher's responsibility. Binder shall be in no way liable for any damages to the boxes or portfolios caused

by the negligence of Publisher's shipper. Binder will, at Publisher's expense for materials but not labor, pack the boxes and portfolios in the individual shipping containers designed to hold a single box and one of each of the two portfolios. Any further packing expenses, both materials and labor, such as crating a group of individual shipping containers into a larger crate, will be done by Binder or supervised by Binder and charged to Publisher as a special charge approved in advance by Publisher.

1.29. Security. To secure the performance of Binder hereunder and to protect Publisher against business risks inherent in Publisher essentially serving as a lender or banker to enable Binder to perform hereunder, Binder shall do as provided in Paragraphs 1.291 and 1.292.

1.291. Life Insurance. Binder, at Publisher's cost, will purchase a term life insurance policy in the amount of \$80,000 on the life of Binder with Publisher as sole owner and beneficiary. Such life insurance policy shall be of a term sufficient to cover the term of the make of the portfolios and boxes; and shall be cancellable only for failure to pay premiums. At the completion by Binder of Binder's performance under this Agreement, Publisher will assign said insurance policy to Binder at Binder's request and upon Binder paying the amount of any prepaid premiums then existing.

1.292. Security Interest. Binder shall grant to Publisher as security for Binder's performance hereunder a first lien security interest in the materials and cutter (such cutter costing or to cost approximately \$5,000) purchased by Binder with funds furnished by Publisher at the commencement of this contract or later during the further performance of this contract. The security instrument shall be in the form attached hereto as Exhibit "A", and Binder shall sign it and all other documentation necessary to perfect the first lien.

2. PUBLISHER'S RESPONSIBILITIES AND COVENANTS.

2.1. Shipment. All costs of shipment, including packing materials, packing labor (beyond placing the boxes and portfolios in their individual shipping containers), insurance, and carrier charges shall be paid by Publisher.

2.2. Payment to Binder for Making Portfolios and Boxes.

For making all of the two portfolios and the boxes, Binder shall be paid by Publisher as follows:

(i) Total Price. A total price of \$80,587.50 shall be paid pursuant to (i) through (iv), below.

(ii) Deposit. Publisher shall deposit with Binder the sum of \$40,293.75 so that Binder can acquire the necessary materials and make the necessary capital improvements for the construction of the boxes and portfolios. Binder acknowledges that Publisher has already advanced \$5,000 to Binder, and such \$5,000 shall be applied to reduce the deposit, thus requiring an amount of \$35,293.75 to complete the deposit. Any materials, capital improvements, or equipment purchased for the construction of the boxes and portfolios shall be the property of the Binder. Provided, however, Publisher shall have a security interest in such materials and a cutter as set forth in Paragraph 1.29.

(iii) Balance of Price. Publisher shall pay to Binder the sum of \$153.50 for every finished box with two portfolios delivered at Binder's place of business properly packed for shipment. One-half of the \$153.50 will be allocated against the deposit. The remainder of said amount shall be paid \$76.75 per box upon delivery of lots of not less than 25.

(iv) Increased Cost. Binder reserves the right to renegotiate this contract in the event that the costs of materials necessary for the construction of the boxes and portfolios contemplated should increase during the contract term and before purchase of such materials by Binder. Binder agrees to advise Publisher within ten (10) working days of any such increase and

the parties will then negotiate a new contract price. In the event no agreement can be reached within ten (10) working days of notice to the Publisher, then the following procedure shall apply: Within five (5) working days, each party shall appoint a negotiator and these two shall in turn appoint a third. A majority vote among the three so appointed shall determine the new contract price caused by the increase in the cost of materials within ten (10) working days of the five-day appointment period. Such negotiation by Publisher, Binder, and/or their negotiator shall not cause the work under this contract to cease.

(v) Added Charges. The foregoing does not provide for any added charges hereunder. Such charges shall be paid by Publisher within 30 days after being invoiced by Binder.

3. TERMINATION OF AGREEMENT. This agreement shall terminate upon completion according to its terms and by any of the events described in the following subparagraphs of this Paragraph 3.

3.1. Death or Incapacity of Binder. Death or incapacity of the Binder shall give to Publisher the option to terminate this contract. However, Publisher agrees to negotiate in good faith with the employees of Binder with regard to the completion of this agreement. In the event that Publisher and the employees of the deceased Binder should agree to complete this contract, then in no event shall the sums to be paid by the Publisher be less than those agreed to herein. However, Publisher shall have no right to reimbursement of any sums paid to Binder as deposits or advance payments if this contract terminates because of the death of Binder. If the contract is terminated because of Binder's incapacity Publisher shall be entitled to a return of any deposits by cash payment and/or in kind fair market value restitution in materials purchased with any deposits.

4. TIME FOR COMPLETION. Binder agrees to complete the construction of the boxes and portfolios within six (6) months of the date of delivery to Binder by Publisher of the deposit required by Paragraph 2.2(ii). Provided, however, if Publisher has not provided Binder with the precise number of pages of the Book and portfolios as provided in Paragraph 1.23 within 30 days of the making of said deposit, then for each day's delay in providing said information, the six-month period shall be extended one day. Binder shall not be liable for any reasonable delays in the construction of said boxes and portfolios due to events beyond the reasonable control of the Binder. It is agreed that because of Publisher's publishing schedule, time is of the essence. ^{which shall include any delays in} the receipt of materials. (4)

5. CASUALTY LOSS. In the event that the boxes and portfolios or the materials for their construction are destroyed by fire, flood or other cause other than the negligence of the Binder or his employees, then upon the receipt of insurance proceeds Binder agrees to proceed forward with the purchase of new materials so that Binder may complete this contract.

6. MISCELLANEOUS.

6.1. Notices. All notices provided for in this Agreement shall be hand delivered or sent by registered mail, return receipt requested, addressed to the parties at their respective addresses stated above. A copy of all notices sent to Publisher shall be sent in the same manner to Denny O. Ingram, McGinnis, Lochridge & Kilgore, 1300 Capitol Center, 919 Congress Avenue, Austin, Texas 78701. A copy of all notices sent to Printer shall be sent in the same manner to another person whom the Printer specifies to Publisher and Denny O. Ingram in writing. Either party may designate another address or change his address for notices under this Agreement by giving written notice of same to the other party.

6.2. Governing Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Texas.

6.3. Entire Agreement, Waiver, Modification. This Agreement constitutes the entire and full agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties affecting the subject matter hereof. Any waiver or modification of this Agreement must be in writing and signed by both parties to be effective. The waiver of a breach of the terms or of any default to this Agreement shall not be deemed a waiver of any subsequent breach or default, whether of the same or similar nature, and shall not in any way affect the other terms hereof.

6.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, beneficiaries by will, executors, personal representatives, and administrators. However, no assignment of this contract or part hereof shall be binding on either party without the written consent of the other.

6.5. Severability. The parties hereto agree that if any part, term, or provision of this Agreement is held by the courts to be unenforceable, the validity of the remaining portions or provisions shall not be affected; and the parties shall retain the rights and obligations contained in the unaffected portions and provisions of this Agreement.

6.6. Place of Suit. Any action of law, suit in equity or judicial proceeding for the enforcement or interpretation of this contract or any provision thereof shall be instituted only in the state or federal courts within the State of Texas.

6.7. Captions, Gender, and Number. The paragraph captions used herein have been inserted for convenience and reference only and shall in no way modify or restrict any of the terms or provisions hereof. All pronouns used herein and references

thereto shall refer to the masculine, feminine, and neuter genders and the singular and plural number as the identification of the persons or entities may require.

6.8. Multiple Originals. This Agreement may be executed by the signing by the parties hereto of multiple originals; and if such is done, each such multiple original shall be treated as a binding original of this Agreement.

EXECUTED as of the day and year stated above.

PUBLISHER:

THE GENTLING BOOK OF TEXAS BIRDS

By: Stuart W. Gentling
Stuart W. Gentling, Venturer
and Attorney-in-Fact for
Scott G. Gentling, Venturer

BINDER:

Craig Jensen
Craig Jensen

Exhibit A
Security Agreement

Craig Jensen

(Name of Debtor)

1403 Justin Lane	Austin	Travis	Texas	78757
(No. and Street)	(City)	(County)	(State)	(Zip)

hereinafter called "Debtor" (whether one or more), and
(hereinafter called "Secured Party"), agree as follows:

Section I. Creation of Security Interest.

Debtor hereby grants to Secured Party a security interest in the collateral described in Section II of this Security Agreement to secure performance and payment of all obligations and indebtedness of Debtor to Secured Party of whatever kind and whenever or however created or incurred.

Section II. Collateral.

The collateral of this Security Agreement consists of (check appropriate box): () Consumer goods; (X) Equipment (Business use); (X) Accounts and/or contract rights; () Fixtures; (X) Inventory; () Crops; () Securities; () Livestock; of the following description: Paper cutter; rights to receive, or inventory of, materials to perform debtor obligations to produce portfolios and boxes to contain the work "Of Birds and Texas," such materials being Archivart Supreme Binders' Board, "Commodore Halflinnen" book cloth, and Archivart 100XL printmaking paper.

(when the security interest covers fixtures, include a description of the land concerned.) Together with all similar collateral hereafter acquired by Debtor, all substitutes and replacements for, and all accessories, accessions, additions, increase and proceeds thereof. In the event the collateral is securities, the collateral also includes all stock rights, stock splits and dividends received as a result of ownership of the securities. The inclusion of proceeds in this Security Agreement does not authorize the Debtor to sell, dispose of or otherwise use the collateral in any manner not specifically authorized by this Agreement. The location of the collateral is () in Secured Party's possession () in Debtor's possession () at the following location:

If other than the Debtor, the record owner of the land where such "goods" are or will be located is:

If any of the collateral is accounts or contract rights, give the location of office where the records concerning them are kept if other than the Debtor's address:

Section III. Debtor's Representations, Warranties and Agreements

A. Debtor will:

- (1) Take adequate care of the collateral, insure the collateral with satisfactory insurance policies in such amounts and for such hazards as the Secured Party directs;
- (2) Pay all costs necessary to preserve and enforce this security interest, collect the obligation and preserve the collateral, and including but not limited to taxes, assessments, insurance premiums, repairs, reasonable attorney's fees and legal expenses, rent, storage costs and expenses of sale;
- (3) Furnish Secured Party with any information on the collateral requested by Secured Party;
- (4) Allow Secured Party to inspect the collateral and inspect and copy all records relating to collateral and the obligations;
- (5) Sign any papers furnished by Secured Party which are necessary to obtain and maintain this Security interest;
- (6) Assist Secured Party in complying with the Federal Assignment of Claims Act;
- (7) Take necessary steps to preserve the liability of account debtors, obligors and secondary parties whose obligations are part of the collateral;
- (8) Transfer possession of all instruments and documents which are part of the collateral to Secured Party immediately, or as to those hereafter acquired, immediately following acquisition if requested to do so by Secured Party;
- (9) Perfect a security interest using a method satisfactory to Secured Party and goods covered by chattel paper which is part of the collateral; and
- (10) Notify the Secured Party of any change occurring in or to the collateral, or in any fact or circumstance warranted or represented by the Debtor in this agreement or furnish to Secured Party, or if any event of default occurs.

B. Debtor will not without Secured Party's consent:

- (1) Remove the collateral from the location specified herein;
- (2) Allow the collateral to become an accession to other goods;
- (3) Sell, lease, otherwise transfer, manufacture, process, assemble or furnish under contracts of service, the collateral, and except goods identified herein as inventory.

C. Debtor warrants:

- (1) No financing statement has been filed with respect to the collateral, other than relating to this security interest;
- (2) Debtor is absolute owner of the collateral and it is not encumbered other than by this security interest (and the same will be true of collateral acquired hereafter when acquired);
- (3) None of the collateral is affixed to real estate except goods identified herein as fixtures or is an accession to other goods, nor will collateral required hereafter be affixed to real estate or an accession to other goods when acquired, unless Debtor has obtained Secured Party's consent and has furnished Secured Party the consents or disclaimers necessary to make this security interest valid against persons holding interest in the real estate or other goods;
- (4) All account debtors and obligors, whose obligations are part of the collateral, are to the extent permitted by law prevented from asserting against Secured Party any claims or defense they have against Sellers;
- (5) The goods are to be used primarily for the purposes indicated in Section II.

TERMS & CONDITIONS CONTINUED ON THE REVERSE SIDE

EXECUTED this _____ day of _____, 19 85

By _____

Section IV. Rights and Remedies of Secured Party.

A. Rights Exclusive of Default.

(1) This Security Agreement, Secured Party's rights hereunder or the indebtedness hereby secured may be assigned from time to time, and in any such case the Assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Secured Party, and Debtor will assert no claim or defenses he may have against Secured Party against the Assignee, except those granted in this Security Agreement;

(2) Secured Party may enter upon Debtor's premises at any reasonable time to inspect the collateral and Debtor's books and records pertaining to the collateral, and Debtor shall assist Secured Party in making any such inspection;

(3) Secured Party may execute, sign, endorse, transfer or deliver in the name of Debtor notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, application for certificates of title or any other documents, necessary to evidence, perfect or realize upon the security interest and obligations created by this Security Agreement;

(4) At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the collateral, may pay for insurance on the collateral and may pay for the maintenance and preservation of the collateral. Debtor agrees to reimburse Secured Party on demand for any payment made or expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon at the rate of ten percent (10%) per annum;

(5) In the event the collateral remains in the possession of Secured Party, collateral may be released for sale or other purposes at Secured Party's option without prejudice to Secured Party's security interest.

(6) Secured Party may notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness in which a security interest is given or which are remitted by Debtor to Secured Party as proceeds to pay Secured Party directly; and

(7) Secured Party may at any time demand, sue for, collect or make any compromise or settlement with reference to the collateral as Secured Party, in its sole discretion, chooses.

B. Rights in Event of Default.

(1) Upon the occurrence of an Event of Default, or if Secured Party deems payment of Debtor's obligations to Secured Party to be insecure, and at any time thereafter, Secured Party may declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a Secured Party under the Uniform Commercial Code of Texas, including without limitation thereto, the right to sell, lease or otherwise dispose of any or all of the collateral, and the right to take possession of the collateral, and for that purpose Secured Party may enter upon any premises on which the collateral or any part thereof may be situated and remove the same therefrom. Secured Party may require Debtor to assemble the collateral and make it available to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated at the beginning of this Security Agreement at least five days before the time of the same or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorney's fees and legal expenses, and Debtor agrees to pay such expenses plus interest thereon at the rate of ten per cent (10%) per annum. Debtor shall remain liable for any deficiency. In addition, Secured Party shall have all the rights and remedies listed under Section A pertaining to rights exclusive of default.

(2) Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

(3) The remedies of Secured Party hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Secured Party.

Section V. Events of Default.

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

(1) Debtor's failure to pay when due any indebtedness secured by this Security Agreement, either principal or interest.

(2) Default by Debtor in the punctual performance of any of the obligations, covenants, terms or provisions contained or referred to in this Security Agreement or in any note secured hereby.

(3) Any warranty, representation, or statement contained in this Security Agreement or made or furnished to Secured Party by or on behalf of Debtor in connection with this Security Agreement or to induce Secured Party to make a loan to Debtor proves to have been false in any respect when made or furnished.

(4) Loss, theft, substantial damage, destruction, sale (except as authorized in this Security Agreement) or encumbrance to or of any of the collateral, or the making of any levy, seizure or attachment thereof or thereon.

(5) Debtor's death, dissolution, termination of existence, insolvency or business failure; the appointment of a receiver of all or any part of the property of Debtor; an assignment for the benefit of creditors by Debtor, the calling of a meeting of creditors of Debtor, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor, surety or endorser for Debtor.

(6) Any statement of the financial condition of Debtor or of any guarantor, surety or endorser of any liability of Debtor to Secured Party submitted to Secured Party by Debtor or any such guarantor, surety or endorser proves to be false.

(7) The collateral becomes, in judgment of Secured Party, unsatisfactory or insufficient in character or value.

(8) Any guarantor, surety or endorser for Debtor defaults in any obligation or liability to Secured Party.

Section VI. Additional Agreements.

(1) The term "Debtor" as used in this instrument shall be construed as singular or plural to correspond with the number of persons executing this instrument as Debtor. The pronouns used in this instrument are in the masculine gender but shall be construed as feminine or neuter as occasion may require. "Secured Party" and "Debtor" as used in this instrument include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties.

(2) If more than one person executes this instrument as Debtor, their obligations under this instrument shall be joint and several.

(3) The acceptance of any late payment or the waiver or modification of any term of this security agreement or any promissory note shall not be construed as being a waiver of the prompt payment of any subsequent payments due or as being the waiver or modification of any other terms of this security agreement or any promissory note. No waiver, modification or additional terms shall be effective unless made in the form of a writing signed by Secured Party and Debtor. The terms used in this instrument which are defined in the Texas Uniform Commercial Code are used with the meanings as therein defined.

(4) The law governing this secured transaction shall be that of the State of Texas in force at the date of this instrument.

(5) This Security Agreement grants to Secured Party a first and prior lien to secure the payment of the debts referred to herein, and extensions and renewals thereof. For the purpose of this paragraph, an extended or renewal note shall be considered executed on the date of the original note. Debtor waives presentment, demand, notice of dishonor, protest, and extension of time without notice as to any instruments and chattel paper in the collateral paper.