

APPENDIX A

PLAN AND AGREEMENT OF MERGER

THIS PLAN AND AGREEMENT OF MERGER (“*Agreement*”) is made and entered into effective as of September 7, 2004 (“*Merger Effective Date*”), by and between VISITALK, INC., a Nevada corporation (the “*Surviving Corporation*”) and VISITALK.COM, INC., an Arizona corporation (the “*Debtor*”). The Surviving Corporation and the Debtor shall be referred to herein as the “*Constituent Corporations*.”

RECITALS

A. The Surviving Corporation was formed under the laws of Nevada and has an authorized capitalization as follows:

<u>Class of Stock</u>	<u>Par Value</u>	<u>No. Shares Authorized</u>
Common	\$.001	65,000,000
Preferred	\$.001	10,000,000

B. the Debtor was formed under the laws of Arizona and has an authorized capitalization as follows:

<u>Class of Stock</u>	<u>Par Value</u>	<u>No. Shares Authorized</u>
Common	no par	100,000,000
Preferred	no par	10,000,000

C. The Surviving Corporation is a wholly owned subsidiary of the Debtor.

D. The Debtor, the Surviving Corporation and others are Co-Proponents under a Chapter 11 proceeding of the Debtor in the United States Bankruptcy Court for the District of Arizona, Case No. 00-13035-PHX-RTB. In accordance with the Second Joint Plan of Reorganization dated June 22, 2004 in this case (the “*Plan*”), the Debtor and the Surviving Corporation have agreed to merge as called for therein. The Plan was confirmed by the Bankruptcy Court on August 27, 2004 by order attached hereto as Exhibit A (the “*Confirmation Order*”), and the Plan is effective as of the date of this Agreement.

E. The Surviving Corporation was formed for the purpose of acquiring substantially all of the assets, operations, rights, privileges, liabilities remaining after reorganization and obligations of the Debtor by asset transfer and merger, and causing the Surviving Corporation to be governed by the corporate laws of the State of Nevada.

F. The Confirmation Order constitutes approval of such merger by the shareholders of the Constituent Corporations.

G. The equity interests and the liabilities of the Debtor have been restructured and satisfied in accordance with the Plan as the condition precedent of the Merger.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Constituent Corporations hereby agree as follows:

1. *Merger and the Surviving Corporation.*

(a) Subject to the terms and conditions of this Agreement, the Debtor shall be merged with and into the Surviving Corporation, which will be governed by the laws of the State of Nevada, and the Debtor shall be predecessor to the Surviving Corporation in the Merger in accordance with A.R.S. ¶10-1101 *et seq.* and N.R.S. Chapter 92A.005, *et seq.* Upon the filing of Articles of Merger with the Secretary of States of Arizona and Nevada, the Merger shall become effective as of the close of business on the Merger Effective Date.

(b) At the Merger Effective Date, by virtue of the Merger, all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of the Debtor and the Surviving Corporation and all property, real, personal and mixed, and all debts due on whatever account, including choices in action, and all and every other interest of or belonging to or due to each of the Debtor and the Surviving Corporation shall be taken and deemed to be transferred to and vested in the Surviving Corporation, or the Creditors' Trust created under the Plan, without further act or deed, and the Surviving Corporation shall be responsible and liable for all of the liabilities and obligations of each of the Debtor and the Surviving Corporation, all with the full effect provided for under the Plan and applicable Arizona and Nevada law.

(c) The name of the Surviving Corporation shall be Visitalk Capital Corporation. The purposes, county where the principal office for the transaction of business shall be located, number of directors and the capital stock of the Surviving Corporation shall be as they appear in the Articles of Incorporation of the Surviving Corporation, as amended and as set forth herein in accordance with the provisions thereof, the Plan and the Nevada Revised Statutes.

(d) The Articles of Incorporation of the Surviving Corporation shall be amended to read as set forth herein:

"FIRST: The name of the corporation (hereinafter called the "*Corporation*") is:

VISITALK CAPITAL CORPORATION."

"FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is four hundred eighty-five million (485,000,000) shares of common stock with a par value of one-tenth of one cent (\$.001) per share and ten million (10,000,000) shares of preferred stock with a par value of one-tenth of one cent (\$.001) per share, undesignated as to class, powers, designations, preferences, limitations, restrictions or relative rights. The board of directors of the Corporation is authorized to fix and determine any class or series of preferred stock and the number of shares of each class or series and to prescribe the powers, designations, preferences, limitations, restrictions and relative rights of any class or series established, all by resolution of the board of directors and in accordance with Section 78.1955 of the Nevada Revised Statutes, as the same may be amended and supplemented."

"ELEVENTH: RESTRICTIONS OF SECURITIES REGARDING I.R.C. §382 AND THE 5% LIMITATION

A. DEFINITIONS. For purposes of Article ELEVENTH:

1. The term "*Act*" shall mean the Securities Exchange Act of 1934, as amended.
2. The terms "*Affiliate*" and "*Associate*" shall have the meanings ascribed to them in Rule 12b-2 of the general Rules and Regulations under the Act.
3. The terms "*acquire*," "*acquisition*," or "*acquiring*" with respect to the acquisition of any security of the Corporation shall refer to the acquisition of such security by any means whatsoever, including without limitation, an acquisition of such security by operation of law, by will or by intestacy.
4. The term "*Code*" means the Internal Revenue Code of 1986, as amended.
5. The term "*Common Stock*" means all Common Stock of the Corporation and any other securities issued by the Corporation which are treated as stock for purposes of §382 of the Code.
6. The term "*Excess Shares*" shall have the meaning ascribed to it in §C.(1) hereof.
7. The term "*5% Limitation*" shall mean the limitations on ownership of Common Stock or Warrants imposed by this Article ELEVENTH.
8. The term "*5% or More Holder*" shall have the meaning ascribed to it in §B hereof.
9. The term "*Net Operating Loss Carryover*" means the net operating loss carryovers to which the Corporation is entitled from time to time under the Code.
10. The terms "*own*," "*owned*," "*ownership*," or "*owning*" refer to the ownership of securities within the meaning of §382 of the Code after taking into account the attribution rules of §382 (1)(3) of the Code and the regulations promulgated thereunder (except insofar as such attribution would be inconsistent with provisions of this Article ELEVENTH relating to Warrants).
11. The term "*Permitted Transferee*" shall have the meaning ascribed to it in §C.(1)(a) hereof.
12. The term "*Person*" shall mean any individual, firm, corporation, partnership, joint venture or other entity and shall include any group comprised of such Person and any other Person with whom such Person or any Affiliate or Associate of such Person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of Common Stock or Warrants, and any other Person who is a member of such group, but does not include any underwriter which participates in an underwriter public offering of the Corporation's Common Stock or Warrants, provided that such underwriter shall not own such Common Stock or Warrants on the last day of any fiscal year.
13. The term "*Proceeds*" shall have the meaning ascribed to it in §C.1(d) hereof.
14. The term "*Purported Owner*" shall have the meaning ascribed to it in §C.(1) hereof.

15. The term "*Purported Owner's Transferor*" shall have the meaning ascribed to it in §C.(1)(a) hereof.

16. The term "*Share Trustee*" shall mean the trustee of the Excess Shares nominated and appointed by the Board of Directors from time to time.

17. The term "*Testing Date*" shall mean the date set by the Board of Directors from time to time to determine whether any person is a Purported Owner of Excess Shares.

18. The term "*Testing Period*" shall mean three-year period ending on the Testing Date.

19. The term "*Transfer Agent*" shall mean the transfer agent with respect to the Common Stock nominated and appointed by the Board of Directors from time to time.

20. The term "*Warrant*" shall mean any securities issued by the Corporation, or any securities issuable by the Corporation in respect to issued securities, which are convertible into, or which include the right to acquire, shares of Common Stock, whether or not the right to make such conversion or acquisition is subject to any contingencies, including, without limitation, warrants, options and convertible debt instruments.

21. The term "*Warrant Agent*" shall mean the warrant agent for the Warrants nominated and appointed by the Board of Directors from time to time.

B. THE 5% LIMITATION/RESTRICTION OF TRANSFER

1. At no time after August 26, 2004 shall any Person owning Common Stock or Warrants which in the aggregate and assuming conversion of such Warrants allowed to be converted in accordance with these terms into the maximum number of shares of Common Stock issuable in respect of such Warrants regardless of contingencies, equal to less than 5% of the sum total of the outstanding Common Stock plus the shares of Common Stock deemed to be outstanding by reason of the assumed conversion of such Warrants owned by such Person, acquire (whether voluntarily or involuntarily) any shares of Common Stock or Warrants which, together with the shares of Common Stock or Warrants owned by such Person, if any, would increase such ownership percentage of such Person to 5% or more of the sum total of the then outstanding Common Stock plus the shares of Common Stock deemed to be outstanding by reason of the assumed conversion of such warrants owned by such Person, nor shall any Person owning Common Stock or Warrants which is the aggregate, and assuming conversion of such Warrants into the maximum number of shares of Common stock issuable in respect of such Warrants regardless of contingencies, equal or exceed 5% of the sum total of the then outstanding Common Stock plus the shares of Common Stock deemed to be outstanding by reason of the assumed conversion of such Warrants then owned by such person increase the ownership by such Person of Common Stock (any such Person who is or becomes the owner of such percentage being a "*5% or More Holder*"), unless:

a. the increase in ownership is due to the receipt or exercise by any Person of Warrants which were received by such Person pursuant to the issuance of Warrants by the Corporation to holders of Common Stock on a pro rata basis; or

b. such acquisition in each instance does not jeopardize the Corporation's ability to preserve and utilize its Net Operating Loss Carryover as determined by standing regulations of the Board of Directors or a finding made in writing by the Board of Directors or a duly-authorized committee thereof and filed with the Secretary of the Corporation; provided, however, that any acquisition or proposed acquisition of Common Stock or Warrants shall not be deemed to

jeopardize the Corporation's ability to preserve and utilize its Net Operating Loss Carryover so long as the increase in the percentage ownership of the acquirer as a result of such acquisition, together with all other increases in percentage ownership resulting from acquisitions during the Testing Period, does not or would not as of the Testing Date cause an aggregate percentage increase to have occurred in the ownership of Common Stock or Warrants by 5% or More Holders of 45 percentage points or more during the Testing Period; and provided further that the Board of Directors shall be fully protected in not permitting any acquisition or proposed acquisition of Common Stock or Warrants if such acquisition, together with all other acquisitions during the Testing Period, would cause percentage increases in the ownership of Common Stock or Warrants by 5% or More Holders aggregating 45 percentage points or more during the Testing Period; or

c. such acquisition is pursuant to any transaction, including, but not limited to, a merger or consolidation, in which holders of all outstanding shares of Common Stock receive, or are offered the opportunity to receive, cash for all such shares, and upon the consummation of which the acquirer will own at least a majority of the outstanding shares of Common Stock.

2. The Corporation and the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, or the chief accounting officer of the Corporation or of the Corporation's legal counsel in making the determination an finding contemplated by this §B of this Article ELEVENTH.

C. VIOLATION OF THE RESTRICTION OF TRANSFER.

1. The transfer of any shares of Common Stock or Warrants in Violation of §B of this Article ELEVENTH is prohibited and shall be null and void. If, notwithstanding the foregoing prohibition, a person shall, voluntarily or involuntarily, become or attempt to become the purported owner (the "*Purported Owner*") of shares of Common Stock or Warrants, or both, in excess of such 5% Limitation the number of shares or Warrants, including shares of Common Stock issued in respect of Warrants which are Excess Shares, so exceeding the 5% Limitation (being herein the "*Excess Shares*"), then:

a. The Purported Owner shall not obtain any rights in and to the Excess Shares, and the purported transfer of the Excess Shares to the Purported Owner shall not be recognized by the Transfer Agent. Until the Excess Shares are transferred to a person whose acquisition thereof will violate the 5% Limitation (a "*Permitted Transferee*"), the transferor of the Excess Shares to the Purported Owner (the "*Purported Owner's Transferor*") shall be deemed to have retained the Excess Shares and shall hold and be entitled to exercise all rights incident to ownership of such Excess Shares, except that if the Excess Shares are Warrants, they may not be exercised, converted or exchanged until transferred to and exercised, converted or exchanged in accordance with their terms by, a Permitted Transferee; provided, however, that the foregoing notwithstanding, in the event shares of Common Stock are issued in respect of Warrants which are Excess Shares prior to notice to the Transfer Agent that such warrants are Excess Shares, the shares of Common Stock so issued shall be deemed to be issued and outstanding shares of Common Stock of the Corporation and shall be Excess Shares deemed retained by the Purported Owner's Transferor. Warrants issued by the Corporation shall reflect the provisions of the foregoing sentence. All Excess Shares will continue to be issued and outstanding.

b. If the Transfer Agent obtains possession of a certificate or certificates representing the Excess Shares, the Transfer Agent shall deliver such certificate or certificates to the Share Trustee who shall proceed forthwith to sell or cause the sale of the Excess Shares to a Permitted Transferee. Upon notice from the Corporation of the existence of Excess Shares and the identity of the Purported Owner, the Share Trustee shall take all lawful action to cause the Purported Owner to deliver or cause delivery of the Excess Shares and any indicia of ownership thereof to the Share Trustee and upon obtaining possession thereof, the Share Trustee shall sell or cause the sale of the Excess Shares in the then existing public market or in such other commercially reasonable fashion as the Corporation shall direct. In performing the duties herein imposed upon it, the Share Trustee shall act at all times as the agent for the Purported Owner's Transferor.

c. Once the Excess Shares are acquired by a Permitted Transferee, the Permitted Transferee shall have and shall be entitled to exercise all rights incident to the ownership of such Excess Shares.

d. The Proceeds from the sale of the Excess Shares to the Permitted Transferee (the "*Proceeds*") shall be distributed as follows: (i) first, to the Share Trustee for any costs incurred in respect of its administration of the Excess Shares, (ii) second, to the Purported Owner, if determinable, for the Excess Shares, and (iii) the remaining Proceeds, if any, shall be distributed to the Purported Owner's Transferor, if known, and if not known, such remaining Proceeds shall be held by the Corporation for the benefit of the Purported Owner's Transferor or such other Person as their interests may appear. Notwithstanding anything in this Article ELEVENTH to the contrary, the Corporation shall at all times be entitled to make application to any court of equitable jurisdiction within the State of Arizona for an adjudication of the respective rights and interests of any Person in and to the Proceeds pursuant to this Article ELEVENTH and applicable law and for leave to pay the Proceeds into such court.

2. Pursuant to §382 of the Code, in determining whether any Person has become a Purported Owner of Excess Shares:

a. the Corporation is entitled to rely on the existence or absence, as of the Testing Date, of filings on Schedules 13D and 13G as required by Rule 13d of the Act to identify any Person who is a 5% or More Holder, and the existence or absence of any amendments to Schedules 13D and 13G showing any material increase or decrease in the percentage of Common Stock or Warrants owned by such Person, as required by Rule 13d-2 of the Act; and

b. in case of any entity which is a 5% or More Holder, in order to determine shifts in the indirect ownership of Common Stock or Warrants, without regard to the actual identity of the ultimate beneficial owners of such Common Stock or Warrants, the Corporation may rely on a statement, signed under oath or affirmation by such an entity, to establish the extent, if any, to which the ownership interests of any such entity's owners have changed as of the Testing Date. The Corporation may not rely on a statement by such an entity if (i) the Corporation knows that statement is false, or (ii) the statement is offered by an entity that has either a direct or indirect ownership interest of 50% or more of the Common Stock or Warrants of the Corporation.

3. The Board of Directors shall be fully protected in relying in good faith on the items set forth in subparagraphs (a) and (b) of the foregoing paragraph (2), together with such other items or sources of information as may be required from time to time by the Code, to determine whether any Person has become a Purported Owner of Excess Shares.

D. Immediately upon the purported acquisition of any Excess Shares, the Purported Owner thereof shall give, or cause to be given, written notice thereof to the Corporation. Each owner of shares of Common Stock and Warrants shall furnish to Corporation all information reasonably requested with respect to all shares of Common Stock and Warrants directly and indirectly owned by such Person.

E. Upon a determination by the Board of Directors that a Person has attempted or may attempt to transfer or to acquire Excess Shares, the Board of Directors may take such action as it deems advisable to refuse to give effect to such transfer or acquisition on the books and records of the Corporation, including without limitation to cause the Transfer Agent to record the Purported Owner's Transferor as the record owner of the Excess Shares, to refuse to issue shares of Common Stock upon the purported exercise of Warrants which are Excess Shares, to refuse to issue shares of Common Stock upon the purported exercise of Warrants which are Excess Shares and to institute proceedings to enjoin or rescind any such transfer acquisition.

F. If any provision of this Article ELEVENTH or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

G. It is the purpose of this Article ELEVENTH to facilitate the Corporation's ability to preserve and utilize its Net Operating Loss Carryover and to that end the Board of Directors is authorized to take such action, to the extent permitted by law and not inconsistent with this Article ELEVENTH, as it may deem necessary or advisable to protect the Corporation and the interests of holders of its equity and debt securities by preservation of the Corporation's ability to preserve and utilize its Net Operating Loss Carryover.

H. The Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by By-Laws or otherwise, regulations and procedures not inconsistent with the express provisions of this Article ELEVENTH for determining whether any acquisition of Common Stock or Warrants would jeopardize the Corporation's ability to preserve and utilize its Net Operating Loss Carryover, and for the orderly application, administration and implementation of the provisions of this Article ELEVENTH. Such procedures and regulations shall be kept on file with the Secretary of the Corporation and with its Transfer Agent and Warrant Agent and shall be made available for inspection by the public and, upon request, shall be mailed to any holder of Common Stock or Warrants of the Corporation.

* * * *

(e) The Bylaws of the Surviving Corporation in effect immediately prior to the Merger Effective Date shall be the Bylaws of the Surviving Corporation, until altered, amended or repealed in accordance with the provisions thereof and the Nevada Revised Statutes.

(f) The names and addresses of the directors of the Surviving Corporation who shall constitute the board of directors of the Surviving Corporation, and who shall hold office until the next annual meeting of the shareholders of the Surviving Corporation are as follows:

<u>Name of Director</u>	<u>Address of Director</u>
Michael S. Williams	13851 S. 37th Street Phoenix, AZ 85044
Lanny R. Lang	3536 E. Saltsage Drive Phoenix, AZ 85048

(g) The names and addresses of the officers of the Surviving Corporation, holding the offices in the Surviving Corporation set forth opposite their name and until their successors are elected or appointed in accordance with the Bylaws of the Surviving Corporation and shall have been duly qualified, are as follows:

<u>Name of Officer</u>	<u>Office held</u>
Michael S. Williams 13851 S. 37th Street Phoenix, AZ 85044	President
Lanny R. Lang 3536 E. Saltsage Drive Phoenix, AZ 85048	Secretary and Treasurer

2. *Conversion of Stock.* At the Merger Effective Date:

(a) Each share of the Common Stock of the Surviving Corporation which is issued immediately prior to the Merger Effective Date (whether then outstanding or held in the treasury of the Surviving Corporation) shall be canceled and returned to the status of authorized but unissued shares, without the payment of any consideration therefor.

(b) Each share of the Common Stock of the Debtor which is issued or committed for issuance under the Plan on the Merger Effective Date (whether then outstanding or held in the treasury of the Debtor) shall be converted into one fully paid and non-assessable share of Common Stock of the Surviving Corporation; and each stock option, warrant note or other equity right, including the Common Stock (the “*Securities*”) granted by the Debtor which is issued under the Plan on the Merger Effective Date shall be converted into Securities of the Surviving Corporation, under the same terms existing immediately prior to the Merger Effective Date.

(c) The rights, preferences, privileges, limitations, terms and conditions of the Surviving Corporation Common Stock and any Securities issued in exchange for the the Debtor Common Stock or Securities shall, to the fullest extent allowable under Nevada law, be identical in all

respects and for all purposes deemed to be originally issued by the Surviving Corporation, including the calculation of any term or holding period related thereto.

(d) Each outstanding certificate that prior to the Merger Effective Date represented shares of Common Stock or other Securities of the Debtor shall be deemed for all purposes to evidence ownership of and to represent the number of shares of Common Stock of the Surviving Corporation into which the Securities of the Debtor represented by such certificates have been converted as provided in Section 2(b) above and shall be so registered on the books and records of the Surviving Corporation or its transfer agents. The registered owner of any such outstanding stock certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or its transfer agent, have and be entitled to exercise any voting and other rights with respect to and to receive any dividend and other distributions upon the share of the Surviving Corporation evidenced by such outstanding certificate as provided above.

(e) Each outstanding stock option or warrant of the Debtor that prior to the Merger Effective Date evidenced the right to purchase stock of the Debtor shall be deemed to evidence the right to acquire a like number of shares of the capital stock of the Surviving Corporation and shares of the Surviving Corporation shall be reserved for the purposes of issuance upon exercise of such stock options and warrants. The Surviving Corporation may issue certificates or other instruments evidencing the terms of such stock options or warrants.

3. *Conditions Precedent.* The obligations of the parties to effect the Merger shall be subject to the performance of the prior implementation steps under the Plan.

4. *Amendment.* This Agreement may be amended by the parties hereto, with the approval of their respective Boards of Directors, at any time prior to the Merger Effective Date, whether before or after approval of this Agreement by the shareholders of the Constituent Corporations, but, after such approval by the shareholders, no amendment shall be made which materially adversely affects the rights of the shareholders of the constituent corporations without further approval of such shareholders. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

5. *Amendment. Dissenters' Rights; Termination.*

(a) Since the Merger was approved under the jurisdiction of the Bankruptcy Court, after the Merger Effective Date, no holder of issued and outstanding voting shares of the capital stock of the Debtor may dissent other than as such shareholder may assert rights under the Bankruptcy Code.

(b) This Agreement may not be terminated at any time prior to the Merger Effective Date except by order of the Bankruptcy Court.

6. *Further Assurances.* From time to time after the Merger Effective Date, as and when requested by the Surviving Corporation and to the extent permitted by law, the officers and directors of each of the Surviving Corporation and the Debtor last in office shall execute and deliver such

assignments, deeds and other instruments and shall take or cause to be taken such further or other actions as shall be necessary in order to vest or perfect in or to confirm of record or otherwise to the Surviving Corporation, or the Creditors' Trust created under the Plan, title to, and possession of, all of the assets, rights, franchises and interests of each of the Surviving Corporation and the Debtor in and to every type of property (real, personal and mixed) and chooses in action, and otherwise to carry out the purposes of this Agreement, and the proper officers and directors of the Surviving Corporation are fully authorized to take any and all such actions in the name of the Surviving Corporation or the Debtor or otherwise.

IN WITNESS WHEREOF, the Surviving Corporation and the Debtor have caused this Agreement to be signed by their respective officers thereunto duly authorized.

VISITALK, INC., a Nevada corporation
(Surviving Corporation)

VISITALK.COM, INC., an Arizona corporation
(Debtor)

/s/ Michael S. Williams

By: Michael S. Williams
Its: President

Date: September 7, 2004

/s/ Michael S. Williams

Michael S. Williams
Its: President

Date: September 7, 2004

ATTEST:

/s/ Lanny R. Lang

Exhibit A Order Confirming Debtor's Second Joint Plan of Reorganization dated June 22, 2004 so ordered August 27, 2004 by Hon. Redfield T. Baum, Sr., United States Bankruptcy Judge.