**FOREIGN AGENCY AGREEMENT M E M O R A N D U M**

Dear _____________,

You requested that I prepare a rough memorandum to show your prospective investors, to assist you in acquiring funding for your record label.

A. You gave me the following information:

A1. You are qualified to handle the activities of selecting artists, session musicians and material, producing masters, handling artwork and printing, promoting and distributing records.

A2. Your investors are willing to provide $________ now and $________________ in six months or the aggregate sum of $_______ for the first year.

A3. Your investors are willing to accept an equity position in the record company with half for them and half for you.

A4. Your investors wish to remain 100% owners in all assets of the company until such time as they have recouped in full their initial capital contribution(s). This is a standard procedure with some venture capital investors.

B. You requested information to prepare a budget for the first fiscal year of operations. My thinking is as follows:

B1 Divide your thinking into two types of costs-- those which will go on monthly regardless of whether the company issues releases or not, and those expenses that are incurred in the production, manufacturing, distribution and promotion of the releases.

B2. Your monthly expenses should include:

a. Your salary

b. Your ordinary expenses account

c. Extra expenses road account

d. Rent

e. Telephone (local)

f. Telephone (long distance)

g. Secretary

h. Bookkeeping

i. Legal Services

j. Office Supplies

k. Demos & recording/video tape

l. Miscellaneous

B3. Your release expenses include:

a. Production of Masters (10 sides) $

b. Pressing and shipping 1st pressing

c. Pressing and shipping 2nd pressing

d. Promotional copies and mailing

e. Excise taxes

f. Royalties

g. Advertising & Artwork

h. Payment of mechanical licenses

i. Distribution costs

B4. The above is incomplete and the amounts may vary.

C. You requested suggestions on how to set up your business:

C1. I would suggest setting up two business entities - one for music publishing and the other for the record company.

C2. The Publishing Company should be constantly acquiring assets in the form of copyrights and songwriters signed exclusively to your publishing arm and will have relatively few expenses (advances to songwriters, lead sheets, filing fees, recording, tape duplications, etc.). This could be initiated asa corporation (probably Chapter sub-S) or could be a limited partnership although for tax purposes the sub-S might be more attractive to your investors.

C3. The record company will spend a lot of money in overhead and record production, promotion, and distribution and it may never have a hit nor recoup the capital contributions of your investors or, for that matter your sweat equity. For limited liability reasons, a corporation is advisable. However, the investors for tax reasons may prefer a limited partnership. All the parties involved should consult their accountants for counsel in this matter as the tax codes change yearly and they would be best qualified to know recent changes in the tax laws.

C4. Other business, such as a distribution, promotion nor management company may be set up at a later time as the need arises.

C5. Any partnership set up will provide for the division of profits to both you and the investors, repayment of initial capital loan, and for the sharing in losses for taxation purposes. Repayment of the initial capital can be in the form of a royalty paid on each record sold and paid for, or may be dispersed at intervals out of the company's general fund. There should be no personal liability for any of the principals beyond the amount they have contributed to the company. Your salary should be considered an expense of the company and not a recoupable advance.

C6. The company should have an employee agreement with you - for possibly three years - with a provision that if your services are terminated, you will receive half of the remaining salary for the term of the employment agreement as liquidated damages. In your capacity as a producer, You may wish to receive a royalty for each record sold and paid for in addition to your salary. Or, your salary can be treated as an advance against royalty rates. Royalty computation should be biannually with the royalties being paid within 60 days of January 1 and July 1 for the previous six months ending on those dates.

C7. If your record company is incorporated, try to make certain that your investors purchase several thousand dollars worth of stock. The ratio of money paid for stock, to money loaned to the corporation should not be so small as to invite adverse results in creditor law suits or any adverse ruling from the Internal Revenue Service.

C8. If your investors want their investment returned before you receive your percentage of the stock, protect yourself to see that you will receive your stock when it is due you. One way to accomplish this would be to have each investor purchase his shares for cash, have the corporation issue to each investor half his shares on one stock certificate and the other half on another certificate, have each investor assign his second certificate to you and have all such certificates placed in escrow with a bank. You will furnish the bank with instructions to deliver the certificates to you upon a notarized notification from the corporation that the initial investment has been recouped in full by the investors and instruct the bank to return all certificates to their respective investors if no notification has been received from the corporation in three years.

C9. The word "investment" can mean the total amount furnished by the investors, or may exclude the amount paid for stock and include only the amounts loaned the corporation and furnished to the partnerships. I recommend the second combination.

D. You requested a rough draft for an investment proposal. This is rough and this should be kept in mind. It can be used as a basis to begin negotiations but is not the last word in the matter.

D1. Please note that you informed me that you will have $_________ to spend during the next six months, and this prompted me to try to budget your company to one-sixth of that amount as your average monthly expenses. I found your monthly overhead to be in excess of what your present budget reflects. After office expenses, you will be left with very little for your production budget.

D2. This indicates that you should concentrate on master production and promotion, and that you should leave the pressing, financing, and distribution to another record company or distributor currently set up for national distribution.

D3. The budget covers items such as long distance phone calls and out of town travel. These are expenses you should incur to promote masters produced by you, whether such masters are released by your company or another national sales company or distributor. Masters leased to another company may not receive sufficient individual attention from such a company (which may operate on the theory of releasing many masters in the hope that one out of ten will hit, current "blue sky" ratio).

D4. I would suggest that you produce masters to be released through other national sales companies, when possible and profitable, and some masters to be released nationally by your own company. Your releases should be done one at a time - wait until one record is dead before releasing the next.

D5. This one release at a time method will give each record its maximum chance for success. Your long distance phone bill and out of town trips can primarily concentrate on your own releases; however, you can also push the records released by other companies which you produced and/or published and possibly expand your company into record distribution and promotion for third parties..

D6. If you have two non-competing records, you may wish to split your primary promotion attention. You may save some shipping and promotional costs by including both masters in the same promotional and mailing package to radio stations, the media and other domestic and foreign labels.

D7. Not every song you record must be released. It is common practice among producers and record companies to record two to four more songs than are slated for release. Doing this assures you that only the best recordings are released and if all the recordings are excellent, you have a head start on the next project with this artist or backup tracks of previously unreleased material for television and/or film appearances by the artist.

E. I hope this memorandum will give you and your investors an idea of where their capital will be used if you have no income. Assuming there will be income to the company, accounts could be set up in the following manner:

E1. You may be reimbursed for cost of masters by national sales agencies. You may receive an advance greater than your session costs, and further advances as your masters become hit records, this can recoup or even show a profit prior to the release of record of production costs.

E2. You might have what other music publishers consider commercially viable songs in the publishing catalogue of the business. You may receive advances from other publishers, both here in the U.S. and abroad who may purchase interests in the copyright.

E3. You may receive advances from foreign companies wishing to license your masters. This can be on a blanket basis for an entire area (e.g. Europe, Asia) or on a per market basis (e.g. France, Germany, etc). This can be a good source of both advances and royalties although you must bear in mind that an overseas licensing agreement will net approximately one-half of the royalties you would earn in the U.S. on your own label.

E4. Although unlikely, you may receive advances from a performing rights society after a writer in your publishing stable has established a record of earnings.

E5. You may in the future, dependent on the success of your label's releases, even receive royalties on masters and songs. On the records your company released, you may even have the pleasant experience of having area distributors pay you on delivery.

I hope this gives you a starting place from which to commence your negotiations with your investors. Keep in mind when negotiating with your investors that although the high returns on investments for the winners in this industry are incentive to invest, the large majority of indie record companies are lucky to just stay in business for five years. This is a high risk investment vehicle and your prospective investors should be made aware of this. Good Luck.

Sincerely