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FOUNTAIN PHARMACEUTICALS INC  
Form PRER14C  
October 09, 2002

SCHEDULE 14C

(Rule 14c-101)

INFORMATION REQUIRED IN INFORMATION STATEMENT  
SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c)  
of the Securities Exchange Act of 1934  
(Amendment No.2)

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for use of the Commission only (as permitted by Rule 14c-5(d) (2))
- Definitive Information Statement

FOUNTAIN PHARMACEUTICALS, INC.

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(Name of Registrant as Specified in its Charter)

Payment of Filing Fee (Check the appropriate box):

- Fee computed on table below per Exchange Act Rules 14C-5(g) and 0-11.

- 1. Title of each class of securities to which transaction applies:  
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- 2. Aggregate number of securities to which transaction applies:  
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- 3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:  
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- 4. Proposed maximum aggregate value of transaction:  
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- Check box if any part of the fee is offset as provided by Exchange Rule 0-11(a) (2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- 1. Amount Previously Paid:  
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- 2. Form, Schedule or Registration Statement No.:
- 3. Filing Party:  
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- 4. Date Filed:

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FOUNTAIN PHARMACEUTICALS, INC.  
505 South Westland Avenue, Suite D  
Tampa, Florida 33606  
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Information Statement pursuant to sections 14(C) and 14(F)  
of the securities and exchange act of 1934  
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WE ARE NOT ASKING YOU FOR A PROXY  
AND YOU ARE REQUESTED NOT TO SEND US A PROXY  
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This Information Statement (the "Information Statement") is being mailed on or about October \_\_, 2002 to the holders of record at the close of business on October 1, 2002, (the "Record Date") of the Class A and Class B common stock, \$.001 par value per share (unless otherwise specified, collectively the "Common Stock") of Fountain Pharmaceuticals, Inc. (the "Company"), in connection with the Company's acquisition of SiriCOMM, Inc. ("SiriCOMM") (the "SiriCOMM Acquisition") and appointment of certain persons to the Board of Directors of the Company other than at a meeting of the shareholders of the Company.

This Information Statement is also being mailed to the Company's shareholders in connection with a proposed action by written consent to authorize and approve:

1. An amendment and restatement of the Company's Certificate of Incorporation which (a) changes the name of the Company to "SiriCOMM, Inc."; (b) combines the outstanding shares of Common Stock into a single class of Common Stock; (c) reverse splits the outstanding shares of the Company's Common Stock one-for-sixty (the "Reverse Split"); (d) decreases the par value of the Company's Common Stock resulting from the Reverse Split to \$.001; (e) increases the number of shares of Common Stock the Company is authorized to issue to 50,000,000; and (f) increases the number of shares of Preferred Stock, \$.001 par value, the Company is authorized to issue from 2,000,000 to 5,000,000.
2. The adoption of the Company's 2002 Equity Incentive Plan.

The sole member of the Board of Directors, Mr. Brendon K. Rennert, beneficially owns 3,500,000 shares of Class A Common Stock and 100,000 shares of Class B Common Stock. These shareholdings represent approximately 59.6% and 95.7%, respectively, of the total outstanding votes of all issued and outstanding Common Stock of the Company and was sufficient to take the proposed action on the Record Date. Dissenting shareholders do not have any statutory appraisal rights as a result of the action taken. Mr. Rennert, on behalf of Park Street Acquisition Corp., executed a written consent on July 15, 2002 in favor of the proposed action on behalf of the shares of the Company which he controls. The Company does not intend to solicit any proxies or consents from any other

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shareholders in connection with these actions.

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Pursuant to the provisions of Delaware law and the Company's Certificate of Incorporation, the amendments require the approval of a majority of such shares. Accordingly, Mr. Rennert's vote is sufficient to approve these matters, which he believes is in the best interests of the Company and its shareholders. The corporate action will be effective 20 days after the mailing of this Information Statement.

This Information Statement is being distributed pursuant to the requirements of Sections 14(c) and 14(f) of the Securities Exchange Act of 1934.

The entire cost of furnishing this Information Statement will be borne by the Company. The Company will request brokerage houses, nominees, custodians, fiduciaries and other like parties to forward this Information Statement to the beneficial owners of the Common Stock held of record by them and will reimburse such persons for their reasonable charges and expenses in connection therewith.

### INFORMATION RELATING TO THE COMPANY'S COMMON STOCK

The shares of Class A Common Stock and Class B Common Stock are the only class of voting securities of the Company outstanding. The Company is authorized to issue 50,000,000 shares of Class A common Stock and 5,000,000 shares of Class B Common Stock. Each share of Class A Common Stock is entitled to one vote per share on all matters submitted to a vote of the shareholders. Each share of Class B Common Stock is entitled to five (5) votes per share on all matters submitted to a vote of the shares. As of the Record Date, the Company had 5,875,795 shares of the Class A Common Stock outstanding, which is the same number of votes this class is entitled to cast, and 104,505 shares of Class B Common Stock outstanding, which entitles this class to have an aggregate of 522,525 votes cast.

### CHANGES OF CONTROL OF THE COMPANY

In order to provide working capital, the Company entered into a secured credit arrangement with Mr. Schuchert as of December 31, 1998. The Secured Credit Agreement provided for a secured line of credit of up to \$1,500,000, which was due on December 31, 2000, 180 days from written demand of Mr. Schuchert as lender, or upon an event of default under the agreement. The facility was secured by all of the assets of the Company (subject to any existing liens). Additional funds were advanced in 1999, 2000, and 2001 on an unsecured basis. As of December 29, 2001 the Company owed Mr. Schuchert approximately \$1,454,733 of principal and interest on an unsecured basis.

On June 21, 2001, Mr. Schuchert notified the Company that it was in default under the Secured Credit Agreement dated December 31, 1998. Mr. Schuchert requested immediate payment of the \$1,500,000 principal and accrued interest of \$31,721 due and, in the event such payments were not forthcoming Mr. Schuchert would take action to take possession of the Company's assets and other

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collateral as defined in the Secured Credit Agreement. As the Company was not in a financial position to make the required payment, the Company's Board of Directors voted on June 28, 2001 to comply with the agreement and transfer the assets of the Company at the close of business on July 6, 2001 to Mr. Schuchert. As a result, the secured debt was satisfied through this transfer of assets,

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although the unsecured facility remained outstanding.

As the Company had no significant assets subsequent to July 6, 2001, it no longer had the ability to generate revenue to pay its unsecured liabilities; therefore, the Company was not in the position to continue as a going concern. Accordingly, the Company's Board of Directors suspended operations.

On December 31, 2001, Park Street acquired 3,500,000 shares of the Company's Class A Common Stock and 100,000 shares of Class B Common Stock from the Company for \$180,000. The proceeds of this sale were utilized to pay the remaining liabilities, equal to approximately \$180,000, of the Company at December 31, 2001 except for the monies owed to Mr. Schuchert and Fountain Holdings LLC (a company controlled by Mr. Schuchert). Simultaneously, Park Street acquired 2,000,000 shares of Class A Preferred Stock from Fountain Holdings, LLC for \$8,000 and all Common Stock Purchase Warrants (the "Warrants") in the name of Fountain Holdings for \$12,000. As of December 31, 2001, the Warrants entitled the holder to purchase an aggregate of 2,993,665 shares of Class A Common Stock at an exercise price of \$.65 per share. Park Street did not acquire any shares of the Company's Common Stock registered in the name of Joseph Schuchert. No other consideration was paid to Mr. Schuchert or Fountain Holdings LLC. Simultaneously with the closing, Park Street and the company agreed to retire the Warrants. Park Street also returned the Preferred Stock to the Company. As of the Record Date no shares of Preferred Stock are issued or outstanding.

As a result of these transactions, Park Street and Mr. Rennert became "control persons" of the Company, as that term is defined in the Securities Act of 1933, as amended (the "Act"). Pursuant to Rule 405 of the Act, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. In connection with these transactions, the previous Board of Directors of the Company nominated Brendon K. Rennert to the Board of Directors and all former officers and directors delivered their letters of resignation to the Company. Mr. Rennert appointed himself as CEO, President and Secretary of the Company.

In connection with the acquisitions by Park Street and the payment to Fountain Holdings LLC of an aggregate of \$20,000 (\$8,000 for Preferred Stock and \$12,000 for the Warrants), Fountain Holdings and Mr. Schuchert released and discharged the Company from its obligations due to them pursuant to the credit agreement dated as of December 31, 1998, and from the unsecured line of credit of approximately \$1,454,733, inclusive of principal and interest, and any and all other debt or obligation owed to Fountain Holdings and Mr. Schuchert or his affiliates by the Company.

As of July 31, 2002, the Company remains a "blank check" or "shell" company with minimal assets and no operations.

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As a result of the transactions described above, there are no shares of Preferred Stock issued and outstanding and Park Street owns 95.7% of the Class B Common Stock and 59.6% of the Class A Common Stock.

By virtue of Park Street's ownership of the Company's aforementioned securities, it is able to elect new directors and officers either at a meeting of the shareholders or by written consent. At the closing of the Acquisition,

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Brendon K. Rennert and Park Street have agreed to elect the management of SiriCOMM to the Company's board of directors and immediately thereafter Mr. Rennert will resign all of his positions with the Company. There are no other arrangements or understandings between Mr. Rennert and the new management team.

### BOARD OF DIRECTORS

#### General

Management of the Company, prior to the Acquisition (collectively referred to as "Prior Management") is set forth below:

Name ----	Age ---	Position -----
Brendon K. Rennert	34	President, Treasurer, Secretary and Sole Director

Mr. Rennert was appointed CEO, President and Secretary of Fountain Pharmaceuticals, Inc. ("Fountain") on December 31, 2001. Mr. Rennert became the sole director of Fountain in January 2002. From December 2001 until present Mr. Rennert also serves as President, sole director and sole shareholder of Park Street Acquisition Corporation, a private Florida Corporation. From October 2001 until present Mr. Rennert also serves as Senior Account Executive for Qwest Communications International, Inc., an internet broadband telecommunications company with offices in Tampa, Florida. From January 1998 until December 1998 Mr. Rennert served as President, Secretary, Treasurer and director of Ybor City Shuttle Service, Inc. a public company based in Tampa, Florida. From 1998 until present Mr. Rennert also serves as President, Secretary, Treasurer and sole director of BKR Investments, Inc. a Florida Corporation which provides independent financial consulting for public and private companies. Mr. Rennert previously served as Vice President of Finance and Director of Operations for Bielski Management, Inc. a New York corporation, operating a taxicab company in New York City, primarily in Manhattan, from January 1995 until November 1997. Bielski Management owns and operates a fleet of over one hundred taxis. From May 1991 to January 1995, Mr. Rennert served as Marketing Director for Lintronics Technologies, Inc. of Tampa, Florida, a research and development company specializing in medical devices. Mr. Rennert is a graduate of the State University College of New York at Fredonia with a BS degree in Business Administration.

Prior Management will resign effective as of the closing of the Acquisition and the following individuals (collectively referred to as "New Management") will be nominated to assume the positions set forth next to their names:

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Name ----	Age ---	Position -----
Henry P. (Hank) Hoffman	51	President, CEO and Chairman
David N. Mendez	41	Executive Vice President - Sales and Marketing and a Director
Kory S. Dillman	31	Executive Vice President - Internet Business Development and a Director
Tom Noland	45	Executive Vice President - Administration, General Counsel, Secretary and a Director

Henry P. (Hank) Hoffman, President, CEO and Chairman

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Mr. Hoffman co-founded SiriCOMM in January 2000 and has been its President, CEO and Chairman since SiriCOMM's inception. Mr. Hoffman has over twenty years experience in the transportation industry. From September 1, 1996 to January 21, 2000 Mr. Hoffman was President and Chief Operating Officer of Hook Up, Inc. of Joplin, MO, a small niche motor carrier. From 1990 to 1995 Mr. Hoffman was President and COO of Tri-State Motor Transit, the nation's largest transporter of munitions for the U.S. Government.

Prior to his term at Tri-State, he served in several Operations/Management positions with both Schneider National, Inc. and Viking Freight System. As an industry leader he has been a Vice President of the American Trucking Associations, President and Chairman of the Board of the Munitions Carriers Conference, member of the Board of Directors of the National Automobile Transporters Association, and Forum Co-Chairman of the National Defense Transportation Association. Prior to his trucking industry career, Mr. Hoffman served as an officer in the United States Army Field Artillery for six years where he completed two command assignments. Mr. Hoffman earned a Bachelor of Science degree from the United States Military Academy, West Point, NY and a Master of Business Administration from the University of Wisconsin, Oshkosh, WI.

David N. Mendez, Executive Vice President - Sales and Marketing and a Director

Mr. Mendez co-founded SiriCOMM in April 2000 and has been its Executive Vice President Sales and Marketing and a director since SiriCOMM's inception. Mr. Mendez has over nine years experience in telecommunications sales and marketing. Mr. Mendez's telecommunications expertise focuses on domestic and international data communication networks including Frame Relay and ATM infrastructures and Internet and intranet networks. From October 1998 to February 2000 he was National Sales Manager for DRIVERNet where he managed such national accounts as Ford, Kenworth, Peterbilt, Paccar Corporation, and Cue Paging. From 1995 to 1998 Mr. Mendez worked as a Major Account Manager for Sprint. Mr. Mendez graduated with a Bachelor of Science degree from Southwest Missouri State University, Springfield, MO.

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Kory S. Dillman, Executive Vice President - Internet Business Development and a Director

Mr. Dillman co-founded SiriCOMM in April 2000 and has been its Executive Vice President - Internet Business Development and a director since SiriCOMM's inception. From 1996 to 1999 Mr. Dillman was Creative Director for DRIVERNet. In that position he produced intranet and Internet applications for DRIVERNet and its customers. He developed specific web-based products for Volvo Trucks North America, Kenworth, Peterbilt, Ambest, Caterpillar Engines, and TravelCenters of America. Prior to joining DRIVERNet Mr. Dillman was Art Director for Wendfall Productions. In this position he managed development for Sony Music and Ardent Records. Mr. Dillman earned a Bachelor of Fine Arts degree from the University of Tulsa, Tulsa, OK.

Tom Noland, Executive Vice President - Administration, General Counsel, Secretary and a Director

Mr. Noland joined SiriCOMM in November 2001 as its Executive Vice President - Administration, General Counsel and a Director. Mr. Noland was in private practice with the law firm of Spencer, Scott & Dwyer in Joplin for eleven years, focusing on the representation of business and banking clients in the areas of real estate transactions, creditors' rights and workers' compensation defense. Prior to joining SiriCOMM, he served as General Counsel to Hook Up, Inc. from 1997 through 2000. Mr. Noland received a Bachelor of Arts

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degree in history from Missouri Southern State College and a Juris Doctorate from the University of Tulsa.

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### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth, as of July 31, 2002, information with respect to the securities holdings of all persons which the Company, pursuant to filings with the Securities and Exchange Commission, has reason to believe may be deemed the beneficial owners of more than 5% of the Company's outstanding Common Stock and Class B Common Stock. The following table indicates the beneficial ownership of such individuals numerically calculated based upon the total number of shares of Common Stock and Class B Common Stock outstanding and alternatively calculated based upon the percentage voting power allocated to such share ownership taking into account the disproportionate voting rights attributed to the Class B Common Stock. Also set forth in the table is the beneficial ownership of all shares of the Company's outstanding stock, as of such date, of all officers and directors, individually and as a group.

Name and Address -----	Class -----	Amount of Beneficial Ownership (1) -----	Percent of Beneficial Ownership and Voting Power -----
Park Street Acquisition Corporation (3) P.O. Box 530246 St. Petersburg, FL 33747	A B	3,500,000 100,000	59.6% 95.7%
Brendon K. Rennert (3) P.O. Box 530246 St. Petersburg, FL 33747	A B	3,500,000 100,000	59.6% 95.7%
Robert Smith (4) 3865 E. Turtle Hatch Springfield, MO 65809	A B	3,500,000 100,000	59.6% 95.7%
John C. Walsh 9 North Pelican Drive Avalon, NJ 08202	A B	1,257,100 (5) -0-	21.0% -0-
Joseph S. Schuchert, Jr. Fountain Holdings, LLC c/o Eaglestone Capital Services, Inc. 400 Oceangate, Suite 1125 Long Beach, CA 90802	A B	-0- -0-	-0- -0-
All Directors and Officers as a Group (1 Person)	A B	3,500,000 100,000	59.6% 95.7%

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(1) Except as otherwise indicated, includes total number of shares outstanding and the number of shares which each person has the right to acquire within 60 days through the exercise of warrants or the conversion of Preferred Stock pursuant to Item 403 of Regulation S-B and Rule 13d-3(d)(1), promulgated under the Securities Exchange Act of 1934. Also reflects

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5,980,301 shares of the Company's Common Stock (including Class B Common Stock) outstanding as of July 22, 2002.

- (2) This column takes into account the disproportionate voting rights granted to the holders of the Class B Common Stock. Holders of Class B Common Stock are entitled to five (5) votes for every share held.

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- (3) Brendon K. Rennert is the officer, director and sole stockholder of Park Street Acquisition Corp. The shares attributed to Park Street Acquisition Corp. are the same shares attributed to Mr. Rennert.
- (4) On August 28, 2001, Park Street Acquisition Corporation and Brendon K. Rennert entered into a Pledge and Escrow Agreement (the "Loan Agreement") with Robert Smith to obtain the funds for the acquisition of the Class A Common Stock, Class B Common Stock and the Class A Convertible Preferred Stock (collectively the "Securities"). Pursuant to the terms of the Loan Agreement, the Securities acquired by Park Street are collateral for the collection of the \$350,000 loan which was due March 31, 2002 with interest at 6% per annum. Pursuant to the Loan Agreement, Robert Smith may become the beneficial owner of the Securities following a default in the Loan Agreement. Prior to such default, Mr. Smith does not have voting or dispositive power with respect to the Securities. The loan is past due and the parties have orally agreed to extend the maturity date of the loan to December 31, 2001. Mr. Smith is a minority stockholder of SiriCOMM, and has no other relationship with Park Street or the Company.
- (5) Includes 6,000 shares of Common Stock issuable upon the exercise of options at an exercise price of \$.625 per share. Does not include Common Stock options to purchase 18,000 shares at an exercise price of \$.625 per share which were granted September 23, 1999 and which have not vested. Mr. Walsh has no connections with the Company, SiriCOMM or Park Street.

EXECUTIVE COMPENSATION

Executive Officers and Directors

We currently do not pay any compensation to any officers or directors.

Summary Compensation Table

The Summary Compensation Table shows certain compensation information for services rendered in all capacities for the fiscal years ended December 31, 1999, 2000 and 2001. Other than as set forth herein, no executive officer's salary and bonus exceeded \$100,000 in any of the applicable years. The following information includes the dollar value of base salaries, bonus awards, the number of stock options granted and certain other compensation, if any, whether paid or deferred.

SUMMARY COMPENSATION TABLE

Name and Principal Position	Annual Compensation	
	Fiscal Year Ended September 30	Bonus (\$)
	Salary (\$)	



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Gerald T. Simmons (1)	2001	\$ 19,630	-0-
Former Chief Executive Officer	2000	\$ 77,782	-0-
and President	1999	\$104,500	\$ 5,000
Christopher J. Whitaker (2)	2001	\$100,000	-0-
Former Interim Chief Executive Officer	2000	\$124,442	-0-
and Vice President of Operations	1999	\$110,962	\$25,000
Francis J. Werner (3)	2001	\$ 97,750	-0-
Former Interim Chief Executive & Financial Officer	2000	\$ 97,991	-0-
and Director of Finance and Administration	1999	\$ 86,912	-0-
John C. Walsh (4)	2001	-0-	-0-
Former Director, Chairman, Chief Executive	2000	-0-	-0-
Officer and President	1999	\$130,962	-0-

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- (1) Mr. Simmons resigned from his position as Chief Executive Officer and President on November 30, 2000. Mr. Simmons did not receive a severance arrangement. See Employment Arrangements and Change of Control.
- (2) Mr. Whitaker was hired on March 30, 1998 as Director of Marketing. On August 3, 1998, Mr. Whitaker was appointed Vice President of Operations. Effective February 1, 2001 assumed the position as Interim Chief Executive Officer and Vice President of Operations. Effective July 6, 2001, Mr. Whitaker was terminated.
- (3) Mr. Werner was hired on May 21, 1990 as Controller. On July 1, 1992 Mr. Werner was appointed Director of Finance and Administration. Effective February 1, 2001 assumed the position as Interim Chief Financial Officer and Director of Finance and Administration. Effective July 6, 2001 he assumed the position of Acting Chief Executive Officer. Effective December 31, 2001 Mr. Werner was terminated.
- (4) Mr. Walsh resigned from his position as Chief Executive Officer and President on December 1, 1998. As part of his severance arrangement, Mr. Walsh received full salary and accompanying benefits through August 3, 1999. Mr. Walsh resigned from his position as a Director on December 31, 2001.
- (5) Represents options to purchase Common Stock granted as of December 8, 1998, as adjusted as of September 30, 1999 for certain anti-dilution provisions pursuant to Mr. Simmons' employment agreement. The options have an exercise price of \$.56 per share and a term expiring on December 8, 2003. The options vested 20% as of the date of grant with the balance vesting 20% on each anniversary of the date of grant.
- (6) Represents option to purchase Common Stock granted as of December 8, 1998. The options have an exercise price of \$.56 per share. 25,000 options vest 1/3 per year over a period of three years starting December 8, 1998 and expire on December 8, 2003. 12,500 options vest 1/3 per year over a period of three years starting December 8, 1999 and expire on December 8, 2003.
- (7) Represents options to purchase Common Stock granted as of September 23, 1999. The options have an exercise price of \$.625 per share. The options

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vest 25% per year over a period of 4 years, and expire on September 23, 2004.

OPTION/SAR GRANTS TABLE  
Option/SAR Grants in the Last Fiscal Year  
Individual Grants

Name	Fiscal Year	Options/SARs Granted (#)	% of Total Options/SARs Granted to Employees in Fiscal Year	Exe Bas (
Gerald T. Simmons Former Chief Executive Officer and President	2001	-0-(1)	0.0%	
Christopher J. Whitaker Former Interim Chief Executive Officer and Vice President of Operations	2001	-0-(1)	0.0%	
Francis J. Werner Interim Chief Executive & Financial Officer and Director of Finance and Administration	2001	-0-(1)	0.0%	
John C. Walsh Director, Former Chairman, Chief Executive Officer and President	2001	-0-(1)	0.0%	

(1) No options were granted during fiscal year 2001.

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OPTION/SAR EXERCISES AND YEAR-END VALUE TABLE

Aggregated Options/SAR Exercises in Last Fiscal Year  
and FY-End Option/SAR Value

Name	Fiscal Year	Shares Acquired on Exercise (#)	Value Realized (\$)	Number of Unexercised Options/SARs at FY-End (#) Exercisable / Unexercisable
Gerald T. Simmons Former Chief Executive Officer and President	2001	-0-	-0-	(E) -0- / (U) -0-
Christopher J. Whitaker Former Interim Chief Executive Officer and Vice President of Operations	2001	-0-	-0-	(E) 20,832 / (U) 16,
Francis J. Werner Interim Chief Executive & Financial Officer and Director of Finance and Administration	2001	-0-	-0-	(E) 37,500 / (U) -0-

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John C. Walsh

2001

-0-

-0-

(E) 12,000 / (U) 12

Director, Former Chairman, Chief Executive  
Officer and President

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(1) Based upon the closing price of the Company's Common Stock of \$.02 per share as reported on the NASDAQ OTC Bulletin Board as of September 30, 2001.

In addition to the foregoing, Mr. Rennert approved the Company's 2002 Equity Incentive Plan (the "Plan"). Additional information concerning the Plan is set forth under the caption "Approval of the 2002 Equity Incentive Plan," below.

## APPROVAL OF AMENDMENT AND RESTATEMENT OF THE COMPANY'S CERTIFICATE OF INCORPORATION

At present, the Company is authorized to issue 50,000,000 shares of Class A Common Stock, 5,000,000 shares of Class B Common Stock and 2,000,000 shares of Preferred Stock. The Company's sole director approved an amendment and restatement to the Company's Certificate of Incorporation to (a) change the name of the Company to "SiriCOMM, Inc."; (b) combine the outstanding shares of Common Stock into a single class of Common Stock; (c) reverse split the outstanding shares of the Company's Common Stock one-for-sixty (the "Reverse Split"); (d)

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reduce the par value of the Company's Common Stock resulting from the Reverse Split to \$.001; (e) increase the number of shares of Common Stock the Company is authorized to issue after the reverse split to 50,000,000; and (f) increase the number of shares of Preferred Stock, \$.001 par value the Company is authorized to issue from 2,000,000 to 5,000,000. Among the factors considered in determining the amount by which the Common Stock would be Reverse Split was a target price range of \$2.00 and \$2.50 and avoiding the loss of a significant number of holders of at least 100 shares of Common Stock (a "Round Lot"). Based on the most recent bid price of \$.04 per share, a one-for-sixty Reverse Split would result in a theoretical price per share of \$2.40. The sole member of the board of directors determined that a one-for-sixty reverse split adequately balanced the objectives of reducing the number of outstanding shares and maintaining a sufficient number of Round Lot holders. The theoretical price ranges considered should not be interpreted an estimate of value or a prediction of any market price. The sole board member, who holds approximately 59.6% of the Company's Common Stock and who holds approximately 95.7% of the Class B Common Stock has approved these actions and has consented to the taking of these actions without a meeting. A copy of the restated and amended Certificate of Incorporation substantially in the form it will be filed with the Secretary of the State of Delaware is attached hereto as Appendix A.

### Change of Corporate Name

The change of corporate name will become effective upon the filing with the Secretary of State of an amendment and restatement to the Company's Certificate of Incorporation which states that, upon the filing of the Certificate of Amendment the name of the Corporation will be "SiriCOMM, Inc."

The Company entered into a Securities Exchange Agreement ("Securities Exchange Agreement") with shareholders owning 100% of SiriCOMM, Inc., a Missouri

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corporation ("SiriCOMM") regarding acquisition by the Company of all of the issued and outstanding common stock of SiriCOMM. It is anticipated that a closing will occur no later than November 30, 2002 and the sole director believes it is prudent to take the necessary corporate actions necessary to consummate the Acquisition, including the Reverse Split. Information concerning SiriCOMM is set forth under the caption "Approval of the SiriCOMM Acquisition," below. In the event the closing does not occur, the Company will maintain its present name.

### Combination of Outstanding Shares of Common Stock into a Single Class

The Company has two classes of Common Stock authorized and outstanding. At present the Company is authorized to issue 50,000,000 shares of Class A Common Stock, of which there are 5,875,796 shares of Class A Common Stock issued and outstanding. The company is authorized to issue 5,000,000 shares of Class B Common Stock, of which 104,505 shares of Class B Common Stock issued and outstanding. The Company's sole officer and director owns 59.6% and 95.7% of the outstanding shares of Class A and Class B Common Stock, respectively. The Company's sole officer, Mr. Rennert, has signed a written consent on behalf of Park Street consenting to the altering of the voting rights of the Class B Common Stock. The Company has not requested nor received a written consent regarding the change in voting rights from the other holder of the Class B Common Stock. The two classes have the same relative rights, except that the Class B Common Stock has a disproportionate voting right whereby each share of Class B Common Stock represents five votes. Regardless of the fact that each share of Class B Common Stock has greater voting rights than the Class A Common Stock, each will be worth the same number of shares of New Common Stock.

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As a result of the combination each share of Class B Common Stock outstanding at the effective time of the combination and Reverse Split will, without any action on the part of the holder thereof become one-sixtieth of a share of New Common Stock, defined below.

The sole officer and director of the Company does not believe it is in the Company's best interest to have a class of Common Stock with a disproportionate voting right and is willing to surrender these disproportionate rights and feels the elimination of the Class B Common Stock will simplify the capitalization of the Company.

### Reverse Split and Reduction of Par Value

As a result of the Reverse Split, each share of Common Stock outstanding at the effective time of the Reverse Split, will, without any action on the part of the holder thereof, each outstanding share will become one-sixtieth of a share of Common Stock. The amendment will also decrease the par value per share of the Company's common stock to \$.001. The decrease in the par value per share will reduce the Company's capital stock accounts. For purposes of this description, the Common Stock, as presently constituted, is referred to as the "Old Common Stock" and the Common Stock resulting from the Reverse Split is referred to as the "New Common Stock." The bid price of the Company's Common Stock on July 31, 2002 was \$.04.

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The Reverse Split will become effective upon the filing with the Secretary of State of an amendment and restatement to the Company's Certificate of Incorporation which states that, upon the filing of the Certificate of Amendment, each share of Old Common Stock then issued and outstanding would automatically become one-sixtieth of a share of New Common Stock. The Securities Exchange Agreement requires the Company to issue 984.1678 shares of New Common Stock for each outstanding SiriCOMM share, of which there are 9,778 outstanding as of July 31, 2002, or approximately 9,623,195 shares of New Common Stock. In addition, the Securities Exchange Agreement requires the Company to issue a sufficient number of shares of New Common Stock at closing equal to 15.5% of the Company's outstanding shares, after giving effect to such issuance, to the holders of four outstanding convertible SiriCOMM notes. Such issuance is a condition of closing the acquisition of SiriCOMM, so that there would not be any securities convertible into a minority interest in the equity of SiriCOMM after closing. If neither SiriCOMM nor the Company issues any additional securities prior to the closing, the Company would have to issue 1,801,843 shares to the note holders and the total number of shares of New Common Stock required to complete the acquisition of SiriCOMM would be 11,425,036.

### Principal Effects of the Reverse Split

The principal effects of the Reverse Split will be as follows:

Based upon the 5,980,301 shares of Old Common Stock (including the shares of Class B Common Stock) outstanding on the Record Date, the Reverse Split would decrease the outstanding shares of Old Common Stock by 98.3% or to 99,672 shares and, upon the effectiveness of the Reverse Split, the completion of the Acquisition and the conversion of the 6% convertible debenture in the principal amount of \$100,000 (discussed below), approximately 11,624,710 shares of New Common Stock would be outstanding.

On February 20, 2002, the Company issued a 6% Subordinated Convertible Debenture to Finter Bank, a non-affiliate, in the principal amount of \$100,000. The original maturity date of this debenture was May 31, 2002, but has been extended to December 31, 2002. The debenture is convertible into the Common Stock of the Company at the rate of \$1.00 per share or 100,000 shares. The stock split will not affect the number of shares issuable upon conversion of this debenture.

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The Company will obtain a new CUSIP number for the New Common Stock at the time of the Reverse Split. Following the effectiveness of the Reverse Split, each yet to be determined number of shares of Old Common Stock, without any action on the part of the holder, will represent one share of New Common Stock.

Subject to the provisions for elimination of fractional shares, as described below, consummation of the Reverse Split will not result in a change in the relative equity position or voting power of the holders of Old Common Stock.

The Certificate of Restatement and Amendment of the Company's Certificate of Incorporation will be filed with the Secretary of State of Delaware ten days after the mailing of this Information Statement. The Reverse Split would become effective as of the date of such filing (the "Effective Date").

### Purposes of the Reverse Stock Split

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The Reverse Split will decrease the number of shares of Old Common Stock outstanding and presumably increase the per share market price for the New Common Stock. Theoretically, the number of shares outstanding should not, by itself, affect the marketability of the stock, the type of investor who acquires it, or the Company's reputation in the financial community, but in practice this is not necessarily the case, as many investors look upon a stock trading at or under \$1.00 per share as unduly speculative in nature and, as a matter of policy, avoid investment in such stocks.

Many leading brokerage firms are reluctant to recommend lower-priced securities to their clients and a variety of brokerage house policies and practices currently tend to discourage individual brokers within firms from dealing in lower-priced stocks. Some of those policies and practices pertain to the payment of brokers' commissions and to time-consuming procedures that make the handling of lower priced stocks unattractive to brokers from an economic standpoint. In addition, the structure of trading commissions also tends to have an adverse impact upon holders of lower priced stocks because the brokerage commission on a sale of a lower priced stock generally represents a higher percentage of the sales price than the commission on a relatively higher priced issue.

In addition, there are not a sufficient number of authorized but unissued shares of Common Stock to consummate the Acquisition. The sole director believes that the Reverse Split and Acquisition is in the best interest of the Company and its shareholders because the potential acquisition will provide shareholders with an operating business with the potential for rapid growth. The Reverse Split is required to consummate the acquisition and, if the Reverse Split is not consummated, the acquisition will not take place, and the Company to remain a shell company with no significant assets or business. Additionally, the reverse stock split would reduce the number of shares of its Common Stock outstanding to amounts that the sole director believes are more reasonable in

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light of its size and market capitalization. The Company requires additional capital for its operations and does not believe that it will be able to raise the necessary capital unless the price of the Common Stock is higher than the current Common Stock price levels. However, no assurance can be given that the Reverse Split will result in any increase in the Common Stock price or that the Company will be able to complete any financing following the Reverse Split.

### Exchange of Certificate and Elimination of Fractional Share Interests

On the Effective Date, shares of Old Common Stock will automatically be combined and changed into one share of New Common Stock. No additional action on the part of the Company or any shareholder will be required in order to effect the Reverse Split. Shareholders will be requested to exchange their certificates representing shares of Old Common Stock held prior to the Reverse Split for new certificates representing shares of New Common Stock. Shareholders will be furnished the necessary materials and instructions to effect such exchange promptly following the Effective Date. Certificates representing shares of Old Common Stock subsequently presented for transfer will not be transferred on the books and records of the Company but will be returned to the tendering person for exchange. Shareholders should not submit any certificates until requested to do so. In the event any certificate representing shares of Old Common Stock is not presented for exchange upon request by the Company, any dividends that may be declared after the Effective Date of the Reverse Split with respect to the Common Stock represented by such certificate will be withheld by the Company until such certificate has been properly presented for exchange, at which time all such withheld dividends which have not yet been paid to a public official pursuant to relevant abandoned property laws will be paid to the holder thereof

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or his designee, without interest.

No fractional shares of New Common Stock will be issued to any shareholder. Accordingly, shareholders of record who would otherwise be entitled to receive fractional shares of New Common Stock, will, upon surrender of their certificates representing shares of Old Common Stock, receive a cash payment in lieu thereof equal to the fair value of such fractional share. Holders of less than sixty shares of Old Common Stock as a result of the Reverse Split will on the Effective Date no longer be shareholders of the Company. The Board of Directors had determined that the fair value of the Common Stock will be based on the closing price of the Common Stock on the OTC-Bulletin Board on the Effective Date (as adjusted to reflect the Reverse Split) or, if there are no reported sales on the Effective Date, the average of the last reported high bid and low ask price on the last date of reported sales shall be used.

### Federal Income Tax Consequences of the Reverse Split

The combination of shares of the Old Common Stock into one share of New Common Stock should be a tax-free transaction under the Internal Revenue Code of 1986, as amended, and the holding period and tax basis of the Old Common Stock will be transferred to the New Common Stock received in exchange therefor.

Generally, cash received in lieu of fractional shares will be treated as a sale of the fractional shares (although in unusual circumstances such cash might possibly be deemed a dividend), and shareholders will recognize gain or loss based upon the difference between the amount of cash received and the basis in the surrendered fractional share.

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This discussion should not be considered as tax or investment advice, and the tax consequences of the Reverse Split may not be the same for all shareholders. Shareholders should consult their own tax advisors to know their individual Federal, state, local and foreign tax consequences.

### Change in Authorized Capital Stock

The sole director has approved an amendment to the Company's Certificate of Incorporation which would change the number of authorized shares of Common Stock, and the par value to \$.001 per share. The number of authorized common shares would be increased to 50,000,000 shares. In addition, the amendment will eliminate the Class A Preferred Stock and increase the number of authorized shares of Preferred Stock from 2,000,000 to 5,000,000 shares. As of the Record Date there were no shares of Preferred Stock issued or outstanding.

### Discussion of the Amendment

Under the Company's Certificate of Incorporation, the Board of Directors of the Company has authority to issue authorized and unissued shares of Common and Preferred Stock without obtaining approval from the holders of the Common Stock. The holders of the Company's Common Stock and Preferred Stock do not have preemptive rights. The Preferred Stock provisions give the Board of Directors broad authority to issue shares of Preferred Stock in one or more series and to determine such matters as the dividend rate and preference, voting rights, conversion privileges, redemption provisions, liquidation preferences and other rights of each series. Each share of Common Stock is entitled to one vote. The holders of any series of preferred stock issued in the future will be entitled to such voting rights as may be specified by the Board of Directors.

It is not possible to determine the actual effect of the Preferred Stock on the rights of the holders of Common Stock until the Board of Directors

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determines the rights of the holders of a series of the Preferred Stock. However, such effect might include (i) restrictions on the payment of dividends to the holders of the Common Stock; (ii) dilution of voting power to the extent that the holder of the Preferred Stock are given voting rights; (iii) dilution of the equity interests and voting powers if the Preferred Stock is convertible into Common Stock; and (iv) restrictions upon any distribution of assets to the holders of the Common Stock upon liquidation or dissolution and until the satisfaction of any liquidation preference granted to the holders of Preferred Stock. Because of the broad powers granted to the Board of Directors to issue shares of Preferred Stock and determine the rights, preferences and privileges of the holders of such series, the Board of Directors has the power to issue shares of Preferred Stock in a manner which could be used as a defensive measure against a hostile takeover or to keep the Board of Directors in power. However, the Board of Directors has no present plans to issue shares for such purpose.

As a result of the one-for-sixty reverse split, the Company's outstanding shares of Common Stock (Classes A and B combined) will be reduced to 99,672 and the number of combined shares of Common Stock the Company will be authorized to issue will be decreased to 916,667. In order to consummate the acquisition of SiriCOMM it is necessary to increase the number of authorized shares of the Company's Common Stock.

As a result of the amendment the Company will be authorized to issue 50,000,000 shares of Common Stock of which approximately 11,500,000 will be issued and outstanding after the closing of the acquisition of SiriCOMM. The issuance of additional shares of Common Stock will dilute shareholders equity interests and voting power in the Company. The Board of Directors of the Company

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believes it will benefit the shareholders to have additional unreserved shares available for issuance in order that adequate shares may be available for the possible issuance of Common Stock, convertible Preferred Stock or convertible debt securities in connection with a possible financing of the Company's business or an acquisition. The Company has no plans, arrangements, understanding or commitments with respect to the issuance of such shares except for the Securities Exchange Agreement with SiriCOMM and 100,000 New Common Shares reserved for issuance upon the conversion of an outstanding convertible debenture in the principal amount of \$100,000. The debenture is convertible into shares of new Common Stock at the rate of \$1.00 per share. The Company received \$100,000 net from the debenture holder. The name of the debenture holder is Finter Bank. Finter Bank has no relationship to Fountain, SiriCOMM, Park Street or anyone else related to these entities. The debenture was not issued in connection with the acquisition of SiriCOMM.

### Approval Required

The approval of a majority of the outstanding stock entitled to vote will be necessary to approve the proposed amendment. As discussed above, the Company's sole director, who holds approximately 59.6% of the votes of the Company's outstanding Common Stock and 95.7% of the outstanding Class B Common Stock has consented to this amendment. He has executed a written consent voting those shares in favor of the proposed amendment. The sole director does not intend to solicit any proxies or consents from any other shareholders in connection with this action.

APPROVAL OF THE COMPANY'S  
2002 INCENTIVE STOCK OPTION PLAN



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The Company's sole director adopted a 2002 Equity Incentive Plan (the "Plan"). The written consent approved the Plan. The Plan designates a Stock Option Committee appointed by the Board of Directors and authorizes the Stock Option committee to grant or award to eligible participants of the Company and its subsidiaries and affiliates, until May 15, 2012, stock options, stock appreciation rights, restricted stock performance stock awards and Bonus Stock awards for up to 3,000,000 shares of the New Common Stock of the Company. The initial members of the Stock Option Committee have not yet been appointed. There are no awards outstanding under the Plan. A complete copy of the Plan is attached hereto as Appendix B.

The following is a general description of certain features of the Plan:

1. Eligibility. Officers, other key employees and consultants of the Company, its subsidiaries and its affiliates who are responsible for the management, growth and profitability of the business of the Company, its subsidiaries and its affiliates are eligible to be granted stock options, stock appreciation rights, and restricted or deferred stock awards under the Plan. Directors are eligible to receive Stock Options.

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2. Administration. The Incentive Plan is administered by the Stock Option Committee of the Company. The Stock Option Committee has full power to select, from among the persons eligible for awards, the individuals to whom awards will be granted, to make any combination of awards to any participants and to determine the specific terms of each grant, subject to the provisions of the Incentive Plan.

3. Stock Options. The Plan permits the granting of non-transferable stock options that are intended to qualify as incentive stock options ("ISO's") under section 422 of the Internal Revenue Code of 1986 and stock options that do not so qualify ("Non-Qualified Stock Options"). The option exercise price for each share covered by an option shall be determined by the Stock Option Committee but shall not be less than 100% of the fair market value of a share on the date of grant. The term of each option will be fixed by the Stock Option Committee, but may not exceed 10 years from the date of the grant in the case of an ISO or 10 years and two days from the date of the grant in the case of a Non-Qualified Stock Option. In the case of 10% stockholders, no ISO shall be exercisable after the expiration of five (5) years from the date the ISO is granted.

4. Stock Appreciation Rights. Non-transferable stock appreciation rights ("SAR's") may be granted in conjunction with options, entitling the holder upon exercise to receive an amount in any combination of cash or unrestricted common stock of the Company (as determined by the Stock Option Committee), not greater in value than the increase since the date of grant in the value of the shares covered by such right. Each SAR will terminate upon the termination of the related option.

5. Restricted Stock. Restricted shares of the common stock may be awarded by the Stock Option Committee subject to such conditions and restrictions as they may determine. The Stock Option Committee shall also determine whether a recipient of restricted shares will pay a purchase price per share or will receive such restricted shares without, any payment in cash or property. No Restricted Stock Award may provide for restrictions beyond ten (10) years from the date of grant.

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6. Performance Stock. Performance shares of Common Stock may be awarded without any payment for such shares by the Stock Option Committee if specified performance goals established by the Committee are satisfied. The designation of an employee eligible for a specific Performance Stock Award shall be made by the Committee in writing prior to the beginning of the period for which the performance is based. The Committee shall establish the maximum number of shares to stock to be issued to a designated Employee if the performance goal or goals are met. The committee reserves the right to make downward adjustments in the maximum amount of an Award if, in its discretion unforeseen events make such adjustment appropriate. The Committee must certify in writing that a performance goal has been attained prior to issuance of any certificate for a Performance Stock Award to any Employee.

7. Bonus Stock. The committee may award shares of Common Stock to Eligible Persons, without any payment for such shares and without any specified performance goals. The Employees eligible for bonus Stock Awards are senior officers and consultants of the Company and such other employees designated by the Committee.

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8. Transfer Restrictions. Grants under the Plan are not transferable except, in the event of death, by will or by the laws of descent and distribution.

9. Termination of Benefits. In certain circumstances such as death, disability, and termination without cause, beneficiaries in the Plan may exercise Options, SAR's and receive the benefits of restricted stock grants following their termination or their employment or tenure as a Director as the case may be.

10. Change of Control. The Plan provides that (a) in the event of a "Change of Control" (as defined in the Plan), unless otherwise determined by the Stock Option Committee prior to such Change of Control, or (b) to the extent expressly provided by the Stock Option Committee at or after the time of grant, in the event of a "Potential Change of Control" (as defined in the Plan), (i) all stock options and related SAR's (to the extent outstanding for at least six months) will become immediately exercisable: (ii) the restrictions and deferral limitations applicable to outstanding restricted stock awards and deferred stock awards will lapse and the shares in question will be fully vested: and (iii) the value of such options and awards, to the extent determined by the Stock Option Committee, will be cashed out on the basis of the highest price paid (or offered) during the preceding 60-day period, as determined by the Stock Option Committee. The Change of Control and Potential Change of Control provisions may serve as a disincentive or impediment to a prospective acquirer of the Company and, therefore, may adversely affect the market price of the common stock of the Company.

11. Amendment of the Plan. The Plan may be amended from time to time by majority vote of the Board of Directors provided as such amendment may affect outstanding options without the consent of an option holder nor may the plan be amended to increase the number of shares of common stock subject to the Plan without stockholder approval.

Shareholders should note that certain disadvantages may result from the adoption of the Plan. Pursuant to the plan the Company is reserving the right to issue up to 3,000,000 shares of New Common Stock. Such issuances may be in the form of stock options, stock appreciation rights, restrictive stock awards, performance stock or bonus stock. Each of these issuances may be made at prices below the then current market price of the Company's Common Stock or at the time or exercise the exercise price may be below current market prices of the

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Company's Common Stock. Accordingly, the sale of these shares may adversely affect the market price of our Common Stock. The issuance of shares upon the exercise of stock options may also result in substantial dilution to the interests of other stockholders. Additionally, the issuance of shares under the plan will result in the reduction of shareholder's interest of the Company with respect to earnings per share, voting, liquidation and book value per share.

### APPROVAL OF THE SIRICOMM ACQUISITION

The Company's sole director has approved the SiriCOMM Acquisition. There is no requirement that the SiriCOMM Acquisition be approved by stockholders of the Company, however, both the Reverse Split and the Amendment of the Company's Certificate of Incorporation simplifying the Company's capital structure by combining outstanding shares of Common Stock into a single class and increasing the number of authorized shares to 50,000,000 facilitates such acquisition.

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### Information About The Acquisition

In the proposed SiriCOMM Acquisition, the Company will acquire SiriCOMM by exchanging shares of New Common Stock and SiriCOMM will be treated as the acquirer for accounting purposes. (See "Anticipated Accounting Treatment," below). If the SiriCOMM Acquisition is completed, shares of SiriCOMM common stock outstanding immediately prior to the merger will be exchanged for shares of the Company's New Common Stock, as follows: On the Record Date, there were 5,980,301 shares of the Company's Common Stock outstanding, including 104,505 shares of Class B Common Stock. Pursuant to the Securities Exchange Agreement, the Company is obligated to issue 9,623,195 shares of New Common Stock to the SiriCOMM shareholders in exchange for 100% of the issued and outstanding shares of SiriCOMM. Additionally, pursuant to the Securities Exchange Agreement, the Company has agreed to issue 1,801,843 shares of New Common Stock to retire \$1,000,000 of convertible notes issued by SiriCOMM. These notes were issued in two stages, an aggregate of \$500,000 on November 16, 2001 and an aggregate of \$500,000 on April 5, 2002. The holders of these notes are Quest Capital Alliance LLC (\$500,000) and Jeff Wasson (\$500,000), neither of whom are affiliated with SiriCOMM. SiriCOMM received \$1,000,000 in connection with these issuances.

Accordingly, after the Reverse Split and closing with SiriCOMM and the conversion of the \$100,000 6% convertible debenture, the new combined entity will have 11,624,710 shares of New Common Stock issued and outstanding. The SiriCOMM shareholders will own 99.2%, the existing Fountain shareholders, exclusive of Brendon Rennert and Park Street, will own .3% and Brendon Rennert and Park Street will collectively own .5% of the issued and outstanding shares of the combined entity. As a result of this transaction, SiriCOMM stockholders will become stockholders of the Company and will no longer have any interest in SiriCOMM other than through their interests in shares of the combined organization. We anticipate that the closing date of this transaction will occur as promptly as practicable following all regulatory approvals. The basis of the exchange of the Company's common stock for SiriCOMM's common stock was the result of arm's length negotiations between the two entities. There were no specific methods used to value both companies' common stock.

### Information About SiriCOMM

SiriCOMM was organized under the laws of the State of Missouri in April 2000. SiriCOMM's principal executive office is located at 2900 Davis Boulevard, Suite 130, Joplin, Missouri 64804. Its telephone number is (417) 626-9961.

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SiriCOMM is engaged in the development of broadband wireless applications service provider technologies serving the marine and highway transportation industries. SiriCOMM's current development activities include integrating multiple technologies including satellite communications, the Internet (and intranets), wireless networking, and productivity enhancing software into commercially viable products and services for its target industries.

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SiriCOMM's patent pending network architecture enables subscribers to transmit data at speeds of 48,000 kilobits per second ("kbps") which is 20 to 100 times faster than other wireless solutions such as CDPD (19.2 kbps), GSM (9.6 kbps), CDMA2000-1XRTT (144 kbps) or Qualcomm's point to point USAT (2 kbps). Moreover, SiriCOMM's unique software solutions leverage this ultra high-speed data network to deliver significant cost reduction and productivity improvement opportunities to users. From its central hub server co-located at the satellite teleport SiriCOMM will receive and transmit data on a "point to broadcast" high-speed network between multiple wireless local area networks installed in strategic locations. For a flat, low monthly fee subscribers will have access to a suite of productivity software, the Internet, e-mail, proprietary company intranet information, etc. The network will support multiple user devices to include 802.11b-compatible Palm OS(TM) wireless hand held devices for the most mobile subscribers. SiriCOMM's technologies are expected to become commercially available before the end of the year 2002.

### Development of SiriCOMM's Business and Products

Since SiriCOMM's inception in April of 2000, its founders have focused their efforts principally in three key areas - product development, pre-market demonstrations to potential customers, and the formation of critical industry alliances. The results of this disciplined approach are significant. First, a working prototype of the broadband wireless network and applications software was developed and refined into a highly marketable product. Patent applications are on file for the entire end-to-end system. Second, demonstrations of the prototype to qualified potential customers reaffirmed the feasibility of the network and the solid need for its unique services. SiriCOMM has made technical presentations to more than 30 communication, automobile, trucking and mobile technology companies during the last 24 months and has received favorable feedback at such demonstrations. Such demonstrations have produced a letter of intent from Christenson Transportation to utilize SiriCOMM's services and a letter of agreement from SmartStop to evaluate SiriCOMM's technology.

The first generation of SiriCOMM products can significantly improve the availability, timeliness, and accuracy of communications and decision support tools for most of the nation's law enforcement agencies, yachts, and trucks that operate in North America. Ultimately, with minor modifications, the SiriCOMM products will be applicable in any industry requiring mobile communications from remote locations, such as recreational vehicles and construction sites.

SiriCOMM intends to charge a monthly subscription fee of \$49.95 per user per month for its services.

The five principal components of the SiriCOMM service include:

1. An I.E.E.E. 802.11 standard compatible wireless device (PC or Palm OS(TM)) for the users. The 802.11 is a wireless standard governed by the Institute of Electrical and Electronics

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Engineers that operates in the 2.4 Gh unregulated frequency spectrum;

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2. Wireless transmission and receiving equipment installed in strategic locations such as marinas, truck stops, weigh stations, and major shipper facilities;
3. Access to the AMC-6 geo-synchronous satellite;
4. Proprietary software processes and applications; and
5. Broadband wireless channels that enable transmission of extremely large amounts of data at speeds 20 to 100 times faster than current wireless solutions.

Users will be able to connect to the SiriCOMM network whenever they are within range (up to approximately one-half mile) of one of several planned access locations SiriCOMM has test locations in Joplin, Missouri, Rock Hill and South Carolina and plans to activate two additional locations near Columbia, Missouri and El Paso, Texas within the next 30 days. While in range, the subscriber will have wireless, universal access to the Internet and to the marina, agency, or fleet intranet, if one exists. For a low, fixed monthly subscription fee subscribers will be able to communicate unlimited amounts of data and messages to their homes, offices, or client support centers using SiriCOMM's high-speed wireless network.

At present SiriCOMM leases transponder access to the AMC-6 satellite on a month to month basis for \$350 per month per ground location pursuant to an informal agreement with Cislunar, the satellite operator. The agreement with Cislunar is an oral agreement for month-to-month supply and purchase of transponder usage. Cislunar has accommodated SiriCOMM by reselling a very small amount of capacity to SiriCOMM on an as-needed basis and Cislunar is willing to continue to do so until SiriCOMM is in a position to build out its network. At that time, usage will likely increase substantially and both Cislunar and SiriCOMM recognize that a written agreement will need to be in place. SiriCOMM plans to enter into a formal agreement for monthly transponder usage when the system is offered commercially. At each ground location, the satellite receiver is linked to the 2.4 Ghz wireless network utilizing a local server and SiriCOMM's technology for rapidly cache and serve network requests. There are no limitations or special licenses requires to operate local two-way data communications at 2.4Ghz wireless frequencies.

SiriCOMM does not have a commercial network presently running implementing its wireless data transmission technology. It plans to build a network with the capacity to service up to 80,000 simultaneous users within 6 months of raising the needed capital. The construction of the initial network is estimated to cost \$4-6 million and is expected to be financed by the private sale of the Company's securities following the SiriCOMM Acquisition. There are no firm commitments on anyone's part to invest in the Company and if the Company is unable to finance the acquisition through the private sale of its securities or other financing, the SiriCOMM technology may never be commercially sold. In addition, any sale of the Company's securities to finance the SiriCOMM technology will dilute the interest of existing shareholders in the Company.

### Anticipated Accounting Treatment

We expect to account for the SiriCOMM Acquisition as a recapitalization of the equity of SiriCOMM, which in principle is equivalent to the issuance of stock by SiriCOMM for the net monetary assets of the Company. We will apply this accounting treatment because the Company is a non-operating public shell and

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because SiriCOMM stockholders will own the majority of the outstanding common stock of the combined company following the transaction.

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### Research and Development

The Company plans to finance research and development for SiriCOMM through the possible private sale of securities following the acquisition, although there are no present commitments or agreements concerning such financing presently. SiriCOMM plans to spend approximately \$30,000 on additional research and development to improve and refine the previously developed suite of wireless applications.

### Distribution

SiriCOMM plans to rely on agents and value added resellers for its sales and distribution. At present, SiriCOMM has informal agreements with original equipment manufacturers, truck stop operators and other sales agents.

### Competition

SiriCOMM and countless other companies have developed many data transmission, location and network access products designed to meet the growing demand for communications services by businesses and government organizations that rely heavily on information technology. SiriCOMM's products will compete on the basis of product features, price, quality, reliability, brand name recognition, product breadth, developed sales channels, product documentation, product warranties and technical support and service. SiriCOMM believes that it will be generally competitive in each of these areas and that the data transmission speed provides competitive advantages. SiriCOMM's existing and potential competitors have significantly more financial, engineering, product development, manufacturing and marketing resources than it has. At present, there are no direct competitors to SiriCOMM's proposed products and services. Various businesses currently offer certain segments of SiriCOMM's comprehensive solution, but at much lower bandwidth, higher cost and/or with no software applications. There can be no assurance that competitors will not introduce comparable or superior products incorporating more advanced technology at lower prices, or that other changes in market conditions or technology will not adversely affect SiriCOMM's ability to compete successfully in the future.

### Government Regulation and Industry Standards

SiriCOMM's planned products and services is presently not regulated by the FCC or local governments. The regulatory process in the United States can be time-consuming and can require the expenditure of substantial resources. There can be no assurance that the FCC or state regulatory agencies will not seek to regulate the use of frequencies utilized by SiriCOMM's planned services or if such services are regulated, grant the requisite approvals for any of SiriCOMM's products on a timely basis, or at all. The failure of SiriCOMM's products to comply, or delays in compliance, with the various existing and evolving standards could negatively impact SiriCOMM's ability to sell its products. United States and state regulations regarding the manufacture and sale of modems and other data communications devices are subject to future change. We cannot predict what impact, if any, such changes may have on SiriCOMM's business.

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## MANAGEMENT'S PLAN OF OPERATIONS

The following discussion should be read in conjunction with the information contained in the financial statements of SiriCOMM, Inc. and the Notes thereto appearing elsewhere herein.

### Plan of Operations

SiriCOMM was incorporated in April 2000. SiriCOMM is engaged in the development of broadband wireless applications to service the marine and highway industries. SiriCOMM, to date, has not introduced its products and services commercially and is considered a development stage enterprise. SiriCOMM has limited assets, significant liabilities and limited business operations. To date, activities have been limited to organizational matters, development of its products and services and capital raising.

Management's plan of operation for the next twelve months is to complete the transaction with the Company, raise additional capital, build a network to service up to 80,000 simultaneous users within six (6) months of raising capital. The construction of the initial network is estimated to cost \$4-6 million and is expected to be financed by the private sale of the Company's securities following the SiriCOMM Acquisition. There are no firm commitments on anyone's part to invest in the Company or SiriCOMM and if the combined entity is unable to finance the acquisition through the private sale of its securities or other financing, the SiriCOMM technology may never be commercially sold.

From inception (April 24, 2000) through June 30, 2002, SiriCOMM has not generated any revenues. During the same period, SiriCOMM has accumulated net losses of \$1,580,083. From inception through June 30, 2002, SiriCOMM's general and administrative expenses totaled \$330,965, or 21% of expenses, its salaries and consulting fees were \$842,530, or 53% of expenses, and its research and development costs were \$258,651, or 16% of expenses.

From inception through June 30, 2002, SiriCOMM has incurred an interest expense of \$30,201 or 2% of expenses, primarily related to the issuance of convertible notes aggregating \$1,000,000.

In February 2002, SiriCOMM entered into five (5) executive employee agreements with certain officers/directors. As part of these agreements, SiriCOMM is obligated to pay these individuals an aggregate annual compensation of \$525,000 through February 2005.

### Liquidity and Capital Resources

Since inception, SiriCOMM has financed its activities primarily from short term loans. As of June 30, 2002, the amount of these loans aggregated \$1,350,427. These loans are comprised of four (4) convertible notes in the aggregate amount of \$1,000,000, a note payable to a former stockholder in the principal amount of \$224,348 and a credit facility with a bank in the amount of \$126,079. The convertible notes automatically convert into 1,801,843 shares of New Common Stock upon the closing of the transaction between SiriCOMM and the Company. These convertible notes bear interest at the rate of 4% per annum, and have maturity dates of March 15, 2002 (\$500,000) and July 5, 2002 (\$500,000). The convertible notes are currently in default and they will not be converted to equity until the closing of the SiriCOMM Acquisition.

The note payable to a former stockholder has a principal balance due as of June 30, 2002 of \$224,348. This note bears interest at the rate of 2.5% per annum. Interest and principal is due in monthly installments of \$10,000 per month through May 2004.

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At June 30, 2002, SiriCOMM had an outstanding credit facility with a bank in the principal amount of \$126,079. This loan bears interest at the rate of 7% per annum, is secured by SiriCOMM receivables (currently existing or thereafter acquired) and is personally guaranteed by a stockholder of SiriCOMM. This loan is due on June 20, 2002, or upon demand by the bank. In July 2002 SiriCOMM signed a note with a bank for \$121,325, bearing interest at 7% per annum requiring eleven monthly payments of \$2,400, with the principal balance maturing on July 20, 2003. The proceeds of this note were used to substantially pay down the outstanding line of credit due to the bank as of June 30, 2002.

As of June 30, 2002, SiriCOMM had total assets of \$314,393 and total current assets of \$236,743. At June 30, 2002, SiriCOMM had total liabilities of \$1,433,777 and total current liabilities of \$1,325,140. SiriCOMM's working capital deficit at June 30, 2002 was \$1,088,397 and an equity deficiency of \$1,119,384.

SiriCOMM is dependent on completing the acquisition with the Company and raising additional funding necessary to implement its business plan as outlined above. SiriCOMM's auditors have issued a "going concern" opinion on the financial statements which is a part of this document, indicting that SiriCOMM is in the development stage of operations, has a working capital and net equity deficiency, is in default of \$1,126,079 of its notes payable and has not yet generated revenues through September 24, 2002. These factors raise substantial doubt in SiriCOMM's ability to continue as a going concern. If SiriCOMM is unable to raise the funds necessary to build a network and fund its operations, it is unlikely that SiriCOMM will remain as a viable going concern.

### HISTORICAL FINANCIAL INFORMATION

The Historical Financial Statements required by Item 310 (c) of Regulation S-B pertaining to SiriCOMM are part of this Information Statement.

### PRO FORMA INFORMATION

The Pro Forma Financial Information required by Item 310(d) of Regulation S-B showing the effect on the Company and SiriCOMM of the SiriCOMM Acquisition are part of this Information Statement.

### AVAILABLE INFORMATION

The Company is subject to the informational requirements of the Securities Exchange Act of 1934 and, in accordance therewith, files reports and other information with the Commission. The Registration Statement and such reports and other information may be inspected without charge at the Public Reference Room maintained by the Commission at Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional Office located at 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material may be obtained from the Public Reference Room of the Commission at 450 Fifth Street, N.W., Washington D.C. 20549, at prescribed rates. Information on the operation of the Public Reference Room is available by calling the Commission at 1-800-SEC-0330. In addition, the Commission maintains an Internet site where the Registration Statement and other information filed with the Commission may be retrieved, and the address of such site is <http://www.sec.gov>. Statements made in this Information Statement concerning the contents of any document referred to herein are not necessarily complete.



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## INFORMATION ACCOMPANYING THIS INFORMATION STATEMENT

The following documents filed with the Commission are being mailed to the Company's shareholders along with this Information Statement:

1. Form 10-KSB report for the year ended September 30, 2001.
2. Form 10-QSB report for the six months ended June 30, 2002.

Brendon K. Rennert  
Sole Director

October \_\_\_\_, 2002

### Attachments:

- Appendix A - Form of Amended and Restated Certificate of Incorporation
- Appendix B - 2002 Equity Incentive Plan

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## REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Board of Directors and Stockholders  
SiriCOMM, Inc.

We have audited the accompanying balance sheet of SiriCOMM, Inc. (the "Company"), a development stage enterprise, as of September 30, 2001, and the related statements of operations, stockholders' deficit and cash flows for the year ended September 30, 2001 and for the periods from inception (April 24, 2000) through September 30, 2001 and 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of SiriCOMM, Inc. at September 30, 2001, and the results of its operations and its cash flows for the year ended September 30, 2001 and for the periods from inception (April 24, 2000) through September 30, 2001 and 2000, in conformity with accounting principles generally accepted in the United States of America.

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As discussed in Note 2, the Company is in the development stage and has not yet earned revenues from operations, and has working capital and equity deficiencies of \$1,088,397 and \$1,119,384, respectively, at June 30, 2002 (unaudited). These conditions raise substantial doubt regarding the Company's ability to continue as a going concern. Management's plans related to these conditions are also discussed in Note 2. The financial statements do not include any adjustments that may result from the outcome of this uncertainty.

/s/ Aidman, Piser & Company, P.A.

Tampa, Florida  
 June 11, 2002,  
 except for Note 2, as to which  
 the date is September 24, 2002

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SIRICOMM, INC.  
 (A DEVELOPMENT STAGE ENTERPRISE)  
 BALANCE SHEETS

ASSETS

	June 30, 2002 (Unaudited)
Current assets:	
Cash and cash equivalents	\$ 210,073
Prepaid expenses and other current assets	26,670
Total current assets	236,743
Furniture and equipment, net of accumulated depreciation (2002, \$12,179; 2001, \$8,415)	77,650
	\$ 314,393

LIABILITIES AND STOCKHOLDERS' DEFICIT

Current liabilities:	
Current maturities of notes payable and long-term debt	\$ 1,241,790
Accounts payable	1,882
Due to shareholders	-
Accrued expenses	81,468
Total current liabilities	1,325,140
Notes payable and long-term debt, less current maturities	108,637
Total liabilities	1,433,777

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Commitments	-----	-
Stockholders' deficit:		
Common stock, \$1 par value, 10,000 shares authorized and issued		10,000
Additional paid-in capital		483,912
Accumulated deficit during the development stage		(1,580,083)
Treasury stock, 222 shares at cost		(33,213)
	-----	
Total stockholders' deficit		(1,119,384)
	-----	
	\$	314,393
		=====

See notes to financial statements.

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SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
STATEMENTS OF OPERATIONS

	Nine months ended June 30,		Year ended September 30, 2001
	2002 (Unaudited)	2001 (Unaudited)	
	-----	-----	-----
Net sales	\$ -	\$ -	\$ -
Operating expenses:			
General and administrative	96,061	60,234	160,748
Salaries and consulting fees	395,462	152,824	175,525
Research and development	134,659	53,132	73,787
Write-off of note receivable	-	50,000	50,000
Depreciation	9,321	3,980	5,928
	-----	-----	-----
Total operating expenses	635,503	320,170	465,988
	-----	-----	-----
Operating loss	(635,503)	(320,170)	(465,988)
Interest expense	(25,592)	(3,654)	(4,609)
Loan costs	(50,000)	-	-
Income tax expense	-	-	-
	-----	-----	-----
Net loss	(\$711,095)	(\$323,824)	(\$470,597)
	=====	=====	=====
Net loss per share, basic and diluted	(\$74)	(\$33)	(\$47)
	=====	=====	=====
Weighted average shares, basic and diluted	9,612	9,882	9,945

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	=====	=====	=====
Unaudited pro-forma presentation applicable to conversion from an S Corporation to C Corporation:			
Net loss before proforma income tax expense	(\$711,095)	(\$323,824)	(\$470,597)
Pro-forma income tax expense	-	-	-
Pro-forma net loss	(\$711,095)	(\$323,824)	(\$470,597)
Pro-forma net loss per share	(\$74)	(\$33)	(\$47)

See notes to financial statements.

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SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
STATEMENTS OF CASH FLOWS

	Nine months ended June 30,		Year Ended
	2002	2001	September 30,
	(Unaudited)	(Unaudited)	2001
	-----	-----	-----
Cash flows from operating activities:			
Net loss	\$ (711,095)	\$ (323,824)	\$ (470,597)
Adjustments to reconcile net loss to net cash flows from operating activities:			
Depreciation	9,321	3,980	5,928
Amortization of loan costs	50,000	-	-
Stock-based compensation	9,000	-	-
Settlement expense funded from debt assumption	-	-	28,000
Write-off of note receivable	-	50,000	50,000
Changes in assets and liabilities:			
Current assets	-	26,656	-
Current liabilities	(10,989)	(24,292)	11,403
Net cash flows from operating activities	(653,763)	(267,480)	(375,266)
Cash flows from investing activities:			
Acquisition of furniture and equipment	(57,821)	(14,000)	(13,999)
Proceeds from sale of furniture and equipment	1,408	-	-
Advances to stockholders	-	(56,144)	-
Issuance of note receivable	-	(50,000)	(50,000)
Net cash flows from investing activities	(56,413)	(120,144)	(63,999)

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	-----	-----	-----
Cash flows from financing activities:			
Borrowings under line of credit, net	-	24,848	97,043
Proceeds from long-term debt	1,027,304	72,500	-
Payments of loan costs	(28,479)	-	-
Payment of loan costs	(50,000)	-	-
Proceeds (repayments) of due to stockholders	(29,471)	-	51,853
Proceeds from sale of common stock	-	289,004	289,004
	-----	-----	-----
Net cash flows from financing activities	919,354	386,352	437,900
	-----	-----	-----
Change in cash	209,178	(1,272)	(1,365)
Cash, beginning of period	895	2,260	2,260
	-----	-----	-----
Cash, end of period	\$ 210,073	\$ 988	\$ 895
	=====	=====	=====

See notes to financial statements.

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SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
STATEMENTS OF CASH FLOWS (CONTINUED)

	Nine months ended June 30,		Year Ended
	-----		September 30,
	2002	2001	2001
	(Unaudited)	(Unaudited)	-----
	-----	-----	
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:			
Cash paid for interest	\$ 3,038	\$ 3,149	\$ 3,464
	=====	=====	=====
SUPPLEMENTAL DISCLOSURES OF NON-CASH FINANCING ACTIVITIES:			
Conversion of debt to 6,372.5 shares of common stock	\$ -	\$ -	\$ -
	=====	=====	=====
Acquisition of 1694.5 shares of treasury stock for a note payable	\$ 253,524	\$ -	\$ -
	=====	=====	=====
Issuance of 1,189 shares of treasury common stock for services	\$ 35,670	\$ -	\$ -
	=====	=====	=====

See notes to financial statements.

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SIRICOMM, INC.  
 (A DEVELOPMENT STAGE ENTERPRISE)  
 STATEMENTS OF STOCKHOLDER'S DEFICIT  
 THE PERIOD FROM INCEPTION (APRIL 24, 2000) TO SEPTEMBER 30, 2000,  
 THE YEAR ENDED SEPTEMBER 30, 2001 AND THE SIX MONTHS ENDED JUNE 30, 2002

	Common Stock Shares	Amount	Additional Paid-in Capital	Treasury Stock
	-----	-----	-----	-----
Issuance of founder shares at inception	3,333	\$ 3,333	\$ -	\$ -
Conversion of debt to equity	6,372	6,372	379,844	
Net loss for the period	-	-	-	-
	-----	-----	-----	-----
Balances, September 30, 2000	9,705	9,705	379,844	-
Issuance of common stock	295	295	288,709	-
Net loss for the year	-	-	-	-
	-----	-----	-----	-----
Balances, September 30, 2001	10,000	10,000	668,553	-
Treasury stock acquisition	-	-	-	(253,524)
Issuance of stock from treasury shares	-	-	(184,641)	220,311
Net loss for the period	-	-	-	-
	-----	-----	-----	-----
Balances, March 31, 2002 (unaudited)	10,000	\$ 10,000	\$ 483,912	\$ (33,213)
	=====	=====	=====	=====

See notes to financial statements.

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SIRICOMM, INC.  
 (A DEVELOPMENT STAGE ENTERPRISE)  
 NOTES TO FINANCIAL STATEMENTS  
 FOR THE SIX MONTHS JUNE 30, 2002 AND 2001 (UNAUDITED),  
 THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM  
 INCEPTION (APRIL 24, 2000) TO SEPTEMBER 30, 2000

1. Nature of operations and summary of significant accounting policies:

Nature of operations:

SiriCOMM, Inc, (the Company), incorporated in the State of Missouri on April 24, 2000, is engaged in the development of a broadband wireless application service technologies intended for use in the marine and transportation industries. The Company's development activities include integrating multiple technologies including satellite communications, the Internet, wireless networking, and productivity enhancing software into commercially viable products and services. The Company expects to complete development activities and commence revenue generating activities in early 2003.

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### Reporting periods:

The Company operated under a calendar reporting year in 2000 and, in 2001, changed its fiscal year to November 30. In connection with the merger discussed in Note 8, the Company has presented its financial information on a September 30 fiscal year and anticipates an adoption of that fiscal year for future financial reporting purposes.

### Use of estimates:

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### Interim financial information:

The financial statements at June 30, 2002 and for the nine months ended June 30, 2002 and 2001, including related amounts in footnotes, are unaudited, but in the opinion of management reflect all normal and recurring adjustments necessary for a fair presentation of the results of those periods. Operating results for the nine months ended June 30, 2002 are not necessarily an indication of the results that may be expected for the year ended September 30, 2002.

SIRICOMM, INC.

(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS

FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

1. Nature of operations and summary of significant accounting policies (continued):

#### Financial instruments:

The carrying value of the Company's financial instruments, including cash, accounts payable, and notes, approximate their fair market values.

#### Furniture and equipment:

Furniture and equipment is stated at cost and depreciated using the straight-line method over the estimated useful life of 5 years.

#### Stock-based compensation:

The Company accounts for compensation costs associated with stock options issued to employees under the provisions of Accounting Principles Board Opinion No. 25 ("APB25") whereby compensation is recognized to the extent the market price of the underlying stock at the grant exceeds the exercise price of the option granted. Stock-based compensation to non-employees is accounted for using the fair-value based method prescribed by Financial Accounting Standard No. 123 - Accounting for Stock-Based Compensation.

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Research and development costs:

The Company incurs costs, principally paid to outside consultants, associated with computer software to be marketed in the future. Costs incurred in connection with establishing technological feasibility have been expensed as research and development costs. Costs incurred subsequent to establishing technological feasibility, including coding and testing, will be capitalized.

Effect of recent accounting pronouncements:

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities. SFAS 146 requires that liabilities associated with an exit or disposal activity be recognized when the liability is incurred and establishes that fair value is the objective measurement of the liability. FAS 146 is effective for exit or disposal activities initiated after December 31, 2002. The adoption of this standard is not expected to have a significant impact on the Company's financial position, results of operations or cash flows.

SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

1. Nature of operations and summary of significant accounting policies (continued):

Pro forma income taxes:

The operations of the Company are included in the personal income tax returns of the stockholders under Subchapter S of the Internal Revenue Code. The unaudited pro forma income tax information assumes that the Company was taxed as a C Corporation. For these purposes, the Company has used the asset and liability method in accounting for income taxes, prescribed in Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes." Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The transaction described in Note 8 will result in the revocation of the S Corporation election.

Net loss per share:

Net loss per share represents the net loss available to common stockholders divided by the weighted average number of common shares outstanding during the year. Diluted earnings per share reflect the potential dilution that could occur if convertible debt was converted into common stock. Diluted net loss per share is considered to be the same as basic net loss per share since the effect of the issuance of common stock associated with the convertible debt is anti-dilutive.

2. Liquidity and managements' plans:

These financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the ordinary course of



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business.

The Company is in the development stage of operations, has a working capital and net equity deficiency, is in default on \$1,126,079 of its notes payable (unaudited at June 30, 2002) and has not yet generated revenues through September 24, 2002. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Losses to date have been funded through short term borrowings, \$1,000,000 of which are convertible into common stock.

SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

2. Liquidity and managements' plans (continued):

The Company is focused on commercialization of its principal products, which will require debt or equity financing in the near-term. Management is currently in negotiations to obtain such funding and in the process of finalizing a merger agreement with an existing public company shell.

Upon completion of an anticipated merger, discussed in Note 8, management believes it will be able to raise an additional \$6 to \$10 million, which will be used to finalize its development stage activities and commence marketing activities. Management anticipates revenue generating activities to commence in early 2003.

There can be no assurances that the Company will be successful in obtaining additional debt or equity financing in order to achieve its financial objectives or to commence revenue generating activities as outlined above. The financial statements do not include any adjustments to the carrying amounts of assets and the amounts and classifications of liabilities that may result from the outcome of this uncertainty.

3. Unaudited pro forma income taxes:

Unaudited pro forma income taxes consists of the following:

	Nine months ended June 30, 2002	June 30, 2001	Year Ended September 30, 2001	From Inception ( September 30, 2000
Current income taxes	\$ -	\$ -	\$ -	\$ -
Deferred income taxes:				
Benefit of net operating loss and start-up costs	266,700	121,500	147,250	149,400
Deferred income taxes	2,200	1,300	1,250	300
Change in valuation allowance	(268,900)	(122,800)	(148,500)	(149,700)
	\$ -	\$ -	\$ -	\$ -

SIRICOMM, INC.

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(A DEVELOPMENT STAGE ENTERPRISE)  
 NOTES TO FINANCIAL STATEMENTS  
 FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
 THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
 (APRIL 24, 2000) TO SEPTEMBER 30, 2000

3. Unaudited pro forma income taxes (continued):

Unaudited pro forma deferred tax assets consists of the following:

	June 30, 2002	September 2001
	-----	-----
Net operating loss carryforward and start-up costs	\$ 592,500	\$ 325,000
Book depreciation in excess of tax	4,600	2,000
Less: valuation allowance	(597,100)	(328,000)
	-----	-----
	\$ -	\$ -
	=====	=====

4. Notes payable and long-term debt:

Notes payable and long-term debt consist of the following at:

	June 30, 2002	September 2001
	-----	-----
	(Unaudited)	
Note payable, former stockholder, bearing interest at 2.5%, unsecured, interest and principal due in monthly installments of \$10,000 through May 2004.	\$ 224,348	\$ -
Note payable, bearing interest at 4%, unsecured, interest and principal due March 15, 2002; convertible into common shares equaling 4.25% of the Company's outstanding shares of stock on the date that the holder exercises its option.	250,000	

SIRICOMM, INC.  
 (A DEVELOPMENT STAGE ENTERPRISE)  
 NOTES TO FINANCIAL STATEMENTS  
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 THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
 (APRIL 24, 2000) TO SEPTEMBER 30, 2000

4. Notes payable and long-term debt (continued):

	June 30, 2002	September 2001
	-----	-----
	(Unaudited)	
Note payable, bearing interest at 4%, unsecured, interest and principal due March 15, 2002; convertible into common shares equaling 3.5% of the		

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Company's outstanding shares of stock on the date that the holder exercises its option.	250,000
Note payable, bearing interest at 4%, unsecured, interest and principal due July 15, 2002; convertible into common shares of stock equaling 4.25% of the Company's outstanding shares of stock on the date that the holder exercises its options.	250,000
Note payable, bearing interest at 4%, unsecured, interest and principal due July 15, 2002; convertible into common shares of stock equaling 3.5% of the Company's outstanding shares of stock on the date that the holder exercises its options.	250,000
Line of credit, interest at 7%, secured by receivables of the Company (currently existing or thereafter acquired) and personally guaranteed by a stockholder of the Company, due June 20, 2002, or upon demand by the bank.	126,079

SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
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THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

4. Notes payable and long-term debt (continued):

	June 30, 2002	September 2001
	-----	-----
	(Unaudited)	
Line of credit refinanced in December 2001.	-	98
	-----	-----
	1,350,427	98
Less: current maturities of notes payable and long-term debt	(1,241,790)	(98)
	-----	-----
	\$ 108,637	\$
	=====	=====

Future maturities of notes payable and long-term debt are as follows:

	June 30, 2002	September 30, 2001
	-----	-----
2002	\$ -	\$ 98,078
2003	1,241,790	-
2004	108.637	-
	-----	-----
	\$ 1,350,427	\$ 98,078
	=====	=====

The Company was not in compliance with terms and provisions of its

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credit agreements as of September 24, 2002 covering \$1,126,079 of indebtedness. Of this amount, the Company has \$1,000,000 of outstanding debt, which management believes will be liquidated through a conversion to equity in connection with the merger discussed in Note 8.

5. Stockholders' deficit:

At inception 3,333 shares of stock were issued to the founding stockholders at par value. During 2000, 6,372.5 additional shares of stock were issued to these same stockholders in satisfaction of then outstanding advances, equivalent to \$60 per share.

SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

5. Stockholders' deficit (continued):

During 2001, the Company commenced equity raising activities and sold an aggregate of 294.5 shares of stock at prices ranging from \$500 to \$2,000 per share.

In December 2001, the Company repurchased 1,694.5 shares of stock at an aggregate cost of \$150 per share in connection with a stockholder dispute, which is further discussed in Note 6.

Subsequent to September 30, 2001, 283.5 treasury shares were reissued pursuant to an anti-dilution clause, which stated that if the Company sells shares in the Company to an investor that represents more than a 2.5% interest in the Company and such investor pays an amount less than \$2,000 per share, the Company shall issue additional shares to the investor so the investor will own the number of shares that represent the investor's total subscription amount divided by the valuation per share of the subsequent sale of an equity interest in the Company.

Subsequent thereto, 300 treasury shares of stock were issued for legal services rendered and valued at \$30 per share based on the value of stock to be issued in connection with the pending merger discussed in Note 8. Furthermore, 889 treasury shares were issued in exchange for services associated with the aforementioned merger and have been reflected as prepaid expenses in the accompanying 2002 unaudited balance sheet.

Cumulative stockholders' deficit information for the period from inception (April 24, 2000) to June 30, 2002 (unaudited) is as follows:

	Shares	Amount
	-----	-----
Issuance of founders share	3,333	\$ 3,333
Conversion of debt to equity	6,372	386,216
Issuance of common stock	295	289,004
Treasury stock acquisition	-	(253,524)
Issuance of stock from treasury shares	-	35,670
Net loss	-	(1,580,083)
	-----	-----
	10,000	\$ (1,119,384)
	=====	=====

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SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

6. Related party transactions:

During 2001, the Company was a defendant in a suit filed by a founding stockholder. This suit was settled on December 21, 2001. As part of the settlement agreement the Company agreed to reimburse the former stockholder \$22,000 for out-of-pocket expenses and \$15,000 in compensation for services previously performed and repurchase all shares of common stock owned by this stockholder. The Company paid \$10,000 in December 2001 in connection with the settlement and issued a note payable for the remaining balance due, payable over a 29 month period. At September 30, 2001, the Company accrued the out-of-pocket expenses and compensation expense, which is included in accounts payable in the accompanying balance sheet.

In addition, as part of the settlement agreement the Company assumed a \$28,000 note payable which has been accrued as general and administrative expense at September 30, 2001. On December 18, 2001, the existing bank line of credit agreement and the note payable of \$28,000 were consolidated into a single line of credit.

7. Commitments:

In February 2002, the Company entered into five executive employee agreements with certain officers/directors. As part of these agreements the Company is obligated to pay these officers/directors aggregate compensation of \$525,000 annually through February 2005.

8. Merger agreement:

During April 2002, the Company entered into a merger agreement with Fountain Pharmaceuticals, Inc. (FPI), a public company shell corporation. FPI will receive all of the outstanding shares of the Company in exchange for the issuance of an aggregate of 9,623,195 post-split shares of FPI's common stock, \$.001 par value, representing approximately 77% of the post-closing, post-split issued and outstanding shares of FPI stock. The Company anticipates that the transaction will be consummated in October 2002.

SIRICOMM, INC.  
(A DEVELOPMENT STAGE ENTERPRISE)  
NOTES TO FINANCIAL STATEMENTS  
FOR THE NINE MONTHS ENDED JUNE 30, 2002 AND 2001 (UNAUDITED),  
THE YEAR ENDED SEPTEMBER 30, 2001, AND THE PERIOD FROM INCEPTION  
(APRIL 24, 2000) TO SEPTEMBER 30, 2000

9. Events subsequent to report of independent certified public accountants (unaudited):

Related party transaction:

On June 29, 2002, the Company entered into an agreement with RJS

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Ventures, Inc. ("RJSV"), an entity owned by a stockholder, to act as the Company's financial advisor in connection with the establishment of the Company as a publicly traded entity and to provide assistance in structuring a \$10 million private placement of the Company's common stock for a one-year period. As part of this agreement the Company is obligated to pay 1) a non-refundable retention fee of \$2,500 per month; 2) a success fee not to exceed \$150,000 for any offering upon closing of an offering; 3) an additional success fee in the amount of \$25,000 upon successful registration of the Company with the American or NASDAQ stock exchange; 4) stock options to purchase Company common stock as follows:

- Option 1: 15,000 shares at exercise price of \$2.00 per share to be granted on the date the Company closes a Security Exchange Agreement with Fountain Pharmaceuticals, Inc. ("FPI"), a public company shell corporation.
- Option 2: 15,000 shares at exercise price of \$3.00 per share to be granted 120 days after Option 1 is granted.
- Option 3: 15,000 shares at exercise price of \$4.00 per share to be granted 120 days after Option 2 is granted.

and, 5) the Company will reimburse reasonable out-of-pocket expenses incurred by RJSV in connection with this agreement.

Issuance of note payable:

On July 20, 2002, the Company signed a note with a bank for \$121,325, bearing interest at 7%, requiring eleven monthly payments of \$2,400, with the principal balance maturing on July 20, 2003. The proceeds of this note were used to substantially pay down the outstanding line-of-credit due to the bank as of June 30, 2002.

### FOUNTAIN PHARMACEUTICALS, INC. AND SIRICOMM, INC. PROFORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

The following unaudited proforma consolidated combined balance sheet aggregates the balance sheet of Fountain Pharmaceuticals, Inc. (a Delaware corporation) ("Parent") as of June 30, 2002 and the balance sheet of SiriComm, Inc. (a Missouri corporation) ("Subsidiary") as of June 30, 2002, accounting for the transaction as a recapitalization of Subsidiary with the issuance of shares for the net assets of Parent (a reverse acquisition) and using the assumptions described in the following notes, giving effect to the transaction, as if the transaction had occurred as of the end of the period. The transaction was not completed as of June 30, 2002.

The following unaudited proforma condensed consolidated statement of operations combine the results of operations of Parent and Subsidiary for the year ended September 30, 2001 as if the transaction had occurred as of the beginning of the period.

The following unaudited proforma condensed consolidated statement of operations combine the results of operations of Parent and Subsidiary for the nine months ended June 30, 2002 as if the transaction had occurred as of the beginning of the period.

The proforma condensed consolidated financial statements should be read in conjunction with the separate financial statements and related notes thereto of Parent and Subsidiary. These proforma financial statements

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are not necessarily indicative of the consolidated financial position, had the acquisition occurred on the date indicated above, or the consolidated results of operations which might have existed for the periods indicated or the results of operations as they may be in the future.

### FOUNTAIN PHARMACEUTICALS, INC. AND SIRICOMM, INC. PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET June 30, 2002

	Fountain -----	Siricomm, Inc. -----	
Assets			
Current assets:			
Cash and cash equivalents	\$ 15,117	\$ 210,073	
Prepaid expenses and other assets	-	26,670	[C, E, F]
	-----	-----	
Total current assets	15,117	236,743	
	-----	-----	
Furniture and equipment, net of accumulated depreciation	-	77,650	
	-----	-----	
	\$ 15,117	\$ 314,393	
	=====	=====	
Liabilities and Stockholders' Equity			
Current liabilities:			
Accounts payable and accrued expenses	\$ 2,000	\$ 83,350	[E]
Current maturities of notes payable and long-term debt	-	1,241,790	[D]
Due to shareholders	-	-	
6% Convertible Debenture	100,000	-	[G]
	-----	-----	
Total current liabilities	102,000	1,325,140	
	-----	-----	
Note payable and long-term debt, less current maturities	-	108,637	
	-----	-----	
Stockholders' equity:			
Preferred Stock	-	-	
Common stock	5,876	10,000	[A, C, D, F]
Class B common stock	105		
Additional paid-in capital	17,272,506	483,912	[A, B, E, F, G]
Accumulated deficit	(17,365,370)	(1,580,083)	[B]
Treasury stock, at cost	-	(33,213)	[F]
	-----	-----	
Total stockholders' equity	(86,883)	(1,119,384)	
	-----	-----	
	\$ 15,117	\$ 314,393	
	=====	=====	

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See Notes to Pro Forma coindensed Consolidated Financial Statements

Fountain Pharmaceuticals, Inc. and Siricomm, Inc.  
Pro Forma Condensed Consolidated Statement of Operations  
For the six months ended June 30, 2002

	Fountain -----	Siricomm -----	Pro Adju -----
Revenues	\$ -	\$ -	\$ -
Cost of sales	-	-	-
Gross profit	-	-	-
Operating expenses:			
General and administrative	106,041	96,061	
Salaries and consulting fees	-	395,462	
Research and Development	-	134,659	
Amortization of loan costs	-	50,000	
Depreciation and amortization	-	9,321	
Selling	-	-	
Total operating expenses	106,041	685,503	
Loss from operations	(106,041)	(685,503)	
Other income (expense)			
Interest income	-	-	
Interest expense	(24,668)	(25,592)	
Other income (expense)	-	-	
	(24,668)	(25,592)	
Net loss from continuing operations	\$ (130,709)	\$ (711,095)	\$ -
Pro forma loss per common share			
Weighted average number of shares			

See Notes to Pro Forma coindensed Consolidated Financial Statements

Fountain Pharmaceuticals, Inc. and Siricomm, Inc.  
Pro Forma Condensed Consolidated Statement of Operations  
For the year ended September 30, 2001



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	Fountain -----	Siricomm -----	
Revenues	\$ 666,754 -----	\$ - -----	[H]
Cost of sales	120,185 -----		
Gross profit	546,569 -----	- -----	
Operating expenses:			
General and administrative	290,826	160,748	[H]
Salaries and consulting fees	-	175,525	
Research and Development	157,000	73,787	[H]
Depreciation and amortization	194,387	5,928	[H]
Selling	426,686 -----		[H]
Total operating expenses	1,068,899 -----	415,988 -----	
Loss from operations	(522,330) -----	(415,988) -----	
Other income (expense)			
Interest income	7,000		
Interest expense	(269,061)	(4,609)	
Other income (expense)	14,083 -----	- -----	
	(247,978) -----	(4,609) -----	
Loss from continuing operations	(770,308) =====	(420,597) =====	
Pro forma loss per common share			
Weighted average number of shares			

See Notes to Pro Forma coindensed Consolidated Financial Statements

Fountain Pharmaceuticals, Inc. and Siricomm, Inc.  
Pro forma Adjustments

[A]	Common Stock	5,881	
	Additional paid-in capital		5,881
	To record 1 for 60 reverse split and change in par value		

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[B]	Additional paid-in capital	17,365,370	
	Accumulated deficit		17,365,370
	To eliminate accumulated deficit of parent at date of acquisition to reflect the recapitalization of subsidiary		
[C]	Investment in subsidiary	9,623	
	Common stock		9,623
	To record acquisition of subsidiary through issuance of 9,623,195 post-split shares		
[D]	Convertible debentures	1,000,000	
	Common Stock		1,937
	Additional Paid-in capital		998,063
	To record converison of convertible promissory notes into 1,937,136 shares		
[E]	Additional paid-in capital	76,670	
	Accounts payable		50,000
	Stock offering costs		26,670
	To record additional costs associated with completing the reorganization and reflect these costs as a reduction of additional paid-in capital		
[F]	Common stock	10,000	
	Treasury stock		33,213
	Investment in subsidiary		9,623
	Additional paid-in capital	32,836	-
	To eliminate common and treasury stock of subsidiary		
[G]	6% Convertible debentures	100,000	
	Common Stock		100
	Additional paid-in capital		99,900
		-----	
		18,600,380	18,600,380

FOUNTAIN PHARMACEUTICALS, INC. AND SIRICOMM, INC.  
NOTES TO PROFORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)

Note 1 - Fountain Pharmaceuticals, Inc.

Fountain Pharmaceuticals, Inc. ('Parent'), a Delaware corporation, was incorporated in 1989. All operations of the Parent were suspended in July 2001 and the Company is currently inactive.

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Note 2 - SiriComm, Inc.

SiriComm, Inc. ("Subsidiary"), a Missouri corporation, was incorporated on April 24, 2000. The Company is engaged in the development of a broadband wireless application service technologies intended for use in the marine and highway transportation industries.

During April 2002, Parent entered into an agreement and plan of reorganization wherein Parent would acquire 100% of Subsidiary through the issuance of an estimated 9,623,195 shares (post-split) of restricted common stock in a transaction wherein Subsidiary will become a wholly-owned subsidiary of Parent. Consummation of the proposed acquisition is anticipated to be completed in October 2002.

Proforma adjustments on the attached pro-forma consolidated financial statements include the following:

- [A] To record 1 for 60 reverse common stock split and change in par value of common stock.
- [B] [C] To record the acquisition of Subsidiary by Parent through the issuance of 9,623,195 post-split shares of common stock. The ownership interests of the former owners of Subsidiary in the combined enterprise is greater than that of the ongoing shareholders of Parent and, accordingly, the management of Subsidiary will assume operating control of the combined enterprise. Consequently, the acquisition is accounted for as the recapitalization of Subsidiary, wherein Subsidiary purchased the assets of Parent and accounted for the transaction as a "Reverse Purchase" for accounting purposes.
- [D] To record conversion of an aggregate \$1,000,000 convertible promissory notes into 1,937,136 shares of common stock.
- [E] The estimated costs incurred in completing the reorganization have been treated as stock issuance costs by Parent and, therefore, as a reduction of additional paid-in capital. These estimated costs of \$50,000 consist primarily of legal and accounting fees. These are in addition to \$26,670 previously incurred.
- [F] To eliminate the common stock of the Subsidiary in consolidation.
- [G] To record conversion of \$100,000 in Convertible debentures issued by Parent into 100,000 shares of common stock. (Debentures not issued in connection with acquisition.)

Note 3 - Proforma (loss) per share

The proforma (loss) per share is computed based on the number of shares outstanding, after adjustment for shares issued in the acquisition, as though all shares issued in the acquisition had been outstanding from the beginning of the periods presented.

Diluted earnings per share was not presented, as its effect was anti-dilutive for the periods presented.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
FOUNTAIN PHARMACEUTICALS, INC.

Fountain Pharmaceuticals, Inc., a corporation organized and existing under the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Fountain Pharmaceuticals, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was March 23, 1989 and the name under which the corporation was originally incorporated was DFW Technologies, Inc. The name of the corporation was changed to Fountain Pharmaceuticals, Inc. on April 10, 1989. On November 13, 1989 the corporation restated its Certificate of Incorporation to authorize, among other things, its Class B Common Stock.

2. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of this corporation by:

(a) combining its Class A common stock, \$.001 par value, and Class B common stock, \$.001 par value, into one single class of common stock.

(b) combining each \_\_\_\_\_ outstanding shares of common stock, \$.001 par value into one share of new common stock and reducing the resulting par value of such stock to \$.001.

(b) increasing the number of authorized shares of common stock, \$.001 par value, to 50,000,000;

(c) increasing the number of authorized shares of preferred stock, \$.001 par value, from 2,000,000 to 5,000,000; and

(d) setting forth certain matters relating to the designation of the relative rights, powers and preferences of qualification, limitations and restrictions of one or more series of preferred stock.

3. The text of the Certificate of Incorporation as amended or supplemented heretofore is further amended hereby to read as herein set forth in full:

"ARTICLE 1

The name of this corporation is SIRICOMM, INC.

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ARTICLE 2

The address of its registered offices in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE 3

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The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

### ARTICLE 4

The total number of shares of stock of all classes which the Corporation has authority to issue is 55,000,000 shares, of which 50,000,000 shares shall be common stock, with a par value of \$.001 per share ("Common Stock"), and 5,000,000 shares shall be preferred stock, with a par value of \$.001 per share ("Preferred Stock").

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the shares of each class of stock are as follows:

#### PREFERRED STOCK

Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. Subject to the provisions hereof and the limitations prescribed by law, the Board of Directors is hereby vested with the authority and is expressly authorized, prior to issuance, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series and, if and to the extent from time to time required by law, by filing a certificate pursuant to the General Corporation Law of the State of Delaware (or other law hereafter in effect relating to the same or substantially similar subject matter), to establish or change the number of shares to be included in each such series and to fix the designation and powers, preferences and rights and the qualifications and limitations or restrictions thereof relating to the shares of each such series, all to the maximum extent permitted by the General Corporation Law of the State of Delaware as in effect on the date hereof or as hereafter amended. The vested authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination of the following:

(a) the distinctive serial designation of such series and the number of shares constituting such series (provided that the aggregate number of shares constituting all series of Preferred Stock shall not exceed 5,000,000);

(b) the annual dividend rate, if any, on shares of such series and the preferences, if any, over any other series (or of any other series over such series) with respect to dividends, and whether dividends shall be cumulative and, if so, from which date or dates;

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(c) whether the shares of such series shall be redeemable and, if so, the terms and conditions of such redemption, including the date or dates upon and after which such shares shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

(d) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or purchase fund and, if so, the terms of such obligation;

(e) whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other

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class or classes, any stock of any series of the same class or any other class or classes or any evidence of indebtedness and, if so, the terms and conditions of such conversion or exchange, including the price or prices or the rate or rates of conversion or exchange and the terms of adjustment, if any;

(f) whether the shares of such series shall have voting rights in addition to the voting rights provided by law, and, if so, the terms of such voting rights, including, without limitation, whether such shares shall have the right to vote with the Common Stock on issues on an equal, greater or lesser basis;

(g) the rights of the shares of such series in the event of a voluntary or involuntary liquidation, dissolution, winding up or distribution of assets of the Corporation;

(h) whether the shares of such series shall be entitled to the benefit of conditions and restrictions upon (i) the creation of indebtedness of the Corporation or any subsidiary, (ii) the issuance of any additional stock (including additional shares of such series or of any other series) or (iii) the payment of dividends or the making of other distributions on the purchase, redemption or other acquisition by the Corporation or any subsidiary of any outstanding stock of the Corporation; and

(i) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof, including, but not limited to, any that may be determined in connection with the adoption of any stockholder rights plan after the date hereof, relating to any such series.

Except where otherwise set forth in the resolution or resolutions adopted by the Board of Directors providing for the issuance of any series of Preferred Stock, the number of shares comprising such series may be increased or decreased (but not below the number of shares then outstanding) from time to time by like action of the Board of Directors.

Shares of any series of Preferred Stock that have been redeemed (whether through the operation of a sinking fund or otherwise) or purchased by the Corporation, or which, if convertible or exchangeable, have been converted into, or exchanged for, shares of stock of any other class or classes or any evidences of indebtedness shall have the status of authorized and unissued

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shares of Preferred Stock and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors or as part of any other series of Preferred Stock, all subject to the conditions or restrictions on issuance set forth in the resolution or resolutions adopted by the Board of Directors providing for the issuance of any series of Preferred Stock and to any filing required by law.

### COMMON STOCK

Subject to all of the rights of the Preferred Stock, and except as may be expressly provided with respect to the Preferred Stock herein, by law or by the Board of Directors pursuant to this Article 4:

(a) dividends may be declared and paid or set apart for payment upon Common Stock out of any assets or funds of the

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Corporation legally available for the payment of dividends and may be payable in cash, stock or otherwise;

(b) the holders of Common Stock shall have the exclusive right to vote for the election of directors (other than in the case of newly created directorships and vacancies, which shall be filled solely by the remaining directors as set forth in Article 6 hereof) and on all other matters requiring stockholder action, each share being entitled to one vote; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of Common Stock in accordance with their respective rights and interests.

### DENIAL OF PREEMPTIVE RIGHTS AND CUMULATIVE VOTING

No holder of any stock of the Corporation shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class whatsoever of the Corporation, or of securities convertible into stock of any class whatsoever, whether now or hereafter authorized, or whether issued for cash or other consideration or by way of dividend.

No holder of any stock of the Corporation shall have the right of cumulative voting at any election of directors or upon any other matter.

### ARTICLE 5

The Corporation is to have perpetual existence.

### ARTICLE 6

All power of the Corporation shall be vested in and exercised by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

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For the management of the business and for the conduct of the affairs of the Corporation, and in further creation, definition, limitation and regulation of the power of the Corporation and of its directors and stockholders, it is further provided:

A. ELECTIONS OF DIRECTORS. Elections of Directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

B. NUMBER, ELECTION AND TERMS OF DIRECTORS. Except as otherwise fixed pursuant to the provisions of Article 4 hereof relating to the rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed from time to time pursuant to the Bylaws. The directors, other than those who may be elected by the holders of any class or series of stock having preference over the Common Stock as to dividends or upon liquidation, shall hold office until the next annual meeting at which their successors are elected and qualified or until their earlier resignation or removal.

C. REMOVAL OF DIRECTORS. Subject to the rights of any class or series of stock having preference over Common Stock as to dividends or upon liquidation to elect directors under specified circumstances, at any regular meeting or

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special meeting called expressly for that purpose, any director or the entire Board of Directors may be removed with or without cause and a successor or successors appointed by vote of the holders of in excess of fifty percent (50%) of the shares then issued and outstanding and entitled to vote at an election of directors.

Except as may otherwise be provided by law, cause for removal shall be construed to exist only if during a director's term as a director of the Corporation: (a) the director whose removal is proposed has been convicted of a felony by a court of competent jurisdiction and such conviction is no longer subject to direct appeal; (b) such director has been adjudicated by a court of competent jurisdiction to be liable for gross negligence, recklessness or misconduct in the performance of his or her duty to the Corporation in a manner of substantial importance to the Corporation and such adjudication is no longer subject to direct appeal; or (c) such director has been adjudicated by a court of competent jurisdiction to be mentally incompetent, which mental incompetence directly affects his or her ability as a director of the Corporation, and such adjudication is no longer subject to direct appeal.

D. STOCKHOLDER ACTION. Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of such holders or by consent in writing of the holders required to take such action. Except as otherwise required by law and subject to the rights of holders of any class or series of stock having a preference over Common Stock as to dividends or upon liquidation, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board, the Chief Executive Officer or the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors.

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E. BYLAW AMENDMENTS. The Board of Directors shall have the power to make, alter, amend and repeal the Bylaws (except so far as the Bylaws adopted by the stockholders shall otherwise provide). Any Bylaws made by the Board of Directors under the powers conferred hereby may be altered, amended or repealed by the directors or by the stockholders.

### F. LIABILITY OF DIRECTORS.

1. No director of the Corporation shall be liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director; provided that this Article 6 shall not eliminate or limit the liability of a director of the Corporation: (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit.

2. If the General Corporation Law of the State of Delaware hereafter is amended to authorize the further elimination or limitation of the liability of directors of the Corporation, then the liability of a director of the Corporation shall be limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended, and such limitation of liability shall be in addition to, and not in lieu of, the limitation on the liability of a director of the Corporation provided by the provisions of this Section F of this Article 6.

3. Any amendment, repeal or modification of this Section F of this Article 6 shall be prospective only and shall not adversely affect any right or protection of a director of the Corporation existing at the time of



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such amendment, repeal or modification.

4. The Corporation shall be obligated at all times to maintain the effectiveness of Bylaw provisions providing for the mandatory indemnification of the directors of the Corporation to the maximum extent permitted by the General Corporation Law of the State of Delaware.

ARTICLE 7

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation."

4. This Amended and Restated Certificate of Incorporation was duly adopted by written consent of the stockholders in accordance with the applicable provisions of Section 228, 242 and 245 of the General Corporation Law of the State of Delaware and written notice of the adoption of this Amended and Restated Certificate of Incorporation has been given as provided by Section 228 of the General Corporation Law of the State of Delaware to every stockholder entitled to such notice.

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5. As of the date of this Certificate, there are outstanding 5,875,796 shares of common stock, \$.001 par value, 104,505 shares of Class B Common Stock, \$.001 par value and no shares of the Corporation's preferred stock, \$.001 par value. Upon filing of this Certificate of Amendment and Restatement, each share of Class A and Class B common stock, \$.001 par value, outstanding shall be converted into \_\_\_\_ shares of new common stock, \$.001 par value.

IN WITNESS WHEREOF, said Fountain Pharmaceuticals, Inc. has caused this Certificate to be signed by Brendon K. Rennert, its President this \_\_\_\_ day of May, 2002.

FOUNTAIN PHARMACEUTICALS, INC.

By:

-----  
Name: Brendon K. Rennert  
Title: President

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Appendix B

FOUNTAIN PHARMACEUTICALS, INC.

2002 EQUITY INCENTIVE PLAN

ARTICLE I - PLAN

1.1 PURPOSE. This Plan is a plan for key Employees (including officers and employee directors) and Consultants of the Company and its Affiliates and is intended to advance the best interests of the Company, its Affiliates, and its stockholders by providing those persons who have substantial responsibility for

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the management and growth of the Company and its Affiliates with additional incentives and an opportunity to obtain or increase their proprietary interest in the Company, thereby encouraging them to continue in the employ of the Company or any of its Affiliates.

1.2 RULE 16B-3 PLAN. The Plan is intended to comply with all applicable conditions of Rule 16b-3 (and all subsequent revisions thereof) promulgated under the Securities Exchange Act of 1934, as amended (the "1934 Act"). To the extent any provision of the Plan or action by the Board of Directors or Committee fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee. In addition, the Board of Directors may amend the Plan from time to time as it deems necessary in order to meet the requirements of any amendments to Rule 16b-3 without the consent of the shareholders of the Company.

1.3 EFFECTIVE DATE OF PLAN. The Plan shall be effective May 15, 2002 (the "Effective Date"), provided that within one year of the Effective Date, the Plan shall have been approved by at least a majority vote of stockholders. No Incentive Option, Nonqualified Option, Stock Appreciation Right, Restricted Stock Award or Performance Stock Award shall be granted pursuant to the Plan ten years after the Effective Date.

### ARTICLE II - DEFINITIONS

The words and phrases defined in this Article shall have the meaning set out in these definitions throughout this Plan, unless the context in which any such word or phrase appears reasonably requires a broader, narrower, or different meaning.

2.1 "AFFILIATE" means any parent corporation and any subsidiary corporation. The term "parent corporation" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if, at the time of the action or transaction, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain. The term "subsidiary corporation" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if, at the time of the action or transaction, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

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2.2 "AWARD" means each of the following granted under this Plan: Incentive Option, Nonqualified Option, Stock Appreciation Right, Restricted Stock Award or Performance Stock Award.

2.3 "BONUS STOCK AWARD" means an Award of Bonus Stock.

2.4 "BOARD OF DIRECTORS" means the board of directors of the Company.

2.5 "CHANGE IN CONTROL" shall mean and include the following transactions or situations:

(a) A sale, transfer, or other disposition by the Company through a single transaction or a series of transactions of securities of the Company representing thirty (30%) percent or more of the combined voting power of the Company's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this definition,

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the term "Person" shall mean and include any individual, partnership, joint venture, association, trust corporation, or other entity (including a "group" as referred to in Section 13(d)(3) of the 1934 Act). For purposes of this definition, the term "Unrelated Person" shall mean and include any Person other than the Company, a wholly-owned subsidiary of the Company, or an employee benefit plan of the Company; provided however, a sale to underwriters in connection with a public offering of the Company's securities pursuant to a firm commitment shall not be a Change of Control.

(b) A sale, transfer, or other disposition through a single transaction or a series of transactions of all or substantially all of the assets of the Company to an Unrelated Person or Unrelated Persons acting in concert with one another.

(c) A change in the ownership of the Company through a single transaction or a series of transactions such that any Unrelated Person or Unrelated Persons acting in concert with one another become the "Beneficial Owner," directly or indirectly, of securities of the Company representing at least thirty (30%) percent of the combined voting power of the Company's then outstanding securities. For purposes of this definition, the term "Beneficial Owner" shall have the same meaning as given to that term in Rule 13d-3 promulgated under the 1934 Act, provided that any pledgee of voting securities is not deemed to be the Beneficial Owner thereof prior to its acquisition of voting rights with respect to such securities.

(d) Any consolidation or merger of the Company with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of the Company immediately prior to the consolidation or merger are the beneficial owners of securities of the surviving corporation representing at least fifty (50%) percent of the combined voting power of the surviving corporation's then outstanding securities.

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(e) During any period of two years, individuals who, at the beginning of such period, constituted the Board of Directors of the Company cease, for any reason, to constitute at least a majority thereof, unless the election or nomination for election of each new director was approved by the vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period.

(f) A change in control of the Company of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the 1934 Act, or any successor regulation of similar importance, regardless of whether the Company is subject to such reporting requirement.

2.6 "CODE" means the Internal Revenue Code of 1986, as amended.

2.7 "COMMITTEE" means the Compensation Committee of the Board of Directors or such other committee designated by the Board of Directors. The Committee shall be comprised solely of at least two members who are both Disinterested Persons and Outside Directors or by the Board of Directors in its entirety.

2.8 "COMPANY" means Fountain Pharmaceuticals, Inc.

2.9 "CONSULTANT" means any person, including an advisor, engaged by the Company or Affiliate to render services and who is compensated for such services.

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2.10 "DISINTERESTED PERSON" means a "disinterested person" as that term is defined in Rule 16b-3 under the 1934 Act.

2.11 "ELIGIBLE PERSONS" shall mean, with respect to the Plan, those persons who, at the time that an Award is granted, are (i) key personnel (including officers and directors) of the Company or Affiliate, or (ii) Consultants or independent contractors who provide valuable services to the Company or Affiliate as determined by the Committee.

2.12 "EMPLOYEE" means a person employed by the Company or any Affiliate to whom an Award is granted.

2.13 "FAIR MARKET VALUE" of the Stock as of any date means (a) the average of the high and low sale prices of the Stock on that date on the principal securities exchange on which the Stock is listed; or (b) if the Stock is not listed on a securities exchange, the average of the high and low sale prices of the Stock on that date as reported on the Nasdaq National Market System; or (c) if the Stock is not listed on the Nasdaq National Market System, the average of the high and low bid quotations for the Stock on that date as reported by the National Quotation Bureau Incorporated; or (d) if none of the foregoing is applicable, an amount at the election of the Committee equal to (x), the average between the closing bid and ask prices per share of Stock on the last preceding date on which those prices were reported or (y) that amount as determined by the Committee in good faith.

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2.14 "INCENTIVE OPTION" means an option to purchase Stock granted under this Plan which is designated as an "Incentive Option" and satisfies the requirements of Section 422 of the Code.

2.15 "NONQUALIFIED OPTION" means an option to purchase Stock granted under this Plan other than an Incentive Option.

2.16 "OPTION" means both an Incentive Option and a Nonqualified Option granted under this Plan to purchase shares of Stock.

2.17 "OPTION AGREEMENT" means the written agreement by and between the Company and an Eligible Person which sets out the terms of an Option.

2.18 "OUTSIDE DIRECTOR" means a member of the Board of Directors serving on the Committee who satisfies Section 162(m) of the Code.

2.19 "PLAN" means the Fountain Pharmaceuticals, Inc. 2002 Equity Incentive Plan, as set out in this document and as it may be amended from time to time.

2.20 "PLAN YEAR" means the Company's fiscal year.

2.21 "PERFORMANCE STOCK AWARD" means an award of shares of Stock to be issued to an Eligible Person if specified predetermined performance goals are satisfied as described in Article VII.

2.22 "RESTRICTED STOCK" means Stock awarded or purchased under a Restricted Stock Agreement entered into pursuant to this Plan, together with (i) all rights, warranties or similar items attached or accruing thereto or represented by the certificate representing the stock and (ii) any stock or securities into which or for which the stock is thereafter converted or exchanged. The terms and conditions of the Restricted Stock Agreement shall be determined by the Committee consistent with the terms of the Plan.

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2.23 "RESTRICTED STOCK AGREEMENT" means an agreement between the Company or any Affiliate and the Eligible Person pursuant to which the Eligible Person receives a Restricted Stock Award subject to Article VI.

2.24 "RESTRICTED STOCK AWARD" means an Award of Restricted Stock.

2.25 "RESTRICTED STOCK PURCHASE PRICE" means the purchase price, if any, per share of Restricted Stock subject to an Award. The Restricted Stock Purchase Price shall be determined by the Committee. It may be greater than or less than the Fair Market Value of the Stock on the date of the Stock Award.

2.26 "STOCK" means the common stock of the Company, \$.001 par value or, in the event that the outstanding shares of common stock are later changed into or exchanged for a different class of stock or securities of the Company or another corporation, that other stock or security.

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2.27 "STOCK APPRECIATION RIGHT" and "SAR" means the right to receive the difference between the Fair Market Value of a share of Stock on the grant date and the Fair Market Value of the share of Stock on the exercise date.

2.28 "10% STOCKHOLDER" means an individual who, at the time the Option is granted, owns Stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of any Affiliate. An individual shall be considered as owning the Stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its stockholders, partners, or beneficiaries.

### ARTICLE III - ELIGIBILITY

The individuals who shall be eligible to receive Awards shall be those Eligible Persons of the Company or any of its Affiliates as the Committee shall determine from time to time. However, no member of the Committee shall be eligible to receive any Award or to receive Stock, Options, Stock Appreciation Rights or any Performance Stock Award under any other plan of the Company or any of its Affiliates, if to do so would cause the individual not to be a Disinterested Person or Outside Director. The Board of Directors may designate one or more individuals who shall not be eligible to receive any Award under this Plan or under other similar plans of the Company.

### ARTICLE IV - GENERAL PROVISIONS RELATING TO AWARDS

4.1 AUTHORITY TO GRANT AWARDS. The Committee may grant to those Eligible Persons of the Company or any of its Affiliates as it shall from time to time determine, Awards under the terms and conditions of this Plan. Subject only to any applicable limitations set out in this Plan, the number of shares of Stock to be covered by any Award to be granted to an Eligible Person shall be determined by the Committee.

4.2 SHARES SUBJECT TO PLAN. The total number of shares of Stock set aside for Awards may be granted under the Plan shall be 3,000,000 shares. The shares may be treasury shares or authorized but unissued shares. The maximum number of shares subject to options or stock appreciation rights which may be issued to any eligible person under the plan during each plan year shall be determined by the Committee. The maximum number of shares subject to restricted

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stock awards which may be granted to any eligible person under the plan during each plan year shall be determined by the Committee. The maximum number of shares subject to performance stock awards which may be granted to any eligible person during each plan year shall be determined by the Committee. The number of

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shares stated in this Section 4.2 shall be subject to adjustment in accordance with the provisions of Section 4.5. In the event that any outstanding Award shall expire or terminate for any reason or any Award is surrendered, the shares of Stock allocable to the unexercised portion of that Award may again be subject to an Award under the Plan.

4.3 NON-TRANSFERABILITY. Awards shall not be transferable by the Eligible Person otherwise than by will or under the laws of descent and distribution, and shall be exercisable, during the Eligible Person's lifetime, only by him. Restricted Stock shall be purchased by and/or become vested under a Restricted Stock Agreement during the Eligible Person's lifetime, only by him. Any attempt to transfer an Award other than under the terms of the Plan and the Agreement shall terminate the Award and all rights of the Eligible Person to that Award.

4.4 REQUIREMENTS OF LAW. The Company shall not be required to sell or issue any Stock under any Award if issuing that Stock would constitute or result in a violation by the Eligible Person or the Company of any provision of any law, statute, or regulation of any governmental authority. Specifically, in connection with any applicable statute or regulation relating to the registration of securities, upon exercise of any Option or pursuant to any Award, the Company shall not be required to issue any Stock unless the Committee has received evidence satisfactory to it to the effect that the holder of that Option or Award will not transfer the Stock except in accordance with applicable law, including receipt of an opinion of counsel satisfactory to the Company to the effect that any proposed transfer complies with applicable law. The determination by the Committee on this matter shall be final, binding and conclusive. The Company may, but shall in no event be obligated to, register any Stock covered by this Plan pursuant to applicable securities laws of any country or any political subdivision. In the event the Stock issuable on exercise of an Option or pursuant to an Award is not registered, the Company may imprint on the certificate evidencing the Stock any legend that counsel for the Company considers necessary or advisable to comply with applicable law. The Company shall not be obligated to take any other affirmative action in order to cause the exercise of an Option or vesting under an Award, or the issuance of shares pursuant thereto, to comply with any law or regulation of any governmental authority.

### 4.5 CHANGES IN THE COMPANY'S CAPITAL STRUCTURE.

(a) The existence of outstanding Options or Awards shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations or other changes in the Company's capital structure or its business, or any merger or consolidation of the Company, or any issue of bonds, debentures, preferred or prior preference stock ahead of or affecting the Stock or its rights, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise. If the Company shall effect a subdivision or consolidation of shares or other capital readjustment, the payment of a Stock dividend, or other increase or reduction of the number of shares of the Stock outstanding, without receiving compensation for it in money, services or property, then (a) the number, class, and per share price of shares of Stock subject to outstanding Options under this Plan shall be appropriately

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adjusted in such a manner as to entitle an Eligible Person to receive upon exercise of an Option, for the same aggregate cash consideration, the equivalent

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total number and class of shares he would have received had he exercised his Option in full immediately prior to the event requiring the adjustment; and (b) the number and class of shares of Stock then reserved to be issued under the Plan shall be adjusted by substituting for the total number and class of shares of Stock then reserved, that number and class of shares of Stock that would have been received by the owner of an equal number of outstanding shares of each class of Stock as the result of the event requiring the adjustment.

(b) If the Company is merged or consolidated with another corporation and the Company is not the surviving corporation, or if the Company is liquidated or sells or otherwise disposes of substantially all its assets while unexercised Options remain outstanding under this Plan:

- (i) subject to the provisions of clause (c) below, after the effective date of the merger, consolidation, liquidation, sale or other disposition, as the case may be, each holder of an outstanding Option shall be entitled, upon exercise of the Option, to receive, in lieu of shares of Stock, the number and class or classes of shares of stock or other securities or property to which the holder would have been entitled if, immediately prior to the merger, consolidation, liquidation, sale or other disposition, the holder had been the holder of record of a number of shares of Stock equal to the number of shares as to which the Option shall be so exercised;
- (ii) the Board of Directors may waive any limitations set out in or imposed under this Plan so that all Options, from and after a date prior to the effective date of the merger, consolidation, liquidation, sale or other disposition, as the case may be, specified by the Board of Directors, shall be exercisable in full; and
- (iii) all outstanding Options may be canceled by the Board of Directors as of the effective date of any merger, consolidation, liquidation, sale or other disposition, if (i) notice of cancellation shall be given to each holder of an Option and (ii) each holder of an Option shall have the right to exercise that Option in full (without regard to any limitations set out in or imposed under this Plan or the Option Agreement granting that Option) during a period set by the Board of Directors preceding the effective date of the merger, consolidation, liquidation, sale or other disposition and, if in the event all outstanding Options may not be exercised in full under applicable securities laws without registration of the shares of Stock issuable on exercise of the Options, the Board of Directors may limit the exercise of the Options to the number of shares of Stock, if any, as may be issued without registration. The method of choosing which Options may be exercised, and the number of shares of Stock for which Options may be exercised, shall be solely

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within the discretion of the Board of Directors.

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(c) After a merger of one or more corporations into the Company or after a consolidation of the Company and one or more corporations in which the Company shall be the surviving corporation, each Eligible Person shall be entitled to have his Restricted Stock and shares earned under a Performance Stock Award appropriately adjusted based on the manner the Stock was adjusted under the terms of the agreement of merger or consolidation.

(d) In each situation described in this Section 4.5, the Committee will make similar adjustments, as appropriate, in outstanding Stock Appreciation Rights.

(e) The issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, for cash or property, or for labor or services either upon direct sale or upon the exercise of rights or warrants to subscribe for them, or upon conversion of shares or obligations of the Company convertible into shares or other securities, shall not affect, and no adjustment by reason of such issuance shall be made with respect to, the number, class, or price of shares of Stock then subject to outstanding Awards.

4.6 ELECTION UNDER SECTION 83(B) OF THE CODE. No Employee shall exercise the election permitted under Section 83(b) of the Code without written approval of the Committee. Any Employee doing so shall forfeit all Awards issued to him under this Plan.

### ARTICLE V - OPTIONS AND STOCK APPRECIATION RIGHTS

5.1 TYPE OF OPTION. The Committee shall specify at the time of grant whether a given Option shall constitute an Incentive Option or a Nonqualified Option. Incentive Stock Options may only be granted to Employees.

5.2 OPTION PRICE. The price at which Stock may be purchased under an Incentive Option shall not be less than the greater of: (a) 100% of the Fair Market Value of the shares of Stock on the date the Option is granted or (b) the aggregate par value of the shares of Stock on the date the Option is granted. The Committee in its discretion may provide that the price at which shares of Stock may be purchased under an Incentive Option shall be more than 100% of Fair Market Value. In the case of any 10% Stockholder, the price at which shares of Stock may be purchased under an Incentive Option shall not be less than 110% of the Fair Market Value of the Stock on the date the Incentive Option is granted. The price at which shares of Stock may be purchased under a Nonqualified Option shall be such price as shall be determined by the Committee in its sole discretion but in no event lower than the par value of the shares of Stock on the date the Option is granted.

5.3 DURATION OF OPTIONS AND SARS. No Option or SAR shall be exercisable after the expiration of ten (10) years from the date the Option or SAR is granted. In the case of a 10% Stockholder, no Incentive Option shall be exercisable after the expiration of five years from the date the Incentive Option is granted.

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5.4 AMOUNT EXERCISABLE -- INCENTIVE OPTIONS. Each Option may be exercised from time to time, in whole or in part, in the manner and subject to the conditions the Committee, in its sole discretion, may provide in the Option



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Agreement, as long as the Option is valid and outstanding, and further provided that no Option may be exercisable within six (6) months of the date of grant, unless otherwise stated in the Option Agreement. To the extent that the aggregate Fair Market Value (determined as of the time an Incentive Option is granted) of the Stock with respect to which Incentive Options first become exercisable by the optionee during any calendar year (under this Plan and any other incentive stock option plan(s) of the Company or any Affiliate) exceeds \$100,000, the portion in excess of \$100,000 of the Incentive Option shall be treated as a Nonqualified Option. In making this determination, Incentive Options shall be taken into account in the order in which they were granted.

5.5 EXERCISE OF OPTIONS. Each Option shall be exercised by the delivery of written notice to the Committee setting forth the number of shares of Stock with respect to which the Option is to be exercised, together with:

(a) cash, certified check, bank draft, or postal or express money order payable to the order of the Company for an amount equal to the option price of the shares,

(b) Stock at its Fair Market Value on the date of exercise, (if approved in advance by the Committee),

(c) an election to make a cashless exercise through a registered broker-dealer (if approved in advance by the Committee),

(d) an election to have shares of Stock, which otherwise would be issued on exercise, withheld in payment of the exercise price (if approved in advance by the Committee), and/or

(e) any other form of payment which is acceptable to the Committee, including without limitation, payment in the form of a promissory note, and specifying the address to which the certificates for the shares are to be mailed.

As promptly as practicable after receipt of written notification and payment, the Company shall deliver to the Eligible Person certificates for the number of shares with respect to which the Option has been exercised, issued in the Eligible Person's name. If shares of Stock are used in payment, the aggregate Fair Market Value of the shares of Stock tendered must be equal to or less than the aggregate exercise price of the shares being purchased upon exercise of the Option, and any difference must be paid by cash, certified check, bank draft, or postal or express money order payable to the order of the Company. Delivery of the shares shall be deemed effected for all purposes when a stock transfer agent of the Company shall have deposited the certificates in the United States mail, addressed to the Eligible Person, at the address specified by the Eligible Person.

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Whenever an Option is exercised by exchanging shares of Stock owned by the Eligible Person, the Eligible Person shall deliver to the Company certificates registered in the name of the Eligible Person representing a number of shares of Stock legally and beneficially owned by the Eligible Person, free of all liens, claims, and encumbrances of every kind, accompanied by stock powers duly endorsed in blank by the record holder of the shares represented by the certificates (with signature guaranteed by a commercial bank or trust company or by a brokerage firm having a membership on a registered national stock exchange). The delivery of certificates upon the exercise of Options is subject to the condition that the person exercising the Option provide the Company with the information the Company might reasonably request pertaining to exercise, sale or other disposition.

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5.6 STOCK APPRECIATION RIGHTS. All Eligible Persons shall be eligible to receive Stock Appreciation Rights. The Committee shall determine the SAR to be awarded from time to time to any Eligible Person. The grant of an SAR to be awarded from time to time shall neither entitle such person to, nor disqualify such person, from participation in any other grant of awards by the Company, whether under this Plan or any other plan of the Company. If granted as a stand-alone SAR Award, the terms of the Award shall be provided in a Stock Appreciation Rights Agreement.

5.7 STOCK APPRECIATION RIGHTS IN TANDEM WITH OPTIONS. Stock Appreciation Rights may, at the discretion of the Committee, be included in each Option granted under the Plan to permit the holder of an Option to surrender that Option, or a portion of the part which is then exercisable, and receive in exchange, upon the conditions and limitations set by the Committee, an amount equal to the excess of the Fair Market Value of the Stock covered by the Option, or the portion of it that was surrendered, determined as of the date of surrender, over the aggregate exercise price of the Stock. The payment may be made in shares of Stock valued at Fair Market Value, in cash, or partly in cash and partly in shares of Stock, as the Committee shall decide in its sole discretion. Stock Appreciation Rights may be exercised only when the Fair Market Value of the Stock covered by the Option surrendered exceeds the exercise price of the Stock. In the event of the surrender of an Option, or a portion of it, to exercise the Stock Appreciation Rights, the shares represented by the Option or that part of it which is surrendered, shall not be available for reissuance under the Plan. Each Stock Appreciation Right issued in tandem with an Option (a) will expire not later than the expiration of the underlying Option, (b) may be for no more than 100% of the difference between the exercise price of the underlying Option and the Fair Market Value of a share of Stock at the time the Stock Appreciation Right is exercised, (c) is transferable only when the underlying Option is transferable, and under the same conditions, and (d) may be exercised only when the underlying Option is eligible to be exercised.

5.8 CONDITIONS OF STOCK APPRECIATION RIGHTS. All Stock Appreciation Rights shall be subject to such terms, conditions, restrictions or limitations as the Committee deems appropriate, including by way of illustration but not by way of limitation, restrictions on transferability, requirement of continued employment, individual performance, financial performance of the Company or payment of any applicable employment or withholding taxes.

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5.9 PAYMENT OF STOCK APPRECIATION RIGHTS. The amount of payment to which the Eligible Person who reserves an SAR shall be entitled upon the exercise of each SAR shall be equal to the amount, if any by which the Fair Market Value of the specified shares of Stock on the exercise date exceeds the Fair Market Value of the specified shares of Stock on the date of grant of the SAR. The SAR shall be paid in either cash or Stock, as determined in the discretion of the Committee as set forth in the SAR agreement. If the payment is in Stock, the number of shares to be paid shall be determined by dividing the amount of such payment by the Fair Market Value of Stock on the exercise date of such SAR.

5.10 EXERCISE ON TERMINATION OF EMPLOYMENT. Unless it is expressly provided otherwise in the Option or SAR agreement, Options and SAR granted to Employees shall terminate one day less than three months after severance of employment of the Employee from the Company and all Affiliates for any reason, with or without cause, other than death, retirement under the then established rules of the Company, or severance for disability. Whether authorized leave of absence or absence on military or government service shall constitute severance of the employment of the Employee shall be determined by the Committee at that

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time.

5.11 DEATH. If, before the expiration of an Option or SAR, the Eligible Person, whether in the employ of the Company or after he has retired or was severed for disability, or otherwise dies, the Option or SAR shall continue until the earlier of the Option's or SAR's expiration date or one year following the date of his death, unless it is expressly provided otherwise in the Option or SAR agreement. After the death of the Eligible Person, his executors, administrators or any persons to whom his Option or SAR may be transferred by will or by the laws of descent and distribution shall have the right, at any time prior to the Option's or SAR's expiration or termination, whichever is earlier, to exercise it, to the extent to which he was entitled to exercise it immediately prior to his death, unless it is expressly provided otherwise in the Option or SAR's agreement.

5.12 RETIREMENT. Unless it is expressly provided otherwise in the Option Agreement, before the expiration of an Incentive Option, the Employee shall be retired in good standing from the employ of the Company under the then established rules of the Company, the Incentive Option shall terminate on the earlier of the Option's expiration date or one day less than one year after his retirement; provided, if an Incentive Option is not exercised within specified time limits prescribed by the Code, it will become a Nonqualified Option by operation of law. Unless it is expressly provided otherwise in the Option Agreement, if before the expiration of a Nonqualified Option, the Employee shall be retired in good standing from the employ of the Company under the then established rules of the Company, the Nonqualified Option shall terminate on the earlier of the Nonqualified Option's expiration date or one day less than one year after his retirement. In the event of retirement, the Employee shall have the right prior to the termination of the Nonqualified Option to exercise the Nonqualified Option, to the extent to which he was entitled to exercise it immediately prior to his retirement, unless it is expressly provided otherwise in the Option Agreement. Upon retirement, an SAR shall continue to be exercisable for the remainder of the term of the SAR agreement.

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5.13 DISABILITY. If, before the expiration of an Option or SAR, the Employee shall be severed from the employ of the Company for disability, the Option or SAR shall terminate on the earlier of the Option's or SAR's expiration date or one day less than one year after the date he was severed because of disability, unless it is expressly provided otherwise in the Option or SAR agreement. In the event that the Employee shall be severed from the employ of the Company for disability, the Employee shall have the right prior to the termination of the Option or SAR to exercise the Option, to the extent to which he was entitled to exercise it immediately prior to his retirement or severance of employment for disability, unless it is expressly provided otherwise in the Option Agreement.

5.14 SUBSTITUTION OPTIONS. Options may be granted under this Plan from time to time in substitution for stock options held by employees of other corporations who are about to become employees of or affiliated with the Company or any Affiliate as the result of a merger or consolidation of the employing corporation with the Company or any Affiliate, or the acquisition by the Company or any Affiliate of the assets of the employing corporation, or the acquisition by the Company or any Affiliate of stock of the employing corporation as the result of which it becomes an Affiliate of the Company. The terms and conditions of the substitute Options granted may vary from the terms and conditions set out in this Plan to the extent the Committee, at the time of grant, may deem appropriate to conform, in whole or in part, to the provisions of the stock options in substitution for which they are granted.

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5.15 RELOAD OPTIONS. Without in any way limiting the authority of the Board of Directors or Committee to make or not to make grants of Options hereunder, the Board of Directors or Committee shall have the authority (but not an obligation) to include as part of any Option Agreement a provision entitling the Eligible Person to a further Option (a "Reload Option") in the event the Eligible Person exercises the Option evidenced by the Option Agreement, in whole or in part, by surrendering other shares of Stock in accordance with this Plan and the terms and conditions of the Option Agreement. Any such Reload Option (a) shall be for a number of shares equal to the number of shares surrendered as part or all of the exercise price of such Option; (b) shall have an expiration date which is the greater of (i) the same expiration date of the Option the exercise of which gave rise to such Reload Option or (ii) one year from the date of grant of the Reload Option; and (c) shall have an exercise price which is equal to one hundred percent (100%) of the Fair Market Value of the Stock subject to the Reload Option on the date of exercise of the original Option. Notwithstanding the foregoing, a Reload Option which is an Incentive Option and which is granted to a 10% Stockholder, shall have an exercise price which is equal to one hundred ten percent (110%) of the Fair Market Value of the Stock subject to the Reload Option on the date of exercise of the original Option and shall have a term which is no longer than five (5) years.

Any such Reload Option may be an Incentive Option or a Nonqualified Option, as the Board of Directors or Committee may designate at the time of the grant of the original Option; provided, however, that the designation of any Reload Option as an Incentive Option shall be subject to the one hundred thousand dollar (\$100,000) annual limitation on exercisability of Incentive Stock Options described in the Plan and in Section 422(d) of the Code. There shall be no Reload Options on a Reload Option. Any such Reload Option shall be subject to the availability of sufficient shares under Section 4.2 herein and shall be subject to such other terms and conditions as the Board of Directors or Committee may determine which are not inconsistent with the express provisions of the Plan regarding the terms of Options.

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5.16 NO RIGHTS AS STOCKHOLDER. No Eligible Person shall have any rights as a stockholder with respect to Stock covered by his Option until the date a stock certificate is issued for the Stock.

### ARTICLE VI - RESTRICTED STOCK AWARDS

6.1 RESTRICTED STOCK AWARDS. The Committee may issue shares of Stock to an Eligible Person subject to the terms of a Restricted Stock Agreement. The Restricted Stock may be issued for no payment by the Eligible Person or for a payment below the Fair Market Value on the date of grant. Restricted Stock shall be subject to restrictions as to sale, transfer, alienation, pledge or other encumbrance and generally will be subject to vesting over a period of time specified in the Restricted Stock Agreement. The Committee shall determine the period of vesting, the number of shares, the price, if any, of Stock included in a Restricted Stock Award, and the other terms and provisions which are included in a Restricted Stock Agreement.

6.2 RESTRICTIONS. Restricted Stock shall be subject to the terms and conditions as determined by the Committee, including without limitation, any or all of the following:

(a) a prohibition against the sale, transfer, alienation, pledge or other encumbrance of the shares of Restricted Stock, such prohibition to lapse (i) at such time or times as the Committee shall determine (whether in annual or more frequent installments, at the time of the death, disability or retirement of the holder of such shares, or otherwise);

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(b) a requirement that the holder of shares of Restricted Stock forfeit, or in the case of shares sold to an Eligible Person, resell back to the Company at his cost, all or a part of such shares in the event of termination of the Eligible Person's employment during any period in which the shares remain subject to restrictions;

(c) a prohibition against employment of the holder of Restricted Stock by any competitor of the Company or its Affiliates, or against such holder's dissemination of any secret or confidential information belonging to the Company or an Affiliate;

(d) unless stated otherwise in the Restricted Stock Agreement,

(i) if restrictions remain at the time of severance of employment with the Company and all Affiliates, other than for reason of disability or death, the Restricted Stock shall be forfeited; and

(ii) if severance of employment is by reason of disability or death, the restrictions on the shares shall lapse and the Eligible Person or his heirs or estate shall be 100% vested in the shares subject to the Restricted Stock Agreement.

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6.3 STOCK CERTIFICATE. Shares of Restricted Stock shall be registered in the name of the Eligible Person receiving the Restricted Stock Award and deposited, together with a stock power endorsed in blank, with the Company. Each such certificate shall bear a legend in substantially the following form:

"The transferability of this certificate and the shares of Stock represented by it is restricted by and subject to the terms and conditions (including conditions of forfeiture) contained in the Fountain Pharmaceuticals, Inc. 2002 Equity Incentive Plan, and an agreement entered into between the registered owner and the Company. A copy of the Plan and agreement is on file in the office of the Secretary of the Company."

6.4 RIGHTS AS STOCKHOLDER. Subject to the terms and conditions of the Plan, each Eligible Person receiving a certificate for Restricted Stock shall have all the rights of a stockholder with respect to the shares of Stock included in the Restricted Stock Award during any period in which such shares are subject to forfeiture and restrictions on transfer, including without limitation, the right to vote such shares. Dividends paid with respect to shares of Restricted Stock in cash or property other than Stock in the Company or rights to acquire stock in the Company shall be paid to the Eligible Person currently. Dividends paid in Stock in the Company or rights to acquire Stock in the Company shall be added to and become a part of the Restricted Stock.

6.5 LAPSE OF RESTRICTIONS. At the end of the time period during which any shares of Restricted Stock are subject to forfeiture and restrictions on sale, transfer, alienation, pledge, or other encumbrance, such shares shall vest and will be delivered in a certificate, free of all restrictions, to the Eligible Person or to the Eligible Person's legal representative, beneficiary or heir; provided the certificate shall bear such legend, if any, as the Committee determines is reasonably required by applicable law. By accepting a Stock Award and executing a Restricted Stock Agreement, the Eligible Person agrees to remit when due any federal and state income and employment taxes required to be

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withheld.

6.6 RESTRICTION PERIOD. No Restricted Stock Award may provide for restrictions continuing beyond ten (10) years from the date of grant.

### ARTICLE VII - PERFORMANCE STOCK AWARDS

7.1 AWARD OF PERFORMANCE STOCK. The Committee may award shares of Stock, without any payment for such shares, to designated Eligible Persons if specified performance goals established by the Committee are satisfied. The

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terms and provisions herein relating to these performance based awards are intended to satisfy Section 162(m) of the Code and regulations issued thereunder. The designation of an employee eligible for a specific Performance Stock Award shall be made by the Committee in writing prior to the beginning of the period for which the performance is measured (or within such period as permitted by IRS regulations). The Committee shall establish the maximum number of shares of Stock to be issued to a designated Employee if the performance goal or goals are met. The Committee reserves the right to make downward adjustments in the maximum amount of an Award if in its discretion unforeseen events make such adjustment appropriate.

7.2 PERFORMANCE GOALS. Performance goals determined by the Committee may be based on specified increases in cash flow, net profits, Stock price, Company, segment or Affiliate sales, market share, earnings per share, return on assets, and/or return on stockholders' equity.

7.3 ELIGIBILITY. The employees eligible for Performance Stock Awards are the senior officers (i.e., chief executive officer, president, vice presidents, secretary, treasurer, and similar positions) of the Company and its Affiliates, and such other employees of the Company and its Affiliates as may be designated by the Committee.

7.4 CERTIFICATE OF PERFORMANCE. The Committee must certify in writing that a performance goal has been attained prior to issuance of any certificate for a Performance Stock Award to any Employee. If the Committee certifies the entitlement of an Employee to the Performance Stock Award, the certificate will be issued to the Employee as soon as administratively practicable, and subject to other applicable provisions of the Plan, including but not limited to, all legal requirements and tax withholding. However, payment may be made in shares of Stock, in cash, or partly in cash and partly in shares of Stock, as the Committee shall decide in its sole discretion. If a cash payment is made in lieu of shares of Stock, the number of shares represented by such payment shall not be available for subsequent issuance under this Plan.

### ARTICLE VII - BONUS STOCK AWARDS

8.1 AWARD OF BONUS STOCK. The committee may award shares of Stock to Eligible Persons, without any payment for such shares and without any specified performance goals. The Committee reserves the right to issue such amount of shares to Eligible Persons as the Committee deems fit.

8.2 ELIGIBILITY. The Employees eligible for Bonus Stock Awards are the senior officers (i.e., chief executive officer, chief operating officer, chief financial officer, president, vice presidents, secretary, treasurer, and similar positions) and consultants of the Company and its Affiliates, and such other employees of the Company and its Affiliates as may be designated by the

Committee.

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ARTICLE IX - ADMINISTRATION

The Plan shall be administered by the Committee. All questions of interpretation and application of the Plan and Awards shall be subject to the determination of the Committee. A majority of the members of the Committee shall constitute a quorum. All determinations of the Committee shall be made by a majority of its members. Any decision or determination reduced to writing and signed by a majority of the members shall be as effective as if it had been made by a majority vote at a meeting properly called and held. This Plan shall be administered in such a manner as to permit the Options which are designated to be Incentive Options to qualify as Incentive Options. In carrying out its authority under this Plan, the Committee shall have full and final authority and discretion, including but not limited to the following rights, powers and authorities, to:

(a) determine the Eligible Persons to whom and the time or times at which Options or Awards will be made,

(b) determine the number of shares and the purchase price of Stock covered in each Option or Award, subject to the terms of the Plan,

(c) determine the terms, provisions and conditions of each Option and Award, which need not be identical,

(d) accelerate the time at which any outstanding Option or SAR may be exercised, or Restricted Stock Award will vest,

(e) define the effect, if any, on an Option or Award of the death, disability, retirement, or termination of employment of the Employee,

(f) prescribe, amend and rescind rules and regulations relating to administration of the Plan, and

(g) make all other determinations and take all other actions deemed necessary, appropriate, or advisable for the proper administration of this Plan.

The actions of the Committee in exercising all of the rights, powers, and authorities set out in this Article and all other Articles of this Plan, when performed in good faith and in its sole judgment, shall be final, conclusive and binding on all parties.

ARTICLE X - AMENDMENT OR TERMINATION OF PLAN

The Board of Directors of the Company may amend, terminate or suspend this Plan at any time, in its sole and absolute discretion; provided, however, that to the extent required to qualify this Plan under Rule 16b-3 promulgated under Section 16 of the Securities Exchange Act of 1934, as amended, no amendment that would (a) materially increase the number of shares of Stock that may be issued under this Plan, (b) materially modify the requirements as to eligibility for participation in this Plan, or (c) otherwise materially increase

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the benefits accruing to participants under this Plan, shall be made without the approval of the Company's stockholders; provided further, however, that to the

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extent required to maintain the status of any Incentive Option under the Code, no amendment that would (a) change the aggregate number of shares of Stock which may be issued under Incentive Options, (b) change the class of employees eligible to receive Incentive Options, or (c) decrease the Option price for Incentive Options below the Fair Market Value of the Stock at the time it is granted, shall be made without the approval of the Company's stockholders. Subject to the preceding sentence, the Board of Directors shall have the power to make any changes in the Plan and in the regulations and administrative provisions under it or in any outstanding Incentive Option as in the opinion of counsel for the Company may be necessary or appropriate from time to time to enable any Incentive Option granted under this Plan to continue to qualify as an incentive stock option or such other stock option as may be defined under the Code so as to receive preferential federal income tax treatment.

### ARTICLE XI - MISCELLANEOUS

11.1 NO ESTABLISHMENT OF A TRUST FUND. No property shall be set aside nor shall a trust fund of any kind be established to secure the rights of any Eligible Person under this Plan. All Eligible Persons shall at all times rely solely upon the general credit of the Company for the payment of any benefit which becomes payable under this Plan.

11.2 NO EMPLOYMENT OBLIGATION. The granting of any Option or Award shall not constitute an employment contract, express or implied, nor impose upon the Company or any Affiliate any obligation to employ or continue to employ any Eligible Person. The right of the Company or any Affiliate to terminate the employment of any person shall not be diminished or affected by reason of the fact that an Option or Award has been granted to him.

11.3 FORFEITURE. Notwithstanding any other provisions of this Plan, if the Committee finds by a majority vote after full consideration of the facts that an Eligible Person, before or after termination of his employment with the Company or an Affiliate for any reason (a) committed or engaged in fraud, embezzlement, theft, commission of a felony, or proven dishonesty in the course of his employment by the Company or an Affiliate, which conduct damaged the Company or Affiliate, or disclosed trade secrets of the Company or an Affiliate, or (b) participated, engaged in or had a material, financial or other interest, whether as an employee, officer, director, consultant, contractor, stockholder, owner, or otherwise, in any commercial endeavor in the United States which is competitive with the business of the Company or an Affiliate without the written consent of the Company or Affiliate, the Eligible Person shall forfeit all outstanding Options and all outstanding Awards, and including all exercised Options and other situations pursuant to which the Company has not yet delivered a stock certificate. Clause (b) shall not be deemed to have been violated solely by reason of the Eligible Person's ownership of stock or securities of any publicly owned corporation, if that ownership does not result in effective control of the corporation.

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The decision of the Committee as to the cause of an Employee's discharge, the damage done to the Company or an Affiliate, and the extent of an Eligible Person's competitive activity shall be final. No decision of the Committee, however, shall affect the finality of the discharge of the Employee by the Company or an Affiliate in any manner.

11.4 TAX WITHHOLDING. The Company or any Affiliate shall be entitled to deduct from other compensation payable to each Eligible Person any sums required by federal, state, or local tax law to be withheld with respect to the grant or exercise of an Option or SAR, lapse of restrictions on Restricted Stock, or



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award of Performance Stock. In the alternative, the Company may require the Eligible Person (or other person exercising the Option, SAR or receiving the Stock) to pay the sum directly to the employer corporation. If the Eligible Person (or other person exercising the Option or SAR or receiving the Stock) is required to pay the sum directly, payment in cash or by check of such sums for taxes shall be delivered within 10 days after the date of exercise or lapse of restrictions. The Company shall have no obligation upon exercise of any Option or lapse of restrictions on Stock until payment has been received, unless withholding (or offset against a cash payment) as of or prior to the date of exercise or lapse of restrictions is sufficient to cover all sums due with respect to that exercise. The Company and its Affiliates shall not be obligated to advise an Eligible Person of the existence of the tax or the amount which the employer corporation will be required to withhold.

11.5 WRITTEN AGREEMENT. Each Option and Award shall be embodied in a written agreement which shall be subject to the terms and conditions of this Plan and shall be signed by the Eligible Person and by a member of the Committee on behalf of the Committee and the Company or an executive officer of the Company, other than the Eligible Person, on behalf of the Company. The agreement may contain any other provisions that the Committee in its discretion shall deem advisable which are not inconsistent with the terms of this Plan.

11.6 INDEMNIFICATION OF THE COMMITTEE AND THE BOARD OF DIRECTORS. With respect to administration of this Plan, the Company shall indemnify each present and future member of the Committee and the Board of Directors against, and each member of the Committee and the Board of Directors shall be entitled without further act on his part to indemnity from the Company for, all expenses (including attorney's fees, the amount of judgments and the amount of approved settlements made with a view to the curtailment of costs of litigation, other than amounts paid to the Company itself) reasonably incurred by him in connection with or arising out of any action, suit, or proceeding in which he may be involved by reason of his being or having been a member of the Committee and/or the Board of Directors, whether or not he continues to be a member of the Committee and/or the Board of Directors at the time of incurring the expenses, including, without limitation, matters as to which he shall be finally adjudged in any action, suit or proceeding to have been found to have been negligent in the performance of his duty as a member of the Committee or the Board of Directors. However, this indemnity shall not include any expenses incurred by any member of the Committee and/or the Board of Directors in respect of matters as to which he shall be finally adjudged in any action, suit or proceeding to have been guilty of gross negligence or willful misconduct in the performance of his duty as a member of the Committee and the Board of Directors. In addition, no right of indemnification under this Plan shall be available to or enforceable by any member of the Committee and the Board of Directors unless, within 60 days after institution of any action, suit or proceeding, he shall have offered the

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Company, in writing, the opportunity to handle and defend same at its own expense. This right of indemnification shall inure to the benefit of the heirs, executors or administrators of each member of the Committee and the Board of Directors and shall be in addition to all other rights to which a member of the Committee and the Board of Directors may be entitled as a matter of law, contract, or otherwise.

11.7 GENDER. If the context requires, words of one gender when used in this Plan shall include the others and words used in the singular or plural shall include the other.

11.8 HEADINGS. Headings of Articles and Sections are included for convenience of reference only and do not constitute part of the Plan and shall

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not be used in construing the terms of the Plan.

11.9 OTHER COMPENSATION PLANS. The adoption of this Plan shall not affect any other stock option, incentive or other compensation or benefit plans in effect for the Company or any Affiliate, nor shall the Plan preclude the Company from establishing any other forms of incentive or other compensation for employees of the Company or any Affiliate.

11.10 OTHER OPTIONS OR AWARDS. The grant of an Option or Award shall not confer upon the Eligible Person the right to receive any future or other Options or Awards under this Plan, whether or not Options or Awards may be granted to similarly situated Eligible Persons, or the right to receive future Options or Awards upon the same terms or conditions as previously granted.

11.11 GOVERNING LAW. The provisions of this Plan shall be construed, administered, and governed under the laws of the State of Delaware.