

B03000000240

VNB Ventures Ltd.

(Requestor's Name)

7018 AC Skinner Pkwy.

(Address)

#250

(Address)

Jacksonville, FL 32050

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

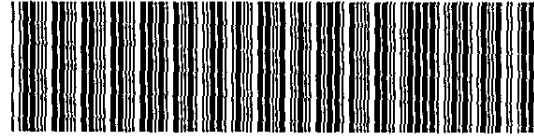
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

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TALLAHASSEE, FLORIDA

J. BRYAN MAY - 2 2005

J. BRYAN MAY 24 2005



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

May 2, 2005

JWB VENTURES, LTD.
7018 AC SKINNER PKWY #250
JACKSONVILLE, FL 32256

SUBJECT: JWB VENTURES, LTD.
Ref. Number: B03000000240

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TALLAHASSEE, FLORIDA

We have received your document for JWB VENTURES, LTD. and your check(s) totaling \$157.50. However, the enclosed document has not been filed and is being returned for the following correction(s):

The plan of merger must be attached/included.

If you have any questions concerning the filing of your document, please call (850) 245-6043.

Joey Bryan
Document Specialist

Letter Number: 705A00030954



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TALLAHASSEE, FLORIDA

May 18, 2005

VIA FIRST CLASS MAIL

Florida Department of State
Attn: Joey Bryan
Document Specialist
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

RE: Plan of Merger documentation

Dear Joey:

Enclosed please find the Plan of Merger by and among JWB Ventures Ltd., OWB Ventures Ltd., and TWB Ventures Ltd. as of February 25, 2005. Please have the enclosed documentation filed with your department as soon as possible.

If you have any questions or need any additional information, please do not hesitate to contact me at your convenience.

Sincerely,

Lee R. Johnson
Vice President and Senior Counsel

LRJ:cmc

enclosures

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TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

The following articles of merger are being submitted in accordance with section(s) 607.1109, 608.4382, and/or 620.203, Florida Statutes.

FIRST: The exact name, street address of its principal office, jurisdiction, and entity type for each merging party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
1. JWB Ventures, Ltd. 7018 AC Skinner Pkwy #250 Jacksonville, Florida 32256	Texas	Limited Partnership
Florida Document/Registration Number: B03000000240		FEI Number: 56-2305206
2. OWB Ventures, Ltd. 7018 AC Skinner Pkwy #250 Jacksonville, Florida 32256	Texas	Limited Partnership
Florida Document/Registration Number: B03000000238		FEI Number: 36-4528424
3. TWB Ventures, Ltd. 7018 AC Skinner Pkwy, #250 Jacksonville, Florida 32256	Texas	Limited Partnership
Florida Document/Registration Number: B03000000239		FEI Number: 36-4528420
4.		
Florida Document/Registration Number:		FEI Number:

(Attach additional sheet(s) if necessary)

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SECOND: The exact name, street address of its principal office, jurisdiction, and entity type of the surviving party are as follows:

<u>Name and Street Address</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
JWB Ventures, Ltd	Texas	Limited Partnership
7018 AC Skinner Pkwy, #250		
Jacksonville, Florida 32256		

Florida Document/Registration Number: B03000000240 FEI Number: 56-2305206

THIRD: The attached Plan of Merger meets the requirements of section(s) 607.1108, 608.438, 617.1103, and/or 620.201, Florida Statutes, and was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with Chapter(s) 607, 617, 608, and/or 620, Florida Statutes.

FOURTH: If applicable, the attached Plan of Merger was approved by the other business entity(ies) that is/are party(ies) to the merger in accordance with the respective laws of all applicable jurisdictions.

FIFTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity hereby appoints the Florida Secretary of State as its agent for substitute service of process pursuant to Chapter 48, Florida Statutes, in any proceeding to enforce any obligation or rights of any dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger.

SIXTH: If not incorporated, organized, or otherwise formed under the laws of the state of Florida, the surviving entity agrees to pay the dissenting shareholders, partners, and/or members of each domestic corporation, partnership, limited partnership and/or limited liability company that is a party to the merger the amount, if any, to which they are entitled under section(s) 607.1302, 620.205, and/or 608.4384, Florida Statutes.

SEVENTH: If applicable, the surviving entity has obtained the written consent of each shareholder, member or person that as a result of the merger is now a general partner of the surviving entity pursuant to section(s) 607.1108(5), 608.4381(2), and/or 620.202(2), Florida Statutes.

EIGHTH: The merger is permitted under the respective laws of all applicable jurisdictions and is not prohibited by the agreement of any partnership or limited partnership or the regulations or articles of organization of any limited liability company that is a party to the merger.

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TALLAHASSEE, FLORIDA

PLAN OF MERGER

by and among

**JWB VENTURES LTD.,
OWB VENTURES LTD.**

and

TWB VENTURES LTD.

February 25, 2005

PLAN OF MERGER

This **PLAN OF MERGER**, dated as of February 25, 2005, is entered into by and among **JWB VENTURES LTD.**, a Texas limited partnership (**JWB**), **OWB VENTURES LTD.**, a Texas limited partnership (**OWB**), and **TWB VENTURES LTD.**, a Texas limited partnership (**TWB**).

RECITALS:

A. The limited partners of each of JWB, OWB and TWB have approved the merger of each of OWB and TWB pursuant to this Agreement with and into JWB, the Certificate of Merger set forth on *Exhibit A* hereto (the "**Certificate of Merger**") and the transactions contemplated hereby, in accordance with the applicable provisions of the statutes of the State of Texas, which permits such Merger.

B. For federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "**Code**").

C. Each of the parties to this Agreement desires to make certain representations, warranties and agreements in connection with the Merger and also to prescribe various conditions thereto.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 Definitions. As used herein, the following terms have the respective meanings set forth below or set forth in the Section of the Agreement following such term:

Act means the Texas Revised Limited Partnership Act.

Agreement means this Plan of Merger among JWB, OWB and TWB, dated February 25, 2005, as the same may be amended from time to time, together with all schedules and exhibits thereto.

Code shall have the meaning set forth in the recitals to this Agreement.

Certificate of Merger shall have the meaning set forth in the recitals to this Agreement.

Closing shall have the meaning set forth in Section 2.3.

Closing Date means the date on which the Closing actually occurs, which shall be on February 25, 2005, unless otherwise agreed by the parties, but shall not in any event be prior to the satisfaction or waiver of and the conditions to Closing set forth in Section 2.4 herein.

DMT means DMT Management LLC, a Texas limited liability company and the general partner of JWB, OWB and TWB.

Effective Date shall have the meaning set forth in Section 2.3.

Effective Time shall have the meaning set forth in Section 2.2.

JWB Partnership Interests means the percentage interests in JWB of the general partner and the limited partners of JWB.

Merger means the merger of OWB and TWB with JWB being the Surviving Partnership pursuant to the Act.

OWB Partnership Interests means the percentage interests in OWB of the general partner and the limited partners of OWB.

Partnership Interests means, collectively, the JWB Partnership Interests, the OWB Partnership Interests and the TWB Partnership Interests.

Person means an individual, sole proprietorship, partnership, corporation, trust, joint venture, unincorporated organization, or a government or agency or political subdivision thereof.

Surviving Partnership shall have the meaning set forth in Section 2.1.

TWB Partnership Interests means the percentage interests in TWB of the general partner and the limited partners of TWB.

2. MERGER

2.1 Certificate of Merger. On the terms and subject to the conditions set forth in this Agreement, JWB, OWB and TWB will merge together pursuant to Section 2.11 of the Act (the "Merger") by filing a Certificate of Merger in substantially the form attached hereto as **Exhibit A**. JWB, OWB and TWB shall cause this Agreement to be executed in accordance with the applicable provisions of the Act. As a result of the Merger, JWB will be the surviving entity of the Merger (the "Surviving Partnership").

The Merger shall be effected pursuant to this Agreement. As promptly as practicable, but in no event sooner than the time that all conditions contained herein are satisfied or waived, JWB, OWB and TWB shall cause the Certificate of Merger to be filed with the Secretary of State of Texas in accordance with Section 2.11 of the Act. The Merger shall become effective at the time

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DALLAS COUNTY, TEXAS
CLERK OF DISTRICT COURT

that JWB, OWB and TWB file the Certificate of Merger with the Texas Secretary of State ("Effective Time").

2.2 Effect of the Merger.

- (a) **General.** The Merger shall have the effect set forth in Section 2.11 of the Act.
- (b) **Certificate of Limited Partnership.** The Certificate of Limited Partnership of JWB will be as set forth on *Exhibit B* hereto.
- (c) **Agreement of Limited Partnership.** The Agreement of Limited Partnership of JWB will be as set forth on *Exhibit C* hereto.
- (d) **General Partner.** DMT shall be the general partner of the Surviving Partnership.
- (f) **Tax Consequences.** It is intended that the Merger shall constitute reorganization within the meaning of Section 368 of the Code and that this Agreement shall constitute a "plan of reorganization" for the purposes of Section 368 of the Code.

2.3 The Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. local time at the offices of JWB Ventures, Ltd., 7018 AC Skinner Pkwy, Suite 250, Jacksonville, Florida, on February 25, 2005 (the "Effective Date"), or any other date and time specified by the parties (the "Closing Date").

2.4 Condition to Closing. As a condition to Closing OWB, TWB and JWB shall obtain the affirmative consent of Whataburger, Inc. approving the merger of OWB, TWB into JWB as set forth in those certain Franchise Agreements by and between Whataburger, Inc, OWB, TWB and JWB respectively.

3. CONVERSION OF PARTNERSHIP INTERESTS

The manner of converting the Partnership Interests issued and outstanding immediately prior to the Effective Time of the Merger, respectively, into partnership interests in the Surviving Partnership shall be as follows:

At of the Effective Time of the Merger each partner's Partnership Interests issued and outstanding immediately prior to the Effective Time of the Merger, by virtue of the Merger and without any action on the part of the holder thereof, shall automatically be deemed converted to the partnership interest in the Surviving Partnership assigned to such partner as set forth on *Schedule I* hereto.

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4. CLOSING

At or prior to the Closing, JWB, OWB and TWB shall deliver to DMT the following instruments:

- (a) The books, ledgers, minute books, seal and other records of JWB, OWB and TWB;
- (b) The Certificate of Merger, as provided in *Exhibit A*; and
- (c) All other documents, instruments and writings required to be delivered by the JWB, OWB and TWB at or prior to Closing pursuant to this Agreement or otherwise required in connection herewith.

5. MISCELLANEOUS

5.1 Captions. The article and section captions used herein are for reference purposes only, and shall not in any way affect the meaning or interpretation of this Agreement.

5.2 Assignment. This Agreement may not be transferred, assigned, pledged or hypothecated by any party hereto, without the prior written consent of the other parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5.3 Counterparts. This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

5.4 Entire Agreement. This Agreement, including the other documents referred to herein which form a part hereof, contains the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

5.5 Amendments. This Agreement may not be amended orally, but only by an agreement in writing signed by the parties hereto.

5.6 Severability. In case any provision in this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.

5.7 Third Party Beneficiaries. Each party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the parties hereto.

5.8 Governing Law. The interpretation and construction of this agreement, and all matters relating hereto, shall be governed by the laws of the State of Texas.

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