EXHIBIT 10.2  
  
 DISTRIBUTION AGREEMENT  
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 THIS AGREEMENT is made effective the 1st day of July, 1997, by and between   
TAMBORIL CIGAR COMPANY, a corporation duly organized and existing under the laws  
of the State of Delaware, with its principal office located at 0000 X.X. Xxxxx   
Xxxxxx, Xxxxx, Xxxxxxx 00000, (hereafter referred to as the "Company"), and   
XXXXXXX IMPORTS, a Florida General Partnership, whose address is 00000 X.X. 00  
Xxxxx, Xxxxx, Xxxxxxx 00000 (hereafter referred to as the ""Distributor"").  
  
 WITNESSETH:  
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 WHEREAS, the Company desires to have all of its Brands (as defined further   
below), including but not limited to Tamboril, Xxxxxxx, and Fore, distributed in  
the United States by Distributor; and  
  
 WHEREAS, the Distributor desires to be an exclusive distributor of the   
Company's cigars in the Territory as defined in Section 1(b) below.  
  
 NOW, THEREFORE, in consideration of the promises and the mutual covenants   
herein and for other good and valuable consideration hereinafter set forth, the   
receipt and sufficiency of which is hereby acknowledged by each of the parties,   
it is understood and agreed as follows:  
  
 1. Definitions. The following terms shall have the meanings specified   
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below for the purposes of this Agreement:  
  
 (a) "Products" shall mean all of the Company's cigars, including but  
 not limited to those commonly known as "Tamboril," "Xxxxxxx", and "Fore".  
 Schedule A  
  
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 lists the current brands and will reflect that all future Company Products  
 (either created or acquired) will automatically be added as they become  
 available provided Distributor notifies Company within thirty (30) days  
 after receiving written notice from Company that a new product becomes  
 available, that Distributor will distribute the new product. Those brands  
 produced by the Company at any one time (except for those not distributed  
 by Distributor pursuant to the preceding sentence) shall be referred to for  
 purposes of this Agreement as the "Brands". Notwithstanding the preceding  
 to the contrary, it is acknowledged that the Fore brand will not be  
 available for distribution until August 1, 1997.  
  
 (b) "Territory" shall mean the United States of America, and shall also  
 include military, duty free, airline, and cruise accounts with a United  
 States based company (e.g., American Airlines, Cunard Cruise Lines, etc.).  
  
 (c) "Prices" shall mean the prices in effect for sale of the Brands by  
 the Company to the Distributor as set forth in Schedule B attached hereto  
 unless such prices are changed in compliance with Section 5 hereof.  
  
 (d) "Trademarks" shall mean the trademarks associated with the Brands,   
 as set forth in Schedule C attached hereto.  
  
 2. Distributorship. The Company hereby grants to the Distributor the   
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exclusive right for the term hereof, and privilege, to sell and distribute the   
Brands in the Territory, subject to the terms and conditions set forth herein.  
  
 3. Duties of the Distributor.  
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 (a) The Distributor undertakes and agrees to diligently, and in a   
commercially reasonable manner, sell and promote the sale of the Company's   
Brands in the Territory as its exclusive distributor.  
  
 (b) The Distributor shall devote its best efforts to promote and sell the   
Company's Brands in the Territory and shall provide to the Company, on a monthly  
basis, written sales reports, setting forth the quantity of each brand sold   
specifying quantities for each of Distributor's subdistributors.  
  
 (c) Subject to the other related terms contained herein, the Distributor   
agrees and guarantees to purchase at a minimum, \_\_\_ cigars on or before December  
31, 1997 (the "1997 Minimum Purchase Requirement). All purchases of cigars prior  
to the effective date of this Agreement shall count towards the 1997 Minimum  
Purchase Requirement. Notwithstanding the preceding to the contrary, the  
purchase of any Fore Brand cigars or other brands not in existence as of the  
date of this Agreement will not count towards the 1997 Minimum Purchase  
Requirement.  
  
4. Duties of the Company.  
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 (a) The Company shall process the Distributor's orders for Brands with   
reasonable promptness, pursuant to the delivery schedule mutually agreed to in   
advance by the parties. The Schedule for 1997 deliveries is attached as Schedule  
D. In years subsequent to 1997, the delivery schedule for the applicable year   
will be established, by mutual agreement, at the same time the minimum purchase   
requirement for such year is determined pursuant to Section 9 below.  
  
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 (b) Company and Distributor will enter into a mutually acceptable written   
schedule each year that will provide, in advance, a schedule that will allow   
Distributor adequate opportunity to plan for its distribution. Company   
understands that delivery pursuant to the agreed upon schedule, as to the   
minimum purchase requirement, is a material requirement of Company pursuant to   
this Agreement.  
  
 (c) The Company shall provide to Distributor a limited quantity, at no   
cost, of whatever sales and point-of-sale materials that are in existence at the  
time of execution of this Agreement as well as any future sales and   
point-of-sale materials that become available during the term of the Agreement.   
The Company and Distributor will mutually agree on the 1997 advertising and   
promotion budget in connection with the Brands. The Company agrees to advertise   
and promote the Brands, for all future years under this Agreement at no less a   
support level than for 1997.  
  
 (d) The Company will provide all of the Brands to Distributor through its  
factories in the Dominican Republic. Distributor shall receive priority as to  
all Brands produced by the Company.  
  
 (e) The Company will promptly provide Distributor with current sales   
information, quantity and type sold for 1997. This information will be   
categorized by Brands and current accounts. The information will reflect all   
previous activity for all Brands, showing sales and returns by account.  
  
5. Pricing Freight Insurance.  
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 (a) The prices for the sale of the Brands to the Distributor during the  
first 12 months of this Agreement are set forth on Schedule B attached hereto.  
These prices shall remain in effect at least until June 30, 1998; provided  
however, in the event of a material Change in the manufacturing cost of the  
Brands, the Company may raise (or will reduce its prices if costs drop) its  
prices to reflect cost increases or decreases. The term "Material Change" shall  
mean an increase or decrease of direct cost in excess of 10 percent of current  
direct costs.  
  
 (b) Within ten (10) business days of a Material Change, Company shall  
provide written notice of same with the details of this change to Distributor  
and the price to the Distributor shall be modified accordingly. In the event  
Distributor has already received a purchase order from one or more of its  
customers during such ten (10) day period, and Distributor is not already in  
possession of inventory to fill said order, the prices for those particular  
cigars shall be unaffected by the Material Change.  
  
 (c) All cigars sold to Distributor will be delivered F.O.B. Miami.  
  
6. Returned Cigars.  
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 (a) Distributor shall have sixty (60) days to inspect all Brands received  
from Company and shall notify Company in writing within said period of any  
defects, allowing Company to understand the nature of such defects. In the event  
that Cigars are returned as a result of defects in the manufacture or delivery  
of the Brands to the F.O.B. point in Miami discovered during the sixty (60) day  
period, Company shall refund the purchase price for said Brands in the form of a  
credit against any amount owed by  
  
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 Distributor to Company.  
  
 (b) In the event there are no open invoices against which to claim  
 credit, Company shall promptly refund to Distributor the amount due from  
 such defective Products, whether or not a claim under this section occurs  
 during or after the termination of this Agreement.  
  
 (c) No refunds shall be due for any defects occurring from the  
 storage, handling, act, or omission to act, by Distributor, its agents, or  
 its customers.  
  
 7. Payments. Payment for all orders during the term of this Agreement  
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shall be net thirty(30) days from the date of delivery of cigars to Distributor  
in Miami. A one time payment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ d ($\_\_\_\_\_) Dollars shall be  
made by Distributor to Company as of the date this Agreement is executed. The  
Distributor shall receive equal \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_) Dollars monthly credits  
against invoices due from Distributor in October, November, and December 1997.  
If for any reason (e.g., force majeure) there is any amount of the remaining  
unused credit, Distributors shall be entitled to take that remaining unused  
credit during the month of December 1997.  
  
 8. Trademarks.  
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 (a) The Distributor acknowledges that the Trademarks and all   
 ancillary rights thereto in any and all trademark classifications  
 (collectively the "Trademarks") of the Products and Brands, as listed in  
 Schedule C hereto, are the sole property of the Company, and the  
 Distributor agrees not to take any action inconsistent with such ownership  
 or license including but not limited to opposition or cancellation  
 proceedings.  
  
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 The Distributor does not acquire hereby, and shall not endeavor to acquire,  
 any rights, licenses or interest in the Trademarks or any marks  
 substantially similar anywhere in the world, including, but not limited to,  
 acquisition through registration, application for registration or use. Any  
 and all use of the Trademarks by Distributor shall inure to the benefit of  
 the Company.  
  
 (b) Distributor further agrees to promptly notify the Company of   
 any unauthorized use of the Trademarks in the Territory which comes to its   
 attention.  
  
 (c) The term Trademarks shall include not only trademarks, service   
 marks and trade names that are currently the property of the Company, but  
 also those acquired in the future.  
  
 (d) The Company agrees to promptly notify Distributor of any claim   
 of the unauthorized use of the Trademarks in the Territory, which comes to  
 the attention of the Company.  
  
 (e) The Company shall defend all Trademarks, at its cost and will   
 hold Distributor harmless and indemnify Distributor for any loss or costs   
 (including attorney's fees) in connection therewith.  
  
 (f) The Company warrants that it has the right to use all of its   
 Trademarks, and will indemnify and hold harmless Distributor in the event  
 that any third party challenges the use or ownership of any Trademark.  
  
 9. Standard of Production: Company's Production; Purchase Commitment.  
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 (a) Company agrees to produce all Brands for Distributor according   
 to the  
  
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Company's established standards for the production of Brands (based on the   
Company's production to date), and warrants the production will be at least as   
high a quality, and consistency, as the samples that have previously been   
provided.  
  
 (b) Distributor agrees and guarantees to purchase at least \_\_\_\_\_\_\_\_ cigars  
pursuant to the delivery schedule attached hereto as Schedule D on or before  
December 31, 1997. The Company agrees and guarantees to deliver cigars in  
accordance with the delivery schedule on Schedule D. Subject to supplying  
sufficient cigars to meet the 1997 Minimum Purchase Requirement (and subsequent  
year's minimum purchase requirement), the Company shall be permitted to sell and  
distribute up to 12 percent of its cigar production from the Tamboril, Dominican  
Republic factory(ies) in addition to 100 percent of cigars produced at another  
factory(ies) outside of the Territory, without any obligation to Distributor  
under this Agreement.  
  
 (c) Any cigars purchased by Distributor from the Company prior to the   
execution of this Agreement shall count towards Distributor meeting the 1997   
Minimum Purchase Requirement. Further, in the event Distributor fails to meet   
the 1997 Minimum Purchase Requirement, cigars purchased in January 1998 shall  
count towards any shortfall in meeting the 1997 Minimum Purchase Requirement,  
provided that the shortfall was 10 percent or less of the 1997 Minimum Purchase  
Requirement. In such event, any cigars purchased in a calendar year which are  
being counted towards the previous year's minimum purchased requirement, shall  
not be counted towards the then current year's minimum purchased requirement.  
  
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 (d) After 1997, the parties shall mutually agree upon minimum purchase   
requirement for subsequent years. Commencing in January, 1998, and in January of  
succeeding years during the term of this Agreement (including any option   
periods), the parties shall negotiate, in good faith, any required minimum   
purchase requirement.  
  
10. Customs and Excise Taxes, Permits, Compliance.  
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 (a) The Distributor hereby agrees to pay any and all Customs and Excise   
Taxes and any other taxes for import or sale of Brands into and within the   
Territory.  
  
 (b) The Distributor warrants that it possesses all permits and licenses   
necessary for the conduct of its business in connection with the Brands and that  
it will maintain such permits and licenses during the term of this Agreement.  
  
 (c) The parties at all times shall exercise their best efforts to   
monitor, and promptly, completely and accurately inform the other party about   
all rules and regulations and all changes of existing rules and regulations   
applicable to the packaging and to all advertisement material of, and relating   
to, the Brands and their distribution and sale in the Territory.  
  
 (d) The Company warrants that it will comply with all federal, state and   
local laws, as well as the laws of any country where the Brands are   
manufactured, regarding the manufacture and sale to Distributor of the Brands.  
  
11. Force Majeure.  
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 (a) Any delay or failure of performance of any part of this Agreement   
shall be excused if and to the extent caused, directly or indirectly, by an   
occurrence beyond  
  
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 either party's control, including, but not limited to, disputes with   
 workmen, fires, strikes, epidemics, floods, accidents, earthquakes,   
 hurricanes, delays in transportation, shortage of freight cars, trucks or  
 vessels, shortages of fuel or other materials, war, riot, civil commotion,  
 radiological contamination, blockades, embargoes, acts, demands or   
 requirements of any governmental body of the United States of America or   
 Dominican Republic, or of any other country from which shipments of the   
 Brands shall be sent or received, or any state or municipality thereof,   
 restraining order of any courts, acts of God or other events of force   
 majeure. Written notice of an occurrence of force majeure shall be   
 given by the affected party to the other party within twenty (20) days   
 after such event occurs.  
  
 (b) Should force majeure, legislation or governmental action,   
 subsequently frustrate either party in complying with this Agreement for a  
 period of one hundred eighty (180) consecutive days after the notice  
 contemplated by subsection (a) above, the aggrieved party may terminate  
 this Agreement in accordance with Section 13 below; provided however, that  
 Distributor must exercise the right to terminate hereunder within ten (10)  
 business days following the expiration of said one hundred eighty (180) day  
 period, or, Distributor's right to terminate shall lapse regarding that  
 particular incident of force majeure, without further notice.  
  
 12. Term. The term of this Agreement, but subject to the termination   
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provisions set forth herein, shall commence on the date first set forth above   
and shall continue for an initial term expiring on December 31, 2000. In   
addition, but subject to meeting minimum performance   
  
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standards as set forth in this section, Distributor shall have three (3)   
additional three (3) year options to renew. The options to renew shall only be   
exercisable if:  
  
 (a) The Distributor shall have met the minimum purchase requirement  
 for the preceding year.  
  
 (b) The Distributor shall give the Company no less than ninety (90)   
 days written notice of its intention to exercise its option.  
  
 (c) The exercise of any option after the first option renewal shall   
 be contingent upon the satisfaction of Subsections (a) and (b) above, the   
 provisions in the paragraph below, and the previous option having been   
 exercised.  
  
 Notwithstanding the preceding to the contrary, any exercise of any  
 option is contingent on the Distributor and the Company agreeing on the  
 minimum purchase requirement for the first year of the applicable option  
 term within ten (10) days of the exercise. The parties shall act in good  
 faith to determine the minimum purchase requirement for the first year of  
 any option, taking into consideration the previous years' minimum purchase  
 requirement.  
  
 13. Termination. This Agreement may be terminated in the following   
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circumstances:  
  
 (a) If either party files or has filed against it, or consents to the  
 filing of any petition in bankruptcy or for other relief under any  
 bankruptcy law or law for the relief of debtors, or be adjudicated  
 insolvent, or be dissolved or liquidated, or make any assignment with its  
 creditors, or a receiver or similar person should be appointed (each of the  
 preceding reflects as a "Bankruptcy Event"), then the other party may  
 terminate  
  
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 this Agreement by notice in writing, in the event such Bankruptcy Event is   
 not terminated with twenty (20) days; or  
  
 (b) Pursuant to the force majeure provisions of Section 11 (b) above.  
  
 (c) Subject to the 10 percent shortfall cure provision set forth in   
 Paragraph 9(c) above, in the event that Distributor fails to achieve the  
 purchase commitments set forth in Schedule D (or in subsequently agreed  
 upon commitments), Company shall have the right, but not the obligation, to  
 terminate this Agreement upon thirty (30) days prior written notice to  
 Distributor. In the event that Company terminates this Agreement for  
 Distributor's failure to achieve the purchase requirements set forth in  
 Schedule D (including the 1997 Minimum Purchase Requirement as set forth in  
 Section 9 above), Distributor, at its option, shall be required to within  
 ten (10) days purchase (and pay for) the difference between actual  
 purchases through the date of termination and the amounts committed to in  
 Schedule D, (the "Purchase Deficiency"), or pay to the Company the profit  
 that the Company would have earned on the Purchase Deficiency. For purposes  
 of the preceding sentence, "profit" shall be computed based on 30 percent  
 of the average invoice price for the Brands purchased over the preceding  
 six (6) months.  
  
 (d) In the event of a material change in the cost of insurance   
 insuring against Distributor liability resulting from the sale and/or  
 distribution of the Brands, Distributor shall have the right, by giving the  
 Company fifteen (15) days written notice, to cancel this Agreement  
 effective the date that such material change in the cost of insurance  
 occurs. In such event, Distributor shall supply to Company written evidence  
 of such material  
  
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 change. Any purchase orders delivered to Company prior to termination  
 pursuant to this paragraph shall be filled by Company, shipped to  
 Distributor, and Distributor shall pay the invoices for said cigars in  
 addition to any invoices outstanding at the time of said termination,  
 within 30 days of their date of delivery.  
  
 (e) The parties agree that the non-performance or breach of any of  
 the essential obligations of either party under this Agreement or any  
 action or omission by either party that adversely and substantially affects  
 the other party shall be valid cause for the termination of this Agreement  
 prior to the expiration of its term.  
  
 (f) Pursuant to the provisions of Section 21 (a) below.  
   
 (g) Pursuant to the provisions of Section 21 (d) below.  
  
 In any event of a termination, Distributor shall be permitted to sell  
its remaining inventory.  
  
 14. Waiver. The failure or omission by either party to insist upon or  
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enforce any of the terms of this Agreement shall not operate to bar any legal  
rights of said party unless such waiver shall be in writing and signed by the  
waiving party.  
  
 15. Notices. All notices and other communications required or permitted to  
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be given pursuant to this Agreement shall be in writing and shall be sent by  
telecopier or facsimile and confirmed by a subsequent letter sent by overnight  
courier service to the addresses shown below, or such other address as either  
party may furnish the other in writing from time to time, any such notices and  
changes of address to be effective on the business day next following the  
delivery of the confirming notice by overnight courier.  
  
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 If to the Company:  
  
 Xx. Xxxxxxx Xxxxxxxxx  
 TAMBORIL CIGAR COMPANY  
 0000 X.X. Xxxxx Xxxxxx  
 Xxxxx, Xxxxxxx 00000  
  
 With an additional copy to:  
  
 XXXXXX X.XXXXXX, ESQ.  
 Xxxxxx Gottbetter & Xxxxxxxx, LLP  
 000 Xxxxx Xxxxxx  
 Xxx Xxxx, Xxx Xxxx 00000  
  
 If to the Distributor:  
  
 XXXXXXX IMPORTS  
 c/o Xxx X.Xxxxx  
 00000 X.X.00 Xxxxx  
 Xxxxx, Xxxxxxx 00000  
  
 With an additional copy to:  
  
 XXXXXX X.XXXXXX, ESQ.  
 Xxxxxx and Xxxx, P.A.  
 0000 Xxxxx Xxxxx Xxxxxxx - Xxxxx 000  
 Xxxxx Xxxxxx, Xxxxxxx 00000  
  
 16. Assignment. The Distributor shall have the right to assignment or   
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transfer this Agreement to an entity as credit worthy as Distributor, and which   
includes as a majority owner one or more of the current owners of Distributor as  
of the date of this Agreement.  
  
 17. Severability. If any provision of this Agreement is determined to be  
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invalid or unenforceable, the remaining provisions shall not be affected, and   
this Agreement shall be  
  
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administered as though the invalid or unenforceable provision were not written  
in this Agreement. Any such invalid or unenforceable provision shall be  
replaced, by mutual agreement of the parties, by a legally valid and enforceable  
provision that resembles most closely the invalid or unenforceable provision and  
that complies best with the parties' original intentions.  
  
 18. Headings. The headings in this Agreement are for purposes of  
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convenience only and shall not limit or otherwise affect any of the terms of  
provisions hereof.  
  
 19. Counterparts. This Agreement may be executed in one or more  
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counterparts, each of which shall be deemed an original, but all of which shall  
constitute one and the same instrument.  
  
 20. Complete Agreement Amendments and Supplements. This Agreement,   
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together with the various Schedules attached to and referred to herein as the   
same may be amended or supplemented from time-to-time, contains the complete   
agreement and understandings of the parties with respect to the subject matter   
of this Agreement, and they supersede all prior discussions, agreements,   
understanding of any and every nature, whether written or oral, between the   
parties with respect to the subject matter of this Agreement, and may be amended  
or supplemented only by a subsequent writing signed by parties.  
  
 21. Standards of Manufacture: Insurance: and Indemnification.  
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 (a) Company represents and warrants that the Brands delivered to   
 Distributor or its designee(s) pursuant to this Agreement shall be  
 produced, labeled and packaged in conformity with all laws, regulations and  
 standards applicable to use within the United States of America.  
  
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 (b) During the term of this Agreement, Company shall maintain in full  
 force and effect general liability insurance with product-completed  
 operations liability coverage in connection with the purchase and resale of  
 Brands by Distributor, Distributor's designees and customers, in an amount  
 of not less than One Million ($1,000,000) Dollars for a single occurrence,  
 or Three Million ($3,000,000) Dollars in total. Such insurance will list  
 Distributor as an additional named insured and shall also contain a broad  
 form vendor's endorsement, further providing that Distributor shall be  
 notified in writing of any cancellation, expiration or non renewal not less  
 than thirty (30) days in advance by the insurer. Company shall cause the  
 insurer, on an annual basis, to send Distributor certificates confirming  
 such coverage. This provision is contingent upon the Company being able to  
 acquire Brands liability insurance at economically feasible rates. In the  
 event the Company does not maintain Brands liability coverage, and  
 Distributor is unable to secure Brands liability coverage covering the  
 Brands as set forth in Section 13 above, Distributor shall have the option  
 to terminate the Agreement. Notwithstanding anything set forth in this  
 subsection to the contrary, even in the event that the Company is unable to  
 obtain and continue to maintain Brands liability insurance (and Distributor  
 does not exercise its right to terminate herein), it will indemnify and  
 hold harmless the Distributor for any claims that result from the sale to  
 Distributor or use of the Company's Brands.  
  
 (c) Company shall defend, indemnify, and hold harmless, Distributor   
 and its insurance carrier, from and against any and all losses, costs,  
 claims, damages, liabilities,  
  
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 and expenses, including reasonable attorneys' fees and other costs and  
 expenses incurred, sustained by, or served against them, at the trial level  
 and with respect to all appeals, which they may suffer as a result of  
 product liability, trademark infringement, or any other claims which arise  
 from the distribution of Brands by Distributor in accordance with the terms  
 of this Agreement. Notwithstanding the above, this indemnification and hold  
 harmless provision shall not be applicable if the loss, cost, claim,  
 damage, liability or expense is caused solely by the act or failure to act  
 on the part of the Distributor, in which case Distributor will defend,  
 indemnify, and hold harmless, Company, and its insurance carrier, from and  
 against any and all losses, costs, claims, damages, liabilities or  
 expenses, including reasonable attorney's fees and other costs and expenses  
 incurred, sustained by, or served against them, at the trial level and with  
 respect to all appeals, which they may suffer as a result of product  
 liability, trademark infringement, or any other claims which arise from the  
 distribution of Brands by Distributor in accordance with the terms of this  
 Agreement.  
  
The provisions of this Section shall survive the termination of this Agreement.  
  
 22. Governing Law. This Agreement shall be governed, construed and   
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interpreted under and pursuant to the laws of the State of Florida.  
  
 IN WITNESS WHEREOF, this Agreement has been duly executed on the day and   
year  
  
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first above written.  
  
TAMBORIL CIGAR COMPANY XXXXXXX IMPORTS, a Florida Partnership  
  
   
By: /s/ Xxxxxxx Xxxxxxxxx By: /s/ Xxxxx X. Xxxxxx  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
Title: PRESIDENT Title: PRESIDENT  
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