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January 14, 2002

**CORPORATION NAME (S) AND DOCUMENT NUMBER (S):**

Duval Sonny's BBQ 2, Ltd.

**Filing Evidence**

- ☐ Plain/Confirmation Copy
- ☒ Certified Copy

**Retrieval Request**

- ☐ Photocopy
- ☐ Certified Copy

**Type of Document**

- ☐ Certificate of Status
- ☐ Certificate of Good Standing
- ☐ Articles Only
- ☐ All Charter Documents to Include Articles & Amendments
- ☐ Fictitious Name Certificate

- ☐ Other **200004772142--G**

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AMENDMENTS	
	Amendment
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	Merger

OTHER FILINGS	
	Annual Reports
	Fictitious Name
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REGISTRATION/QUALIFICATION	
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CERTIFICATE AND AGREEMENT

OF

LIMITED PARTNERSHIP

OF

DUVAL SONNY'S BBQ 2, LTD.

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CERTIFICATE AND AGREEMENT OF Limited Partnership, made and entered into by and between DUVAL BBQ 2, INC., a Florida corporation, hereinafter referred to as the General Partner, and JOHN W. KIRKPATRICK, III (the Initial Limited Partner), and those other parties who from time to time execute Subscription Agreements as Limited Partners, hereinafter referred to as the Limited Partners.

SECTION I

FORMATION OF LIMITED PARTNERSHIP

The parties hereby enter into a Limited Partnership under the provisions of the Uniform Limited Partnership Act of the State of Florida, and the rights and liabilities of the Partners shall be as provided in that Act, or herein otherwise expressly provided.

SECTION II

NAME

The business of the Partnership shall be conducted under the name of Duval Sonny's BBQ 2, Ltd., or such other name as the General Partner shall hereafter designate in writing to the Limited Partners.

SECTION III

DEFINITIONS

The following definitions shall apply:

(a) Affiliate refers to (i) a person directly or indirectly controlling, controlled by or under common control with another person, (ii) a person owning or controlling ten percent (10%) or more of the outstanding voting securities of such other person, (iii) any officer, director or partner of such person, and (iv) if such other person is a officer, director, or partner, any company for which such person acts in any such capacity.

(b) Administration Fee shall refer to that fee payable to the General Partner pursuant to Subsection XIV(a) (1) of this Agreement.

(c) Agreement means this Certificate and Agreement of Limited Partnership, as amended, modified, or supplemented from time to time.

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(d) Distributable Cash From Operations, Sales and Refinancing shall mean cash receipts from operations, sales of the Partnership property and net proceeds from refinancing, less operating expenditures (including the Administration Fee) less payment of all costs and encumbrances payable by the Partnership in connection with the Partnership's operations, including but not limited to salaries, food supplies, debt service, replacements, and what constitutes, in the sole discretion of the General Partner, a reasonable allowance for working capital and reserves contingencies and anticipated obligations.

(e) General Partner means Duval BBQ 2, Inc., a Florida corporation, but at any time Duval BBQ 2, Inc. is no longer acting as General Partner, the term shall mean the partner then acting in such capacity.

(f) Limited Partners means: (i) the Initial Limited Partner; (ii) the parties who purchase Partnership Units pursuant to this agreement and who shall execute the Subscription Agreement in form attached as Appendix B as an Additional Limited Partner, and (iii) any party admitted as a substituted Limited Partner pursuant to Section XV.

(g) Limited Partnership Unit or Unit or Capital Unit means the Partnership interest and appurtenant rights, powers and privileges of a Limited Partner and represents the stated capital contributions with respect thereto, all as set forth elsewhere herein.

(h) Net Income and Net Losses means the net income or net loss of the Partnership for Federal income tax purposes determined as of the close of the Partnership's fiscal year, including, without limitation, each item of Partnership income, gain, loss or deduction.

(i) Partners shall refer to the General Partner and all of the Limited Partners, where no distinction is required by the context in which the term is used herein.

(j) Partnership means a Limited Partnership, the Partnership formed and governed by this Agreement.

(k) Partnership Agreement or Agreement shall refer to this Limited Partnership Agreement and Certificate of Limited Partnership, and any amendments or supplement thereto.

(l) Partnership Property or Properties shall refer to all equipment and properties or any interest therein acquired directly or indirectly by the Partnership and all improvements thereon and all repairs, replacements or renewals thereof, together with all personal property acquired by the Partnership which is from time to time located thereon or specifically used in connection therewith.

(m) Unit of Limited Partnership Participation shall refer to four percent (4%) of the total Limited Partnership interest, which is to say the General Partner owns 7.5 units of participation, the Class A Limited Partners collectively own 11 units of participation and the Class B Limited Partners shall collectively own 6.5 units of participation

#### SECTION IV

#### PURPOSE

The business of the Partnership is to own, manage and operate restaurant facilities in Jacksonville, Florida, to acquire, manage and maintain certain real and personal property in connection therewith, and to engage in any and all activities related or incidental thereto.

## SECTION V

### NAMES AND ADDRESSES OF PARTNERS

The names, addresses, and capital contribution of the General and Limited Partners, as set forth in Schedule A attached hereto and incorporated herein by reference.

## SECTION VI

### TERM

The term of the Partnership shall be from the date hereof to December 31, 2051, or until all Partnership Properties are sold or until otherwise sooner terminated as hereinafter provided.

## SECTION VII

### BUSINESS AND MAILING ADDRESS

The business and mailing address of the Partnership is 2531 NW 41<sup>st</sup> Street, Suite D, Gainesville, Florida 32606. The General Partner may from time to time change the business and mailing address and in such event, the General Partner shall notify the Limited Partners in writing within twenty (20) days of the effective date of such change. The General Partner may in its discretion establish additional places of business of the Partnership.

## SECTION VIII

### CAPITAL CONTRIBUTIONS

(a) Partnership Interests and Capital Contributions. There shall be three classes of Partnership interests: (i) the interest of the General Partner representing 30% of the entire Partnership interest; (ii) the interest of Class A Limited Partners who have agreed to transfer to the Partnership a total of \$1,100,000.00 for their Partnership interests representing 44% of the entire Partnership interest; (iii) the interest of Class B Limited Partners who as a group represent 26% of the entire Partnership interest.

(b) Capital Accounts. An account ("Capital Account") shall be determined and maintained for each Partner throughout the term of the Partnership. Each Partner's Capital Account shall be:

- (1) Increased by:
  - (a) the amount of money contributed by him to the Partnership;
  - (b) the fair market value of property contributed to the Partnership by him (net of liabilities secured by such contributed property that the Partnership is considered to assume or take subject to under Code Section 752); and
  - (c) allocations to him of Partnership income and gain (or items of income and gain) including income and gain exempt from tax.

- (2) Decreased by:

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- (a) the amount of money distributed to him by the Partnership,
- (b) the fair market value of property distributed to him by the Partnership (net of liabilities secured by such distributed property that such Partner is considered to assume or take subject to under Code Section 752),
- (c) allocations to him of expenditures of the Partnership described in Code Section 705(a)(2)(B), and
- (d) allocations to him of Partnership loss and deduction (or items of loss and deduction)

(3) Otherwise, Capital Accounts shall be maintained and adjusted in accordance with the requirements, and, at the election of the General Partner, the permissive rules of Treasury Regulation Section 1.704-1(b) (2) (iv).

(4) Upon liquidation of the Partnership, after all Distributions have been made and all allocations pursuant to this Section have been made, any Partner with a deficit balance in its capital account shall restore the amount of such deficit, within ninety (90) days of the determination that such deficit exists, to the Partnership in cash for payment to creditors or to Partners with positive capital account balances. This covenant is for the exclusive benefit of the parties to this Agreement and may not be enforced by any creditor of the Partnership or any third party.

(c) No Interest on Capital Accounts. No Partner shall be entitled to receive interest from the Partnership on his Capital Account. In addition, no Partner shall have the right to withdraw or reduce his Capital Contribution except as may result by virtue of Distributions in accordance with Section 9 below. Furthermore, no Partner shall have the right to demand property other than cash in return for his original investment.

(d) Amendment to Agreement. The General Partner shall have the power to amend this Agreement to modify any method of allocation provided in this Section VIII in order to assure that such method conforms to Section 704 of the Internal Revenue Code or any regulations promulgated thereunder; provided however, that no such amendment to this Agreement shall have a material adverse effect on the Partnership Interests of the Limited Partners.

(e) The Partners may voluntarily make loans to the Partnership from time to time, as authorized by the General Partner. Any such loans shall not be treated as contributions to the capital of the Partnership for any purpose hereunder, and shall not entitle such Partner to any increase in his share of the Net income and Net Losses or contributions from the Partnership. The Partnership shall be obligated to such Partners for the amount of any such loans and such loans shall be evidenced by promissory notes executed by the Partnership.

## SECTION IX

### ALLOCATION OF NET INCOME AND NET LOSSES DISTRIBUTIONS TO PARTNERS

- (a) For each fiscal year of the Partnership, subject to any overriding allocation under Section
- (b) below, the Partnership's Net Income or Net Loss from ordinary Partnership business operations shall be allocated to the Partners in a manner consistent with Distributions.

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(b) Notwithstanding the provisions of Section (a) above, the following allocations of Net Income and Net Loss and items thereof shall be made in accordance with Section 704 of the Internal Revenue Code or any regulation promulgated thereunder. The General Partner shall have the power to amend this Agreement to modify any method of allocation provided in this Section IX in order to assure that such method conforms to Section 704 of the Internal Revenue Code or any regulations promulgated thereunder; provided, however, that no such amendment to this Agreement shall have a material adverse effect on the Partnership Interests of the Limited Partners.

(1) In the event Net Income, Net Loss, or items thereof are allocated to one or more Partners pursuant to subsection (b) above, Net Income and Net Loss not required to be allocated by the provisions of subsection (b), will be allocated to the Partners in a manner designed to bring each Partner's Capital Account balance to what it would have been had the original allocation of Net Income, Net Loss, or items thereof pursuant to subsection (b), not occurred.

(2) In the event the Internal Revenue Service disallows the current deduction claimed by the Partnership for all or any portion of amounts paid to the General Partner, its affiliates, or any other party on the grounds that the payee is a Partner in the Partnership and that such payments are, therefore, nondeductible Distributions to a Partner, an amount of gross income of the Partnership for the Partnership year in which such fees are paid and claimed as deductions equal to the portion of such fee or fees that have been disallowed shall be specially allocated to such deemed Partner.

(3) The Partnership income or loss to be allocated to Limited Partners shall be allocated to newly admitted Limited Partners as of the following times: (i) to those Limited Partners admitted to the Partnership prior to the 16th day of a month, as of the first day of the month in which such Limited Partners are admitted to the Partnership; or (ii) to those Limited Partners admitted after the 15th day of a month, as of the 1st day of the month next following the month in which such Limited Partners are admitted to the Partnership.

(4) If one or more Limited Partner's Partnership Interest(s) or the General Partner's interest are transferred during any fiscal year of the Partnership, the Partnership income or loss attributable to such Partnership Interest(s) for such fiscal year shall be allocated between the transferor and the transferee as they shall agree; provided, however, that if the Partnership does not receive on or before January 31 of the year following the year in which the transfer occurs a written notice stating the manner in which such parties have agreed to allocate such Partnership income or loss, then all such Partnership Income or loss shall be allocated between the parties based on the percentage of the year each party was, according to the books and records of the Partnership, the owner of record of the Partnership Interest(s) transferred during that year. Distributions of Assets in respect of Partnership Interest(s) shall be made only to persons who, according to the books and records of the Partnership, are owners of such Partnership Interest(s) on the date selected by the General Partner to determine ownership of the Partnership Interest(s). The General Partner and the Partnership shall incur no liability for making Distributions in accordance with the provisions of the preceding sentence, whether or not the General Partner or the Partnership has knowledge or notice of any transfer of ownership of any Partnership Interest(s).

(5) Except as otherwise expressly provided in this Agreement, any allocation to a Partner of a portion of the Net Income or Net Loss shall be deemed to be an allocation to that Partner of the same proportionate part of each item of income, gain, loss, deduction, or credit that is earned, realized or available by or to the Partnership for federal and state income tax purposes.

(c) Any Distributions made by the Partnership other than Dissolution and Termination shall be made to the Partners as follows:

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(1) The Class A Limited Partners shall receive all of the first distributions of cash on their Limited Partnership units in quarterly payments equal to 3.75% of their capital investment in the Partnership; and thereafter

(2) A payment on the General Partnership units and Class B Limited Partnership units quarterly payments equal to 3.75% times the number of General Partnership units owned and Class B Limited Partnership units owned multiplied by \$100,000; and thereafter

(3) Any surplus distributable cash shall be distributed to all Partnership units pro rata.

(d) Upon the good faith determination to distribute funds in any manner expressly provided in this Section IX, the General Partner shall incur no liability on account of such Distribution, even if it results in the Partnership retaining insufficient funds for the operation of its business, or results in loss to the Partnership, or necessitates the borrowing of funds by the Partnership.

#### SECTION X

#### BOOKS OF ACCOUNT, RECORDS AND REPORTS

(a) Proper and complete records and books of account shall be kept by the General Partner in which shall be entered fully and accurately all transactions and other matters relative to the Partnership's business as are usually entered into records and books of account maintained by persons engaged in business of a like character. The Partnership books and records shall be maintained on the same basis on which the Partnership will prepare its income tax returns. The books and records shall at all times be maintained at the principal office of the Partnership and shall be open to the reasonable inspection and examination of the Partners or their duly authorized representatives during reasonable business hours. The General Partner shall furnish a list of names and addresses of all Limited Partners to any Limited Partner who requests such a list in writing for any proper purpose.

(b) No later than twenty (20) days from the end of each calendar quarter of the Partnership, the General Partner shall furnish to each Limited Partner a report of the business and operations of the Partnership during such year which report shall constitute the accounting of the Partner for such year. Such report shall contain:

- (1) A balance sheet as of the end of the Partnership's fiscal quarter and statements of operations, for the quarter then ended, all of which shall be prepared in accordance with generally accepted accounting principles;
- (2) A report of the activities of the Partnership during the period covered by the report; and

No later than seventy-five (75) days after the end of each fiscal year, the General Partner shall furnish to each Limited Partner all the information necessary for the preparation of the Limited Partner's federal inform tax return.

#### SECTION XI

#### FISCAL YEAR

The fiscal year of the Partnership shall end on December 31st of each year.

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## SECTION XII

### PARTNERSHIP FUNDS

The funds of the Partnership shall be deposited in such bank account or accounts, or invested in such interest-bearing or noninterest-bearing investments, as shall be designated by the General Partner.

## SECTION XIII

### STATUS OF LIMITED PARTNERS

(a) The Limited Partners shall not participate in the management or control of the Partnership's business nor shall they transact any business for the Partnership, nor shall they have the power to act for or bind the Partnership, such powers being vested solely and exclusively in the General Partner.

(b) The death or legal incapacity of a Limited Partner shall not cause a dissolution of the Partnership, but the rights of such Limited Partner to share in the profits and losses of the Partnership, to receive Distributions of Partnership assets and to assign Partnership Interests pursuant to Section XV hereof shall, on the happening of such an event, devolve upon his personal representative, or in the event of the death of one whose Limited Partnership Interest is held in joint tenancy, shall pass to the surviving joint tenant, subject to the terms and conditions of this agreement, and the Partnership shall continue as a Limited Partnership. The estate of the deceased Limited Partner or such surviving joint tenant, as the case may be, shall be liable for all the obligations of the deceased Limited Partner. However, in no event shall such personal representative or surviving joint tenant become a substituted Limited Partner, except in accordance with Section XV.

## SECTION XIV

### POWERS, RIGHTS, AND DUTIES OF GENERAL PARTNER

(a) In addition to the distributable cash provided pursuant to Article IX hereof the General Partner and its affiliates shall be entitled to the following fees and amounts:

(1) The Partnership will pay all costs and expenses associated with the Partnership Properties and the administration of the Partnership including all accounting, documentation, professional and reporting expenses. To the extent that it is reasonable and possible to do so, all Partnership expenditures will be billed directly to and paid by the Partnership. Such costs shall include, but shall not be limited to:

- (i) All costs of personnel employed by the Partnership or directly involved in the business of the Partnership, including persons who may also be employees of the General Partner or Affiliates;
- (ii) Legal, accounting, audit, brokerage, and other fees;
- (iii) Fees and expenses paid to independent contractors, leasing agents, consultants, site managers and other agents;
- (iv) Costs relating to the preparation of budgets, cash flow projections, and Partnership state and federal tax returns;



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- (v) Expenses in connection with preparing and mailing reports required to be furnished to Partners or deemed by the General Partner to be of significance to the Partners.

(b) The General Partner shall have exclusive authority to manage the operations and affairs of the Partnership and to make all decisions regarding the business of the Partnership. Subject to the foregoing, it is understood and agreed that the General Partner shall have all of the rights and powers of a general partner as provided in the Florida Uniform Limited Partnership Act and as otherwise provided in the Florida Uniform Limited Partnership Act and as otherwise provided by law, and any action taken by the General Partner shall constitute the act of and serve to bind the Partnership. Persons dealing with the Partnership are entitled to rely conclusively on the power and authority of each General Partner as set forth in this agreement.

(c) Subject to the provisions of paragraph (a) of this Section XIV, the General Partner is hereby granted the right, power and authority to do on behalf of the Partnership all things which, in its sole judgment, are necessary, proper or desirable to carry out its aforementioned duties and responsibilities, including but not limited to the right, power and authority: to incur all reasonable expenditures; to employ and dismiss from employment any and all employee, agents, independent contractors, attorneys (including officers and shareholders of the General Partner), and accountants, upon such terms and for such compensation as the General Partner deems proper; to purchase, manage, improve, sell, lease, and otherwise deal in real property and all incidental and subsidiary businesses and activities; to borrow money and as security therefore pledge, mortgage or otherwise encumber any property or assets (including future income) of the Partnership; to do any and all of the foregoing at such price, rental, consideration, or amount, for cash, securities, percentage of net profits (however computed or defined), of the Partnership, Net Profits or Gross Receipts of the Partnership or other property, and upon such terms as the General Partner deems proper; and to execute, acknowledge and deliver any and all instruments to effectuate any and all of the foregoing.

(d) The General Partner thereof shall devote such time to the Partnership business as it, in its sole discretion, shall deem to be necessary to manage and supervise the Partnership business and affairs in an efficient manner; but nothing in this agreement shall preclude the employment, at the expense of the Partnership, of any agent or third party to manage or provide other services in respect of the Partnership property subject to the control of the General Partner.

(e) The General Partner or its affiliates shall not be required to manage the Partnership as its sole and exclusive function and it may have other business interests, and may engage in other activities in addition to those relating to the Partnership, including other restaurant syndications and the rendition of services or advice of any kind to parties other than the Partnership or its Limited Partners. Neither the Partnership nor any Partner shall have any right by virtue of this agreement or the Partnership relationship created hereby in or to such other ventures or activities or to the income or proceeds derived therefrom and the pursuit of such ventures, even if competitive with the business of the Partnership, shall not be deemed wrongful or improper. Neither the General Partner nor its affiliates shall be obligated to present any particular investment opportunity to the Partnership even if such opportunity is of a character which, if presented to the Partnership, could be taken by the Partnership, and the General Partner shall have the right to take for its own account (individually or as a trustee) or to recommend to others as such particular investment opportunity.

(f) The validity of any transaction, agreement, or payment involving the Partnership and General Partner or an affiliate of the General Partner otherwise permitted by the terms of this agreement shall not be affected by reason of the relationship between the Partnership and such General Partner of

such affiliate.

(g) The General Partner shall have a fiduciary responsibility for the safekeeping and use of all funds and assets of the Partnership, whether or not in their immediate possession or control, and the General Partner shall not employ nor permit another to employ such funds or assets in any manner except for the exclusive benefit of the Partnership.

(h) The General Partner shall not be liable, responsible, or accountable in damages or otherwise to the Partnership or any Limited Partner for any action taken or failure to act on behalf of the Partnership within the scope of the authority conferred on the General Partner by this agreement or by law unless such action or omission was performed or omitted fraudulently or in bad faith or constituted wanton and willful misconduct or gross negligence.

(i) The Partnership shall indemnify and hold harmless the General Partner, and its agents and employees, herein referred to as the indemnified Parties from and against any loss, expense, damage, or injury suffered or sustained by it by reason of any acts, omissions or alleged acts or omissions arising out of its activities on behalf of the Partnership, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees, and other cost or expenses incurred in connection with the defense of any actual or threatened action, proceeding, or claim and including any payments made by the General Partner pursuant to an indemnification agreement no broader than this paragraph (i) of this Section XIV, provided that the acts, omissions, or alleged acts or omissions upon which said actual or threatened action, proceeding, or claims are based were in good faith and were not performed or omitted fraudulently or in bad faith or as a result of wanton or willful misconduct or gross negligence by such indemnified party.

(j) The General Partner may, in its sole discretion, make or revoke the election referred to in Section 754 of the Internal Revenue Code of 1954, or any similar provision enacted in lieu thereof. Each of the partners will upon request supply the information necessary to properly give effect to such election.

(k) The General Partner may, in order to promote the Partnership's purposes, sell, issue or transfer any or all unissued Partnership Capital Units to any person or entity on such terms as the General Partner in its sole discretion deems proper.

(l) If there is more than one General Partner, then any decision made by the General Partner(s) holding the largest interest in the Partnership shall control.

#### SECTION XV

#### RESTRICTIONS ON TRANSFER

(a) No transfer of an interest in the Partnership may be made without the approval of the General Partner, which may be granted in its discretion.

(b) Before a valid sale or transfer of any Limited Partnership Interest shall occur, the holder of the Limited Partnership Interest to be sold or transferred shall first give notice in writing to the General Partner of his intention to sell or transfer such Limited Partnership Interest, which shall include the terms of such sale or transfer. Within fifteen (15) days after the receipt of such notice to the General Partner, the Partnership shall have the right to acquire the Limited Partnership Interest referred to in the notice at the price and upon the terms stated in such notice. In the event the Partnership elects to purchase the Limited Partnership Interest, the Partnership shall pay the purchase price specified in the notice against the delivery of an instrument of assignments executed by the assignor. In such event, the

purchaser of Capital Units shall be redeemed or retired, increasing proportionately each Partner's percentage interest in the entire capital interest of the Partnership.

If the Partnership does not elect to purchase the Limited Partnership Interest referred to in such notice to the General Partner, within a fifteen (15) day period and the General Partner have approved the transfer pursuant to (a) above, the Limited Partner desiring to sell or transfer may dispose of all of the Limited Partnership Interests referred to in the notice to any person or person whomsoever; provided, however, that he shall not sell or transfer such Limited Partnership Interests at a lower price or on terms more favorable to the purchaser or transferee than those specified in such notice to the General Partner and provided further that the sale or transfer of such Limited Partnership Interest shall not be made more than sixty (60) days after the date upon which the written notice was received by the General Partner from the selling Limited Partner. For the purpose of this Section, the sale or transfer shall be deemed to have occurred on the date upon which the General Partner receives the instrument of assignment referred to in this subparagraph.

Any sale or transfer, a purported sale, transfer or other disposition, or Limited Partnership Interests of the Limited Partnership shall be null and void unless the terms, conditions and provisions of this paragraph (b) are strictly observed and followed.

(c) Upon effectiveness of an assignment of a Limited Partnership Interest under paragraph (a) of this Section XV, the General Partner shall execute, file and record with the appropriate governmental agencies such documents (including amendments to this agreement) as are required to accomplish the substitution of the assignee as a substituted Limited Partner. In no event shall the consent of any Limited Partner (other than the assignor) be required to effect such substitution. The Partnership shall treat such person entitled to become a substituted Limited Partner pursuant to the provisions of paragraph (a) of Section XV as the substituted Limited Partner with respect to the interests assigned from the date such assignment is effective under Section XV, paragraph (a), notwithstanding the time consumed in preparing and filing the necessary documents with governmental agencies necessary to effectuate the substitution.

(d) Any person admitted to the Partnership as a substituted Limited Partner shall be subject to and bound by all of the provisions of this agreement as if originally a party to this agreement.

## SECTION XVI

### DEATH, INCOMPETENCY, BANKRUPTCY, RETIREMENT AND REMOVAL OF PARTNERS

1. Death, Incompetency or Bankruptcy of a Limited Partner. In the event of the death, adjudication as an incompetent or adjudication as bankrupt of any of the Limited Partners, the Partnership shall not be dissolved, but shall continue as a Partnership without interruption. The interest of any such deceased partner in the Partnership shall be held by such persons or entities as have been designated in his last will and testament, or if none are so designated, by such persons or entities as may be designated by his executor or administrator, or if none are so designated by his estate. In the event of the adjudication of any of the Limited Partners as incompetent or bankrupt, the interest of such incompetent or bankrupt partner shall be held by his representative or trustee designated by the court making such adjudication. The remaining partners agree to accept any such designee or designees as an assignee of such deceased, incompetent or bankrupt partner; provided, however, that in no event shall such designee or designees become a substituted Limited Partner unless and until the requirements set forth in Section XV are met.

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2. Death, Resignation, Incompetency, Retirement or Bankruptcy of the General Partner. Upon the death, resignation, retirement, judicially determined incompetency (if a natural person) or bankruptcy of a General Partner(s) the Partnership shall dissolve and terminate, unless within 15 days of such event a majority in interest of the remaining Partner(s) elect to continue the Partnership and elect a new General Partner(s), or if there is more than one General Partner continue with the remaining General Partner(s), provided that said election shall not violate the terms of any franchise agreement entered into by Sonny's Franchise Company and entered into or assigned to the Partnership or the Uniform Limited Partnership Act.

3. Removal of General Partner for Mismanagement. At any time, the Partners, both general and limited, may call a meeting of all partners for the sole purpose of removing and replacing the General Partner based on its gross mismanagement of the Partnership's assets and operations. Said meeting shall be called upon written notice mailed to each partner at least fifteen (15) days prior to the meeting and must be signed by partners owning at least fifty percent (50%) of the Partnership's capital interest. At said meeting, the General Partner may be discharged and replaced by a vote of the Limited partners owning not less than ninety percent (90%) of the total Units of participation owned by all Limited partners that the General Partner be removed in view of its gross mismanagement of the Partnership's operations, provided that said removal and replacement shall not violate the terms of any franchise agreement entered into by Sonny's Franchise Company, which has been entered into or assigned to the Partnership. If any General Partner is discharged then his interest shall be converted to a Limited Partnership Interest which shall be economically equivalent to his General Partnership Interest before conversion.

## SECTION XVII

### DISSOLUTION AND TERMINATION

1. Events of Dissolution. The Partnership shall be dissolved:

- (a) Upon the Partnership's inability to purchase the Partnership Property, for whatever reason.
- (b) Upon the death, resignation, retirement, adjudication as an incompetent (if a natural person), or bankruptcy of the General Partner, except as provided in Section XVI above.
- (c) Upon the vote of the Limited Partners owning not less than ninety percent (90%) of the total Units of Participation owned by all Limited Partners.
- (d) Upon the occurrence to an event specified under the laws of the State of Florida as one effecting dissolution (except as otherwise provided in this Agreement).
- (e) Upon the sale by the Partnership of all its right, title and interest in and to all of its real property assets and the receipt by the Partnership of the purchase price in full and in cash.

2. Dissolution and Winding Up. Upon the dissolution of the Partnership, the General Partner shall proceed with reasonable promptness to wind up the affairs of the Partnership; provided, however, that in the event of the dissolution of the Partnership on account of the dissolution or bankruptcy, of the General Partner, then the legal representative or successor of the General Partner shall liquidate the Partnership assets except such assets as the liquidator deems conversion to be imprudent, then the General Partner or liquidator shall distribute such assets in kind, based on the fair market value thereof, except as otherwise provided in Paragraph 3 following. All Distributions hereunder shall be made as follows:

(a) First, to the Class A Limited Partners until the Class A Limited Partners have received the amount of their original capital contribution.

(b) Second, forty-four percent (44%) to the Class A Limited Partners, twenty-six percent (26%) to the Class B Limited Partners, and thirty percent (30%) to the General Partner. All Distributions to the Limited Partners under this subsection (d) shall be in proportion to their respective interests as Limited Partners.

3. Dissolution on Sale of Property. Notwithstanding anything in this Section to the contrary, in the event of the sale of the Partnership property and the receipt by the Partnership of a promissory note in partial payment of the purchase price, the Partnership shall not be dissolved, but shall continue in existence until the indebtedness evidenced by said promissory note has been paid in full and in cash. However, the net sales proceeds shall be subject to and distributed in accordance with the provisions of Paragraph 2 above.

#### SECTION XVIII

#### MISCELLANEOUS

1. Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the partner giving such notice, election or demand and shall be delivered personally or sent by registered or certified mail to the other partner or partners, at his address set forth in Schedule A attached, or on the Limited Partners' Signature Certificates attached hereto and incorporated herein, or at such other address as may be supplied in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice.

2. Successors and Assigns. This Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the partners, their respective successors, successors-in-title, heirs, legal representative and assigns, and each partner agrees, on behalf of himself, his successors, successors-in-title, heirs, legal representative, and assigns to execute any instruments which may be necessary or appropriate to carry out and execute the purposes and intentions of this Agreement, and hereby authorizes and directs his successors, successors-in-interest to any partner, whether such successor acquires such interest by way of gift, purchase, foreclosure, or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement. It is the intention of the partners that, during the term of this Agreement, the rights of the partners and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any partner or successor-in-interest to assign, transfer, sell or otherwise dispose of or deal with his interest in the Partnership shall be subject to the limitations and restrictions of this Agreement; provided, however, that no assignment of any interest in the Partnership shall be effective unless made in accordance with Section XV above.

3. Power of Attorney. Each of the Limited Partners, including any substituted Limited Partners, by the execution of this Agreement, does hereby irrevocably constitute and appoint the General Partner and any substituted general partner, his true and lawful agent and attorney-in-fact, with full power and authority in his name, place and stead, to make, execute, acknowledge, swear to, deliver, file and record such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including, but not limited to:

(a) A separate certificate of Limited Partnership, as well as amendments thereto, and hereto, required to be filed under the laws of the State of Florida or the laws of any other state.

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(b) Any other instrument, certificate or document which may be required to be filed by the Partnership under the laws of any state or by any governmental agency.

(c) Any instrument, certificate or document which may be required to effect the continuation of the Partnership, the admission of any person to the Partnership as a Limited Partner, the admission to the Partnership of the substitute Limited Partner, or the dissolution and termination of the Partnership in accordance with the terms of this Agreement.

(d) Any documents required by Sonny's Franchise Company. If for any reason the Power of Attorney granted hereunder is not acceptable to Sonny's Franchise Company, the Limited Partners shall personally execute such documents.

The foregoing grant of authority; (i) is a Special Power of Attorney coupled with an interest, is irrevocable, and shall survive the death, bankruptcy, insolvency, or adjudication or legal incapacity of any of the Limited Partners; (ii) may be exercised by the General Partner for Limited Partners by listing all of the Limited Partners and executing any instrument with a single signature of the General Partner acting as attorney-in-fact for all of the Limited Partners; and (iii) shall survive the delivery of an assignment by any of the Limited Partners of an interest in the Partnership; provided, however, that if an assignee has been approved by the General Partner for admission to the Partnership as a substitute Limited Partner, the Special Power of Attorney shall, with respect to the assignor, survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution.

4. Amendment. No change, modification or amendment of this Agreement shall be valid or binding upon the partners unless such change or modification shall be in writing signed by the partner or partners against whom the same is sought to be enforced.

5. Counterparts. This Agreement may be executed in multiple counterparts which when combined shall be deemed one agreement.

#### SECTION XIX

#### REGISTERED AGENT

The name and Florida street address of the Registered Agent for service of process is Duval BBQ 2, Inc., a Florida corporation, 1320 SE 25<sup>th</sup> Loop, Suite 101, Ocala, Florida 34471.


UNDER THE PENALTIES OF PERJURY, we declare that we have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.


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DATED: JANUARY 2, 2002

Duval BBQ 2, Inc.  
2531 N.W. 41<sup>st</sup> Street, Suite "D"  
Gainesville, FL 32606  
General Partner

  
By: Kenneth B. Kirkpatrick  
Title: President

  
John W. Kirkpatrick, III  
2531 NW 41<sup>st</sup> Street, Suite "D"  
Gainesville, Florida 32606

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SCHEDULE "A"

General Partner(s)

ADDRESS

DUVAL BBQ 2, INC.,  
a Florida corporation

1320 SE 25<sup>th</sup> Loop, Suite 101  
Ocala, Florida 34471

Capital Contribution \$0  
Interest 30%

Class A Limited Partners

ADDRESS

TO BE DETERMINED

TO BE DETERMINED

Total Capital Contributions \$1,100,000.00  
Cummulative Interest 44%

Class B Limited Partners

ADDRESS

JOHN W. KIRKPATRICK, III

2531 NW 41<sup>st</sup> Street, Suite "D"  
Gainesville, Florida 32606

Capital Contribution \$0  
Interest 8%

SANDRA KAYE KIRKPATRICK

2107 SE 3<sup>rd</sup> Avenue  
Ocala, Florida 34471

Capital Contribution \$0  
Interest 7%

ROBERT THOBURN

9409 SW 47<sup>th</sup> Lane  
Gainesville, Florida 32608

Capital Contribution \$0  
Interest 5%

WILLIAM OLINGER

2700 NW 43<sup>rd</sup> Street, Suite A  
Gainesville, Florida 32606

Capital Contribution \$0  
Interest 2.5%

UNALLOCATED 3.5%

TO BE DETERMINED



APPENDIX "B"

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To: Duval Sonny's BBQ 2, Ltd.  
2531 NW 41<sup>st</sup> Street, Suite "D"  
Gainesville, Florida 32606

Gentlemen:

1. Subscription. By executing this subscription agreement the undersigned hereby agrees to purchase \_\_\_\_\_ Limited Partnership Units in Duval Sonny's BBQ 2, Ltd., as defined by the Certificate and Agreement of Limited Partnership of Duval Sonny's BBQ 2, Ltd. agreement dated \_\_\_\_\_, \_\_\_\_\_ (the securities), for an aggregate purchase price of \$ \_\_\_\_\_.

THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("1933 ACT") AND HAVE NOT BEEN REGISTERED WITH THE STATE OF FLORIDA, NOR ANY OTHER STATE. ANY UNITS PURCHASED CANNOT BE TRANSFERRED UNLESS REGISTERED UNDER THE 1933 ACT AND APPLICABLE STATE ACTS, OR ARE EXEMPTED FROM SUCH REGISTRATION. THE PARTNERSHIP IS UNDER NO OBLIGATION TO REGISTER THESE UNITS UNDER THE 1933 ACT, OR ANY EXEMPTION UNDER THE 1933 ACT, NOR UNDER ANY STATE ACT OR ANY EXEMPTION AVAILABLE THEREUNDER. THERE IS NO PUBLIC MARKET FOR THESE UNITS AND NONE IS LIKELY TO DEVELOP. CONSEQUENTLY, INVESTORS MAY BE REQUIRED TO RETAIN THESE UNITS AND BEAR THE ATTENDANT ECONOMIC RISK FOR AN INDEFINITE PERIOD.

THE SECURITIES ARE OFFERED ONLY TO INDIVIDUALS OR BUSINESS ORGANIZATIONS HAVING A PRINCIPAL RESIDENCE OR OFFICE, RESPECTIVELY, WITHIN THE STATE OF FLORIDA. NO OFFERS OR SALES WILL BE MADE TO ANY OTHER INDIVIDUALS OR BUSINESS ORGANIZATIONS.

THE SECURITIES INVOLVE CERTAIN RISK FACTORS AND INVOLVE TRANSACTIONS BETWEEN THE GENERAL PARTNER OR ITS AFFILIATES WHICH MAY INVOLVE CONFLICTS OF INTEREST.

2. Representations and Warranties. I warrant and represent to the Partnership:

- (a) The securities are being purchased by me for investment only, for my own account, and not with a view to, nor for resale in connection with, the distribution thereof, and that the undersigned is not participating, directly or indirectly, in an underwriting or any such undertaking.
- (b) I will not take, nor cause to be taken, any action that would cause me to be deemed an underwriter, as defined in Section 2(11) of the Securities Act of 1933, as amended (the 1933 Act), of the securities.
- (c) I have received and have read a copy of the Certificate and Agreement of Limited Partnership of Duval Sonny's BBQ 2, Ltd. and of the Confidential Private Placement Memorandum for Duval Sonny's BBQ 2, Ltd.
- (d) I (and my offeree representative, if any) have had an opportunity to ask questions of, and receive answers from persons acting on behalf of the Partnership to verify the accuracy and completeness of the information set forth in the document listed in (c) above.

3. Successors and Assigns. This Subscription Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to the successors and assigns of the Partnership and to the personal and legal representatives, heirs, guardians, successors, and permitted assignees of the undersigned.

4. Applicable Law. This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of Florida and, to the extent it involves any United States statute, in accordance with the laws in the United States.

5. Counterpart to Partnership Agreement. A signature on this Subscription Agreement constitutes a signature on the Certificate and Agreement of Limited Partnership of Duval Sonny's BBQ 2, Ltd.

IN WITNESS WHEREOF, the undersigned has executed and sealed this Subscription Agreement this  
\_\_\_\_ day of \_\_\_\_\_.

(SEAL) \_\_\_\_\_

(SEAL)

Address:

Social Security or Tax Identification Number:

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# ACCEPTANCE OF REGISTERED AGENT

Having been named Registered Agent of Duval Sonny's BBQ 2, Ltd., the undersigned hereby accepts said office and agrees to comply with the provisions of Chapter 620, Florida Statutes as same pertains to the office of Registered Agent.

DUVAL BBQ 2, INC.

By:   
Kenneth D. Kirkpatrick, President

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**AFFIDAVIT OF CAPITAL CONTRIBUTIONS  
FOR FLORIDA LIMITED PARTNERSHIP**

The undersigned constituting all of the general partners of Duval Sonny's BBQ 2, Ltd., a Florida Limited Partnership, certify:

The amount of capital contributions to date of the limited partners is \$200,000.00.

The total amount contributed and anticipated to be contributed by the limited partners at this time totals \$1,100,000.00.

Signed this 10th day of January, 2002.

FURTHER AFFIANT SAYETH NOT.

Under the penalties of perjury, I declare that I have read the foregoing and know the contents thereof and that the facts stated herein are true and correct.

DUVAL BBQ 2, INC.

By:   
Kenneth D. Kirkpatrick, President

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