FIRST AMENDMENT TO DISTRIBUTION AGREEMENT  
  
 THIS FIRST AMENDMENT TO DISTRIBUTION AGREEMENT dated April 25th, 1997 (the  
"Agreement") is made and entered into on this 25th day of April, 1997, by and  
between U.S. Cigar Distributors, Inc., a Florida corporation ("U.S. Cigar"), and  
Xxxxxxx International, Inc., a Delaware corporation ("Xxxxxxx").  
  
 Paragraph 1 of the Agreement is hereby modified as follows:  
  
 1. Engagement of Distributor  
  
 U.S. Cigar hereby grants to Xxxxxxx the exclusive right to distribute Xxx  
Xxxx brand cigars (the "Products") in the territory, as hereinafter described,  
for a term of 24 months (the "Initial Term") with an automatic 24 month  
extension, unless notice of termination is given by either party on or before  
the 18th month of the Initial Term, provided the performance standards set forth  
herein are met (the "Term"). It is understood by the parties that the rights  
granted herein do not constitute an assignment of any trademark, trade name or  
copyright. In the event that Xxxxxxx elects not to sell any Product hereunder,  
U.S. Cigar shall have the right to distribute such Product in the territory as  
hereinafter described. The parties shall agree within ninety (90) days of the  
date of this Agreement on the other brands (and flavorings within such brands),  
if any, that Xxxxxxx shall have an exclusive right to distribute hereunder.  
   
 Paragraphs 3. A and B of the Agreement are hereby modified as follows:  
  
 A. On or before October 31 of each year, Xxxxxxx and U.S. Cigar shall agree  
on an annual sales forecast (the "Annual Sales Forecast") for the succeeding  
calendar year of the Term containing sales projections for each Product on a  
monthly basis. The Annual Sales Forecast may be revised by Xxxxxxx by up to 50%  
for any month(s) during the Term upon thirty (30) days prior written notice to  
U.S. Cigar, provided that Xxxxxxx shall exercise commercially reasonable efforts  
to sell the total amount of Products included in the Annual Sales Forecast. The  
Annual Sales Forecast for the remainder of 1997 shall be provided within ninety  
(90) days of the date of this Agreement.  
  
 B. On or before October 31 of each year, Xxxxxxx and U.S. Cigar shall agree  
on a production and delivery schedule (the "Annual Production and Delivery  
Schedule") for the succeeding calendar year of the Term containing production  
and delivery schedules for each Product on a monthly basis. The Annual  
Production and Delivery Schedule may be revised by U.S. Cigar by up to 50% for  
any month(s) during the Term upon thirty(30) days prior written notice to  
Xxxxxxx, provided that U.S. Cigar shall exercise commercially reasonable efforts  
to produce and deliver the total amount of Products included in the Annual  
Production and Delivery Schedule. The Annual Production and Delivery Schedule  
for the remainder of 1997 shall be provided within ninety (90) days of the date  
of this Agreement.  
  
  
  
 IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and   
official seal this \_\_\_\_ day of April, 1997.  
  
  
Signed and sealed in the U.S. Cigar Distributors, Inc.,  
presence of:  
  
-----------------------------  
  
 By: /s/ Xxxx X. Xxxx, Xx.  
----------------------------- -----------------------------  
 Xxxx X. Xxxx, Xx., President  
  
  
 Xxxxxxx International, Inc.  
  
-----------------------------  
  
/s/ By: /s/ J. Xxxxxx Xxxx, III  
----------------------------- -------------------------------  
 J. Xxxxxx Xxxx, III, Executive   
 Vice President  
  
  
  
 2  
  
  
  
 U.S. Cigar Distributors,  
 0000 Xxxxxxxx Xxxxxx  
 Xxxxx Xxxxxx, Xxxxxxx 00000  
 Tel: 000.000.0000 Fax 000.000.0000  
  
  
  
Pricing Schedule for the balance of 1997 on sales to XXXXXXX INTERNATIONAL, INC.  
  
 Exhibit C--Pricing Forecast  
   
Product Presentation Current Price New Price  
 (see notes) 10/01/97  
-------------------------------------------------------------------------------------------------------  
Xxx Xxxx/Long Filler Petit Lonsdale 25/box 1.08 1.172  
 5x5 cartons 1.08 1.172  
 Xxxxxxxxx 25/box 1.28 1.389  
 4x5 cartons 1.28 1.389  
 Double Corona 25/box 1.48 1.606  
 3x5 cartons 1.48 1.606  
 Robusto 25/box 1.26 1.367  
 3x5 cartons 1.26 1.367  
 Short Filler Small Cigars 10x5 0.26 0.282  
 Half Coronas 50 box 0.50 0.543  
 5x5 cartons 0.50 0.543  
 Slim Panatelas 50 box 0.57 0.618  
 5x5 cartons 0.57 0.618  
Palomitas: Classic 20x10's 0.134 0.145  
 ctns.  
 50's box " "  
 Cherry 20x10's " "  
 ctns  
 50's box " "  
 Clove 20x10's " "  
 ctns.  
 50's box " "  
Sub-Total Palomitas  
-------------------------------------------------------------------------------------------------------  
  
  
Notes: Current prices agree with discussions held with Xxxxxxx as to the  
Distribution Agreement and prices. The forecast beyond June 1997 is subject to  
review as to unit volume, product mix, and pricing forecast for October 1st,  
1997. This price would hold for at least 90 days.  
  
  
  
 DISTRIBUTION AGREEMENT  
  
 THIS DISTRIBUTION AGREEMENT (the "Agreement") is made and entered into on  
this 25th day of April, 1997, by and between U.S. Cigar Distributors, Inc., a  
Florida corporation ("U.S. Cigar"), and Xxxxxxx International, Inc., a Delaware  
corporation ("Xxxxxxx").  
  
 RECITALS:  
  
 A. U.S. Cigar is engaged in the distribution of tobacco leaf, cigars,  
cigarillos and other tobacco products and is the exclusive distributor in the  
United States, Canada and Mexico for certain of these products produced,  
brokered and manufactured by Agro Comercial Fumageira, S.A. and Xxxxxxxxx  
Charutos e Cigarrilhas Ltda., Salvador, Bahia, Brazil (collectively, the  
"Xxxxxxxxx Group").  
  
 B. The parties hereto wish to enter into an exclusive distribution  
agreement.  
  
  
NOW, THEREFORE, the parties agree as follows:  
  
1. ENGAGEMENT OF DISTRIBUTOR  
  
 U.S. Cigar hereby grants to Xxxxxxx the exclusive right to distribute Xxx  
Xxxx brand cigars (the "Products") in the territory, as hereinafter described,  
for a term of 24 months (the "Initial Term") with an automatic 24 month  
extension, unless notice of termination is given by either party on or before  
the 18th month of the Initial Term, provided the performance standards set forth  
herein are met (the "Term"). It is understood by the parties that the rights  
granted herein do not constitute an assignment of any trademark, trade name or  
copyright. In the event that Xxxxxxx elects not to sell any Product hereunder,  
U.S. Cigar shall have the right to distribute such Product in the territory as  
hereinafter described.  
  
2. TERRITORY  
  
 The exclusive territory shall consist of the United States only (the  
"Territory").  
  
3. SALES FORECAST AND MINIMUM SALES  
  
 A. On or before October 31 of each year, Xxxxxxx and U.S. Cigar shall agree  
on an annual sales forecast (the "Annual Sales Forecast") for the succeeding  
calendar year of the Term containing sales projections for each Product on a  
monthly basis. The Annual Sales Forecast may be revised by Xxxxxxx by up to 50%  
for any month(s) during the Term upon thirty (30) days prior written notice to  
U.S. Cigar, provided that Xxxxxxx shall exercise commercially reasonable efforts  
to sell the total amount of Products included in the Annual Sales Forecast. The  
Annual Sales Forecast for the remainder of 1997 is attached hereto as Exhibit A.  
  
  
  
 B. On or before October 31 of each year, Xxxxxxx and U.S. Cigar shall agree  
on a production and delivery schedule (the "Annual Production and Delivery  
Schedule") for the succeeding calendar year of the Term containing production  
and delivery schedules for each Product on a monthly basis. The Annual  
Production and Delivery Schedule may be revised by U.S. Cigar by up to 50% for  
any month(s) during the Term upon thirty (30) days prior written notice to  
Xxxxxxx, provided that U.S. Cigar shall exercise commercially reasonable efforts  
to produce and deliver the total amount of Products included in the Annual  
Production and Delivery Schedule. The Annual Production and Delivery Schedule  
for the remainder of 1997 is attached hereto as Exhibit B.  
  
 C. Subject to the Subparagraphs A and B herein, prevailing market  
conditions and Xxxxxxx'x sales of the Products, Xxxxxxx intends to purchase  
Products from U.S. Cigar having an aggregate invoice value, exclusive of freight  
and taxes, but before any discounts or allowances, of up to $225,000.00 per  
month during the Term.  
  
4. ORDERS AND ACCOUNTS  
  
 A. All orders shall be taken at U.S. Cigar's export billing price as set  
forth on a price list as hereinafter described on terms then in effect, FOB,  
Salvador, Brazil or such other location specified by U.S. Cigar. Freight and  
insurance charges prepaid by U.S. Cigar may, at its option, be included in the  
price or billed separately to Xxxxxxx. All orders must be signed by Xxxxxxx or  
its duly authorized agent.  
   
 B. On or before October 31 of each year, Xxxxxxx and U.S. Cigar shall agree  
on a list of prices that U.S. Cigar will charge Xxxxxxx for the Products (the  
"Price List") for the succeeding calendar year. The Price List may be changed by  
U.S. Cigar only upon the giving of at least ninety (90) days prior written  
notice to Xxxxxxx or upon the waiver of receipt of such notice by Xxxxxxx. The  
Price List for the remainder of 1997 is attached hereto as Exhibit C.  
  
 C. The selling price charged by Xxxxxxx for the Products to its customers  
shall be at its sole discretion.  
  
 D. All invoices from U.S. Cigar to Xxxxxxx shall be paid in United States  
currency.  
  
 E. U.S. Cigar warrants and represents that all Products sold shall be free  
of defects, whether apparent or latent. Xxxxxxx shall be entitled to return all  
defective Products for either a full credit or replacement, including all  
freight charges, if Xxxxxxx gives written notice of the defect to U.S. Cigar  
within seven (7) days of receipt of the Products in the case of an apparent  
defect or within seven (7) days of discovery in the case of a latent defect.  
  
 F. All orders shall be filled by U.S. Cigar with reasonable promptness  
except that in the case of fire, riots, strikes, accidents, acts of God, pests,  
disease, abnormal climactic conditions or force majeure which unavoidably  
stopped the making of deliveries, deliveries may be canceled or partially  
canceled as the case may require upon written notice to Xxxxxxx. Such  
interruption of deliveries,  
  
  
  
 2  
  
  
however, shall not invalidate the remainder of this Agreement but upon removal  
of the cause of the interruption, deliveries shall be as before.  
  
5. PROMOTION OF PRODUCTS:  
  
 A. U.S. Cigar and Xxxxxxx shall jointly develop an overall marketing  
strategy for the Products, taking into consideration the availability of the  
Products and the market requirements in the Territory; develop a marketing  
campaign and shall produce advertising and promotional material. U.S. Cigar and  
Xxxxxxx shall share all costs associated with such promotional expenses equally.  
The marketing campaign and the related expenditures shall require the approval  
of U.S. Cigar, the approval of which shall not be unreasonably withheld.  
  
 B. All packaging shall contain a statement that the cigar(s) was  
manufactured by Xxxxxxxxx Charutos e Cigarrilhas Ltda., Bahia, Brazil.  
  
6. NAME AND TRADEMARKS  
  
 A. All trademarks, trade names, and copyrights granted or applied for in  
connection with the Products are and shall remain the sole property of the  
Xxxxxxxxx Group or U.S. Cigar. Xxxxxxx will not by its operations hereunder  
acquire any right, title or interest thereto. Xxxxxxx shall not alter or remove  
any trade name, trademark or other identification marks, symbols or labels from  
the Products.  
  
 B. Use of the trademarks, trade names, and copyrights on any sales  
promotion, advertising, stationery or other media produced by or for Xxxxxxx may  
only be done with the express written consent of U.S. Cigar.  
  
 X. Xxxxxxx will not, by its operations hereunder, acquire any right, title  
or interest in any blend of tobacco used in any Product or in any blend of  
tobacco formulated or developed by either Xxxxxxx or U.S. Cigar and used in any  
Product hereunder.  
  
7. EXPENSES:  
  
 Except as set forth in this Agreement, each party shall pay all of its own  
expenses in connection with this Agreement.  
  
8. CONFIDENTIALITY  
  
 Xxxxxxx hereby agrees to keep confidential all knowledge, techniques,  
information of any related sort and agrees not to reveal any information to  
anyone concerning knowledge which Xxxxxxx has derived from its relationship with  
U.S. Cigar.  
  
  
  
 3  
  
  
  
  
9. INDEMNIFICATION  
  
 A. U.S. Cigar shall indemnify Xxxxxxx, and hold Xxxxxxx harmless from any  
claims, demands, liabilities, actions, suits or proceedings asserted or claimed  
by third parties and arising out of the operation of U.S. Cigar's business. This  
indemnification shall not apply, however, to any indemnitee whose own act or  
omission has given rise to any such claim, demand, liability, action suit or  
proceeding.  
  
 X. Xxxxxxx shall indemnify U.S. Cigar, and hold U.S. Cigar harmless from  
any claims, demands, liabilities, actions, suits or proceedings asserted or  
claimed by third parties and arising out of the operation of Xxxxxxx'x business.  
This indemnification shall not apply, however, to any indemnitee whose own act  
or omission has given rise to any such claim, demand, liability, action, suit or  
proceeding.  
  
10. ASSIGNMENT  
  
 This Agreement is personal to the parties hereto and may not be assigned by  
Xxxxxxx, in whole or in part, without the prior written consent of U.S. Cigar.  
Change of ownership of more than 25% of the outstanding common shares of Xxxxxxx  
or merger of Xxxxxxx shall constitute an assignment hereunder.  
  
11. AGENCY:  
  
 Xxxxxxx is an independent contractor and is not a legal or implied agent of  
U.S. Cigar and has no authority to bind the U.S. Cigar as a result of the  
relationship created by this Agreement. No acts or assistance given by U.S.  
Cigar shall be construed to alter the relationship created by this Agreement.  
  
12. TERMINATION:  
  
 This Agreement shall terminate in the event one of the following  
contingencies occurs, but in no event shall such termination relieve either  
party of any of its obligations hereunder:  
  
 A. At the option of U.S. Cigar, upon sixty (60) days prior written notice,  
if Xxxxxxx shall materially fail to meet any material obligations provided for  
in this Agreement and fails to cure such breach within sixty (60) days of  
receipt of such notice.  
  
 B. At the option of Xxxxxxx, upon sixty (60) days prior written notice, if  
U.S. Cigar shall materially fail to meet any material obligations provided for  
in this Agreement and fails to cure such breach within sixty (60) days of  
receipt of such notice.  
  
 C. At the option of U.S. Cigar, upon the insolvency or bankruptcy of  
Xxxxxxx, the making of an assignment for the benefit of creditors, or the  
appointment of a receiver or trustee of any part of the assets of Xxxxxxx'x  
business.  
  
  
  
 4  
  
  
  
  
 D. In the event that this Agreement is terminated hereunder, Xxxxxxx shall  
have the right to sell the Products in its possession in the Exclusive Territory  
for a period of three (3) months after the effective date of the termination of  
this Agreement.  
  
 E. Within three (3) months after the effective date of the termination of  
this Agreement, Xxxxxxx shall immediately return to U.S. Cigar at U.S. Cigar's  
office or at another location designated by U.S. Cigar and at Xxxxxxx'x expense  
all of U.S. Cigar's literature, labels, samples, consignment equipment, if any,  
and supplies in Xxxxxxx'x possession. Additionally, U.S. Cigar shall purchase  
from Xxxxxxx all Products remaining in Xxxxxxx'x possession at the end of the  
three (3) month period for cost plus any shipping and carrying charges incurred  
by Xxxxxxx.  
  
 F. Unless otherwise provided herein, termination of this Agreement shall  
not affect any liability of either party to the other which accrued prior to the  
effective date of the termination of this Agreement.  
  
13. NOTICE:  
  
 All notices, consents, requests, demands, and other communications  
hereunder shall be in writing and shall be deemed to have been duly given or  
delivered if delivered personally; or sent by facsimile with a copy sent by  
first class mail; or mailed by registered mail, return receipt requested, with  
first class postage prepaid:  
  
 To U.S. Cigar: Xxxx X. Xxxx, Xx.  
 0000 Xxxxxxxx Xx.  
 Xxxxx Xxxxxx, Xxxxxxx 00000  
 Facsimile#: (000) 000-0000  
  
  
 With Copy to: Xxxxxxx X. Xxxxxx, Esq.  
 Merkin & Iglesias  
 000 Xxxxxxxx Xxx., Xxxxx 000  
 Xxxxx, Xxxxxxx 00000  
 Facsimile#: (000) 000-0000  
  
  
 To Xxxxxxx: Xxxxx Xxxxxxxxx  
 Vice President/General Manager  
 Xxxxxxx International, Inc.  
 X.X. Xxx 0000  
 Xxxxxxxxxxxx, Xxxxxxx 00000  
 Facsimile#: (000) 000-0000  
  
  
 5  
  
  
  
  
 With Copy to: Xxxxxx X. Xxxxxxxx, Esq.  
 Schnader, Harrison, Xxxxx & Xxxxx  
 000 Xxxxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
 Facsimile#: (000) 000-0000  
  
  
or to such other address as designated by the recipient, in writing, and  
properly sent to the other parties hereto.  
  
14. ARBITRATION  
  
 It is agreed by the parties that all disputes concerning this Agreement  
which the parties fail to adjust between themselves should be submitted to  
arbitration in Miami, Florida. The arbitrators shall be selected and the  
arbitration shall be conducted under the Rules of the American Arbitration  
Association. Each party shall bear its own expenses, but the arbitrator's fees  
and costs shall be borne equally between the parties.  
  
15. WAIVER:  
  
 Failure by either party to enforce any of the provisions of this Agreement  
shall not constitute a waiver of that party's rights hereunder.  
  
16. MODIFICATION:  
  
 This Agreement constitutes the entire Agreement of the parties and may not  
be modified, except in writing.  
  
17. GOVERNING LAW:  
  
 This Agreement shall be construed and enforced in accordance with the laws  
of the State of Florida.  
  
  
  
  
 6  
  
  
  
  
18. SEPARABILITY:  
  
 If any provision of this Agreement in any way contravenes the laws of any  
state or jurisdiction, such provision shall be deemed not to be a part of this  
Agreement in that jurisdiction, and the parties agree to remain bound by all  
remaining provisions.  
  
 IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and  
official seal this \_\_\_\_ day of April, 1997.  
  
  
Signed and sealed in the U.S. Cigar Distributors, Inc.,  
presence of:  
  
-----------------------------  
  
 By: /s/ Xxxx X. Xxxx, Xx.  
----------------------------- -----------------------------  
 Xxxx X. Xxxx, Xx., President  
  
  
 Xxxxxxx International, Inc.  
  
-----------------------------  
  
  
/s/ By: /s/ J. Xxxxxx Xxxx, III  
----------------------------- -------------------------------  
 J. Xxxxxx Xxxx, III, Executive   
 Vice President  
  
 7