As filed with the Securities and Exchange Commission on May 12, 2000

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT

Under

THE SECURITIES ACT OF 1933

Active Power, Inc.

(Exact name of registrant as specified in its charter)

Delaware	3261	74-2642142
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

Active Power, Inc.
11525 Stonehollow Dr.
Suite 110
Austin, TX 78758
Telephone: (512) 836-6464, Facsimile: (512) 836-4511

(Address, including zip code, and telephone number, including area code, of the registrant's principal executive offices)

Joseph F. Pinkerton, III
Chief Executive Officer
11525 Stonehollow Drive
Suite 110
Austin, TX 78758
Telephone: (512) 836-6464
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(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended, check the following box. [_]

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [_]

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [_]

CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee
Common Stock, $0.001 par value.........................	$100,000,000	$26,400

(1)Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o).

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities

and Exchange Commission, acting pursuant to such Section 8(a), may determine.

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THE INFORMATION IN THIS PRELIMINARY PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THESE SECURITIES MAY NOT BE SOLD UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PRELIMINARY PROSPECTUS IS NOT AN OFFER TO SELL NOR DOES IT SEEK AN OFFER TO BUY THESE SECURITIES IN ANY JURISDICTION WHERE THE OFFER OR SALE IS NOT PERMITTED.

Subject to Completion. Dated , 2000.

Shares

[LOGO OF ACTIVE POWER APPEARS HERE]

ACTIVE POWER, INC.

Common Stock

This is an initial public offering of shares of common stock of Active Power, Inc. All of the shares of common stock are being sold by Active Power.

Prior to this offering, there has been no public market for the common stock. It is estimated that the initial public offering price per share will be between $ and $. Active Power intends to have the common stock approved for quotation on the Nasdaq National Market under the symbol "ACPW".

See "Risk Factors" beginning on page 7 to read about factors you should consider before buying shares of our common stock.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY OTHER REGULATORY BODY HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

	Per Share	Total
Initial public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to Active Power	$	$

To the extent that the underwriters sell more than shares of common stock, the underwriters have the option to purchase up to an additional shares from Active Power and up to an additional shares from a selling stockholder identified in this prospectus at the initial public offering price less the underwriting discount. Active Power will not receive any of the proceeds from the sale of any shares sold by the selling stockholder.

The underwriters expect to deliver the shares against payment in New York, New York on , 2000.

GOLDMAN, SACHS & CO.

MERRILL LYNCH & CO.

MORGAN STANLEY DEAN WITTER

CIBC WORLD MARKETS

Prospectus dated , 2000.

[INSIDE FRONT COVER GRAPHICS]

[Description of graphics: The inside front cover has three graphical depictions.

The first graphic is located on the top half of the page and is captioned "Improving power quality for the digital economy". This graphic depicts conceptually how our products shield sensitive electronic equipment from power supply disturbances. The graphic depicts the flow of electricity from a power generating facility, located in the far left side of the graphic, along power transmission lines to the digital equipment of customers, located in the far right side of the graphic.

Clouds are depicted on the upper left portion of the graphic above the power transmission lines. Lightning bolts are shown striking down from the clouds onto the power lines, representing a storm-induced disturbance to the electricity supply.

In the center of the graphic, separating the power lines from the end-user's sensitive electronic equipment lies a rectangular box containing the Active Power name and logo, representing our products which protect the customer's equipment from the power disturbance.

Arrows pointing down and to the right represent clean electrical power flowing from the Active Power box to the user's telecommunications equipment, computer network and circuit boards that are located on the lower right of the graphic.

At the left side of the bottom of the page is a graphic with the caption "CleanSource UPS Technology". The graphic is a three-dimensional rendering of our CleanSource UPS product showing the exposed internal components of the product without its sheet-metal shell. The graphic shows the appearance and relative size and location of the components of the product. The flywheel energy storage component is visible at the bottom of the CleanSource UPS product while the UPS electronics appear closer to the top.

At the right side of the bottom of the page is a graphic with the caption "CAT branded CleanSource UPS". This graphic is a three-dimensional rendering of a Caterpillar-branded CleanSource UPS product showing the external appearance of the product with its painted sheet-metal shell. Caterpillar's "CAT" logo is visible on the upper left of the front side of the product.]

PROSPECTUS SUMMARY

This summary provides an overview of the key aspects of the offering. Because this is a summary, it may not contain all of the information that is important to you.

Active Power, Inc.

Overview

We design, manufacture and market power quality products that provide the consistent, reliable electric power required by today's digital economy. We are the first company to commercialize a flywheel energy storage system that provides a highly reliable, low-cost and non-toxic replacement for lead-acid batteries used in conventional power quality installations. Leveraging our expertise in this technology and in conjunction with Caterpillar, the leading maker of engine generators for the power reliability market, we have developed a battery-free power quality system, which is marketed under the Caterpillar brand name. As an extension of our existing product lines, we are developing a fully integrated continuous power system. The initial target market for this product is the rapidly growing telecommunications industry.

Industry Background

The worldwide demand for high quality electricity has been increasing rapidly in recent years, driven in large part by the growth in the use of computers, the Internet and telecommunications products. These applications are far less tolerant of voltage disturbances, such as sags and surges, and power outages, than conventional uses. A 1999 study by the Electric Power Research Institute estimated that electric power problems annually cost U.S. industry more than $30 billion in lost data, material and productivity. Almost all end users of sophisticated electronic equipment recognize these issues and are seeking solutions for their power quality and reliability problems.

Conventional Power Quality Systems and Their Limitations

Currently, there are a variety of approaches that attempt to address the deficiencies of power delivered by the electric utility grid. Conventional power quality systems have been constructed from an array of devices, including batteries for short-term power disturbances, engine generators, commonly referred to as "gensets", for longer-term outages, and control electronics to bridge the two. A short-term (seconds to minutes) energy storage device with control electronics is referred to as an uninterruptible power supply, or UPS. A UPS coupled with a genset to protect against longer-term outages (minutes to hours or days) is referred to as a continuous power system, or CPS. The conventional patchwork approach to UPS and CPS has resulted in inefficient systems that generally are expensive, unreliable and environmentally unsound.

Active Power's Products

Rather than adopt conventional approaches to power quality systems, we design new solutions specifically for the power quality market. As a result, we believe that we create products that are less expensive, more efficient and more reliable than other systems presently available.

CLEANSOURCE DC

Our first product, CleanSource DC, is a patented flywheel-based energy storage system that is a cost-effective, reliable, non-toxic replacement for the lead-acid batteries used in a UPS. Our flywheel stores kinetic energy by spinning constantly in a patented low-friction environment. When the user requires power, our product converts the kinetic energy of the spinning flywheel into electricity. Our first CleanSource DC unit was placed in service in March 1997. Our installed CleanSource DC units have accumulated over 235,000 hours of field operation without a loss of electric power.

CLEANSOURCE UPS

Our second product, CleanSource UPS, is the primary focus of our current sales efforts. It integrates UPS electronics, which detect any power quality problems and correct them by regulating the use of alternative sources of energy, with our flywheel-based energy storage system. As a result of the efficiencies created by the significant component overlap in the two systems, CleanSource UPS represents a compact, reliable and efficient power quality solution. When used with a genset, CleanSource UPS also provides a continuous power solution. We developed CleanSource UPS in collaboration with Caterpillar, the leading manufacturer and supplier of gensets to the power quality and reliability market. We have granted Caterpillar exclusive distribution rights to CleanSource UPS, subject to limited exceptions. It markets CleanSource UPS under the Caterpillar brand name. We believe that our relationship with Caterpillar provides our product with immediate brand recognition and provides us with access to Caterpillar's worldwide sales, service and support network.

FUTURE PRODUCTS

We also are developing additional products to increase the quality of power while decreasing its cost. These include:

FULLY INTEGRATED CONTINUOUS POWER SYSTEM. Leveraging the technology and design expertise developed in our earlier products, we are developing a fully integrated continuous power system. This system will combine short and long term energy storage and UPS functionality into one fully integrated system. We believe that this product will provide customers with higher levels of power reliability and lower operating costs than conventional patchwork, lead-acid battery based approaches. The initial target market for this product is as a back-up power source for distributed telecommunications applications.

DISTRIBUTED POWER TECHNOLOGY. Under an agreement with Caterpillar, the world's leading producer of distributed power systems, we are studying the potential benefits of a new type of electromechanical technology that can be used in distributed power applications.

OUR BUSINESS STRATEGY

Our goal is to become the leading supplier of power quality and reliability equipment. Key elements of our strategy include:

- designing, manufacturing and marketing optimal solutions for targeted markets;

- leveraging our core technologies to develop next generation products;

- distributing and marketing our products through established original equipment manufacturer channels;

- leveraging our relationship with Caterpillar to achieve rapid market penetration;

- outsourcing components to rapidly scale manufacturing; and

- aggressively protecting our intellectual property.

Market Opportunities

The Electric Power Research Institute estimates that power disturbances cost U.S. businesses more than $30 billion each year. According to industry sources, in 1999 businesses spent in excess of $10.0 billion globally on power quality and reliability products in an attempt to reduce these losses. Our current products, CleanSource DC and CleanSource UPS, are targeted at the $5.5 billion market for UPS, which is expected to grow at an annual rate of 10% to 15% over the next several years. We believe that our CleanSource products are superior alternatives to conventional UPS and CPS products and should be able to rapidly penetrate this growing segment of the power quality industry. With future products, we anticipate that we will be able to compete in most segments of this market.

We intend to focus on the following market opportunities:

Internet Market

A study conducted by the University of Texas and released by Cisco Systems, Inc. found that the U.S. Internet economy grew at an estimated average annual rate of 175% from 1995 to 1998. This study also projected that the U.S. Internet economy would grow to $507 billion in 1999, up 68% from 1998. To support this growth, internet service providers must construct new facilities to house the computers and communications systems required to provide around-the-clock service to their customers. To ensure continuous service, ISPs are adding power quality equipment to protect these systems.

Telecommunications Market

To ensure uninterrupted service, wireless telecommunications providers must have continuous power at each cellular and PCS station. The market for back-up telecommunications power systems represents approximately $3.0 billion of the $10.0 billion power quality market and is growing at approximately 10% to 15% per year. Conventional CPS systems dominate this market using a patchwork of gensets, lead-acid batteries and UPS electronics. We are designing our next generation product, a fully integrated CPS, to service the specific needs of this market, although we expect broader market applications in the future. We believe that our fully integrated CPS will be well positioned to serve this market.

Other Power Quality and Reliability Markets

Industrial. An Electric Power Research Institute study on recurring U.S. power problems estimated that the average U.S. manufacturing facility experienced in excess of 20 power disturbances annually. Exacerbating this problem, manufacturing organizations are employing increasing levels of automation, especially process and machine control, communications and computerized optimization of material flow. Even brief power disturbances, which result in lost material, lost data, and worker and plant down time, can be very expensive. Industries with the potential to suffer significant loss from power disturbances include semiconductor and pharmaceutical manufacturing, plastic and fiber extrusion, textiles, and precision machining.

Commercial Facilities. Many commercial facilities such as office buildings, hotels and university facilities now have a large number of computers or servers. Historically, these businesses and their personal computer networks have been unprotected from power disturbances or have only been spot-protected with a small PC UPS under each person's desk. A single CleanSource UPS system can protect as few as 200 PCs more cost effectively than many small PC UPS products.

Retrofit Market. Caterpillar has the largest installed base of standby generators in the world. Due to the growing requirement for high quality power, many of the customers that rely on standby generators for long-term power outages can no longer afford the five to ten second outage while the generator starts. We believe that upgrading, or retrofitting, a portion of Caterpillar's approximately 250,000 installed gensets worldwide by adding our CleanSource UPS, thereby creating a CPS, represents a significant market opportunity.

Distributed Generation

Fuel cells and microturbines, which allow users to bypass the electric utility grid by generating power locally, represent potential markets for our CleanSource products. These distributed generation technologies currently cannot respond effectively to rapid changes in electric power demands, or loads, due to their slow response capability. CleanSource DC can absorb sharp peaks in electrical demand, allowing a relatively expensive microturbine or fuel cell to be sized for the average power requirement of the customer. This combination provides a cost competitive alternative to sizing the fuel cell or microturbine to handle both peak and average electrical demands. In addition, CleanSource UPS can seamlessly transfer a customer load from utility power to fuel cell or microturbine standby power in the event of a utility outage.

Corporate Information

We were founded as a Texas corporation in 1992. We changed our name from Magnetic Bearing Technologies, Inc. to Active Power, Inc. in 1996. We reincorporated in Delaware in 2000.

Our principal executive offices are located at 11525 Stonehollow Drive, Suite 110, Austin, Texas 78758. Our telephone number is (512) 836-6464.

The Offering

Common stock we are offering........	shares
Outstanding common stock after the offering...........................	shares
Use of proceeds.....................	We intend to use the net proceeds for working capital and other general corporate purposes, including increases in both component and finished goods inventory, expansion of our manufacturing facilities and capacity, capital expenditures, research and development, sales and marketing, and possible acquisitions and international expansion. See "Use of Proceeds".
Proposed Nasdaq National Market symbol......................	ACPW

The number of shares of common stock to be outstanding after this offering is based on the number of shares outstanding as of April 30, 2000, and assumes the conversion of all of our preferred stock, other than our 1992 preferred stock, into 8,084,208 shares of common stock and the likely exercise by a stockholder of a warrant to purchase 200,000 shares of our common stock, which warrant otherwise would expire at the closing of this offering. This number excludes 1,568,864 shares of common stock issuable upon exercise of options outstanding as of April 30, 2000 with a weighted average exercise price of $1.68 per share, 93,852 additional shares of common stock reserved under our option plan as of April 30, 2000, and 200,000 shares of common stock issuable upon exercise of outstanding warrants as of April 30, 2000 with a weighted average exercise price of $11.34 per share, and assumes no exercise of the underwriters' over-allotment option.

Assumptions that Apply to this Prospectus

This offering is for   shares. The underwriters have a 30-day option to purchase up to   additional shares from us and up to   additional shares from a selling stockholder to cover over-allotments. Unless we state otherwise, the information in this prospectus assumes that the underwriters will not exercise the over-allotment option.

Except where we state otherwise, the information we present in this prospectus:

- reflects our reincorporation in Delaware in March 2000, at which time each share of common stock and preferred stock issued by our predecessor Texas corporation was exchanged for two shares of a similar series of common stock or preferred stock in the successor Delaware corporation; and

- reflects the conversion of all outstanding shares of preferred stock, other than our 1992 preferred stock, into 8,084,208 shares of common stock upon the closing of this offering and the exercise by a stockholder of a warrant to purchase 200,000 shares of our common stock, which warrant otherwise would expire at the closing of this offering.

All references in this prospectus to "we", "us", "ours" and "Active Power" are intended to include Active Power, Inc., including our predecessor Texas corporation.

SUMMARY FINANCIAL INFORMATION
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	YEAR ENDED DECEMBER 31,			THREE MONTHS ENDED MARCH 31, (UNAUDITED)	
	1997	1998	1999	1999	2000
STATEMENT OF OPERATIONS DATA:					
Product revenue	$ 137	$ 915	$ 1,047	$ 203	$ 182
Product margin	(20)	(323)	(1,959)	(348)	(339)
Development funding	--	--	5,000	3,000	--
Total operating expenses	3,862	5,971	7,794	1,427	3,572
Operating income (loss)	(3,882)	(6,294)	(4,753)	1,225	(3,912)
Net income (loss)	(3,738)	(5,979)	(7,419)	1,153	(5,108)

The following table contains a summary of our unaudited balance sheet:

. on an actual basis at March 31, 2000;

. on a pro forma basis to reflect the conversion of all outstanding shares of convertible preferred stock into 8,084,208 shares of common stock and the likely exercise by a stockholder of a warrant to purchase 200,000 shares of common stock, which warrant otherwise would expire at the closing of this offering, in each case as if such conversion or exercise had occurred on March 31, 2000; and

. on a pro forma as adjusted basis at March 31, 2000 to additionally reflect net proceeds from the sale of   shares of common stock offered hereby at an initial public offering price of $ per share.

	MARCH 31, 2000		
	ACTUAL	PRO FORMA	PRO FORMA AS ADJUSTED
BALANCE SHEET DATA:			
Cash, cash equivalents and short-term investments	$ 23,360	$23,390	$
Working capital	23,661	23,691	
Total assets	26,377	26,407	
Redeemable convertible preferred stock	54,962	--	
Stockholders' equity (deficit)	(34,398)	25,250	

RISK FACTORS

You should carefully consider the following risks and all other information contained in this prospectus before deciding to invest in our common stock.

WE HAVE INCURRED SIGNIFICANT LOSSES AND ANTICIPATE LOSSES FOR THE NEXT SEVERAL YEARS.

We have incurred operating losses since our inception and expect to continue to incur losses in the foreseeable future. As of March 31, 2000, we had an accumulated deficit of $29.1 million. To date, our product revenue has been insignificant, and we have funded our operations through sales of our equity and a $5.0 million development funding payment from Caterpillar. We will need to generate significant revenue to achieve profitability, and we cannot assure you that we will ever realize sufficient revenue to achieve profitability. We also expect to incur significant product development, sales and marketing and administrative expenses and, as a result, we expect to continue to incur losses.

DUE TO OUR LIMITED OPERATING HISTORY AND THE UNCERTAIN MARKET ACCEPTANCE OF OUR PRODUCTS, WE MAY NOT EVER ACHIEVE SIGNIFICANT REVENUE AND MAY HAVE DIFFICULTY ACCURATELY PREDICTING REVENUE FOR FUTURE PERIODS AND APPROPRIATELY BUDGETING FOR EXPENSES.

We have generated a total of $2.0 million in product revenue over the past two years, and we have sold fewer than 100 CleanSource DC and CleanSource UPS products. We are uncertain whether our products will achieve market acceptance such that our revenues will increase or whether we will be able to achieve significant revenue. Therefore, we have a very limited ability to predict future revenue. In addition, we currently have only a small backlog of orders. Our limited operating experience, the uncertain market acceptance for our products, and other factors that are beyond our control make it difficult for us to accurately forecast our quarterly and annual revenue. However, we use our forecasted revenue to establish our expense budget. Most of our expenses are fixed in the short term or incurred in advance of anticipated revenue. As a result, we may not be able to decrease our expenses in a timely manner to offset any revenue shortfall. Further, we are expanding our staff and facilities and increasing our expense levels in anticipation of future revenue growth. If our revenue does not increase as anticipated, we will incur significant losses.

OUR BUSINESS IS SUBJECT TO FLUCTUATIONS IN OPERATING RESULTS, WHICH COULD NEGATIVELY IMPACT THE PRICE OF OUR STOCK.

Our product revenue, expense and operating results have varied in the past and may fluctuate significantly in the future due to a variety of factors, many of which are outside of our control. These factors include, among others:

- our ability to timely develop and market new products;

- the timing of orders from our customers and the possibility that these customers may change their order requirements with little or no advance notice to us;

- deferrals of customer orders in anticipation of new products, services or product enhancements from us or other providers of power quality systems;

- the uncertainty regarding the adoption of our current and future products;

- the rate of adoption of our CleanSource UPS as an alternative to current UPS systems;

- effects of pricing pressures from manufacturers of competing or alternative products and technologies;

- availability and cost of supplies and components of our products;

- intellectual property disputes;
- quality problems with our products;
- the loss of significant personnel; and
- the rate of growth of the markets for our products.

OUR BUSINESS IS DEPENDENT ON THE MARKET FOR POWER QUALITY PRODUCTS, AND IF THIS MARKET DOES NOT EXPAND AS WE ANTICIPATE, OR IF ALTERNATIVES TO OUR PRODUCTS ARE SUCCESSFUL, OUR BUSINESS WILL SUFFER.

The market for power quality products is rapidly evolving and it is difficult to predict its potential size or future growth rate. Most of the organizations that may purchase our products have invested substantial resources in their existing power systems and, as a result, may be reluctant or slow to adopt a new approach. Moreover, our products are alternatives to existing UPS and CPS systems and may never be accepted by our customers or may be made obsolete by other advances in power quality technologies. Improvements may also be made to the existing alternatives to our products which could render them less desirable or obsolete.

WE HAVE LIMITED PRODUCT OFFERINGS, AND OUR SUCCESS DEPENDS ON OUR ABILITY TO DEVELOP IN A TIMELY MANNER NEW AND ENHANCED PRODUCTS THAT ACHIEVE MARKET ACCEPTANCE.

We have only one principal product that has any significant operating history at customer sites, CleanSource DC, and we have only recently introduced our CleanSource UPS product. To grow our revenue, we must rely on Caterpillar to successfully market our CleanSource UPS product, and we must develop and introduce to market new products and product enhancements in a timely manner. Even if we are able to develop and commercially introduce new products and enhancements, they may not achieve market acceptance. This would substantially impair our revenue prospects.

Factors that may affect the market acceptance of our products, some of which are beyond our control, include the following:

- the growth of, and changing requirements of customers within, the power quality and reliability market;
- the performance, quality, price and total cost of ownership of our products when compared to competing or alternative products and technologies;
- the success of our relationship with Caterpillar, the exclusive, worldwide distributor of our CleanSource UPS product, and Caterpillar's success in introducing our CleanSource UPS product to its power quality customers;
- our development of relationships with existing and new original equipment manufacturer, or OEM, customers and their success in marketing our products;
- power quality customers' reluctance to try a new product or technology;
- power quality customers' perceptions of the safety and quality of our products; and
- the emergence of alternative technologies and products or the improvement of existing alternatives to our products.

FAILURE TO EXPAND OUR DISTRIBUTION CHANNELS AND MANAGE OUR DISTRIBUTION RELATIONSHIPS COULD IMPEDE OUR FUTURE GROWTH.

The future growth of our business will depend in part on our ability to expand our existing relationships with OEMs, to identify and develop additional channels for the distribution and sale of our products and to manage these relationships. As part of our growth strategy, we intend to expand

our relationships with OEMs and to develop relationships with new OEMs. We will also look to identify and develop relationships with additional partners that could serve as distributors for our products. Our inability to successfully execute this strategy and to reduce our reliance on Caterpillar could impede our future growth.

WE ARE HEAVILY DEPENDENT ON OUR RELATIONSHIP WITH CATERPILLAR. IF OUR RELATIONSHIP IS UNSUCCESSFUL, OUR BUSINESS AND REVENUE WILL SUFFER.

Caterpillar provided us with $5.0 million in funding to support the development of our CleanSource UPS product. In exchange for this payment, Caterpillar received co-ownership of the proprietary rights in this product. During 1999 and the first quarter of 2000, we received approximately $412,000, or 39%, and $181,000, or 99%, respectively, of our product revenue from Caterpillar. We have entered into an agreement with Caterpillar whereby they are the exclusive distributor, subject to limited exceptions, of our CleanSource UPS product. Caterpillar is not obligated to purchase any CleanSource UPS units. If our relationship with Caterpillar is not successful, or if Caterpillar's distribution of our CleanSource UPS product is not successful, our business and revenue will suffer.

WE DEPEND ON A LIMITED NUMBER OF OEM CUSTOMERS FOR THE VAST MAJORITY OF OUR REVENUE, AND THE LOSS OF OR SIGNIFICANT REDUCTION IN ORDERS FROM ANY KEY OEM CUSTOMER, PARTICULARLY CATERPILLAR, WOULD SIGNIFICANTLY REDUCE OUR REVENUE.

We rely on OEMs as a primary distribution channel as they are able to sell our products to a large number of end-user organizations. We believe that the use of OEM channels will enable our products to achieve broad market penetration, while we devote a limited amount of our resources to sales, marketing and customer service and support. Our operating results in the foreseeable future will continue to depend on sales to a relatively small number of OEM customers, primarily Caterpillar. Therefore, the loss of any of our key OEM customers, particularly Caterpillar, or a significant reduction in sales to any one of them, would significantly reduce our revenue.

OEMS MAY DEVOTE A LIMITED AMOUNT OF THEIR RESOURCES TO SALES, MARKETING AND CUSTOMER SERVICE AND SUPPORT OF OUR PRODUCTS, WHICH WOULD ADVERSELY AFFECT OUR PRODUCT REVENUES.

As a part of our OEM strategy, we do not make all of our products available to all of our OEMs. Consequently, an OEM could sell one of our products and compete with another product that we have not made available to it. For example, because of our relationship with Caterpillar, none of our current or potential future CleanSource DC OEMs, other than Caterpillar, is able to sell CleanSource UPS. As a result, OEMs may devote a limited amount of resources to sales, marketing and customer service and support of our products.

WE MAY HAVE DIFFICULTY MANAGING THE EXPANSION OF OUR OPERATIONS.

We are undergoing rapid growth in the number of our employees, the size of our physical facilities and the scope of our operations. For example, we had 38 employees on January 1, 1998 and expect to have approximately 136 by July 1, 2000. Such rapid expansion is likely to place a significant strain on our senior management team and other resources. Our business, prospects, results of operations or financial condition could be harmed if we encounter difficulties in effectively managing the budgeting, forecasting and other process control issues presented by such a rapid expansion.

WE HAVE NO EXPERIENCE MANUFACTURING OUR PRODUCTS IN THE QUANTITIES WE EXPECT TO SELL IN THE FUTURE.

To be financially successful, we will have to manufacture our products in commercial quantities at acceptable costs while also preserving the quality levels achieved in manufacturing these products

in more limited quantities. This presents a number of technological and engineering challenges for us. We cannot assure you that we will be successful in executing the planned expansion of our manufacturing activities. We have not previously manufactured our products in high volume. We do not know whether or when we will be able to develop efficient, low-cost manufacturing capability and processes that will enable us to meet the quality, price, engineering, design and product standards or production volumes required to successfully manufacture large quantities of our products. Even if we are successful in developing our manufacturing capability and processes, we do not know whether we will do so in time to meet our product commercialization schedule or to satisfy the requirements of our customers.

WE ARE SUBJECT TO INCREASED INVENTORY RISKS AND COSTS BECAUSE WE OUTSOURCE THE MANUFACTURING OF COMPONENTS OF OUR PRODUCTS IN ADVANCE OF BINDING COMMITMENTS FROM OUR CUSTOMERS TO PURCHASE OUR PRODUCTS.

To assure the availability of our products to our OEM customers, we outsource the manufacturing of components prior to the receipt of purchase orders from OEM customers based on their forecasts of their product needs. However, these forecasts do not represent binding purchase commitments, and we do not recognize revenue for such products until the product is shipped to the OEM. As a result, we incur inventory and manufacturing costs in advance of anticipated revenue. As demand for our products may not materialize, this product delivery method subjects us to increased risks of high inventory carrying costs and obsolescence and may increase our operating costs. In addition, we may from time to time make design changes to our products which could lead to obsolescence of inventory.

WE DEPEND ON SOLE SOURCE AND LIMITED SOURCE SUPPLIERS FOR CERTAIN KEY COMPONENTS, AND IF WE ARE UNABLE TO BUY THESE COMPONENTS ON A TIMELY BASIS, OUR DELAYED ABILITY TO DELIVER OUR PRODUCTS TO OUR CUSTOMERS MAY RESULT IN REDUCED REVENUE AND LOST SALES.

We purchase power electronic converters, forged steel and other key components for our products from sole or limited sources. We do not have long-term contracts with any of our suppliers, and to date most of our component purchases have been made in relatively small volumes. As a result, if our suppliers receive excess demand for their products, we may receive a low priority for order fulfillment as large volume customers will receive priority. If we are delayed in acquiring components for our products, the manufacture and shipment of our products also will be delayed. We generally use a twelve month forecast of our future product sales to determine our component requirements. Lead times for ordering materials and components vary significantly and depend on factors such as specific supplier requirements, contract terms, the extensive production time required and current market demand for such components. Some of these delays may be substantial. As a result, we purchase these components in large quantities to protect our ability to deliver finished products. If we overestimate our component requirements, we may have excess inventory, which will increase our costs. If we underestimate our component requirements, we will have inadequate inventory, which will delay our manufacturing and render us unable to deliver products to customers on scheduled delivery dates. If we are unable to obtain a component from a supplier or if the price of a component has increased substantially, we will be required to manufacture the component internally, which will result in delays. Manufacturing delays could negatively impact our ability to sell our products and could damage our customer relationships.

WE MAY BE EXPOSED TO LAWSUITS AND OTHER CLAIMS IF OUR PRODUCTS FAIL, WHICH COULD ADVERSELY IMPACT OUR RESULTS OF OPERATIONS.

Potential customers will rely upon our products for critical power needs. A malfunction or the inadequate design of our products could result in tort or warranty claims. Although we attempt to reduce the risks of these types of losses by limiting the scope and coverage of our product warranties and through warranty disclaimers and liability indemnification clauses in our agreements,

we cannot assure you that our efforts will effectively limit our liability. Any liability for damages resulting from malfunctions could be substantial and could materially adversely affect our business and results of operations.

WE DEPEND ON KEY PERSONNEL TO MANAGE OUR BUSINESS AND DEVELOP NEW PRODUCTS IN A RAPIDLY CHANGING MARKET, AND IF WE ARE UNABLE TO RETAIN OUR CURRENT PERSONNEL AND HIRE ADDITIONAL PERSONNEL, OUR ABILITY TO DEVELOP AND SELL OUR PRODUCTS COULD BE IMPAIRED.

We believe our future success will depend in large part upon our ability to attract and retain highly skilled managerial, engineering and sales and marketing personnel. In particular, due to the relatively early stage of our business, we believe that our future success is highly dependent on Joseph F. Pinkerton, III, our founder, chief executive officer and president, to provide continuity in the execution of our growth plans. We do not have employment contracts with any of our key personnel. The loss of the services of any of our key employees, the inability to attract or retain qualified personnel in the future or delays in hiring required personnel, particularly engineers and sales personnel, could delay the development and introduction of, and negatively impact our ability to sell, our products.

WE HAVE HIRED A SUBSTANTIAL NUMBER OF OUR EMPLOYEES FROM OUR CURRENT CUSTOMERS AND FROM SOME OF OUR COMPETITORS, WHICH COULD DAMAGE OUR CUSTOMER RELATIONSHIPS AND EXPOSE US TO POTENTIAL LITIGATION.

There is a limited supply of skilled employees in the power quality industry. We have hired many of our current employees from our customers and our competitors. As a result, some of our current customers might begin to view us as competitors in the future, and one or more of our competitors could file lawsuits against us alleging the infringement of their trade secrets and other intellectual property. Although we do not believe we have infringed upon the intellectual property of our competitors, such lawsuits could divert our attention and resources from our business operations.

WE ARE A RELATIVELY SMALL COMPANY WITH LIMITED RESOURCES COMPARED TO SOME OF OUR CURRENT AND POTENTIAL COMPETITORS, AND COMPETITION WITHIN OUR MARKETS MAY LIMIT OUR SALES GROWTH.

The markets for power quality and power reliability are intensely competitive. There are many companies engaged in all areas of traditional and alternative UPS and CPS systems in the United States, Canada and abroad, including, among others, major electric and specialized electronics firms, as well as universities, research institutions and foreign government-sponsored companies. There are many companies located in the United States, Canada and abroad that are developing flywheel-based energy storage systems and flywheel-based power quality systems. We also compete indirectly with companies that are developing other types of power technologies, such as Superconducting Magnetic Energy Storage, ultra-capacitors and dynamic voltage restorers.

Many of our current and potential competitors have longer operating histories, significantly greater resources, broader name recognition and a larger customer base than we have. As a result, these competitors may have greater credibility with our existing and potential customers. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products than we can to ours, which would allow them to respond more quickly than us to new or emerging technologies or changes in customer requirements. In addition, some of our current and potential competitors have established supplier or joint development relationships with our current or potential customers. These competitors may be able to leverage their existing relationships to discourage these customers from purchasing products

from us or to persuade them to replace our products with their products. Increased competition could decrease our prices, reduce our sales, lower our margins, or decrease our market share. These and other competitive pressures could prevent us from competing successfully against current or future competitors and could materially harm our business.

IF WE ARE UNABLE TO PROTECT OUR INTELLECTUAL PROPERTY, WE MAY BE UNABLE TO COMPETE.

Our products rely on our proprietary technology, and we expect that future technological advancements made by us will be critical to sustain market acceptance of our products. Therefore, we believe that the protection of our intellectual property rights is, and will continue to be, important to the success of our business. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. We also enter into confidentiality or license agreements with our employees, consultants and business partners and control access to and distribution of our software, documentation and other proprietary information. Despite these efforts, unauthorized parties may attempt to copy or otherwise obtain and use our products or technology. Monitoring unauthorized use of our products is difficult, and we cannot be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where applicable laws may not protect our proprietary rights as fully as in the United States. In addition, the measures we undertake may not be sufficient to adequately protect our proprietary technology and may not preclude competitors from independently developing products with functionality or features similar to those of our products.

OUR EFFORTS TO PROTECT OUR INTELLECTUAL PROPERTY MAY CAUSE US TO BECOME INVOLVED IN COSTLY AND LENGTHY LITIGATION WHICH COULD SERIOUSLY HARM OUR BUSINESS.

In recent years, there has been significant litigation in the United States involving patents, trademarks and other intellectual property rights. Although we have not been involved in intellectual property litigation, we may become involved in litigation in the future to protect our intellectual property or defend allegations of infringement asserted by others. Legal proceedings could subject us to significant liability for damages or invalidate our intellectual property rights. Any litigation, regardless of its outcome, would likely be time consuming and expensive to resolve and would divert management's time and attention. Any potential intellectual property litigation also could force us to take specific actions, including:

- cease selling our products that use the challenged intellectual property;

- obtain from the owner of the infringed intellectual property right a license to sell or use the relevant technology or trademark, which license may not be available on reasonable terms, or at all; or

- redesign those products that use infringing intellectual property or cease to use an infringing trademark.

ANY ACQUISITIONS WE MAKE COULD DISRUPT OUR BUSINESS AND HARM OUR FINANCIAL CONDITION.

As part of our growth strategy, we intend to review opportunities to acquire other businesses or technologies that would complement our current products, expand the breadth of our markets or enhance our technical capabilities. We have no experience in making acquisitions. Acquisitions entail a number of risks that could materially and adversely affect our business and operating results, including:

- problems integrating the acquired operations, technologies or products with our existing business and products;

- potential disruption of our ongoing business and distraction of our management;

- difficulties in retaining business relationships with suppliers and customers of the acquired companies;

- difficulties in coordinating and integrating overall business strategies, sales and marketing, and research and development efforts;

- the maintenance of corporate cultures, controls, procedures and policies;

- risks associated with entering markets in which we lack prior experience; and

- potential loss of key employees.

WE MAY REQUIRE SUBSTANTIAL ADDITIONAL FUNDS IN THE FUTURE TO FINANCE OUR PRODUCT DEVELOPMENT AND COMMERCIALIZATION PLANS.

Our product development and commercialization schedule could be delayed if we are unable to fund our research and development activities or the development of our manufacturing capabilities with our revenue, cash on hand and proceeds from this offering. We expect that the net proceeds of this offering, together with our other available sources of working capital, will be sufficient to fund development activities for at least 24 months. However, unforeseen delays or difficulties in these activities could increase costs and exhaust our resources prior to the full commercialization of our products under development. We do not know whether we will be able to secure additional funding, or funding on terms acceptable to us, to continue our operations as planned. If financing is not available, we may be required to reduce, delay or eliminate certain activities or to license or sell to others some of our proprietary technology.

INSIDERS WILL CONTINUE TO HAVE SUBSTANTIAL CONTROL OVER OUR COMPANY AFTER THIS OFFERING AND COULD DELAY OR PREVENT A CHANGE IN CORPORATE CONTROL.

Upon completion of this offering, our executive officers and directors, and their respective affiliates, will beneficially own, in the aggregate, approximately   % of our outstanding common stock. As a result, these stockholders will be able to exert significant control over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of voting power could delay or prevent an acquisition of our company on terms which other stockholders may desire.

PROVISIONS IN OUR CHARTER DOCUMENTS AND OF DELAWARE LAW, AND PROVISIONS IN OUR AGREEMENT WITH CATERPILLAR, COULD PREVENT, DELAY OR IMPEDE A CHANGE IN CONTROL OF OUR COMPANY AND MAY DEPRESS THE MARKET PRICE OF OUR COMMON STOCK.

Provisions of our certificate of incorporation and bylaws could have the effect of discouraging, delaying or preventing a merger or acquisition that a stockholder may consider favorable. We also are subject to the anti-takeover laws of the State of Delaware which may further discourage, delay or prevent someone from acquiring or merging with us. In addition, our agreement with Caterpillar for the distribution of CleanSource UPS provides that Caterpillar may terminate the agreement in the event we are acquired or undergo a change in control. The possible loss of our most significant customer could be a significant deterrent to possible acquirors and may substantially limit the number of possible acquirors. All of these factors may decrease the likelihood that we would be acquired, which may depress the market price of our common stock. Please see "Description of Capital Stock--Anti-Takeover Effects" for more information concerning the anti-takeover provisions applicable to us.

OUR STOCK PRICE MAY BE VOLATILE, AND YOU MAY NOT BE ABLE TO RESELL YOUR SHARES AT OR ABOVE THE INITIAL PUBLIC OFFERING PRICE.

Prior to this offering, there has been no public market for our common stock. Although we have applied to have our common stock quoted on the Nasdaq National Market, an active trading market for our shares may never develop or be sustained following this offering. The initial public offering price for our common stock will be determined through negotiations between the underwriters and us. This initial public offering price may vary from the market price of our common stock after the offering. If you purchase shares of common stock, you may not be able to resell those shares at or above the initial public offering price. The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, including the following:

- actual or anticipated fluctuations in our operating results;
- changes in financial estimates by securities analysts or our failure to perform in line with such estimates;
- changes in market valuations of other technology companies, particularly those that sell products used in power quality systems;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;
- introduction of technologies or product enhancements that reduce the need for flywheel energy storage systems;
- the loss of one or more key OEM customers; and
- departures of key personnel.

WE MAY BE SUBJECT TO LITIGATION IF OUR STOCK PRICE IS VOLATILE

Our stock price may be volatile due to numerous factors, including those listed above. In addition, the stock market has recently experienced extreme volatility that often has been unrelated to the performance of particular companies. These market fluctuations may cause our stock price to fall regardless of our performance. In the past, companies that have experienced volatility in the market price of their stock have been the subject of securities class action litigation. We may be involved in a securities class action litigation in the future. Such litigation often results in substantial costs and a diversion of management's attention and resources and could harm our business, prospects, results of operations or financial condition.

Of our total outstanding shares, , or %, are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.

After this offering, we will have outstanding shares of common stock based on the number of shares outstanding at April 30, 2000. This includes the shares we are selling in this offering, which may be resold in the public market immediately. The remaining 13,372,927 shares will become available for resale in the public market as shown in the chart below.

Number of Shares/% of Total Shares Outstanding	Date of availability for resale into the public market
	Immediately (except to the extent purchased by our affiliates).
2,278,424/ %	90 days after the date of this prospectus due to lock-up agreements these stockholders have with the underwriters if the conditions described under "Shares Eligible for Future Sale--Lock-up Agreements" are satisfied.
2,278,949/ %	120 days after the date of this prospectus if additional conditions described under "Shares Eligible for Future Sale--Lock-up Agreements" are satisfied.
6,879,682/ %	180 days after the date of this prospectus due to the release of the lock-up agreement these shareholders have with the underwriters.
1,935,872/ %	Between 181 and 365 days after the date of this prospectus subject to the requirements of the federal securities laws.

As restrictions on resale end, the market price of our stock could drop significantly if the holders of restricted shares sell them or are perceived by the market as intending to sell them. For more detailed information, see "Shares Eligible for Future Sale" on page 58.

Our management may apply the proceeds of this offering to uses that our stockholders may not agree with and in ways that do not improve our efforts to achieve profitability or increase our stock price.

Although in "Use of Proceeds" we have specified some ways in which we initially intend to use a portion of the proceeds of this offering, our management will have considerable discretion in the application of the net proceeds received by us from this offering, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. You must rely on the judgment of our management regarding the application of the proceeds of this offering. The net proceeds may be used for corporate purposes that do not improve our efforts to achieve profitability or increase our stock price. Pending application of the net proceeds from this offering, they may be placed in investments that do not produce income or that lose value.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. You can identify these statements by forward-looking words such as:

- ""may''
- ""will''
- ""expect''
- ""intend''
- ""anticipate''
- ""believe''
- ""estimate''
- ""continue''
- and other similar words.

You should read statements that contain these words and other forward-looking statements carefully because they discuss our future expectations, make projections of our future results of operations or of our financial condition or state other "forward-looking" information. We believe that it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control. The factors listed in the sections captioned "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations", as well as any cautionary language in this prospectus, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements. Before you invest in our common stock, you should be aware that the occurrence of the events described in the "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" sections and elsewhere in this prospectus could have a material adverse effect on our business, operating results and financial condition.

USE OF PROCEEDS

At the initial public offering price of $ per share, we will receive approximately $ million from our sale of shares of common stock, net of estimated offering expenses and underwriting discounts and commissions payable by us. If the underwriters exercise their over-allotment option in full, we will receive an additional $ million in net proceeds and the selling stockholder will receive an aggregate of $ in net proceeds. We will not receive any portion of the net proceeds received by a selling stockholder from the sale of his shares upon exercise of the underwriters' over-allotment option. See "Principal and Selling Stockholders".

The principal purposes of this offering are to increase our equity capital, create a public market for our common stock under market conditions that we believe are favorable, facilitate future access by us to public equity markets and provide us with increased visibility in our markets. We estimate that we will use the net proceeds of the offering for general corporate purposes, including increases in both component and finished goods inventory, expansion of our manufacturing facilities and capacity, capital expenditures, research and development, sales and marketing and possible acquisitions and international expansion. Additionally, following this offering, our board of directors may determine to use $210,000 of our proceeds to redeem our 1992 preferred stock. As of the date of this prospectus, we have not allocated any specific amount of proceeds for these purposes.

Notwithstanding the estimates set forth above, our management will have significant flexibility in applying the net proceeds of this offering. For example, we may use a portion of the net proceeds to acquire businesses, products or technologies that are complimentary to our current or future business and product lines. Although we are not subject to any agreement or letter of intent with respect to potential acquisitions, we have from time to time engaged in acquisition discussions with other parties. Pending any such uses of the proceeds of this offering, we will invest the net proceeds of this offering in short-term, investment grade, interest-bearing instruments.

DIVIDEND POLICY

We have never declared or paid any dividends on our capital stock. We expect to retain future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition and capital requirements. Our credit agreements prohibit us from paying cash dividends.

CAPITALIZATION

The following table sets forth our short-term debt and capitalization:

- on an actual basis at March 31, 2000;
- on a pro forma basis at March 31, 2000 to reflect the conversion of all outstanding shares of our preferred stock, other than the 1992 preferred stock, into 8,084,208 shares of our common stock, and the likely exercise by a stockholder of warrants to purchase 200,000 shares of common stock, which warrant otherwise would expire at the closing of this offering;
- on a pro forma as adjusted basis at March 31, 2000 to additionally reflect net proceeds from the sale of   shares of common stock offered hereby at an assumed initial public offering price of $ per share.

You should read the following table in conjunction with our financial statements and the notes to those statements which are included in this prospectus.

	As of March 31, 2000		
	Actual	Pro Forma	Pro Forma As Adjusted
	(in thousands, except share data) (unaudited)		
Warrants with redemption rights	$ 4,656	--	--
Redeemable convertible preferred stock, $0.001 par value, 8,527,166 shares designated, 7,732,082 issued and outstanding, actual; no shares designated, issued or outstanding, pro forma and pro forma as adjusted	54,962	--	--
1992 preferred stock, $0.001 par value, 420,000 shares designated, issued and outstanding	--	--	--
Stockholders' equity (deficit):			
Common stock, $0.001 par value, 30,000,000 shares authorized; 5,233,042 shares issued and outstanding, actual; 13,517,250 shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted	3	11	
Additional paid-in capital	3,648	63,288	
Unearned stock compensation	(8,926)	(8,926)	(8,926)
Accumulated deficit	(29,123)	(29,123)	(29,123)
Total stockholders' equity (deficit)	(34,398)	25,250	
Total capitalization	$25,220	$25,250	$

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The share information set forth above excludes:

- 200,000 shares issuable upon exercise of warrants with a weighted average exercise price of $11.34 per share;
- 1,633,408 shares issuable upon exercise of outstanding options under our stock option plan with a weighted average exercise price of $1.05 per share; and
- 13,852 additional shares of common stock reserved for issuance under our stock option plan.

DILUTION

Our pro forma net tangible book value at March 31, 2000, was $25.3 million, or $1.87 per share of common stock. Pro forma net tangible book value per share represents the amount of our total tangible assets reduced by the amount of our total liabilities, divided by the pro forma number of shares of common stock outstanding as of March 31, 2000 after giving effect to the conversion of all outstanding shares of our convertible preferred stock into 8,084,208 shares of common stock and the likely exercise by a stockholder of a warrant to purchase 200,000 shares of common stock, which warrant otherwise would expire at the closing of this offering.

Dilution in pro forma net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the pro forma net tangible book value per share of common stock immediately after the completion of this offering. After giving effect to our sale of shares of common stock in this offering at an initial public offering price of $ per share, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our adjusted pro forma net tangible book value at March 31, 2000 would have been $ million, or $ per share. This amount represents an immediate increase in pro forma net tangible book value to our existing stockholders of $ per share and an immediate dilution to new investors of $ per share. The following table illustrates this per share dilution:

Initial public offering price per share		$
Pro forma net tangible book value per share at March 31, 2000	$1.87	
Increase in pro forma net tangible book value per share attributable to new investors		
Pro forma net tangible book value per share after this offering		
Dilution per share to new investors		$

If the underwriters exercise their over-allotment option in full, our adjusted pro forma net tangible book value at March 31, 2000 would have been $ million, or $ per share, representing an immediate increase in pro forma net tangible book value to our existing stockholders of $ per share and an immediate dilution to new investors of $ per share.

The following table summarizes, on a pro forma basis at March 31, 2000, after giving effect to the pro forma adjustments described above, the differences between the number of shares of common stock purchased from us, the aggregate cash consideration paid to us and the average price per share paid by our existing stockholders and by new investors purchasing shares of common stock in this offering. The calculation below is based on an initial public offering price of $ per share, before deducting underwriting discounts and commissions and estimated offering expenses payable by us:

	SHARES PURCHASED		TOTAL CONSIDERATION		AVERAGE PRICE PER SHARE
	NUMBER	PERCENT	AMOUNT	PERCENT	
Existing stockholders	13,517,250	%	$43,933,215	%	$3.25
New investors					
Total		100.0%		100.0%	

This discussion and table assume no exercise of any stock options outstanding at March 31, 2000 and, except as referenced otherwise above, no exercise of any outstanding warrants. Assuming the warrant exercise referenced above, at March 31, 2000, there were warrants to purchase 200,000 shares of common stock with a weighted average exercise price of $11.34 per share, and options outstanding under our stock option plan to purchase a total of 1,633,408 shares of common stock with a weighted average exercise price of $1.05 per share. To the extent that any of these warrants or options are exercised, there will be further dilution to new investors.

SELECTED FINANCIAL DATA

You should read the selected financial data set forth below in conjunction with our financial statements and the notes thereto, "Management's Discussion and Analysis of Financial Condition and Results of Operations", and other financial information appearing elsewhere in this prospectus.

The statement of operations data set forth below for the years ended December 31, 1997, 1998 and 1999 and the balance sheet data as of December 31, 1998 and 1999 are derived from, and qualified by reference to, our audited financial statements appearing elsewhere in this prospectus. The statement of operations data for the years ended December 31, 1995 and 1996 and the balance sheet data as of December 31, 1995, 1996 and 1997 have been derived from audited financial statements not included in this prospectus. The statement of operations data for the three months ended March 31, 1999 and 2000 and the balance sheet data as of March 31, 2000 are derived from unaudited financial statements appearing elsewhere in this prospectus which, in the opinion of our management, reflect all normal recurring adjustments that we consider necessary for a fair presentation of such information in accordance with generally accepted accounting principles. Operating results for the three months ended March 31, 2000 are not necessarily indicative of the results that may be expected for the full fiscal year or future results.

	YEAR ENDED DECEMBER 31,					THREE MONTHS ENDED MARCH 31,	
	1995	1996	1997	1998	1999	1999	2000
	(IN THOUSANDS, EXCEPT PER SHARE DATA)						
Product revenue	$ 120	$ --	$ 137	$ 915	$ 1,047	$ 203	$ 182
Cost of goods sold	--	--	157	1,238	3,006	551	521
Product margin	$ 120	$ --	$ (20)	$ (323)	$ (1,959)	$ (348)	$ (339)
Development funding	--	--	--	--	5,000	3,000	--
Operating expenses:							
Research and development	430	968	2,598	4,045	4,441	957	1,463
Selling, general and administrative	179	483	1,264	1,926	2,644	470	1,098
Amortization of deferred stock compensation	--	--	--	--	709	--	1,011
Total operating expenses	$ 609	$ 1,451	$ 3,862	$ 5,971	$ 7,794	$ 1,427	$ 3,572
Operating income (loss)	$ (489)	$ (1,451)	$ (3,882)	$ (6,294)	$ (4,753)	$ 1,225	$ (3,912)
Other income (expense), net	25	109	144	315	(2,666)	(72)	(1,196)
Net income (loss)	$ (464)	$ (1,342)	$ (3,738)	$ (5,979)	$ (7,419)	$ 1,153	$ (5,108)
Net income (loss) to common stockholders	(517)	(1,635)	(4,564)	(8,767)	(12,732)	151	(8,228)
Net income (loss) per share of common stock, basic and diluted	$ (0.12)	$ (0.37)	$ (1.03)	$ (1.93)	$ (2.75)	$ 0.03	$ (1.68)
Shares used in computing net income (loss) per share:							
basic	4,332,862	4,364,100	4,439,566	4,532,133	4,634,053	4,575,693	4,886,942
diluted	4,332,862	4,364,100	4,439,566	4,532,133	4,634,053	5,346,406	4,886,942

BALANCE SHEET DATA:

	AS OF DECEMBER 31,					AS OF MARCH 31,
	1995	1996	1997	1998	1999	2000
Cash, cash equivalents and short-term investments	$419	$2,434	$4,340	$ 7,536	$26,265	$23,360
Working capital	384	2,470	4,565	8,008	26,394	23,661
Total assets	476	3,002	5,921	9,734	28,366	26,377
Long-term obligations, less current portion	--	--	170	55	--	--
Redeemable convertible preferred stock	918	4,960	11,786	24,575	51,841	54,962
Total stockholders' deficit	(535)	(2,167)	(6,742)	(15,524)	(27,424)	(34,398)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with our financial statements and related notes which appear elsewhere in the prospectus. The following discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this prospectus, particularly under the heading "Risk Factors". Please also see "Cautionary Note Regarding Forward-Looking Statements".

Overview

We design, manufacture and market power quality products that provide the consistent, reliable electric power required by today's digital economy. We are the first company to commercialize a flywheel energy storage system that provides a highly reliable, low-cost and non-toxic replacement for lead-acid batteries used in conventional power quality installations. Leveraging our expertise in this technology and in conjunction with Caterpillar, the leading maker of engine generators for the power reliability market, we have developed a battery-free power quality system, which is marketed under the Caterpillar brand name. Our products are sold for use in the facilities of companies in many different industries that all share a critical need for reliable, high quality power, such as Internet service providers, semiconductor manufacturers, telecommunications providers, pharmaceutical manufacturers, hospitals, electric utilities and broadcasters. As an extension of these existing product lines, we are developing a fully integrated continuous power system. The initial target market for this product is the rapidly growing telecommunications industry.

To date, we have primarily funded our operations through sales of shares of our preferred stock, which have resulted in gross proceeds of approximately $42.8 million, as well as $5.0 million in development funding received from Caterpillar in 1999. Since 1996, we have focused our efforts and financial resources primarily on the design and development of our CleanSource line of power quality products and on establishing effective OEM channels to market our products. As of March 31, 2000, we had generated an accumulated deficit of $29.1 million and expect to continue to sustain operating losses for the next several years.

Since our inception, a small number of customers have accounted for the majority of our annual sales. During 1999, our four largest customers accounted for 89% of our sales, with our largest customer, Caterpillar, accounting for 39%. In the first quarter of 2000, Caterpillar accounted for 99% of our revenue as we have shifted focus to our CleanSource UPS product. We expect to continue to be dependent on a few OEM customers, in particular Caterpillar, for the majority of our sales for the foreseeable future.

With the commercial release of our second generation product line, CleanSource UPS, in May 2000 under the Caterpillar brand name, and a growing market demand for power quality equipment, we believe the demand for our products will increase significantly. To prepare for this anticipated growth in demand and to position us for future growth, we have increased and expect to continue to increase the scale of our operations in the following ways:

- Expand our manufacturing facilities and add manufacturing personnel to address anticipated product demand;

- Increase our personnel levels in product development and engineering to accelerate time to market on new products and enhance existing product lines; and

- Add sales and marketing personnel to support our OEM customers.

We believe that, although these efforts will increase our operating expenses, they will also enable us to realize accelerated revenue growth.

In connection with the grant of stock options to our employees in 1999 and during the three months ended March 31, 2000, we recorded deferred stock compensation aggregating $10.6 million. Deferred stock compensation represents the difference between the deemed fair value of the common stock underlying the options and the options' exercise price on the date of grant. We amortize deferred stock compensation to operating expense over the vesting period, generally four years. Additionally, in April 2000 we recorded deferred stock compensation of $2.0 million. In 1999, we amortized $709,000 of the deferred stock compensation to expense and during the three months ended March 31, 2000 we amortized an additional $1.0 million to expense. We currently expect to amortize the deferred stock compensation remaining at March 31, 2000 in the periods below (in millions):

Period	Amount
April 1, 2000 to December 31, 2000	$3.8
January 1, 2001 to December 31, 2001	2.8
January 1, 2002 to December 31, 2002	1.5
January 1, 2003 to December 31, 2003	0.7
January 1, 2004 to December 31, 2004	0.1
	$8.9

Comparison of 1999 to 1998

Product Revenue. Product revenue primarily consists of sales of our CleanSource power quality products. Sales increased $132,000, or 14%, to $1.05 million in 1999 from $915,000 in 1998. This increase was attributable to the continued acceptance of our first product, CleanSource DC, as well as the initial beta sales of our second product, CleanSource UPS, in the fourth quarter of 1999. The average selling price of our products increased in 1999 due to the introduction and the initial sales of our CleanSource UPS product, which carries a higher selling price than our CleanSource DC product.

Cost of goods sold. Cost of goods sold includes the cost of component parts of our product that are sourced from suppliers, personnel, equipment and other costs associated with our assembly and test operations, shipping costs, and the costs of manufacturing support functions such as logistics and quality assurance. In addition, a portion of our occupancy expenses as well as product warranty costs are allocated to costs of good sold. Cost of goods sold increased $1.8 million, or 143%, to $3.0 million in 1999 from $1.2 million in 1998. In anticipation of future demand for our products, we expanded our manufacturing capacity in 1999. As a result, the additional manufacturing overhead contributed to higher cost of goods sold in 1999. In addition, we expensed approximately $549,000 in 1999 associated with components that we determined to be in excess of our needs due to design changes made to our CleanSource DC product. We expect that as our production volumes increase over time, unit production costs will tend to decrease as we achieve greater economies of scale in production and in purchasing component parts.

Development funding. Development funding consists of funds received from Caterpillar to support the development of the CleanSource UPS product. In 1999, we received $5.0 million in development funding. We did not receive any development funding in 1998 or in 1997. We do not currently have any other development funding contracts.

Research and development. Research and development expense primarily consists of compensation and related costs of employees engaged in research, development and engineering activities, as well as an allocated portion of our occupancy costs. Research and development expense increased $396,000, or 10%, to $4.4 million in 1999 from $4.0 million in 1998. The increase

in research and development expense was primarily due to the increased product development of CleanSource UPS and other products. We believe that research and development expense will continue to increase significantly in 2000 and thereafter as we continue to develop new products and enhance existing product lines.

SELLING, GENERAL AND ADMINISTRATIVE. Selling, general and administrative expense is primarily comprised of compensation and related costs for sales, marketing and administrative personnel, an allocable portion of occupancy costs, other promotional and marketing expenses, professional fees and reserves for bad debt. Selling, general and administrative expense increased $719,000, or 37%, to $2.6 million in 1999 from $1.9 million in 1998. The increase in selling, general and administrative expense was principally due to an increase in personnel in our sales organization we made in order to support our OEM channel partners and to address opportunities for sales of our CleanSource UPS product line. We believe that selling, general and administrative expense will increase in future periods as we add sales, marketing and administrative personnel to position us for future sales growth.

AMORTIZATION OF DEFERRED STOCK COMPENSATION. Deferred stock compensation reflects the difference between the exercise price of option grants to employees and the subsequently deemed fair value of our common stock at the date of grant. We are amortizing deferred stock compensation as an operating expense over the vesting periods of the applicable options, which resulted in amortization expense of $709,000 in 1999. No amortization of deferred stock compensation occurred in 1998 as, prior to 1999, we believe that all options were granted at exercise prices equal to the fair value of the underlying stock on the date of grant. We expect that this amortization expense will increase in 2000 due to the vesting of options that were granted in 1999 and 2000. However, we expect the amortization expense to decrease after 2000, as the options that were granted at exercise prices less than the subsequently deemed fair value become fully vested.

OTHER EXPENSE. Other expense in 1999 includes a $3.1 million charge for the change in fair value of outstanding warrants with redemption rights. Because of the redemption feature, we reflect these warrants as a liability and record fair value changes in current period losses. In 1999, the fair value of the underlying common stock increased substantially, resulting in an increase in the warrant value and corresponding expense. Prior to 1999, the underlying common stock value approximated the value at the date of issuance of the warrants.

INCOME TAX EXPENSE. As of December 31, 1999, our accumulated net operating loss carryforward was $5.7 million. We anticipate that all of this loss carryforward amount will remain available for offset against any future tax liabilities that we may incur; however, because of uncertainty regarding our ability to use these carryforwards, we have established a valuation allowance for the full amount of our deferred tax assets.

COMPARISON OF 1998 TO 1997

PRODUCT REVENUE. Product revenue increased $778,000, or 565%, to $915,000 in 1998 from $137,000 in 1997. The increase was attributable to greater market acceptance of our first product, CleanSource DC. In 1998, we experienced increases in sales to new customers for this product as well as to existing customers.

COST OF GOODS SOLD. Cost of goods sold increased $1.1 million, or 687%, to $1.2 million in 1998 from $157,000 in 1997. The increase in cost of goods sold was primarily due to the expansion of our manufacturing infrastructure to support the increase in the 1998 sales volume of the CleanSource DC product.

Research and development. Research and development expense increased $1.4 million, or 56%, to $4.0 million in 1998 from $2.6 million in 1997. The increase in research and development expense primarily was due to an increase in our engineering staff from 17 employees at December 31, 1997 to 29 employees at December 31, 1998, as well as increased product development expenses associated with our CleanSource DC product.

Selling, general and administrative. Selling, general and administrative expense increased $661,000, or 52%, to $1.9 million in 1998 from $1.3 million in 1997. The increase in selling, general and administrative expense was attributable to an increase in 1998 in the number of personnel within our sales, marketing and administrative departments to support an anticipated growth in sales volume.

Comparison of Three Months Ended March 31, 2000 to Three Months Ended March 31, 1999

Product Revenue. Product revenue decreased $21,000, or 11.5%, to $182,000 from $203,000 for the three months ended March 31, 2000 and 1999, respectively, due to the shift in focus from our CleanSource DC product, which comprised the majority of our first quarter 1999 sales, to CleanSource UPS beta units, which made up the majority of our revenue for the three months ended March 31, 2000. For the three months ended March 31, 2000, Caterpillar accounted for 99% of our sales. We expect to continue to be dependent on a few OEM customers, in particular Caterpillar, for the majority of our sales for the foreseeable future.

Cost of Goods Sold. Cost of goods sold decreased $30,000, or 5.4%, to $521,000 from $551,000 for the three months ended March 31, 2000 and 1999, respectively. This decrease is related to the decrease in product revenue.

Research and Development. Research and development increased $506,000, or 53%, to $1.5 million from $957,000 for the three months ended March 31, 2000 and 1999, respectively. This increase was mainly due to an increase in staffing to accelerate our product development efforts.

Other expense. Other expense in the three months ended March 31, 2000 includes a $1.6 million charge for the change in fair value of outstanding warrants with redemption rights as a result of an increase in the fair value of the underlying common stock.

Selling, general and administrative. Selling, general and administrative expenses increased $628,000, or 134%, to $1.1 million from $470,000 for the three months ended March 31, 2000 and 1999, respectively. This increase was due to increasing our sales force to support our OEM channel partners, as well as increasing our administrative staff in preparation for our anticipated sales growth.

Liquidity and Capital Resources

Our principal sources of liquidity as of March 31, 2000 consisted of $23.4 million of cash, cash equivalents and short-term investments, as well as our bank credit facility and an equipment financing line. Our bank credit facility consists of a revolving line of credit with borrowing availability equal to the lesser of $1 million or 80% of eligible accounts receivable. As of March 31, 2000, we had no amounts outstanding under this line of credit. Borrowings outstanding under the credit line will bear interest at the bank's prime rate, which was 9.0% at March 31, 2000. The equipment financing line was originated in March 1997 and is comprised of seven separate schedules that are set to mature at various times between April 2001 and December 2001. The aggregate amount of equipment purchases that were financed under the equipment financing line was $400,000 as of March 31, 2000.

To date, we have primarily funded our operations through sales of shares of our preferred stock, which have resulted in gross proceeds of approximately $42.8 million, as well as $5.0 million in

development funding received from Caterpillar in 1999. During 1999, cash used by operating activities was $2.6 million, which compares to $5.9 million and $3.9 million in 1998 and 1997. For the three months ended March 31, 2000, cash used by operating activities was $2.5 million. The cash usage in each of these periods was primarily attributable to our focus on the development of products and the expansion of our manufacturing operations and sales activities.

Capital expenditures were $437,000, $793,000 and $598,000 in 1997, 1998 and 1999. We made these expenditures to acquire engineering test equipment, to develop market demonstration units, and to purchase manufacturing equipment for the building and test of production units, as well as for general computer equipment and software for administrative purposes. We expect to incur between $1.0 and $2.0 million in expenses in 2000 in connection with the buildout of additional office, engineering lab and manufacturing space. In addition, we expect to purchase approximately $2.0 million of capital equipment in 2000 for use in our research and development activities and to expand our manufacturing capacity.

We believe the proceeds of this offering, together with our existing cash balances, will be sufficient to meet our capital requirements through at least the next 24 months, although we might elect to seek additional funding prior to that time. Beyond the next 24 months, our capital requirements will depend on many factors, including the rate of sales growth, the market acceptance of our products, the rate of expansion of our sales and marketing activities, the rate of expansion of our manufacturing facilities, and the timing and extent of research and development projects. Although we are not a party to any agreement or letter of intent with respect to a potential acquisition, we may enter into acquisitions or strategic arrangements in the future which could also require us to seek additional equity or debt financing.

RECENT ACCOUNTING PRONOUNCEMENTS

In March 2000, the Financial Accounting Standards Board issued Interpretation No. 44 "Accounting for Certain Transactions Involving Stock Compensation", an interpretation of APB Opinion No. 25. Interpretation No. 44 has an effective date of July 1, 2000. We do not believe Interpretation No. 44 will affect our accounting for transactions involving stock-based compensation.

In December 1999, the staff of the Securities and Exchange Commission released Staff Accounting Bulletin, or SAB, No. 101, entitled "Revenue Recognition in Financial Statements", which provides guidance on the recognition, presentation and disclosure of revenue in financial statements. SAB No. 101 did not have a material impact on our financial statements.

QUALITATIVE AND QUANTITATIVE DISCLOSURE ABOUT MARKET RISK

Our interest income is sensitive to changes in the general level of U.S. interest rates, particularly since the majority of our investments are in short-term instruments. We believe that our investment policy is conservative, both in terms of the average maturity of investments that we allow and in terms of the credit quality of the investments we hold. Therefore, we have concluded that we do not have a material market risk exposure.

BUSINESS

The following description of our business should be read in conjunction with the information included elsewhere in this prospectus. This description contains forward-looking statements that involve risks and uncertainties. Our actual results could differ significantly from the results discussed in these forward-looking statements as a result of certain of the factors set forth elsewhere in this prospectus, particularly under the heading "Risk Factors". Please also see "Cautionary Note Regarding Forward-Looking Statements".

Overview

We design, manufacture and market power quality products that provide the consistent, reliable electric power required by today's digital economy. We are the first company to commercialize a flywheel energy storage system that provides a highly reliable, low-cost and non-toxic replacement for lead-acid batteries used in conventional power quality installations. Leveraging our expertise in this technology and in conjunction with Caterpillar, the leading maker of engine generators for the power reliability market, we have developed a battery-free power quality system, which is marketed under the Caterpillar brand name. As an extension of these existing product lines, we are developing a fully integrated continuous power system. The initial target market for this product is the rapidly growing telecommunications industry.

Industry Background

Power Requirements of the New Economy

The worldwide demand for high quality electricity has been increasing rapidly in recent years, driven in large part by growth in the use of computers, the Internet and telecommunications products. Industry sources have estimated that the share of all U.S. electricity consumed by computer-based microprocessors is 13% and that within the next decade 50% of the nation's current electricity supply may be required to meet the direct and indirect needs of the Internet.

As the influence of sophisticated digital electronics expands across all industries, the need for very high levels of power reliability and quality also increases. Most industries now rely on these highly sensitive electronics to manage and control their manufacturing processes. However, despite this increasingly dramatic change in the mix of electricity demand, the mechanisms used to provide power have not changed. The power delivered over the electricity grid today is subject to power disturbances, such as voltage sags and surges, and power outages. These disturbances, while typically lasting less than two seconds, can have significant detrimental effects on the devices of the new economy.

[GRAPHIC]

[Description of Graphic: This graphic depicts sine waves representing both the types of problems with power supplied from the electric utility grid and the desired sine wave for "Reliable, Quality Electric Power". The first graphic on the far left is titled "Reliability Problem" and shows a steady sine wave that turns into a straight line. Above the straight line is the word "Outage" with an arrow pointing at the straight line. In the middle of the graphic under "Power Quality Problems" are two sine waves. The top sine wave has smaller peaks and valleys in the middle of the sine wave. Above the middle of the sine wave are the words "Voltage Sag" with an arrow pointing at the center of the sine wave. The bottom sine wave has larger peaks and valleys in the middle of the sine wave. Above the middle of the sine wave are the words "Voltage Surges" with an arrow pointing at the center of the sine wave. On the right side of the diagram is a smooth, continuous sine wave which is labeled "Reliable, Quality Electric Power".]

The power outages in a number of major cities during the summers of 1998 and 1999 have highlighted the increasing likelihood of costly interruptions and the need to seek reliability protection. Power disturbances are a significant concern for everything from the computers used in modern commercial and industrial processes to telecommunications equipment. Leaving these devices unprotected from disturbances can have significant and negative impacts on the power user. A 1999 study by the Electric Power Research Institute estimated that electric power problems annually cost U.S. industry more than $30 billion in lost data, material and productivity. Even the loss of quality

power for one second at a semiconductor manufacturing plant can result in the loss of millions of dollars. As the digital economy grows, avoiding network and equipment downtime due to power-related problems will become even more important.

Electric utilities are unable to provide high quality, uninterrupted power due in large part to the inherent limitations of the existing transmission and distribution system. The electric utility grid is naturally exposed to reliability and quality problems caused by severe weather, animals, accidents and other external events. While substantial upgrades and other investment could improve overall reliability, the absolute level of power quality required for these sophisticated electronic applications may still remain difficult to achieve.

POWER QUALITY SYSTEMS: UNINTERRUPTIBLE POWER SUPPLIES AND CONTINUOUS POWER SYSTEMS

Currently, there are a variety of approaches that attempt to address the deficiencies of power delivered by the electric utility grid. Conventional power quality systems have been constructed from an array of devices, including batteries for short-term power disturbances, engine generators, commonly referred to as "gensets", for longer-term outages, and control electronics to bridge the two. A short-term (seconds to minutes) energy storage device with control electronics is referred to as an uninterruptible power supply, or UPS. A UPS coupled with a genset to protect against longer-term outages (minutes to hours or days) is referred to as a continuous power system, or CPS.

A UPS protects sensitive systems from sags, surges and temporary interruptions in utility-supplied power. A UPS consists of solid-state switches and electronics that are connected to both the utility grid and a back-up power source, typically lead-acid batteries. The UPS electronics monitor the power from the grid. If the UPS determines that the power being supplied from the grid is unacceptable or that insufficient power is being supplied, it will draw power from the back-up power source to ensure uninterrupted, quality power. These systems typically provide 5 to 15 minutes of back-up power before the batteries are depleted.

A CPS provides back-up power indefinitely. As described above, if the UPS determines that there is a power quality or power reliability problem, it initially turns to the back-up power source. If, however, the disturbance lasts for an extended period (typically, more than 5 to 10 seconds), the CPS genset activates and begins to provide back-up power. Internet service providers, data processing centers, semiconductor plants, cellular phone sites and fiber nodes all use CPS to keep critical business equipment operating when electric utility power falters.

The following diagrams depict a conventional UPS and CPS:

[GRAPHIC]

[Description of grahpic: The graphic on the left depicts a "Conventional UPS System". From the left side of the graphic is an arrow pointed to the center of the graphic with the caption "Electric Power from Utility" beneath the arrow. The arrow points to a box in the center of the graphic with the caption "Uninterruptable Power Supply Electronics" inside the box. Beneath the box and connected to the box with a line is another box with the caption "Lead Acid Battery for short term power (seconds to minutes)" inside the box. From the center box is an arrow pointed to the right side of the graphic with the caption "Uninterruptible Power to Customer" beneath the arrow. Beneath this graphic is the following text "Electric power from the electric utility passes through the UPS to the customer. If this power is interrupted or is disturbed, the UPS immediately draws power from the battery to supply uninterrupted power to customer".
The graphic on the right depicts a "Conventional CPS System". From the left side of the graphic is an arrow pointed to the center of the graphic with the caption "Electric Power from Utility" beneath the arrow. The arrow points to a box in the center of the graphic with the caption "Uninterruptible Power Supply Electronics" inside the box. Above the box and connected to the center box with a line is an oval with the caption "Generator" inside the oval and the caption "long term power (minutes to days)" to the left of the oval. Beneath the center box and connected to the center box with a line is another box with the caption "Lead Acid Battery for short term power (seconds to minutes)" inside the box. From the center box is an arrow pointed to the right side of the graphic with the caption "Uninterruptible Power to customer" beneath the arrow. Beneath this graphic is the following text: "In a CPS configuration, if the power disturbance lasts longer than a few seconds, the standy generator is started to provide electric power for as long as required."]

Electric power from the electric utility passes through the UPS to the customer. If this power is interrupted or is disturbed, the UPS immediately draws power from the battery to supply uninterrupted power to the customer.

In a CPS configuration, if the power disturbance lasts longer than a few seconds, the standby generator is started to provide electric power for as long as required.

Limitations of Conventional UPS and CPS

Conventional UPS and CPS devices have evolved out of a makeshift combination of diesel engines, generators, automobile batteries and UPS electronics. We believe that this patchwork approach to UPS and CPS has resulted in systems that are less efficient, less reliable and more expensive than they otherwise could be. The lead-acid batteries, which provide ride-through, or temporary, power for the UPS and CPS, are viewed as the weakest component of conventional power quality and reliability solutions. Lead-acid batteries have numerous problems, including:

Reliability

- Relatively high failure rate--Batteries are prone to heat buildup and acid leaks that lead to battery failure.

- Limited life based on usage--When batteries are repeatedly used at close to their maximum power output, their power output capacity can rapidly decrease, reducing the batteries' effectiveness over time.

Cost

- High maintenance--Batteries must be regularly inspected, generally every three months, to detect problems. Batteries also require periodic testing to determine their power output capacity, which degrades over time.

- Bulky--Generally, multiple batteries forming banks or strings must be used to support UPS functions. They also must be spaced apart to prevent uncontrolled heating.

- Frequent replacement required--Regardless of usage, batteries have a limited useful life and must be replaced every 2 to 6 years, depending upon the type of use, environment and other factors.

- Temperature sensitivity--Unless cooled by costly air conditioning systems, battery life will rapidly degrade.

Environmental

- Toxicity--Batteries contain toxic materials such as lead and sulfuric acid.

- Disposal--State and federal environmental regulations governing battery disposal are rigorous and costly.

Beyond the specific problems associated with lead-acid batteries, existing UPS and CPS contain inefficiencies inherent in any system that was not designed as an integrated solution. Specifically, the major components of these systems do not come from a single reliable source. This lack of a single-source supplier makes installation, maintenance and failure analysis more difficult, costly and complex. Separate companies manufacture, market and service the genset, UPS electronics and batteries. The end user must assume the responsibility to integrate and monitor the system.

Active Power's Products

Rather than adopt conventional approaches to power quality systems, we design new solutions specifically for the power quality market. As a result, we believe that we create products that are less expensive, more efficient and more reliable than other systems presently available.

CleanSource DC

CleanSource DC is the first commercially viable, non-chemical replacement for lead-acid batteries used for short-term power in power quality applications. As opposed to the chemical energy stored by batteries, our patented flywheel energy storage system stores kinetic energy by spinning constantly in a patented low-friction environment. When the UPS electronics detect a power disturbance, CleanSource DC draws upon the power stored as kinetic energy to eliminate the disturbance. Our CleanSource flywheel energy storage system is compact, quiet and predictable.

CleanSource DC can run in conjunction with battery strings used in UPS and CPS systems or can replace the batteries now used in conjunction with fuel cells and microturbines to meet peak power demands. This system is available in a variety of delivered power ratings up to 480 kW per flywheel system. We also can configure the units in parallel to achieve higher power. CleanSource DC has been designed for much longer service intervals and more extreme environments than typical lead-acid battery installations. Our first CleanSource DC unit was placed in service in March 1997. Our installed CleanSource DC units have accumulated over 235,000 hours of field operation without a loss of electric power.

CleanSource UPS

Building on the technological success of CleanSource DC, we created a battery-free UPS, CleanSource UPS, which is the primary focus of our current sales efforts. Historically, a UPS is created by coupling together two components--a string or strings of batteries and control electronics. CleanSource UPS integrates UPS electronics and our flywheel energy storage system into a single power quality solution. CleanSource UPS is contrasted with a conventional battery-based system in the illustration below.

[GRAPHIC]

[Description of graphic: This graphic depicts a comparison of a "Conventional Battery-Based UPS" and a "CleanSource UPS". The Traditional Battery-Based UPS is pictured on the left side of the graphic. The left portion of the Traditional Battery-Based UPS is labeled "battery cabinets" and the right side of the Traditional Battery-Based UPS is labeled "UPS electronics". Beneath the picture of the Traditional Battery-Based UPS is the following information: "240 KW UPS with minimum battery cabinet; Footprint - 37.5 sq. ft., Weight - 13,000 lbs., Electrical Efficiency - 92%". The CleanSource UPS is pictured on the right side of the graphic. Beneath the picture of the CleanSource UPS is the following information: "250 KW UPS with energy storage; Footprint - 10 sq. ft., Weight - 3,250 lbs., Electrical Efficiency - 98%".]

The CleanSource UPS design takes advantage of the many component similarities between CleanSource DC and standard UPS electronics. Each system requires power conversion electronics, fans for cooling, a frame for structural support, a user display and data reporting, and other overlapping functions. By combining these functions into a single system, as shown in the figure below, we can provide a highly reliable power quality solution while achieving significant cost savings.

[GRAPHIC]

[Description of graphic: This graphic depicts "CleanSource UPS System Efficiencies". The graphic is a ven diagram consisting of two circles which partially overlap in the middle of the graphic. The circle on the left side of the graphic is labeled "Energy Storage" at the bottom left. Inside the left circle on the left side of the circle are the words "flywheel puck". In the middle of the left circle is the caption "Flywheel Electronics". In the middle of the graphic where the circles overlap from top to bottom are the words "heat sinks & fans", "cabinet frame & skins" and "monitoring & display". Above the overlapping portion of the circles is the caption "System Efficiencies" with an arrow pointed toward the overlapping portion of the diagram. The circle on the right side of the graphic is labeled "UPS" at the bottom right. Inside the right circle on the right side of the circle are the words "bypass switch contactors". In the middle of the right circle is the caption "UPS Electronics".]

Due to its unique design, CleanSource UPS typically has a lower installed cost than a conventional battery-based UPS. Due to its high efficiency and battery-free energy storage design, the total cost of ownership of CleanSource UPS is less than half of that of conventional systems. In conjunction with Caterpillar, we designed CleanSource UPS to be compatible with new and installed standby generators, extending their application to CPS. We are currently delivering CleanSource UPS units and have plans to introduce higher power, parallel systems by the end of 2000. Because of our product, Caterpillar is the only company selling, installing and servicing a complete CPS under a single brand name worldwide.

Future Products

Fully Integrated Continuous Power System. We are developing an advanced CPS for the distributed telecommunications market that combines short and long term energy storage and UPS functionality into one fully integrated system. We believe that benefits of this fully integrated CPS product will include increased reliability, lower cost and less maintenance relative to the piecemeal systems in use today. We anticipate commercial availability of our first CPS product in the second half of 2001.

Distributed Power Technology. Under an agreement with Caterpillar, the world's leading producer of distributed power systems, we are studying the potential benefits of a new type of electromechanical technology that can be used in distributed power applications.

Our Business Strategy

Our goal is to become the leading supplier of power quality and reliability equipment. Key elements of our strategy include:

Design, Manufacture And Market Optimal Solutions For Targeted Markets

We design products for specific markets. Our first product, CleanSource DC, put this principle into practice. We created a flywheel product to meet the specific needs of the UPS market. In so doing, we overcame the design constraints that had hampered preceding flywheel programs and to produce the first commercially viable alternative to lead-acid batteries. We intend to continue to identify market needs for the power industry and design products to address those specific needs.

Leverage Our Core Technologies to Develop Next Generation Products

We intend to continue to use our expertise in advanced electromechanical technologies combined with an integrated solutions approach to create innovative products that lower the cost and increase the quality of electric power. We are designing a fully integrated CPS with applications in the distributed telecommunications power quality and reliability market. Additionally, we have entered into an agreement with Caterpillar to study the feasibility of a new type of electromechanical technology for use in distributed power applications.

Distribute and Market our Products through Established OEM Channels

We believe that working with leading original equipment manufacturers, or OEMs, enables us to rapidly introduce our products into established customer and dealer networks and promote the adoption of new technologies. To date, our most important OEM relationship is with Caterpillar, a worldwide distributor of our CleanSource UPS products. Additionally, we have established distributor relationships with leading UPS OEMs Powerware and MGE UPS Systems for our CleanSource DC product. We intend to continue to use development and distribution relationships for our future products to achieve rapid market penetration.

Leverage Our Relationship with Caterpillar to Achieve Rapid Market Penetration

We believe that our distribution agreement with Caterpillar allows us to rapidly penetrate the power quality and reliability market through Caterpillar's worldwide network of over 200 dealers and over 1,500 branch outlets. A portion of Caterpillar's large installed base of over 250,000 gensets also provides a significant retrofit opportunity by converting installed standby systems to CPS with our CleanSource UPS. Our relationship with Caterpillar should enhance our credibility among the generally conservative customers within the power quality and reliability market. We will continue to examine additional ways to leverage our relationship with Caterpillar.

Outsource Components to Rapidly Scale Manufacturing

We intend to continue to outsource all non-proprietary hardware and electronics by maintaining and building on multiple supplier relationships so that we can respond quickly to significant quantity increases. We intend to focus on the final assembly and testing of our products, decreasing production cycle times and increasing volume production capability.

Aggressively Protect Our Intellectual Property

We seek to identify and to protect aggressively our key intellectual property, primarily through the use of patents. We believe that a policy of actively protecting intellectual property is an important component of our strategy to serve as a leading innovator in power quality technology and will provide us with a long-term competitive advantage.

Market Opportunities

The Electric Power Research Institute estimates that power disturbances cost U.S. businesses more than $30 billion each year. According to industry sources, in 1999 businesses spent in excess of $10.0 billion globally on power quality and reliability products in an attempt to reduce these losses. Our current products, CleanSource DC and CleanSource UPS, are targeted at the $5.5 billion market for UPS, which is expected to grow at an annual rate of 10% to 15% over the next several years. We believe that our CleanSource products are superior alternatives to conventional UPS and CPS products and should be able to rapidly penetrate this growing segment of the power quality industry. With future products, we anticipate that we will be able to compete in most segments of this market.

We intend to focus on the following market opportunities:

Internet Market

A study conducted by the University of Texas and released by Cisco Systems, Inc. found that the U.S. Internet economy grew at an estimated average annual rate of 175% from 1995 to 1998. This study also projected that the Internet economy would grow to $507 billion in 1999, up 68% from 1998. To support this growth, internet service providers must construct new facilities to house the computers and communications systems required to provide around-the-clock service to their customers. To ensure continuous service, ISPs are adding power quality equipment to protect these systems.

Telecommunications Market

To ensure uninterrupted service, wireless telecommunications providers must have continuous power at each cellular and PCS station. The market for back-up telecommunications power systems represents approximately $3.0 billion of the $10.0 billion power quality market and is growing at approximately 10% to 15% per year. Conventional CPS systems dominate this market using a patchwork of gensets, lead-acid batteries and UPS electronics. We are designing our next generation product, a fully integrated CPS, to service the specific needs of this market, although we expect broader market applications in the future. We believe that our fully integrated CPS will be well positioned to serve this market.

Other Power Quality and Reliability Markets

Industrial. An Electric Power Research Institute study on recurring U.S. power problems estimated that the average U.S. manufacturing facility experienced in excess of 20 power disturbances annually. Exacerbating this problem, manufacturing organizations are employing increasing levels of automation, especially process and machine control, communications and computerized optimization of material flow. Even brief power disturbances, which result in lost material, lost data and worker and plant down time, can be very expensive. Industries with the potential to suffer significant loss from power disturbances include semiconductor and pharmaceutical manufacturing, plastic and fiber extrusion, textiles, and precision machining.

Commercial Facilities. Many commercial facilities such as office buildings, hotels and university facilities now have a large number of computers or servers. Historically, these businesses and their personal computer networks have been unprotected from power disturbances or have only been spot-protected with a small PC UPS under each person's desk. A single CleanSource UPS system can protect as few as 200 PCs more cost effectively than many small PC UPS products.

Retrofit Market. Caterpillar has the largest installed base of standby generators in the world. Due to the growing requirement for high quality power, many of the customers that rely on standby generators for long-term power outages can no longer afford the five to ten second outage while the generator starts. We believe that upgrading, or retrofitting, a portion of Caterpillar's approximately 250,000 installed gensets worldwide by adding our CleanSource UPS, thereby creating a CPS, represents a significant market opportunity.

Distributed Generation

Fuel cells and microturbines, which allow users to bypass the electric utility grid by generating power locally, represent potential markets for our CleanSource products. These distributed generation technologies currently cannot respond effectively to rapid changes in electric power demands, or loads, due to their slow response capability. CleanSource DC can absorb sharp peaks in electrical demand, allowing a relatively expensive microturbine or fuel cell to be sized for the average power requirement of the customer. This combination provides a cost competitive alternative to sizing the fuel cell or microturbine to handle both peak and average electrical demands. In addition, CleanSource UPS can seamlessly transfer a customer load from utility power to fuel cell or microturbine standby power in the event of a utility outage.

Our Relationship with Caterpillar

We have established a key, strategic relationship with Caterpillar. Caterpillar is the market leader in new genset sales and has the largest installed base of existing standby generators in the world. Through Caterpillar's worldwide dealership and sales force network and its strong market reputation, we believe that we will be able to rapidly penetrate the market for our products.

After establishing an initial relationship with us for the distribution of our CleanSource DC product, Caterpillar agreed to participate in the development of CleanSource UPS and to become a worldwide distributor of CleanSource UPS, which is marketed under the Caterpillar brand name. By offering a Caterpillar UPS with a new standby genset, Caterpillar can transform a standby power system into a CPS. The combined solution dramatically reduces maintenance and increases reliability relative to traditional CPS products. By providing this comprehensive solution, Caterpillar is the only power quality supplier capable of delivering a CPS from a single supplier with worldwide service and support. We believe that this total solution gives both Caterpillar and us a significant competitive advantage in the power quality market.

Caterpillar provided $5.0 million in funding to support the development of CleanSource UPS. In exchange, Caterpillar received co-ownership of the intellectual property associated with the integration of UPS functionality with CleanSource DC, while we retained sole ownership of the underlying flywheel energy storage technology. Either Caterpillar or we may license to other entities the intellectual property associated with the integration of UPS functionality with CleanSource DC without further consent or accounting, provided that we do not license such technologies to competitors of Caterpillar for a period of five years.

Upon the completion of the development phase, we granted to Caterpillar worldwide rights to distribute CleanSource UPS, supported by our sales and marketing personnel. Caterpillar agreed to purchase 90% of its and its affiliates' requirements for flywheel-based UPS products from us. We are prohibited from selling CleanSource UPS to certain identified competitors of Caterpillar for a period of five years if Caterpillar meets specific contractual obligations over each year of the five-year term of the agreement. Caterpillar has a right to terminate its CleanSource UPS distribution agreement with us in the event we are acquired or undergo a change in control.

Under our agreement with Caterpillar, we also are studying the potential benefits of a new type of electromechanical technology that can be used in distributed power applications.

Sales, Marketing and Support

Sales and Marketing

In the power quality industry, we believe that partnering with established companies with significant relationships and service capabilities enables us to promote the adoption of new technology that otherwise would take significantly longer for wide application. Our sales activity has

focused principally on OEM adoption of our products through extensive OEM testing, product qualification and early product placement with select end users. We intend to continue to sell through OEMs to gain acceptance of our proprietary and innovative power technologies. We believe that focusing on product acceptance and support from OEMs provides the greatest opportunity for market penetration and sales growth with minimal resources. We are also expanding our international sales activities through our multinational OEM sales channels. We employ a small, geographically dispersed sales force to develop leads and educate our OEM customers in their sales efforts.

Our marketing efforts are geared toward developing and sustaining key relationships with OEMs, participating in tradeshows to promote and launch our products, and training for the salespeople within the OEM channels. We also work with OEM partners on promotional activities such as advertising development, direct mail and telemarketing strategies. We use our marketing resources to stimulate end user sales through trade press articles, participation in industry conferences and limited direct mail to specific power quality customers.

Service and Support

We are transitioning the service and maintenance of our products from our own service personnel to the OEMs who sell our products. We believe that this will reduce the need for a large end-user support organization by enabling our OEMs to provide installation, service and primary support to their customers. Our service personnel will remain as a back-up for difficult situations or where no trained personnel are immediately available and will support initial applications of the products. Our customer service and support organization also provides comprehensive training programs to our OEM customers.

Our Customers

Our primary customers are OEMs. To date, our most significant OEM is Caterpillar, which distributes CleanSource UPS under its brand name. We intend to continue to use selected development and distribution partnerships to develop and distribute our future products into selected markets and achieve rapid market penetration.

End use industries for our products include Internet service providers, semiconductor manufacturers, telecommunication providers, pharmaceutical manufacturers, hospitals, electric utilities and broadcasters.

During 1999, Caterpillar accounted for 39% of our total revenue and our largest UPS OEM, Powerware, accounted for 21% of our revenue. Sales to Micron Technologies and Lee Technologies also accounted for 16% and for 13% of our 1999 revenue, respectively. No other customer accounted for more than 10% of our revenue during 1999. Due to Caterpillar's exclusive CleanSource UPS distribution rights, we anticipate that revenue from Caterpillar will comprise a majority of our revenue in 2000. In the first quarter of 2000, Caterpillar accounted for 99% of our revenue.

Technology

Flywheel Energy Storage System

Our patented flywheel energy storage system stores kinetic energy by spinning constantly in a low-friction environment. When the user requires back-up power, our system converts the kinetic energy of the spinning flywheel into electricity. We believe that relative to other energy storage alternatives, our system provides high quality, reliable power at the lowest cost.

Over the past 20 years, attempts at commercializing flywheel systems have been based on technology used in aerospace applications, such as satellite momentum control, that attempt to maximize the amount of stored energy with the absolute minimum system weight. Cost has been a secondary concern for such applications. As a result of these design goals, these flywheel designs require extremely high rotational speeds in excess of 50,000 rotations per minute. In order to achieve such high speeds, the flywheel must be made of expensive materials, such as composite carbon fiber. As a result, high-speed flywheel concepts require a number of expensive safety systems, including extensive inertial containment and "active" magnetic bearing systems that use sophisticated computer controls to continuously monitor the position and balance of the flywheel.

Rather than rely on the flywheel concepts developed for other applications, we focused our development efforts on providing products that meet the specific needs of the power quality and reliability market. Users requiring back-up power products want products that can deliver high quality, reliable power at the lowest cost. As a result of these needs, we developed a flywheel system that operates at significantly lower speeds, under 8,000 rotations per minute. These speeds are comparable to those of automobile engines and industrial machinery. This lower flywheel speed has allowed us to develop a lower cost design by using an inexpensive bearing system and conventional steel in place of expensive composite materials.

The design of our flywheel system, which is displayed below, integrates the function of a motor (which provides the energy to rotate the flywheel), flywheel rotor (which spins constantly to maintain a ready source of kinetic energy) and generator (which converts the kinetic energy of the flywheel into electricity) into a single integrated system. This integration further reduces the cost of our product and increases its efficiency. The flywheel rotor is designed to spin in a near frictionless environment by the use of a low-cost, combination magnetic and mechanical bearing system. The friction in the spinning chamber is further reduced by the creation of a partial vacuum, which reduces the amount of air in the chamber that otherwise creates drag on the flywheel rotor. As the flywheel rotor slows down when a user requires power, the rotor's magnetism is increased as it rotates past copper coils contained in the armature to generate constant output power.

[GRAPHIC]

[Description of graphic: This graphic depicts "The CleanSource Flywheel Technology" and lists the patents we have obtained or filed for on the specific parts of the flywheel system. From the top of the left side of the flywheel to the bottom, we have listed the following patents: "Magnetic bearing integrated into field circuit, Patent# US5920138", "Constant voltage regulation, Patent# US5932935", "Smooth air-gap armature, Patent Pending", "High-power motor-generator, Patent# US5905321". From the top of the right side of the flywheel to the bottom, we have listed the following patents: "Ball bearing cartridge for easy replacement, Patent# US6029538", High intertia motor-generator rotor, Patent# US5929548" and "Slotless motor-generator stator, Patent# US5731654, Patent# 5969457".]

We have verified our flywheel design with both internal and external three-dimensional finite element analysis, as well as tests designed to determine the flywheel's safety at varying speeds. We test each flywheel rotor with stringent quality control methods. These tests have demonstrated a factor of safety consistent with common industrial machines such as large motors and generators.

The CleanSource Family of Products

Our unique flywheel energy storage system device is being used in our two currently offered products: CleanSource DC and CleanSource UPS. The CleanSource UPS design takes advantage of the many component similarities between the CleanSource DC and a traditional UPS system. Both products require power conversion electronics, fans for cooling, a frame for structural support, telemetry, data reporting, a user display and other overlapping functions. By combining these functions into a single system, we achieved significant cost efficiencies.

The UPS electronics we use in our CleanSource UPS product are the latest in power semiconductor devices using highly reliable and efficient insulated gate bipolar transistors. This results in an efficient, highly responsive power conditioning system that can protect sensitive customer power requirements from even the briefest of electric power anomalies. Tightly integrating these power electronics with our flywheel energy storage system results in an efficient, compact and cost effective UPS system.

Generator Start Enhancement

To enhance the overall system reliability of CleanSource UPS, we have patented a method to draw power from the flywheel to supply 24 volts of starting power to a genset to augment or replace the typical starter battery, which is the cause of most generator start failures. When taking advantage of this flywheel-sourced starting power, the reliability of the entire CPS solution is significantly enhanced.

Research and Development

We believe that our research and development efforts are essential to our ability to successfully deliver innovative products that address the needs of our customers as the market for power quality products evolves. Our research and development team works closely with our marketing and sales team and OEMs to define product features and performance to address the specific needs. Our research and development expenses were $2.6 million, $4.0 million and $4.4 million in 1997, 1998 and 1999, respectively. We anticipate maintaining significant levels of research and development expenditures in the future. At March 31, 2000, our research and development efforts employed 45 engineers and technicians.

Manufacturing

We source many of our components from contract manufacturers to enhance our ability to scale our operations and minimize cost. This approach allows us to respond quickly to customer orders while maintaining high quality standards.

Our internal manufacturing process consists of assembly, functional testing and quality control of our products. We also test components, parts and subassemblies obtained from suppliers for quality control purposes.

We purchase our components on a purchase order basis. We do not have long-term agreements with any of our suppliers. However, we intend to seek long-term agreements with key suppliers to ensure the adequate supply of components. Although we use standard parts and components for our products where possible, we purchase a particular type of power module and a

microprocessor from single source suppliers. If we were unable to obtain these components, we believe it would take approximately six months to develop a substitute power module and approximately four months to develop a substitute microprocessor. We have an agreement with the power module supplier to maintain at least three months inventory, and we plan to maintain an additional three months of inventory. We maintain approximately six months of inventory of the microprocessor.

We plan to substantially expand our manufacturing facilities and capacity in order to support projected volume demand for our products.

Proprietary Rights

We rely on a combination of patents and trademarks, as well as confidentiality agreements and other contractual restrictions with employees and third parties, to establish and protect our proprietary rights. We currently have filed thirty-two patents before the United States' Patent and Trademark Office, twenty-one of which have issued, nine of which are pending, three of which have been allowed, and two of which we abandoned. Additionally, we have made twenty-five filings under the Patent Cooperation Treaty, and before the European Patent Office and the Japanese Patent Office. Of those patents prosecuted before the United States' Patent and Trademark Office, seventeen claim inventions related to our CleanSource product line, eight of which have issued. Six of these issued patents protect inventions related to a motor/generator for flywheel use, a central component of our CleanSource product. Our patent strategy is critical for preserving our rights in and to the intellectual property embodied in our CleanSource product line. As a manufactured, tangible device that is sold rather than licensed, the CleanSource product line does not qualify for copyright or trade secret protection. To enforce our ownership of such technology, we principally rely on the protection obtained through the patents we own, as well as state unfair competition laws. We intend to aggressively protect our patents, including by bringing legal actions if we deem it necessary.

We own the registered trademark CLEANSOURCE in the United States and have applied for a trademark on our logo. All other trademarks, service marks or trade names referred to in this prospectus are the property of their respective owners.

Competition

The power quality and power reliability markets are intensely competitive, with the principal bases for competition being system reliability and cost, including initial cost and total cost of ownership, and OEM endorsement and brand recognition. Our battery-free power quality and reliability products compete directly with the flywheel-based products of Piller, Hitec and EuroDiesel. In addition, our current CleanSource UPS product competes with battery-based UPS manufacturers, Powerware, MGE UPS Systems and Liebert. Our future CPS product will compete with manufacturers of CPS equipment for the telecommunications market, including Alpha Technologies and the Lectro division of Invensys. We also compete, directly or indirectly, with a number of other companies and competing technologies in these markets. Our products have been designed to replace a number of existing technologies, primarily lead-acid batteries and related UPS electronics. Therefore, we compete indirectly with manufacturers of these products. Moreover, a number of other companies are developing flywheel-based technologies which could compete with our technologies.

Two of our CleanSource DC distributors, Powerware and MGE UPS Systems, market products which compete with CleanSource UPS.

Employees

At March 31, 2000, we had 98 employees, with 45 engaged in research and development; 27 in manufacturing; 8 in sales; 6 in marketing and customer support; and 12 in administration, information

technology and finance. None of our employees is represented by a labor union. We have not experienced any work stoppages and consider our relations with our employees to be good.

Facilities

Our corporate headquarters facility, which houses our administrative, advanced development, engineering, information systems, marketing, sales and service and support groups, consists of approximately 23,500 square feet in Austin, Texas. We lease our corporate headquarters facility pursuant to a lease agreement that expires in March 2003. Our manufacturing facility of approximately 15,000 square feet is also located in Austin, Texas. The lease on this facility also expires in March 2003.

Legal Proceedings

We are not party to any legal proceedings.

MANAGEMENT

EXECUTIVE OFFICERS, DIRECTORS AND KEY EMPLOYEES

The following table sets forth certain information concerning our executive officers and directors and certain of our key employees:

NAME	AGE	POSITION(S)
DIRECTORS AND EXECUTIVE OFFICERS:		
Eric L. Jones	65	Chairman of the Board of Directors
Joseph F. Pinkerton, III	36	President, Chief Executive Officer and Director
David S. Gino	42	Vice President of Finance and Chief Financial Officer
James A. Balthazar	46	Vice President of Marketing
William E. Ott, II	44	Vice President of Sales and Service
Richard E. Anderson	35	Director (1)
Rodney S. Bond	55	Director (2)
Lindsay R. Jones	39	Director
Jan H. Lindelow	54	Director (1)(2)
Terrence L. Rock	53	Director (1)(2)
OTHER KEY EMPLOYEES:		
Mark Ascolese	49	Senior Vice President
Daniel R. Brent	53	Vice President of Manufacturing
David B. Clifton	52	Vice President of Advanced Development
William C. Kainer	48	Vice President of Business Development
Travis R. Williams	55	Vice President of Engineering

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(1)Member of the compensation committee
(2)Member of the audit committee

EXECUTIVE OFFICERS AND DIRECTORS

ERIC L. JONES has served as the Chairman of our Board of Directors since March 1995. Since April 1994, he has been a partner with SSM Venture Partners, L.P., an Austin, Texas-based venture capital firm. Mr. Jones is currently a director/chairman of several private companies including 360 Commerce and Motive Communications. He is also the past chairman of the board of directors of VTEL Corporation and Tivoli Systems. During a twenty-five year career at Texas Instruments, Mr. Jones held various positions, including as a corporate vice president and as president of TI's Data Systems Group. Mr. Jones holds a Ph.D. in mechanical engineering from the University of Texas at Austin.

JOSEPH F. PINKERTON, III, our founder, has served as our Chief Executive Officer, President and director since August 1992. From June 1989 to June 1992, Mr. Pinkerton was a principal with FRC, a private research and development company. Mr. Pinkerton holds numerous U.S. and foreign patents. Mr. Pinkerton holds a B.A. in physics from Albion College, in association with Columbia University.

DAVID S. GINO has served as our Chief Financial Officer and Vice President of Finance since December 1999. From August 1995 to November 1999, Mr. Gino was the Chief Financial Officer and

Executive Vice President of Finance of DuPont Photomasks, a public semiconductor component manufacturer. From October 1987 to August 1995, Mr. Gino held a number of financial and business management positions with The DuPont Company. Mr. Gino holds a B.A. in economics from the University of California and an MBA from the University of Phoenix.

JAMES A. BALTHAZAR has served as our Vice President of Marketing since October 1996. From March 1984 to August 1996, Mr. Balthazar held various management positions, including Vice President of Marketing, at Convex Computer Corporation, a public supercomputer manufacturer. Mr. Balthazar holds a B.S. from the University of Maryland, College Park and an M.S. in engineering from Cornell University.

WILLIAM E. OTT, II has served as our Vice President of Sales and Service since September 1997. From July 1996 to September 1997, Mr. Ott served as General Manager for Eastern United States, Canada and Latin America at US Data Corp, a public manufacturer of automation software. From August 1995 to July 1996, he was the Southeastern Sales Director for Pyramid Technology Corp., a public high performance UNIX server manufacturer, and from July 1994 to June 1995, he was the Southeastern United States Sales Manager for Sybase, Inc. Mr. Ott holds a B.S. in electrical engineering and an M.B.A. from the University of Missouri at Columbia.

RICHARD E. ANDERSON has served on our Board of Directors since 1992. In 1992, Mr. Anderson founded Hill Partners, Inc., a real estate development and investment company, where he currently serves as a partner. Mr. Anderson holds a B.A. in economics from Southern Methodist University.

RODNEY S. BOND has served on our Board of Directors since September 1994. Since May 1990, Mr. Bond has served in various capacities, including as Vice President, Chief Strategic Officer and Vice President, Chief Financial Officer with VTEL Corporation, a public digital video communications company. Mr. Bond holds a B.S. in metalurgical engineering from the University of Illinois and an M.B.A. from Northwestern University.

LINDSAY R. JONES has served on our Board of Directors since December 1996. Ms. Jones is a Vice President of Advent International Corp., a private equity firm, which she joined in September 1990. Ms. Jones holds a B.A. in economics from Middlebury College.

JAN H. LINDELOW has served on our Board of Directors since February 1998. Since May 1997 to the present, Mr. Lindelow has served as Chairman and CEO of Tivoli Systems, Inc. From January 1995 to April 1997, he was a self-employed management consultant. From 1988 to June 1994, Mr. Lindelow worked in various management capacities at Asea Brown Boveri AG. Mr. Lindelow holds an M.S. in electrical engineering from the Royal Institute of Technology in Stockholm, Sweden.

TERRENCE L. ROCK has served on our Board of Directors since 1997. Since 1996, Mr. Rock has served as a partner with CenterPoint Venture Partners. From 1983 to 1996, Mr. Rock worked for Convex Computer Corporation holding various positions, including President and Vice President of Operations. Mr. Rock also serves on the board at several private companies. Mr. Rock holds a B.S. in mechanical engineering from South Dakota School of Mines and Technology.

OTHER KEY EMPLOYEES

MARK ASCOLESE has served as our Senior Vice President since March 2000. From 1985 to March 2000, Mr. Ascolese served as President, Global Accounts, as well as various other executive level positions at Invensys PLC's Powerware subsidiary. Mr. Ascolese holds a B.S. in commerce from the University of Louisville.

DANIEL R. BRENT has served as our Vice President of Manufacturing since July 1996. From June 1984 until July 1996, Mr. Brent held various manufacturing management positions, including manager and director of technical support in the Austin, Texas and Fremont, California divisions of Tandem Computers. Mr. Brent holds a B.S. in chemistry from Wichita State University.

DAVID B. CLIFTON has served as our Vice President of Advanced Development since 1997. From 1994 to 1997, Mr. Clifton served as our Vice President of Engineering. Prior to joining Active Power, Mr. Clifton was a founder and Vice President of Engineering at Asoma Instruments. Mr. Clifton attended Texas Tech University, Oklahoma University and the University of Texas at Austin.

WILLIAM C. KAINER has served as our Vice President of Business Development since January 1999. From October 1997 to January 1999, Mr. Kainer served as our Vice President of Service. From January 1997 to October 1997, he served as Vice President of Sales for Haystack Labs, a private security software company. From November 1995 to September 1996, Mr. Kainer was the Vice President of Sales and Marketing of General Computer Systems, a private pharmaceutical software company. From July 1994 to October 1995, he was General Manager of the Americas at Convex Computer Corporation. Mr. Kainer holds a B.A. in history from the University of Houston.

TRAVIS R. WILLIAMS has served as our Vice President of Engineering since October 1997. Prior to this, Mr. Williams held various positions, including the Manager of Development Engineering at the Wayne Division of Dresser Industries, Inc., a public manufacturer of retail petroleum marketing systems, from February 1988 to September 1997. Mr. Williams holds a B.S. in mechanical engineering from Texas A&M University and an M.S. in electrical engineering from the University of California at Los Angeles.

Our officers serve at the discretion of the board of directors. All of our current directors were elected pursuant to the Fourth Amended and Restated Voting Agreement dated November 23, 1999 by and between us and certain of our stockholders. The voting provisions of this agreement will automatically terminate upon the closing of this offering. There are no family relationships among any of our executive officers or directors.

CLASSIFIED BOARD OF DIRECTORS

Prior to the closing of this offering, we intend to file an amended certificate of incorporation pursuant to which our board of directors will be divided into three classes effective upon the closing of this offering. The members of each class will serve for a staggered, three year term. Upon the expiration of the term of a class of directors, directors in that class will be elected for three-year terms at the annual meeting of stockholders in the year in which their term expires. The classes will be comprised as follows:

- Class I Directors. Richard E. Anderson, Rodney S. Bond and Lindsay R. Jones will be Class I Directors whose terms will expire at the 2001 annual meeting of stockholders;

- Class II Directors. Jan H. Lindelow and Terrence L. Rock will be Class II Directors whose terms will expire at the 2002 annual meeting of stockholders; and

- Class III Directors. Eric L. Jones and Joseph F. Pinkerton, III will be Class III Directors whose terms will expire at the 2003 annual meeting of stockholders.

COMMITTEES OF THE BOARD OF DIRECTORS

Our board of directors has established an audit committee and a compensation committee.

AUDIT COMMITTEE. The audit committee reports to the board of directors with regard to the selection of our independent auditors, the scope of our annual audits, fees to be paid to the auditors,

the performance of our independent auditors, compliance with our accounting and financial policies, and management's procedures and policies relative to the adequacy of our internal accounting controls. The members of the audit committee are Messrs. Bond, Lindelow and Rock.

COMPENSATION COMMITTEE. The compensation committee reviews and makes recommendations to the board regarding our compensation policies and all forms of compensation to be provided to our directors, executive officers and certain other employees. In addition, the compensation committee reviews bonus and stock compensation arrangements for all of our other employees. The compensation committee also administers our stock option and stock purchase plans. The members of the compensation committee are Messrs. Anderson, Lindelow and Rock.

DIRECTOR COMPENSATION

Each of our non-employee directors receives a fee of $5,000 per quarter for his or her service as a director. In addition, non-employee directors will receive stock option grants at periodic intervals under the automatic option grant program of our 2000 Stock Incentive Plan. Non-employee and employee directors will also be eligible to receive option grants under the discretionary option grant program of the 2000 plan. Under the automatic option grant program, each individual who first becomes a non-employee board member at any time after this offering will receive an option grant to purchase 20,000 shares of common stock on the date such individual joins the board. In addition, on the date of each annual stockholders meeting held after this offering, each non-employee board member who continues to serve as a non-employee board member will automatically be granted an option to purchase 5,000 shares of common stock, provided such individual has served on the board for at least six months.

In May 1996, we entered into a consulting services agreement with Eric L. Jones, the chairman of our board of directors. Mr. Jones receives a fee of $6,250 per month for providing consulting services to us. This agreement is terminable by either party with 30 days advance written notice.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Our board's compensation committee consists of Messrs. Anderson, Lindelow and Rock. To date, no member of our compensation committee has served as an officer or employee of Active Power. No member of the compensation committee serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or its compensation committee.

EMPLOYMENT AGREEMENTS AND SEVERANCE ARRANGEMENTS

We have severance arrangements in place with the following employees:

- JOSEPH F. PINKERTON, III. Pursuant to a resolution by our board of directors, Mr. Pinkerton will receive six months of severance pay if he is terminated without cause. Additionally, if after six months of an inability to perform his duties due to a permanent disability Mr. Pinkerton is terminated, he will receive three months of severance pay.

- DAVID S. GINO. Upon a change in corporate control that results in a significant reduction in his role and/or responsibility within 12 months of the change in corporate control, Mr. Gino will receive up to six months of severance pay. Additionally, 75% of his then unvested options will accelerate and vest immediately.

LIMITATION OF LIABILITY AND INDEMNIFICATION

Our certificate of incorporation limits the liability of our directors to us or our stockholders for breaches of the directors' fiduciary duties to the fullest extent permitted by Delaware law. In addition, our certificate of incorporation and bylaws provide for mandatory indemnification of directors and officers to the fullest extent permitted by Delaware law. We also maintain directors' and officers' liability insurance and enter into indemnification agreements with all of our directors and executive officers.

EXECUTIVE COMPENSATION

The following table provides the total compensation paid to our chief executive officer and the next highest paid executive officers whose compensation (salary and bonus) exceeded $100,000 in 1999.

SUMMARY COMPENSATION TABLE

	ANNUAL COMPENSATION			LONG-TERM COMPENSATION
NAME AND PRINCIPAL POSITION	SALARY ($)	BONUS ($)	OTHER ANNUAL COMPENSATION ($)	SECURITIES UNDERLYING OPTIONS (#)
Joseph F. Pinkerton, III.... President and Chief Executive Officer	$157,308	$50,000	--	--
James A. Balthazar.......... Vice President of Marketing	128,750	254	--	7,000
William E. Ott.............. Vice President of Sales and Service	123,600	25,499	--	13,000

OPTION GRANTS IN LAST FISCAL YEAR

The following table provides information concerning individual grants of stock options made during 1999 to each of our executive officers named in the summary compensation table. We have never granted any stock appreciation rights.

The exercise prices represent our board's estimate of the fair market value of the common stock on the grant date. In establishing these prices, our board considered many factors, including the book value of our common stock, the price of the most recent sales of our preferred stock, the preferences given to our preferred stock and the lack of marketability of our common stock.

The amounts shown as potential realizable value represent hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. These amounts represent certain assumed rates of appreciation in the value of our common stock. The 5% and 10% assumed annual rates of compounded stock price appreciation are mandated by rules of the Securities and Exchange Commission and do not represent our estimate or projection of the future price of our common stock. The potential realizable value is calculated based on the ten-year term of the option at its time of grant. It is calculated based on the assumption that our initial public offering price per share appreciates at the indicated annual rate compounded annually for the entire term of the option and that the option is exercised and sold on the last day of its term for the appreciated stock price. Actual gains, if any, on stock option exercises depend on the future performance of our common stock. The amounts reflected in the table may not necessarily be achieved.

We granted these options under our 1993 Stock Option Plan. Each option has a maximum term of ten years, subject to earlier termination if the optionee's services are terminated. Except as otherwise noted, these options are immediately exercisable, but we have the right to repurchase, at the exercise price, any shares that have not vested at the time the optionee terminates employment with us. The percentage of total options granted to our employees in the last fiscal year is based on options to purchase an aggregate of 591,000 shares of common stock granted in 1999. The following table sets forth information concerning the individual grants of stock options to each of our named executive officers in the year ended 1999.

OPTION GRANTS IN 1999

NAME	INDIVIDUAL GRANTS: NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED(#)(1)	PERCENT OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN THE YEAR ENDED 1999(%)	EXERCISE PRICE PER SHARE	EXPIRATION DATE	POTENTIAL REALIZABLE VALUE OF ASSUMED ANNUAL RATES OF STOCK PRICE APPRECIATION FOR OPTION TERM: 5%($)	10%($)
Joseph F. Pinkerton, III....................	--	--	--	--	--	--
James A. Balthazar(2)...	7,000	1.2%	$2.25	12/9/09	$	$
William E. Ott(3).......	13,000	2.2	2.25	12/9/09		

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(1)These options are fully exercisable but if the employee leaves us before he has vested in his option shares, we have the right to repurchase, at the exercise price, any shares that have not vested.
(2)These options vested as to 6.25% on March 9, 2000 and vest as to the remaining 93.75% in equal quarterly installments over the following 15 quarters.
(3)These options vested as to 6.25% on March 9, 2000 and vest as to the remaining 93.75% in equal quarterly installments over the following 15 quarters.

FISCAL YEAR-END OPTION VALUES

The following table provides information about stock options held as of December 31, 1999 by each of our executive officers named in the Summary Compensation Table. Actual gains on exercise, if any, will depend on the value of our common stock on the date on which the shares are sold.

YEAR END 1999 OPTION VALUES

	NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 31, 1999(#)		VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT DECEMBER 31, 1999($)(1)	
	EXERCISABLE	UNEXERCISABLE	EXERCISABLE	UNEXERCISABLE
Joseph F. Pinkerton, III...	--	--	--	--
James A. Balthazar.........	172,000	--	$	$
William E. Ott.............	111,500	--		

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(1)There was no public trading market for our common stock as of December 31, 1999. Accordingly, we have based the value of unexercised in-the-money options at December 31, 1999 on our initial public offering price of $ per share, less the applicable exercise price per share, multiplied by the number of shares underlying the options. Actual gains on exercise, if any, will depend on the value of our common stock on the date on which the shares are sold.

2000 STOCK INCENTIVE PLAN

INTRODUCTION. The 2000 Stock Incentive Plan is the successor program to our 1993 Stock Option Plan. The 2000 plan was adopted by our board of directors and has been approved by our stockholders. The 2000 plan will become effective immediately upon the signing of the underwriting agreement for this offering. At that time, all outstanding options under the 1993 plan will be transferred to the 2000 plan, and no further option grants will be made under the 1993 plan. The transferred options will continue to be governed by their existing terms, unless our compensation committee decides to extend one or more features of the 2000 plan to those options. Except as otherwise noted below, the transferred options will have substantially the same terms as will be in effect for grants made under the discretionary option grant program of our 2000 plan.

SHARE RESERVE. shares of our common stock have been authorized for issuance under the 2000 plan. This share reserve consists of the number of shares carried over from the 1993 plan plus an additional increase of shares. The share reserve under our 2000 plan will automatically increase on the first trading day in January of each calendar year, beginning with calendar year 2001, by an amount equal to percent (%) of the total number of shares of our common stock outstanding on the last trading day of December in the prior calendar year, but in no event will this annual increase exceed shares. In addition, no participant in the 2000 plan may be granted stock options, separately exercisable stock appreciation rights or direct stock issuances for more than shares of common stock in total in any calendar year.

PROGRAMS. Our 2000 plan has three separate programs:

- the discretionary option grant program, under which eligible employees may be granted options to purchase shares of our common stock at an exercise price not less than the fair market value of those shares on the grant date;

- the stock issuance program, under which eligible individuals may be issued shares of common stock directly, upon the attainment of performance milestones, the completion of a specified period of service or as a bonus for past services; and

- the automatic option grant program, under which option grants will automatically be made at periodic intervals to eligible non-employee board members to purchase shares of common stock at an exercise price equal to the fair market value of those shares on the grant date.

ELIGIBILITY. The individuals eligible to participate in our 2000 plan include our officers and other employees, our non-employee board members and any consultants we hire.

ADMINISTRATION. The discretionary option grant and stock issuance programs will be administered by our compensation committee. This committee will determine which eligible individuals are to receive option grants or stock issuances under those programs, the time or times when the grants or issuances are to be made, the number of shares subject to each grant or issuance, the status of any granted option as either an incentive stock option or a nonstatutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding.

PLAN FEATURES. Our 2000 plan includes the following features:

- The exercise price for any options granted under the plan may be paid in cash or in shares of our common stock valued at the fair market value on the exercise date. The option may also be exercised through a same-day sale program through an independent brokerage firm without any cash outlay by the optionee.

- The compensation committee has the authority to cancel outstanding options under the discretionary option grant program, including any transferred options from our 1993 plan, in return for the grant of new options for the same or different number of option shares with an exercise price per share based upon the fair market value of our common stock on the new grant date.

CHANGE IN CONTROL. The 2000 plan includes the following change in control provisions which may result in the accelerated vesting of outstanding option grants and stock issuances:

- In the event that we are acquired by merger or asset sale or board-approved sale by the stockholders of more than 50% of our outstanding voting stock, each outstanding option under the discretionary option grant program which is not to be assumed by the successor corporation or otherwise continued in effect will immediately become exercisable for all the option shares, and all outstanding unvested shares will immediately vest, except to the extent our repurchase rights with respect to those shares are to be assigned to the successor corporation or otherwise continued in effect.

- The compensation committee will have complete discretion to grant one or more options which will become exercisable for all the option shares in the event those options are assumed in the acquisition but the optionee's service with us or the acquiring entity is subsequently involuntarily terminated. The vesting of any outstanding shares under our 2000 plan may be accelerated upon similar terms and conditions.

- The compensation committee may grant options and structure repurchase rights so that the shares subject to those options or repurchase rights will immediately vest in connection with a hostile takeover effected through a successful tender offer for more than 50% of our outstanding voting stock or a change in the majority of our board through one or more contested elections. Such accelerated vesting may occur either at the time of such transaction or upon the subsequent termination of the optionee's services.

- The options currently outstanding under our 1993 plan will immediately vest in the event we are acquired by merger or asset sale, unless those options are assumed by the acquiring entity or our repurchase rights with respect to any unvested shares subject to those options are assigned to such entity. If the options are so assumed by the acquiring entity and our repurchase rights are so assigned to such entity, then no accelerated vesting will occur at the time of the acquisition but, at the discretion of our board of directors at the time of the option grant or any time when the option is outstanding, the options will accelerate and vest in full upon an involuntary termination of the optionee's employment within a period no later than 18 months following the acquisition.

AUTOMATIC OPTION GRANT PROGRAM. Each individual who first becomes a non-employee board member at any time after the effective date of this offering will receive an option grant to purchase 20,000 shares of common stock on the date such individual joins the board. In addition, on the date of each annual stockholders meeting held after the effective date of this offering, each non-employee board member who is to continue to serve as a non-employee board member, including each of our current non-employee board members, will automatically be granted an option to purchase 5,000 shares of common stock, provided such individual has served on the board for at least six months.

Each automatic grant will have an exercise price per share equal to the fair market value per share of our common stock on the grant date and will have a term of 10 years, subject to earlier termination following the optionee's cessation of board service. The option will be immediately exercisable for all of the option shares; however, we may repurchase, at the exercise price paid per share, any shares purchased under the option which are not vested at the time of the optionee's cessation of board service. The shares subject to each initial 20,000-share automatic option grant will vest in a series of three successive annual installments upon the optionee's completion of each year of board service over the three-year period measured from the grant date. The shares subject to each annual 5,000 share automatic grant will vest upon the optionee's completion of one year of service measured from the grant date. However, the shares will immediately vest in full upon certain changes in control or ownership or upon the optionee's death or disability while then serving as a board member.

The board may amend or modify the 2000 plan at any time, subject to any required stockholder approval. The 2000 plan will terminate no later than   , 2010.

CHANGE IN CONTROL ARRANGEMENTS UNDER 1993 STOCK OPTION PLAN

If we are acquired in a stockholder-approved transaction, whether by merger or asset sale, then all of the outstanding options granted under our 1993 plan, including those held by our executive officers, will accelerate in full, unless those options are assumed by the successor company and our repurchase rights with respect to unvested option shares are assigned to that company. At the

discretion of our board of directors, at the time of the option grant or at any time when the option remains outstanding, if the optionee's employment is terminated other than for cause within a period not to exceed 18 months after the acquisition, the options will accelerate and become fully vested, and such options may be exercised at any time prior to the earlier of the expiration date of the option or the earlier termination of the option.

EMPLOYEE STOCK PURCHASE PLAN

INTRODUCTION. Our Employee Stock Purchase Plan was adopted by our board of directors and has been approved by our stockholders. The plan will become effective immediately upon the signing of the underwriting agreement for this offering. The plan is designed to allow our eligible employees to purchase shares of common stock, at semi-annual intervals, with their accumulated payroll deductions.

SHARE RESERVE. shares of our common stock initially have been reserved for issuance. The reserve will automatically increase on the first trading day of January in each calendar year, beginning in calendar year 2001, by an amount equal to percent (%) of the total number of outstanding shares of our common stock on the last trading day of December in the prior calendar year. In no event will any such annual increase exceed shares.

OFFERING PERIODS. The plan has a series of successive offering periods, each with a maximum duration of 24 months. The initial offering period began on the date of the signing of the underwriting agreement for this offering and ends on the last business day in 2001. The next offering period will start on the first business day in 2001, and subsequent offering periods will be set by our compensation committee.

ELIGIBLE EMPLOYEES. Individuals scheduled to work more than 20 hours per week for more than five calendar months per year may join an offering period on their start date or any semi-annual entry date within that period. Semi-annual entry dates will occur on the first business day of June and December each year. Individuals who become eligible employees after the start date of an offering period may join the plan on any subsequent semi-annual entry date within that offering period.

PAYROLL DEDUCTIONS. A participant may contribute up to 15% of his or her base salary through payroll deductions, and the accumulated deductions will be applied to the purchase of shares on each semi-annual purchase date. The purchase price per share will be equal to 85% of the fair market value per share on the participant's entry date into the offering period or, if lower, 85% of the fair market value per share on the semi-annual purchase date. Semi-annual purchase dates will occur on the last business day of and each year. However, a participant may not purchase more than shares on any one semi-annual purchase date, and no more than 75,000 shares may be purchased in total by all participants on any one semi-annual purchase date. Our compensation committee will have the authority to change these limitations for any subsequent offering period.

RESET FEATURE. If the fair market value per share of our common stock on any purchase date is less than the fair market value per share on the start date of the two-year offering period, then that offering period will automatically terminate, and a new two-year offering period will begin on the next business day. All participants in the terminated offering will be transferred to the new offering period.

CHANGE IN CONTROL. Should we be acquired by merger or sale of substantially all of our assets or more than fifty percent of our voting securities, then all outstanding purchase rights will automatically be exercised immediately prior to the effective date of the acquisition. The purchase price will be equal to 85% of the market value per share on the participant's entry date into the offering period in which an acquisition occurs or, if lower, 85% of the fair market value per share immediately prior to the acquisition.

TERMINATION AND AMENDMENT OF PLAN. The plan will terminate no later than the last business day of 2010. The board may at any time amend, suspend or discontinue the plan. However, certain amendments may require stockholder approval.

CERTAIN TRANSACTIONS

Private Placements of Equity

5% Stockholders, Directors and Executive Officers. Since our inception in August 1992, we have raised capital primarily through the sale of our preferred stock, including the following sales to holders of more than 5% of our outstanding common stock and to directors and executive officers:

- In August 1992, we sold 100,000 shares of our non-voting 1992 preferred stock at a price of $0.50 per share to Richard E. Anderson. Concurrently with this financing, Mr. Anderson became a director.

- In March 1995, we sold to SSM Venture Partners 263,158 shares of our Series A preferred stock at a price of $1.52 per share and a warrant to purchase 200,000 shares of common stock at an exercise price of $0.15 per share. Concurrently with the closing of the financing, SSM Venture Partners became a 5% stockholder and Eric L. Jones became the chairman of our board of directors. Prior to this offering, we anticipate that SSM will exercise this warrant.

- In May 1996, we sold an aggregate of 1,847,292 shares of our Series B preferred stock at a price of $2.03 per share to funds affiliated with Advent International, funds affiliated with Austin Ventures and SSM Venture Partners. Concurrently with the closing of the financing, investment funds affiliated with Advent International Corp. and investment funds affiliated with Austin Ventures became 5% stockholders.

  In connection with our Series C preferred stock financing in July 1997, the terms of the Series B preferred stock were modified to provide that the Series B preferred stock would be convertible into common stock at a rate of approximately 1.19:1.

- In July 1997, we sold an aggregate of 1,726,620 shares of our Series C preferred stock at a price of $3.475 per share to funds affiliated with Austin Ventures, CenterPoint Venture Fund, funds affiliated with Advent International Corp. and SSM Venture Partners. Concurrently with the closing of the financing, CenterPoint Venture Fund I, became a 5% stockholder and Terrence L. Rock became a director.

- In June 1998, we sold an aggregate of 1,454,552 shares of our Series D preferred stock at a price of $6.05 per share to Rho Management Trust I, CenterPoint Venture Fund I, SSM Venture Partners, funds affiliated with Austin Ventures, funds affiliated with Advent International Corp. and Jan H. Lindelow. Concurrently with the closing of the financing, Rho Management Trust I became a 5% stockholder.

- In November 1999, we sold an aggregate of 1,830,302 shares of our Series E preferred stock at a price of $11.34 per share to Rho Management Trust I, funds affiliated with SSM Venture Partners, funds affiliated with Austin Ventures, CenterPoint Venture Fund II, L.P., funds affiliated with Advent International Corp., our director Richard E. Anderson and his brother Charles A. Anderson, and Eric L. Jones.

The following table summarizes the shares of our preferred stock purchased by our 5% stockholders, directors and executive officers since our inception and the aggregate number of shares of common stock into which those shares of preferred stock will be converted upon the consummation of this offering:

INVESTOR	SERIES A PREFERRED STOCK	SERIES B PREFERRED STOCK	SERIES C PREFERRED STOCK	SERIES D PREFERRED STOCK	SERIES E PREFERRED STOCK	AGGREGATE NUMBER OF SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF PREFERRED STOCK
SSM Venture Partners Funds..................	263,158	615,764	287,770	117,356	246,916	1,648,338
Advent International Funds..................	--	615,764	287,770	57,520	17,636	1,096,063
Austin Ventures Funds...	--	615,764	575,540	99,174	176,366	1,584,218
CenterPoint Venture Partners Funds.........	--	--	575,540	330,578	176,366	1,082,484
Rho Management Trust I..	--	--	--	809,924	264,550	1,074,474
Richard E. Anderson (1)....................	--	--	--	--	49,312	49,312
Eric L. Jones (2).......	--	--	--	--	17,320	17,320
Jan H. Lindelow.........	--	--	--	40,000	--	40,000

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(1)Includes shares purchased by his brother.

(2)Excludes shares purchased by funds affiliated with SSM Venture Partners, with which Mr. Jones is affiliated.

OTHER TRANSACTIONS

CONSULTING AGREEMENT WITH ERIC L. JONES. In May 1996, we entered into a consulting services agreement with Eric Jones, the chairman of our board of directors. In exchange for providing consulting services to us, Mr. Jones receives a fee of $6,250 per month. This agreement is terminable by either party with 30 days advance written notice.

REGISTRATION RIGHTS. For more information on registration rights we have granted to our 5% stockholders, other stockholders and some of our directors, please see "Description of Capital Stock--Registration Rights".

STOCK OPTIONS AND CHANGE IN CONTROL ARRANGEMENTS. For more information regarding the grant of stock options and the change in control arrangements which may be available to directors and executive officers, please see "Management--Director Compensation", "--Employment Agreements, and Severance Arrangements" and "--Executive Compensation".

INDEMNIFICATION AND INSURANCE. Our bylaws require us to indemnify our directors and executive officers to the fullest extent permitted by Delaware law. We have entered into indemnification agreements with all of our directors and executive officers and have purchased directors' and officers' liability insurance. In addition, our certificate of incorporation limits the personal liability of our board members for breaches of their fiduciary duties.

PRINCIPAL AND SELLING STOCKHOLDERS

This table sets forth information regarding the beneficial ownership of our common stock as of April 30, 2000, as adjusted to reflect the sale of common stock in this offering for:

- each person known by us to own beneficially more than 5% of our common stock;
- each executive officer named in the summary compensation table on page 43;
- each of our directors; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and includes voting and investment power with respect to the securities. Except as indicated in the notes following the table, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The number of shares of common stock used to calculate the percentage ownership of each listed person includes the shares of common stock underlying options or warrants held by such persons that are exercisable within 60 days of this offering. The percentage of beneficial ownership before the offering is based on 13,501,793 shares, consisting of 5,417,585 shares of common stock outstanding as of April 30, 2000, and 8,084,208 shares issuable upon the conversion of the convertible preferred stock. Percentage of beneficial ownership after the offering is based on shares, including the shares to be sold in this offering.

Active Power and our founder and chief executive officer, Joseph F. Pinkerton, III, may sell shares in connection with the exercise of the underwriters' over-allotment option. Active Power may sell up to shares and Mr. Pinkerton may sell up to shares. To the extent the underwriters' over-allotment option is exercised for less than shares, the shares to be sold will be allocated pro rata between Active Power and Mr. Pinkerton. The post-offering ownership percentages in the table do not take into account any exercise of the underwriters' over-allotment option.

Unless otherwise indicated in the notes to the table below, the address for each person set forth below is c/o Active Power, Inc., 11525 Stonehollow Drive, Suite 110, Austin, Texas 78758.

NAME	SHARES OF COMMON STOCK BENEFICIALLY OWNED (#)	PERCENTAGE OF COMMON STOCK BENEFICIALLY OWNED (%)	
		BEFORE THE OFFERING	AFTER THE OFFERING
EXECUTIVE OFFICERS AND DIRECTORS:			
Eric L. Jones	1,965,658	14.4%	%
Joseph F. Pinkerton, III	2,953,982	21.9	
James A. Balthazar	172,000	1.3	
William E. Ott, II	151,500	1.1	
Richard E. Anderson	127,014	*	
Rodney S. Bond	38,750	*	
Lindsay R. Jones	1,096,063	8.1	
Jan H. Lindelow	60,000	*	
Terrence L. Rock	1,082,484	8.0	
All directors and executive officers as a group (10 persons)	7,758,559	56.1	
OTHER 5% STOCKHOLDERS			
Funds affiliated with Austin Ventures	1,584,218	11.7	
Funds affiliated with Advent International Corp.	1,096,063	8.1	
Funds affiliated with CenterPoint Venture Partners	1,082,484	8.0	
Funds affiliated with SSM Venture Partners	1,848,338	13.5	
Rho Management Trust I	1,074,474	8.0	

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* Indicates beneficial ownership of less than 1% of the total outstanding common stock.

- Eric L. Jones. 1,848,338 shares indicated as owned by Mr. Jones are included because of his association with funds affiliated with SSM Venture Partners. Mr. Jones is a shareholder of SSM Corporation, the general partner of SSM I, L.P., the general partner of (a) SSM Venture Partners, L.P., (b) SSM Partners II, L.P. and (c) SSM Venture Associates, L.P. Mr. Jones disclaims beneficial ownership of the shares held by SSM Venture Partners, L.P., SSM Venture Partners II, L.P. and SSM Venture Associates, L.P., except to the extent of his interest in SSM Corporation. Mr. Jones' address is c/o SSM Corporation, 110 Wild Basin Rd., Suite 280, Austin, Texas 78734.

- Joseph F. Pinkerton, III. Includes 300,000 shares held by Mr. Pinkerton's minor children. Mr. Pinkerton disclaims beneficial ownership of these shares.

- James A. Balthazar. These shares include options to purchase 32,000 shares of common stock that are immediately exercisable. 17,500 shares of common stock are currently unvested and are subject to our right to repurchase them if Mr. Balthazar's services are terminated prior to vesting.

- William E. Ott, II. These shares include options to purchase 71,500 shares of common stock that are immediately exercisable.

- Richard E. Anderson. Mr. Anderson also holds 100,000 shares, or 23.8%, of our non-voting 1992 preferred stock, which is not convertible into shares of our common stock. These shares of 1992 preferred stock have not been excluded from the foregoing table. Mr. Anderson's address is c/o Hill Partners, 2800 Industrial Terrace, Austin, Texas 78758.

- Rodney S. Bond. These shares include options to purchase 12,500 shares of common stock that are immediately exercisable. Mr. Bond's address is c/o VTEL Corporation, 108 Wild Basin Road, Austin, Texas 78746.

- Lindsay R. Jones. All shares indicated as owned by Ms. Jones are included because of her association with funds affiliated with Advent International Corp. Ms. Jones is a Vice President of Advent International Corporation, the general partner of (a) Advent International Investors II Limited Partnership, (b) Advent International Limited Partnership, the general partner of Envirotech Investment Fund I Limited Partnership and (c) Advent International Partnership, the general partner of Adwest Limited Partnership. Ms. Jones disclaims beneficial ownership of the shares held by Advent International Investors II Limited Partnership, Envirotech Investment Fund I Limited Partnership and Adwest Limited Partnership. Ms. Jones' address is c/o Advent International Corporation, 75 State Street, 29th Floor, Boston Massachusetts 02109.

- Jan H. Lindelow. These shares include options to purchase 20,000 shares of common stock that are immediately exercisable. Mr. Lindelow's address is c/o Tivoli Systems, 9442 Capital of Texas Highway North, Austin, Texas 78759.

- Terrence L. Rock. All shares indicated as owned by Mr. Rock are included because of his association with funds affiliated with CenterPoint Venture Partners. Mr. Rock is (a) a limited partner of CenterPoint Venture Partners, L.P. and CenterPoint Venture Fund II, L.P., (b) a limited partner of Paluck Associates, L.P., the general partner of CenterPoint Venture Partners, L.P., and (c) a general partner of CenterPoint Associates II, L.P., the general partner of CenterPoint Venture Fund II, L.P. Mr. Rock disclaims beneficial ownership of the shares held by CenterPoint Venture Partners, L.P. and CenterPoint Venture Fund II, L.P., except to the extent of his pecuniary interest in these funds. Mr. Rock's address is c/o CenterPoint Venture Partners, 13455 Noel Road, Suite 1670, Two Galleria Tower, Dallas, Texas 75240.

- All directors and executive officers as a group. Includes 111,108 shares owned by David S. Gino, our chief financial officer, who is not named in the summary compensation table because he joined us in December 1999 and therefore did not have in excess of $100,000 in annual compensation.

- FUNDS AFFILIATED WITH AUSTIN VENTURES. Includes:

  - 511,369 shares held by Austin Ventures IV-A, L.P.; and

  - 1,072,849 shares held by Austin Ventures IV-B, L.P.

  These funds may be deemed to beneficially own each other's shares because the general partners of each partnership are affiliated. Each partnership, however, disclaims beneficial ownership of the other's shares, and each general partner of the funds or the general partners of the funds disclaims beneficial ownership of the shares held by the partnership except to the extent of his pecuniary interest. The address of the investment funds affiliated with Austin Ventures is 114 West Seventh Street, Suite 1300, Austin, Texas 78701.

- FUNDS AFFILIATED WITH ADVENT INTERNATIONAL CORP. Includes:

  - 876,853 shares held by Envirotech Investment Fund I Limited Partnership;

  - 214,829 shares held by Adwest Limited Partnership; and

  - 4,381 shares held by Advent International Investors II Limited Partnership.

  Each of these partnerships is managed by Advent International Corporation. Advent International Corporation exercises sole voting and investment power with respect to all shares held by these funds. The address of the investment funds affiliated with Advent International Corporation is 75 State Street, Boston, Massachusetts 02109.

- FUNDS AFFILIATED WITH CENTERPOINT VENTURE PARTNERS. Includes:

  - 906,118 shares held by CenterPoint Venture Partners, L.P. and

  - 176,366 shares held by CenterPoint Venture Fund II, L.P.

  These funds may be deemed to beneficially own each other's shares because the general partners of each partnership are affiliated. Each partnership, however, disclaims beneficial ownership of the other's shares, and each general partner of the funds or the general partners of the funds disclaims beneficial ownership of the shares held by the partnerships except to the extent of his pecuniary interest. The address of the investment funds affiliated with CenterPoint Venture Partners is 13455 Noel Road, Suite 1670, Two Galleria Tower, Dallas, Texas 75240.

- FUNDS AFFILIATED WITH SSM VENTURE PARTNERS. Includes:

  - 1,471,970 shares held by SSM Venture Partners, L.P.;

  - 200,000 shares issuable upon the exercise of a warrant held by SSM Venture Partners, L.P.;

  - 147,548 shares held by SSM Venture Partners II, L.P.; and

  - 28,820 shares held by SSM Venture Associates, L.P.

  These funds may be deemed to beneficially own each other's shares because they are controlled by affiliated entities. Each partnership, however, disclaims beneficial ownership of the others' shares. The address of the investment funds affiliated with SSM Ventures Partners is 845 Crossover Lane, Suite 140, Memphis, Tennessee 38117.

- RHO MANAGEMENT TRUST I's address is 888 7th Avenue, Suite 4500, New York, New York 10106.

DESCRIPTION OF CAPITAL STOCK

Upon completion of this offering, our authorized capital stock will consist of 175,000,000 shares of common stock, par value $0.001 per share, and 25,420,000 shares of preferred stock, par value $0.001 per share. The rights and preferences of the authorized preferred stock may be designated from time to time by our board of directors. The following summary is qualified by reference to our certificate of incorporation and our bylaws, forms of which have been filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

As of April 30, 2000, there were 5,417,585 shares of common stock outstanding that were held of record by 117 stockholders. Holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. The holders of common stock are not entitled to cumulate voting rights with respect to the election of directors, and as a result, minority stockholders will not be able to elect directors on the basis of their votes alone. Subject to limitations under Delaware law and preferences that may apply to any outstanding shares of preferred stock, holders of common stock are entitled to receive ratably such dividends or other distribution, if any, as may be declared by our board of directors out of funds legally available therefor. In the event of our liquidation, dissolution or winding up, holders of common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to the liquidation preference of any outstanding preferred stock. The common stock has no preemptive, conversion or other rights to subscribe for additional securities of Active Power. There are no redemption or sinking fund provisions applicable to the common stock. All outstanding shares of common stock are, and all shares of common stock to be outstanding upon completion of the offering will be, validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

Preferred Stock

As of April 30, 2000, there were 7,732,084 shares of convertible preferred stock and 420,000 shares of 1992 preferred stock outstanding. Upon the closing of this offering, each share of our convertible preferred stock, other than our Series B preferred stock, will automatically convert into one share of common stock. Our 1,847,292 shares of Series B preferred stock will convert into approximately 2,199,418 shares of common stock. The 420,000 shares of 1992 preferred stock outstanding are not convertible into our common stock and is redeemable at a price of $0.50 per share at such time as our board of directors determines that we have available funds in excess of anticipated needs. Our board of directors will determine whether to redeem the 1992 preferred stock following this offering. Upon the completion of this offering, our board of directors will have the authority, without further action by the stockholders, to issue up to 25,000,000 shares of preferred stock in one or more series, to fix the rights, preferences, privileges and restrictions of the authorized preferred stock and to issue shares of each such series. The issuance of preferred stock could have the effect of restricting dividends on the common stock, diluting the voting power for the common stock, impairing the liquidation rights of the common stock or delaying or preventing our change in control without further action by the stockholders. At present, we have no plans to issue any shares of preferred stock.

Registration Rights

According to the terms of an investors' rights agreement, beginning 180 days after the closing of this offering, some of our stockholders, who will hold in the aggregate 8,084,208 shares of

common stock, may require us to file a registration statement under the Securities Act of 1933 with respect to the resale of their shares. To demand such registration, stockholders' holding an aggregate of at least a majority of these shares that are then outstanding for the first demand registration, and stockholders holding an aggregate of at least 25% of these shares that are then outstanding for the second demand registration, must request that the registration statement register the resale of at least 20% of these shares that are then outstanding. We are not required to effect more than two demand registrations.

At any time after we become eligible to file a registration statement on Form S-3 under the Securities Act, holders of demand registration rights may require us to file up to six registration statements on Form S-3 with respect to their shares of common stock, resulting in an aggregate offering of at least $500,000 on each registration statement on Form S-3. We are not required to file more than one registration statement on Form S-3 in any six month period.

These registration rights are subject to conditions and limitations, including the right of the underwriters of an offering to limit the number of shares of common stock to be included in the registration. We are generally required to bear all of the expenses of all registrations under the investors' rights agreement, except underwriting discounts and commissions. The investors' rights agreement also contains our commitment to indemnify the holders of registration rights for losses they incur in connection with registrations under the agreement. Registration of any of the shares of common stock held by security holders with registration rights would result in those shares becoming freely tradeable without restriction under the Securities Act.

ANTI-TAKEOVER EFFECTS

Provisions of Delaware law, our certificate of incorporation, our bylaws and certain contracts to which we are a party could have the effect of delaying or preventing a third party from acquiring us, even if the acquisition would benefit our stockholders. The provisions of Delaware law and in our certificate of incorporation and bylaws are intended to enhance the likelihood of continuity and stability in the composition of our board of directors and in the policies formulated by the board of directors and to discourage certain types of transactions that may involve an actual or threatened change of control of Active Power. These provisions are designed to reduce our vulnerability to an unsolicited proposal for a takeover that does not contemplate the acquisition of all of our outstanding shares, or an unsolicited proposal for the restructuring or sale of all or part of Active Power.

DELAWARE ANTI-TAKEOVER STATUTE. We are subject to the provisions of Section 203 of the Delaware General Corporation Law, an anti-takeover law. Subject to certain exceptions, the statute prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder's becoming an interested stockholder;

- upon consummation of the transaction which resulted in the stockholder's becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned (1) by persons who are directors and also officers and (2) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or after such date, the business combination is approved by the board of directors and

authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66- 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the date of determination whether the person is an "interested stockholder", did own, 15% or more of the corporation's voting stock.

In addition, provisions of our certificate of incorporation and bylaws may also have an anti-takeover effect. These provisions may delay, defer or prevent a tender offer or takeover attempt of our company that a stockholder might consider in his or her best interest, including attempts that might result in a premium over the market price for the shares held by our stockholders. The following summarizes these provisions.

CLASSIFIED BOARD OF DIRECTORS. Our certificate of incorporation provides that, effective immediately upon the closing of this offering, our board of directors will be divided into three classes of directors, as nearly equal in size as is practicable, serving staggered three-year terms. As a result, approximately one-third of the board of directors will be elected each year. These provisions, when coupled with the provisions of our certificate of incorporation and bylaws authorizing our board of directors to fill vacant directorships or increase the size of our board, may deter a stockholder from removing incumbent directors and simultaneously gaining control of the board of directors.

STOCKHOLDER ACTION; SPECIAL MEETING OF STOCKHOLDERS. Our certificate of incorporation eliminates the ability of stockholders to act by written consent. Our bylaws provide that special meetings of our stockholders may be called only by a majority of our board of directors.

ADVANCE NOTICE REQUIREMENTS FOR STOCKHOLDER PROPOSALS AND DIRECTOR NOMINATIONS. Our bylaws provide that stockholders seeking to bring business before an annual meeting of stockholders, or to nominate candidates for election as directors at an annual meeting of stockholders, must provide us with timely written notice of their proposal. To be timely, a stockholder's notice must be delivered to or mailed and received at our principal executive offices not less than 120 days before the first anniversary of the date we released the notice of annual meeting to stockholders in connection with the previous year's annual meeting. If, however, no meeting was held in the prior year or the date of the annual meeting has been changed by more than 30 days from the date contemplated in the notice of annual meeting, notice by the stockholder, in order to be timely, must be received a reasonable time before we release the notice of annual meeting to stockholders. Our bylaws also specify certain requirements as to the form and content of a stockholder's notice. These provisions may make it more difficult for stockholders to bring matters before an annual meeting of stockholders or to make nominations for directors at an annual meeting of stockholders.

AUTHORIZED BUT UNISSUED SHARES. Our authorized but unissued shares of common stock and preferred stock are available for our board to issue without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of our authorized but unissued shares of common stock and preferred stock could render it more difficult or discourage an attempt to obtain control of our company by means of a proxy context, tender offer, merger or other transaction.

SUPERMAJORITY VOTE PROVISIONS. The Delaware General Corporation Law provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of

incorporation or bylaws, as the case may be, requires a greater percentage. Our certificate of incorporation imposes supermajority vote requirements (two-thirds) in connection with the amendment of certain provisions of our certificate of incorporation, including the provisions relating to the classified board of directors and action by written consent of stockholders.

INDEMNIFICATION. Our certificate of incorporation and bylaws require us to indemnify our directors and officers to the fullest extent permitted by Delaware law. In addition, our charter limits the personal liability of our board members for breaches by the directors of their fiduciary duties to the fullest extent permitted under Delaware law.

CATERPILLAR TERMINATION RIGHT. Caterpillar, our most significant customer, has a right to terminate its CleanSource UPS distribution agreement with us in the event we are acquired or undergo a change in control.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is EquiServe Trust Company and its address is 150 Royall Street, Canton, MA 02021.

NASDAQ NATIONAL MARKET LISTING

We have applied to have our common stock listed for quotation on the Nasdaq National Market under the trading symbol "ACPW".

SHARES ELIGIBLE FOR FUTURE SALE

If our stockholders sell substantial amounts of our common stock in the public market following this offering, the prevailing market price of our common stock could decline. Furthermore, because we do not expect that any of these shares will be available for sale for at least 90 days following this offering as a result of the contractual and legal restrictions on resale described below, sales of substantial amounts of our common stock in the public market after these restrictions lapse could adversely affect the prevailing market price of the common stock and our ability to raise equity capital in the future.

Upon the closing of this offering, we will have outstanding an aggregate of shares of our common stock, based upon the number of shares outstanding as of April 30, 2000 and assuming no exercise of the underwriters' over-allotment option and no exercise of outstanding options and warrants. Of these shares, all shares sold in this offering will be freely tradeable without restriction or further registration under the Securities Act unless they are purchased by our "affiliates", as that term is defined in Rule 144 under the Securities Act. Our outstanding shares will be eligible for sale in the public market as follows:

NUMBER OF SHARES	DATE
	After the date of this prospectus, freely tradeable shares sold in this offering.
2,278,424	After 90 days from the date of this prospectus, 20% of the shares subject to lock-up agreements with the underwriters will be released if the conditions described below under "--Lock-up Agreements" are satisfied and will be eligible for sale in the public market under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701.
2,278,949	After 120 days from the date of this prospectus, an additional 20% of the shares subject to lock-up agreements with the underwriters will be released if the conditions described below under "--Lock-up Agreements" are satisfied and will be eligible for sale in the public market under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701.
6,879,682	After 180 days from the date of this prospectus, the lock-up agreements are released and these shares are eligible for sale in the public market under Rule 144 (subject, in some cases, to volume limitations), Rule 144(k) or Rule 701.
1,935,872	After 180 days from the date of this prospectus, restricted securities that are held for less than one year and are not eligible for sale in the public market under Rule 144.

LOCK-UP AGREEMENTS. All of our directors and officers and all of our stockholders and option holders have signed or are otherwise subject to lock-up agreements under which they have agreed not to transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for shares of our common stock for 180 days after the date of this prospectus. However, if the last reported sale price of our common stock is greater than two times the initial public offering price per share for a specified period of time ending on the 90th day after the date of this prospectus, then 20% of the shares, and shares underlying options, held by each stockholder or option holder on the date of this prospectus shall be released from the 180-day restriction, subject to delays as a result of the timing of our earnings release and compliance

with insider trading policies. In addition, if the last reported sale price of our common stock is greater than two times the initial public offering price per share for a specified period of time ending on the 120th day after the date of this prospectus, then an additional 20% of the shares, and shares underlying options, held by each stockholder or option holder on the date of this prospectus shall be released from the 180-day restriction, subject to delays as a result of the timing of our earnings release and compliance with insider trading policies. Transfers or dispositions can be made sooner with the prior written consent of Goldman, Sachs & Co. or, if the transferee agrees to sign an identical lock-up agreement and other conditions are met: (a) if the transfer is a bona fide gift, (b) if the transfer is to a trust for the benefit of the stockholder or option holder, or (c) if the transfer is to certain other affiliates of the stockholder or option holder. Goldman, Sachs & Co. may, in its sole discretion, at any time and without prior notice, release all or any portion of the shares subject to the lock-up agreements.

RULE 144. In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person who has beneficially owned shares of our common stock for at least one year, including the holding period of certain prior owners other than affiliates, is entitled to sell within any three-month period a number of shares that does not exceed the greater of (a) 1% of the number of shares of our common stock then outstanding, which will equal approximately   shares immediately after the offering, or (b) the average weekly trading volume of our common stock on the Nasdaq National Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale. Sales under Rule 144 are also subject to certain manner-of-sale provisions, notice requirements and the availability of current public information about us.

RULE 144(K). Under Rule 144(k), a person who is not deemed to have been one of our affiliates at any time during the three months preceding a sale and who has beneficially owned shares for at least two years, including the holding period of certain prior owners other than affiliates, is entitled to sell those shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Therefore, unless otherwise restricted, Rule 144(k) shares may be sold immediately upon the closing of this offering.

RULE 701. In general, under Rule 701 of the Securities Act as currently in effect, each of our directors, officers, employees, consultants or advisors who purchased shares from us before the date of this prospectus in connection with a compensatory stock plan or other written compensatory agreement is eligible to resell such shares 90 days after the effective date of this offering in reliance on Rule 144, but without compliance with certain restrictions, including the holding period, contained in Rule 144.

REGISTRATION RIGHTS. After this offering, the holders of 8,361,035 shares of our common stock and warrants to purchase 200,000 shares of our common stock will be entitled to certain rights with respect to the registration of their shares under the Securities Act. See "Description of Capital Stock-Registration Rights". After any sale of shares pursuant to a registration statement, such shares will be freely tradable without restriction under the Securities Act. These sales could cause the market price of our common stock to decline.

STOCK PLANS. As of April 30, 2000, options to purchase 1,565,814 shares of common stock were outstanding under our 1993 plan. After this offering, we intend to file a registration statement on Form S-8 under the Securities Act of 1933 covering shares of common stock reserved for issuance under our 2000 stock incentive plan and our employee stock purchase plan. Based on the number of options outstanding and shares reserved for issuance under our 2000 plan and our employee stock purchase plan, the Form S-8 registration statement would cover   shares. The Form S-8 registration statement will become effective immediately upon filing, whereupon, subject to the satisfaction of applicable exercisability periods, Rule 144 limitations applicable to affiliates and the lock-up agreements with the underwriters referred to above, shares of common stock to be issued upon exercise of outstanding options granted pursuant to our 2000 stock incentive plan and shares of common stock issued pursuant to our employee stock purchase plan (to the extent that such shares were not held by affiliates) will be available for immediate resale in the public market.

UNDERWRITING

Active Power, the selling stockholder and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman, Sachs & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. Incorporated and CIBC World Markets Corp. are the representatives of the underwriters.

Underwriters	Number of Shares
Goldman, Sachs & Co.	
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Morgan Stanley & Co. Incorporated	
CIBC World Markets Corp	
Total	

If the underwriters sell more shares than the total number set forth in the table above, the underwriters have an option to buy up to an additional shares from Active Power and up to an additional shares from the selling stockholder to cover such sales. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by Active Power and by the selling stockholder. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional shares from Active Power and additional shares from the selling stockholder.

Paid by Active Power	No Exercise	Full Exercise
Per Share	$	$
Total	$	$

Paid by the Selling Stockholder	No Exercise	Full Exercise
Per Share	--	$
Total	--	$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $ per share from the initial public offering price. Any such securities dealers may resell any shares purchased from the underwriters to certain other brokers or dealers at a discount of up to $ per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms.

Active Power, its officers, directors, stockholders and option holders have agreed with the underwriters not to dispose of or hedge any of their common stock or securities convertible into or exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of Goldman Sachs & Co. on behalf of the representatives; provided, however, that this restriction shall terminate as to 20% of the shares held by officers, directors, stockholders and option holders after 90 days and an additional 20% of the shares held by officers, directors, stockholders and option holders after 120 days after the prospectus, subject to delays as a result of

the timing of Active Power's earnings releases and compliance with insider trading policies, in the event that, as of such dates, the reported last sale price of common stock on the Nasdaq National Market is greater than twice the initial public offering price specified in this prospectus for a certain period of time ending on such dates. Further, the restrictions do not apply to shares of common stock purchased on the open market by stockholders or optionholders who are not subject to the reporting requirements of Section 16 of the Securities Exchange Act of 1934. This agreement does not apply to any existing employee benefit plans. See "Shares Eligible for Future Sale" for a discussion of certain transfer restrictions.

Prior to this offering, there has been no public market for the shares. The initial public offering price will be negotiated among Active Power and the representatives. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be Active Power's historical performance, estimates of the business potential and earnings prospects of Active Power, an assessment of Active Power's management and the consideration of the above factors in relation to market valuation of companies in related businesses.

Active Power intends to apply to have its common stock approved for quotation on the Nasdaq National Market under the symbol "ACPW".

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

These activities by the underwriters may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. These transactions may be effected on the Nasdaq National Market, in the over-the-counter market or otherwise.

The underwriters do not expect sales to discretionary accounts to exceed five percent of the total number of shares offered.

Active Power estimates that its share of the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately $.

Active Power and the selling stockholder have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Brobeck, Phleger & Harrison LLP, Austin, Texas. Certain legal matters in connection with this offering will be passed upon for the underwriters by Vinson & Elkins L.L.P., Austin, Texas.

EXPERTS

Ernst & Young LLP, independent auditors, have audited our financial statements at December 31, 1998 and 1999 and for the three years in the period ended December 31, 1999, as set forth in their report. We have included our financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION ABOUT ACTIVE POWER

We have filed with the Securities and Exchange Commission a registration statement on Form S-1, including exhibits, schedules and amendments, under the Securities Act of 1933 with respect to the shares of common stock to be sold in this offering. This prospectus does not contain all the information included in the registration statement. For further information about us and the shares of our common stock to be sold in this offering, please refer to this registration statement. Complete exhibits have been filed with our registration statement on Form S-1.

You may read and copy any contract, agreement or other document referred to in this prospectus and any portion of our registration statement or any other information from our filings at the Securities and Exchange Commission's public reference room at 450 Fifth Street, N.W., Washington, D.C. 20549. You can request copies of these documents, upon payment of a duplicating fee, by writing to the Securities and Exchange Commission. Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information about the public reference rooms. Our filings with the Securities and Exchange Commission, including our registration statement, are also available to you on the Securities and Exchange Commission's Website, http://www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934 and will file and furnish to our stockholders annual reports containing financial statements audited by our independent auditors, make available to our stockholders quarterly reports containing unaudited financial data for the first three quarters of each fiscal year, proxy statements and other information filed with the Securities and Exchange Commission.

You may read and copy any reports, statements or other information on file at the public reference rooms or at the Securities and Exchange Commission's Website referenced above. You can also request copies of these documents, for a copying fee, by writing to the Commission.

ACTIVE POWER, INC.

FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1998 AND 1999
AND THREE MONTHS ENDED MARCH 31, 1999 AND 2000 (UNAUDITED AND PRO FORMA)

CONTENTS

Report of Independent Auditors.. F-2
AUDITED FINANCIAL STATEMENTS:
Balance Sheets.. F-3
Statements of Operations.. F-4
Statements of Stockholders' Deficit... F-5
Statements of Cash Flows.. F-6
Notes to Financial Statements... F-7

REPORT OF INDEPENDENT AUDITORS

The Board of Directors
Active Power, Inc.

We have audited the accompanying balance sheets of Active Power, Inc. (the Company) as of December 31, 1998 and 1999, and the related statements of operations, stockholders' deficit and cash flows for each of the three years in the period ended December 31, 1999. 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. 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 Active Power, Inc. at December 31, 1998 and 1999, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 1999, in conformity with accounting principles generally accepted in the United States.

/s/ Ernst & Young LLP

Austin, Texas
February 26, 2000, except for
Note 12, as to which the date is
March 31, 2000

ACTIVE POWER, INC.

BALANCE SHEETS

	DECEMBER 31		MARCH 31	PRO FORMA MARCH 31
	1998	1999	2000	2000
			(UNAUDITED)	(UNAUDITED)
ASSETS				
Current assets:				
Cash and cash equivalents...........	$ 2,800,145	$ 24,856,497	$ 18,605,977	$ 18,635,977
Short-term investments...........	4,735,815	1,408,822	4,754,002	4,754,002
Accounts receivable, net of allowance for doubtful accounts of $5,040 and $25,976....	219,186	37,758	196,029	196,029
Inventories, net.......	807,273	933,692	1,231,321	1,231,321
Prepaid expenses and other.................	16,184	5,331	30,895	30,895
Total current assets................	8,578,603	27,242,100	24,818,224	24,848,224
Property and equipment, net.....................	1,155,829	1,123,723	1,559,137	1,559,137
Total assets.........	$ 9,734,432	$ 28,365,823	$ 26,377,361	$ 26,407,361
LIABILITIES AND STOCKHOLDERS' DEFICIT				
Current liabilities:				
Accounts payable.......	$ 252,888	$ 195,680	$ 659,632	$ 659,632
Accrued expenses.......	203,091	597,002	497,501	497,501
Current portion of notes payable.........	114,203	55,324	--	--
Total current liabilities.........	570,182	848,006	1,157,133	1,157,133
Note payable, net of current portion............	55,324	--	--	--
Other non-current liabilities...................	57,593	6,843	--	--
Warrants with redemption rights..................	--	3,094,000	4,656,000	--
Total liabilities........	683,099	3,948,849	5,813,133	1,157,133
Redeemable convertible preferred stock.........	24,574,843	51,841,224	54,961,737	--
Stockholders' deficit:				
1992 Preferred Stock--$.001 par value, $.50 redemption value: 420,000 shares designated, issued and outstanding; $210,000 liquidation value.....	420	420	420	$ 420
Common Stock--$.001 par value; 30,000,000 shares authorized; 4,651,570 and 4,994,040 shares issued and outstanding, in 1998 and 1999, respectively (13,517,250 shares on a pro forma basis, unaudited)............	4,651	4,993	5,248	13,517
Treasury stock, at cost; 16,018 shares...	(2,403)	(2,403)	(2,403)	(2,403)
Deferred stock compensation..........	--	(3,411,593)	(8,925,868)	(8,925,868)
Additional paid-in capital..............	--	--	3,648,417	63,287,885
Accumulated deficit....	(15,526,178)	(24,015,667)	(29,123,323)	(29,123,323)
Total stockholders' (deficit) equity....	(15,523,510)	(27,424,250)	$(34,397,509)	$ 25,250,228
Total liabilities and stockholders' deficit............	$ 9,734,432	$ 28,365,823	$ 26,377,361	$ 26,407,361

See accompanying notes.

ACTIVE POWER, INC.

STATEMENTS OF OPERATIONS

	YEAR ENDED DECEMBER 31			THREE MONTHS ENDED MARCH 31	
	1997	1998	1999	1999	2000
				(UNAUDITED)	
Product revenue.........	$ 137,590	$ 915,318	$ 1,046,811	$ 202,951	$ 181,836
Cost of goods sold......	157,363	1,238,456	3,006,174	550,846	521,055
Product margin........	(19,773)	(323,138)	(1,959,363)	(347,895)	(339,219)
Development funding.....	--	--	5,000,000	3,000,000	--
Operating expenses:					
Selling, general and administrative........	1,264,277	1,925,288	2,643,503	469,998	1,097,758
Research and development...........	2,597,520	4,045,103	4,440,983	957,411	1,462,927
Amortization of deferred stock compensation....	--	--	709,477	--	1,011,690
Total operating expenses................	3,861,797	5,970,391	7,793,963	1,427,409	3,572,375
Operating income (loss)..............	(3,881,570)	(6,293,529)	(4,753,326)	1,224,696	(3,911,594)
Interest income.........	174,969	338,753	438,964	86,223	372,011
Interest expense........	(31,817)	(33,892)	(17,947)	(7,940)	(4,372)
Change in fair value of warrants with redemption rights............	--	--	(3,094,000)	(150,000)	(1,562,000)
Other income............	--	9,890	7,556	--	(1,701)
Net income (loss).....	$(3,738,418)	$(5,978,778)	$ (7,418,753)	$1,152,979	$(5,107,656)
Dividends on preferred stock--all in arrears..	(573,076)	(1,283,213)	(1,820,421)	(412,310)	(849,033)
Accretion of redeemable convertible preferred stock to redemption amounts................	(252,707)	(1,505,400)	(3,493,195)	(590,062)	(2,271,480)
Net income (loss) to common stockholders..	$(4,564,201)	$(8,767,391)	$(12,732,369)	$ 150,607	$(8,228,169)
Net income (loss) per share, basic and diluted.....................	$ (1.03)	$ (1.93)	$ (2.75)	$ .03	$ (1.68)
Shares used in computing net income (loss) per share, basic...........	4,439,566	4,532,133	4,634,053	4,575,693	4,886,942
diluted................	4,439,566	4,532,133	4,634,053	5,346,406	4,886,942
Pro forma loss per share, basic and diluted, assuming conversion of preferred stock to common stock (unaudited)............			$ (1.16)		$ (0.63)
Shares used in computing pro forma loss per share, basic and diluted, assuming conversion of preferred stock to common stock (unaudited)............			10,975,343		12,971,150

See accompanying notes.

ACTIVE POWER, INC.

STATEMENTS OF STOCKHOLDERS' DEFICIT

	1992 PREFERRED STOCK		COMMON STOCK		TREASURY STOCK					
	NUMBER OF SHARES	PAR VALUE	NUMBER OF SHARES	PAR VALUE	NUMBER OF SHARES	AT COST	UNEARNED STOCK COMPENSATION	ADDITIONAL PAID-IN CAPITAL	ACCUMULATED DEFICIT	TOTAL STOCKHOLDERS' (DEFICIT) EQUITY
BALANCE AT DECEMBER 31, 1996...........	420,000	$420	4,498,120	$ 4,498	16,018	$(2,403)	$ --	$ 722,517	$ (2,892,273)	$ (2,167,241)
Exercise of stock options...	--	--	100,250	100	--	--	--	18,950	--	19,050
Preferred stock issuance costs..	--	--	--	--	--	--	--	(30,000)	--	(30,000)
Accretion of redeemable convertible preferred stock to redemption amount..........	--	--	--	--		--	--	(252,706)	--	(252,706)
Cumulative dividends on redeemable convertible preferred stock...........	--	--	--	--	--	--	--	(458,761)	(114,315)	(573,076)
Net loss........	--	--	--	--	--	--	--	--	(3,738,418)	(3,738,418)
BALANCE AT DECEMBER 31, 1997...........	420,000	420	4,598,370	4,598	16,018	(2,403)	--	--	(6,745,006)	(6,742,391)
Exercise of stock options...	--	--	53,200	53	--	--	--	11,219	--	11,272
Preferred stock issuance costs..	--	--	--	--	--	--	--	(11,219)	(13,781)	(25,000)
Accretion of redeemable convertible preferred stock to redemption amount..........	--	--	--	--		--	--	--	(1,505,400)	(1,505,400)
Cumulative dividends on redeemable convertible preferred stock...........	--	--	--	--	--	--	--	--	(1,283,213)	(1,283,213)
Net loss........	--	--	--	--	--	--	--	--	(5,978,778)	(5,978,778)
BALANCE AT DECEMBER 31, 1998...........	420,000	420	4,651,570	4,651	16,018	(2,403)	--	--	(15,526,178)	(15,523,510)
Exercise of stock options...	--	--	342,470	342	--	--	--	135,990	--	136,332
Warrants issued for services....	--	--	--	--	--	--	--	52,000	--	52,000
Preferred stock issuance costs..	--	--	--	--	--	--	--	(66,180)	--	(66,180)
Deferred stock compensation....	--	--	--	--	--	--	(4,121,070)	4,121,070	--	--
Amortization of deferred stock compensation....	--		--	--	--	--	709,477	--	--	709,477
Accretion of redeemable convertible preferred stock to redemption amount..........	--	--	--	--	--	--	--	(3,493,195)	--	(3,493,195)
Cumulative dividends on redeemable convertible preferred stock...........	--	--	--	--	--	--	--	(749,685)	(1,070,736)	(1,820,421)
Net loss........	--	--	--	--	--	--	--	--	(7,418,753)	(7,418,753)
BALANCE AT DECEMBER 31, 1999...........	420,000	420	4,994,040	4,993	16,018	(2,403)	(3,411,593)	--	(24,015,667)	(27,424,250)
(UNAUDITED)										
Exercise of stock options...	--	--	255,020	255	--	--	--	242,965	--	243,220
Deferred stock compensation....	--	--	--	--	--	--	(6,525,965)	6,525,965	--	--
Amortization of										

deferred stock compensation....	--	--	--	--	--	--	1,011,690	--	--	1,011,690
Accretion of redeemable convertible preferred stock to redemption amount..........	--	--	--	--	--	--	--	(2,271,480)	--	(2,271,480)
Cumulative dividends on redeemable convertible preferred stock...........	--	--	--	--	--	--	--	(849,033)	--	(849,033)
Net loss........	--	--	--	--	--	--	--	--	(5,107,656)	(5,107,656)
BALANCE AT MARCH 31, 2000........	420,000	$420	5,249,060	$ 5,248	16,018	$(2,403)	$(8,925,868)	$ 3,648,417	$(29,123,323)	$(34,397,509)
Pro forma at March 31, 2000..	420,000	$420	13,533,268	$13,732	16,018	$(2,403)	$(8,925,868)	$63,287,670	$(29,123,323)	$ 25,250,228

ACTIVE POWER, INC.

STATEMENTS OF CASH FLOWS

	Year ended December 31			Three months ended March 31	
	1997	1998	1999	1999	2000
				(unaudited)	
Operating activities					
Net loss	$(3,738,418)	$(5,978,778)	$(7,418,753)	$1,152,979	$(5,107,656)
Adjustment to reconcile net loss to cash used in operating activities:					
Depreciation expense	111,877	342,476	629,288	137,802	153,942
Loss on disposal of assets	--	--	903	--	--
Warrants issued for services	--	--	52,000	--	--
Amortization of deferred stock compensation	--	--	709,477	--	1,011,690
Changes in fair value of warrants with redemption rights	--	--	3,094,000	150,000	1,562,000
Changes in operating assets and liabilities:					
Accounts receivable, net	(26,600)	(192,586)	181,428	(2,485,853)	(158,271)
Inventories, net	(658,283)	18,204	(126,419)	137,183	(297,629)
Prepaid expenses and other assets	(2,727)	7,149	10,853	16,184	(25,564)
Accounts payable	353,878	(252,665)	(57,208)	(36,752)	463,952
Accrued expenses	46,172	156,919	393,911	(31,601)	(99,501)
Other non-current liabilities	--	--	(50,750)	(12,687)	(6,843)
Net cash used in operating activities	(3,914,101)	(5,899,281)	(2,581,270)	(972,745)	(2,503,880)
Investing activities					
Net maturity (purchase) of short-term investments	(2,341,468)	(965,471)	3,326,993	2,945,135	(3,345,180)
Purchases of property and equipment	(436,580)	(792,580)	(598,085)	(52,132)	(589,356)
Net cash provided by (used in) investing activities	(2,778,048)	(1,758,051)	2,728,908	2,893,003	(3,934,536)
Financing activities					
Proceeds from issuance of notes payable	350,000	--	--	--	--
Payments on notes payable	(82,215)	(98,258)	(114,203)	(36,176)	(55,324)
Proceeds from issuance of Common Stock	19,050	11,272	136,332	4,637	243,220
Proceeds from issuance of Convertible Preferred Stock, net of issuance costs	5,970,004	9,975,008	21,886,585	--	--
Net cash provided by (used in) activities	6,256,839	9,888,022	21,908,714	(31,539)	187,896
Increase (decrease) in cash and cash equivalents	(435,310)	2,230,690	22,056,352	1,888,719	(6,250,520)
Cash and cash equivalents, beginning of period	1,004,765	569,455	2,800,145	2,800,145	24,856,497
Cash and cash equivalents, end of period	$ 569,455	$ 2,800,145	$24,856,497	$4,688,864	$18,605,977
Supplemental disclosure of cash flow information:					
Interest paid	$ 31,817	$ 32,653	$ 17,947	$ 7,940	$ 4,372

See accompanying notes.

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1999

1. ORGANIZATION

Active Power, Inc. was founded in 1992 for the purpose of developing and commercializing advances in the field of electromechanics. Since inception, Active Power has devoted its efforts principally to research and development and marketing of flywheel-based power-quality and storage products that provide consistent, reliable electric power required by today's digital economy. These efforts have included pursuing patent protection for intellectual property, successful production of initial prototypes and limited production volumes, development of manufacturing processes, raising capital and pursuing markets for Active Power's products.

2. SIGNIFICANT ACCOUNTING POLICIES

UNAUDITED INTERIM INFORMATION AND PRO FORMA INFORMATION

The financial information as of March 31, 2000 and for the three month periods ended March 31, 1999 and 2000 is unaudited, but reflects all adjustments, consisting of normal recurring accruals which are, in the opinion of management, necessary to fairly present such information in accordance with generally accepted accounting principles.

Active Power's historical capital structure is not indicative of its prospective structure due to the automatic conversion of all shares of redeemable convertible preferred stock into common stock concurrent with the closing of the anticipated initial public offering of its common stock and the likely exercise by a stockholder of 200,000 warrants with redemption rights prior to the anticipated initial public offering. Accordingly, Active Power has presented pro forma stockholders' equity as if all outstanding shares of redeemable convertible preferred stock had converted into common stock and the warrants with redemption rights had been exercised as of March 31, 2000. Additionally, Active Power has presented pro forma basic and diluted loss per share assuming the conversion of all outstanding shares of redeemable convertible preferred stock into common stock from their respective dates of issuance.

USE OF ESTIMATES

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

REVENUE RECOGNITION

Active Power generally recognizes revenue at the date a unit is shipped. Active Power recognizes revenue related to units shipped for evaluation by the customer at the point of customer acceptance of the unit.

CASH EQUIVALENTS

Active Power considers liquid investments with a maturity of three months or less when purchased to be cash equivalents.

SHORT-TERM INVESTMENTS

Short-term investments consist of debt securities with readily determinable fair values. Active Power accounts for highly liquid investments with maturities greater than three months but less than one year at date of acquisition as short-term investments. Active Power classifies short-term investments as held-to-maturity (due primarily to the limited time to maturity) and accordingly reports them at adjusted cost basis, which approximates fair value, using the specific identification method for securities sold.

INVENTORIES

Active Power states inventories at the lower of cost or replacement cost, with cost being determined on a standard cost basis which does not differ materially from actual cost.

Inventories consist of the following at December 31:

	1998	1999
Raw materials	$ 662,436	$1,287,031
Work in process	197,607	135,324
Finished goods	26,381	295,315
Evaluation units	183,323	27,771
	$1,069,747	$1,745,441

The following table summarizes the changes in inventory reserves:

Balance at December 31, 1996	$ --
Additions charged to costs and expenses	198,475
Write-off of inventory	--
Balance at December 31, 1997	198,475
Additions charged to costs and expenses	105,000
Write-off of inventory	41,001
Balance at December 31, 1998	262,474
Additions charged to costs and expenses	549,275
Write-off of inventory	--
Balance at December 31, 1999	$811,749

PROPERTY AND EQUIPMENT

Active Power carries property and equipment at cost, less accumulated depreciation. Active Power depreciates property and equipment using the straight-line method over the estimated useful lives of the assets (generally three to seven years).

PATENT APPLICATION COSTS

Active Power has not capitalized patent appreciation fees and related costs because of uncertainties regarding net realizable value of the technology represented by the existing patent applications and ultimate recoverability. All patent costs have been expensed through December 31, 1999.

ACCOUNTING FOR STOCK-BASED COMPENSATION

As allowed by the Financial Accounting Standards Board's ("FASB") Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, Active Power accounts for its stock compensation arrangements with employees under the provisions of the Accounting Principles Board's Opinion No. 25, Accounting for Stock Issued to Employees.

INCOME TAXES

Active Power accounts for income taxes in accordance with the FASB's Statement No. 109, Accounting for Income Taxes. Statement No. 109 prescribes the use of the liability method whereby deferred tax asset and liability account balances 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.

SEGMENT REPORTING

Active Power's chief operating decision maker allocates resources and assesses the performance of its power management product development and sales activities as one segment.

CONCENTRATION OF CREDIT RISK

Financial instruments which potentially subject Active Power to concentrations of credit risk consist of short-term investments and trade receivables. Active Power's short-term investments are placed with high credit quality financial institutions and issuers. Active Power performs limited credit evaluations of its customers' financial condition and generally does not require collateral. Active Power estimates an allowance for doubtful accounts based on factors related to the credit risk of each customer. Credit losses have not been significant to date.

The following table summarizes the changes in the allowance for doubtful accounts receivable:

Balance at December 31, 1996	$ --
Additions charged to costs and expenses	463
Write-off of uncollectible accounts	--
Balance at December 31, 1997	463
Additions charged to costs and expenses	4,577
Write-off of uncollectible accounts	--
Balance at December 31, 1998	5,040
Additions charged to costs and expenses	20,936
Write-off of uncollectible accounts	--
Balance at December 31, 1999	$25,976

The following customers accounted for a significant percentage of Active Power's total revenue as follows (customer H is a stockholder):

CUSTOMER	1997	1998	1999
A	--	17%	39%
B	--	--	21%
C	--	--	16%
D	23%	--	13%
E	--	24%	--
F	36%	20%	--
G	23%	--	--
H	18%	--	--

ADVERTISING COSTS

Active Power expenses advertising costs as incurred. These expenses were not material in 1997, 1998 or 1999.

NET LOSS PER SHARE

Active Power computes loss per share in accordance with the FASB's Statement No. 128, Earnings Per Share, and SEC Staff Accounting Bulletin No. 98 ("SAB 98"). Under Statement No. 128 and SAB 98, basic loss per share is computed by dividing net loss by the weighted average number of shares outstanding. Diluted loss per share is computed by dividing net loss by the weighted average number of common shares and dilutive common share equivalents outstanding. Except for the three months ended March 31, 2000, Active Power's calculation of diluted loss per share excludes shares of common stock issuable upon exercise of warrants and employee stock options because inclusion would be antidilutive.

Under SAB 98, all options, warrants or other potentially dilutive instruments issued for nominal consideration prior to the anticipated effective date of an initial public offering are required to be included in the calculation of basic and diluted loss per share as if they were outstanding for all periods presented. Active Power has not issued any such securities for nominal consideration.

The following table sets forth the computation of basic and diluted net loss per share:

	YEAR ENDED DECEMBER 31			THREE MONTHS ENDED MARCH 31,
	1997	1998	1999	2000
Net loss to common stockholders	$(4,564,201)	$(8,767,391)	$(12,732,369)	(8,228,169)
Basic and diluted:				
Weighted-average shares of common stock outstanding	4,536,128	4,619,813	4,699,138	5,036,874
Weighted-average shares of common stock subject to repurchase	(96,562)	(87,680)	(65,085)	(149,932)
Shares used in computing basic and diluted net loss per share	4,439,566	4,532,133	4,634,053	4,886,942
Basic and diluted net loss per share	$ (1.03)	$ (1.93)	$ (2.75)	$ (1.68)
Pro forma (unaudited):				
Shares used above			4,634,053	4,886,942
Pro forma adjustment to reflect assumed conversion of convertible preferred stock			6,341,290	8,084,208
Shares used in computing pro forma basic and diluted net loss per share			10,975,343	12,971,150
Pro forma basic and diluted net loss per share			$ (1.16)	$ (0.63)

3. PROPERTY AND EQUIPMENT

Property and equipment consist of the following at December 31:

	1998	1999
Equipment	$1,036,883	$ 1,391,233
Demonstration units	107,321	107,321
Computers and purchased software	319,131	424,525
Furniture and fixtures	63,037	63,037
Leasehold improvements	179,825	316,541
	1,706,197	2,302,657
Accumulated depreciation	(550,368)	(1,178,934)
	$1,155,829	$ 1,123,723

4. STOCKHOLDERS' EQUITY AND REDEEMABLE PREFERRED STOCKS

At December 31, 1999, Active Power has authorized 10,420,000 shares of $.001 par value preferred stock as follows (shares designated are the same as shares issued except for Series E for which 2,730,954 are designated):

	SHARES ISSUED	CARRYING VALUE	LIQUIDATION VALUE	CONVERTIBLE TO NUMBER OF COMMON SHARES	CUMULATIVE DIVIDENDS IN ARREARS
1992 Preferred Stock	420,000	$ 2,100	$ 210,000	--	$ --
Series A	569,406	2,015,081	1,194,955	569,406	329,457
Series B	1,847,292	7,273,475	4,246,072	2,199,418	1,096,438
Series C	1,726,620	8,818,251	7,163,841	1,726,620	1,163,836
Series D	1,652,894	11,610,472	11,233,982	1,652,894	1,233,974
Series E	1,935,870	22,123,945	22,123,945	1,935,870	171,180
	8,152,082	$51,843,324	$46,172,795	8,084,208	$3,994,885

1992 PREFERRED STOCK

Holders of the 1992 Preferred Stock are not entitled to dividends. The 1992 Preferred Stock shall be redeemed by Active Power at such time as the Board of Directors determines, in its sole discretion, that Active Power has available funds in excess of anticipated needs. No dividends may be declared or paid on Common Stock so long as any shares of 1992 Preferred Stock are issued and outstanding. The redemption price per share of 1992 Preferred Stock is $.50. Subject to the rights of the Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock, in the event of involuntary liquidation, holders of the 1992 Preferred Stock shall be entitled to receive $.50 per share, before any distribution of assets is made to holders of Common Stock.

REDEEMABLE CONVERTIBLE PREFERRED STOCK

The Series A, Series B, Series C, Series D, and Series E Redeemable Convertible Preferred Stock is convertible into Common Stock at the option of the holder at any time based upon the conversion price defined in the related Preferred Stock agreements. Each share of Convertible

Preferred Stock shall automatically be converted into shares of Common Stock in the event of a public offering whose offering price and whose gross proceeds equals or exceeds $17.01 per share and $20.0 million.

REDEMPTION RIGHTS

Beginning in August 2002, the holders of the Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock, upon proper election by the holders and notification to Active Power, may require Active Power to redeem such preferred stock in the following amounts:

REDEMPTION PERIOD	NUMBER OF SHARES
60 days after the date of the Redemption Notice (the "First Mandatory Redemption Date")	One-third of the shares outstanding
First anniversary of the First Mandatory Redemption Date	One-half of the shares outstanding
Second anniversary of the First Mandatory Redemption Date	All remaining shares outstanding

Upon redemption, the holders of the Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock shall be entitled to receive the greater of (i) the fair market value of the shares or (ii) $1.52, $2.03, $3.48, $6.05 and $11.34, respectively, plus any accrued or declared but unpaid dividends as of the redemption date. The redemption price shall be adjusted for all redemptions of shares made subsequent to the initial Redemption Date to include accrued interest at the prime rate published in The Wall Street Journal. The carrying value of redeemable convertible preferred stock is accreted to the estimated fair value using the interest method to the redemption date. The accretion is reflected as a charge to loss to common stockholders.

In the event of voluntary or involuntary liquidation of Active Power, the holders of the Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock shall be entitled to receive, prior and in preference to any distributions of any of the assets of the Company to the holders of the 1992 Preferred Stock and Common Stock, an amount for each share of $1.52, $2.03, $3.48, $6.05, and $11.34, respectively, plus accrued or declared but unpaid dividends.

VOTING RIGHTS AND DIVIDENDS

The holders of Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock are entitled to voting rights equal to Common Stock and shall accrue annual cumulative cash dividends of $0.1216, $0.1624, $0.278, $0.484 and $0.9072 per share, respectively, payable prior and in preference to any dividends on Common Stock out of funds legally available. Cumulative dividends with respect to the Series A, Series B, Series C, Series D and Series E Preferred Stock shall cease to be payable if the Series A, Series B, Series C, Series D and Series E Convertible Preferred Stock are converted to Common Stock prior to August 2002 in connection with the Company's sale of shares of Common Stock in a firm commitment underwritten initial public offering

or upon approval of a sufficient number of Series A, Series B, Series C, Series D and Series E Convertible Preferred stockholders as determined in Active Power's Certificate of Incorporation.

Changes in redeemable stocks are as follows:

	NUMBER OF SHARES	CARRYING VALUE
Balance at December 31, 1996	2,416,698	$ 4,960,436
Stock issued for cash	1,726,620	6,000,004
Accretion of redeemable convertible preferred stock to redemption amount	--	252,706
Cumulative dividends	--	573,076
Balance at December 31, 1997	4,143,318	11,786,222
Stock issued for cash	1,652,894	10,000,008
Accretion of redeemable convertible preferred stock to redemption amount	--	1,505,400
Cumulative dividends	--	1,283,213
Balance at December 31, 1998	5,796,212	24,574,843
Stock issued for cash	1,935,870	21,952,765
Accretion of redeemable convertible preferred stock to redemption amount	--	3,493,195
Cumulative dividends	--	1,820,421
Balance at December 31, 1999	7,732,082	$51,841,224

WARRANTS

In March 1995, the Company issued a warrant for the purchase of 200,000 shares of Common Stock at a strike price of $.15 per share. The warrant is exercisable from the date of issuance until the earlier of the consummation of a public offering of Common Stock or March 2002. In the event the holders of the Series A Convertible Preferred Stock have elected to require the Company to redeem the outstanding Series A Convertible Preferred Stock, then the holders of Common Stock purchased under this warrant may require the Company to repurchase such Common Stock at the greater of the exercise price plus any declared and unpaid dividends or the fair market value of the Common Stock at the Redemption Date. Because of this redemption provision, Active Power has classified these warrants as a liability at their estimated fair value and recorded the changes in fair value against income.

In November 1999, the Company issued warrants to purchase up to 200,000 shares of Common Stock to two purchasers of the Series E Preferred Stock in conjunction with the placement of the preferred stock and strategic alliance agreements with those stockholders. The warrants have a strike price of $11.34 per share. The warrants were fully vested, non-forfeitable and exercisable upon issuance and expire in November 2006. Active Power expensed the estimated fair value of these warrants of approximately $50,000 in 1999.

CAPITAL AND WARRANTS

At December 31, 1998 and 1999, 200,000 and 400,000 warrants to purchase shares of common stock were outstanding and exercisable, respectively.

The exercise prices of the warrants is to be adjusted only for capital restructures and stock splits, and not for subsequent sales of Common Stock. The weighted average exercise price of warrants outstanding at December 31, 1999 was $5.76. The weighted average fair value of warrants granted during the year ended December 31, 1999 was $.26.

STOCK OPTION AGREEMENTS

Active Power has reserved approximately 2,520,000 shares of its Common Stock for issuance under its 1993 Stock Option Plan. The options are immediately exercisable upon grant and vest over periods ranging from immediate to four years. certain events, Active Power has repurchase rights for unvested shares purchased by optionees. At December 31, 1998 and 1999, 69,012 and 100,906 shares, respectively, that were purchased by optionees remained unvested and subject to repurchase.

A summary of Common Stock option activity during the years ended December 31, 1997, 1998 and 1999 is as follows:

	NUMBER OF SHARES	RANGE OF EXERCISE PRICES	WEIGHTED-AVERAGE EXERCISE PRICES
Outstanding at December 31, 1996	526,000	$.15 - $4.25	$ .33
Granted	672,250	.20 - .35	.32
Exercised	(100,250)	.15 - .20	.19
Canceled	--	--	--
Outstanding at December 31, 1997	1,098,000	.15 - 4.25	.33
Granted	324,000	.35 - .60	.49
Exercised	(53,200)	.15 - .60	.21
Canceled	(26,000)	.20 - .35	.35
Outstanding at December 31, 1998	1,342,800	.15 - 4.25	.38
Granted	591,000	.90 - 2.25	1.41
Exercised	(342,470)	.15 - 1.80	.40
Canceled	(41,364)	.20 - 4.25	.62
Outstanding at December 31, 1999	1,549,966	$.15 - 4.25	$ .76

At December 31, 1999, 346,314 shares were available for future grants.

The following is a summary of options outstanding and exercisable as of December 31, 1999:

RANGE OF EXERCISE PRICES	NUMBER	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE (IN YEARS)	WEIGHTED AVERAGE EXERCISE PRICE
$4.00 - $4.25	14,000	3.9	$4.11
$0.15 - $ .20	395,000	6.5	.19
$0.35 - $ .90	777,966	8.4	.53
$1.20 - $2.25	363,000	9.9	1.71
	1,549,966	8.2	$ .76

Stock options vested as of December 31, 1998 and 1999 were 710,916 and 1,191,866, respectively.

Of the stock options granted to employees during the year ended December 31, 1999, 917,000 had exercise prices below the subsequently deemed fair market value of the underlying shares of Common Stock on the date of grant. As a result, Active Power recorded unearned stock compensation of $4,121,070 of which $709,477 was amortized to non-cash compensation during the year ended December 31, 1999. The remaining unearned compensation will be recognized as non-cash compensation over the remaining vesting period of the options of approximately 3 years.

Pro forma information regarding net loss is required by Statement No. 123, and has been determined as if Active Power had accounted for its employee stock options under the fair value method of Statement No. 123. The fair value for these options was estimated at the date of grant using a minimum value option pricing model with the following assumptions.

	YEAR ENDED DECEMBER 31		
	1997	1998	1999
Risk-free interest rate	6.5%	6.5%	6.5%
Weighted-average expected life of the options	7 years	7 years	7 years
Dividend rate	0%	0%	0%
Assumed volatility	0%	0%	0%
Weighted average fair value of options granted:			
Exercise price equal to fair value of stock on date of grant	$ .13	$ .13	$ .17
Exercise price less than fair value of stock on date of grant	$ --	$ --	$ 4.88

For purposes of pro forma disclosure, the estimated fair value of the options is amortized to expense over the options' vesting period. Active Power's pro forma information under Statement No. 123 follows:

	YEAR ENDED DECEMBER 31		
	1997	1998	1999
Pro forma stock-based compensation expense	$ 15,977	$ 35,726	$ 768,004
Pro forma net loss	$(3,754,395)	$(6,014,504)	$(7,477,280)
Pro forma basic and diluted loss per share	$ (1.03)	$ (1.94)	$ (2.76)

Option valuation models incorporate highly subjective assumptions. Because changes in the subjective assumptions can materially affect the fair value estimate, the existing models do not necessarily provide a reliable single measure of the fair value of Active Power's employee stock options. Because the determination of fair value of all employee stock options granted after such time as Active Power becomes a public entity will include an expected volatility factor and because, for pro forma disclosure purposes, the estimated fair value of Active Power's employee stock options is treated as if amortized to expense over the options' vesting period, the effects of applying Statement No. 123 for pro forma disclosures are not necessarily indicative of future amounts.

Common stock reserved at December 31, 1999 consists of the following:

For conversion of Convertible Preferred Stock	8,529,290
For exercise of Common Stock Warrants	400,000
For issuance under the 1993 Stock Option Plan	2,520,000

5. INCOME TAXES

At December 31, 1999, Active Power has net operating loss carryforwards of approximately $14,432,000 for federal tax reporting purposes and research and development credit carryforwards of approximately $391,000. The net operating loss and research and development credit carryforwards begin to expire in 2007. Utilization of the net operating losses and credits may be subject to a substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code of 1986. The annual limitation may result in the expiration of net operating losses and credits before utilization.

Significant components of Active Power's deferred tax liabilities and assets as of December 31 are as follows:

	1998	1999
Deferred tax liabilities:		
Capital expenses	$ 35,000	$ --
Deferred tax assets:		
Capital expenses	--	71,000
Deferred compensation	19,000	19,000
Reserves and allowances	128,000	461,000
Put warrants	--	1,145,000
Net operating loss and tax credit carryforwards	4,787,000	5,730,000
Other	3,000	34,000
Total deferred tax assets	4,937,000	7,460,000
Valuation allowance for net deferred tax assets	(4,902,000)	(7,460,000)
Net deferred taxes	$ --	$ --

Active Power has established a valuation allowance equal to the net deferred tax assets because of uncertainties regarding its ability to generate sufficient taxable income during the carryforward period to utilize the net operating loss carryforwards.

Active Power's benefit for income taxes differs from the expected benefit amount computed by applying the statutory federal income tax rate of 34% to loss before taxes due to the following:

	YEAR ENDED DECEMBER 31		
	1997	1998	1999
Federal statutory rate	(34.0)%	(34.0)%	(34.0)%
Non-cash compensation expense	--	--	9.6
State taxes, net of federal benefit	(3.0)	(3.0)	(3.0)
Permanent items and other	(1.3)	(1.8)	(2.1)
Change in valuation allowance	38.3	38.8	29.5
	0.0%	0.0%	0.0%

6. NOTE PAYABLE

On March 21, 1997, Active Power entered into a $350,000 note payable agreement with a financial institution. This note bears interest at 15.132%, is secured by furniture and equipment and is payable in monthly installments of principal and interest of $11,013 maturing March 1, 2000 with a final payment of $35,000.

7. COMMITMENTS

Active Power leases its office facility under an operating lease agreement. Certain stockholders of Active Power have an ownership interest in the building which Active Power leases. The office space and manufacturing facilities lease is noncancelable and obligates Active Power to pay taxes and maintenance costs. In addition Active Power leases certain equipment under a noncancelable lease.

Future minimum payments under these leases at December 31, 1999 are as follows:

2000	$ 341,393
2001	380,817
2002	392,777
2003	98,194
Total future minimum lease payments	$1,213,181

Related party rent expense for the years ended December 31, 1997, 1998, and 1999, was $213,246 and $236,151, and $226,445, respectively. Other rent expense for the years ended December 31, 1997, 1998, and 1999 was $170,320, $252,670, and $40,352, respectively.

8. EMPLOYEE BENEFIT PLAN

In 1996, Active Power established a 401(k) Plan that covers substantially all full-time employees. Company contributions to the plan are determined at the discretion of the Board of Directors and vest ratably over five years of service starting after the first year of employment. Active Power did not contribute to this plan in 1997, 1998, and 1999.

9. LINE OF CREDIT

On August 3, 1999, Active Power entered into a line of credit agreement with a financial institution in the amount of $1,000,000. There are no amounts outstanding under this line of credit at December 31, 1999. The line of credit bears interest at the lender's prime rate and matures on August 2, 2000. The line of credit is secured by Active Power's tangible property.

10. DEVELOPMENT FUNDING

During January 1999, Active Power entered into a contract development agreement with a third party. In accordance with the agreement, the third party provided funding to allow Active Power to accelerate development of its products in a certain market application in exchange for the third party obtaining exclusive marketing rights for the product in that application. The exclusive marketing

rights are subject to the third party meeting specified minimum orders of the product. The two companies share ownership of the resulting intellectual property. Active Power completed the contract in 1999 and collected the full $5,000,000 development funding specified in the contract, which it recognized as it achieved the product performance milestones specified in the agreement. Active Power does not separately account for efforts spent by its engineers on research and development by the various project. Because this project involved development of Active Power's product already contemplated by management and for which Active Power co-owns the resulting intellectual property, all of the costs associated with this contract are classified in research and development expense.

11. GEOGRAPHIC INFORMATION

Revenues for the year ended December 31 were as follows:

	1997	1998	1999
United States	$137,590	$867,775	$6,014,411
Foreign countries	--	47,543	32,400
Total	$137,590	$915,318	$6,046,811

Revenues from foreign countries above represent shipments to customers located primarily in Europe. Active Power has no property, plant or equipment located outside the United States.

12. SUBSEQUENT EVENTS

In March 2000, Active Power reincorporated in Delaware. In conjunction with the reincorporation, all of the $0.01 par value shares held by the common and preferred stockholders were automatically converted into two $0.001 par value shares of the corresponding common or preferred stock of the Delaware corporation. All share and per share amounts in the financial statements and accompanying notes have been restated to reflect this reincorporation as if it had taken place at the inception of Active Power.

During the three months ended March 31, 2000, Active Power granted 346,400 stock options to employees with exercise prices below the subsequently deemed fair value of the underlying shares and, accordingly, recorded $6,525,965 additional unearned stock compensation which will be recognized as non-cash compensation over the options' vesting period of four years.

[INSIDE BACK COVER]

No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

TABLE OF CONTENTS

	Page
Prospectus Summary	1
Risk Factors	7
Cautionary Note Regarding Forward-Looking Statements	16
Use of Proceeds	17
Dividend Policy	17
Capitalization	18
Dilution	19
Selected Financial Data	20
Management's Discussion and Analysis of Financial Condition and Results of Operations	21
Business	26
Management	39
Certain Transactions	49
Principal and Selling Stockholders	51
Description of Capital Stock	54
Shares Eligible for Future Sale	58
Underwriting	60
Legal Matters	62
Experts	62
Where You Can Find Additional Information About Active Power	62
Index to Financial Statements	F-1

Through and including , 2000 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Shares
ACTIVE POWER, INC.
Common Stock

[ACTIVE POWER LOGO]

GOLDMAN, SACHS & CO.
MERRILL LYNCH & CO.
MORGAN STANLEY DEAN WITTER
CIBC WORLD MARKETS

Representatives of the Underwriters

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses, other than the underwriting discount, payable by us in connection with the sale of common stock being registered. All amounts are estimates except the SEC registration fee and the NASD filing fee. No portion of the costs and expenses is being borne by the selling stockholder.

Item	Amount
SEC registration fee	$26,400
NASD fee	10,500
Nasdaq National Market listing fee	*
Printing and engraving expenses	*
Legal fees and expenses	*
Accounting fees and expenses	*
Blue sky fees and expenses	*
Transfer agent fees	*
Miscellaneous	*
Total	$ *

- --------
*   To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law (the "DGCL") provides, in effect, that any person made a party to any action by reason of the fact that he is or was our director, officer, employee or agent may and, in certain cases, must be indemnified by us against, in the case of a non-derivative action, judgments, fines, amounts paid in settlement and reasonable expenses (including attorneys' fees) incurred by him as a result of such action, and in the case of a derivative action, against reasonable expenses (including attorneys' fees), if in either type of action he acted in good faith and in a manner he reasonably believed to be in or not opposed to our best interests. This indemnification does not apply, in a derivative action, to matters as to which it is adjudged that the director, officer, employee or agent is liable to us, unless upon court order it is determined that, despite such adjudication of liability but in view of all the circumstances of the case, he is fairly and reasonably entitled to indemnity for expenses, and, in a non-derivative action, to any criminal proceeding in which such person had reasonable cause to believe his conduct was unlawful.

Article V of our certificate of incorporation, as amended, provides that no director shall be liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL.

Reference is made to Section 8 of the underwriting agreement, the form of which is to be filed as Exhibit 1.1 hereto, pursuant to which the underwriters have agreed to indemnify our officers and directors against certain liabilities under the Securities Act.

We have entered into Indemnification Agreements with each director, a form of which is filed as Exhibit 10.1 to this Registration Statement. Pursuant to such agreements, we will be obligated, to the extent permitted by applicable law, to indemnify such directors against all expenses, judgments, fines and penalties incurred in connection with the defense or settlement of any actions brought against them by reason of the fact that they were our directors or assumed certain responsibilities at the direction of us. We also intend to purchase additional directors and officers liability insurance in order to limit our exposure to liability for indemnification of directors and officers.

ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES

Since April 1, 1997, we have issued unregistered securities to a number of people as described below. None of these transactions involved any underwriters, underwriting discounts or commissions, or any public offering, and Registrant believes that each transaction was exempt from the registration requirements of the Securities Act in reliance on Section 4(2) thereof, Regulation D promulgated thereunder or Rule 701 in accordance with compensatory benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of securities in each transaction represented their intention to acquire the securities for investment purposes only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in the transactions. All recipients had adequate access, through their relationship with us, to information about us. The following common stock share amounts, the weighted average exercise price and the exercise price per share of the shares of common stock issued under our 1993 Stock Option Plan, as amended, are adjusted to reflect the exchange of each share of common stock and preferred stock issued by our predecessor Texas corporation for two shares of a similar series of common stock or preferred stock in the successor Delaware corporation.

1. In July 1997, we issued 1,726,620 shares of Series C Convertible Preferred Stock for $3.475 per share, for an aggregate purchase price of $6,000,004.50. The following stockholders purchased our Series C Convertible Preferred Stock: CenterPoint Venture Partners, L.P.; funds affiliated with Advent International Corporation; SSM Venture Partners, L.P.; and funds affiliated with Austin Ventures.

2. In June 1998, we issued 1,652,894 shares of Series D Convertible Preferred Stock for $6.05 per share, for an aggregate purchase price of $10,000,008.70. The following stockholders purchased our Series D Convertible Preferred Stock: Rho Management Trust I; CenterPoint Venture Partners, L.P.; funds affiliated with Advent International Corporation; SSM Venture Partners, L.P.; funds affiliated with Austin Ventures; Sevin Rosen Management Company; and several accredited investors.

3. In November 1999, we issued 1,935,870 shares of Series E Convertible Preferred Stock for $11.34 per share, for an aggregate purchase price of $21,952,765. The following stockholders purchased our Series E Convertible Preferred Stock: Stephens-Active Power, LLC; ECT Merchant Investments Corp.; Rho Management Trust I; CenterPoint Venture Fund II, L.P.; funds affiliated with SSM Venture Partners; funds affiliated with Austin Ventures; funds affiliated with Advent International Corporation; and a number of accredited investors.

4. In November 1999, in connection with the sale of Series E preferred stock, we issued warrants to purchase an aggregate of 200,000 shares of Common Stock at an exercise price of $11.34 per share to Enron North America Corp. and Stephens Group, Inc.

5. Through April 30, 2000, we have issued and sold 1,057,284 shares of our Common Stock to directors, employees and consultants upon the exercise of options granted under our 1993 Stock Option Plan at a weighted average exercise price of $0.50.

6. From time to time during the past three years, we have granted options to purchase common stock to employees, directors and consultants. The following table sets forth information regarding these grants.

	Number of Shares	Exercise Price Per Share
September 17, 1997 to April 30, 1998............	679,000	$0.35
June 11, 1998 to December 10, 1998..............	182,000	0.60
March 1, 1999 to June 17, 1999..................	217,000	0.90
September 9, 1999...............................	89,000	1.20
November 11, 1999...............................	240,000	1.80
December 9, 1999 through February 29, 2000......	347,400	2.25
March 9, 2000...................................	54,000	3.00
April 13, 2000..................................	109,000	9.00

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

1.1* Form of Underwriting Agreement

3.1 Form of Amended and Restated Certificate of Incorporation

3.2 Form of Amended and Restated Bylaws

4.1* Specimen certificate for shares of Common Stock

4.2 Warrant to Purchase Common Stock issued to Enron North America Corp.

4.3 Warrant to Purchase Common Stock issued to Stephens Group, Inc.

5.1* Opinion of Brobeck, Phleger & Harrison LLP

10.1 Form of Indemnity Agreement

10.2* Active Power, Inc. 2000 Stock Incentive Plan

10.3* Active Power, Inc. 2000 Employee Stock Purchase Plan

10.4 Second Amended and Restated Investors' Rights Agreement by and between Active Power, Inc. and certain of its stockholders

10.5 Consulting Services Agreement by and between Active Power and Eric L. Jones

10.6+ Phase II Development and Phase III Feasibility Agreement by and between Active Power, Inc. and Caterpillar Inc.

10.7 Credit Terms and Conditions by and between Active Power, Inc. and Imperial Bank

10.8 Security and Loan Agreement by and between Active Power, Inc. and Imperial Bank

10.9 Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd.

10.10 First Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd.

10.11 Second Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd.

10.12 Third Amendment to Lease Agreement by and between Active Power, Inc. and Braker Phase III, Ltd.

10.13 Fourth Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company

10.14 Fifth Amendment to Lease Agreement by and between Active Power, Inc. and Metropolitan Life Insurance Company

10.15 Sublease Agreement by and between Active Power, Inc. and Video Associates Laboratories, Inc.

10.16 Employee offer letter (including severance arrangements) from Active Power, Inc. to David S. Gino

23.1 Consent of Ernst & Young LLP

23.2* Consent of Brobeck, Phleger & Harrison LLP (Reference is made to Exhibit 5.1)

24.1 Power of Attorney (see page II-5)

27.1 Financial Data Schedule

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* To be included by amendment.
+ Application has been made to the Commission to seek confidential treatment of certain provisions of this exhibit. Omitted material for which confidential treatment has been requested has been filed separately with the Commission.

ITEM 17. UNDERTAKINGS.

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") may be permitted to our directors, officers and controlling persons pursuant to the DGCL, our Certificate of Incorporation or our Bylaws, the underwriting agreement or otherwise, we have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by us of expenses incurred or paid by one of our directors, officers, or controlling persons in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, we will, unless in the opinion of our counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by us is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

We hereby undertake that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by us pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

2. For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, we have duly caused this registration statement to be signed on our behalf by the undersigned, thereunto duly authorized, in the city of Austin, state of Texas, on May 12, 2000.

ACTIVE POWER, INC.

By: /s/ Joseph F. Pinkerton, III

Joseph F. Pinkerton, III
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Joseph F. Pinkerton, III and David S. Gino, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act of 1933, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Name	Title	Date
/s/ Joseph F. Pinkerton, III Joseph F. Pinkerton, III	President, Chief Executive Officer and Director (Principal Executive Officer)	May 12, 2000
/s/ David S. Gino David S. Gino	Chief Financial Officer (Principal Financial and Accounting Officer)	May 12, 2000
/s/ Eric L. Jones Eric L. Jones	Chairman of the Board	May 12, 2000
/s/ Richard E. Anderson Richard E. Anderson	Director	May 12, 2000
/s/ Rodney S. Bond Rodney S. Bond	Director	May 12, 2000
/s/ Lindsay R. Jones Lindsay R. Jones	Director	May 12, 2000
Jan H. Lindelow	Director	May , 2000
/s/ Terrence L. Rock Terrence L. Rock	Director	May 12, 2000

INDEX TO EXHIBITS

Exhibit No.	Description
1.1*	Form of Underwriting Agreement
3.1	Form of Amended and Restated Certificate of Incorporation
3.2	Form of Amended and Restated Bylaws
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4.2	Warrant to Purchase Common Stock issued to Enron North America Corp.
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24.1	Power of Attorney (see page II-5)
27.1	Financial Data Schedule

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* To be included by amendment.
+ Application has been made to the Commission to seek confidential treatment of certain provisions of this exhibit. Omitted material for which confidential treatment has been requested has been filed separately with the Commission.

EXHIBIT 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF ACTIVE POWER, INC.

Active Power, Inc., a corporation organized and existing under the Delaware General Corporation Law (the "DGCL"), Does Hereby Certify:

First: The original Certificate of Incorporation of this corporation was filed with the Secretary of State of Delaware on March 29, 2000 under the name "Active Power, Inc."

Second: The Amended and Restated Certificate of Incorporation of Active Power, Inc. in the form attached hereto as Annex A has been duly adopted in accordance with the provisions of Sections 228, 245 and 242 of the DGCL by the directors and stockholders of this corporation.

Third: The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Annex A attached hereto and is incorporated herein by this reference.

In Witness Whereof, Active Power, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized and elected President this ___ day of ________, 2000.

ACTIVE POWER, INC.

By: /s/ Joseph F. Pinkerton, III

Joseph F. Pinkerton, III
President and Chief Executive Officer

ANNEX A

AMENDED AND RESTATED
CERTCIFICATE OF INCORPORATION
OF
ACTIVE POWER, INC.

ARTICLE I

The name of this corporation shall be Active Power, Inc. (the "Company").

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

4.1 Prior to a Qualified Public Offering (as defined in section 5B of this Section 4.1 of Article IV), the Company's capital stock shall be comprised as set forth in this Section 4.1 as follows:

A. The aggregate number of shares that the Company shall have authority to issue is Forty Million Four Hundred Twenty Thousand (40,420,000) shares, (i) Thirty Million (30,000,000) shares of which shall be Common Stock with a par value of $0.001 per share, and (ii) Ten Million Four Hundred Twenty Thousand (10,420,000) shares of which shall be Preferred Stock with a par value of $0.001 per share. Of such Preferred Stock, (1) Four Hundred Twenty Thousand (420,000) shall be designated as the "1992 Preferred Stock" (the "1992 Preferred Stock"), (2) Five Hundred Sixty-Nine Thousand Four Hundred Six (569,406) shares shall be designated as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), (3) One Million Eight Hundred Forty-Seven Thousand Two Hundred Ninety-Two (1,847,292) shares shall be designated as "Series B Convertible Preferred Stock" (the "Series B Preferred Stock"), (4) One Million Seven Hundred Twenty-Six Thousand Six Hundred Twenty

(1,726,620) shares shall be designated as "Series C Convertible Preferred Stock" (the "Series C Preferred Stock"), (5) One Million Six Hundred Fifty-Two Thousand Eight Hundred Ninety-Four (1,652,894) shares shall be designated as "Series D Convertible Preferred Stock" (the "Series D Preferred Stock"), (6) One Million Nine Hundred Thirty-Five Thousand Eight Hundred Seventy (1,935,870) shares shall be designated as "Series E Convertible Preferred Stock" (the "Series E Preferred Stock") and (7) the balance may be divided into and issued in series as described herein.

B. The Board of Directors of the Company is authorized subject to limitations prescribed by the General Corporation Law and the provisions of this Section 4.1 of Article IV, to provide for the issuance of the shares of Preferred Stock in series, and by filing a statement of designation pursuant to the General Corporation Law, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

(1) the number of shares constituting that series and the distinctive designation of that series;

(2) the dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

(3) whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

(4) whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

(5) whether or not the shares of that series be redeemable, and, if so, the terms and conditions of such redemption, including the date or date upon or after which they 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;

(6) whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;

(7) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment of shares of that series; and

(8) any other relative rights, preferences and limitations of that series.

The powers, preferences and rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. All shares of any one series of Preferred Stock shall be identical in all respects with all other shares of such series, except that shares of any one series issued at different times may differ as to the date from which dividends thereof shall be cumulative. The Board of Directors may increase the number of shares of the Preferred Stock designated for any existing series by a resolution adding to such series authorized and unissued shares of the Preferred Stock not designated for any other series. The Board of Directors may decrease the number of shares of Preferred Stock designated for any existing series by a resolution, subtracting from such series unissued shares of the Preferred Stock designated for such series, and the shares so subtracted shall become authorized, unissued and undesignated shares of the Preferred Stock.

C. The 1992 Preferred Stock shall have the preferences, limitations and relative rights set forth below:

(1) _Dividends_. Holders of the 1992 Preferred Stock shall not be entitled to receive dividends, payable in cash, stock or otherwise, with respect to such 1992 Preferred Stock at any time while such 1992 Preferred Stock is outstanding.

(2) _Redemption_. The 1992 Preferred Stock shall be redeemable by the Company. Such redemption shall be effected by the Company at such time as the Board of Directors of the Company determines, in its sole discretion, that the Company has available funds in excess of the anticipated needs of the Company, including reasonable reserves for future expenses or capital costs. No dividends shall be declared or paid with respect to the Common Stock so long as any shares of 1992 Preferred Stock are issued and outstanding. The redemption price per share of 1992 Preferred Stock shall be $0.50.

At such time or times as the Board of Directors determines that funds are available for the redemption of all or a portion of the 1992 Preferred Stock, the Company shall provide each holder of 1992 Preferred Stock with written notice of its election to redeem all or a portion of such 1992 Preferred Stock. If only a portion of the total outstanding shares of 1992 Preferred Stock is to be redeemed, a pro rata portion of each holder's shares of 1992 Preferred Stock shall be redeemed, provided that such redemption shall be adjusted to preclude the creation of fractional shares pursuant to such redemption.

Any shares of 1992 Preferred Stock which are redeemed by the Company will be cancelled and will not be reissued, sold or transferred. If fewer than the total number of shares of 1992 Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of 1992 Preferred Stock will be issued to the holder thereof without cost to such holder within twenty days after surrender of the certificate representing the redeemed shares.

The Company will not redeem, repurchase or otherwise acquire any shares of 1992 Preferred Stock except as expressly authorized herein or pursuant to a purchase offer made pro rata to all holders of shares of 1992 Preferred Stock on the basis of the number of shares of 1992 Preferred Stock owned by each such holder.

(3) Liquidation. Subject to the rights of any series of Preferred Stock which may from time to time come into existence, in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, holders of the then outstanding shares of 1992 Preferred Stock shall be entitled to receive for each such share of 1992 Preferred Stock payment in cash equal to $0.50, before any distribution of assets is made to holders of the Common Stock or any other class or series of capital stock of the Company ranking junior to the 1992 Preferred Stock as to distribution on liquidation, dissolution or winding up. Subject to the rights of any series of Preferred Stock which may from time to time come into existence, if, upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to holders of 1992 Preferred Stock shall be insufficient to permit payment in full of the aforesaid preferential amounts, then all such assets of the Company shall be distributed ratably among the holders of the 1992 Preferred Stock in proportion to the full preferential amounts to which they shall be entitled respectively.

After distribution in full of the preferential amounts to be distributed to the holders of any outstanding shares of 1992 Preferred Stock, and to the holders of any outstanding securities of the Company having a preference to distributions of assets of the Company upon liquidation, dissolution or winding up of the Company, the holders of the shares of Common Stock shall be entitled to receive all remaining assets of the Company available for distributions to its stockholders, ratably in proportion to the number of shares of the Common Stock held by them, and the holders of the 1992 Preferred Stock shall have no right to participate in such remaining assets.

Neither the merger nor consolidation of the Company into or with any other entity, nor the merger or consolidation of any other entity into or with the Company, nor a sale, transfer, lease or other disposition of all or any part of the assets of the Company shall be deemed to be a liquidation, dissolution or winding up of the Company within the meaning of this Part C of Section 4.1 of Article IV.

(4) Voting Rights. The holders of shares of 1992 Preferred Stock shall not be entitled to vote upon any matter submitted to a vote of the stockholders of the Company except to the extent required by law.

D. The description of the preferences, limitations and relative rights of the Company's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock is set forth below:

(1) Dividends.

1A. Subject to the restrictions contained herein, the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to receive cash dividends at the rate of $0.1216, $0.1624, $0.278, $0.484 and $0.9072 per share per annum, respectively (as adjusted for any stock dividends, combinations, splits or reclassifications with respect to such shares), payable out of funds legally available therefor, prior and in preference to any declaration or payment of any cash dividend on the Common Stock or the 1992 Preferred Stock of the Company. Such dividends shall be payable with respect to the Series A Preferred Stock at the beginning of each

calendar quarter beginning April 1, 1995, with respect to the Series B Preferred Stock at the beginning of each calendar quarter beginning July 1, 1996, with respect to the Series C Preferred Stock at the beginning of each calendar quarter beginning October 1, 1997, with respect to the Series D Preferred Stock at the beginning of each calendar quarter beginning July 1, 1998 and with respect to the Series E Preferred Stock at the beginning of each calendar quarter beginning January 1, 2000. Such dividends shall accrue on each share of Series A Preferred Stock from the date that such share was issued by the Company (the "Series A Issue Date"), on each share of Series B Preferred Stock from May 6, 1996 (the "Series B Issue Date"), on each share of Series C Preferred Stock from July 29, 1997 (the "Series C Issue Date"), on each share of Series D Preferred Stock from June 16, 1998 (the "Series D Issue Date"), and on each share of Series E Preferred Stock from the date that such share was issued by the Company (the "Series E Issue Date") and shall accrue from day to day, whether or not earned or declared. Such dividends shall be cumulative so that, except as provided below, if such dividends in respect of any previous or current dividend period shall not have been paid, the deficiency shall first be fully paid before any dividend or other distribution shall be paid on or declared and set apart for the 1992 Preferred Stock or the Common Stock. Any accumulation of dividends on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall not bear interest. Cumulative dividends with respect to a share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock which are accrued, payable and/or in arrears shall not then or thereafter be paid and shall cease to be accrued, payable and/or in arrears if such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, has been converted to Common Stock prior to July 29, 2002; provided that if any such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall not have been converted into Common Stock prior to July 29, 2002, dividends with respect to any such unconverted shares shall continue to accumulate and shall be paid to the extent assets are legally available therefor as required under this paragraph 1A, when, as and if declared by the Board of Directors.

1B. Except as provided elsewhere herein, with respect to the 1992 Preferred Stock, no dividends (other than those payable solely in shares of Common Stock of the Company) shall be paid on or declared and set apart for any Common Stock or any other class or series of stock of the Company during any fiscal year of the Company until dividends for all past dividend periods and the then current dividend period shall have been paid, or a sum sufficient for the payment therefor set apart, with respect to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, and no dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid pursuant to the above provisions of this paragraph 1B) is paid with respect to all outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock in an amount for each such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock equal to or greater than the aggregate amount of such dividends for the number of shares of Common Stock into which each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock could then be converted.

1C. In the event the Company shall declare a distribution (other than any distribution described in paragraph 1A or 1B) payable in securities of any other Person (as defined in part (8)), evidences of indebtedness issued by the Company or other Persons, assets (excluding cash dividends) or options or rights to purchase any such securities or evidences of indebtedness, then, in each such case, the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to a proportionate share of any such distribution as though the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock were the holders of the number of shares of Common Stock of the Company into which their shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of the Company entitled to receive such distribution.

(2) Liquidation Preference.

2A. In the event of any sale, liquidation, dissolution or winding up of the Company, either voluntary or involuntary:

(i) The holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Company to the holders of the 1992 Preferred Stock and Common Stock by reason of their ownership thereof, an amount for each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock then held by them equal to $1.52, $2.03, $3.475, $6.05 and $11.34, respectively (as adjusted for any stock dividends, combinations, splits or reclassifications with respect to such shares), plus accrued or declared but unpaid dividends on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock as the case may be. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall be insufficient to permit the payment to such holders of such full preferential amount, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock in proportion to the relative liquidation preferences (as provided in this subparagraph (i)) of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then held by them.

(ii) Subject to payment in full of the liquidation preference with respect to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock as provided in subparagraph (i) above, the holders of the 1992 Preferred Stock shall be entitled to payments upon the liquidation of the Company as provided in the Certificate of Incorporation.

(iii) Subject to the payment in full of the liquidation preferences with respect to the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock as provided in subparagraph (i) above and the 1992 Preferred Stock (if any) as provided in subparagraph (ii) above, the entire remaining assets and funds of the Company legally available for distribution, if any, shall be distributed among the holders of the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock ratably in proportion to the shares of Common Stock then held by them and the shares of Common Stock which they have the right to acquire upon conversion of the shares of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock then held by them, provided, however, that, including the amounts paid pursuant to subparagraph (i) above, in no event shall (A) the Series A Preferred Stock receive greater than $4.50 per share plus accrued or declared but unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares), (B) the Series B Preferred Stock receive greater than $6.09 per share plus accrued or declared but unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares), (C) the Series C Preferred Stock receive greater than $10.425 per share plus accrued or declared but unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares), (D) the Series D Preferred Stock receive greater than $18.15 per share plus accrued or declared but unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares), or (E) the Series E Preferred Stock receive greater than $17.01 per share plus accrued or declared but unpaid dividends (as adjusted for any stock dividends, combinations or splits with respect to such shares).

2B. For the purposes of this part (2), unless otherwise determined as to a particular transaction by the vote or written consent of a Sufficient Vote (as defined in subparagraph (v) below) of the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding and except as provided in the Certificate of Incorporation with respect to the 1992 Preferred Stock, a "liquidation" shall include:

(i) a reorganization, consolidation or merger of the Company with or into any other Company, or any other Person, other than a wholly-owned Subsidiary (as defined in part (8) below) of the Company in which the holders of the Company's securities prior to the transaction or series of transactions would beneficially own less than 50% of the outstanding voting securities of the surviving entity after the transaction or series of transactions, excluding any transaction in which stockholders of the Company prior to the transaction will maintain voting control of the resulting entity after the transaction;

(ii) any corporate reorganization in which the Company shall not be the continuing or surviving entity resulting from such reorganization;

(iii) a sale of all or substantially all of the assets of the Company; or

(iv) any transaction approved by the stockholders of the Company in which more than fifty percent (50%) of the outstanding stock of the Company (on

an as-if converted basis) is redeemed or repurchased in any 90-day period; such that in each case the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be paid in cash or in securities received from the acquiring company, or in a combination thereof, at the closing of any such transaction, an amount equal to the amount per share which would be payable to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock pursuant to this part (2) in a liquidation of the Company; and

(v) For purposes of this Certificate of Incorporation, a "Sufficient Vote" of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall mean the approval, either by vote or written consent, of the holders of at least fifty percent (50%) of all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding, voting together as a single class and without regard to the number of shares issuable upon the conversion of such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock.

2C. Any securities to be delivered to the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock pursuant to paragraph 2B above shall be valued as follows:

(i) If such securities are not subject to restriction on free marketability, then:

(a) if traded on a securities exchange, the value of such securities shall be deemed to be the average of the security's closing prices on such exchange over the 30-day period ending three days prior to the closing;

(b) if actively traded over-the-counter, the value of such securities shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing; and

(c) if there is no active public market, the value of such securities shall be the fair market value thereof, as mutually determined by a majority of the members of the Board of Directors of the Company who are not then representatives of or otherwise affiliates of any holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock (collectively, the "Disinterested Directors") and a Sufficient Vote of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, voting together as a single class, or, in the absence of such agreement, by an appraisal conducted by an independent appraiser jointly selected by the Disinterested Directors and the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding (an "Independent Appraisal") paid for by the Company; and

(ii) Securities subject to investment letter or other restrictions on free marketability shall be valued at an appropriate discount from the value determined as provided in subparagraphs (i)(a), (i)(b) or (i)(c) above to reflect the approximate fair market value thereof, as mutually determined by a majority of the Disinterested Directors and a Sufficient Vote of the holders of the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, voting together as a single class, or, in the absence of such agreement, by an Independent Appraisal paid for by the Company.

2D. The Company shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock written notice of such impending transaction not later than 20 days prior to the stockholders meeting called to approve such transaction or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the contemplated transaction, and the Company shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after the mailing by the Company of the first notice provided for herein or sooner than 20 days after the mailing by the Company of any notice of material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of a Sufficient Vote of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, voting together as a single class.

(3) Redemptions.

3A. The holders of sixty-seven percent (67%) of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding, at any time after July 29, 2002 and upon sixty (60) days prior written notice to the Company of such election (the "Redemption Notice"), may require the Company to redeem (and require each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock to participate in such redemption) (each, a "Mandatory Redemption") on the dates referenced below (each, a "Mandatory Redemption Date") the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock set forth opposite such Mandatory Redemption Date below at a price per share equal to the respective Series A Redemption Price, Series B Redemption Price, Series C Redemption Price, Series D Redemption Price or Series E Redemption Price (as defined in paragraph 3B), as the case may be:

Mandatory Redemption Date	Number of Shares
The date which is 60 days after the date of the Redemption Notice (the "First Mandatory Redemption Date")	Up to one-third (1/3) of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding
First Anniversary of the First Mandatory Redemption Date	Up to one-half (1/2) of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding
Second Anniversary of the First Mandatory Redemption Date	All remaining shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding

3B. The holders of Series A Preferred Stock shall be entitled to receive from the Company on any Mandatory Redemption Date an amount in cash for each share of Series A Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Series A Redemption Price") equal to the greater of (i) the fair market value of a share of Series A Preferred Stock on such Mandatory Redemption Date, or (ii) $1.52 (as adjusted for stock dividends, combinations, splits or reclassifications with respect to such shares) plus any accrued, or declared but unpaid, dividends on the Series A Preferred Stock as of the First Mandatory Redemption Date. The holders of Series B Preferred Stock shall be entitled to receive from the Company on any Mandatory Redemption Date an amount in cash for each share of Series B Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Series B Redemption Price") equal to the greater of (i) the fair market value of a share of Series B Preferred Stock on such Mandatory Redemption Date, or (ii) $2.03 (as adjusted for stock dividends, combinations, splits or reclassifications with respect to such shares) plus any accrued, or declared but unpaid, dividends on the Series B Preferred Stock as of the First Mandatory Redemption Date. The holders of Series C Preferred Stock shall be entitled to receive from the Company on any Mandatory Redemption Date an amount in cash for each share of Series C Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Series C Redemption Price") equal to the greater of (i) the fair market value of a share of Series C Preferred Stock on such Mandatory Redemption Date, or (ii) $3.475 (as adjusted for stock dividends, combinations, splits or reclassifications with respect to such shares) plus any accrued, or declared but unpaid, dividends

on the Series C Preferred Stock as of the First Mandatory Redemption Date. The holders of Series D Preferred Stock shall be entitled to receive from the Company on any Mandatory Redemption Date an amount in cash for each share of Series D Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Series D Redemption Price") equal to the greater of (i) the fair market value of a share of Series D Preferred Stock on such Mandatory Redemption Date, or (ii) $6.05 (as adjusted for stock dividends, combinations, splits or reclassifications with respect to such shares) plus any accrued, or declared but unpaid, dividends on the Series D Preferred Stock as of the First Mandatory Redemption Date. The holders of Series E Preferred Stock shall be entitled to receive from the Company on any Mandatory Redemption Date an amount in cash for each share of Series E Preferred Stock to be redeemed on such Mandatory Redemption Date (the "Series E Redemption Price") equal to the greater of (i) the fair market value of a share of Series E Preferred Stock on such Mandatory Redemption Date, or (ii) $11.34 (as adjusted for stock dividends, combinations, splits or reclassifications with respect to such shares) plus any accrued, or declared but unpaid, dividends on the Series E Preferred Stock as of the First Mandatory Redemption Date. The Series A Redemption Price, Series B Redemption Price, Series C Redemption Price, Series D Redemption Price and Series E Redemption Price shall be adjusted for all redemptions of shares made after the First Mandatory Redemption Date to include accrued interest compounded monthly from the First Mandatory Redemption Date at the prime rate published in The Wall Street Journal on such date through and until payment in full of the Redemption Price for each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, then outstanding in lieu of any further cumulative dividends on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, from and after the First Mandatory Redemption Date. For purposes of this paragraph 3B, the "fair market value" of a share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, shall be its fair market value as determined by a majority of the Disinterested Directors and a Sufficient Vote of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock Series and Series E Preferred Stock then outstanding, or, if they are unable to reach an agreement not later than 20 days prior to such Mandatory Redemption Date, as determined by an Independent Appraisal paid for by the Company.

3C. If the funds of the Company legally available for redemption of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock on any Mandatory Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock to be redeemed on such Mandatory Redemption Date, those funds that are legally available will be used by the Company to redeem the maximum possible number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock ratably among the holders of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock to be redeemed based upon the proportion which the aggregate Series A Redemption Price, Series B Redemption Price, Series C Redemption Price, Series D Redemption Price and Series E Redemption Price, respectively, bears to the aggregate redemption price to be paid with respect to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D

Preferred Stock and Series E Preferred Stock. At any time and from time to time thereafter when additional funds of the Company are legally available for redemption of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, such funds immediately will be used by the Company to redeem the balance of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock which the Company has become obligated to redeem on any Mandatory Redemption Date but which it has not redeemed and such funds will not be used for any other purpose, including, but not limited to, any redemption of the 1992 Preferred Stock as provided in the Certificate of Incorporation, or any redemption of any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock which the Company is obligated to redeem on any subsequent Mandatory Redemption Date.

3D. No share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock is entitled to any dividends accruing after the First Mandatory Redemption Date. From and after the date on which the Series A Redemption Price, Series B Redemption Price, Series C Redemption Price, Series D Redemption Price or Series E Redemption Price is paid, all rights of the holders of such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock will cease, and such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock will not be deemed to be outstanding.

3E. Any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock which are redeemed or otherwise acquired by the Company will be cancelled and will not be reissued, sold or transferred. If fewer than the total number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock will be issued to the holder thereof without cost to such holder within ten business days after surrender of the certificate representing the redeemed shares.

3F. Neither the Company nor any Subsidiary (as defined in part (8)) will redeem, repurchase or otherwise acquire any shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, except as expressly authorized herein or pursuant to a purchase offer made pro rata to all holders of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock on the basis of the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock owned by each such holder.

(4) Voting Rights.

4A. Except as expressly provided in this Certificate of Incorporation or in any agreement to which stockholders of the Company may be a party with each other, each

holder of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock could then be converted and shall have voting rights and powers equal to the voting rights and powers of the Common Stock (except as otherwise expressly provided in the Certificate of Incorporation or as required by law) and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Fractional votes shall not, however, be permitted and any fractional votes resulting from the above formula shall be rounded to the nearest whole number (with one-half being rounded upward).

4B. In addition, and without limiting any other rights to which a holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock otherwise may be entitled, the Company shall not engage in any of the transactions set forth in subparagraphs (i), (ii), (iii) and (iv) of paragraph 2B, subparagraph (c) of paragraph 2C, paragraph 2D, paragraph 3A and part (9) below of Section 4.1 of this Article IV, until such transaction has been approved by a Sufficient Vote of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding.

(5) Conversion.

The holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

5A. Right to Convert.

(i) Conversion of Series A Preferred Stock. Subject to compliance with the provisions of paragraph 5C, each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Company or any transfer agent for such share, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing $1.52 by the conversion price with respect to the Series A Preferred Stock (the "Series A Conversion Price") in effect at the time of conversion. The initial Series A Conversion Price shall be $1.52 per share; provided, however, that such conversion price shall be subject to adjustment as provided herein.

(ii) Conversion of Series B Preferred Stock. Subject to compliance with the provisions of paragraph 5C, each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for such share, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing $2.03 by the conversion price with respect to the Series B Preferred Stock (the "Series B Conversion Price") in effect at the time of conversion. The initial Series B Conversion Price shall be $1.705 per share; provided, however, that such conversion price shall be subject to adjustment as provided herein.

(iii) Conversion of Series C Preferred Stock. Subject to compliance with the provisions of paragraph 5C, each share of Series C Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for such share, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing $3.475 by the conversion price with respect to the Series C Preferred Stock (the "Series C Conversion Price") in effect at the time of conversion. The initial Series C Conversion Price shall be $3.475 per share; provided, however, that such conversion price shall be subject to adjustment as provided herein.

(iv) Conversion of Series D Preferred Stock. Subject to compliance with the provisions of paragraph 5C, each share of Series D Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for such share, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing $6.05 by the conversion price with respect to the Series D Preferred Stock (the "Series D Conversion Price") in effect at the time of conversion. The initial Series D Conversion Price shall be $6.05 per share; provided, however, that such conversion price shall be subject to adjustment as provided herein.

(v) Conversion of Series E Preferred Stock. Subject to compliance with the provisions of paragraph 5C, each share of Series E Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Company or any transfer agent for such share, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing $11.34 by the conversion price with respect to the Series E Preferred Stock (the "Series E Conversion Price") in effect at the time of conversion. The initial Series E Conversion Price shall be $11.34 per share; provided, however, that such conversion price shall be subject to adjustment as provided herein.

5B. Automatic Conversion.

(i) Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price, respectively (each, a "Conversion Price"), immediately upon the closing of the sale of the Company's Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended, with aggregate gross proceeds to the Company and any selling stockholders therein of at least $20,000,000 (before subtracting underwriting commissions and expenses) at an offering price of at least $17.01 per share (as adjusted for any stock dividends, combinations, splits or reclassifications, and the like) (a "Qualified Public Offering") (in the event of which Qualified Public Offering, the Person(s) entitled to receive Common Stock issuable upon such conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall not be deemed to have converted that

Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock until immediately prior to the closing of such offering).

(ii) Each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Price immediately upon the vote or written consent of the holders of not less than eighty percent (80%) of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock then outstanding (voting or acting, as the case may be, as a single class and without regard to the number of shares issuable upon the conversion of such Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock).

5C. Mechanics of Conversion. Before any holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates thereof, duly endorsed, at the office of the Company or of any transfer agent for such shares, and shall give written notice to the Company at such office that he elects to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Company shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as provided herein. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock to be converted, and the Person(s) entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. In the event of an automatic conversion, the Board of Directors may elect to treat the conversion of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock as having been made effective as of the date of the event resulting in the automatic conversion.

5D. Adjustments to Conversion Price for Dilutive Issues.

(i) Special Definitions. For purposes of this paragraph 5D, the following definitions apply:

(a) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to 5D(iii), deemed to be issued) by the Company after the Series E Issue Date other than shares of Common Stock, Options and/or Convertible Securities issued or issuable:

1. upon conversion of shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock;

2. to current or former officers, directors, employees or consultants of the Company pursuant to a stock option plan, stock purchase plan or restricted stock plan approved by the stockholders and the Board of Directors;

3. to directors, employees or consultants of the Company as compensation for services rendered to the Company under agreements approved by all members of the Board of Directors at a duly convened meeting at which all such members were present or by their unanimous written consent;

4. upon exercise of certain warrants to purchase up to 550,000 shares (which number is subject to adjustment as provided therein) of Common Stock;

5. as a dividend or distribution on Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock;

6. pursuant to a transaction or event for which adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price is made pursuant to paragraph 5E; or

7. pursuant to the acquisition of another or other Person by merger, share exchange or purchase of all or substantially all of the assets of such Company or other Person or reorganization transaction.

(b) "Convertible Securities" shall mean any evidences of indebtedness, shares (other than Common Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock) or other securities convertible into or exchangeable for Common Stock.

(c) "Options" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities.

(ii) No Adjustment of Conversion Price. No adjustment in the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price of a particular share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, respectively, shall be made in respect of the issuance of Additional Shares of Common Stock unless the consideration per share for an Additional Share of Common Stock issued or deemed to be issued by the Company is less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price as the case may be, in effect on the date of, and immediately prior to such issue, for such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, respectively.

(iii) Deemed Issue of Additional Shares of Common Stock. In the event the Company, at any time or from time to time after the Series E Issue Date, shall issue

any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein designed to protect against dilution) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued unless the consideration per share (determined pursuant to paragraph 5D(v) hereof) of such Additional Shares of Common Stock would be less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as the case may be, in effect on the date of and immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(a) no further adjustments in the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(b) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase in the consideration payable to the Company, or decrease in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as the case may be, computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities (provided, however, that no such adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price shall affect Common Stock previously issued upon conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock).

(c) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon such expiration, be recomputed as if:

1. in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common Stock issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or

exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration actually received by the Company upon such exercise, or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Company upon such conversion or exchange, and

2. in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options and the consideration received by the Company for the Additional Shares of Common Stock deemed to have been then issued was the consideration actually received by the Company for the issue of all such Options, whether or not exercised, plus the consideration deemed to have been received by the Company (determined pursuant to paragraph 5D(v) below) upon the issue of the Convertible Securities with respect to which such Options were actually exercised;

(d) no adjustment of the conversion rate for the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall have the effect of increasing the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price to an amount which exceeds the lower of (x) the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price on the original adjustment date, or (y) the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price that would have resulted from any actual issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date;

(e) in the case of any Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price shall be made, except as to shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock converted during such period, until the expiration or exercise of all such Options, whereupon such adjustment shall be made in the same manner provided in clause (c) above; and

(f) if any such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed thereof, the adjustment previously made in the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price which became effective on such record date shall be cancelled as of the close of business on such record date, and shall instead be made on the actual date of issuance, if any.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Company, at any time after the Series E Issue Date, shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to paragraph 5D(iii)) for a consideration per share less than the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as the case may be, in effect on the date of and immediately prior to such issue, then and in such event, such Series A Conversion Price, Series B Conversion Price, Series C Conversion Price,

Series D Conversion Price or Series E Conversion Price shall be reduced, as the case may be, concurrently with such issue, to a price (calculated to the nearest whole cent) determined by multiplying the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as applicable, by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Company for the total number of Additional Shares of Common Stock so issued would purchase at the applicable Conversion Price, and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such issue plus the number of such Additional Shares of Common Stock so issued; and provided further that, for the purposes of this paragraph 5D(iv), all shares of Common Stock issuable upon conversion of all outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock shall be deemed to be outstanding. For example, if after the Series E Issue Date, the Company issues 1,000,000 shares of Common Stock for consideration per share of $10.00, assuming 5,386,643 shares of Common Stock outstanding (determined in the manner provided above and using the initial Series E conversion rate of one (1)), the Conversion Price of a share of Series E Preferred Stock immediately would be reduced to the price determined by multiplying $11.34 (the initial Series E Conversion Price) by the following fraction:

(5,386,643 + [(1,000,000 x 10.00) 11.34]) (5,386,643 + 1,000,000)

$$= \frac{5,386,643 + 881,834}{6,386,643}$$

$$= \frac{6,268,477}{6,386,643}$$

$$= 0.9815$$

resulting in an adjusted Series E Conversion Price of $11.34 x 0.9815 = $11.13, and a revised Series E Conversion Rate of 1.02:1 (i.e., $11.34 $11.13).

(v) Determination of Consideration. For purposes of this paragraph 5D, the consideration received by the Company for the issuance of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property. Such consideration shall:

1. insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company excluding amounts paid or payable for accrued interest or accrued dividends after deducting all commissions and expenses paid and concessions and discounts allowed to underwriters, dealers or others performing similar services in connection with such issue;

2. insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

3. in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined in good faith by the Board of Directors.

(b) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to paragraph 5D(iii), relating to Options and Convertible Securities, shall be determined by dividing:

1. the total amount, if any, received or receivable by the Company as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Company upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Option for Convertible Securities and the conversion or exchange of such Convertible Securities; by

2. the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

5E. Adjustments for Dividends, Combinations or Subdivisions of Common Stock. In the event that the Company at any time or from time to time after the Series E Issue Date shall declare or pay any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock, or shall effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise), or in the event the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, then the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased or increased, as appropriate.

5F. Other Distributions. In the event the Company shall at any time or from time to time make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in securities of other Persons, evidences of indebtedness issued by the Company or any of its subsidiaries or other Persons, assets (excluding cash dividends) or Options or rights not referred to in paragraph 5D(iii), then in each such event provision shall be made so that the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock

shall receive, upon the conversion thereof, the securities of the Company which they would have received had their stock been converted into Common Stock on the date of such event.

5G. Other Adjustments. In case of any reorganization or any reclassification of the capital stock of the Company, any consolidation, merger or share exchange of the Company with or into another corporation or corporations (other than a consolidation or merger deemed to be a liquidation, dissolution or winding up of the Company as provided in paragraph 2B above), each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or property (including cash) to which a holder of the number of shares of Common Stock deliverable upon conversion of such share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock would have been entitled upon the record date of (or date of, if no record date is fixed) such reorganization, reclassification, consolidation, merger or share exchange; and, in any case appropriate adjustment (as determined by the Board of Directors) shall be made in the application of the provisions herein set forth with respect to the rights and interests thereafter of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock to the end that the provisions set forth herein shall thereafter be applicable, as nearly equivalent as is practicable, in relation to any shares of stock or the securities or property (including cash) thereafter deliverable upon the conversion of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock.

5H. No Impairment. The Company will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company but will at all times in good faith assist in the carrying out of all the provisions of this part (5) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion right of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock against impairment.

5I. Certificates as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price or Series E Conversion Price, as the case may be, pursuant to this part (5), the Company at its expense shall promptly compute such adjustment and prepare and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, upon the written request at any time of any holder of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, as the case may be, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Series A Conversion Price, Series B Conversion Price, Series C Conversion Price, Series D Conversion Price and Series E Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other

property which at the time would be received upon the conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock.

5J. <u>Issue Taxes</u>. The Company shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock on conversion of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock pursuant hereto; provided, however, that the Company shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

5K. <u>Reservation of Stock Issuable Upon Conversion</u>. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation.

5L. <u>Fractional Shares</u>. No fractional share shall be issued upon the conversion of any share or shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after such aggregation, the conversion would result in the issuance of a fraction of a share of Common Stock, the Company shall, in lieu of issuing any fractional share, pay the holder otherwise entitled to such fraction a sum in cash equal to the fair market value of such fraction on the date of conversion (as determined in good faith by the Board of Directors of the Company).

(6) <u>Registration of Transfer</u>.

The Company will keep at its principal office a register for the registration of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock. Upon the surrender of any certificate representing shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock at such place, the Company will, at the request of the record holder of such certificate, execute and deliver (at the Company's expense) a new

certificate or certificates in exchange therefor representing in the aggregate the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock as is requested by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate, and dividends will accrue on the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock represented by the surrendered certificate.

(7) Replacement.

Upon receipt of evidence reasonably satisfactory to the Company (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Company or, in the case of any mutilation, upon surrender of such certificate the Company will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock represented by such lost, stolen, destroyed or mutilated certificate, and dividends will accrue on the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

(8) Certain Definitions. When used in this Part D of this Section 4.1 of Article IV:

"Common Stock" means, collectively, the Company's Common Stock, par value $0.001 per share, and any capital stock of any class of the Company hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Company.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Subsidiary" means any corporation more than fifty percent (50%) of the outstanding voting securities are owned by the Company or any Subsidiary, directly or indirectly, or a partnership or limited liability company in which the Company or any Subsidiary is a general partner or manager or holds interests entitling it to receive more than fifty percent (50%) of the profits or losses of the partnership or limited liability company.

(9) Amendment and Waiver.

No amendment, modification or waiver of this Part D of this Section 4.1 of Article IV will be binding or effective with respect to any provision of these terms without the vote or prior written consent of a Sufficient Vote of the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock outstanding at the time such action is taken, voting together as a single class. No change in the terms hereof may be accomplished by merger or consolidation of the Company or any other liquidation event under Section 2B above with another Person unless the Company has obtained the prior written consent of the holders of a Sufficient Vote of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock.

(10) Notices.

10A. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally or by express courier, telegraphed, telexed, sent by facsimile transmission or sent postage prepaid by certified or registered mail, return receipt requested, or by express mail. Any such notice shall be deemed given when so delivered personally, telegraphed, telexed, or sent by confirmed facsimile transmission or, if mailed, three (3) business days after the date of deposit in the United States mail addressed (a) to the Company, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Company (unless otherwise indicated by any such holder). Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by telecopier shall be confirmed by appropriate answer back and shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the next day after receipt if not received during the recipient's normal business hours.

10B. In the event of any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any security or right convertible into or entitling the holder thereof to receive Additional Shares of Common Stock, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Company shall mail to each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock at least 20 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken, and the amount and character of such dividend, distribution, security or right.

E. Common Stock. The Common Stock shall be subject to the prior and superior rights of the 1992 Preferred Stock, Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock and of any subsequent series of preferred stock. Each share of Common Stock shall be equal to every other share of Common Stock. The holder of shares of Common Stock shall be entitled to one vote for each share of such stock upon matters presented to stockholders.

4.2 Effective as of a Qualified Public Offering (as defined in Section 5B of Part D of Section 4.1 of this Article IV), the Company's capital stock shall be comprised as follows:

A. *Authorized Shares.* The aggregate number of shares that the Company shall have authority to issue is Two Hundred Million (200,000,000), (a) One Hundred Seventy-Five Million (175,000,000) shares of which shall be Common Stock, par value $0.001 per share, and (b) Twenty-Five Million Four Hundred Twenty Thousand (25,420,000) shares of which shall be Preferred Stock, par value $0.001 per share. Of such Preferred Stock, Four Hundred Twenty Thousand (420,000) shall be designated as the "1992 Preferred Stock" (the "*1992 Preferred Stock*").

B. *Common Stock.* Each share of Common Stock shall have one vote on each matter submitted to a vote of the stockholders of the Company. Subject to the provisions of applicable law and the rights of the holders of the outstanding shares of Preferred Stock, if any, the holders of shares of Common Stock shall be entitled to receive, when and as declared by the Board of Directors of the Company, out of the assets of the Company legally available therefor, dividends or other distributions, whether payable in cash, property or securities of the Company. The holders of shares of Common Stock shall be entitled to receive, in proportion to the number of shares of Common Stock held, the net assets of the Company upon dissolution after any preferential amounts required to be paid or distributed to holders of outstanding shares of Preferred Stock, if any, are so paid or distributed.

C. *Preferred Stock.*

(1) *Series.* The Preferred Stock may be issued from time to time by the Board of Directors as shares of one or more series. The description of shares of each additional series of Preferred Stock, including any designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption shall be as set forth in resolutions adopted by the Board of Directors.

(2) *Rights and Preferences.* The Board of Directors is expressly authorized, at any time, by adopting resolutions providing for the issuance of, or providing for a change in the number of, shares of any particular series of Preferred Stock and, if and to the extent from time to time required by law, by filing certificates of amendment or designation which are effective without stockholder action, to increase or decrease the number of shares included in each series of Preferred Stock, but not below the number of shares then issued, and to set in any one or more respects the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms and conditions of redemption relating to the shares of each such series. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, setting or changing the following:

(a) the dividend rate, if any, on shares of such series, the times of payment and the date from which dividends shall be accumulated, if dividends are to be cumulative ;

(b) whether the shares of such series shall be redeemable and, if so, the redemption price and the terms and conditions of such redemption;

(c) the obligation, if any, of the Company to redeem shares of such series pursuant to a sinking fund;

(d) whether shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes 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;

(e) whether the shares of such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the extent of such voting rights;

(f) the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding-up of the Company; and

(g) any other relative rights, powers, preferences, qualifications, limitations or restrictions thereof relating to such series.

D. The 1992 Preferred Stock shall have the preferences, limitations and relative rights set forth below:

(1) Dividends. Holders of the 1992 Preferred Stock shall not be entitled to receive dividends, payable in cash, stock or otherwise, with respect to such 1992 Preferred Stock at any time while such 1992 Preferred Stock is outstanding.

(2) Redemption. The 1992 Preferred Stock shall be redeemable by the Company. Such redemption shall be effected by the Company at such time as the Board of Directors of the Company determines, in its sole discretion, that the Company has available funds in excess of the anticipated needs of the Company, including reasonable reserves for future expenses or capital costs. No dividends shall be declared or paid with respect to the Common Stock so long as any shares of 1992 Preferred Stock are issued and outstanding. The redemption price per share of 1992 Preferred Stock shall be $0.50.

At such time or times as the Board of Directors determines that funds are available for the redemption of all or a portion of the 1992 Preferred Stock, the Company shall provide each holder of 1992 Preferred Stock with written notice of its election to redeem all or a portion of such 1992 Preferred Stock. If only a portion of the total outstanding shares of 1992 Preferred Stock is to be redeemed, a pro rata portion of each holder's shares of 1992 Preferred Stock shall be redeemed, provided that such redemption shall be adjusted to preclude the creation of fractional shares pursuant to such redemption.

Any shares of 1992 Preferred Stock which are redeemed by the Company will be cancelled and will not be reissued, sold or transferred. If fewer than the total number of shares of 1992 Preferred Stock represented by any certificate are redeemed, a new certificate representing the number of unredeemed shares of 1992 Preferred Stock will be issued to the holder thereof without cost to such holder within twenty days after surrender of the certificate representing the redeemed shares.

The Company will not redeem, repurchase or otherwise acquire any shares of 1992 Preferred Stock except as expressly authorized herein or pursuant to a purchase offer made pro rata to all holders of shares of 1992 Preferred Stock on the basis of the number of shares of 1992 Preferred Stock owned by each such holder.

(3) Liquidation. Subject to the rights of any series of Preferred Stock which may from time to time come into existence, in the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, holders of the then outstanding shares of 1992 Preferred Stock shall be entitled to receive for each such share of 1992 Preferred Stock payment in cash equal to $0.50, before any distribution of assets is made to holders of the Common Stock or any other class or series of capital stock of the Company ranking junior to the 1992 Preferred Stock as to distribution on liquidation, dissolution or winding up. Subject to the rights of any series of Preferred Stock which may from time to time come into existence, if, upon any such liquidation, dissolution or winding up of the Company, the assets of the Company available for distribution to holders of 1992 Preferred Stock shall be insufficient to permit payment in full of the aforesaid preferential amounts, then all such assets of the Company shall be distributed ratably among the holders of the 1992 Preferred Stock in proportion to the full preferential amounts to which they shall be entitled respectively.

After distribution in full of the preferential amounts to be distributed to the holders of any outstanding shares of 1992 Preferred Stock, and to the holders of any outstanding securities of the Company having a preference to distributions of assets of the Company upon liquidation, dissolution or winding up of the Company, the holders of the shares of Common Stock shall be entitled to receive all remaining assets of the Company available for distributions to its stockholders, ratably in proportion to the number of shares of the Common Stock held by them, and the holders of the 1992 Preferred Stock shall have no right to participate in such remaining assets.

Neither the merger nor consolidation of the Company into or with any other entity, nor the merger or consolidation of any other entity into or with the Company, nor a sale, transfer, lease or other disposition of all or any part of the assets of the Company shall be deemed to be a liquidation, dissolution or winding up of the Company within the meaning of this Part D of Section 4.2 of Article IV.

(4) Voting Rights. The holders of shares of 1992 Preferred Stock shall not be entitled to vote upon any matter submitted to a vote of the stockholders of the Company except to the extent required by law.

ARTICLE V

A director of the Company shall not be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Company or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware

General Corporation Law or (d) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

ARTICLE VI

The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Company.

ARTICLE VII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Company may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Company.

ARTICLE VIII

Election of directors at an annual or special meeting of stockholders need not be by written ballot unless the Bylaws of the Company shall so provide.

ARTICLE IX

A. At each annual meeting of stockholders, directors of the Company shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified. Effective immediately following the closing of the initial public offering of the Company's capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "<u>Initial Public Offering</u>"), the directors of the Company shall be divided into three classes as nearly equal in size as is practicable, hereby designated as Class I, Class II and Class III. The initial Class I, Class II and Class III directors shall be those directors designated and elected by resolution of the Board of Directors or stockholders prior to the Initial Public Offering. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the closing of the Initial Public Offering (the "<u>First Public Company Annual Meeting</u>"); the term of office of the initial Class II directors shall expire at the next succeeding annual meeting of stockholders; and the term of office of the initial Class III directors shall expire at the second succeeding annual meeting of stockholders. At each annual meeting after the First Public Company Annual Meeting, directors to replace those of a Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

B. Vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at a meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy shall hold office until the next succeeding annual meeting of stockholders of the Company and until his or her successor shall have been duly elected and qualified.

ARTICLE X

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Company.

ARTICLE XI

Effective upon the closing of the Initial Public Offering, stockholders of the Company may not take action by written consent in lieu of a meeting but must take any actions at a duly called annual or special meeting.

ARTICLE XII

Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or this Certificate of Incorporation, effective as of the Initial Public Offering, the affirmative vote of the holders of at least two-thirds (2/3) of the combined voting power of all of the then-outstanding shares of the Company entitled to vote shall be required to alter, amend or repeal Articles IX or XI or this Article XII, or any provisions thereof.

ARTICLE XIII

Subject to Article XII above, the Company 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 all rights conferred on stockholders herein are granted subject to this reservation.

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EXHIBIT 3.2

AMENDED AND RESTATED
BYLAWS
OF
ACTIVE POWER, INC.,
a Delaware corporation

TABLE OF CONTENTS

		Page
ARTICLE I. Offices		1
Section 1.1	Registered Office	1
Section 1.2	Other Offices	1
ARTICLE II. Corporate Seal		1
ARTICLE III. Stockholders' Meetings		1
Section 3.1	Place of Meetings	1
Section 3.2	Annual Meeting	2
Section 3.3	Special Meetings	4
Section 3.4	Notice of Meetings	4
Section 3.5	Quorum	4
Section 3.6	Adjournment and Notice of Adjourned Meetings	5
Section 3.7	Voting Rights	5
Section 3.8	Joint Owners of Stock	5
Section 3.9	List of Stockholders	6
Section 3.10	No Action Without Meeting	6
Section 3.11	Organization	6
ARTICLE IV. Directors		7
Section 4.1	Number and Term of Office; Classification	7
Section 4.2	Powers	7
Section 4.3	Vacancies	7
Section 4.4	Resignation	8
Section 4.5	Removal	8
Section 4.6	Meetings	8
Section 4.7	Quorum and Voting	9
Section 4.8	Action Without Meeting	9
Section 4.9	Fees and Compensation	9
Section 4.10	Committees	10
ARTICLE V. Officers		11
Section 5.1	Officers Designated	11
Section 5.2	Tenure and Duties of Officers	11
Section 5.3	Delegation of Authority	14
Section 5.4	Resignations	14
Section 5.5	Removal	14
ARTICLE VI. Execution of Corporate Instruments and Voting of Securities Owned by the Corporation		14
Section 6.1	Execution of Corporate Instruments	14
Section 6.2	Voting of Securities Owned by the Corporation	15

ARTICLE VII. Shares of Stock... 15
Section 7.1 Form and Execution of Certificates.................. 15
Section 7.2 Lost Certificates................................... 16
Section 7.3 Transfers... 16
Section 7.4 Fixing Record Dates................................. 16
Section 7.5 Registered Stockholders............................. 17
ARTICLE VIII. Other Securities of the Corporation........................ 17
Section 8.1 Execution of Other Securities....................... 17
ARTICLE IX. Dividends.. 18
Section 9.1 Declaration of Dividends............................ 18
Section 9.2 Dividend Reserve.................................... 18
ARTICLE X. Fiscal Year... 18
ARTICLE XI. Indemnification of Directors, Officers, Employees and Other Agents... 18
Section 11.1 Directors and Executive Officers.................... 18
Section 11.2 Other Officers, Employees and Other Agents.......... 19
Section 11.3 Good Faith.. 19
Section 11.4 Expenses.. 19
Section 11.5 Enforcement... 20
Section 11.6 Non-Exclusivity of Rights........................... 20
Section 11.7 Survival of Rights.................................. 20
Section 11.8 Insurance... 20
Section 11.9 Amendments.. 21
Section 11.10 Savings Clause..................................... 21
Section 11.11 Certain Definitions................................ 21
ARTICLE XII. Notices... 22
Section 12.1 Notice to Stockholders.............................. 22
Section 12.2 Notice to Directors................................. 22
Section 12.3 Address Unknown..................................... 22
Section 12.4 Affidavit of Mailing................................ 22
Section 12.5 Time Notices Deemed Given........................... 22
Section 12.6 Failure to Receive Notice........................... 22
Section 12.7 Notice to Person with Whom Communication Is Unlawful 22
Section 12.8 Notice to Person with Undeliverable Address......... 23
ARTICLE XIII. Amendments... 23
Section 13.1 Amendments.. 23
Section 13.2 Application of Bylaws............................... 23

AMENDED AND RESTATED BYLAWS
OF
ACTIVE POWER, INC.,
a Delaware corporation

ARTICLE I.

OFFICES

Section 1.1 Registered Office. The registered office of the corporation shall be the registered office named in the certificate of incorporation of the corporation, or such other office as may be designated from time to time by the Board of Directors in the manner provided by law.

Section 1.2 Other Offices. The corporation may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. The books of the corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in these Bylaws.

ARTICLE II.

CORPORATE SEAL

The corporate seal shall consist of a die bearing the name of the corporation. Said seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or reproduced.

ARTICLE III.

STOCKHOLDERS' MEETINGS

Section 3.1 Place of Meetings. Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the principal executive offices of the corporation.

Section 3.2 Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of Directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received by the Secretary of the corporation not later than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the date of the proxy statement delivered to stockholders in connection with the preceding year's annual meeting; provided, however, that if either (i) the date of the annual meeting is advanced more than thirty (30) days or delayed (other than as a result of adjournment) more than sixty (60) days from such an anniversary date or (ii) no proxy statement was delivered to stockholders in connection with the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation. To be in proper form, a stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting:

(i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting;

(ii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice or introduce the business specified in the notice;

(iii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business;

(iv) the class and number of shares of the corporation which are beneficially owned by the stockholder;

(v) any material interest of the stockholder in such business; and

(vi) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of

1934, as amended (the "Exchange Act"), in such stockholder's capacity as a proponent of a stockholder proposal.

The chairman of the meeting shall determine whether any business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any proposed business has not been properly brought before the meeting, the chairman shall declare that such proposed business shall not be presented for stockholder action at the meeting. For purposes of this Section 3.2, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act. Notwithstanding any provision in this Section 3.2 to the contrary, requests for inclusion of proposals in the corporation's proxy statement made pursuant to Rule 14a-8 under the Exchange Act shall be deemed to have been delivered in a timely manner if delivered in accordance with such Rule. Notwithstanding compliance with the requirements of this Section 3.2, the chairman presiding at any meeting of the stockholders may, in his sole discretion, refuse to allow a stockholder or stockholder representative to present any proposal which the corporation would not be required to include in a proxy statement under any rule promulgated by the Securities and Exchange Commission.

(c) Only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible for election as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of Directors at the meeting who complies with the notice procedures set forth in this paragraph. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 3.2. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a Director: (A) the name, age, business address and residence address of such person; (B) the principal occupation or employment of such person; (C) the class and number of shares of the corporation which are beneficially owned by such person; (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a Director if elected); and (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (b) of this Section 3.2. At the request of the Board of Directors, any person nominated by a stockholder for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a Director of the corporation unless nominated in accordance with the procedures set forth in this paragraph. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if the chairman should so determine, the chairman shall so declare at the meeting, and the defective nomination shall be disregarded.

Section 3.3 Special Meetings.

(a) Special meetings of the stockholders of the corporation may only be called, for any purpose or purposes, by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) No business may be transacted at such special meeting otherwise than specified in the resolution calling for the meeting. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request other than any actions effected prior to the corporation's initial public offering of its capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "Initial Public Offering"). Upon determination of the time and place of the meeting, notice shall be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders may be held.

Section 3.4 Notice of Meetings. Except as otherwise provided by law or the certificate of incorporation of the corporation, as the same may be amended or restated from time to time and including any certificates of designation thereunder (hereinafter, the "Certificate of Incorporation"), and for actions effected prior to an Initial Public Offering (for which no notice need be given) written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date, time and purpose or purposes of the meeting. Notice of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 3.5 Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by duly authorized proxy, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all actions taken by the holders of a majority of the votes cast, excluding abstentions, at any

meeting at which a quorum is present shall be valid and binding upon the corporation; provided, however, that Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of Directors. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority (plurality, in the case of the election of Directors) of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Section 3.6 Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 3.7 Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 7.5 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Elections of Directors need not be by written ballot, unless otherwise provided in the Certificate of Incorporation.

Section 3.8 Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; or (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the Delaware General Corporation Law, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) shall be a majority or even-split in interest.

Section 3.9 List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present.

Section 3.10 No Action Without Meeting. Effective upon the closing of the corporation's Initial Public Offering, the stockholders of the corporation may not take action by written consent without a meeting and must take any actions at a duly called annual or special meeting.

Section 3.11 Organization.

(a) At every meeting of stockholders, unless another officer of the corporation has been appointed by the Board of Directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed, is absent, or designates the next senior officer present to so act, the President, or, if the President is absent, the most senior Vice President present, or, in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV.

DIRECTORS

Section 4.1 Number and Term of Office; Classification.

(a) The number of directors which shall constitute the whole Board of Directors shall be determined from time to time by the Board of Directors (provided that no decrease in the number of directors which would have the effect of shortening the term of an incumbent director may be made by the Board of Directors), provided that the number of directors shall be not less than one (1). At each annual meeting of stockholders, Directors of the corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified or until such Director's earlier death, resignation or due removal; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. Directors need not be stockholders unless so required by the Certificate of Incorporation. If, for any reason, the Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

(b) Effective immediately following the closing of the Initial Public Offering, the Directors of the corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The initial Class I, Class II and Class III directors shall be those directors designated and elected by resolution of the Board of Directors or stockholders prior to the Initial Public Offering. The term of office of the initial Class I directors shall expire at the first annual meeting of stockholders following the closing of the Initial Public Offering (the "First Public Company Annual Meeting"); the term of office of the initial Class II directors shall expire at the next succeeding annual meeting of stockholders; and the term of office of the initial Class III directors shall expire at the second succeeding annual meeting of stockholders. At each annual meeting of stockholders following the First Public Company Annual Meeting, Directors to replace those of the Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and qualified. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

Section 4.2 Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 4.3 Vacancies. Vacancies occurring on the Board of Directors may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum. Each Director so elected shall hold office for the unexpired portion of the term of the Director or newly created directorship whose place shall be vacant and until his or her successor shall have been duly elected and qualified or until such Director's earlier death, resignation or due removal. A vacancy in the Board of Directors shall be deemed to exist under

this Section 4.3 in the case of (i) the death, removal or resignation of any Director; (ii) an increase in the authorized number of Directors pursuant to Section 4.1(a) above; or (iii) if the stockholders fail at any meeting of stockholders at which Directors are to be elected (including any meeting referred to in Section 4.6 below) to elect the number of Directors then constituting the whole Board of Directors.

Section 4.4 Resignation. Any Director may resign at any time by delivering his or her written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 4.5 Removal. At a special meeting of stockholders called for such purpose and in the manner provided herein, subject to any limitations imposed by law or the Certificate of Incorporation, the Board of Directors, or any individual Director, may only be removed from office for cause, and a new Director or Directors shall be elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of Directors.

Section 4.6 Meetings.

(a) Annual Meetings. Unless the Board shall determine otherwise, the annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Regular Meetings. Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the principal executive offices of the corporation. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

(c) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, and subject to the notice requirements contained herein, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the Directors.

(d) Telephone Meetings. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear

each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) Notice of Meetings. Written notice of the time and place of all special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Such notice need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. Notice of any meeting may be waived in writing at any time before or after the meeting and will be deemed waived by any Director by attendance thereat, except when the Director attends the meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after such meeting, each of the Directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 4.7 Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Article XI hereof, for which a quorum shall be one-third of the exact number of Directors fixed from time to time in accordance with Section 4.1 hereof, but not less than one (1), a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 4.1 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum be present or otherwise, a majority of the Directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a vote of the majority of the Directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

Section 4.8 Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 4.9 Fees and Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any

meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 4.10 Committees.

(a) Executive Committee. The Board of Directors may by resolution passed by a majority of the whole Board of Directors appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have, and may exercise when the Board of Directors is not in session, all powers of the Board of Directors in the management of the business and affairs of the corporation except such committee shall not have the power or authority to amend the Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

(b) Other Committees. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of paragraphs (a) and (b) of this Section 4.10 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 4.10 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings

of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends such special meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

(e) Organization. The Chairman of the Board shall preside at every meeting of the Board of Directors, if present. In the case of any meeting, if there is no Chairman of the Board or if the Chairman is not present, the Vice Chairman (if there be one) shall preside, or if there be no Vice Chairman or if the Vice Chairman is not present, a chairman chosen by a majority of the Directors present shall act as chairman of such meeting. The Secretary of the corporation or, in the absence of the Secretary, any person appointed by the Chairman shall act as secretary of the meeting.

ARTICLE V.

OFFICERS

Section 5.1 Officers Designated. The officers of the corporation shall include a President and a Secretary, and, if and when designated by the Board of Directors, a Chairman of the Board of Directors, one or more executive and non-executive Vice Presidents (any one or more of which executive Vice Presidents may be designated as Executive Vice President or Senior Vice President or a similar title), and a Treasurer. The Board of Directors also may, at its discretion, create additional officers and assign such duties to those offices as it may deem appropriate from time to time, which offices may include a Vice Chairman of the Board of Directors, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, one or more Assistant Secretaries and Assistant Treasurers, and one or more other officers which may be created at the discretion of the Board of Directors. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 5.2 Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the

vacancy may be filled by the Board of Directors. Except for the Chairman of the Board and the Vice Chairman of the Board, no officer need be a director.

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the Board of Directors and, unless the Chairman has designated the next senior officer to so preside, at all meetings of the stockholders. The Chairman of the Board of Directors shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) Powers and Duties of the Vice Chairman of the Board. The Board of Directors may but is not required to assign areas of responsibility to a Vice Chairman of the Board, and, in such event, and subject to the overall direction of the Chairman of the Board and the Board of Directors, the Vice Chairman of the Board shall be responsible for supervising the management of the affairs of the corporation and its subsidiaries within the area or areas assigned and shall monitor and review on behalf of the Board of Directors all functions within such corresponding area or areas of the corporation and each such subsidiary of the corporation. In the absence of the President, or in the event of the President's inability or refusal to act, the Vice Chairman of the Board shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Further, the Vice Chairman of the Board shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to the Vice Chairman of the Board by the Board of Directors or the Chairman of the Board.

(d) Duties of President. Unless the Board of Directors otherwise determines (including by election of Chief Executive Officer) and subject to the provisions of paragraph (e) below, the President shall be the chief executive and chief operating officer of the corporation. Unless the Board of Directors otherwise determines, he shall, in the absence of the Chairman of the Board or Vice Chairman of the Board or if there be no Chairman of the Board or Vice Chairman of the Board, preside at all meetings of the stockholders and (should he be a director) of the Board of Directors. The President shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

(e) Duties of the Chief Executive and Chief Operating Officers. Subject to the control of the Board of Directors, the chief executive officer shall have general executive charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities; and subject to the control of the chief executive officer, the chief operating officer shall have general operating charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities.

(f) Duties of Vice Presidents. Vice Presidents, by virtue of their appointment as such, shall not necessarily be deemed to be executive officers of the corporation, such status as an executive officer only being conferred if and to the extent such Vice President is placed in charge of a principal business unit, division or function (e.g., sales, administration or finance) or performs a policy-making function for the corporation (within the meaning of Section 16 of the

1934 Act and the rules and regulations promulgated thereunder). Each executive Vice President shall at all times possess, and upon the authority of the President or the chief executive officer any non-executive Vice President shall from time to time possess, power to sign all certificates, contracts and other instruments of the corporation, except as otherwise limited pursuant to Article VI hereof or by the Chairman of the Board, the President, chief executive officer or the Vice Chairman of the Board. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) Duties of Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of the Board of Directors and the stockholders, in books provided for that purpose; shall attend to the giving and serving of all notices; may in the name of the corporation affix the seal of the corporation to all contracts and attest the affixation of the seal of the corporation thereto; may sign with the other appointed officers all certificates for shares of capital stock of the corporation; and shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the corporation during business hours. The Secretary shall perform all other duties given in these Bylaws and other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The chief executive officer may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors or the chief executive officer, shall designate from time to time.

(h) Assistant Secretaries. Each Assistant Secretary shall have the usual powers and duties pertaining to such offices, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to an Assistant Secretary by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability or refusal to act.

(i) Duties of Treasurer.

(i) The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chairman of the Board, the Vice Chairman of the Board, chief executive officer, if one be designated, or the Chief Financial Officer. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Vice Chairman of the Board or the President shall designate from time to time.

(ii) In absence of a designated Chief Financial Officer, unless otherwise determined by the Board of Directors or chief executive officer, the Treasurer shall serve as the chief financial officer subject to control of the chief executive officer.

(iii) The Chief Financial Officer, if any be designated, may, but need not serve as the Treasurer.

(j) Assistant Treasurers. Each Assistant Treasurer shall have the usual powers and duties pertaining to such office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to each Assistant Treasurer by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Treasurer. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability or refusal to act.

Section 5.3 Delegation of Authority. For any reason that the Board of Directors may deem sufficient, the Board of Directors may, except where otherwise provided by statute, delegate the powers or duties of any officer to any other person, and may authorize any officer to delegate specified duties of such office to any other person. Any such delegation or authorization by the Board shall be effected from time to time by resolution of the Board of Directors.

Section 5.4 Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 5.5 Removal. Any officer may be removed from office at any time, either with or without cause, by the vote or written consent of a majority of the Directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI.

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 6.1 Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, the President, Chief Executive Officer or any executive Vice President and if any be designated, Chief Financial Officer, Treasurer, Assistant Secretary or Assistant Treasurer, and upon the authority conferred by the Board of Directors, President or Chief Executive Officer, any non-executive Vice President, and by the Secretary. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 6.2 Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman or Vice Chairman of the Board of Directors, Chief Executive Officer, the President, or any executive Vice President.

ARTICLE VII.

SHARES OF STOCK

Section 7.1 Form and Execution of Certificates. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman or Vice Chairman of the Board of Directors, the Chief Executive Officer, the President or any executive Vice President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, certifying the number of shares and the class or series owned by him in the corporation. Where such certificate is countersigned by a transfer agent other than the corporation or its employee, or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may

be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 7.2 Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 7.3 Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only on its books by the holders thereof, in person or by attorney duly authorized and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. Upon surrender to the corporation or a transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The Board of Directors shall have the power and authority to make all such other rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the corporation.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the Delaware General Corporation Law.

Section 7.4 Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed by the Board of Directors, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.5 Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII.

OTHER SECURITIES OF THE CORPORATION

Section 8.1 Execution of Other Securities. All bonds, debentures and other corporate ecurities of the corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chairman or Vice Chairman of the Board of Directors, the Chief Executive Officer, the President or any executive Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before any bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX.

DIVIDENDS

Section 9.1 Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 9.2 Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X.

FISCAL YEAR

The fiscal year of the corporation shall end as of December 31st, unless otherwise fixed by resolution of the Board of Directors.

ARTICLE XI.

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 11.1 Directors and Executive Officers. The corporation shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the corporation may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, provided, further, that the corporation shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law.

Section 11.2 Other Officers, Employees and Other Agents. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

Section 11.3 Good Faith.

(a) For purposes of any determination under this Article XI, a Director or executive officer shall be deemed to have acted in good faith and in a manner such officer reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that such officer's conduct was unlawful, if such officer's action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the Director or executive officer believed to be reliable and competent in the matters presented ;

(ii) counsel, independent accountants or other persons as to matters which the Director or executive officer believed to be within such person's professional competence; and

(iii) with respect to a Director, a committee of the Board upon which such Director does not serve, as to matters within such committee's designated authority, which committee the Director believes to merit confidence; so long as, in each case, the Director or executive officer acts without knowledge that would cause such reliance to be unwarranted.

(b) The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

(c) The provisions of this Section 11.3 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

Section 11.4 Expenses. The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article XI or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 11.5 of this Article XI, no advance shall be made by the corporation if a determination is reasonably and

promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

Section 11.5 Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Article XI shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the Director or executive officer. Any right to indemnification or advances granted by this Article XI to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, also shall be entitled to be paid the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 11.6 Non-Exclusivity of Rights. The rights conferred on any person by this Article XI shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

Section 11.7 Survival of Rights. The rights conferred on any person by this Article XI shall continue as to a person who has ceased to be a Director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 11.8 Insurance. To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article XI.

Section 11.9 Amendments. Any repeal or modification of this Article XI shall only be prospective and shall not affect the rights under this Article XI in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

Section 11.10 Savings Clause. If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Director and executive officer to the full extent not prohibited by any applicable portion of this Article XI that shall not have been invalidated, or by any other applicable law.

Section 11.11 Certain Definitions. For the purposes of this Article XI, the following definitions shall apply:

(a) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(b) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(c) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article XI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(d) References to a "director," "officer," "employee," or "agent" of the corporation shall include without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(e) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an

employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article XI.

ARTICLE XII.

NOTICES

Section 12.1 Notice to Stockholders. Unless the Certificate of Incorporation requires otherwise, whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to such stockholder's last known post office address as shown by the stock record of the corporation or its transfer agent.

Section 12.2 Notice to Directors. Any notice required to be given to any Director may be given by the method stated in Section 12.1, or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such Director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such Director. It shall not be necessary that the same method of giving notice be employed in respect of all Directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

Section 12.3 Address Unknown. If no address of a stockholder or Director be known, notice may be sent to the principal executive officer of the corporation.

Section 12.4 Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or Director or Directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

Section 12.5 Time Notices Deemed Given. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at the time of transmission.

Section 12.6 Failure to Receive Notice. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any Director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent such person in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such Director to receive such notice.

Section 12.7 Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of

Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Section 12.8 Notice to Person with Undeliverable Address. Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at such person's address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

ARTICLE XIII.

AMENDMENTS

Section 13.1 Amendments. Except as otherwise provided in the Certificate of Incorporation, these Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the holders of a majority of the outstanding voting shares or by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

Section 13.2 Application of Bylaws. In the event that any provisions of these Bylaws is or may be in conflict with any law of the United States, of the state of incorporation of the corporation or of any other governmental body or power having jurisdiction over this corporation, or over the subject matter to which such provision of these Bylaws applies, or may apply, such provision of these Bylaws shall be inoperative to the extent only that the operation

thereof unavoidably conflicts with such law, and shall in all other respects be in full force and effect.

EXHIBIT 4.2

NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF REGISTRATION UNDER SUCH ACT AND APPLICABLE LAWS, OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL TO THE HOLDERS OF THIS WARRANT (WHICH COUNSEL SHALL BE SATISFACTORY TO THE COMPANY), QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION THEREUNDER.

THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT ARE SUBJECT TO CERTAIN RESTRICTIONS CONTAINED IN AN INVESTORS' RIGHTS AGREEMENT, INCLUDING MARKET STAND-OFF PROVISIONS AND A SHAREHOLDERS AGREEMENT, BOTH AS AMENDED, COPIES OF WHICH ARE ON FILE AT THE OFFICE OF THE SECRETARY OF THE COMPANY.

No. - WC-001 - November 23, 1999

ACTIVE POWER, INC.

COMMON STOCK PURCHASE WARRANT

This certifies that, for value received, ECT MERCHANT INVESTMENTS CORP. ("ECT"), or registered assigns (the "Holder"), during the term of this Warrant as set forth in Section 1, is entitled to purchase from ACTIVE POWER, INC., a Texas corporation (the "Company"), for value received, up to SEVENTY-FIVE THOUSAND (75,000) Warrant Shares (as defined below), upon surrender hereof at the principal office of the Company referred to below, with a duly executed Notice of Exercise in the form attached, and simultaneous payment therefor in lawful money of the United States, at the Exercise Price (as defined in Section 2 below). The number, character and Exercise Price of such Warrant Shares are subject to adjustment as provided herein. The term "Warrant" as used herein shall include this Warrant, and any warrants delivered in substitution or exchange therefor as provided herein.

"Warrant Shares" shall mean the Company's Common Stock, par value $0.01 per share ("Common Stock").

1. Term of Warrant. Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, at any time or from time to time before 5:00 p.m. Austin, Texas time, on the date (the "Expiration Date") which is seven years after the date hereof. After the Expiration Date this Warrant shall be void.

2. Exercise Price. The purchase price per share for the Common Stock purchased under this Warrant shall be TWENTY-TWO AND 68/100 DOLLARS ($22.68) (the "Exercise Price"), subject to adjustment as provided under Section 12 hereof.

3. Exercise of Warrant.

(a) Method of Exercise. The purchase rights represented by this Warrant are exercisable by the Holder by delivery of a Notice of Exercise, the form of which is attached hereto as Exhibit A, duly completed and executed on behalf of the Holder, at the office of the Company, and upon payment therewith of the aggregate Exercise Price with respect to such Warrant Shares in cash or by check payable to the Company.

(b) Other Matters. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above, and the person entitled to receive the Warrant Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such shares as of the close of business on such date. As promptly as practicable on or after such date and in any event within ten (10) days thereafter, the Company at its expense shall issue and deliver to the person or persons entitled to receive the same a certificate or certificates for the number of shares issued upon such exercise. In the event that this Warrant is exercised in part, the Company at its expense will execute and deliver a new Warrant of like tenor exercisable for the remaining number of shares for which this Warrant may then be exercised.

4. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.

5. Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and substance to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor and amount.

6. No Rights as Stockholders; Notices to Holders. Nothing contained in this Warrant or in any of the Warrants shall be construed as conferring upon the Holders or their transferees the right to vote or to receive dividends or to consent or to receive notice as shareholders in respect of any meeting of shareholders for the election of directors of the Company or any other matter, or any rights whatsoever as shareholders of the Company.

7. Transfer; Issuance of Stock Certificates; Restrictive Legends.

(a) Transfer. Subject to compliance with the restrictions on transfer set forth in this Section 7, each transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant to the Company, together with a written assignment of this Warrant in

the form of Exhibit B hereto duly executed by the Holder or its agent or attorney. Upon such surrender and delivery, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in such instrument of assignment. A Warrant, if properly assigned in compliance with the provisions hereof, may be exercised by the new holder for the purchase of Warrant Shares without having a new Warrant issued. Prior to presentment for registration or transfer thereof, the Company may deem and treat the registered holder of this Warrant as the absolute owner hereof (notwithstanding any notations of ownership or writing thereon made by anyone other than a duly authorized officer of the Company) for all purposes and shall not be affected by any notice to the contrary. All Warrants issued upon assignment of Warrants shall be the valid obligations of the Company, evidencing the same rights and entitled to the same benefits as the Warrants surrendered upon such registration of transfer or exchange. Notwithstanding the foregoing, the Holder hereof may not transfer this Warrant to any subsequent transferees (other than to transferees who are affiliates of the Holder) unless the Holder transfers all shares of Series E Preferred Stock or Common Stock or rights to acquire shares of Common Stock then held by the Holder (including those held by affiliates of the Holder).

(b) Stock Certificates. Certificates for the Warrant Shares shall be delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been exercised pursuant to Section 1, and a new Warrant representing the shares of Common Stock, if any, with respect to which this Warrant shall not then have been exercised shall also be issued to the Holder within such time. The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the Holder including, without limitation, any documentary, stamp or similar tax that may be payable in respect thereof; provided, however, that the Company shall not be required to pay any income tax to which the holder hereof may be subject in connection with the issuance of this Warrant or the Warrant Shares; and provided further, that if Warrant Shares are to be delivered in a name other than the name of the Holder representing any Warrant being exercised, then no such delivery shall be made unless the person requiring the same has paid to the Company the amount of transfer taxes or charges incident thereto, if any.

(c) Restrictive Legends.

(i) Except as otherwise provided in this Section 7, each certificate for Warrant Shares initially issued upon the exercise of this Warrant, and each certificate for Warrant Shares issued to any subsequent transferee of any such certificate, shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW. NO TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE SHALL BE VALID OR EFFECTIVE UNLESS (A) SUCH TRANSFER IS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, OR (B) THE HOLDER SHALL DELIVER TO THE COMPANY AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH PROPOSED TRANSFER IS EXEMPT FROM THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS."

(ii) Except as otherwise provided in this Section 7, each Warrant shall be stamped or otherwise imprinted with a legend in substantially the following form:

"NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF REGISTRATION UNDER SUCH ACT AND APPLICABLE LAWS, OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL TO THE HOLDERS OF THIS WARRANT (WHICH COUNSEL SHALL BE SATISFACTORY TO THE COMPANY), QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION THEREUNDER."

(iii) Notwithstanding the foregoing, the legend requirements of this Section 7 shall terminate as to any particular Warrant or Warrant Share when the Company shall have received from the Holder an opinion of counsel in form and substance reasonably acceptable to the Company that such legend is not required in order to ensure compliance with the Securities Act. Whenever the restrictions imposed by this Section 7 shall terminate, the Holder hereof or of the Warrant Shares, as the case may be, shall be entitled to receive from the Company without cost to Holder a new Warrant or certificate for Warrant Shares of like tenor, as the case may be, without such restrictive legend.

(d) Compliance with Securities Laws.

(i) The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Warrant Shares to be issued upon exercise hereof are being acquired solely for the Holder's own account for investment, and that the Holder will not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof or except under circumstances that will not result in a violation of the Securities Act or any state securities laws. Upon exercise of this Warrant, the Holder shall, if requested by the Company, confirm in writing, by executing the form attached as Schedule 1 to Exhibit A hereto, that the Warrant Shares so purchased are being acquired for investment, and not with a view toward distribution or resale in violation of applicable securities laws.

(ii) In connection with the issuance of this Warrant, the Holder specifically represents to the Company by acceptance of this Warrant as follows:

(A) The Holder has had an opportunity to discuss the Company's business with the management of the Company, is aware of the Company's business affairs and financial condition, has had access to the Company's books and records, and has been afforded the opportunity to ask questions of and receive answers from officers of the Company. The Holder has substantial experience in evaluating the merits and risks of its investment in the

Company. The Purchaser is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities Act as presently in effect.

(B) The Holder understands that this Warrant has not been, and upon exercise hereof the Warrant Shares will not be, registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein.

(C) The Holder further understands that this Warrant, and upon exercise the Warrant Shares, must be held indefinitely unless subsequently registered under the Securities Act and any applicable state securities laws, or unless exemptions from registration are otherwise available.

8. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of Warrant Shares to provide for the issuance of Common Stock upon the exercise of this Warrant and, from time to time, will take all steps necessary to amend its corporate charter, if necessary, to provide sufficient reserves of Warrant Shares issuable upon exercise of the Warrant. The Company further covenants that all Warrant Shares that may be issued upon the exercise of this Warrant will be free from all taxes, liens and charges except for restrictions on transfer and any taxes, liens and charges imposed on the Holder unrelated to the Company's issuance of Warrant Shares upon exercise of the Warrant.

9. Representations and Warranties. The Company represents and warrants to the Holder as follows:

(a) Authorization. This Warrant has been duly authorized and executed by the Company and is a valid and binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive and other equitable remedies;

(b) Reservation; Issuance. The Warrant Shares have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable;

(c) No Conflicts. The execution and delivery of this Warrant are not, and the issuance of the Warrant Shares upon exercise of this Warrant in accordance with the terms hereof will not be, inconsistent with the Company's charter or bylaws; do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Company; and do not and will not conflict with or contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration or filing with or the taking of any action in respect of or by, any federal, state or local government authority or agency or other person, except for the filing of notices pursuant to federal and state securities laws, which filings will be effected by the time required thereby, and

the filing of any registration statements required to be filed by the Company pursuant to any registration rights granted to Holder by the Company.

(d) No Litigation. There are no actions, suits, audits, investigations or proceedings pending or, to the knowledge of the Company, threatened against the Company in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Company to perform its obligations under this Warrant.

10. Notices. All notices, requests and other communications with respect to the Warrants shall be in writing. Communications may be made by telecopy or similar writing. Each communication shall be given to the Holder at the address in the warrant register and the Company at its offices in Austin, Texas, or at any other address as the party may specify for this purpose by notice to the other party. Each communication shall be effective (1) if given by telecopy, when the telecopy is transmitted to the proper address and the receipt of the transmission is confirmed, (2) if given by mail, 72 hours after the communication is deposited in the mails properly addressed with first class postage prepaid or (3) if given by any other means, when delivered to the proper address and a written acknowledgement of delivery is received.

11. Amendments. Any term of this Warrant may be amended with the written consent of the Company and the Holder of this Warrant.

12. Adjustments. The Exercise Price and the number of shares purchasable hereunder are subject to adjustment from time to time as follows:

(a) Adjustment for Dividends in Other Stock, Property, etc.; Reclassification, etc. In case at any time while this Warrant is outstanding and unexpired, the holders of Warrant Shares shall have received, or (on or after the record date fixed for the determination of stockholders eligible to receive) shall have become entitled to receive, without payment therefor, (i) other or additional stock or other securities or property (other than cash) by way of dividend; or (ii) other or additional stock or other securities or property by way of stock-split, spin-off, split-up, reclassification, recapitalization, combination of shares or similar corporate rearrangement; then and in each such case the Holder, upon the exercise hereof, shall be entitled to receive the amount of stock and other securities and property which such Holder would hold on the date of such exercise if on the original issue date he had been the holder of record of the number of Warrant Shares called for on the face of this Warrant and had thereafter, during the period from the original issue date to and including the date of such exercise, retained such shares and all such other or additional stock and other securities and properties receivable by him as aforesaid during such period, giving effect to all adjustments called for during such period by this Section 12.

(b) Merger, Consolidation or Disposition of Assets. In the event of any capital reorganization or any reclassification (other than a change in par value) of the capital stock of the Company, or of any exchange or conversion of the Warrant Shares for or into securities of another corporation, or in the event of the consolidation or merger of the Company with or into any other person (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or in case of any

sale or conveyance of all or substantially all of the assets of the Company including intellectual property rights which, in the aggregate constitute substantially all of the Company's material assets, the person formed by such consolidation or resulting from such capital reorganization, reclassification or merger or which acquires such assets, as the case may be, shall make provision such that this Warrant shall thereafter be exercisable for the kind and amount of shares of stock, other securities, cash and other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, as the case may be, by a holder of the shares of Common Stock equal to the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to the effective date of such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, assuming (i) such holder of Common Stock of the Company is not a person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made as the case may be (each, a "constituent entity"), or an affiliate of a constituent entity, and (ii) such person failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance and, in any case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to rights and interests thereafter of the Holder, to the end that the provisions set forth herein (including the specified changes in and other adjustments to the Exercise Price and the number of Warrant Shares issuable upon exercise of this Warrant) shall thereafter be applicable, as near as reasonably may be, in relating to any shares of stock or other securities or other property thereafter deliverable upon exercise of this Warrant.

(c) Time of Adjustments. Each adjustment required by this Section 12 shall be effective as and when the event requiring such adjustment occurs.

(d) Notice of Adjustment. Whenever the Exercise Price and the number of Warrant Shares purchasable upon the exercise of each Warrant is adjusted as herein provided, the Company shall promptly provide each Holder a certificate setting forth the Exercise Price and the number of Warrant Shares purchasable upon the exercise of each Warrant after such adjustment, setting forth a brief statement of the facts requiring such adjustments and setting forth the computation by which such adjustments were made. Such certificate shall be conclusive evidence of the correctness of such adjustments.

(e) No Adjustment for Cash Dividends. Except as provided in this Section 12, no adjustment in respect of any cash dividends shall be made during the term of a Warrant or upon the exercise of a Warrant.

(f) Statement on Warrants. Irrespective of any adjustments in the number or kind of shares purchasable upon the exercise of the Warrant, the Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the initial Warrant.

(g) No Dilution or Impairment. The Company will not, by amendment to its charter or through any reorganization, sale of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the

carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of the Warrant. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any shares of stock receivable upon the exercise of the Warrant above the amount payable therefor upon such exercise; and (ii) will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock upon the full exercise of the Warrant.

(h) Notices of Record Date, etc. In the event of:

(i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right;

(ii) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any conveyance of all or substantially all the assets of the Company to or consolidation or merger of the Company with or into any other corporation; or

(iii) any voluntary or involuntary dissolution, liquidation or winding up of the Company;

then and in each such event the Company will mail or cause to be mailed to the Holder a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right; (B) the date on which any such reorganization, reclassification, conveyance, consolidation, merger, dissolution, liquidation, or winding up is to take place, and the time, if any is to be fixed, as of which the holders of record of Warrant Shares (or other securities) shall be entitled to exchange their Warrant Shares (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, conveyance, consolidation, merger, dissolution, liquidation, or winding up; and (C) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant and the persons or class of persons to whom such proposed issue or grant is to be offered or made. Such notice shall be mailed at least 15 days prior to the date therein specified.

13. Miscellaneous.

(a) Successors and Assigns. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the Holder and their respective permitted assigns. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder.

(b) Headings. The headings of the Sections of this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(c) Choice of Law. This Warrant and the performance or breach thereof shall be governed by and interpreted as to substantive matters in accordance with the applicable laws of the State of Texas (excluding its choice of law rules), except that upon the Company's reincorporation as a Delaware corporation, if effected, the Warrant shall be governed under Delaware law.

* * * *

IN WITNESS WHEREOF, the undersigned has caused this Warrant to be executed by its officers thereunto duly authorized.

Dated: November 23, 1999

ACTIVE POWER, INC.

By: /s/

Name:__________________________________
Title:_________________________________

Address: 11525 Stonehollow Drive,
Suite 135 Austin, Texas 78758

EXHIBIT A

NOTICE OF EXERCISE

(1) The undersigned hereby irrevocably elects to purchase ___________ shares of Common Stock of Active Power, Inc., pursuant to the terms of the attached Warrant, and tenders herewith payment in full of the aggregate purchase price of $_________ for such shares.

(2) In exercising this Warrant, the undersigned hereby confirms and acknowledges that the shares of Common Stock are being acquired for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares. In support thereof, the undersigned has executed an Investment Representation Statement attached hereto as Schedule 1.

(3) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name or names as are specified below:

____
(Name)

____
____
(address)

(4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned.

ECT MERCHANT INVESTMENTS CORP.

By:__________________________
Name:________________________
Title:_______________________
Date:________________________

Schedule 1

INVESTMENT REPRESENTATION STATEMENT

To: Active Power, Inc.

Security: Common Stock issuable upon exercise of Common Stock Purchase Warrant dated November 23, 1999.

In connection with the purchase of the above-listed securities (the "Securities"), the undersigned (the "Purchaser") represents to the Company as follows:

(a) The Purchaser is aware of the Company business affairs and financial condition, and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. The Purchaser is purchasing the Securities for its own account for investment purposes only and not with a view to, or for the resale in connection with, any "distribution" thereof for purposes of the Securities Act of 1933, as amended (the "Securities Act").

(b) The Purchaser understands that the Securities have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Purchaser's investment intent as expressed herein. In this connection, the Purchaser understands that, in the view of the Securities and Exchange Commission ("SEC"), the statutory basis for such exemption may be unavailable if the Purchaser's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future.

(c) The Purchaser further understands that the Securities must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from registration is otherwise available. In addition, the Purchaser understands that the certificate evidencing the Securities will be imprinted with the legend referred to in the Warrant under which the Securities are being purchased.

(d) The Purchaser is aware of the provisions of Rule 144 and 144A, promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions, if applicable, including, among other things: The availability of certain public information about the Company, the resale occurring not less than one year after the party has purchased and paid for the securities to be sold; the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the

Securities Exchange Act of 1934, as amended) and the amount of securities being sold during any three-month period not exceeding the specified limitations stated therein.

(e) The Purchaser further understands that at the time it wishes to sell the Securities there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144 and 144A, and that, in such event, the Purchaser may be precluded from selling the Securities under Rule 144 and 144A even if the two-year minimum holding period had been satisfied.

(f) The Purchaser further understands that in the event all of the requirements of Rule 144 and 144A are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

Purchaser:

____

Date:_____________________

Exhibit B

ASSIGNMENT FORM

(Subject to compliance with Section 7)

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the within Warrant, with respect to the number of Warrant Shares set forth below:

Name of Assignee	Address	No. of Shares

and does hereby irrevocably constitute and appoint ____________________ to make such transfer on the books of Active Power, Inc., maintained for the purpose, with full power of substitution in the premises.

The undersigned also represents that, by assignment hereof, the Assignee acknowledges that this Warrant and the shares of stock to be issued upon exercise hereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of this Warrant or any shares of stock to be issued upon exercise hereof except in compliance with Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale.

Signature:_______________________________________
Name of Holder:__________________________________
Name of Authorized Representative,
if a legal entity:____________________________

Title of Representative:_________________________
Date:____

EXHIBIT 4.3

NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF REGISTRATION UNDER SUCH ACT AND APPLICABLE LAWS, OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL TO THE HOLDERS OF THIS WARRANT (WHICH COUNSEL SHALL BE SATISFACTORY TO THE COMPANY), QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION THEREUNDER.

THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT ARE SUBJECT TO CERTAIN RESTRICTIONS CONTAINED IN AN INVESTORS' RIGHTS AGREEMENT, INCLUDING MARKET STAND-OFF PROVISIONS AND A SHAREHOLDERS AGREEMENT, BOTH AS AMENDED, COPIES OF WHICH ARE ON FILE AT THE OFFICE OF THE SECRETARY OF THE COMPANY.

No. - WC-002 - November 23, 1999

ACTIVE POWER, INC.

COMMON STOCK PURCHASE WARRANT

THIS CERTIFIES THAT, for value received, STEPHENS-GROUP, INC. ("Stephens"), or registered assigns (the "Holder"), during the term of this Warrant as set forth in Section 1, is entitled to purchase from ACTIVE POWER, INC., a Texas corporation (the "Company"), for value received, up to TWENTY-FIVE THOUSAND (25,000) Warrant Shares (as defined below), upon surrender hereof at the principal office of the Company referred to below, with a duly executed Notice of Exercise in the form attached, and simultaneous payment therefor in lawful money of the United States, at the Exercise Price (as defined in Section 2 below). The number, character and Exercise Price of such Warrant Shares are subject to adjustment as provided herein. The term "Warrant" as used herein shall include this Warrant, and any warrants delivered in substitution or exchange therefor as provided herein.

"Warrant Shares" shall mean the Company's Common Stock, par value $0.01 per share ("Common Stock").

1. Term of Warrant. Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, at any time or from time to time before 5:00 p.m. Austin, Texas time, on the date (the "Expiration Date") which is seven years after the date hereof. After the Expiration Date this Warrant shall be void.

2. Exercise Price. The purchase price per share for the Common Stock purchased under this Warrant shall be TWENTY-TWO AND 68/100 DOLLARS ($22.68) (the "Exercise Price"), subject to adjustment as provided under Section 12 hereof.

3. Exercise of Warrant.

(a) Method of Exercise. The purchase rights represented by this Warrant are exercisable by the Holder by delivery of a Notice of Exercise, the form of which is attached hereto as Exhibit A, duly completed and executed on behalf of the Holder, at the office of the Company, and upon payment therewith of the aggregate Exercise Price with respect to such Warrant Shares in cash or by check payable to the Company.

(b) Other Matters. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above, and the person entitled to receive the Warrant Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such shares as of the close of business on such date. As promptly as practicable on or after such date and in any event within ten (10) days thereafter, the Company at its expense shall issue and deliver to the person or persons entitled to receive the same a certificate or certificates for the number of shares issued upon such exercise. In the event that this Warrant is exercised in part, the Company at its expense will execute and deliver a new Warrant of like tenor exercisable for the remaining number of shares for which this Warrant may then be exercised.

4. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.

5. Replacement of Warrant. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and substance to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor and amount.

6. No Rights as Stockholders; Notices to Holders. Nothing contained in this Warrant or in any of the Warrants shall be construed as conferring upon the Holders or their transferees the right to vote or to receive dividends or to consent or to receive notice as shareholders in respect of any meeting of shareholders for the election of directors of the Company or any other matter, or any rights whatsoever as shareholders of the Company.

7. Transfer; Issuance of Stock Certificates; Restrictive Legends.

(a) Transfer. Subject to compliance with the restrictions on transfer set forth in this Section 7, each transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant to the Company, together with a written assignment of this Warrant in

the form of _Exhibit B_ hereto duly executed by the Holder or its agent or attorney. Upon such surrender and delivery, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in such instrument of assignment. A Warrant, if properly assigned in compliance with the provisions hereof, may be exercised by the new holder for the purchase of Warrant Shares without having a new Warrant issued. Prior to presentment for registration or transfer thereof, the Company may deem and treat the registered holder of this Warrant as the absolute owner hereof (notwithstanding any notations of ownership or writing thereon made by anyone other than a duly authorized officer of the Company) for all purposes and shall not be affected by any notice to the contrary. All Warrants issued upon assignment of Warrants shall be the valid obligations of the Company, evidencing the same rights and entitled to the same benefits as the Warrants surrendered upon such registration of transfer or exchange. Notwithstanding the foregoing, the Holder hereof may not transfer this Warrant to any subsequent transferees (other than to transferees who are affiliates of the Holder) unless the Holder transfers all shares of Series E Preferred Stock or Common Stock or rights to acquire shares of Common Stock then held by the Holder (including those held by affiliates of the Holder) to such subsequent transferees.

(b) _Stock Certificates._ Certificates for the Warrant Shares shall be delivered to the Holder within a reasonable time after the rights represented by this Warrant shall have been exercised pursuant to Section 1, and a new Warrant representing the shares of Common Stock, if any, with respect to which this Warrant shall not then have been exercised shall also be issued to the Holder within such time. The issuance of certificates for Warrant Shares upon the exercise of this Warrant shall be made without charge to the Holder including, without limitation, any documentary, stamp or similar tax that may be payable in respect thereof; _provided, however,_ that the Company shall not be required to pay any income tax to which the holder hereof may be subject in connection with the issuance of this Warrant or the Warrant Shares; and _provided further_, that if Warrant Shares are to be delivered in a name other than the name of the Holder representing any Warrant being exercised, then no such delivery shall be made unless the person requiring the same has paid to the Company the amount of transfer taxes or charges incident thereto, if any.

(c) _Restrictive Legends._

(i) Except as otherwise provided in this Section 7, each certificate for Warrant Shares initially issued upon the exercise of this Warrant, and each certificate for Warrant Shares issued to any subsequent transferee of any such certificate, shall be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW. NO TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE SHALL BE VALID OR EFFECTIVE UNLESS (A) SUCH TRANSFER IS MADE PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS, OR (B) THE HOLDER SHALL DELIVER TO THE COMPANY AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH PROPOSED TRANSFER IS EXEMPT FROM THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND OF ANY APPLICABLE STATE SECURITIES LAWS."

(ii) Except as otherwise provided in this Section 7, each Warrant shall be stamped or otherwise imprinted with a legend in substantially the following form:

"NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE HEREOF HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS, AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF REGISTRATION UNDER SUCH ACT AND APPLICABLE LAWS, OR IN A TRANSACTION WHICH, IN THE OPINION OF COUNSEL TO THE HOLDERS OF THIS WARRANT (WHICH COUNSEL SHALL BE SATISFACTORY TO THE COMPANY), QUALIFIES AS AN EXEMPT TRANSACTION UNDER THE SECURITIES ACT AND THE RULES PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION THEREUNDER."

(iii) Notwithstanding the foregoing, the legend requirements of this Section 7 shall terminate as to any particular Warrant or Warrant Share when the Company shall have received from the Holder an opinion of counsel in form and substance reasonably acceptable to the Company that such legend is not required in order to ensure compliance with the Securities Act. Whenever the restrictions imposed by this Section 7 shall terminate, the Holder hereof or of the Warrant Shares, as the case may be, shall be entitled to receive from the Company without cost to Holder a new Warrant or certificate for Warrant Shares of like tenor, as the case may be, without such restrictive legend.

(d) Compliance with Securities Laws.

(i) The Holder of this Warrant, by acceptance hereof, acknowledges that this Warrant and the Warrant Shares to be issued upon exercise hereof are being acquired solely for the Holder's own account for investment, and that the Holder will not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof or except under circumstances that will not result in a violation of the Securities Act or any state securities laws. Upon exercise of this Warrant, the Holder shall, if requested by the Company, confirm in writing, by executing the form attached as Schedule 1 to Exhibit A hereto, that the Warrant Shares so purchased are being acquired for investment, and not with a view toward distribution or resale in violation of applicable securities laws.

(ii) In connection with the issuance of this Warrant, the Holder specifically represents to the Company by acceptance of this Warrant as follows:

(A) The Holder has had an opportunity to discuss the Company's business with the management of the Company, is aware of the Company's business affairs and financial condition, has had access to the Company's books and records, and has been afforded the opportunity to ask questions of and receive answers from officers of the Company. The Holder has substantial experience in evaluating the merits and risks of its investment in the

Company. The Purchaser is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities Act as presently in effect.

(B) The Holder understands that this Warrant has not been, and upon exercise hereof the Warrant Shares will not be, registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein.

(C) The Holder further understands that this Warrant, and upon exercise the Warrant Shares, must be held indefinitely unless subsequently registered under the Securities Act and any applicable state securities laws, or unless exemptions from registration are otherwise available.

8. Reservation of Stock. The Company covenants that during the term this Warrant is exercisable, the Company will reserve from its authorized and unissued Common Stock a sufficient number of Warrant Shares to provide for the issuance of Common Stock upon the exercise of this Warrant and, from time to time, will take all steps necessary to amend its corporate charter, if necessary, to provide sufficient reserves of Warrant Shares issuable upon exercise of the Warrant. The Company further covenants that all Warrant Shares that may be issued upon the exercise of this Warrant will be free from all taxes, liens and charges except for restrictions on transfer and any taxes, liens and charges imposed on the Holder unrelated to the Company's issuance of Warrant Shares upon exercise of the Warrant.

9. Representations and Warranties. The Company represents and warrants to the Holder as follows:

(a) Authorization. This Warrant has been duly authorized and executed by Company and is a valid and binding obligation of the Company enforceable in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law or principles at equity governing specific performance, injunctive and other equitable remedies;

(b) Reservation; Issuance. The Warrant Shares have been duly authorized and reserved for issuance by the Company and, when issued in accordance with the terms hereof, will be validly issued, fully paid and nonassessable;

(c) No Conflicts. The execution and delivery of this Warrant are not, and the issuance of the Warrant Shares upon exercise of this Warrant in accordance with the terms hereof will not be, inconsistent with the Company's charter or bylaws; do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Company; and do not and will not conflict with or contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument of which the Company is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration or filing with or the taking of any action in respect of or by, any federal, state or local government authority or agency or other person, except for the filing of notices pursuant to federal and state securities laws, which filings will be effected by the time required thereby, and

the filing of any registration statements required to be filed by the Company pursuant to any registration rights granted to Holder by the Company.

(d) No Litigation. There are no actions, suits, audits, investigations or proceedings pending or, to the knowledge of the Company, threatened against the Company in any court or before any governmental commission, board or authority which, if adversely determined, will have a material adverse effect on the ability of the Company to perform its obligations under this Warrant.

10. Notices. All notices, requests and other communications with respect to the Warrants shall be in writing. Communications may be made by telecopy or similar writing. Each communication shall be given to the Holder at the address in the warrant register and the Company at its offices in Austin, Texas, or at any other address as the party may specify for this purpose by notice to the other party. Each communication shall be effective (1) if given by telecopy, when the telecopy is transmitted to the proper address and the receipt of the transmission is confirmed, (2) if given by mail, 72 hours after the communication is deposited in the mails properly addressed with first class postage prepaid or (3) if given by any other means, when delivered to the proper address and a written acknowledgement of delivery is received.

11. Amendments. Any term of this Warrant may be amended with the written consent of the Company and the Holder of this Warrant.

12. Adjustments. The Exercise Price and the number of shares purchasable hereunder are subject to adjustment from time to time as follows:

(a) Adjustment for Dividends in Other Stock, Property, etc.; Reclassification, etc. In case at any time while this Warrant is outstanding and unexpired, the holders of Warrant Shares shall have received, or (on or after the record date fixed for the determination of stockholders eligible to receive) shall have become entitled to receive, without payment therefor, (i) other or additional stock or other securities or property (other than cash) by way of dividend; or (ii) other or additional stock or other securities or property by way of stock-split, spin-off, split-up, reclassification, recapitalization, combination of shares or similar corporate rearrangement; then and in each such case the Holder, upon the exercise hereof, shall be entitled to receive the amount of stock and other securities and property which such Holder would hold on the date of such exercise if on the original issue date he had been the holder of record of the number of Warrant Shares called for on the face of this Warrant and had thereafter, during the period from the original issue date to and including the date of such exercise, retained such shares and all such other or additional stock and other securities and properties receivable by him as aforesaid during such period, giving effect to all adjustments called for during such period by this Section 12.

(b) Merger, Consolidation or Disposition of Assets. In the event of any capital reorganization or any reclassification (other than a change in par value) of the capital stock of the Company, or of any exchange or conversion of the Warrant Shares for or into securities of another corporation, or in the event of the consolidation or merger of the Company with or into any other person (other than a merger which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock) or in case of any

sale or conveyance of all or substantially all of the assets of the Company including intellectual property rights which, in the aggregate constitute substantially all of the Company's material assets, the person formed by such consolidation or resulting from such capital reorganization, reclassification or merger or which acquires such assets, as the case may be, shall make provision such that this Warrant shall thereafter be exercisable for the kind and amount of shares of stock, other securities, cash and other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, as the case may be, by a holder of the shares of Common Stock equal to the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to the effective date of such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, assuming (i) such holder of Common Stock of the Company is not a person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made as the case may be (each, a "constituent entity"), or an affiliate of a constituent entity, and (ii) such person failed to exercise his rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance and, in any case appropriate adjustment shall be made in the application of the provisions herein set forth with respect to rights and interests thereafter of the Holder, to the end that the provisions set forth herein (including the specified changes in and other adjustments to the Exercise Price and the number of Warrant Shares issuable upon exercise of this Warrant) shall thereafter be applicable, as near as reasonably may be, in relating to any shares of stock or other securities or other property thereafter deliverable upon exercise of this Warrant.

(c) Time of Adjustments. Each adjustment required by this Section 12 shall be effective as and when the event requiring such adjustment occurs.

(d) Notice of Adjustment. Whenever the Exercise Price and the number of Warrant Shares purchasable upon the exercise of each Warrant is adjusted as herein provided, the Company shall promptly provide each Holder a certificate setting forth the Exercise Price and the number of Warrant Shares purchasable upon the exercise of each Warrant after such adjustment, setting forth a brief statement of the facts requiring such adjustments and setting forth the computation by which such adjustments were made. Such certificate shall be conclusive evidence of the correctness of such adjustments.

(e) No Adjustment for Cash Dividends. Except as provided in this Section 12, no adjustment in respect of any cash dividends shall be made during the term of a Warrant or upon the exercise of a Warrant.

(f) Statement on Warrants. Irrespective of any adjustments in the number or kind of shares purchasable upon the exercise of the Warrant, the Warrants theretofore or thereafter issued may continue to express the same price and number and kind of shares as are stated in the initial Warrant.

(g) No Dilution or Impairment. The Company will not, by amendment to its charter or through any reorganization, sale of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the

carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of the Warrant. Without limiting the generality of the foregoing, the Company (i) will not increase the par value of any shares of stock receivable upon the exercise of the Warrant above the amount payable therefor upon such exercise; and (ii) will take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of stock upon the full exercise of the Warrant.

(h) Notices of Record Date, etc. In the event of:

(i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right;

(ii) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any conveyance of all or substantially all the assets of the Company to or consolidation or merger of the Company with or into any other corporation; or

(iii) any voluntary or involuntary dissolution, liquidation or winding up of the Company;

then and in each such event the Company will mail or cause to be mailed to the Holder a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and stating the amount and character of such dividend, distribution or right; (B) the date on which any such reorganization, reclassification, conveyance, consolidation, merger, dissolution, liquidation, or winding up is to take place, and the time, if any is to be fixed, as of which the holders of record of Warrant Shares (or other securities) shall be entitled to exchange their Warrant Shares (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, conveyance, consolidation, merger, dissolution, liquidation, or winding up; and (C) the amount and character of any stock or other securities, or rights or options with respect thereto, proposed to be issued or granted, the date of such proposed issue or grant and the persons or class of persons to whom such proposed issue or grant is to be offered or made. Such notice shall be mailed at least 15 days prior to the date therein specified.

13. Miscellaneous.

(a) Successors and Assigns. This Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the Holder and their respective permitted assigns. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant, and shall be enforceable by any such Holder.

(b) Headings. The headings of the Sections of this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(c) Choice of Law. This Warrant and the performance or breach thereof shall be governed by and interpreted as to substantive matters in accordance with the applicable laws of the State of Texas (excluding its choice of law rules), except that upon the Company's reincorporation as a Delaware corporation, if effected, the Warrant shall be governed under Delaware law.

* * * *

IN WITNESS WHEREOF, the undersigned has caused this Warrant to be executed by its officers thereunto duly authorized.

Dated: November 23, 1999

ACTIVE POWER, INC.

By: /s/

Name:_______________________
Title:______________________

Address: 11525 Stonehollow Drive, Suite 135
Austin, Texas 78758

EXHIBIT A

NOTICE OF EXERCISE

(1) The undersigned hereby irrevocably elects to purchase ________ shares of Common Stock of Active Power, Inc., pursuant to the terms of the attached Warrant, and tenders herewith payment in full of the aggregate purchase price of $_________ for such shares.

(2) In exercising this Warrant, the undersigned hereby confirms and acknowledges that the shares of Common Stock are being acquired for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such shares. In support thereof, the undersigned has executed an Investment Representation Statement attached hereto as Schedule 1.

(3) Please issue a certificate or certificates representing said shares of Common Stock in the name of the undersigned or in such other name or names as are specified below:

____
(Name)

____
____
(address)

(4) Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned.

STEPHENS GROUP, INC.

By:________________________________
Name:______________________________
Title:_____________________________
Date:______________________________

Schedule 1

INVESTMENT REPRESENTATION STATEMENT

To: Active Power, Inc.

Security: Common Stock issuable upon exercise of Common Stock Purchase Warrant dated November 23, 1999.

In connection with the purchase of the above-listed securities (the "Securities"), the undersigned (the "Purchaser") represents to the Company as follows:

(a) The Purchaser is aware of the Company business affairs and financial condition, and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. The Purchaser is purchasing the Securities for its own account for investment purposes only and not with a view to, or for the resale in connection with, any "distribution" thereof for purposes of the Securities Act of 1933, as amended (the "Securities Act").

(b) The Purchaser understands that the Securities have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Purchaser's investment intent as expressed herein. In this connection, the Purchaser understands that, in the view of the Securities and Exchange Commission ("SEC"), the statutory basis for such exemption may be unavailable if the Purchaser's representation was predicated solely upon a present intention to hold these Securities for the minimum capital gains period specified under tax statutes, for a deferred sale, for or until an increase or decrease in the market price of the Securities, or for a period of one year or any other fixed period in the future.

(c) The Purchaser further understands that the Securities must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from registration is otherwise available. In addition, the Purchaser understands that the certificate evidencing the Securities will be imprinted with the legend referred to in the Warrant under which the Securities are being purchased.

(d) The Purchaser is aware of the provisions of Rule 144 and 144A, promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions, if applicable, including, among other things: The availability of certain public information about the Company, the resale occurring not less than one year after the party has purchased and paid for the securities to be sold; the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the

Securities Exchange Act of 1934, as amended) and the amount of securities being sold during any three-month period not exceeding the specified limitations stated therein.

(e) The Purchaser further understands that at the time it wishes to sell the Securities there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information requirements of Rule 144 and 144A, and that, in such event, the Purchaser may be precluded from selling the Securities under Rule 144 and 144A even if the two-year minimum holding period had been satisfied.

(f) The Purchaser further understands that in the event all of the requirements of Rule 144 and 144A are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rule 144 is not exclusive, the Staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk.

Purchaser:

____

Date:________________________

Exhibit B

ASSIGNMENT FORM

(Subject to compliance with Section 7)

FOR VALUE RECEIVED, the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under the within Warrant, with respect to the number of Warrant Shares set forth below:

Name of Assignee	Address	No. of Shares

and does hereby irrevocably constitute and appoint ____________________ to make such transfer on the books of Active Power, Inc., maintained for the purpose, with full power of substitution in the premises.

The undersigned also represents that, by assignment hereof, the Assignee acknowledges that this Warrant and the shares of stock to be issued upon exercise hereof are being acquired for investment and that the Assignee will not offer, sell or otherwise dispose of this Warrant or any shares of stock to be issued upon exercise hereof except in compliance with Securities Act of 1933, as amended, or any state securities laws. Further, the Assignee has acknowledged that upon exercise of this Warrant, the Assignee shall, if requested by the Company, confirm in writing, in a form satisfactory to the Company, that the shares of stock so purchased are being acquired for investment and not with a view toward distribution or resale.

Signature:____
Name of Holder:_____________________________________
Name of Authorized Representative,
if a legal entity:__________________________________
Title of Representative:____________________________
Date:____

EXHIBIT 10.1

INDEMNITY AGREEMENT

This Indemnity Agreement is made and entered into as of this _____ day of ________, 2000 between Active Power, Inc., a Delaware corporation (the "Corporation"), and _______________________________ ("Indemnitee").

I N T R O D U C T I O N:

A. Indemnitee is an executive officer, director and/or agent of the Corporation (or a subsidiary of the Corporation), as the case may be from time to time, and performs a valuable service for the Corporation in such capacity (or capacities); and

B. The Certificate of Incorporation (the "Certificate") and the Bylaws (the "Bylaws") of the Corporation contain provisions providing for the indemnification of the officers, directors and agents of the Corporation to the maximum extent authorized by Section 145 of the Delaware General Corporation Law, as amended ("DGCL"); and

C. The Certificate, the Bylaws and the DGCL, by their non-exclusive nature, permit contracts between the Corporation and the members of its Board of Directors and officers with respect to indemnification of such directors and officers; and

D. In accordance with the authorization as provided by the DGCL, the Corporation has purchased and presently maintains a policy or policies of Directors and Officers Liability Insurance ("D & O Insurance"), covering certain liabilities which may be incurred by its directors and officers in the performance of their duties as directors or officers of the Corporation; and

E. As a result of developments affecting the terms, scope and availability of D & O Insurance there exists general uncertainty as to the extent of protection afforded members of the Board of Directors and executive officers of the Corporation by such D & O Insurance and by statutory and bylaw indemnification provisions; and

F. In order to induce Indemnitee to continue to serve as an executive officer, director or agent of the Corporation, the Corporation has determined and agreed to enter into this contract with Indemnitee.

A G R E E M E N T:

Now, Therefore, in consideration of Indemnitee's continued service as an executive officer and a member of the Board of Directors after the date hereof, the parties hereto agree as follows:

1. Indemnification of Indemnitee. The Corporation hereby agrees to hold harmless and indemnify Indemnitee and any partnership, corporation, trust or other entity of

which Indemnitee is or was a partner, shareholder, trustee, director, officer, employee or agent (Indemnitee and each such partnership, corporation, trust or other entity being hereinafter referred to collectively as an "Indemnitee") to the fullest extent authorized or permitted by the provisions of the DGCL, as may be amended from time to time.

2. Additional Indemnity. Subject only to the exclusions set forth in Section 3 hereof, the Corporation hereby further agrees to hold harmless and indemnify Indemnitee:

(a) against any and all expenses (including attorney's fees), witness fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including an action by or in the right of the Corporation) to which Indemnitee is, was or at any time becomes a party, or is threatened to be made a party, by reason of the fact that Indemnitee is, was or at any time becomes a director, officer, employee or agent of the Corporation or any subsidiary of the Corporation, or is or was serving or at any time serves at the request of the Corporation or any subsidiary of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnitee's conduct was unlawful; and

(b) otherwise to the fullest extent as may be provided to Indemnitee by the Corporation under the non-exclusivity provisions of Article XI of the Corporation's Bylaws (as the same, including such article, may be amended, modified or restated from time to time) and the DGCL.

3. Limitations on Additional Indemnity. No indemnity pursuant to Section 2 hereof shall be paid by the Corporation:

(a) except to the extent the aggregate of losses to be indemnified thereunder exceeds the sum of such losses for which the Indemnitee is indemnified pursuant to Section 1 hereof or pursuant to any D & O Insurance purchased and maintained by the Corporation;

(b) in respect to remuneration paid to Indemnitee if it shall be determined by a final judgment or other final adjudication that such remuneration was in violation of law ;

(c) on account of any suit in which judgment is rendered against Indemnitee for an accounting of profits made from the purchase or sale by Indemnitee of securities of the Corporation pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law;

(d) on account of Indemnitee's conduct which is finally adjudged to have been knowingly fraudulent or deliberately dishonest, or to constitute willful misconduct;

(e) on account of Indemnitee's conduct which is the subject of an action, suit or proceeding described in Section 7(c)(ii) hereof;

(f) on account of any action, claim or proceeding (other than a proceeding referred to in Section 8(b) hereof) initiated by the Indemnitee unless such action, claim or proceeding was authorized in the specific case by action of the Board of Directors; and

(g) if a final decision by a Court having jurisdiction in the matter shall determine that such indemnification is not lawful (and, in this respect, both the Corporation and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication).

4. Contribution. If the indemnification provided in Sections 1 and 2 hereof is unavailable by reason of a Court decision described in Section 3(g) hereof based on grounds other than any of those set forth in paragraphs (b) through (f) of Section 3 hereof, then in respect of any threatened, pending or completed action, suit or proceeding in which the Corporation is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Corporation shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in such proportion as is appropriate to reflect (a) the relative benefits received by the Corporation on the one hand and Indemnitee on the other hand from the transaction from which such action, suit or proceeding arose, and (b) the relative fault of the Corporation on the one hand and of Indemnitee on the other in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Corporation on the one hand and of Indemnitee on the other shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Corporation agrees that it would not be just and equitable if contribution pursuant to this Section 4 were determined by pro rata allocation or any other method of allocation that does not take account of the foregoing equitable considerations.

5. Continuation of Obligations. All agreements and obligations of the Corporation contained herein shall continue during the period Indemnitee is a director, officer or agent of the Corporation or any subsidiary of the Corporation (or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation unless

and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper and shall continue thereafter so long as Indemnitee shall be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, criminal or investigative, by reason of the fact that Indemnitee was an officer of the Corporation or serving in any other capacity referred to herein.

6. Notification and Defense of Claim. Not later than thirty days after receipt by Indemnitee of notice of the commencement of any action, suit or proceeding, Indemnitee will, if a claim in respect thereof is to be made against the Corporation under this Agreement, notify the Corporation of the commencement thereof; but the omission so to notify the Corporation will not relieve it from any liability which it may have to Indemnitee otherwise than under this Agreement. With respect to any such action, suit or proceeding as to which Indemnitee notifies the Corporation of the commencement thereof:

(a) the Corporation will be entitled to participate therein at its own expense;

(b) except as otherwise provided below, to the extent that it may wish, the Corporation jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee. After notice from the Corporation to Indemnitee of its election so as to assume the defense thereof, the Corporation will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its counsel in such action, suit or proceeding but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of Indemnitee's separate counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or on behalf of the Corporation or as to which Indemnitee shall have made the conclusion provided for in (ii) above; and

(c) the Corporation shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent. The Corporation shall be permitted to settle any action except that it shall not settle any action or claim in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold its consent to any proposed settlement.

7. Advancement and Repayment of Expenses.

(a) In the event that Indemnitee employs his own counsel pursuant to Section 6(b)(i) through (iii) above, the Corporation shall advance to Indemnitee, prior to any final disposition of any threatened or pending action, suit or proceeding, whether civil, criminal, administrative or investigative, any and all reasonable expenses (including legal fees and expenses) incurred in investigating or defending any such action, suit or proceeding within ten days after receiving copies of invoices presented to Indemnitee for such expenses;

(b) Indemnitee agrees that Indemnitee will reimburse the Corporation for all reasonable expenses paid by the Corporation in defending any civil or criminal action, suit or proceeding against Indemnitee in the event and only to the extent it shall be ultimately determined by a final judicial decision (from which there is no right of appeal) that Indemnitee is not entitled, under the provisions of the DGCL, the Certificate, the Bylaws, this Agreement or otherwise, to be indemnified by the Corporation for such expenses; and

(c) Notwithstanding the foregoing, the Corporation shall not be required to advance such expenses to Indemnitee if Indemnitee (i) commences any action, suit or proceeding as a plaintiff unless such advance is specifically approved by a majority of the Board of Directors or (ii) is a party to an action, suit or proceeding brought by the Corporation and approved by a majority of the Board which alleges willful misappropriation of corporate assets by Indemnitee, disclosure of confidential information in violation of Indemnitee's fiduciary or contractual obligations to the Corporation, or any other willful and deliberate breach in bad faith of Indemnitee's duty to the Corporation or its shareholders.

8. Procedure. Any indemnification and advances provided for in Section 1 and Section 2 shall be made no later than 45 days after receipt of the written request of Indemnitee. If a claim under this Agreement, under any statute, or under any provision of the Corporation's Certificate of Incorporation or Bylaws providing for indemnification, is not paid in full by the Corporation within 45 days after a written request for payment thereof has first been received by the Corporation, Indemnitee may, but need not, at any time thereafter bring an action against the Corporation to recover the unpaid amount of the claim and, subject to Section 12 of this Agreement, Indemnitee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action, suit or proceeding in advance of its final disposition) that Indemnitee has not met the standards of conduct which make it permissible under applicable law for the Corporation to indemnify Indemnitee for the amount claimed, but the burden of proving such defense shall be on the Corporation and Indemnitee shall be entitled to receive interim payments of expenses pursuant to Subsection 2(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Corporation contests Indemnitee's right to indemnification, the question of Indemnitee's right to indemnification shall be for the court to decide, and neither the failure of the Corporation (including its Board of Directors, any committee or subgroup of the Board of Directors,

independent legal counsel, or its stockholders) to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Corporation (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its stockholders) that Indemnitee has not met such applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct.

9. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on the Corporation hereby in order to induce Indemnitee to continue as an executive officer, director or agent of the Corporation, and acknowledges that Indemnitee is relying upon this Agreement in continuing in such capacity; and

(b) In the event Indemnitee is required to bring any action to enforce rights or to collect moneys due under this Agreement and is successful in such action, the Corporation shall reimburse Indemnitee for all Indemnitee's reasonable fees and expenses in bringing and pursuing such action.

10. Subrogation. In the event of payment under this agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Corporation effectively to bring suit to enforce such rights.

11. Non-Exclusivity of Rights. The rights conferred on Indemnitee by this Agreement shall not be exclusive of any other right which Indemnitee may have or hereafter acquire under any statute, provisions of the Corporation's Certificate of Incorporation or Bylaws, agreement, vote of stockholders or directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding office.

12. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by Indemnitee in the investigation, defense, appeal or settlement of any civil or criminal action, suit or proceeding, but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

13. Survival of Rights. The rights conferred on Indemnitee by this Agreement shall continue after Indemnitee has ceased to be a director, officer, employee or other agent of the Corporation and shall inure to the benefit of Indemnitee's heirs, executors and administrators.

14. Separability. Each of the provisions of this Agreement is a separate and distinct agreement and independent of the others, so that if any or all of the provisions hereof shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions hereof or the obligation of

the Corporation to indemnify the Indemnitee to the full extent provided by the Certificate, Bylaws or the DGCL.

15. Governing Law; Consent to Jurisdiction. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Delaware. The Corporation and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of Delaware.

16. Binding Effect. This Agreement shall be binding upon Indemnitee and upon the Corporation, its successors and assigns, and shall inure to the benefit of Indemnitee, his heirs, personal representatives and assigns and to the benefit of the Corporation, its successors and assigns.

17. Amendment and Termination. No amendment, modification, termination or cancellation of this Agreement shall be effective unless in writing signed by both parties hereto.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

[Signature Page Follows]

In Witness Whereof, the parties hereto have executed this Indemnity Agreement on and as of the day and year first above written.

Active Power, Inc.

By: ---------------------------------

Name: -------------------------------

Title: -----------------------------

Indemnitee

Print Name: -------------------------

[Signature Page to Indemnity Agreement]

EXHIBIT 10.4

ACTIVE POWER, INC.

SECOND AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT

November 23, 1999

ACTIVE POWER, INC.
SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

TABLE OF CONTENTS

INDEX OF DEFINED TERMS		-ii-
ARTICLE I	REGISTRATION RIGHTS	1
Section 1.1	Certain Definitions	1
Section 1.2	Piggyback Registrations	2
Section 1.3	Demand Registrations	2
Section 1.4	Registrations on Form S-3	4
Section 1.5	Registration Procedures	4
Section 1.6	Expenses of Registration	5
Section 1.7	Underwritten Registrations	5
Section 1.8	Rule 144 Requirements; Termination of Registration Rights	6
Section 1.9	Information by Holder	6
Section 1.10	Prospectus Delivery Requirement	6
Section 1.11	Rule 144 Reporting	6
Section 1.12	Other Registration Rights	7
Section 1.13	Listing Application	7
Section 1.14	Damages; Injunctive Relief	7
Section 1.15	Indemnification	7
Section 1.16	Assignment of Registration Rights	10
ARTICLE II	COVENANTS OF THE COMPANY	10
Section 2.1	Affirmative Covenants	10
Section 2.2	Negative Covenants	16
ARTICLE III	MISCELLANEOUS	19
Section 3.1	Successors and Assigns	19
Section 3.2	Governing Law	19
Section 3.3	Counterparts	19
Section 3.4	Titles and Subtitles	19
Section 3.5	Notices	19
Section 3.6	Expenses	20
Section 3.7	Amendments and Waivers	20
Section 3.8	Severability	20
Section 3.9	Aggregation of Stock	21
Section 3.10	Entire Agreement; No Waiver	21

Schedule A Key Management
Schedule B Investors
Schedule C Independent Series A Holders
Schedule D Series D Preferred Shareholders
Schedule E Common Shareholders

INDEX OF DEFINED TERMS

TERM	LOCATION
Agreement	Introduction
Articles of Incorporation	Section 2.1(a)
Beneficiaries	Section 1.5
Board Observer Qualified	Holder Section 2.1(c)(ii)
Code	Section 2.1(i)
Common Shareholders	Introduction
Company	Introduction
Exchange Act	Section 1.1(a)
Holder	Section 1.1(b)
Indemnified Party	Section 1.15(c)
Indemnifying Party	Section 1.15(c)
Independent Series A Holders	Introduction
Investor/Investors	Introduction
Key Management	Introduction and Section 1.1(i)
Previous Agreement	Recitals
Prior Restated Agreement	Section 1.1(e)
Qualified Holder	Section 2.1(b)(i)
Qualified Public Offering	Section 2.1(b)(i)
Registrable Securities	Section 1.1(c)
Registration Expenses	Section 1.1(d)
SEC	Section 1.1(f)
Securities Act	Section 1.1(g)
Selling Expenses	Section 1.1(h)
Series D Preferred Shareholders	Introduction
Series E Preferred Stock	Recitals
Series E Purchase Agreement	Recitals
Under Subscribing Holder	Section 2.2(a)(v)(D)(3)

ACTIVE POWER, INC.
SECOND AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT

THIS SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (the "Agreement") is made as of the 23rd day of November, 1999, by and among Active Power, Inc., a Texas corporation (the "Company"), certain members of Company's management listed on Schedule A hereto, as the same may be amended from time to time pursuant to Section 1.1(i) hereof (the "Key Management"), the investors listed on Schedule B hereto (each, an "Investor" and collectively, the "Investors"), certain holders of the Series A Convertible Preferred Stock of the Company listed on Schedule C hereto (the "Independent Series A Holders"), certain holders of the Series D Convertible Preferred Stock of the Company listed on Schedule D hereto (The "Series D Preferred Shareholders") and certain other holders of the Common Stock of the Company listed on Schedule E hereto (the "Common Shareholders").

R E C I T A L S:

WHEREAS, the Company, the Investors, the Independent Series A Holders, the Series D Preferred Shareholders and the Common Shareholders are parties to that certain Amended and Restated Investors' Rights Agreement, dated June 16, 1998 (the "Previous Agreement");

WHEREAS, the Series D Preferred Shareholders also hold the Company's Series B Convertible Preferred Stock and Series C Convertible Preferred Stock;

WHEREAS, the Company and the Investors are parties to the Series E Convertible Preferred Stock Purchase Agreement dated as of even date herewith (the "Series E Purchase Agreement") pursuant to which the Company has agreed to sell, and the Investors have agreed to purchase, shares of the Series E Convertible Preferred Stock (the "Series E Preferred Stock") of the Company; and

WHEREAS, the parties desire to enter into this Agreement to amend and supersede the Previous Agreement as a material inducement to the Investors to enter into the Series E Agreement and invest funds in the Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and for certain other good and valuable consideration, the receipt and sufficiency of which in hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

REGISTRATION RIGHTS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth below:

(a) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder;

(b) "Holder" means the person who is then the record owner of Registrable Securities which have not been sold to the public.

(c) "Registrable Securities" means (i) the Common Stock issuable upon conversion of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or the exercise of the Warrants; and (ii) any Common Stock issued or issuable with respect to the shares referred to in clause (i) by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization; provided that any such share shall cease to be a Registrable Security when sold pursuant to a registration statement declared effective under the Securities Act or sold to the public pursuant to a broker transaction under Rule 144 promulgated thereunder.

(d) "Registration Expenses" means all expenses incurred by the Company in compliance with Sections 2, 3, and 4 hereof, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration and the reasonable fees and disbursements of a single special counsel for the Holders, provided the Holders shall have used their reasonable best efforts to utilize the counsel for the Company or the Underwriters and shall employ such separate special counsel only if necessary.

(e) "Prior Restated Agreement" means the First Amended and Restated Stock Purchase and Stockholders' Agreement made and entered into as of March 6, 1995 by and among the Company and the persons listed on the signature pages thereto, as amended pursuant to Amendment No. 1 thereto dated as of May 6, 1996.

(f) "SEC" means the United States Securities and Exchange Commission.

(g) "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(h) "Selling Expenses" means all underwriting discounts, selling commissions and transfer taxes applicable to the sale of securities by the Holders, Key Management and Common Shareholders, as the case may be, in an offering pursuant to this Agreement.

(i) "Key Management" means shareholders of the Company who are (i) officers or key employees of the Company and (ii) identified in good faith from time to time by the Board of Directors as "Key Management" for purposes of this Agreement.

(j) Certain other capitalized terms used but not defined herein, shall have the respective meanings ascribed to such terms in the Series E Purchase Agreement.

Section 1.2 Piggyback Registrations.

(a) If the Company shall determine to register any of its securities under the Securities Act, either for its own account or the account of a security holder or holders exercising their registration rights, other than pursuant to (1) Section 1.3 below; (2) a registration statement relating solely to employee benefit, stock option or purchase plans, or a transaction pursuant to Rule 145 promulgated under the Securities Act; or (3) an offering on any registration form which does not permit secondary sales or does not include substantially the same information as would be required to be included in a registration statement covering the sale of Registrable Securities, the Company will:

(i) promptly give to (x) each Holder, (y) each member of Key Management, and (z) each Common Shareholder, written notice thereof (which shall include the number of shares the Company or other security holder proposes to register and, if known, the name of the proposed underwriter); and

(ii) use its reasonable best efforts to include in such registration statement all of the Registrable Securities and Common Stock specified in a written request or requests, made by the Holders, Key Management and Common Shareholders within twenty (20) days after receipt of the written notice from the Company described in clause (i) above. If the underwriter advises the Company that marketing considerations require a limitation on the number of shares offered pursuant to any registration statement, such limitation shall be imposed in the following order: (x) first, the shares of the Company sought to be included therein by the Company shall be included to the extent allowed by the underwriter, (y) second, the shares sought to be included therein by the Common Shareholders shall be cut back pro rata, in proportion to the shares sought to be included therein by each, and (z) third, the shares sought to be included therein by the Holders and Key Management shall be cut back pro rata, in proportion to the shares sought to be included therein by each.

(b) If any Holder, any member of Key Management or any Common Shareholder disapproves of the terms of any Company underwriting in which his or its shares are to be included under this Section 1.2, he or it may elect to withdraw therefrom by written notice to the Company and the underwriter delivered at least seven days prior to the effective date of the registration statement.

Section 1.3 Demand Registrations.

(a) From and after the earlier of (1) the fourth anniversary date of the Closing of the Series E Purchase Agreement or (2) 180 days after the effective date of the initial public offering of the Company's Common Stock, if the Company receives in writing a first request from the Holders of an aggregate of not less than a majority of the Registrable Securities then

outstanding, or a second request from the Holders of an aggregate of not less than 25% of the Registrable Securities then outstanding, that the Company effect the registration under the Securities Act of Registrable Securities, of which at least 20% of the then outstanding Registrable Securities shall be included in such registration (which offering must have a per share price of not less than $34.02 per share (as adjusted for stock dividends, splits, combinations, reclassification and the like)), the Company will:

(i) promptly give written notice of the proposed registration to all other Holders, Key Management and the Common Shareholders; and

(ii) as soon as practicable, prepare and file and use its reasonable best efforts to cause to become effective such registration statement as may be so requested and as would permit or facilitate the sale and distribution of such portion of the Registrable Securities as is specified in such request, together with such additional portion of the Registrable Securities of any Holder(s) and shares of Common Stock held by Key Management and Common Shareholders joining in such request as may be specified in a written request given to the Company within thirty (30) days after receipt of the written notice from the Company specified in clause (i) above.

(b) If the underwriter managing the offering advises the Holders, Key Management and Common Shareholders who have requested inclusion of their Registrable Securities or Common Stock, as the case may be, in such registration statement that marketing considerations require a limitation on the number of shares offered, such limitation shall be imposed in the following order: (1) first, excluding shares to be registered by the Common Shareholders pro rata according to the number of shares of Common Stock requested to be included by each; (2) second, excluding shares to be registered by Key Management pro rata according to the number of shares of Common Stock requested to be included by each; and (3) third, pro rata among such Holders who requested inclusion of Registrable Securities in such registration statement according to the number of shares of Registrable Securities owned by each. Except for shares of Common Stock held by Key Management, neither the Company nor any other shareholder may include shares in such registration statement without the consent of Holders of a majority of the Registrable Securities included therein if the underwriter managing such offering advises the Holders who have included Registrable Securities in such registration statement that the inclusion of such additional shares may either limit the number of Registrable Securities which can be sold or adversely affect the price at which such Registrable Securities can be sold.

(c) Notwithstanding Section 1.3(b) above, the Company shall have the right, exercisable by written notice to the initiating Holders within thirty (30) days after receipt of their request to effect a registration under the Securities Act, to include the Company's shares in such registration, in which event such registration shall be deemed to be a Company-initiated registration, and the Holders, Key Management and Common Shareholders shall have the right to include their Registrable Securities and shares of Common Stock, as the case may be, therein to the extent permitted under Section 1.2 above.

(d) The Company shall not be obligated to effect more than two (2) registrations under this Section 1.3. No registration statement initiated by Holders hereunder

shall count as a registration under this Section 1.3 unless and until it shall have been declared effective. Any registration requested under this Section 1.3 which shall not become effective solely by reason of the refusal of the Holders participating therein to proceed with the registration shall count as a registration effected under this Section 1.3 unless the Company shall have been reimbursed for the Registration Expenses incurred by it in connection therewith.

Section 1.4 Registrations on Form S-3. In addition to the registrations provided in Sections 1.2 and 1.3 above, in the event the Company is qualified to file a registration statement on Form S-3 (or similar short form registration) under the Securities Act, the Company shall give written notice of such fact to the Holders. Holders of the Registrable Securities may, by written notice to the Company, require the Company to file a registration statement on Form S-3 to effectuate registration of such Holders' Registrable Securities. Following the initial public offering of its securities, the Company will use its reasonable best efforts to qualify for registration on Form S-3 or any similar short form registration within the time prescribed by the Securities Act. The Company may be required to file up to six (6) registrations on Form S-3 upon demand, each with respect to an aggregate offering of not less than $500,000 (as determined with reference to the number of shares proposed to be sold in such registration multiplied by the average closing price, or if no closing price is available, the mean of the bid and asked prices, over the fifteen trading days preceding the date of such demand), but it shall not be obligated to file more than one registration statement on Form S-3 in any six month period.

Section 1.5 Registration Procedures. In the case of each registration statement filed by the Company pursuant to this Agreement, the Company will, at its expense, do the following for the benefit of the Holders, Key Management and Common Shareholders (sometimes referred to collectively as the "Beneficiaries"):

(a) Use its reasonable best efforts to keep such registration statement effective for a period of 180 days or until the Beneficiaries have completed the distribution described in the registration statement relating thereto, or such shorter period of time as is specified by Rule 174 promulgated under the Securities Act, whichever first occurs, and amend or supplement such registration statement and the prospectus contained therein from time to time to the extent necessary to comply with the Securities Act and applicable state securities laws;

(b) Use its reasonable best efforts to register or qualify the securities to be sold by the Beneficiaries under such registration under the applicable securities or "blue sky" laws of such jurisdictions as the underwriter of such offering shall reasonably deem necessary in order to ensure a successful offering; provided, that the Company shall not be obligated to qualify to do business in any jurisdiction where it is not then so qualified or otherwise required to be so qualified or to take any action which would subject it to the service of process in suits other than those arising out of such registration;

(c) Furnish such number of prospectuses, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents incident thereto as a Beneficiary from time to time may reasonably request in order to facilitate the disposition of Registrable Securities;

(d) In connection with any underwritten offering pursuant to a registration statement filed pursuant to Section 1.3 hereof, the Company will enter into an underwriting agreement necessary to effect the offer and sale of Common Stock, provided such underwriting agreement contains usual and customary underwriting provisions and is entered into by the Beneficiaries and provided further that if the underwriter so requests, the underwriting agreement will contain customary contribution provisions on the part of the Company; and

(e) Permit each selling shareholder and such shareholder's counsel or other representatives to inspect and copy such corporate documents as he may reasonably request, subject to receipt of such written confidentiality undertaking as the Company may reasonably request.

Section 1.6 Expenses of Registration. In the event of a registration in which securities held by Beneficiaries are included under this Agreement, the Company shall pay all Registration Expenses, but shall not be required to pay or otherwise assume responsibility for Selling Expenses, which shall be the sole responsibility of the selling shareholders.

Section 1.7 Underwritten Registrations.

(a) The Company shall have the right to select the managing underwriter or underwriters for any underwritten offering made pursuant to a registration under Section 1.2 or Section 1.4 hereof. The Company also, shall have the right to select the managing underwriter or underwriters in any registration under Section 1.3 hereof, provided that such managing underwriter or underwriters shall be reasonably acceptable to the Holders owning a majority of Registrable Securities included in such registration.

(b) In connection with the initial public offering by the Company, the Holders, members of Key Management and the Common Shareholders shall, if requested by the managing underwriter or underwriters thereof, agree not to sell any of their Registrable Securities or any other securities of the Company owned by such shareholders in any transaction other than pursuant to such underwritten offering for a period beginning 60 days prior to the date the Company and the underwriter reasonably expect the registration statement to become effective, and for such period not to exceed 180 days as determined in the discretion of the Board of Directors of the Company (such agreement shall be pursuant to the standard form of lock-up agreement of the managing underwriter or underwriters of such initial public offering); provided, however, (i) that, if reasonably satisfactory to the underwriters, such agreement shall permit the Holders, members of Key Management and the Common Shareholders to make permitted transfers (as such term is used in Section 4 of the Fourth Amended and Restated Shareholders Agreement) of their Registrable Securities, which agreement shall be expressly conditioned on any such transferees similarly agreeing to be bound by this Section 1.7, and (ii) that all officers and directors of the Company and all individual holders of at least one percent (1%) of the total voting power of the Company enter into similar agreements.

(c) The Company may delay for a maximum of six months any underwritten offering pursuant to Section 1.2 or Section 1.3 when, in the good faith judgment of the Board of Directors, (i) a condition or pending transaction exists, the disclosure of which would reasonably

be expected to have a material adverse effect on the Company, or (ii) a delay in such offering would be in the best interests of the Company.

Section 1.8 Rule 144 Requirements; Termination of Registration Rights.

(a) At any time and from time to time after the close of business on the earliest of the date that (i) a registration statement filed by the Company under the Securities Act becomes effective; (ii) the Company registers a class of securities under Section 12 of the Exchange Act; or (iii) the Company issues an offering circular meeting the requirements of Regulation A under the Act, the Company shall undertake to make publicly available, and available upon request to the Holders of Registrable Securities, such information as is necessary to enable Holders to make sales of their stock pursuant to Rule 144. The Company shall furnish to any such Beneficiary, upon request, a written statement executed by the Company setting forth the steps it has taken to comply with the current public information requirements of Rule 144.

(b) The rights of a Beneficiary to demand or participate in any registration effected under this Agreement shall terminate as to such Beneficiary at such time as such Beneficiary (i) holds less than three percent (3%) of the fully diluted shares of Common Stock then outstanding and (ii) such Beneficiary is eligible to dispose of his shares pursuant to Rule 144(k), as in effect at such time.

Section 1.9 Information by Holder. Each Beneficiary included in any registration shall furnish to the Company such information regarding such Beneficiary and the distribution proposed by such Beneficiary as the Company may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification or compliance referred to in this Agreement.

Section 1.10 Prospectus Delivery Requirement. In the event that any Beneficiaries propose to distribute any Registrable Securities in a registered offering which is not underwritten, such Beneficiaries severally agree to comply with the prospectus delivery requirements of the Securities Act with respect to such distribution and to furnish evidence of such compliance to the extent reasonably requested by the Company in connection with such distribution.

Section 1.11 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that permit the sale of restricted securities (as that term is defined in Rule 144 promulgated under the Securities Act) to the public without registration, the Company agrees to:

(a) use its reasonable best efforts to make and keep public information from and after ninety days following the effective date of the first registration under the Securities Act filed by the Company for an offering of its securities to the general public;

(b) use its reasonable best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

(c) so long as the Beneficiaries own any shares of Common Stock, furnish each of the Beneficiaries promptly upon its request, (i) a written statement by the Company as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety days following the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and Exchange Act (at any time after it has become subject to such reporting requirements); (ii) a copy of the most recent annual or quarterly report of the Company; and (iii) such other reports and documents so filed as the Beneficiary may reasonably request in availing itself of any rule or regulation of the SEC allowing the Beneficiary to sell any such securities without registration.

Section 1.12 Other Registration Rights. From and after the date of this Agreement, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder the right to require the Company to initiate any registration of any securities of the Company prior to the date on which the Holders may initiate a registration or to initiate a registration in which the Holders may not participate in proportion to their stock ownership, provided that this Section shall not limit the right of the Company to enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder the right, upon any registration of any of the Company's securities, to include, among the securities which the Company is then registering, securities owned by such holder. Any right given by the Company to any holder or prospective holder of the Company's securities in connection with the registration of securities shall be conditioned such that it shall be consistent with the rights of the Holders as provided in this Agreement.

Section 1.13 Listing Application. If shares of any class of stock of the Company shall be listed on a national securities exchange or qualified for inclusion on any interdealer quotation system, the Company shall, at its expense, include in its listing application all of the shares of the listed class then owned by the Beneficiaries.

Section 1.14 Damages; Injunctive Relief. The Company recognizes and agrees that the Holders of Registrable Securities shall not have an adequate remedy if the Company fails to comply with the provisions of this Agreement, and that damages will not be readily ascertainable, and the Company expressly agrees that in the event of such failure damages shall not be an exclusive remedy and the Holders, or any of them, may seek specific performance of the Company's obligations hereunder.

Section 1.15 Indemnification.

(a) The Company will, and hereby does, agree to indemnify and hold harmless each Beneficiary whose securities of the Company are included in any registration statement, each of its officers, directors, agents, employees and partners, and each person controlling such Beneficiary (within the meaning of the Securities Act), with respect to which registration, qualification or compliance has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls such Beneficiary or underwriter within the meaning of the Securities Act, against all claims, losses, damages, and liabilities (joint or several) or actions in respect thereof arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus, offering circular or other

document (including any related registration statement, including any preliminary prospectus or final prospectus contained therein, notification or the like, and all amendments and supplements thereto) incident to any such registration, qualification or compliance, or based on any omission (or alleged omissions) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of the Securities Act or the Exchange Act or the securities laws of any state or any rule or regulation under the Securities Act or the Exchange Act or the securities laws of any state applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance, and, subject to compliance with the provisions of paragraph (c) below, will promptly reimburse each such Beneficiary, each of its officers, directors, agents, employees and partners, and each person controlling such Beneficiary, each such underwriter and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending any such claim, loss, damage, liability or action, whether or not resulting in any liability, *provided* that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement (or alleged untrue statement) or omission (or alleged omission) in reliance upon and in conformity with written information furnished to the Company by such Beneficiary or underwriter and stated to be expressly for use therein.

(b) Each Beneficiary will, if securities held by such Beneficiary are included in the securities as to which such registration, qualification or compliance is being effected, indemnify and hold harmless the Company, each of its directors, officers, employees and agents and each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of the Securities Act and the rules and regulations thereunder, each other such Beneficiary and each of their officers, directors, employees, agents and partners, and each person controlling such Beneficiary, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document (and all amendments and supplements thereto), or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Beneficiary of the Securities Act or the Exchange Act or any rule or regulation under the Securities Act or the Exchange Act or the securities laws of any state applicable to such Beneficiary, and will promptly reimburse the Company and such other Beneficiaries' directors, officers, partners, persons, underwriters or control persons for any legal or other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, whether or not resulting in liability, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular or other document in reliance upon and in conformity with written information furnished to the Company by such Beneficiary and stated to be expressly for use therein; provided that in no event shall any indemnity under this paragraph exceed the net proceeds from the offering received by such Beneficiary if such Beneficiary (i) is not, individually or through its affiliates or controlling persons, a director, executive officer or beneficial holder of in excess of 10% of the outstanding voting stock of the Company and (ii) had no knowledge regarding the untruth of any statement (or alleged untrue statement), or any omission (or alleged omission) upon which any

indemnity stated in this paragraph (b) is a condition precedent to the Company's obligation to include securities of the Beneficiary in any registration statement; that the Company will be relying upon this indemnity as an inducement in doing so; that the Company may, at its option, require an instrument executed by the Beneficiary and expressly reaffirming this indemnity as a precondition to proceeding with the registration of any securities under this Agreement; and that even in the absence of such instrument, the decision of the Beneficiary to proceed with such registration shall be deemed a reaffirmation of the provision.

(c) Each party entitled to indemnification under this Section 1.5 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, but the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations under this Agreement (except and to the extent the Indemnifying Party has been prejudiced as a consequence thereof). The Indemnified Party will be entitled to participate in, and to the extent that it may elect by written notice delivered to the Indemnifying Party promptly after receiving the aforesaid notice from such Indemnifying Party, at its expense to assume, the defense of any such claim or any litigation resulting therefrom, with counsel reasonably satisfactory to such Indemnified Party; provided that the Indemnified Party may participate in such defense at its expense, notwithstanding the assumption of such of defense by the Indemnifying Party, and provided, further, that if the defendants in any such action shall include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party or Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party or Parties and the reasonable fees and expenses of such counsel shall be paid by the Indemnifying Party unless such different or additional defenses are determined by a court of competent jurisdiction to be invalid or such court bases its decision on common defenses, in which cases the Indemnified Party or Parties shall pay the fees and expenses of such separate counsel.

(d) No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment against or enter into any settlement concerning any Indemnified Party which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation. Each Indemnified Party shall provide such reasonable cooperation and shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(e) If the indemnification provided for in this Section 1.15 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, claims, damages or liabilities referred to herein, the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party

on the one hand and of the Indemnified Party on the other in connection with the violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided that in no event shall any contribution under this paragraph exceed the net proceeds from the offering received by such Beneficiary if such Beneficiary (i) is not, individually or through its affiliates or controlling persons, a director, executive officer or beneficial holder of in excess of 10% of the outstanding voting stock of the Company and (ii) had no knowledge regarding the untruth of any statement (or alleged untrue statement), or any omission (or alleged omission) upon which any contribution is sought under this paragraph.

(f) Neither the Company nor any Holder shall be required to participate in a registration pursuant to which it would be required to execute an underwriting agreement in connection with a registration effected under Section 1.2 or Section 1.3 which imposes indemnification or contribution obligations on the Company or such Holder, as the case may be, more onerous than those imposed hereunder.

Section 1.16 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Article I may be assigned by a Beneficiary to a transferee or assignee of Registrable Securities which (i) is a subsidiary, affiliate, member, parent, general partner, limited partner, trust grantor or beneficiary, or retired partner of a Beneficiary, (ii) is a Beneficiary's family member or trust for the benefit of an individual Beneficiary, (iii) is already a Beneficiary of Registrable Securities or (iv) acquires at least one hundred thousand (100,000) shares of Registrable Securities (as adjusted for stock splits and combinations); provided, such transfer shall be subject to the following: (A) the transferor shall, within ten (10) days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (B) such transferee shall agree to be subject to all restrictions set forth in this Agreement.

ARTICLE II

COVENANTS OF THE COMPANY

Section 2.1 Affirmative Covenants.

(a) Fulfillment of Obligations. The Company will observe and comply fully with all the terms, conditions and covenants of this Agreement, the Related Documents, and any other instruments or documents to be entered into by the Company pursuant hereto and thereto, and its Articles of Incorporation, as amended through the date hereof (the "Articles of Incorporation").

(b) Accounts and Reports.

(i) The Company will maintain a standard system of accounts on a basis in accordance with generally accepted accounting principles and will keep proper financial records. In addition, prior to a Qualified Public Offering (as defined below), the Company will furnish to (1) each Investor (so long as such Investor holds, in the aggregate, at least 100,000 outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Underlying Shares, or any combination thereof, as adjusted for any stock dividends, combinations, splits or reclassifications with respect to such shares) and (2) to each other holder of at least 100,000 outstanding shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock or Underlying Shares in the aggregate whose primary business is not directly competitive to the business engaged in by the Company, or employed by such a competitor (each, a "Qualified Holder"), the following:

A. within 90 days after the end of each fiscal year, a copy of the consolidated balance sheet for the Company and its subsidiaries as at the end of such year, consolidated statements of income, retained earnings and cash flows of the Company and its subsidiaries for such year, all in reasonable detail, and prepared and certified by an independent public accounting firm;

B. as soon as practicable prior to the end of each fiscal year, an annual budget and operating plan for the Company for the coming fiscal year, broken down on a monthly basis;

C. as soon as practicable after the end of each month, and, in any event, within 30 days after the end of each month, a copy of the consolidated balance sheet of the Company and its subsidiaries as at the end of such month and a consolidated statement of income for such month and the portion of the fiscal year ending on the last day of such month, with variation analysis from budget, prepared in reasonable detail setting forth in each case comparisons to the annual budget and certified as to accuracy in all material respects, subject to year-end audit adjustments, by the principal financial officer of the Company;

D. copies of all financial statements and reports that the Company sends to its shareholders generally or files with the Securities and Exchange Commission or any stock exchange on which any securities of the Company may be listed;

E. promptly upon receipt thereof, any additional reports or management letters given to the Company by its independent public accountants (and not otherwise contained in other materials furnished to such Investor); and

F. such other financial and other information as such Investor and any Qualified Holder may reasonably request, including monthly executive summaries of the Company's activities; provided that in each of the foregoing instances, such information to the extent it is not generally disclosed to the public shall by maintained in confidence by the Investors.

For purposes of this Agreement, a "Qualified Public Offering" means the sale of the Company's Common Stock in a firm commitment, underwritten public offering registered under the Securities Act other than a registration statement relating solely to a transaction under Rule 145 under the Securities Act or to an employee benefit plan of the Company, at a public offering price (prior to underwriter's commissions and expenses) per share of Common Stock (as adjusted for stock dividends, splits, combinations, reclassification and the like) per share equal to or exceeding $34.02 and with aggregate gross proceeds to the Company and any selling shareholders therein (before deduction for underwriter's commissions and expenses relating to such registration) of at least $20,000,000, as adjusted.

(ii) Prior to a Qualified Public Offering, the Company will also permit each Qualified Holder and its authorized representatives, at all reasonable times and, upon one business days' prior notice to the Company, as often as reasonably requested, to visit and inspect, at the expense of such Qualified Holder, any of the properties of the Company, to inspect its books and records and to make extracts therefrom, and to discuss the affairs, finances and accounts of the Company with its officers; provided that such Qualified Holder shall at all times maintain the confidentiality of any proprietary information of the Company and their respective clients.

(c) Board of Directors Elections; Meetings; Actions. Prior to a Qualified Public Offering:

(i) The Company shall take any and all action necessary to ensure that members of the Board of Directors are elected annually by the non-cumulative vote of the shareholders of the Company, voting in the manner provided in the Third Amended and Restated Articles of Incorporation and the Fourth Amended and Restated Voting Agreement.

(ii) The Company will use its reasonable best efforts to give each Qualified Holder written notice at one week in advance of all meetings of the Board of Directors and all meetings of committees of the Board of Directors, which notice may be waived in writing or by attendance at the meeting, and will permit a representative of such Qualified Holder to attend and observe meetings of the Board of Directors; provided, however that the Company reserves the right to exclude the representative of such Qualified Holder from access to any meeting or portion thereof:

A. if the Company believes, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege;

B. to avoid the disclosure of highly confidential proprietary information to such representative if such representative represents a Qualified Holder that is a potential competitor, customer or prospective customer of the Company, and the attendance of such representative would give the Qualified Holder a competitive advantage or cause the Company to lose a competitive advantage, or for other similar reasons; or

C. if in the judgment of a majority of the Directors, such access would materially impair the due consideration by the Board of Directors of any matter;

(iii) The Company will promptly reimburse each Director for all reasonable costs incurred by such Director in connection with his or her attendance at meetings of the Board of Directors or of any committees thereof. Meetings of the Board shall be held at least quarterly.

(iv) The Company shall furnish each Qualified Holder with a copy of the minutes, written consents and other records of all meetings and other actions taken by the Board of Directors and its committees and all written material given to members of the Board of Directors in connection with such meeting at the same time such materials and information are given to the Board of Directors; provided, however, that the Company reserves the right to exclude such Qualified Holder from access to any such material:

A. if the Company believes, upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege; or

B. to avoid the disclosure of highly confidential proprietary information to Qualified Holder if such Qualified Holder is a potential competitor, customer, or prospective customer of the Company, and the disclosure of such information would give the Qualified Holder a competitive advantage or cause the Company to lose a competitive advantage, or for other similar reasons;

(v) If the Company proposes to take any action by written consent in lieu of a meeting of its Board of Directors or any committee thereof, the Company shall give written notice thereof to each Qualified Holder prior to or concurrently with the time such consent is distributed to directors for signature, together with any description of the nature and substance of such action as may be provided to the Directors of the Company.

(d) Payment of Taxes, etc. Prior to a Qualified Public Offering, the Company will pay and discharge or cause to be paid and discharged, all taxes, assessments and governmental charges or levies imposed upon it or upon its respective income or properties before the same shall become in default, as well as all lawful claims for labor, materials and supplies that, if not paid when due, might result in the imposition of a lien or charge upon any of its properties; provided, however, that the Company shall not be required to pay and discharge any such tax, assessment, charge, levy or claim so long as the validity thereof is being contested by the Company in good faith by appropriate proceedings and an adequate reserve therefor has been established.

(e) Dealings with Related Parties. Prior to a Qualified Public Offering, each transaction (other than expense reimbursements or payments to employees or Directors in the ordinary course of the Company's business) by and between the Company on the one hand, and any shareholder, Director, officer or employee of the Company, or entities controlled by or affiliated with any such persons, on the other hand, shall be approved by the unanimous consent of all Directors of the Company who are not interested in such transaction (it being acknowledged and agreed that the purchase and sale of the Series E Preferred Stock pursuant to the Series E Purchase Agreement and the transactions related thereto were the subject of arms'-length negotiations and have received such approval).

(f) Use of Proceeds. The proceeds to the Company from the sale of the Series E Preferred Stock shall be used by the Company for costs associated with the preparation of applications for patent and patent prosecution, development and engineering expenses for product development, expansion of marketing and sales activities and other general corporate and working capital purposes.

(g) Key Man Insurance. The Company will, until consummation of a Qualified Public Offering, use its reasonable best efforts to maintain, at its expense, "key man" life insurance insuring the life of Joseph F. Pinkerton, III and designating the Company as the beneficiary of a death benefit of at least $2,000,000. Joseph F. Pinkerton, III is in satisfactory health and the Company and Joseph F. Pinkerton, III are not aware of any condition that would prevent the Company from obtaining such life insurance at normally prevailing rates for persons in good health.

(h) Conduct of Business. Unless otherwise approved by the unanimous vote or consent of all directors then serving on the Company's Board of Directors, prior to a Qualified Public Offering, the Company will engage only in businesses relating to the development, research, marketing, distribution and sales of proprietary technologies, and products based on such technologies, utilizing magnetic forces and energy conversion processes.

(i) Section 1202. As of and immediately following the date hereof, the Company meets all of the requirements for qualification as a "qualified small business" set forth in Section 1202(d) of the Internal Revenue Code of 1986, as amended (the "Code"), including without limitation the following: (1) the Company will be a domestic C corporation and (2) the Company's (and any predecessor's) aggregate gross assets, as defined by Code Section 1202(d)(2), at no time between August 10, 1983 through the date hereof, have exceeded $50.0 million, taking into account the assets of any corporation required to be aggregated with the Company in accordance with Code Section 1202(d)(3). In addition, the Company has not made any purchases of its own stock described in Code Section 1202(c)(3)(B) during the one year period preceding the date hereof. Finally, as of the date hereof, the Company is an eligible corporation, as defined by Code Section 1202(e)(4), and the Company hereby agrees that it shall continue to do the following:

(i) use its reasonable best efforts to comply with the reporting and record keeping requirements of Section 1202 of the Code and any regulations promulgated thereunder;

(ii) use its reasonable best efforts to provide the Investors with notice at least ten (10) business days prior to taking any of the following actions:

A. Within the two-year period ending one year from the date hereof, purchase an amount of its own stock (within the meaning of Section 1202(c)(3) of the Code) having an aggregate value at the time(s) of purchase exceeding five percent of the aggregate value of all of its outstanding stock determined as of the start of such period;

B. Conduct any of the following businesses (as defined for purposes of Section 1202(e)(3) of the Code):

(1) any business involving the performance of services in the fields of law, accounting, actuarial science, performing arts, athletics, or brokerage services;

(2) any banking or insurance business;

(3) any farming business (including the business of raising or harvesting trees);

(4) any business involving the production or extraction of natural resources with respect to which a deduction is allowable under Section 613 or 613A of the Code; or

(5) any business of operating a hotel, motel, restaurant or similar establishment;

(iii) Knowingly permit more than 10 percent (10%) of the value of its assets to consist of stock issued by other companies (other than stock of companies that qualify as subsidiaries of the Company within the meaning of Section 1202(e)(5) of the Code or stock that is held as working capital or reasonably expected to be sold within two years to finance research and experimentation within the meaning of Section 1202(e)(6) of the Code);

(iv) Knowingly permit more than 10 percent (10%) of the value of its assets to consist of real property which is not used in the active conduct of a qualified trade or business within the meaning of Section 1202(e)(7) of the Code;

(v) Make an election under Section 936 of the Code (relating to the Puerto Rico and possessions tax credit) or permit a subsidiary to make such an election; or

(vi) In a single transaction or series of related transactions, raise capital of more than $1 million through the issuance of securities or the incurrence of indebtedness if such transaction or series of related transactions likely would cause the Company to fail to satisfy the active business requirement set forth in Section 1202(e)(1) of the Code by virtue of holding excess cash or investment assets.

For purposes of the foregoing, any valuation or other determination (including, without limitation, a determination that a specific course of action does not constitute the conduct of a business described in subsection (i), (ii) or (iii) above) made by the Company's Board of Directors in good faith or for which there was, at the time made, a reasonable basis in law or fact shall be conclusive.

(j) The Company shall require all Directors, officers, consultants and employees of the Company to execute and deliver a proprietary information and inventions assignment agreement.

(k) The Company shall operate in a manner such that it will not become a "United States real property holding corporation" ("USRPHC") as that term is defined in Section 897(c)(2) of the Code, and the regulations promulgated thereunder. The Company agrees to

make determinations as to its status as a USRPHC, and will file statements concerning those determinations with the Internal Revenue Service, in the manner and at the times required under Treas. Reg. (S) 1.897-2(h), or any supplementary or successor provision thereto. Within thirty (30) days of a request from an Investor or any of its partners, shareholders, members or affiliates, the Company will inform the requesting party, in the manner set forth in Treas. Reg. (S) 1.897-2(h)(1)(iv), or any supplementary or successor provision thereto, whether that party's interest in the Company constitutes a United States real property interest (within the meaning of Section 897(c)(1) of the Code, and the regulations promulgated thereunder) and whether the Company has provided to the Internal Revenue Service all required notices as to its USRPHC status.

Section 2.2 Negative Covenants.

(a) Negative Covenants Generally. Until the effective date of a Qualified Public Offering, or for so long as at least 200,000 shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock are outstanding, the Company further covenants and agrees with the Investors that it will not, without the prior authorization of at least a majority (or such higher percentage required in the Company's Articles of Incorporation, Bylaws or the Texas Business Corporation Act, or other agreement by which the parties hereto may be bound) of the holders of outstanding shares entitled to vote on such matters of each of (1) the Common Stock, voting as a single class, and (2) the outstanding Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Underlying Shares then held by the Investors and each Qualified Holder, voting as single class, do any of the following:

(i) Declare or pay any dividends on Common Stock or 1992 Preferred Stock, or repurchase, redeem or offer to acquire any of its Preferred Stock or Common Stock (except for buy-backs under employee stock purchase plans, the exercise of put rights as provided in the Warrants, the redemptions contemplated by the Articles of Incorporation, or the Company's right to repurchase certain shares of Common Stock as set forth in the Prior Restated Agreement);

(ii) Make any loans or advances to employees, except in the ordinary course of business as part of travel advances or salary (except that promissory notes for purchase of shares shall be permitted without any such consent);

(iii) Make or enter into any guarantees except in ordinary course of business; or

(iv) Own, or permit any subsidiary of the Company to own, any stock or other securities of any corporation, partnership or other entity unless it is wholly owned by the Company or another such subsidiary;

(v) Issue any shares of its capital stock, any warrants, options or other rights to purchase such shares or any securities convertible into or exchangeable for such shares, except in the following circumstances:

A. as a dividend or distribution payable pro rata to all shareholders;

B. issuances of shares of Common Stock pursuant to the conversion of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock or upon exercise of the Warrants;

C. issuances of not in excess of an aggregate of 1,260,000 shares of Common Stock to employees, officers, directors or consultants of the Company upon the exercise of options granted by the Company pursuant to the 1993 Plan with the approval of the Board of Directors of the Company or a duly appointed committee thereof;

D. issuances of shares of Common Stock pursuant to warrants issued to ECT Merchant Investments Corp. or its affiliates, Stephens Group, Inc. or its affiliates, or General Electric Corporation or its affiliates in connection with certain strategic relationships entered into in connection with the Series E Preferred Stock financing; or

E. an issuance for cash (other than as described in clauses (B), (C) and (D) above) or marketable securities, provided that prior to such issuance:

(1) The Company shall have first offered such securities to each Qualified Holder in the manner provided below;

(2) The Company shall have given to each such Qualified Holder written notice stating the name and address of the proposed Investor and the principal terms and conditions of such offer, which notice will contain an offer by the Company to sell to each such Qualified Holder that portion of the securities to be issued that reflects the same proportionate interest of each such Qualified Holder's interest in the Company's outstanding Common Stock (assuming the conversion of all shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock), at the same price and upon the same terms that such securities are proposed to be issued to others;

(3) Each such Qualified Holder shall, within fifteen (15) days of receiving such notice, have mailed or otherwise delivered to the Company written notice indicating its intention to purchase the securities offered to it. In the event that any such holder elects to purchase the securities offered to it, the consideration therefor shall be paid to the Company and validly issued stock or other securities shall be delivered to such holder on or before noon on the fifth day (or next succeeding business day) after the receipt by the Company of all such notices of election to purchase. If such a Qualified Holder has not notified the Company (the "Under Subscribing Holder") of its intent to purchase all of the securities offered to it by the expiration of the 15-day period described in the first sentence of this subparagraph (3), the Company shall immediately notify the subscribers that have elected to purchase all of the securities offered to them, and each such subscriber shall have the option to purchase, until the expiration of ten days following the expiration of such 15-day period, its pro rata portion of the shares or other securities not so purchased by the Under Subscribing Holder. Any shares or other securities not purchased by the Qualified Holders may be sold by the Company to others on the terms and conditions identified in the notice delivered pursuant to subparagraph (2) above for a period of forty-five days following the expiration of the 15-day period described in the first sentence of this subparagraph (3).

(vi) increase the authorized number of the shares of its capital stock; or

(vii) except to the extent that all such indebtedness or obligations with respect to such indebtedness do not exceed $250,000 in the aggregate (A) create or assume any long-term debt (including obligations in respect of capital leases or, except in the ordinary course of business under existing lines of credit, create, incur or assume any short-term debt for borrowed money, or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other person, except in the ordinary course of business and consistent with past practice; provided, however, this limitation shall not apply to the incurrence of indebtedness in the manner provided in clauses (A) and (B) above if (1) the proceeds of such borrowing are used to finance working capital requirements of the Company or capital asset acquisitions for use in the Company's then permitted lines of business, or (2) the incurrence of such indebtedness is approved by at least two-thirds of the members of the Board.

(b) Negative Covenants with Respect to Preferred Stock. So long as at least 100,000 shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock are outstanding, the Company further covenants and agrees with the Investors that it will not, without the prior authorization of at least a majority of the outstanding shares of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series E Preferred Stock, together with any outstanding Underlying Shares, voting collectively as a single class and entitled to vote on such matters (or such higher percentage as required in the Company's Articles of Incorporation or Bylaws or the Texas Business Corporation Act, or in any other agreement or state corporation law by which the Company and the holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Underlying Shares may be bound), do any of the following:

(i) make any change in its Articles of Incorporation or Bylaws which alters, changes or amends the preferences, rights or privileges of the holders of the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock; provided, that any such change which would adversely affect the rights of the holders of any individual series of Preferred Stock, or otherwise require the vote of a single series of Preferred Stock under applicable law, shall in addition require the consent of a majority in interest (or such higher percentage as may be required by law) of the holders of such class of Preferred Stock;

(ii) create any class or series of equity security with rights which are prior or preferential to or which ranks pari passu to the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock or Series E Preferred Stock; or

(iii) change the number of members of Board of Directors or the procedures for electing directors, whether by amendment to its Bylaws or otherwise.

ARTICLE III

MISCELLANEOUS

Section 3.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Registrable Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Section 3.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to conflicts of laws principles, unless the Company reincorporates in Delaware (or another state), in which case the law of the State of Delaware (or such other state) shall apply.

Section 3.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 3.4 Titles and Subtitles.

The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 3.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by commercial delivery service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with confirmation of receipt) to the parties at the address for each party set forth beneath each party's as follows (or at such other address for a party as shall be specified by like notice):

(i) if to the Company:

Active Power, Inc.
11525 Stonehollow Drive
Suite 135
Austin, Texas 78758
Attention: Mr. Joseph F. Pinkerton, III
Fax: (512) 836-4511

with a copy to:

Brobeck, Phleger & Harrison LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701

Attn: J. Matthew Lyons, Esq.
Fax: (512) 477-5813

(ii) if to Key Management:

Addressed to the appropriate person c/o the Company.

(iii) if to the Investors:

At the address set forth on Schedule B hereto.

(iv) if to the Common Shareholders, the Independent Series A Holders or the Series D Preferred Shareholders:

At the most recent address on the Company's books with respect to such Common Shareholder, Independent Series A Holder or Series D Preferred Shareholder.

Notice given by personal delivery, courier service or mail shall be effective upon actual receipt. Notice given by telecopier shall be confirmed by appropriate answer back and shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Any party may change any address to which notice is to be given to it by giving notice as provided above of such change of address.

Section 3.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

Section 3.7 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the holders of at least a majority of the Registrable Securities then outstanding; provided, however, that (i) the registration rights of the holders of any individual class of Preferred Stock, Common Shareholders or Key Management, as the case may be, and (ii) this proviso may not be amended without the consent of (x) in the case of an amendment affecting an individual class of Preferred Stock, the holders of a majority of the outstanding shares of such class of Preferred Stock and Underlying Shares with respect to such class of Preferred Stock or (y) in the case of an amendment with respect to Common Shareholders or Key Management, the holders of a majority of the outstanding shares held by Common Shareholders and Key Management. Any amendment or waiver effected in accordance with this Section shall be binding upon each holder of any Registrable Securities then outstanding, each future holder of all such Registrable Securities and the Company.

Section 3.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement

and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

Section 3.9 Aggregation of Stock. All shares of Registrable Securities held or acquired by affiliated entities or persons shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

Section 3.10 Entire Agreement; No Waiver. This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and does hereby supersede the Previous Agreement. No course of dealing between or among the parties hereto or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any such party.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Investors' Rights Agreement as of the date first above written.

COMPANY:

ACTIVE POWER, INC.

By:/s/ Joseph F. Pinkerton, III
Joseph F. Pinkerton, III
President

INVESTORS:

STEPHENS-ACTIVE POWER, LLC

By: Stephens Group, Inc.
As Manager

By: /s/ Jackson Farrow, Jr.
Name: Jackson Farrow, Jr.
Title: Vice-President

ECT MERCHANT INVESTMENTS CORP.

By: /s/ Stephen Horn
Name: Stephen Horn
Title: Vice-President

RHO MANAGEMENT TRUST I

By: Rho Management Company, Inc.
As Investment Advisor

By: /s/ Joshua Ruch
Name: Joshua Ruch
Title: President and CEO

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

CENTERPOINT VENTURE FUND II, L.P.

By: CENTERPOINT ASSOCIATES II, L.P.
its General Partner

By: CENTERPOINT ASSOCIATES

MANAGEMENT II, L.L.C.
its General Partner

By: /s/ Robert J. Paluck
Robert J. Paluck
Managing Member

SSM VENTURE PARTNERS, L.P.

By: SSM I, L.P., its General Partner

By: SSM Corporation, its General Partner

By: /s/ Wm. F. Harrison
Name: William F. Harrison
Vice President

SSM VENTURE PARTNERS II, L.P.

By: SSM II, L.P., its General Partner

By: SSM Corporation, its General Partner

By: /s/ Wm. F. Harrison
Name: William F. Harrison
Vice President

SSM VENTURE ASSOCIATES, L.P.

By: SSM II, L.P., its General Partner

By: SSM Corporation, its General Partner

By: /s/ Wm. F. Harrison

Vice President

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT]

AUSTIN VENTURES IV-A, L.P.

By: AV Partners IV, L.P., its General Partner

By: /s/ John D. Thornton
John D. Thornton
Authorized Signatory

AUSTIN VENTURES IV-B, L.P.

By: AV Partners IV, L.P., its General Partner

By: /s/ John D. Thornton
John D. Thornton
Authorized Signatory

ADWEST LIMITED PARTNERSHIP

By: Advent International Partnership, its
General Partner

By: Advent International Corporation, its
General Partner

By: /s/ Lindsay R. Jones
Lindsay R. Jones
Vice President

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT]

ENVIROTECH INVESTMENT FUND I LIMITED PARTNERSHIP

By: Advent International Limited Partnership, its
General Partner

By: Advent International Corporation, its
General Partner

By: /s/ Lindsay R. Jones
Lindsay R. Jones
Vice President

ADVENT INTERNATIONAL INVESTORS II LIMITED
PARTNERSHIP

By: Advent International Corporation, its
General Partner

By: /s/ Lindsay R. Jones
Lindsay R. Jones
Vice President

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED
INVESTORS' RIGHTS AGREEMENT]

KEY MANAGEMENT:

/s/ Joseph F. Pinkerton, III
Joseph F. Pinkerton, III

/s/ David B. Clifton
David B. Clifton

/s/ Bryan B. Plater
Bryan B. Plater

/s/ Eric L. Jones
Eric L. Jones

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

[signature block for individuals:]

____
Print Name:____________________________
Number and class of Shares:____________

[signature block for entities:]

____
[print name of entity in the line above]

By:____________________________________
Name:__________________________________
Title:_________________________________
Number and class of Shares:____________

[SIGNATURE PAGE TO SECOND AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT]

Schedule A

Key Management

Joseph F. Pinkerton, III
David B. Clifton
Bryan B. Plater
Eric L. Jones

Schedule B

Investors

Stephens-Active Power, LLC
111 Center Street
Suite 2500
Little Rock, Arkansas 72201-4430
Attention Mr. Robert Janes
Fax: (501) 377-8027

with a copy to:
Stephens Group, Inc. (Legal)
111 Center Street
Suite 2500
Little Rock, Arkansas 72201-4430
Attention Mr. Jackson Farrow

ECT Merchant Investments Corp.
c/o Enron Corporation
1400 Smith Street
Houston, Texas 77002-9140
Attention: Mr. Robert Greer
Fax: (713) 646-4043

Rho Management Trust I
c/o Rho Management
767 5/th/ Avenue, 43/rd/ Floor
New York, New York 10153
Attn: Ms. Danielle Bodor
Fax: (212) 751-3613

with a copy to:
Rho Management (Legal)
888 7/th/ Avenue, Suite 4500
New York, New York 10019
Attn: Gregory Todd, Esq.

Austin Ventures IV-A, L.P.
Austin Ventures IV-B, L.P.
1300 Norwood Tower
114 West Seventh Street
Austin, Texas 78701
Attn: Mr. John D. Thornton
Fax: (512) 476-3952

SSM Venture Partners, L.P.
SSM Venture Partners II, L.P.
SSM Venture Associates, L.P.
845 Crossover Lane, Suite 140
Memphis, Tennessee 38117
Attn: Mr. Bill Harrison
Fax: (910) 767-1135

with a copy to:
SSM Venture Partners, L.P.
11525 Stonehollow Dr.,
Suite 135
Austin, Texas 78758
Attn: Mr. Eric L. Jones
Fax: (512) 836-4511

Adwest Limited Partnership
EnviroTech Investment Fund I
  Limited Partnership
Advent International Investors II
  Limited Partnership
c/o Advent International
  Corporation
101 Federal Street
Boston, Massachusetts 02110
Attn: Ms. Lindsay R. Jones
Fax: (617) 951-0566

CenterPoint Venture Fund, L.P.
Two Galleria Tower
Suite 1670
13455 Noel Rd.
Dallas, Texas 75240
Attn: Mr. Terrence L. Rock
Mr. Robert J. Paluck
Fax: (972) 702-1103

Schedule C

Independent Series A Holders

Richard Hill
Stan Erwin
David D. Plater
Gary Farmer
Stuart M. Benjamin
Edward W. Benjamin
Succession of Richard B. Montgomery, Jr.
McGrede Partnership
TX/AR MBT Joint Venture
Winston-Brookview MBT JV
KCR Family Limited Partnership
K&E Partnership
SHWMM Partnership
Richard A. Houstoun
Huneke Family Trust U/D/T
W. Allen Custard III

Schedule D

Series D Preferred Shareholders

Benjamin Rosen
L.J. Sevin
Harvey B. Cash
Thomas H. Aschenbrenner
John V. Jaggers
Dennis J. Gorman
Steven J. Wallach
W. Scott Hendrick
Dietrich Erdman
Jan E. Lindelow
Robert B. Palmer

Schedule E

Common Shareholders

Richard E. Anderson
C.A. Anderson Family, L.P.
Robert I. Bogin
Vicki Covert Buchanan
Hill Financial Ltd. Partnership
D. Kent Lance
Hal E. Puthoff
The Walter R. Johnson and Hollyce R. Johnson Revocable Living Trust Agreement
John M. Meadows
John Gray
Jody Frank
Stan Erwin
Andrew Mohr
David D. Plater
Gary Farmer
Stogie Investments
Donna Reisenbigler
Robert Buchanan
Stuart M. Benjamin
Edward W. Benjamin
Charles and Betty Moreton Family Trust
W. J. McAnelly, Jr.
H. H. Prewett
Walter C. Flower III
Krasna B. Vojkovich
Succession of Richard B. Montgomery, Jr.
Elizabeth F. Dumas
Kleinfeld Family Irrevocable Trust #1
Ira Zucker
Mark B. Kleinfeld
Russell G. Bogin
Richard O. Bogin
Robert S. Valenstein
Isaac Luski
Scott R. Little
David Wehrlen (transferee of Joseph F. Pinkerton, III)

EXHIBIT 10.5

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement dated May 6, 1996 (the "Agreement") is made and entered into by and between Magnetic Bearing Technologies, Inc., a Texas corporation (the "Company"), and Eric L. Jones ("Consultant").

1. Term of the Agreement. The Company hereby engages Consultant to perform certain consulting services described herein, and Consultant hereby accepts such engagement with the Company for an initial term of one year, commencing on the date hereof (the "Initial Term"). Upon the expiration of the Initial Term, unless either party shall have given the other notice of its intent to terminate the Agreement in the manner provided in Section 6, the Agreement shall renew and extend for successive one month terms until terminated in the manner provided in Section 6.

2. Duties and Obligations.

a. Consultant initially shall be Chairman of the Board of Directors of the Company (the "Board") and shall have such powers and duties customarily associated with his position as a member of the Board. In his capacity as a consultant and as Chairman of the Board, Consultant shall advise the Company with respect to general corporate strategy, as well as, but not limited to, finance, budgeting, marketing, administration, acquisitions and corporate partnering.

b. During the term of this Agreement, Consultant shall devote an average of approximately ten hours per week to the provision of services hereunder.

c. Consultant currently is subject to a Proprietary Information and Nondisclosure Agreement with the Company and agrees to remain subject to such agreement or to such other similar agreement as the Company and Consultant may later agree during the term of the Agreement.

3. Compensation. As partial compensation for the services of Consultant, during the Initial term, the Company shall pay to Consultant a fee of $6,250 per month (prorated for any partial month in which services are rendered), resulting in a fee of $75,000 during the Initial Term. Compensation for additional terms during which this Agreement is in effect shall be agreed to by Consultant and the Company's Board of Directors.

4. Equity Interest in the Company. As additional compensation for the services of Consultant, Consultant shall be granted, concurrent with the execution of this Agreement, options to purchase 50,000 shares of the Company's Common Stock at an exercise price of $0.40 per share, which options shall be governed exclusively by the Stock Option Agreement substantially in the form attached hereto as Exhibit A (the "Option Agreement").

Any subsequent option grants to Consultant, in his capacity as consultant or otherwise, shall be at the discretion of the Board of Directors.

5. Expenses. The Company shall promptly reimburse Consultant for all reasonable out-of-pocket expenses incurred in connection with the provisions of consulting services to the Company, including costs Consultant incurs in attending Board meetings. Consultant shall provide the Company with monthly invoices detailing expense reimbursements which Consultant believes are due under this Agreement, and shall itemize and provide receipts for expenses upon request.

6. Termination of Consulting Services. Consultant may terminate this Agreement at any time, including during the Initial Term, by delivery to the Company of 30 days prior notice. During any period in which the Agreement is in effect, including the Initial Term, the Company may terminate this Agreement for "Cause." After the Initial Term, either party may terminate the Agreement upon 30 days prior notice. For purposes of this Agreement, "Cause" shall mean any of the following: gross misconduct or acts of commission or omission that involve a conviction for fraud, embezzlement or misappropriation of any property or proprietary information of the Company.

7. Miscellaneous.

a. Independent Contractor. Consultant is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to, workers' compensation insurance, if any be required.

b. Governing Law. This Agreement shall be interpreted, construed, governed and enforced according to the laws of the State of Texas.

c. Severability. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

d. Successors and Assigns. The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company. Consultant shall not be entitled to assign any of his rights or obligations under this Agreement.

e. Entire Agreement. This Agreement, together with the Stock Option Agreement and the Proprietary Information and Nondisclosure Agreement, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be amended or modified only pursuant to a writing signed by Consultant and an authorized representative of the Company.

f. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by U.S. mail, certified and postage prepaid, by overnight courier or by hand delivery at the address set forth below such party's name on the signature page hereto. Any notice shall be deemed to have been received at the time

it is delivered. Notice of change of address shall also be governed by this section or may be delivered by first-class mail or by facsimile.

g. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Consulting Services Agreement as of the date set forth above.

CONSULTANT

/s/ ERIC L. JONES

Eric L. Jones

10528 Glass Mountain Trail
Austin, TX 78750
Fax: 512.258.9433

MAGNETIC BEARING TECHNOLOGIES, INC.

By: /S/ Joseph F. Pinkerton, III

Joseph F. Pinkerton, III
President

11525 Stonehollow Drive, Suite 135
Austin, TX 78758
Fax: 512.836.4511

EXHIBIT 10.6

PHASE II DEVELOPMENT AND PHASE III FEASIBILITY STUDY AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is effective as of January 22, 1999, ("Effective Date") by and between Active Power, 11525 Stonehollow Drive, Suite 135, Austin, Texas 78758 ("ACTIVE POWER") and Caterpillar Inc., 100 N.E. Adams Street, Peoria, Illinois 61629-6490 ("CATERPILLAR").

1. DEFINITIONS

For purposes of this AGREEMENT, the following definitions shall apply:

a) "AFFILIATE" means any company, corporation, partnership or other business entity which is more than fifty percent (50%) or more owned, directly or indirectly, by a party to this AGREEMENT.

b) "BACKGROUND INTELLECTUAL PROPERTY" shall be all INTELLECTUAL PROPERTY incorporated into the PHASE II PRODUCT other than that which is defined as PROGRAM INTELLECTUAL PROPERTY.

c) "FIELD OF USE" shall mean earth-moving equipment, construction equipment, mining equipment, forestry equipment, engines, engine generator sets, agricultural equipment, paving equipment, components for all such equipment and all reasonable extensions thereof which are mutually agreed in writing by the parties hereto.

d) "INTELLECTUAL PROPERTY" includes, without limitation, inventions, whether or not patentable, copyrights, computer software and accompanying documentation, specifications, know how and original works of authorship. INTELLECTUAL PROPERTY includes PROPRIETARY INFORMATION.

e) "PROGRAM INTELLECTUAL PROPERTY" means INTELLECTUAL PROPERTY that is created, made, conceived or reduced to practice in performance of work under the PROGRAM with respect to UPS electronics (identified as such in Exhibit E) or UPS packaging.

f) "PROGRAM" shall mean the efforts of CATERPILLAR or ACTIVE POWER to develop PHASE II PRODUCTS.

2. PROGRAM

CATERPILLAR and ACTIVE POWER have agreed to a PHASE I program under a separate agreement governing the purchase of certain PHASE I products. This Agreement governs Phase II development and preliminary Phase III discussions. Notwithstanding anything contained in this Agreement and subject to the restrictions in the PHASE I Purchase Agreement, nothing contained herein shall preclude ACTIVE POWER from selling or otherwise disposing of ACTIVE POWER'S CleanSource flywheel energy storage system.

a) PHASE II

(i) The parties shall cooperate to develop a PHASE II PRODUCT which shall include an industrial duty uninterruptible power supply ("UPS") and a CleanSource flywheel. The PHASE II PRODUCT specification and requirements are detailed in Exhibit A ("Specifications").

(ii) The parties will cooperate with one another to design, develop and test the PHASE II PRODUCT for possible use with CATERPILLAR generator sets. ACTIVE POWER will make one prototype that conforms with the Specifications. If the parties mutually agree on any changes to the Specifications during the development process, such changes shall be incorporated into the Specifications and be attached to,and become part of, this Agreement. The parties will test this prototype, at a mutually, reasonably agreed upon site, for compliance with the Specifications (except for the Specification relating to reliability target) stated in Exhibit A. Each party will document and report to the other party the results of such tests performed on such prototype together with any comments concerning design changes, further development, and the like. CATERPILLAR will accept or reject the PHASE II PRODUCT prototype within thirty (30) calendar days after testing begins at the site selected by CATERPILLAR (however, if CATERPILLAR fails to indicate a testing location within sixty (60) days after ACTIVE POWER has completed Milestone 2 (as set forth in Exhibit C), the testing site shall be ACTIVE POWER's site in Austin Texas); failure to give notice of acceptance or rejection will constitute acceptance. CATERPILLAR may reject the PHASE II PRODUCT only if it fails in some respect to meet the Specifications (except for the Specification relating to reliability target) stated in Exhibit A. If CATERPILLAR properly rejects the PHASE II PRODUCT, ACTIVE POWER may correct the failures and when it believes that it has made the necessary corrections and has notified CATERPILLAR, the parties will again test the PHASE II prototype and the acceptance/rejection/correction provisions above shall be reapplied until the PHASE II PRODUCT is accepted; provided, however, if a correction to a deliverable that is rejected by CATERPILLAR for failure to meet a Specification (except for the Specification relating to reliability target) set forth in Exhibit A is not accepted, Caterpillar may terminate this Agreement. The day on which CATERPILLAR accepts the PHASE II PRODUCT shall be deemed the "Acceptance Date". After the Acceptance Date, CATERPILLAR may purchase additional prototypes at a price per prototype defined by the pricing for Phase II Product in Exhibit B. Any prototypes shall be provided to CATERPILLAR on an "AS IS" basis.

(iii) Within ninety (90) days following the Acceptance Date, CATERPILLAR shall have the option of purchasing such PHASE II PRODUCTS pursuant to the provisions of the Phase II Purchase Agreement Terms and Conditions ("Phase II Purchase Option") as specified in Exhibit B hereto. In the event of conflict between this Agreement and the Phase II Purchase Agreement Terms and Conditions, this Agreement shall control. Caterpillar may exercise such Phase II Purchase Option by providing written notice to Active Power of such exercise within the aforesaid 90 day period. ACTIVE POWER will cooperate with CATERPILLAR during reliability testing to meet the reliability targets.

b) PHASE III

(i) CATERPILLAR and ACTIVE POWER will negotiate reasonably and in good faith towards a PHASE III development program ("PHASE III PROGRAM"), which presently contemplates the activities specified below in paragraph 2(b)(iii).

(ii) CATERPILLAR and ACTIVE POWER may agree to jointly fund any PHASE III PROGRAM.

(iii) The PHASE III PROGRAM development will include a jointly completed feasibility study [****] that is based on the PHASE II PROGRAM developments, ACTIVE POWER's flywheel technology, and CATERPILLAR's knowledge of the generator set market. The parties will also explore other opportunities for application of the PHASE II PRODUCT and opportunities for further joint development efforts to expand the PHASE II PRODUCT's capabilities. The study will identify the scope

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of the market opportunity, required resources, technical risk, and an initial application. [****] It is envisioned that the feasibility study will provide ACTIVE POWER and CATERPILLAR with necessary information to complete a long-term [****] alliance agreement.

3. PHASE II COSTS

a) Unless otherwise stated in this Agreement or later mutually agreed to in writing specifically referencing this Agreement, each party will bear its own costs incurred in the PROGRAM.

b) Caterpillar agrees to pay Active Power for co-ownership of PROGRAM INTELLECTUAL PROPERTY the sum of $5,000,000 (five million dollars). The payments shall be made in installments, each installment being due and payable upon the objective satisfaction of each of the five milestones in the payment schedule listed in Exhibit C ("Payment Milestones"). Other than the payments specified above, Caterpillar shall not be responsible for any other payments or funding, and Active Power shall bear all its costs for participating in this Program, or any part thereof. Caterpillar shall bear its own costs for participating in this program, or any part thereof.

c) Upon receipt of ACTIVE POWER'S correct itemized invoice(s) and after objective satisfaction of each Milestone, CATERPILLAR will pay ACTIVE POWER in accordance with such invoice.

4. CONFIDENTIALITY

a) In connection with work under this Agreement, a party ("TRANSMITTING PARTY") may deliver PROPRIETARY INFORMATION relating directly to the PHASE II or PHASE III development to the other party ("RECEIVING PARTY"). The RECEIVING PARTY may not use the PROPRIETARY INFORMATION except for work performed according to this Agreement, will protect the confidentiality of the PROPRIETARY INFORMATION with at least the same degree of care as it protects its own confidential information and will not disclose any such PROPRIETARY INFORMATION, without the express written consent of the TRANSMITTING PARTY. "PROPRIETARY INFORMATION" includes any process, system, formula, pattern, model, device compilation, or other information: (i) not known by the RECEIVING PARTY prior to this Agreement or known by the RECEIVING PARTY prior to this Agreement but having restriction on its use or disclosure; and (ii) not generally known by others (unless so know through some fault of the RECEIVING PARTY). PROPRIETARY INFORMATION does not include knowledge, skills or information which is generally known in ACTIVE POWER's or CATERPILLAR's trade or profession.

b) Each party agrees that it will neither (i) disclose to the other party or any of its employees information in confidence belonging to a third party; nor (ii) knowingly in the performance of the work hereunder produce anything that embodies information under confidential restriction, or is covered by a patent, patent application, copyright, trade secret, or other intellectual property right owned by a third party.

c) Nothing in this Agreement shall be construed as preventing either party from independent development, provided that PROPRIETARY INFORMATION is handled in accordance with paragraph 4(a).

d) Should the RECEIVING PARTY be required to disclose PROPRIETARY INFORMATION by governmental or judicial order, the RECEIVING PARTY will give the TRANSMITTING PARTY prompt notice of any such order and will comply with any protective order imposed on such disclosure.

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5. INTELLECTUAL PROPERTY

a) BACKGROUND INTELLECTUAL PROPERTY shall remain the property of the party who created, made, conceived and reduced it to practice.

b) All PROGRAM INTELLECTUAL PROPERTY shall be jointly owned by the parties and may be exploited and/or nonexclusively licensed by either party without further consent or accounting to the other party. With respect to all rights and ownership in such PROGRAM INTELLECTUAL PROPERTY, the parties will mutually discuss whether to obtain or maintain such rights, including without limitation, any patents, trademarks, copyrights, trade secrets, CONFIDENTIAL INFORMATION, and any other proprietary rights therein, and if one refuses to take any such joint action requested by the other, the other may proceed at its own expense; no such action will change the foregoing ownership provision. A party will execute all documents the other may request for such purposes and to otherwise assist the other (at the other's expense) for such purposes.

c) Each of CATERPILLAR and ACTIVE POWER grant to the other party an irrevocable, perpetual, nonexclusive, worldwide, royalty free license (including the right to sublicense to such other party's Affiliates) to make, have made, use, sell and otherwise exploit during and/or after the term of this Agreement any modifications, improvements, inventions, know how, ideas or suggestions made with respect to the other party's Proprietary Information by such party's employees who have had access to such Proprietary Information. If something ceases to be considered Proprietary Information, licenses granted with respect thereto while such information was deemed Proprietary Information, will be unaffected.

d) Except as provided in this Agreement or the Exhibits, nothing in this Agreement shall be construed as a grant of, or agreement to grant, to either party any licenses under intellectual property rights of the other party, regardless of whether they are dominant of or subordinate to those provided herein.

6. LICENSING JOINTLY OWNED INTELLECTUAL PROPERTY

a) Unless otherwise agreed to by the parties, all licensing revenues generated by licensing PROGRAM INTELLECTUAL PROPERTY to third parties shall be retained by the licensor of such PROGRAM INTELLECTUAL PROPERTY.

b) In the event that one party chooses to enforce PROGRAM INTELLECTUAL PROPERTY rights against a third party, the other party shall be given the opportunity to join in such enforcement prior to its commencement and in the event the other party chooses to join, both parties shall equally share all costs, including attorneys' fees and share equally all revenues generated by the enforcement, including licensing fees, if any. If the other party chooses not to join such enforcement, such party shall nevertheless reasonably cooperate with the one party in such enforcement (at the other party's expense), including joining as a nominal party subject to indemnification by such party , but will not be entitled to any proceeds of such enforcement activity.

7. NOTICES

All notices and invoices pursuant to this Agreement shall reference this Agreement and be given in writing to the respective party at its address designated below or to such other address as may be substituted in writing by that party to the other. All notices shall be deemed to be fully given and received if sent by registered or certified mail, postage prepaid, return receipt requested.

Notice to ACTIVE POWER:
Active Power
11525 Stonehollow Drive, Suite 135
Austin, Texas 78758

Notices to CATERPILLAR:
Caterpillar Inc.
Intellectual Property Department
Attn: Licensing Division
100 N.E. Adams Street
Peoria, Illinois 61629-6490

Invoices to CATERPILLAR:
Attn: Disbursements Div.
LD235 Mailroom
600 W. Washington Street
East Peoria, Illinois 61630
Pontiac, Illinois 61764

8. INDEMNIFICATION

Each party shall indemnify, defend and hold harmless the other party, its directors, officers, employees and agents, from all third party (including a party's employees) claims, demands, liabilities, loss, damage, and expense, including costs, and reasonable litigation expenses and counsel fees incurred in connection therewith, arising out of injury to or death of any person or damage to property proximately caused by the indemnifying party's gross negligence or willful acts or omissions which arise in connection with the performance of work hereunder while the indemnifying party is on premises of the other party. Such indemnity shall be provided subject to (a) prompt written notifications of any and all such threats, claims, or proceedings related thereto and the other party giving reasonable assistance to the indemnifying party in the defense thereof, (b) the indemnifying party having sole control of the defense and all related settlement negotiations, and (c) such indemnifications shall be limited in the case of real or tangible property to the reduction in value or replacement cost of such property.

9. WARRANTY

Each party warrants its right to enter into this AGREEMENT. Warranties for production units of PHASE II PRODUCTS shall be as set forth in Exhibit B. In addition, any hardware, software or firmware provided by ACTIVE POWER to CATERPILLAR is warranted to accurately process properly formatted date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other hardware, software or firmware used in combination with the hardware, software or firmware being provided by ACTIVE POWER, properly exchanges properly formatted date/time data with it.

10. TERM AND TERMINATION

a) This PROGRAM shall become effective on the Effective Date of this Agreement and shall remain in effect unless terminated in writing by both parties.

b) CATERPILLAR may terminate ACTIVE POWER's work under this Agreement by giving ACTIVE POWER ninety (90) days written notice in which event ACTIVE POWER shall be (i) reimbursed only for work performed and expenses reasonably incurred prior to receipt of such notice and (ii) entitled to immediate payment of the amount associated with the next milestone. In no event shall the total amount paid to ACTIVE POWER exceed the price agreed to herein.

c) Upon termination of this Agreement, Paragraphs 4, 5,6,7, 8, 9, 10, 11, 12, 13, and 14, of this Agreement shall survive.

d) If the Agreement is terminated and upon and in accordance with the written reasonable request of either party (provided such written request is given within a reasonable

period of time after such termination), but except for information covered by the rights granted in Paragraph 5, the other party shall promptly return or destroy any tangible information (including all copies thereof except as noted below) provided under the PROGRAM by the requesting party. However the other party's counsel may retain in a secure location one copy each of such tangible information and use them only for ensuring compliance with the obligations of Paragraph 5.

11. RELATIONSHIP

Nothing herein is to imply an agency, joint venture or partner relationship between the parties.

12. ASSIGNMENT AND GOVERNING LAW

Except to an entity that acquires all or substantially all the business or assets of a party, this Agreement is not assignable by either party without the written consent of the other party, which shall not be unreasonably withheld, and will be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws provisions thereof.

13. ENTIRE UNDERSTANDING

This Agreement and the Exhibits hereto constitute the entire agreement and understanding between the parties with respect to the subject matters herein and therein, and shall supersede and replace any conflicting terms and conditions set forth in any purchase order, prior agreement, quotation, proposal, correspondence, or oral discussion relating to the subject matter hereof. This Agreement may only be amended by a writing signed by both parties which makes specific reference to the provision(s) of this Agreement being modified. Should any provision of this Agreement be held invalid, illegal, or unenforceable, the validity of the remaining provisions shall not be affected by such holding. This AGREEMENT shall be binding upon the heirs, successors, and/or legal representatives of the parties.

14. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR (I) ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT OR (II) CATERPILLAR'S COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

The parties have caused this Agreement to be signed in duplicate by their duly authorized representatives on the Effective Date.

ACTIVE POWER, Inc.	CATERPILLAR INC
By: /s/	By: /s/
Name:______________________	Name:___________________________
Title:_____________________	Title:__________________________
Date:______________________	Date:___________________________

EXHIBIT "A"

SPECIFICATIONS FOR PHASE II PRODUCT

In the event that ACTIVE POWER has developed and includes a CS2 flywheel and associated components in the Prototype, then the Phase II Product shall comply with the following specification entitled CS2-UPS Specification, otherwise the Phase II Product shall comply with the following specification entitled CS1-UPS Specification.

CS1-UPS Specification
12/14/98

Definition

CS1-UPS is a line-interactive UPS that employs Active Power's first generation DC to DC flywheel energy storage system (flywheel system described in US patent 5,731,645).

(i) Ratings

- Maximum discharge time - 300 seconds
- Delivered energy - 3.0 MJ
- Maximum delivered power - 250KW for 12.5 seconds

(ii) Input

- Input voltage - 480Vrms +10%/-20%
- Interface - 3 phase, 4 wire (3 phase plus neutral and ground)
- Input frequency - 45Hz - 66Hz
- Walk-in time - 1 second minimum, variable to up to 15 seconds

(iii) Output

- Nominal output voltage: 480Vrms, matched to utility input +/- 5%
- Interface - 3 phase, 4 wire (3 phase plus neutral and ground)
- Output voltage regulation in Flywheel Mode:
  - +/- 5 % of input nominal, static balanced
  - +/- 5 % of input nominal, static asymmetrical
  - +/- 5 % of input nominal, within 80 ms following 100% step load
- Output voltage harmonic distortion:
  - 5% THD maximum and 3% any single harmonic with 100% linear load
  - 10% THD maximum with 100% non-linear load

(iv) Recharge Time

- Recharge time - 2.5 minutes maximum
- Charge time from 0 RPM - 7.5 minutes maximum
- Adjustable to avoid overloading source
- Duty Cycle: 10% for 5 discharges

(v) Standby Losses

- 3% of rated power

(vi) Temperature rating

- Start-up - 0 to +40C
- Operating - -20 to 40C
- Storage - -25 to +70C

(vii) Humidity

- Relative humidity - 95%, non-condensing

(viii) Barometric Pressure

- Full rating to 3000 feet; reduced by 5% /1000ft above 4000ft

(ix) Vibration

- 5g peak, 30ms pulse duration

(x) Acoustical Noise

- 70 dB, "A" weighting, at 3 feet from system

(xi) Dimensions

- Height 79" maximum
- Width 43" maximum
- Depth 36" maximum

(xii) Floor Loading

- 325 lbs./sq. ft. maximum

(xiii) System Features

- Bi-directional Inverters
- Flywheel energy storage for standby power
- Adjustable load walk-in
- Internal self-diagnostics
- Fault event logging
- Preheat capability

(xiv) Monitoring and Control

- Key switch for system control
- Local EPO (Emergency Power Off)
- LCD display - reports alarms & system state
- Monitor & alarms on critical components
- Programmable setup parameters
- External customer contacts (A-Type) dry contacts {six (6) input and six (6) output
- RS232 or RS485 Serial Connection
- Ethernet Interface

(xv) System Options

- Automatic bypass
- Automatic restart following depletion of stored-energy and restoration of AC source
- Remote monitoring capability
- Internal modem
- Remote EPO (Emergency Power Off)
- Input voltage other than 480VAC using optional external transformer cabinet
- Output voltage other than 480VAC using optional external transformer cabinet

(xvi) System Reliability

The reliability target of .039 failures per 100 hours is to be met with a 75% confidence.

[****]

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[****]

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EXHIBIT "B"

PURCHASE OF PHASE II PRODUCT TERMS AND CONDITIONS

The terms and conditions of the Phase II Purchase Agreement are attached hereto and shall be incorporated herein by reference.

PHASE II PURCHASE AGREEMENT TERMS AND CONDITIONS

1. Products Covered by Agreement. This Agreement concerns the purchase and sale of the PHASE II PRODUCT (hereinafter called "Product"), manufactured to the Specifications.

2. Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, Seller will, to the extent properly and accurately forecasted and ordered by Buyer as provided in the next paragraph, use commercially reasonable efforts to supply the Products to Buyer and Buyer agrees to purchase ninety percent (90%) of Buyer's and its Affiliates ("Affiliate" means any company of which Buyer holds a greater than fifty percent (50%) ownership interest) requirements for an AC to AC flywheel-based UPS product for generator set applications. Seller understands that Buyer makes no guarantee as to the quantity of Product it will require, however, Buyer agrees that it will undertake the Phase II activities set forth on Exhibit A ("Phase II Activities").

Buyer's initial forecasted annual requirements will be attached hereto as Exhibit B as of the Effective Date of this Phase II Purchase Agreement. Such forecast of such requirements provided to Seller by Buyer shall be non-binding and Seller acknowledges that it shall not be entitled to and shall not rely on such forecasts/estimates as binding commitments unless they are expressly stated as such by Buyer in writing. Seller shall not be obligated to supply Buyer with more than one hundred fifty percent (150%) of the initial projection for a particular quarter, unless agreed to in writing. Buyer's forecasts and orders shall reflect its good-faith expectations of customer demand and Buyer shall act in a commercially reasonable manner to schedule orders to avoid creating production capacity problems for Seller.

3. Exclusive Caterpillar Rights. For a period of five years from the Effective Date of this Phase II Purchase Agreement, and provided this Phase II Purchase Agreement has not been terminated, ACTIVE POWER agrees not to license any PROGRAM INTELLECTUAL PROPERTY nor ACTIVE POWER's BACKGROUND INTELLECTUAL PROPERTY that is solely developed for a PHASE II PRODUCT, to [****] Before the end of such five-year period, ACTIVE POWER will, at CATERPILLAR's option, discuss the possibility of a mutually agreeable extension of such FIELD OF USE exclusivity. During such five year period, if any, and provided this Phase II Purchase Agreement has not been terminated, ACTIVE POWER shall, at CATERPILLAR's option and provided that CATERPILLAR [****] However, nothing contained in this Agreement, shall restrict ACTIVE POWER with respect to making, using, selling, marketing, licensing or exploiting its flywheel energy storage systems or technologies.

[****]

4. Price Containment. Both Seller and Buyer are committed to controlling and reducing costs, and both recognize that effective cost control is of the essence to this Agreement, While this Agreement is in effect, Seller will maintain a cost control and reduction program with respect to Product,

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and will review costs on a regular basis for progress toward the objective of maintaining or reducing Seller's prices to Buyer. A constant interaction between Buyer's and Seller's engineering personnel is essential. All documented mutually agreed cost savings, through the efforts of Buyer or Seller, will be shared on a 50-50 basis. Any cost savings gained without the efforts of Buyer and not mutually agreed to in writing will be owned by Seller. Any cost increases must be documented and approved by Buyer.

5. Product Prices. Prices are as shown in Exhibit E. After eighteen months from the Effective date of this Agreement, Exhibit E may be modified from time to time upon sixty (60) days written notice from the Seller; provided, however, that Buyer may terminate this Agreement within thirty(30) days after receipt of notice of such price increase if such increase is unacceptable to Buyer. Seller agrees and acknowledges that should such prices exceed the lowest Product prices provided to any other customer of Seller purchasing Product at similar (or reduced) volume levels and making only similar or reduced commitments (including, but not limited to time commitments), such prices to Buyer shall be automatically adjusted to reflect any lower pricing provided to such other customers.

6. Product Training and Support.

a. In order to provide sufficient warranty support for the Product, Buyer's service training personnel will successfully complete Seller's certified training course in order to become competent to a level equivalent to Seller's certified service technicians. Seller shall provide such training for up to five (5) scheduled classes and for a maximum of ten (10) students per class. Such training shall be given at Seller's facilities free of charge for the first five scheduled classes of the term of this Agreement and at Seller's published prices for any remaining training. Buyer shall be responsible for its own travel expenses as incurred for such training at Seller's facilities.

b. Seller will provide sales and marketing support to Buyer's key dealers, as requested and identified by Buyer. Except as provided below, Seller agrees to provide such support free of charge for three (3) man days per identified dealer up to a maximum amount of thirty (30) man days which shall be the cumulative total available for such dealers. Any dealer support services requested beyond the thirty (30) day limit shall be charged to Buyer at a rate of $1000 per man day. Buyer shall reimburse Seller for any travel expenses for dealer support services requested outside of North America or such expenses beyond the initial thirty (30) man days.

7. Term. The initial term of this Agreement shall be Five (5) years, commencing as of the date of completion of performance tests on Products and shipment of first reliability test machines (the "Effective Date"). This Agreement shall automatically be extended for additional terms of six (6) months each unless either party gives written notice to terminate at least three (3) months prior to the end of the initial term or any additional term, or unless otherwise terminated pursuant to the provisions hereof.

8. Warranty.

a. Seller warrants that each Product shall be in conformity with the Specifications and shall be free from defects in material and workmanship. In addition, any hardware, software or firmware provided by Seller to Buyer is warranted to accurately process properly formatted date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other hardware, software or firmware used in combination with the hardware, software or firmware being provided by Seller, properly exchanges properly formatted date/time data with it.

b. Except as provided below, Seller will provide Buyer with the same warranty, under the same terms and conditions (including without limitation, disclaimers), as Buyer provides to its customers procuring electric power generation products (as attached as Exhibit G); provided, however,

that Seller's warranty to Buyer shall be for a one year period from the date of delivery to the end-user, notwithstanding any longer warranty period in Buyer's warranty. If Buyer performs travel labor (up to four hours), Seller shall reimburse such documented, customary and reasonable expenses incurred by Buyer on behalf of the Product provided such labor is performed by an employee of Buyer or one of its dealers that has been competently trained with respect to the Product. A monthly written statement of Buyer's actual costs for providing warranty services to its customers, including notice of specific Product failures, and summary information on the causes of such failure, will be sent by Buyer to Seller.

c. Within twelve (12) months from the Effective Date of this Agreement, Buyer shall inventory and maintain appropriate spares to provide its standard level of service.

d. Claims for Buyer's "Product Improvement Programs" (PIP), "Product Support Programs" (PSP), "Extended Warranty" and other policy actions are to be negotiated on a case-by-case basis by both parties and documented in writing as signed by both parties. Participation in these programs will be based on an amount mutually agreed to by Seller and Buyer.

THE FOREGOING WARRANTIES SHALL BE SELLER'S SOLE LIABILITY WITH REGARD TO THE PRODUCTS.

9. Indemnification. Except to the extent covered by the indemnity from Buyer below, Seller agrees to indemnify, defend, and hold Buyer harmless against and from all claims, demands, liabilities, loss, damage, cost, and expense, of whatsoever nature paid to a third party or incurred in the defense (i) arising from a claim that the Product infringes an intellectual property right of a third party or (ii) arising from the injury or death of any person or loss or damage to property directly due to, any defect of design, material, or workmanship of Product or failure of Product to conform with the Specifications, provided Seller is promptly notified of any and all such threats, claims or proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Seller shall not be responsible for any settlement it does not approve of in writing. The indemnity provided in this Section shall be Buyer's sole and exclusive remedy for any claim of infringement related to the Product. Buyer agrees to indemnify, defend, and hold Seller harmless against and from all claims, demands, liabilities, loss, damage, cost, and expense, of whatsoever nature paid to a third party or incurred in the defense of a claim arising on account of Buyer's (i) misrepresentation of the Product or providing unauthorized representations or warranties to its customers, (ii) modifications to the Product or (iii) negligence or other fault of products or services of Buyer.

10. Indemnity Restrictions. SELLER MAKES NO WARRANTY OR REPRESENTATION WITH RESPECT TO, (a) determining whether the Product will achieve the results desired by Buyer or any third person, (b) selecting, procuring, installing, operating and maintaining complementary equipment to insure correct operation of the Product, and (c) ensuring the accuracy of any configuration design or implementation that utilizes the Product. In the event of any alteration or attachment to the Product not authorized by Seller, Seller shall have no liability or responsibility to Buyer for: (a) any hardware, software, equipment, or services provided by any persons other than Seller; (b) the proper functioning of the Product if the alteration or attachment is the cause of the malfunction; or (c) damage caused by any alteration or attachment to the Product.

11. Insurance. Seller agrees to keep in full force and effect, at its sole expense, during the term of this Agreement and for a period of ten (10) years thereafter, at least the insurance coverage described below with insurance companies acceptable to Buyer. The limits set forth are minimum limits and shall not be construed to limit Seller's liability. All cost and deductible amounts shall be for the sole account of Seller. All policies required by Buyer pursuant to this Agreement shall name Buyer as an additional insured (per ISO Endorsement #CG 2026 or its equivalent) and waive subrogation rights in favor of Caterpillar. All policies required shall also be designated as primary coverage to any similar coverage carried by Caterpillar.

Seller shall not provide Product hereunder until all insurance as required hereunder has been obtained, and certificates have been submitted to and accepted by Buyer.

The required coverage shall be: Commercial General Liability Insurance (Occurrence Coverage) including products, completed operations, contractual liability coverage of indemnities contained in this contract, with a minimum combined single limit of liability of $5,000,000 for each occurrence for bodily injury and property damage. Such policy shall contain provisions that provide at least thirty (30) days prior written notice of any cancellation, non-renewal, or reduction in coverage to Buyer. Seller shall deliver Certificates of Insurance in a form satisfactory to Buyer evidencing the existence of such policy.

12. Termination by Buyer. Buyer may terminate this Agreement at any time, in the event:

a. Quality - Products consistently and materially fail to meet the Specifications as defined herein or as hereafter agreed to by Buyer and Seller, or fails to achieve status as a Caterpillar certified supplier within twenty-four (24) months of the Effective Date of this Agreement.

b. Delivery - Seller is substantially and continuously failing to meet Buyer's Firm Orders with respect to mutually agreed shipment dates. Seller shall provide to Buyer a written schedule of Seller's standard lead times for delivery of Products from the date Orders are accepted by Seller. Such schedule for lead times shall be updated by Seller on a regular basis to reflect any modifications thereto.

c. Competitiveness - Seller fails to be responsive to the market place or fails to remain competitive on a world-wide basis with other manufacturers of comparable parts in terms of price.

d. Default Generally - Material default by Seller in any material obligation hereunder owed by Seller to Buyer.

Notwithstanding the above, Buyer may terminate pursuant to Subsections (a), (b), (c) or (d) above only if Seller has failed to cure such default within sixty (60) days after written notice thereof has been received by Seller.

13. Termination by Seller. Seller may terminate this Agreement at any time in the event Buyer breaches the Agreement and fails to cure such breach within sixty (60) (or ten days in the case of non-payment) after written notice thereof has been received by Buyer.

14. Licenses. As between the parties, Seller shall own all right, title and interest in and to the Product except as otherwise provided in the "Phase II Development and Phase III Feasibility Study Agreement.". In the event that this Agreement is terminated by Buyer pursuant to Section 12(b) and only while Buyer remains in full compliance with the provisions of this Agreement prior to termination and following termination as such surviving provisions shall apply, Seller hereby grants to Buyer, effective as of such termination date, a nonexclusive, worldwide, royalty bearing license (including the right to sublicense to Buyer's Affiliates) to make, have made, use and/or sell Product. The foregoing license shall only be effective for the 18 months beginning with the date of termination and Buyer shall pay a royalty of one thousand two hundred fifty dollars ($1,250) per delivered megajoule per published rating by Seller for each Product.

Each of Buyer and Seller grant to the other party an irrevocable, perpetual, nonexclusive, worldwide, royalty free license (including the right to sublicense to such other party's Affiliates) to make, have made, use, sell and otherwise exploit during and/or after the term of this Agreement any modifications, improvements, inventions, know how, ideas or suggestions made with respect to the other party's Confidential Information by such party's employees who have had access to such Confidential Information. If something ceases to be considered Confidential Information, licenses granted with respect thereto while such information was deemed Confidential Information, will be unaffected.

15. Parts Support. During the term of this Agreement or following any termination hereof, other than termination by Seller due to a breach by Buyer, Seller shall provide, or at its option cause to be provided, such quantities of parts to Buyer as Buyer may request from time to time for a period of five (5) years from the date of the last customer shipment made by Seller under this Agreement of the applicable Product release, at a price not to exceed Seller's then-current prices provided to other customers under similar terms and conditions, provided such parts are reasonably and commercially available to Seller. If for any reason Seller is unable to provide parts to Buyer pursuant to its obligations under this section 14, Seller grants to Buyer a nonexclusive, perpetual, worldwide royalty bearing license to make, have made, use and/or sell such parts utilizing Seller's proprietary designs. The foregoing license is subject to a royalty of 6% of the applicable price set forth in Seller's most current Catalog Spares Pricing list.

16. Use of Other Supply Sources. Nothing in this Agreement shall prevent Buyer from seeking other sources for alternatives to the Product to the extent Seller's production capacity continuously and substantially fails to meet Buyer's Firm Orders.

17. Change in Ownership and Control. During the life of this Agreement, if there is a change in the ownership and control of either party, the other party shall have the option of terminating this Agreement immediately by giving written notice thereof within ten days of being notified of the occurrence of such change of control; provided that if a party provides advance notice of a bona fide proposed change of control (including the identity of the principal owners after such change of control occurs) the other party will within ten days provide written notification to the first party as to whether it will exercise such termination right if the change of control occurs. For purposes of this Section 17, a change in the ownership and control of either Buyer or Seller or a parent company of either party shall be deemed to have occurred if and only if and when any one or more persons (excluding existing investors) acting in concert individually or jointly is or becomes a beneficial owner, directly or indirectly, of securities representing more than fifty percent (50%) of the combined voting power of all then outstanding securities of Seller or Buyer or the parent company of either party.

18. Shipping Instructions/Terms and Conditions. Orders will be placed under Buyer's blanket purchase order(s). This agreement shall supersede Buyers standard purchase order terms (other than the terms under the following sections: "Work on Buyer's Premises" and "Property Furnished to Seller by Buyer", which terms shall be deemed to be incorporated herein by reference and made a part hereof) or any terms stated in any acknowledgment forms or other forms utilized by Seller or Buyer. Such orders shall specify the quantity, part number and description, unit price, requested ship date, destination, and Buyer's freight carrier and account number with the carrier. Orders shall be subject to acceptance by Seller ("Firm Orders"). No modification to this Agreement will be stated on an order. All Products shall be shipped F.O.B. Seller's facility in Austin, Texas. Title and risk of loss to Product shall pass to Buyer upon delivery to the carrier at the F.O.B. point. Buyer shall designate a carrier. Any special freight charges shall be Seller's responsibility if necessary to meet not more than 115% of Buyer's projected quarterly requirements.

19. Inspection. Product is subject to Buyer's inspection, testing and approval. Buyer, at its option, may reject or refuse to accept any Product which does not meet the requirements of the warranty set forth herein. Buyer's right to reject shall expire one (1) year after the date of shipment. Prior to returning any Product, Buyer shall notify Seller of its intent to reject, and Seller may within thirty (30) days correct any such defect. Items rejected by Buyer will be returned to Seller at Seller's expense, and Seller agrees to refund to Buyer any payments (including but not limited to shipment expense) made by Buyer for such Product. Payment by Buyer for any Product shall not be deemed an acceptance thereof. Acceptance of any Product shall not relieve Seller from any of its obligations, representations or warranties hereunder or with respect thereto.

20. Prices and Payments. Prices set forth in Exhibit E do not include installation, freight and handling charges, or applicable taxes, and Buyer shall be responsible for all such charges and taxes with respect to the Products and the shipment thereof. All payments shall be made by Buyer in accordance

with the terms of Buyer's then-current standard settlement schedule. All payments due hereunder shall be paid to Seller in United States dollars in the United States. Unless Buyer furnishes a proper exemption certificate, Buyer shall be charged for all taxes, however, designated, levied or based on this Agreement or the Product.

21. Force Majeure. Neither Buyer nor Seller shall be liable for any delay in or failure of performance of their respective obligations hereunder if such performance is rendered impossible or impracticable by reason of fire, explosion, earthquake, accident, breakdown, strike, drought, embargo, war, riot, act of God or public enemy, an act of governmental authority, agency or entity, shortage of raw materials, or other contingency, delay, failure or cause, beyond the reasonable control of the part whose performance is affected, irrespective of whether such contingency is specified herein or is presently occurring or anticipated by either party. Upon the occurrence of any event covered by this provision, Seller and Buyer shall make every effort to continue to maintain as much as possible the supplier-customer relationship established under this Agreement. However, in the event Buyer or Seller is unable to meet its obligations hereunder because of the conditions described above and such inability continued for a period of two (2) months, the other party shall have the right to terminate this Agreement upon thirty (30) days prior written notice.

22. Assignment/Applicable Law. Except to an entity that acquires all or substantially all the business or assets of a party, this Agreement is not assignable by either party without the written consent of the other party and will be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws provisions thereof.

23. Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement and understanding between the parties with respect to the subject matters herein and therein, and supersede and replace any prior agreements and understandings whether oral or written, between them with respect to such matters. Any additional or different terms of any related purchase order, confirmation, acknowledgment, shipping instruction form or similar form of Buyer or Seller even if signed by the parties after the date hereof, shall have no force or effect.

24. Waiver. The provisions of this Agreement may waived, altered, amended, or repealed in whole or in part upon the written consent of all parties to this Agreement The waiver by party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

25. Severability. Invalidation of any of the provisions contained herein, or the application of such invalidation of thereof to any person, by legislation, judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes hereof.

26. Counterparts. Section headings contained herein are for ease of reference only and shall not be given substantive effect. This Agreement may be signed in one or more counterparts, each to be effective as an original.

27. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, OR BUYER'S COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

28. Confidential Information.

a. In connection with work under this Agreement, a party ("TRANSMITTING PARTY") may deliver PROPRIETARY INFORMATION relating directly to the business or technology of the other party ("RECEIVING PARTY"). The RECEIVING PARTY may not use the PROPRIETARY INFORMATION except as necessary to perform its obligations under this Agreement, will protect the confidentiality of the PROPRIETARY INFORMATION with at least the same degree of care as it protects its own confidential information and will not disclose any such PROPRIETARY INFORMATION, without the express written consent of the TRANSMITTING PARTY. "PROPRIETARY INFORMATION" includes any process, system, formula, pattern, model, device compilation, or other information: (i) not known by the RECEIVING PARTY prior to this Agreement or known by the RECEIVING PARTY prior to this Agreement but having restriction on its use or disclosure; and (ii) not generally known by others (unless so know through some fault of the RECEIVING PARTY). PROPRIETARY INFORMATION does not include knowledge, skills or information which is generally known in Seller's or Buyer's trade or profession.

b. Each party agrees that it will neither (i) disclose to the other party or any of its employees information in confidence belonging to a third party; nor (ii) knowingly in the performance of the work hereunder produce anything that embodies information under confidential restriction, or is covered by a patent, patent application, copyright, trade secret, or other intellectual property right owned by a third party.

c. Nothing in this Agreement shall be construed as preventing either party from independent development, provided that PROPRIETARY INFORMATION is handled in accordance with paragraph 28(a).

d. Should the RECEIVING PARTY be required to disclose PROPRIETARY INFORMATION by governmental or judicial order, the RECEIVING PARTY will give the TRANSMITTING PARTY prompt notice of any such order and will comply with any protective order imposed on such disclosure.

29. Compliance with Laws. Both parties represent that they have complied, and during the performance of this Agreement will continue to comply, with the provisions of all applicable laws and regulations from which liability may accrue to the other party for any violation thereof.

30. Confidentiality. Except with respect to potential investors and/or acquirers, the terms of this Agreement as well as its existence shall be kept confidential and not disclosed by either party without the express written consent of the other party.

Exhibit "A"

PHASE II MARKETING ACTIVITIES

- Buyer will conduct a product launch with appropriate marketing subsidiaries and dealers.
- Buyer will create appropriate sales binder for above training or launch.
- Buyer will effect pricing and price list literature for the program for all appropriate worldwide marketing subsidiaries and dealers.
- Buyer will announce product to dealers.
- Buyer will effect a Caterpillar Product News announcement.
- Buyer will create product brochures for product promotion.
- Buyer will create product specification sheets.
- Buyer will enter appropriate performance and specifications into its online Technical Marketing Information (TMI) systems.
- Buyer will make adequate technical drawings available to its dealers.
- Buyer will effect a public product announcement of the phase II product that will include reference to the new Caterpillar UPS product and its use of the Active Power flywheel energy storage system.
- Buyer will create a product promotional video.
- Buyer will include the product where appropriate in its marketing/specification software.
- Buyer will promote the product internally to its worldwide marketing subsidiaries.
- Buyer will effect the above in all languages deemed appropriate by Buyer.

Implementation of the foregoing Marketing Activities is dependent upon Buyer receiving adequate product and technical information from Seller

EXHIBIT B

Forecast (to be provided as of the Effective Date)

EXHIBIT "C"

[****]

Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

EXHIBIT "D"

[****]

Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

EXHIBIT "E"

. Prices:

[****]

Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

EXHIBIT "C"

PAYMENT MILESTONES

MILESTONE	PAYMENT	ESTIMATED COMPLETION DATE
1. Phase II agreement signed	$ .5 million	4Q98
1. CS-UPS bench demo at Active Power's Austin facility that meets following performance objectives: . 30 second discharge at 50 kW . flywheel recharges in less than 20 minutes . less than 15% THD on input & output . output voltage regulation plus or minus 10%	$1.0 million	1Q99
3. CS-UPS bench demo at Active Power's Austin facility that meets following performance objectives: . 20 second discharge at 100 kW . flywheel recharges in less than 10 minutes . less than 10% THD on input & output . output voltage regulation plus or minus 5%	$1.5 million	1Q99
4. CS-UPS bench demo at Active Power's Austin facility that meets following performance objectives: . will use production components . single board controller for flywheel & UPS . static switch & contactors operational . 12.5 second discharge at 250 kW . flywheel recharges in less than 5 minutes . less than 5% THD on input & output . output voltage regulation plus or minus 2%	$1 million	2Q99
5. Phase II product meets Exhibit A specifications and first Phase II unit shipped, along with associated production drawings, to Caterpillar.	$1 million	3Q99

EXHIBIT "D"

[****]

Confidential treatment has been requested for the portions of this agreement marked by asterisks. Omitted material for which confidential treatment has been requested has been filed separately with the Securities and Exchange Commission.

EXHIBIT "E"

PICTORIAL DESCRIPTION OF PROGRAM INTELLECTUAL PROPERTY

PHASE II SCHEMATIC

[Graphic of Schematic]

[Description of graphic: The schematic depicts the elements of each party's intellectual property divided between "flywheel and flywheel electronics" and "UPS electronics."]

For the avoidance of doubt, PROGRAM INTELLECTUAL PROPERTY does not include INTELLECTUAL PROPERTY with respect to the fly wheel, fly wheel electronics or flywheel packaging.

Exhibit 10.7

Imperial Bank
Member FDIC

226 Airport Parkway
San Jose, CA 95110

Subject: Credit Terms and Conditions ("Agreement")

Gentlemen:

To induce you to make loans to the undersigned (herein called "Borrower"), and in consideration of any loan or loans you, in your sole discretion, may make to Borrower, Borrower warrants and agrees as follows:

A. Borrower represents and warrants that:

1. Existence and Rights.
Borrower is a Texas corporation. Borrower: Active Power, Inc.

Borrower is duly organized and existing and in good standing under the laws of the State of Texas and is authorized and in good standing to do business in the State of Texas. Borrower has powers and adequate authority, rights and franchises to own its property and to carry on its business as now conducted, and is duly qualified and in good standing in each State in which the character of the properties owned by it therein or the conduct of its business makes such qualification necessary, and Borrower has the power and adequate authority to make and carry out this Agreement. Borrower has no investment in any other business entity.

2. Agreement Authorized. The execution, delivery and performance of this Agreement are duly authorized and do not require the consent or approval of any governmental body or other regulatory authority; are not in contravention of or in conflict with any law or regulation or any term or provision of Borrower's articles of incorporation, by-laws, or Articles of Association, as the case may be, and this Agreement is the valid, binding and legally enforceable obligation of Borrower in accordance with its terms.

3. No Conflict. The execution, delivery and performance of this Agreement are not in contravention of or in conflict with any agreement, indenture or undertaking to which Borrower is a party or by which it or any of its property may be bound or affected, and do not cause any lien, charge or other encumbrance to be created or imposed upon any such property by reason thereof.

4. Litigation. There is no litigation or other proceeding pending or threatened against or affecting Borrower, and Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority.

5. Financial Condition. The balance sheet of Borrower as of May 31, 1999 and the related profit and loss statement for the one month ended on that date, a copy of which has heretofore been delivered to you by Borrower, and all other statements and data submitted in writing by Borrower to you in connection with this request for credit are true and correct, and said balance sheet and profit and loss statement truly present the financial condition of Borrower as of the date thereof and the results of the operations of Borrower for the period covered thereby, and have been prepared in accordance with generally accepted accounting principles on a basis consistently maintained. Since such date there have been no materially adverse changes in the financial condition or business of Borrower. Borrower has no knowledge of any liabilities, contingent or otherwise, at such date not reflected in said balance sheet, and Borrower has not entered into any special commitments or substantial contracts which are not reflected in said balance sheet, other than in the ordinary and normal course of its business, which may have a materially adverse effect upon its financial condition, operations or business as now conducted.

6. Title to Assets. Borrower has good title to its assets, and the same are not subject to any liens or encumbrances other than those permitted by Section C.3 hereof.

7. Tax Status. Borrower has no liability for any delinquent state, local or federal taxes, and if Borrower has contracted with any government agency, Borrower has no liability for renegotiation of profits.

8. Trademarks, Patents. Borrower, as of the date hereof, possesses all necessary trademarks, trade names, copyrights, patents, patent rights, and licenses to conduct its business as now operated, without any known conflict with the valid trademarks, trade names, copyrights, patents and license rights of others.

9. Regulation U. The proceeds of this loan shall not be used to purchase or carry margin stock (as defined with Regulation U of the Board of Governors of the Federal Reserve system).

10. Year 2000 Compliance. Borrower has reviewed the areas within their operations and business which could be adversely affected by, and have developed or are developing a program to address on a timely basis, the Year 2000 Problem and have made related appropriate inquiry of material suppliers and vendors, and based on such review and program, the Year 2000 Problem will not have a material adverse effect upon its financial condition, operations or business as now conducted. "Year 2000 Problem" means the risk that any computer applications used by Borrower may be unable to recognize and properly perform date-sensitive functions involving certain dates prior to and any dates one or after December 31, 1999.

B. Borrower agrees that so long as it is indebted to you, or so long as Bank has any obligation to extend credit to Borrower it will, unless you shall otherwise consent in writing:

1. Rights and Facilities. Maintain and preserve all rights, franchises and other authority adequate for the conduct of its business; maintain its properties, equipment and facilities in good order and repair; conduct its business in an orderly manner without voluntary interruption and, if a corporation or partnership, maintain and preserve its existence.

2. Insurance. Maintain public liability, property damage and workers' compensation insurance and insurance on all its insurable property against fire and other hazards with responsible insurance carriers to the extent usually maintained by similar businesses.

3. Taxes and Other Liabilities. Pay and discharge, before the same become delinquent and before penalties accrue thereon, all taxes, assessments and governmental charges upon or against it or any of its properties, and all its other liabilities at any time existing, except to the extent and so long as:
(a) The same are being contested in good faith and by appropriate proceedings in such manners as not to cause any materially adverse effect upon its financial condition or the loss of any right of redemption from any sale thereunder, and
(b) it shall have set aside on its books reserves (segregated to the extent required by generally accepted accounting practice) deemed by it adequate with respect thereto.

4. Records and Reports. Maintain a standard and modern system of accounting in accordance with generally accepted accounting principles on a basis consistently maintained; permit your representatives to have access to, and to examine its properties, books and records at all reasonable times and, except at any time while an event of default has occurred and is continuing, upon reasonable prior written notice; and furnish you:
(a) As soon as available, and in any event within 30 days after the close of each month of each fiscal year of Borrower, commencing with the month next ending, a balance sheet, profit and loss statement and reconciliation of Borrower's capital accounts as of the close of such period and covering operations for the portion of Borrower's fiscal year ending on the last day of such period, all in reasonable detail, prepared in accordance with generally accepted accounting principles on a basis consistently maintained by Borrower and certified by an appropriate officer of Borrower, subject, however, to year-end audit adjustments;
(b) As soon as available, and in any event within 90 days after the close of each fiscal year of Borrower, a report of annual statements of Company as of the close of and for such fiscal year, all in reasonable detail and stating in comparative form the figures as of the close of and for the previous fiscal year, with the unqualified opinion of accountants reasonably satisfactory to you.
(c) Within 30 days after the close of each month and of each fiscal year of Borrower, a certificate by chief financial officer or partner of Borrower, stating that Borrower has performed and observed each and every covenant contained in this Agreement to be performed by it and that, to the best of Borrower's knowledge, no event has occurred and no condition then exists which constitutes an event of default hereunder or would constitute such an event of default upon the lapse of time or upon the giving of notice and the lapse of time specified herein, or, if any such event has occurred or any such condition exists, specifying the nature thereof;
(d) Promptly after the receipt thereof by Borrower, copies of any detailed audit reports submitted to Borrower by independent accountants in connection with each annual or interim audit of the accounts of Borrower made by such accountants;

(e) Promptly after the same are available, copies of all such proxy statements, financial statements and reports as Borrower shall send to its stockholders, if any, and copies of all reports which Borrower may file with the Securities and Exchange Commission or any governmental authority at any time substituted therefor; and

(f) Such other information relating to the affairs of Borrower as you reasonably may request from time to time.

(g) Notice of Default. Promptly notify the Bank in writing of the occurrence of any event of default hereunder or any event which, to the best of Borrower's knowledge, upon notice and lapse of time would be an event of default.

5. Year 2000 Compliance. Borrower shall perform all acts reasonably necessary to ensure that Borrower and any business in which Borrower holds a substantial interest become Year 2000 Compliant in a timely manner. Such acts shall include, without limitation, performing a comprehensive review and assessment of all Borrower's systems and adopting a detailed plan, with itemized budget, for the remediation, monitoring and testing of such systems. Borrower shall also take reasonably necessary steps to ensure that it will not be materially adversely affected as a result of any customer, supplier or vendor's failure to become Year 2000 compliant. As used in this paragraph, "Year 2000 Compliant" shall mean, in regard to any entity, that all software, hardware, firmware, equipment, goods or systems utilized by or material to the business operations or financial condition of such entity, will properly perform date sensitive functions before, during and after the year 2000. Borrower shall, immediately upon request, provide to Bank such certifications or other evidence of Borrower's compliance with the terms of this paragraph as Bank may from time to time require.

C. Borrower agrees that so long as it is indebted to you, or so long as Bank has any obligation to extend credit to Borrower it will not, without your written consent:

1. Type of Business; Management. Make any substantial change in the character of its business; or make any substantial change in its executive management.

2. Outside Indebtedness. Except for purchase money indebtedness, create, incur, assume or permit to exist any indebtedness for borrowed moneys other than loans from you except obligations now existing as shown in financial statement dated July 1999 and extensions and modifications (but not increases) thereof, excluding those being refinanced by your bank; or sell or transfer, either with or without recourse, any accounts or notes receivable or any moneys due to become due.

3. Liens and Encumbrances. Except for (i) purchase money liens, inchoate liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like persons imposed without actions of such parties, <u>provided</u>, that payment thereof is not yet required, (iii) liens incurred or deposits made in the ordinary course of Borrower's business in connection with worker's compensation, unemployment insurance, social security and other like laws, and (iv) leases, subleases, licenses and sublicenses granted to others in the ordinary course of business not interfering in any material respect with the conduct or operation of Borrower's business, and any interest or titles of a lessor, sublessor, licensor, or sublicensor under any such lease, sublease, license, or sublicense, create, incur, or assume any mortgage, pledge encumbrance, lien or charge of any kind (including the charge upon property at any time purchased or acquired under conditional sale or other title retention agreement) upon any asset now owned or hereafter acquired by it including but not limited to intellectual property, other than liens for taxes not delinquent and liens in your favor.

4. Loans, Investments, Secondary Liabilities. Make any loans or advances to any person or other entity other than in the ordinary and normal course of its business as now conducted or make any investment in securities other than United States Government Treasuries or Agencies, Imperial Bank sponsored paper, or the Monarch Money Market Funds <u>provided</u>, <u>however</u>, Borrower shall be permitted to invest up to twenty-five percent (25%) of its average liquid assets for the preceding month in mutual funds and/or certificates of deposit or deposit accounts with any United States based bank with capital in excess of One Hundred Million Dollars ($100,000,000); or guarantee or otherwise become liable upon the obligation of any person or other entity, except by endorsement of negotiable instruments for deposit or collection in the ordinary and normal course of its business.

5. Acquisition or Sale of Business; Merger or Consolidation. Purchase or otherwise acquire the assets or business of any person or other entity; or liquidate, dissolve, merge (except solely to reincorporate Borrower as a Delaware corporation in which case the new corporation shall be required to execute such documentation related to such reincorporation as the bank may reasonably require) or consolidate, or commence any proceedings therefor; or sell any assets except in the ordinary and normal course of its business as now conducted; or sell, lease, assign, or transfer any substantial part of its business or fixed assets, or any property or other assets necessary for the continuance of its business as now conducted including without limitation the selling of any property or other asset, except in connection with sale-leaseback transactions up to $25,000 in each instance and up to $100,000 in the aggregate, accompanied by the leasing back of the same.

6. Dividends, Stock Payments. If a corporation, declare or pay any dividend (other than dividends payable in common stock of Borrower) or make any other distribution on any of its capital stock now outstanding or hereafter issued or purchase, redeem or retire any of such stock except for stock repurchases pursuant to Borrower's 1993 Stock Option Plan.

D. The occurrence of any one of the following events of default shall, at your option, terminate your commitment to lend and make all sums of principal and interest then remaining unpaid on all Borrower's indebtedness to you immediately due and payable, all without demand, presentment or notice, all of which are hereby expressly waived.

1. Failure to Pay. Failure to pay any installment of principal or of interest on any indebtedness of Borrower to you provided such failure remains uncured for five (5) days.

2. Breach of Covenant. Failure of Borrower to perform any other terms or conditions of this Agreement or any other agreement between Borrower and Bank binding upon Borrower provided such failure remains uncured for ten (10) days after notice to Borrower thereof provided such failure remains uncured for ten (10) days after notice to Borrower thereof.

3. Breach of Warranty. Any of Borrower's representations or warranties made herein or any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect.

4. Insolvency; Receiver or Trustee. Borrower shall become insolvent; or admit its inability to pay its debts as they mature; or make an assignment for the benefit of creditors; or apply for or consent to the appointment of a receiver or trustee for it or for a substantial part of its property or business.

5. Judgments, Attachments. Any money judgment, writ or warrant of attachment, or similar process shall be entered or filed against Borrower or any of its assets and shall remain unvacated unbonded or unstayed for a period of 10 days or in any event later than five days prior to the date of any proposed sale thereunder.

6. Bankruptcy. Bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by or against Borrower and, if instituted against it, shall be consented to.

E. Miscellaneous Provisions.

1. Failure or Indulgence Not Waiver. No failure or delay on the part of your Bank or any holder of Notes issued hereunder, in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this agreement or any note issued in connection with a loan that your Bank may make hereunder, are cumulative to, and not exclusive of, any rights or remedies otherwise available.

2. Applicable Law. This Agreement and all other agreements and instruments required by Bank in connection therewith shall be governed by and construed according to the laws of the state of California, to the jurisdiction of whose courts the parties hereby agree to submit.

3. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, THE BANK AND THE BORROWER EACH HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OBLIGATION OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE BANK OR THE BORROWER IN CONNECTION WITH ANY OF THE ABOVE, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER IN CONTRACT OR TORT OR OTHERWISE

The Commitment Letter July 21, 1999, and all amends thereto and replacements therefore, and certain riders are attached hereto and incorporated herein by this reference for additional terms. In the event of a conflict between this Agreement and the Letter, the terms in the Letter shall take precedence.

ACTIVE POWER, INC.

By: /s/

Name: ______________________________________
Title: _____________________________________

IMPERIAL BANK

By: /s/

Name: ______________________________________
Title: _____________________________________

Exhibit 10.8

IMPERIAL BANK

SECURITY AND LOAN AGREEMENT
(ACCOUNTS RECEIVABLE)

This Agreement is entered into between Active Power, Inc.

, a Texas Corporation

(herein called "Borrower") and IMPERIAL BANK (herein called "Bank").

1. Bank hereby commits, subject to all the terms and conditions of this Agreement and prior to the termination of its commitment as hereinafter provided, to make loans to Borrower from time to time in such amounts as may be determined by Bank up to, but not exceeding in the aggregate unpaid principal balance, the following Borrowing Base:

80 % of Eligible Accounts

and in no event more than $ 1,000,000.00

2. The amount of each loan made by Bank to Borrower hereunder shall be debited to the loan ledger account of Borrower maintained by Bank (herein called "Loan Account") and Bank shall credit the Loan Account with all loan repayments made by Borrower. Borrower promises to pay Bank (a) the unpaid balance of Borrower's Loan Account on demand and (b) on or before the tenth day of each month, interest on the average daily unpaid balance of the Loan Account during the immediately preceding month at the rate of Zero percent (0.00 %) per annum in excess of the rate of interest which Bank has announced as its prime lending rate ("Prime Rate") which shall vary concurrently with any change in such Prime Rate. Interest shall be computed at the above rate on the basis of the actual number of days during which the principal balance of the loan account is outstanding divided by 360, which shall for interest computation purposes be considered one year. Bank at Its option may demand payment of any or all of the amount due under the Loan Account including accrued but unpaid Interest at any time. Such notice may be given verbally or in writing and should be effective upon receipt by Borrower. The amount of interest payable each month by Borrower shall not be less than a minimum monthly charge of $ 250.00 . Bank is hereby authorized to charge Borrower's deposit account(s) with Bank for all sums due Bank under this Agreement.

3. Requests for loans hereunder shall be in writing duly executed by Borrower in a form satisfactory to Bank and shall contain a certification setting forth the matters referred to in Section 1, which shall disclose that Borrower is entitled to the amount of loan being requested.

4. As used In this Agreement, the following terms shall have the following meanings:

   A. "Accounts" means any right to payment for goods sold or leased, or to be sold or to be leased, or for services rendered or to be rendered no matter how evidenced, Including accounts receivable, contract rights, chattel paper, Instruments, purchase orders, notes, drafts, acceptances, general intangibles and other forms of obligations and receivables.

   B. "Collateral" means any and all personal property of Borrower which is assigned or hereafter is assigned to Bank as security or in which Bank now has or hereafter acquires a security interest.

   C. "Eligible Accounts" means all of Borrower's Accounts excluding, however, (1) all Accounts under which payment is not received within 90 days from any invoice date, (2) all Accounts against which the account debtor or any other person obligated to make payment thereon asserts any defense, offset, counterclaim or other right to avoid or reduce the liability represented by the Account and (3) any Accounts if the account debtor or any other person liable in connection therewith is insolvent, subject to bankruptcy or receivership

proceedings or has made an assignment for the benefit of creditors or whose credit standing is unacceptable to Bank and Bank has so notified Borrower. Eligible Accounts shall only include such accounts as Bank in its sole discretion shall determine are eligible from time to time.

5. Borrower hereby assigns to Bank all Borrower's present and future Accounts, including all proceeds due thereunder, all guaranties and security therefor, and hereby grants to Bank a continuing security interest in all moneys in the Collateral Account referred to in Section 6 hereof, as security for any and all obligations of Borrower to Bank, whether now owing or hereafter incurred and whether direct, indirect, absolute or contingent. So -long as Borrower is indebted to Bank or Bank is committed to extend credit to Borrower, Borrower will execute and deliver to Bank such assignments, including Bank's standard forms of Specific or General Assignment covering individual Accounts, notices, financing statements, and other documents and papers as Bank may require In order to affirm, effectuate or further assure the assignment to Bank of the Collateral or to give any third party, including the account debtors obligated on the Accounts, notice of Bank's interest in the Collateral.

6. Until Bank exercises its rights to collect the Accounts pursuant to paragraph 10, Borrower will collect with reasonable diligence all Borrower's Accounts, provided that no legal action shall be maintained thereon or in connection therewith without Bank's prior written consent. Any collection of Accounts by Borrower, whether In the form of cash, checks, notes, or other instruments for the payment of money (properly endorsed or assigned where required to enable Bank to collect same), shall be in trust for Bank, and Borrower shall keep all such collections separate and apart from all other funds and property so as to be capable of identification as the property of Bank and deliver said collections daily to Bank in the identical form received. The proceeds of such collections when received by Bank may be applied by Bank directly to the payment of Borrower's Loan Account or any other obligation secured hereby. Any credit given by Bank upon receipt of said proceeds shall be conditional credit subject to collection. Returned items at Bank's option may be charged to Borrower's general account. All collections of the Accounts shall be set forth on an itemized schedule, showing the name of the account debtor, the amount of each payment and such other information as Bank may reasonably request.

7. Until Bank exercises its rights to collect the Accounts pursuant to paragraph 10, Borrower may continue its present policies with respect to returned merchandise and adjustments. However, Borrower shall notify Bank within two (2) working days of all cases involving returns, repossessions, and loss or damage of or to merchandise represented by the Accounts and of any credits, adjustments or disputes arising in connection with the goods or services represented by the Accounts, and in any of such events, Borrower will immediately pay to Bank form its own funds (and not from the proceeds of Accounts or Inventory) for application to Borrower's Loan Account or any other obligation secured hereby the amount of any credit for such returned or repossessed merchandise and adjustments made to any of the Accounts.

8. Borrower represents and warrants to Bank: (i) if Borrower is a corporation, that Borrower is duly organized and existing in the State of its incorporation and the execution, deliver, and performance hereof are within Borrower's corporate powers, have been duly authorized and are not in conflict with law or the terms of any charter, by-law or other incorporation papers, or of any indenture, agreement or undertaking to which Borrower is a party or by which Borrower is found or affected; (ii) Borrower is, or at the time the collateral becomes subject to Bank's security interest will be, the true and lawful owner of and has, or at the time the Collateral becomes subject to Bank's security interest will have, good and clear title to the Collateral, subject only to Bank's right therein; (iii) Each Account is, or at the time the Account comes into existence will be, a true and correct statement of a bona fide indebtedness incurred by the debtor named therein in the amount of the Account for either merchandise sold or delivered (or being held subject to Borrower's delivery instruction) to, or services rendered, performed and accepted by, the account debtor; (iv) That, to the best of Borrower's knowledge, there are or will be no defenses, counterclaims, or setoffs which may be asserted against the Accounts; and (v) to the best of Borrower's knowledge, any and all financial information, including

information relating to the Collateral, submitted by Borrower to Bank, whether previously or in the future, is or will be true and correct.

9. Borrower will: (i) Furnish Bank from time to time such financial statements and information as Bank may reasonably request and inform Bank within two (2) working days the occurrence of a material adverse change therein; (ii) Furnish Bank periodically, in such form and detail and at such times as Bank may reasonably require, statements showing aging and reconciliation of the Accounts and collections thereon; (iii) Permit representatives of Bank to inspect the Borrower's books and records relating to the Collateral and make extracts therefrom at any reasonable time and upon giving reasonable notice to the Borrower to arrange for verification of the Accounts, under reasonable procedures, acceptable to Bank, directly with the account debtors or otherwise at Borrower's expense; (iv) Promptly notify Bank of any attachment or other legal process levied against any of the Collateral and any information received by Borrower relative to the Collateral, including the Accounts, the account debtors or other persons obligated in connection therewith, which may in any way affect the value of the Collateral or the rights and remedies of Bank in respect thereto; (v) Reimburse Bank upon demand for any and all reasonable legal costs, including reasonable attorneys' fees, and other expense incurred in collecting any sums payable by Borrower under Borrower's Loan Account or any other obligation secured hereby, enforcing any term or provision of this Security Agreement or otherwise or in the checking, handling and collection of the Collateral and the preparation and enforcement of any agreement relating thereto; (vi) Notify Bank of each location and of each office of Borrower at which records of Borrower relating to the Accounts are kept; (vii) Provide, maintain and deliver to Bank policies insuring the Collateral against loss or damage by such risks and in such amounts, forms and companies as Bank may reasonably require and with loss payable solely to Bank, and, in the event Bank takes possession of the Collateral, the insurance policy or policies and any unearned or returned premium thereon shall at the option of Bank become the sole property of Bank, such policies and the proceeds of any other insurance covering or in any way relating to the Collateral, whether now in existence or hereafter obtained, being hereby assigned to Bank; (viii) In the event the unpaid balance of Borrower's Loan Account shall exceed the maximum amount of outstanding loans to which Borrower is entitled under Section 1 hereof, Borrower shall, within two (2) working days, pay to Bank, from its own funds and not from the proceeds of Collateral, for credit to Borrower's Loan Account the amount of such excess.

10. Bank may at any time, without prior notice to Borrower, collect the Accounts and may give notice of assignment to any and all account debtors, and Borrower does hereby make, constitute and appoint Bank its irrevocable, true and lawful attorney with power to receive, open and dispose of all mail addressed to Borrower, to endorse the name of Borrower upon any checks or other evidences of payment that may come into the possession of Bank upon the Accounts to endorse the name of the undersigned upon any document or instrument relating to the Collateral; in its name or otherwise, to demand, sue for, collect and give acquittances for any and all moneys due or to become due upon the Accounts; to compromise, prosecute or defend any action, claim or proceeding with respect thereto; and to do any and all things necessary and proper to carry out the purpose herein contemplated.

11. Until Borrower's Loan Account and all other obligations secured hereby shall have been repaid in full, Borrower shall not sell, dispose of or grant a security interest in any of the Collateral other than to Bank, or execute any financing statements covering the Collateral in favor of any secured party or person other than Bank.

12. Should: (i) Default be made in the payment of any obligation, or breach be made in any warranty, statement, promise, term or condition, contained herein or hereby secured; (ii) Any statement or representation made for the purpose of obtaining credit hereunder prove false; (iii) Bank reasonably deem the Collateral inadequate or unsafe or in danger of misuse; (iv) Borrower become insolvent or make an assignment for the benefit of creditors; or (v) Any proceeding be commenced by or against Borrower under any bankruptcy, reorganization, arrangement, readjustment of debt or moratorium law or statute; then in any such event, Bank may, at its option and without demand first made and without notice to Borrower, do any one or more of the following: (a) Terminate its obligation to make loans to Borrower as provided in Section 1 hereof; (b) Declare all

sums secured hereby immediately due and payable; (c) Immediately take possession of the Collateral wherever it may be found, using all necessary force so to do, or require Borrower to assemble the Collateral and make it available to Bank at a place designated by Bank which is reasonably convenient to Borrower and Bank, and Borrower waives all claims for damages due to or arising from or connected with any such taking; (d) Proceed in the foreclosure of Bank's security interest and sale of the Collateral in any manner permitted by law, or provided for herein; (e) Sell, lease or otherwise dispose of the Collateral at public or private sale, with or without having the Collateral at the place of sale, and upon terms and in such manner as Bank may determine, and Bank may purchase same at any such sale; (f) Retain the Collateral in full satisfaction of the obligations secured thereby; (g) Exercise any remedies of a secured party under the Uniform Commercial Code. Prior to any such disposition, Bank may, at as option, cause any of the Collateral to be repaired or reconditioned in such manner and to such extent as Bank may deem advisable, and any sums expended therefor by Bank shall be repaid by Borrower and secured hereby. Bank shall have the right to enforce one or more remedies hereunder successively or concurrently, and any such action shall not estop or prevent Bank from pursuing any further remedy which it may have hereunder or by law. If a sufficient sum is not realized from any such disposition of Collateral to pay all obligations secured by this Security Agreement, Borrower hereby promises and agrees to pay Bank any deficiency.

13. If any writ of attachment, garnishment, execution or other legal process be issued against any property of Borrower, or if any assessment for taxes against Borrower, other than real property, is made by the Federal or State government or any department thereof, the obligation of Bank to make loans to Borrower as provided in Section 1 hereof shall immediately terminate and the unpaid balance of the Loan Account, all other obligations secured hereby and all other sums due hereunder shall immediately become due and payable without demand, presentment or notice.

14. Borrower authorizes Bank to destroy all invoices, delivery receipts, reports and other types of documents and records submitted to Bank in connection with the transactions contemplated herein at any time subsequent to four months from the time such items are delivered to Bank.

15. Nothing herein shall in any way limit the effect of the conditions set forth in any other security or other agreement executed by Borrower, but each and every condition hereof shall be in addition thereto.

16. Should default be made in the payment of principal or interest when due, or in the performance or observance, when due, of any item, covenant or condition of this Agreement, any deed of trust, security agreement or other agreement (including amendments or extensions thereof) securing or pertaining to this Agreement, at the option of the holder hereof and without notice or demand, the entire balance of principal and accrued interest then remaining unpaid shall (a) become immediately due and payable, and (b) thereafter bear interest, until paid in full, at the increased rate of 5% per year in excess of the rate provided for above, as it may vary from time to time.

17. If any installment payment, interest payment, principal payment or principal balance payment due hereunder is delinquent twenty (20) or more days, Borrower agrees to pay Bank a late charge in the amount of 5% of the payment so due and unpaid, in addition to the payment; but nothing in this paragraph is to be construed as any obligation on the part of the Bank to accept payment of any payment past due or less than the total unpaid principal balance after maturity.

    All payments shall be applied first to any late charges owing, then to interest and the remainder, if any, to principal.

18. Reference Provision.

    A. Other than (i) non-judicial foreclosure and all matters in connection therewith regarding security interests in real or personal property; or (ii) the appointment of a receiver, or the exercise of other provisional remedies (any and all of which may be initiated pursuant to applicable law), each controversy, dispute or claim

between the parties arising out of or relating to this document ("Agreement"), which controversy, dispute or claim is not settled in writing within thirty (30) days after the "Claim Date" (defined as the date on which a party subject to the Agreement gives written notice to all other parties that a controversy, dispute or claim exists), will be settled by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure, or their successor section ("CCP"), which shall constitute the exclusive remedy for the settlement of any controversy, dispute or claim concerning this Agreement, including whether such controversy, dispute or claim is subject to the reference proceeding and except as set forth above, the parties waive their rights to initiate any legal proceedings against each other in any court or jurisdiction other than the Superior Court in the County where the Real Property, if any, is located or Los Angeles County if none (the "Court"). The referee shall be a retired Judge of the Court selected by mutual agreement of the parties, and if they cannot so agree within forty-five (45) days after the Claim Date, the referee shall be promptly selected by the Presiding Judge of the Court (or his representative). The referee shall be appointed to sit as a temporary judge, with all of the powers of a temporary judge, as authorized by law, and upon selection should take and subscribe to the oath of office as provided for in Rule 244 of the California Rules of Court (or any subsequently enacted Rule). Each party shall have one peremptory challenge pursuant to CCP (S)170.6. The referee shall (a) be requested to set the matter for hearing within sixty (60) days after the Claim Date and (b) try any and all issues of law or fact and report a statement of decision upon them, if possible, within ninety (90) days of the Claim Date. Any decision rendered by the referees will be final, binding and conclusive and judgment shall be entered pursuant to CCP (S)644 in any court in the State of California having jurisdiction. Any party may apply for a reference proceeding at any time after thirty (30) days following notice to any other party of the nature of the controversy, dispute or claim, by filing a petition for a hearing and/or trial. All discovery permitted by this Agreement shall be completed no later than fifteen (15) days before the first hearing date established by the referee. The referee may extend such period in the event of a party's refusal to provide requested discovery for any reason whatsoever, including, without limitation, legal objections raised to such discovery or unavailability of a witness due to absence or illness. No party shall be entitled to "priority" in conducting discovery. Depositions may be taken by either party upon seven (7) days written notice, and request for production or inspection of documents shall be responded to within ten (10) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding upon the parties. Pending appointment of the referee as provided herein, the Superior Court is empowered to issue temporary and or provisional remedies, as appropriate.

B. Except as expressly set forth in this Agreement and the riders attached hereto, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of all hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee. The party making such a request shall have the obligation to arrange for and pay for the court reporter. The costs of the court reporter at the trial shall be borne equally by the parties.

C. The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, to provide all temporary and/or provisional remedies and to enter equitable orders that will be binding upon the parties. The referee shall Issue a single judgment at the close of the reference proceeding which shall dispose of all of the claims of the parties that are the subject of the reference. The

parties hereto expressly reserve the right to contest or appeal from the final judgment or any appealable order or appealable judgment entered by the referee. The parties hereto expressly reserve the right to findings of fact, conclusions of law, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

D. In the event that the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by the reference procedure herein described will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge of the Court, in accordance with the California Arbitration Act, (S)1280 through (S)1294.2 of the CCP as amended from time to time. The limitations with respect to discovery as set forth hereinabove shall apply to any such arbitration proceeding.

19. Additional Provisions: Subject to the provisions of the Credit Terms and Conditions Agreement dated August 3, 1999, and all amendments and riders thereto and replacements therefor.

If checked, the Addendum or Exhibit 'A" attached (and all amendments thereto and replacements therefor) is incorporated herein by this reference.

By signing in the space below, each of the undersigned agrees that the foregoing Riders are incorporated in and made a part of the Security and Loan Agreement between Active Power, Inc. and Imperial Bank dated August ___, 1999.

Executed this 3rd day of August, 1999

Active Power, Inc., a Texas corporation
(Name of Borrower)

IMPERIAL BANK

By: /s/
(Authorized Signature and Title)

BY: /s/
Title

BY: /s/
(Authorized Signature and Title)

Exhibit 10.9

LEASE AGREEMENT

Between

Braker Phase III, Ltd.,

as Landlord,

and

Magnetic Bearing Technologies, Inc.,

as Tenant,

Covering approximately 4,050 gross square feet
of the Building known (or to be known) as

Braker Center III, Building 1

located at

11525 Stonehollow Drive, Suite 135

Austin, Texas, 78758.

STANDARD INDUSTRIAL LEASE AGREEMENT
(AUS/91)

Approximately 4,050 gross square feet
11525 Stonehollow Drive, Suite 135
Austin, Texas 78758
(Braker Center III, Building 1)

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between Braker Phase III, Ltd., hereinafter referred to as "Landlord," and Magnetic Bearing Technologies, Inc., hereinafter referred to as "Tenant."

1. PREMISES AND TERM. In consideration of the mutual obligations of Landlord and Tenant set forth herein, Landlord leases to Tenant, and Tenant hereby takes from Landlord, certain leased premises situated within the County of Travis, State of Texas, as more particularly described on EXHIBIT "A" attached hereto and incorporated herein by reference (the "Premises"), to have and to hold, subject to the terms, covenants and conditions in this Lease. The term of this Lease shall commence on the Commencement Date hereinafter set forth and shall end on the last day of the month that is Sixty (60) months after the Commencement Date.

A. Building or Improvements to be Constructed. If the Premises or part thereof are to be constructed, the "Commencement Date" shall be deemed to be the earliest of: (i) the date upon which the Premises and other improvements to be erected in accordance with the plans and specifications described on EXHIBIT "B" attached hereto and incorporated herein by reference (the "Plans") have been substantially completed; (ii) the date on which the Premises or such improvements would have been substantially completed but for delays caused directly by Tenant, including Plan delays or change orders; (iii) the date on which Tenant occupies any part of the Premises. As used herein, the term "substantially completed" shall mean that, in the opinion of the architect or space planner that prepared the Plans, such improvements have been completed in accordance with the Plans, and the Premises are in good and satisfactory condition, with the exception of completion of minor punch list items. As soon as such improvements have been substantially completed, Landlord shall notify Tenant in writing that the Commencement Date has occurred. Should the Landlord fail to deliver the space for occupancy by June 1, 1996, the Tenant will have the right to cancel this Lease Agreement.

2. BASE RENT, SECURITY DEPOSIT AND ESCROW DEPOSITS.

A. Base Rent. Tenant agrees to pay Landlord rent for the Premises, in advance, without demand, deduction or set off, at the rate of See Rental Rate Paragraph in Exhibit "C" ($_____________) per month during the term hereof. One such monthly installment, plus the other monthly charges set forth in Paragraph 2C below, shall be due and payable on the date hereof, and a like monthly installment shall be due and payable on or before the first day of each calendar month succeeding the Commencement Date, except that all payments due hereunder for any fractional calendar month shall be prorated.

B. Security Deposit. In addition, Tenant agrees to deposit with Landlord on the date hereof the sum of Two Thousand Five Hundred and No/100 Dollars ($2,500.00), which shall be held by Landlord, without obligation for interest, as security for the performance of Tenant's obligations under this Lease (the "Security Deposit"), it being expressly understood and agreed that the Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon occurrence of an Event of Default, Landlord may use all or part of the Security Deposit to pay past due rent or other payments due Landlord under this Lease or the cost of any other damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. On demand, Tenant shall pay Landlord the amount that will restore the Security Deposit to its original amount. The Security Deposit shall be deemed the property of Landlord, but any remaining balance of the Security Deposit shall be returned by Landlord to Tenant when all of Tenant's present and future obligations under this Lease have been fulfilled.

C. Escrow Deposits. Without limiting in any way Tenant's other obligations under this Lease, Tenant agrees to pay to Landlord its Proportionate Share (as defined in this Paragraph 2C below) of (i) Taxes (hereinafter defined) payable by Landlord pursuant to Paragraph 3A below, (ii) the cost of utilities payable by Landlord pursuant to

Paragraph 8 below, (iii) Landlord's cost of maintaininginsurance pursuant to Paragraph 9A below, and (iv) Landlord's cost of maintaining the Premises pursuant to paragraph 5E below and any common area charges payable by Tenant in accordance with Paragraph 4B below (collectively, the "Tenant Costs"). During each month of the term of this Lease, on the same day that rent is due hereunder, Tenant shall deposit in escrow with Landlord an amount equal to one-twelfth (1/12) of the estimated amount of Tenant's Proportionate Share of the Tenant Costs. Tenant authorizes Landlord to use the funds deposited with Landlord under this Paragraph 2C to pay such Tenant Costs. The initial monthly escrow payments are based upon the estimated amounts for the year in question and shall be increased or decreased annually to reflect the projected actual amount of all Tenant Costs. If the Tenant's total escrow deposits for any calendar year are less than Tenant's actual Proportionate Share of the Tenant Costs for such calendar year, Tenant shall pay the difference to Landlord within thirty (30) days after demand. If the total escrow deposits of Tenant for any calendar year are more than Tenant's actual Proportionate Share of the Tenant Costs for such calendar year, Landlord shall return the excess to the Tenant within sixty (60) days. In the event the Premises constitute a portion of a multiple occupancy building (the "Building"), Tenant's "Proportionate Share" with respect to the Building, as used in this Lease, shall mean a fraction, the numerator of which is the gross rentable area contained in the Premises and the denominator of which is the gross rentable area contained in the entire Building. In the event the Premises or the Building is part of a project or business park owned, managed or leased by Landlord or an affiliate of Landlord (the "Project"), Tenant's "Proportionate Share" of the Project, as used in this Lease, shall mean a fraction, the numerator of which is the gross rentable area contained in the Premises and the denominator of which is the gross rentable area contained in all of the buildings (including the Building) within the Project.

3. TAXES

A. Real Property Taxes. Subject to reimbursement under Paragraph 2C herein, Landlord agrees to pay all taxes, assessments and governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Premises, the Building and/or the land of which the Premises or the Building are a part. If at any time during the term of this Lease there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the land and improvements of which the Premises are a part, then all such taxes, assessments, levies or charges, or the part thereof so measured or based shall be deemed to be included within the term "Taxes" for the purposes hereof. The Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair tax burden on the real property within the applicable taxing jurisdiction. Tenant agrees to pay its Proportionate Share of the cost of such consultant.

B. Personal Property Taxes. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises. If any such taxes are levied or assessed against Landlord or Landlord's property and (i) Landlord pays the same or (ii) the assessed value of Landlord's property is increased by inclusion of such personal property and fixtures and Landlord pays the increased taxes, then Tenant shall pay to Landlord, upon demand, the amount of such taxes.

4. LANDLORD'S REPAIRS AND MAINTENANCE.

A. Structural Repairs. Landlord, at its own cost and expense, shall maintain the roof, foundation and the structural soundness of the exterior walls of the Building in good repair, reasonable wear and tear excluded. The term "walls" as used herein shall not include windows, glass or plate glass, any doors, special store fronts or office entries, and the term "foundation" as used herein shall not include loading docks. Tenant shall immediately give Landlord written notice of defect or need for repairs, after which Landlord shall have reasonable opportunity to effect such repairs or cure such defect.

B. Tenant's Share of Common Area Charges. Tenant agrees to pay its Proportionate Share of the cost of (i) maintenance and/or landscaping (including both maintenance and replacement of landscaping) of any property that is a part of the Building and/or the Project; (ii) operating, maintaining and repairing any property, facilities or services (including without limitation utilities and insurance therefor) provided for the use or benefit of Tenant or the common use or benefit of Tenant and other lessees of the Project or the Building; and (iii) an administrative and or management fee of up to ten percent (10%).

Initials _______ _______
Date _______ _______

5. TENANT'S REPAIRS.

A. Maintenance of Premises and Appurtenances. Tenant, at its own cost and expense, shall (i) maintain all parts of the Premises and promptly make all necessary repairs and replacements to the Premises (except those for which Landlord is expressly responsible hereunder), and (ii) keep the parking areas, driveways and alleys surrounding the Premises in a clean and sanitary condition. Tenant's obligation to maintain, repair and make replacements to the Premises shall cover, but not be limited to, pest control (including termites), trash removal and the maintenance, repair and replacement of all HVAC, electrical, plumbing, sprinkler and other mechanical systems which service the Tenant's lease space.

B. Parking. Tenant and its employees, customers and licensees shall have the right to use only its Proportionate Share of any parking areas that have been designated for such use by Landlord in writing, subject to (i) all rules and regulations promulgated by Landlord, and (ii) rights of ingress and egress of other lessees. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, and Tenant expressly does not have the right to tow or obstruct improperly parked vehicles. Tenant agrees not to park on any public streets or private roadways adjacent to or in the vicinity of the Premises.

C. System Maintenance. Tenant, at its own cost and expense, shall enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all hot water, heating and air conditioning systems and equipment within the Premises. The service contract must include all services suggested by the equipment manufacturer in its operations/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Premises.

D. Option to Maintain Premises. Landlord reserves the right to perform, in whole or in part and without notice to Tenant, maintenance, repairs and replacements to the Premises, paving, common area, landscape, exterior painting, common sewage line plumbing and any other items that are otherwise Tenant's obligations under this Paragraph 5, in which event, Tenant shall be liable for its Proportionate Share of the cost and expense of such repair, replacement, maintenance and other such items.

6. ALTERATIONS. Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of Landlord such consent will not be unreasonably withheld. Tenant, at its own cost and expense, may erect such shelves, bins, machinery and trade fixtures as it desires, provided that (i) such items do not alter the basic character of the Premises or the Building, (ii) such items do not overload or damage same, (iii) such items may be removed without injury to the Premises, and (iv) the construction, erection or installation thereof complies with all applicable governmental laws, ordinances, regulations and with Landlord's specifications and requirements. Tenant shall be responsible for compliance with The Americans With Disabilities Act of 1990. Without implying any consent of Landlord thereto, all alterations, additions, improvements and partitions erected by Tenant shall be and remain the property of Tenant during the term of this Lease. All shelves, bins, machinery and trade fixtures installed by Tenant shall be removed on or before the earlier to occur of the day of termination or expiration of this Lease or vacating the Premises, at which time Tenant shall restore the Premises to their original condition. All alterations, installations, removals and restorations shall be performed in a good and workmanlike manner so as not to damage or alter the primary structure or structural qualities of the Building or other improvements situated on the Premises or of which the Premises are a part.

7. SIGNS. Any signage Tenant desires for the Premises shall be subject to Landlord's written approval and shall be submitted to Landlord prior to the Commencement Date of this Lease. Tenant shall repair, paint and/or replace the Building fascia surface to which its signs are attached upon Tenant's vacating the Premises or the removal or alteration of its signage. Tenant shall not, without Landlord's prior written consent, (i) make any changes to the exterior of the Premises, such as painting; (ii) install any exterior lights, decorations, balloons, flags, pennants or banners; or (iii) erect or install any signs, windows or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall conform in all respects to the criteria established by Landlord or shall be otherwise subject to Landlord's prior written consent.

Initials _______ _______
Date _______ _______

8. UTILITIES. Landlord agrees to provide normal water and electricity service to the Premises. Tenant shall pay for all water, gas, heat, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or at the Premises, together with any taxes, penalties, surcharges or the like pertaining to the Tenant's use of the Premises and any maintenance charges for utilities. Landlord shall have the right to cause any of said services to be separately metered to Tenant, at Tenant's expense. Tenant shall pay its pro rata share, as reasonably determined by Landlord, of all charges for jointly metered utilities. Landlord shall not be liable for any interruption or failure of utility service on the Premises, and Tenant shall have no rights or claims as a result of any such failure the Landlord will use its best reasonable efforts to restore service. In the event water is not separately metered to Tenant, Tenant agrees that it will not use water and sewer capacity for uses other than normal domestic restroom and kitchen usage, and Tenant further agrees to reimburse Landlord for the entire amount of common water and sewer costs as additional rental if, in fact, Tenant uses water or sewer capacity for uses other than normal domestic restroom and kitchen uses without first obtaining Landlord's written permission, including but not limited to the cost for acquiring additional sewer capacity to service Tenant's excess sewer use. Furthermore, Tenant agrees in such event to install at its own expense a submeter to determine Tenant's usage.

9. INSURANCE.

A. Landlord's Insurance. Subject to reimbursement under Paragraph 2C herein, Landlord shall maintain insurance covering the Building in an amount not less than eighty percent (80%) of the "replacement cost" thereof, insuring against the perils of fire, lightning, extended coverage, vandalism and malicious mischief.

B. Tenant's Insurance. Tenant, at its own expense, shall maintain during the term of this Lease a policy including personal injury and property damage, with contractual liability endorsement, in the amount of Five Hundred Thousand Dollars ($500,000.00) for property damage and One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) in the aggregate for personal injuries or deaths of persons occurring in or about the Premises. Tenant, at its own expense, shall also maintain during the term of this Lease fire and extended coverage insurance covering the replacement cost of (i) all alterations, additions, partitions and improvements installed or placed on the Premises by Tenant or by Landlord on behalf of Tenant; and (ii) all of Tenant's personal property contained within the Premises. Said policies shall (i) name the Landlord as an additional insured and insure Landlord's contingent liability under or in connection with this Lease (except for the workers' compensation policy, which instead shall include a waiver of subrogation endorsement in favor of Landlord); (ii) be issued by an insurance company which is acceptable to Landlord; and (iii) provide that said insurance shall not be cancelled unless thirty (30) days prior written notice has been given to Landlord. Said policy or policies or certificates thereof shall be delivered to Landlord by Tenant on or before the Commencement Date and upon each renewal of said insurance.

C. Prohibited Uses. Tenant will not permit the Premises to be used for any purpose or in any manner that would (i) void the insurance thereon, (ii) increase the insurance risk or cost thereof, or (iii) cause the disallowance of any sprinkler credits; including without limitation, use of the Premises for the receipt, storage or handling of any product, material or merchandise that is explosive or highly inflammable. If any increase in the cost of any insurance on the Premises or the Building is caused by Tenant's use of the Premises or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord upon demand therefor.

10. FIRE AND CASUALTY DAMAGE.

A. Total or Substantial Damage and Destruction. If the Premises or the Building should be damaged or destroyed by fire or other peril, Tenant shall immediately give written notice to Landlord of such damage or destruction. If the Premises or the Building should be totally destroyed by any peril covered by the insurance to be provided by Landlord under Paragraph 9A above, or if they should be so damaged thereby that, in Landlord's estimation, rebuilding or repairs cannot be completed within one hundred eighty (180) days after the date of such damage or after such completion there would not be enough time remaining under the terms of this Lease to fully amortize such rebuilding or repairs, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

B. Partial Damage or Destruction. If the Premises or the Building should be damaged by any peril covered by the insurance to be provided by Landlord under Paragraph 9A above and, in Landlord's estimation, rebuilding or repairs can be substantially completed within one hundred twenty (120) days after the date of such damage, then this

Initials _______ _______
Date _______ _______

Lease shall not terminate and Landlord shall substantially restore the Premises to its previous condition, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures, additions and other improvements that may have been constructed, erected or installed in or about the Premises for the benefit of, by or for Tenant.

C. Lienholders' Rights in Proceeds. Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made known to Landlord by any such holder, whereupon all rights and obligations hereunder shall cease and terminate.

D. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claims, actions or causes of action against each other, or their respective agents, officers and employees, for any loss or damage that may occur to the Premises, improvements to the Building or personal property (Building contents) within the Building and/or Premises, for any reason regardless of cause or origin. Each party to this Lease agrees immediately after execution of this Lease to give written notice of the terms of the mutual waivers contained in this subparagraph to each insurance company that has issued to such party policies of fire and extended coverage insurance and to have the insurance policies properly endorsed to provide that the carriers of such policies waive all rights of recovery under subrogation or otherwise against the other party.

11. LIABILITY AND INDEMNIFICATION. Except for any claims, right of recovery and causes of action that Landlord has released, Tenant shall hold Landlord harmless from and defend Landlord against any and all claims or liability for any injury or damage (i) to any person or property whatsoever occurring in, on or about the Premises or any part thereof, the Building and/or other common areas, the use of which Tenant may have in accordance with this Lease, if (and only if) such injury or damage shall be caused in whole or in part by the act, neglect, fault or omission of any duty by Tenant, its agents, servants, employees or invitees; (ii) arising from the conduct or management of any work done by the Tenant in or about the Premises; (iii) arising from transactions of the Tenant; and (iv) all costs, counsel fees, expenses and liabilities incurred in connection with any such claim or action or proceeding brought thereon. The provisions of this Paragraph 11 shall survive the expiration or termination of this Lease. Landlord shall not be liable in any event for personal injury or loss of Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities or other occurrences. Landlord strongly recommends that Tenant secure Tenant's own insurance in excess of the amounts required elsewhere in this Lease to protect against the above occurrences if Tenant desires additional coverage for such risks. Tenant shall give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord shall not be responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or from the public areas of the Building or the Project, regardless of whether such loss occurs when the area is locked against entry. Landlord shall not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any lessees in the Building or the Project, or for any damages or losses caused by theft, burglary, assault, vandalism or other crimes. Landlord strongly recommends that Tenant provide its own security systems and services and secure Tenant's own insurance in excess of the amounts required elsewhere in this Lease to protect against the above occurrences if Tenant desires additional protection or coverage for such risks. Tenant shall give Landlord prompt notice of any criminal or suspicious conduct within or about the Premises, the Building or the Project and/or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent same is provided at Landlord's sole discretion, Landlord shall not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord shall use reasonable diligence in the maintenance of existing lighting, if any, in the parking garage or parking areas servicing the Premises, and Landlord shall not be responsible for additional lighting or any security measures in the Project, the Premises, the parking garage or other parking areas.

12. USE. The Premises shall be used only for the purpose of receiving, storing, shipping and selling developing, manufacturing, assembling and testing (other than retail) products, materials and merchandise made and/or distributed by Tenant and for such other lawful purposes as may be directly incidental thereto. Outside storage,

Initials _______ _______
Date _______ _______

including without limitation storage of trucks and other vehicles, is prohibited without Landlord's prior written consent. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, all at Tenant's sole expense. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action that would constitute a nuisance or would disturb, unreasonably interfere with or endanger Landlord or any other lessees of the Building or the Project.

13. HAZARDOUS WASTE. The term "Hazardous Substances," as used in this Lease, shall mean pollutants, contaminants, toxic or hazardous wastes, radioactive materials or any other substances, the use and/or the removal of which is required or the use of which is restricted, prohibited or penalized by any "Environmental Law," which term shall mean any federal, state or local statute, ordinance, regulation or other law of a governmental or quasi-governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances. Tenant hereby agrees that: (i) no activity will be conducted on the Premises that will produce any Hazardous Substances, except for such activities that are part of the ordinary course of Tenant's business activities (the "Permitted Activities"), provided said Permitted Activities are conducted in accordance with all Environmental Laws and have been approved in advance in writing by Landlord and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (ii) the Premises will not be used in any manner for the storage of any Hazardous Substances, except for the temporary storage of such materials that are used in the ordinary course of Tenant's business (the "Permitted Materials"), provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws and have been approved in advance in writing by Landlord, and, in connection therewith, Tenant shall be responsible for obtaining any required permits or authorizations and paying any fees and providing any testing required by any governmental agency; (iii) no portion of the Premises will be used as a landfill or a dump; (iv) Tenant will not install any underground tanks of any type; (v) Tenant will not allow any surface or subsurface conditions to exist or come into existence that constitute, or with the passage of time may constitute, a public or private nuisance; and (vi) Tenant will not permit any Hazardous Substances to be brought onto the Premises, except for the Permitted Materials, and if so brought or found located thereon, the same shall be immediately removed, with proper disposal, and all required clean-up procedures shall be diligently undertaken by Tenant at its sole cost pursuant to all Environmental Laws. Landlord and Landlord's representatives shall have the right but not the obligation to enter the Premises for the purpose of inspecting the storage, use and disposal of any Permitted Materials to ensure compliance with all Environmental Laws. Should it be determined, in Landlord's sole opinion, that any Permitted Materials are being improperly stored, used or disposed of, then Tenant shall immediately take such corrective action as requested by Landlord. Should Tenant fail to take such corrective action within twenty-four (24) hours, Landlord shall have the right to perform such work and Tenant shall reimburse Landlord, on demand, for any and all costs associated with said work. If at any time during or after the term of this Lease, the Premises is found to be contaminated with Hazardous Substances, Tenant shall diligently institute proper and thorough clean-up procedures, at Tenant's sole cost. Tenant agrees to indemnify and hold Landlord harmless from all claims, demands, actions, liabilities, costs, expenses, damages, penalties and obligations of any nature arising from or as a result of any contamination of the Premises with Hazardous Substances, or otherwise arising from the use of the Premises by Tenant. The foregoing indemnification and the responsibilities of Tenant shall survive the termination or expiration of this Lease.

14. INSPECTION. Landlord's agents and representatives shall have the right to enter the Premises at any reasonable time during business hours (or at any time in case of emergency) (i) to inspect the Premises, (ii) to make such repairs as may be required or permitted pursuant to this Lease, and/or (iii) during the last six (6) months of the Lease term, for the purpose of showing the Premises. In addition, Landlord shall have the right to erect a suitable sign on the Premises stating the Premises are available for lease. Tenant shall notify Landlord in writing at least thirty (30) days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating. If Tenant fails to give such notice or to arrange for such inspection, then Landlord's inspection of the Premises shall be deemed correct for the purpose of determining Tenant's responsibility for repairs and restoration of the Premises.

15. ASSIGNMENT AND SUBLETTING. Tenant shall not have the right to sublet, assign or otherwise transfer or encumber this Lease, or any interest therein, without the prior written consent of Landlord which shall not be unreasonably withheld. Any attempted assignment, subletting, transfer or encumbrance by Tenant in violation of

Initials _______ _______
Date _______ _______

the terms and covenants of this paragraph shall be void. Any assignee, sublessee or transferee of Tenant's interest in this Lease (all such assignees, sublessees and transferees being hereinafter referred to as "Transferees"), by assuming Tenant's obligations hereunder, shall assume liability to Landlord for all amounts paid to persons other than Landlord by such Transferees to which Landlord is entitled or is otherwise in contravention of this Paragraph 15. No assignment, subletting or other transfer, whether or not consented to by Landlord or permitted hereunder, shall relieve Tenant of its liability under this Lease. If an Event of Default occurs while the Premises or any part thereof are assigned or sublet, then Landlord, in addition to any other remedies herein provided or provided by law, may collect directly from such Transferee all rents payable to the Tenant and apply such rent against any sums due Landlord hereunder. No such collection shall be construed to constitute a novation or a release of Tenant from the further performance of Tenant's obligations hereunder. If Landlord consents to any subletting or assignment by Tenant as hereinabove provided and any category of rent subsequently received by Tenant under any such sublease is in excess of the same category of rent payable under this Lease, or any additional consideration is paid to Tenant by the assignee under any such assignment, then Landlord may, at its option, declare such excess rents under any sublease or such additional consideration for any assignment to be due and payable by Tenant to Landlord as additional rent hereunder.

16. CONDEMNATION. If more than eighty percent (80%) of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date of such taking. If less than eighty percent (80%) of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, or if the taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then this Lease shall not terminate, but the rent payable hereunder during the unexpired portion of this Lease shall be reduced to such extent as may be fair and reasonable under all of the circumstances. All compensation awarded in connection with or as a result of any of the foregoing proceedings shall be the property of Landlord, and Tenant hereby assigns any interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property, if a separate award for such items is made to Tenant.

17. HOLDING OVER. At the termination of this Lease by its expiration or otherwise, Tenant shall immediately deliver possession of the Premises to Landlord with all repairs and maintenance required herein to be performed by Tenant completed. If, for any reason, Tenant retains possession of the Premises after the expiration or termination of this Lease, unless the parties hereto otherwise agree in writing, such possession shall be deemed to be a tenancy at will only, and all of the other terms and provisions of this Lease shall be applicable during such period, except that Tenant shall pay Landlord from time to time, upon demand, as rental for the period of such possession, an amount equal to one and one-quarter (1 1/4) times the rent in effect on the date of such termination of this Lease, computed on a daily basis for each day of such period. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided. The preceding provisions of this Paragraph 17 shall not be construed as consent for Tenant to retain possession of the Premises in the absence of written consent thereto by Landlord.

18. QUIET ENJOYMENT. Landlord represents that it has the authority to enter into this Lease and that, so long as Tenant pays all amounts due hereunder and performs all other covenants and agreements herein set forth, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

19. EVENTS OF DEFAULT. The following events (herein individually referred to as an "Event of Default") each shall be deemed to be a default in or breach of Tenant's obligations under this Lease:

A. Tenant shall fail to pay any installment of the rent herein reserved when due, or any other payment or reimbursement to Landlord required herein when due, and such failure shall continue for a period of five (5) days from the date such payment was due.

B. Tenant shall fail to discharge any lien placed upon the Premises in violation of Paragraph 22 hereof within twenty (20) days after any such lien or encumbrance is filed against the Premises.

Initials _______ _______
Date _______ _______

C. Tenant shall default in the performance of any of its obligations under any other lease to Tenant from Landlord, or from any person or entity affiliated with or related to Landlord, and same shall remain uncured after the lapsing of any applicable cure periods provided for under such other lease.

D. Tenant shall fail to comply with any term, provision or covenant of this Lease (other than those listed above in this paragraph) and shall not begin to cure such failure within twenty (20) days after written notice thereof from Landlord.

20. REMEDIES. Upon each occurrence of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand:

(a) Terminate this Lease;

(b) Enter upon and take possession of the Premises without terminating this Lease;

(c) Make such payments and/or take such action and pay and/or perform whatever Tenant is obligated to pay or perform under the terms of this Lease, and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action; and/or

A. Damages Upon Termination. If Landlord terminates this Lease at Landlord's option, Tenant shall be liable for and shall pay to Landlord the sum of all rental and other payments owed to Landlord hereunder accrued to the date of such termination, plus, as liquidated damages, an amount equal to (i) the present value of the total rental and other payments owed hereunder for the remaining portion of the Lease term, calculated as if such term expired on the date set forth in Paragraph 1, less (ii) the present value of the then fair market rental for the Premises for such period, provided that, because of the difficulty of ascertaining such value and in order to achieve a reasonable estimate of liquidated damages hereunder, Landlord and Tenant stipulate and agree, for the purposes hereof, that such fair market rental shall in no event exceed seventy-five percent (75%) of the rental amount for such period set forth in Paragraph 2 above.

B. Damages Upon Repossession. If Landlord repossesses the Premises without terminating this Lease, Tenant, at Landlord's option, shall be liable for and shall pay Landlord on demand all rental and other payments owed to Landlord hereunder, accrued to the date of such repossession, plus all amounts required to be paid by Tenant to Landlord until the date of expiration of the term as stated in Paragraph 1, diminished by all amounts actually received by Landlord through reletting the Premises during such remaining term (but only to the extent of the rent herein reserved). Actions to collect amounts due by Tenant to Landlord under this paragraph may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term.

C. Costs of Reletting, Removing, Repairs and Enforcement. Upon an Event of Default, in addition to any sum provided to be paid under this Paragraph 20, Tenant also shall be liable for and shall pay to Landlord (i) brokers' fees and all other costs and expenses incurred by Landlord in connection with reletting the whole or any part of the Premises; (ii) the costs of removing, storing or disposing of Tenant's or any other occupant's property; (iii) the costs of repairing, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant or tenants; (iv) any and all costs and expenses incurred by Landlord in effecting compliance with Tenant's obligations under this Lease; and (v) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies hereunder, including without limitation all reasonable attorneys' fees and all court costs incurred in connection with such enforcement or defense.

D. Late Charge. In the event Tenant fails to make any payment due hereunder within five (5) days after such payment is due, including without limitation any rental or escrow payment, in order to help defray the additional cost to Landlord for processing such late payments and not as interest, Tenant shall pay to Landlord on demand a late charge in an amount equal to five percent (5%) of such payment. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law, and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

E. Interest on Past Due Amounts. If Tenant fails to pay any sum which at any time becomes due to Landlord under any provision of this Lease as and when the same becomes due hereunder, and such failure continues for ten

Initials _______ _______
Date _______ _______

(10) days after the due date for such payment, then Tenant shall pay to Landlord interest on such overdue amounts from the date due until paid at an annual rate which equals the lesser of (i) twelve percent (12%) or (ii) the highest rate then permitted by law.

F. No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that such surrender can be effected only by the written agreement of Landlord. Tenant and Landlord further agree that forbearance by Landlord to enforce any of its rights under this Lease or at law or in equity shall not be a waiver of Landlord's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention is given to Tenant, and, notwithstanding any such reletting or re-entry or taking possession of the Premises, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any remedies hereunder shall not preclude the pursuit of any other remedy herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of any rent following an Event of Default hereunder shall not be construed as Landlord's waiver of such Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease shall be deemed or construed to constitute a waiver of any other violation or default.

G. Reletting of Premises. In the event of any termination of this Lease and/or repossession of the Premises for an Event of Default, Landlord shall use reasonable efforts to relet the Premises and to collect rental after reletting, with no obligation to accept any lessee that Landlord deems undesirable or to expend any funds in connection with such reletting or collection of rents therefrom. Tenant shall not be entitled to credit for or reimbursement of any proceeds of such reletting in excess of the rental owed hereunder for the period of such reletting. Landlord may relet the whole or any portion of the Premises, for any period, to any tenant and for any use or purpose.

H. Landlord's Default. If Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure, Tenant's exclusive remedy shall be an action for damages. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the premises and not thereafter. The term "Landlord" shall mean only the owner, for the time being, of the Premises and, in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, provided that such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provision of this Lease, Landlord shall not have any personal liability hereunder. In the event of any breach or default by Landlord in any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then owned by Landlord in the Premises or the Building; however, in no event shall any deficiency judgement or any money judgement of any kind be sought or obtained against any Landlord.

I. Tenant's Personal Property. If Landlord repossesses the Premises pursuant to the authority herein granted, or if Tenant vacates or abandons all or any part of the Premises, then, in addition to Landlord's rights under Paragraph 27 hereof, Landlord shall have the right to (i) keep in place and use, or (ii) remove and store, all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, at all times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. In addition to the Landlord's other rights hereunder, Landlord may dispose of the stored property if Tenant does not claim the property within ten (10) days after the date the property is stored. Landlord shall give Tenant at least ten (10) days prior written notice of such intended disposition. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord herein stated shall be in addition to any and

Initials ________ _________
Date ________ _________

all other rights that Landlord has or may hereafter have at law or in equity, and Tenant stipulates and agrees that the rights granted Landlord under this paragraph are commercially reasonable.

21. MORTGAGES. Tenant accepts this Lease subject and subordinate to any mortgages and/or deeds of trust now or at any time hereafter constituting a lien or charge upon the Premises or the improvements situated thereon or the Building, provided, however, that if the mortgagee, trustee or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease superior to any such instrument, then by notice to Tenant from such mortgagee, trustee or holder, this Lease shall be deemed superior to such lien, whether this Lease was executed before or after said mortgage or deed of trust. Tenant, at any time hereafter on demand, shall execute any instruments, releases or other documents that may be required by any mortgagee, trustee or holder for the purpose of subjecting and subordinating this Lease to the lien of any such mortgage. Tenant shall not terminate this Lease or pursue any other remedy available to Tenant hereunder for any default on the part of Landlord without first giving written notice by certified or registered mail, return receipt requested, to any mortgagee, trustee or holder of any such mortgage or deed of trust, the name and post office address of which Tenant has received written notice, specifying the default in reasonable detail and affording such mortgagee, trustee or holder a reasonable opportunity (but in no event less than thirty (30) days) to make performance, at its election, for and on behalf of Landlord.

22. MECHANIC'S LIENS. Tenant has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises. Tenant will save and hold Landlord harmless from any and all loss, cost or expense, including without limitation attorneys' fees, based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this Lease.

23. MISCELLANEOUS.

A. Interpretation. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease. Any reference in this Lease to rentable area shall mean the gross rentable area as determined by the roofline of the building in question.

B. Binding Effect. Except as otherwise herein expressly provided, the terms, provisions and covenants and conditions in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective heirs, executors, personal representatives, legal representatives, successors and assigns. Landlord shall have the right to transfer and assign, in whole or in part, its rights and obligations in the Premises and in the Building and other property that are the subject of this Lease.

C. Evidence of Authority. Tenant agrees to furnish to Landlord, promptly upon demand, a corporate resolution, proof of due authorization by partners or other appropriate documentation evidencing the due authorization of such party to enter into this Lease.

D. Force Majeure. Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord.

E. Payments Constitute Rent. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as rent, shall constitute rent.

F. Estoppel Certificates. Tenant agrees, from time to time, within ten (10) days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease, any defaults existing under this Lease (or the absence thereof) and such other factual or legal matters pertaining to this Lease as may be requested by Landlord. It is understood and agreed that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease.

G. Entire Agreement. This Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease, and contains all of the covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord

or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. Landlord's agents and employees do not and will not have authority to make exceptions, changes or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances shall Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

H. Survival of Obligations. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the term of this Lease shall survive the expiration or earlier termination of the term hereof, including without limitation all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises. Upon the expiration or earlier termination of the term hereof, and prior to Tenant vacating the Premises, Tenant shall pay to Landlord any amount reasonably estimated by Landlord as necessary to put the Premises in good condition and repair, reasonable wear and tear excluded, including without limitation the cost of repairs to and replacements of all heating and air conditioning systems and equipment therein. Tenant shall also, prior to vacating the Premises, pay to Landlord the amount, as estimated by Landlord, of Tenant's obligation hereunder for real estate taxes and insurance premiums for the year in which the Lease expires or terminates. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant hereunder, with Tenant being liable for any additional costs therefore upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied, as the case may be. Any Security Deposit held by Landlord may, at Landlord's option, be credited against any amounts due from Tenant under this Paragraph 23H.

I. Severability of Terms. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then, in such event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

J Effective Date. All references in this Lease to "the date hereof" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.

K. Brokers' Commission. Tenant represents and warrants that it has dealt with and will deal with no broker, agent or other person other than Hill Partners, Inc. in connection with this transaction or future related transactions and that no broker, agent or other person other than Hill Partners, Inc. brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any broker, agent or other person other than Hill Partners, Inc. claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

L. Ambiguity. Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by both Landlord and Tenant, and that Landlord and Tenant have each had the opportunity to have this Lease reviewed by their respective legal counsel, and, accordingly, in the event of any ambiguity herein, Tenant does hereby waive the rule of construction that such ambiguity shall be resolved against the party who prepared this Lease.

M. Joint Several Liability. If there be more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. If there be a guarantor of Tenant's obligations hereunder, the obligations hereunder imposed upon Tenant shall be joint and several obligations of Tenant and such guarantor, and Landlord need not first proceed against Tenant before proceeding against such guarantor, nor shall any such guarantor be released from its guaranty for any reason whatsoever, including, without limitation, in case of any amendments hereto, waivers hereof or failure to give such guarantor any notices hereunder.

Initials ________ ________
Date ________ ________

N. Third Party Rights. Nothing herein expressed or implied is intended, or shall be construed, to confer upon or give to any person or entity, other than the parties hereto, any right or remedy under or by reason of this Lease.

O. Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Lease, and the exhibits listed herein below and attached hereto, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out herein. All capitalized terms used in such documents shall, unless otherwise defined therein, have the same meanings as are set forth herein.

P. Applicable Law. This Lease has been executed in the State of Texas and shall be governed in all respects by the laws of the State of Texas. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever shall the amount contracted for, charged or received by Landlord for the use, forbearance or retention of money hereunder or otherwise exceed the maximum amount which Landlord is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be automatically reduced to the limit of such validity, and if from any such circumstance Landlord shall ever receive as interest or otherwise an amount in excess of the maximum that can be legally collected, then such amount which would be excessive interest shall be applied to the reduction of rent hereunder, and if such amount which would be excessive interest exceeds such rent, then such additional amount shall be refunded to Tenant.

24. NOTICES. Each provision of this instrument or of any applicable governmental laws, ordinances, regulations and other requirements with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord shall be deemed to be complied with when and if the following steps are taken:

(i) All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address for Landlord set forth below or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such rent and other amounts have been actually received by Landlord.

(ii) All payments required to be made by Landlord to Tenant hereunder shall be payable to Tenant at the address set forth below, or at such other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance herewith.

(iii) Except as expressly provided herein, any written notice, document or payment required or permitted to be delivered hereunder shall be deemed to be delivered when received or, whether actually received or not, when deposited in the United States Mail, postage prepaid, Certified or Registered Mail, addressed to the parties hereto at the respective addresses set out below, or at such other address as they have theretofore specified by written notice delivered in accordance herewith.

25. ADDITIONAL PROVISIONS. See EXHIBIT "C" attached hereto and incorporated herein by reference.

26. LANDLORD'S LIEN. In addition to any statutory lien for rent in Landlord's favor, Landlord shall have and Tenant hereby grants to Landlord a continuing security interest in all rentals and other sums of money which may become due under this Lease from Tenant, all goods, equipment, fixtures, furniture, inventory, and other personal property of Tenant now or hereafter situated at, on or within the real property described in EXHIBIT "A" attached hereto and incorporated herein by reference, and such property shall not be removed therefrom without the consent of Landlord, except in the ordinary course of Tenant's business. In the event any of the foregoing described property is removed from the Premises in violation of the covenant in the preceding sentence, the security interest shall continue in such property and all proceeds and products, regardless of location. Upon an Event of Default hereunder by Tenant, in addition to all of Landlord's other rights and remedies, Landlord shall have all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this paragraph at public or private sale at any time after ten (10) days prior notice by Landlord. Tenant hereby agrees to

Initials ________ _________
Date ________ _________

execute such other instruments deemed by Landlord as necessary or desirable under applicable law to perfect more fully the security interest hereby created. Landlord and Tenant agree that this Lease and security agreement and EXHIBIT "A" attached hereto serves as a financing statement and that a copy, photograph or other reproduction of this portion of this Lease may be filed of record by Landlord and have the same force and effect as the original. This security agreement and financing statement also covers fixtures located at the Premises subject to this Lease and legally described in EXHIBIT "A" attached hereto, and all rents or other consideration received by or on behalf of Tenant in connection with any assignment of Tenant's interest in this Lease or any sublease of the Premises or any part thereof, and, therefore, may also be filed for record in the appropriate real estate records. Landlord will agree to subordinate this lien to the Tenant's priority lenders so long as the Tenant is not in default of this Lease Agreement.

EXECUTED BY LANDLORD, this _____ day of _______________, 19___.

BRAKER PHASE III, LTD.
By: 2800 Industrial, Inc., General Partner

/s/ Richard E. Anderson

Attest/Witness	By: Richard E. Anderson
______________________________	Title: Vice President
______________________________	Address: c/o Hill Partners, Inc.
Title: _______________________	2800 Industrial Terrace, Austin, TX 78758

EXECUTED BY TENANT, this _____ day _________________, 19___.

MAGNETIC BEARING TECHNOLOGIES, INC.

/s/

Attest/Witness	By:
______________________________	Title:
By: __________________________	Address:
Title: _______________________	

EXHIBIT "A" - Description of Premises
EXHIBIT "B" - Plans
EXHIBIT "C" - Additional Provisions

Initials ________ _________
Date ________ _________

EXHIBIT "B"
PLANS

TO BE ATTACHED AT A LATER DATE

EXHIBIT "C"
ADDITIONAL PROVISIONS

RENTAL RATE

The monthly base rental rate shall be structured as follows:

Year	Base Rental Rate Per Square Foot Per Month	Rental Rate Per Month
Year 1	$.55	$2,227.50
Year 2	$.60	$2,430.00
Year 3	$.65	$2,632.50
Year 4	$.70	$2,835.00
Year 5	$.75	$3,037.50

TENANT FINISH ALLOWANCE

Landlord shall provide a maximum tenant finish allowance of Twelve and No/00 Dollars ($12.00) per square foot or Forty-eight Thousand Six Hundred and No/00 Dollars ($48,600.00) to be applied toward interior improvements, excluding extraordinary items installed on behalf of the Tenant. Included in this Twelve and No/00 Dollars ($12.00) per square foot or Forty-eight Thousand Six Hundred and No/00 Dollars ($48,600.00) are all costs associated with the interior construction of the premises including architectural and engineering fees, a construction management fee of four (4) percent of hard costs and all other costs associated with the interior improvement construction. Any finish out dollars required over and above the finish-out allowance of Twelve and No/00 Dollars ($12.00) per square foot or Forty-eight Thousand Six Hundred and No/00 Dollars ($48,600.00) will be amortized over the lease term at ten (10) percent per annum interest.

INTERIOR IMPROVEMENTS

All improvements must comply with Landlord's standard specifications and all applicable governmental regulations. Prior to beginning construction of any such improvements, Tenant shall submit architectural drawings of the proposed improvements to Landlord and shall obtain Landlord's written consent to begin construction.

Exhibit 10.10

FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN
BRAKER PHASE III, LTD. AS LANDLORD,
AND MAGNETIC BEARING TECHNOLOGIES, INC., AS TENANT

To be attached to and form a part of Lease made the 12th day of March, 1996 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Lease), between Landlord and Tenant, covering a total of 4,050 square feet and located at 11525 Stonehollow Drive, Suite 135, Austin, Texas, 78758 known as Braker Center III, Building 1.

WITNESSETH that:

1. Effective August 1, 1996 and expiring May 31, 2001, the demised premises shall contain, in addition to the approximately 4,050 square feet originally demised, an additional area, hereinafter called the "new space", containing approximately 4,050 square feet adjacent thereto (see Exhibit "A" attached hereto), thus making the aggregate area of the demised premises approximately 8,100 square feet. *

2. Landlord shall provide a maximum tenant finish allowance of Twelve and No/00 Dollars ($12.00) per square foot or Forty-eight Thousand Six Hundred and NO/100 Dollars ($48,600.00) for the additional area of 4,050 square feet. This allowance is inclusive of all costs associated with the finish-out and is an absolute maximum. Any finish-out dollars required over and above the finish-out allowance of Twelve and No/00 Dollars ($12.00) per square foot or Forty-eight Thousand Six Hundred and NO/100 Dollars ($48,600.00) will be the sole responsibility of the Tenant.

3. The monthly base rental shall be structured as follows:

Lease Period	Existing Space 4,050	New Space 4,050	Base Total Rental Rate
5/6/96 thru 7/31/96	$3,313.60	0	$3,313.60
8/1/96 thru 5/31/97	$3,313.60	$2,551.50	$5,865.10
6/1/97 thru 5/31/98	$3,516.10	$2,551.50	$6,067.60
6/1/98 thru 5/31/99	$3,718.60	$2,551.50	$6,270.10
6/1/99 thru 5/31/00	$3,921.10	$2,551.50	$6,472.60
6/1/00 thru 5/31/01	$4,123.60	$2,551.50	$6,675.10

4. Except as herein and hereby modified and amended the Agreement of Lease shall remain in full force and effect and all the terms, provisions, covenants and conditions thereof are hereby ratified and confirmed.

DATED AS OF THE ______ DAY OF ________________, 19__.

WITNESS:

BRAKER PHASE III, LTD.:
By: 2800 Industrial, Inc., General Partner

/s/
- -----------------------------

/s/ Richard E. Anderson

By: Richard E. Anderson
Title: Vice President

WITNESS:

MAGNETIC BEARING TECHNOLOGIES, INC.

/s/
- -----------------------------

/s/ Joseph F. Pinkerton

By: Joseph F. Pinkerton
Title: President

* Effective date of Amendment shall begin no sooner than the date upon which the improvements to the Premises of the "new space" have been substantially completed in accordance with the plans and specifications described in Exhibit B or the date on which the new space would have been substantially completed if not for delay caused directly by Tenant, including Plan delays or change orders.

Exhibit 10.11

SECOND AMENDMENT TO LEASE AGREEMENT BETWEEN
BRAKER PHASE III, LTD. AS LANDLORD,
AND MAGNETIC BEARING TECHNOLOGIES, INC., AS TENANT

To be attached to and form a part of Lease made the 12th day of March, 1996 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Lease), between Landlord and Tenant, covering a total of 8,100 square feet and located at 11525 Stonehollow Drive, Suite 135, Austin, Texas, 78758 known as Braker Center III, Building 1.

WITNESSETH that:

1. The Commencement Date shall be May 6, 1996, and shall expire Sixty (60) months thereafter on Maya 31, 2001.

2. Effective September 1, 1996 and expiring May 31, 2001, the monthly base rental rate shall be structured as follows:

Lease Period	Base Total Rental Rate Per Month
9/1/96 thru 5/31/97	$6,025.10
6/1/97 thru 5/31/98	$6,227.60
6/1/98 thru 5/31/99	$6,430.10
6/1/99 thru 5/31/00	$6,632.60
6/1/00 thru 5/31/01	$6,835.10

3. The Lease expressly refers to Tenant as "Magnetic Bearing Technologies, Inc. The Tenant's name has been changed to "Active Power, Inc.. The Lease and all related documents are hereby amended such that all references to "Tenant" or "Magnetic Bearing Technologies, Inc." will translate to mean "Active Power, Inc.".

4. Except as herein and hereby modified and amended the Agreement of Lease shall remain in full force and effect and all the terms, provisions, covenants and conditions thereof are hereby ratified and confirmed.

DATED AS OF THE 1st DAY OF September, 1996.

WITNESS:

BRAKER PHASE III, LTD.:
By: 2800 Industrial, Inc., General Partner

/s/

/s/ Richard E. Anderson

By: Richard E. Anderson
Title: Vice President

WITNESS:	ACTIVE POWER, INC.
/s/	/s/ Joseph F. Pinkerton
----------------------------------	----------------------------------
	By: Joseph F. Pinkerton
	Title: President

Exhibit 10.12

THIRD AMENDMENT TO LEASE AGREEMENT BETWEEN
BRAKER PHASE III, LTD. AS LANDLORD,
AND ACTIVE POWER INC., AS TENANT

To be attached to and form a part of Lease made the 12th day of March, 1996 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Lease), between Landlord and Tenant, covering a total of 8,100 square feet and located at 11525 Stonehollow Drive, Suite 135, Austin, Texas, 78758 known as Braker Center III, Building 1.

WITNESSETH that:

1. Effective November 1, 1997 and expiring October 31, 1999, the demised premises shall contain, in addition to the approximately 8,100 square feet originally demised, an additional area, hereinafter called the "new space", containing approximately 15,080 square feet adjacent thereto (see Exhibit "A" attached hereto), thus making the aggregate area of the demised premises approximately 23,180 square feet.

2. Effective November 1, 1997 the monthly base rental rate shall be structured as follows:

Lease Period	Existing Space 8,100	New Space 15,080	Base Total Rental Rate Per Month
11/1/97 - 5/31/98	$6,227.60	$9,048.00	$15,275.60
6/1/98 - 10/31/98	$6,430.10	$9,048.00	$15,478.10
11/1/98 - 5/31/99	$6,430.10	$9,500.40	$15,930.50
6/1/99 - 10/31/99	$6,632.60	$9,500.40	$16,133.00
11/1/99 - 5/31/00	$6,632.60	-0-	$ 6,632.60
6/1/00 - 5/31/01	$6,835.10	-0-	$ 6,835.10

3. Landlord shall provide a maximum tenant finish allowance of Ten Thousand and No/00 Dollars ($10,000.00) to be applied toward interior improvements. Included in this Ten Thousand and No/00 Dollars ($10,000.00) are all costs associated with the interior construction of the premises including architectural and engineering fees and all other costs associated with the interior improvement construction.

4. The Lease expressly refers to Landlord as Braker Phase III, Ltd. The Landlord's name has been changed to Metropolitan Life Insurance Company. The Lease and all related documents are hereby amended such that all referenced to "Landlord" or "Braker Phase III, Ltd." will translate to mean "Metropolitan Life Insurance Company".

5. Except as herein and hereby modified and amended the Agreement of Lease shall remain in full force and effect and all the terms, provisions, covenants and conditions thereof are hereby ratified and confirmed.

DATED AS OF THE 10th DAY OF October, 1997.

WITNESS: METROPOLITAN LIFE INSURANCE COMPANY
a New York corporation, on behalf of a commingled separate account
By: SSR Realty Advisors, Inc., a Delaware corporation, as Investment Advisor to Metropolitan Life Insurance Company

/s/ Alan Bates

- ---

By: Alan Bates
Title:______________________________

WITNESS: ACTIVE POWER, INC.

/s/ Joseph F. Pinkerton

- ---

By: Joseph F. Pinkerton
Title: President

Exhibit 10.13

FOURTH AMENDMENT TO LEASE AGREEMENT BETWEEN

METROPOLITAN LIFE INSURANCE COMPANY, AS LANDLORD

AND

ACTIVE POWER, INC., AS TENANT

To be attached to and form a part of Lease made the 12th day of March 1996 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Lease), between Landlord and Tenant.

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this "Fourth Amendment) made and entered into as of the 20th day of August, 1999 by and between METROPOLITAN LIFE INSURANCE COMPANY ("Landlord") and ACTIVE POWER, INC., ("Tenant").

W I T N E S S E T H:

Landlord and Tenant entered into that certain Lease Agreement dated March 12, 1996 (the "Lease" for space in Stonehollow 1), the Third Amendment dated October 10, 1997 addresses an expansion of space into STONEHOLLOW 2 of approximately 15,080 square feet of space located at 11525 Stonehollow Drive, Suite 225, Austin, Texas.

Landlord and Tenant now desire to further amend the Lease Agreement and Amendments in certain respects as more fully hereinafter set forth. Landlord and Tenant agree as follows:

1. Landlord and Tenant agree to extend the term of the 15,080 square foot space (Suite 225 in Stonehollow 2) for an additional twelve (12) months. Effective date to be November 1, 1999 and the Expiration Date to be October 31, 2000.

2. Tenant agrees to accept space in its current "as is" condition.

3. The base rental for this 15,080 square foot space shall be $0.71 per square foot per month (NNN).

4. Except as specifically amended hereby, the Lease shall remain unaffected hereby and in full force and effect as originally written.

DATED AS OF THE 20 DAY OF AUGUST, 1999.

WITNESS:	LANDLORD:
	Metropolitan Life Insurance Company, a New York corporation, on behalf of a commingled separate account
/s/ Susan R. Barra	
	By: SSR Realty Advisors, Inc., a Delaware corporation, as Investment Advisor to Metropolitan Life Insurance Company
	By:
	Name: /s/ A. Alan Bates
	Title: A. Alan Bates
	Address: ______________________________
	______________________________
	______________________________
	Telephone: ______________________________
	Fax: ______________________________

WITNESS:	TENANT:
	ACTIVE POWER, INC.
/s/ Diane G. Lung	
	By: /s/ Joseph F. Pinkerton, III
	Name: Joseph F. Pinkerton
	Title: President
	Address: 11525 Stonehollow, #635
	Austin, TX 78758
	______________________________
	Telephone: 512-836-6464
	Fax: 512-836-4511

Exhibit 10.14

FIFTH AMENDMENT TO LEASE AGREEMENT BETWEEN
METROPOLITAN LIFE INSURANCE COMPANY, AS LANDLORD
AND
ACTIVE POWER, INC., AS TENANT

To be attached to and form a part of Lease made the 12th day of March 1996 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Lease), between Landlord and Tenant.

THIS FIFTH AMENDMENT TO LEASE AGREEMENT (this "Fifth Amendment") made and entered into as of the 9th day of February, 2000 by and between METROPOLITAN LIFE INSURANCE COMPANY ("Landlord") and ACTIVE POWER, INC., ("Tenant").

W I T N E S S E T H:

Landlord and Tenant entered into that certain Lease Agreement dated March 12, 1996 (the "Lease" for space in Stonehollow 1), amended by the First Amendment dated June 24, 1996 increasing the square footage to 8,100 square feet in Stonehollow 1, Suite 135, amended by the Second Amendment dated September 4, 1996 notifying Landlord of a name change from "Magnetic Bearing Technologies" to "Active Power, Inc." amended by the Third Amendment dated October 10, 1997 expanding into STONEHOLLOW 2 for approximately an additional 15,080 square feet of space located at 11525 Stonehollow Drive, Suite 255, Austin, Texas for a total of 23,180 square feet of space and finally amended by the Fourth Amendment dated August 20, 1999 extending the term in Stonehollow 2, Suite 255 for an additional twelve months.

Landlord and Tenant now desire to further amend the Lease Agreement and Amendments in certain respects as more fully hereinafter set forth. Landlord and Tenant agree as follows:

1. Landlord and Tenant agree to extend the term of the 8,100 square foot space (Stonehollow 1, Suite 135) for an additional twenty-two (22) months. Current expiration date for Suite 135 is May 31, 2001; therefore the new expiration date shall be March 31, 2003.

2. Landlord and Tenant agree to extend the term of the 15,080 square foot space (Stonehollow 2, Suite 255) for an additional twenty-nine (29) months. Current expiration date for Suite 255 is October 31, 2000; therefore the new expiration shall be March 31, 2003.

3. Landlord and Tenant agree that Tenant shall expand into an additional 7,466 square feet of space located at 11525 Stonehollow Drive (Stonehollow 1) Suite 120 and an additional 4,200 square feet of space located at 11525 Stonehollow Drive (Stonehollow 1) Suite 110 as outlined on the attached Exhibit "A" as "expansion space #1".

4. Landlord is leasing the "expansion space #1" (Suites 120 & 110) to Tenant "as is" "where is" without representation or warranty, without any obligation to alter, remodel, improve, repair or decorate any part of the "expansion space #1" (Suites 120 & 110). Any provisions in the Lease conflicting herewith shall be amended accordingly. Landlord

agrees to deliver the "expansion space #1" (Suites 120 & 110) to Tenant in broom-clean condition. With respect to the "expansion space #1" (Suites 120 & 110), Landlord agrees that all plumbing, electrical and HVAC systems shall be in good working order as of the Commencement Date and agrees to provide a limited warranty of thirty (30) days from rent commencement with respect thereto. Tenant must notify Landlord in writing of any warranty item within such thirty (30) day period or such warranty shall be deemed null and void. Landlord shall provide an allowance of $50,864.00 for tenant improvements.

5. Landlord agrees to allow Tenant access to the "expansion space #1" (Suites 120 & 110) for forty-two (42) days for construction of tenant improvements and cabling free of charge.

6. Commencement Date for the "expansion space #1" (Suites 120 & 110) shall be seven (7) days after Landlord's written notice. Commencement is currently estimated to be January 30, 2000. Rent shall commence for the "expansion space #1" (Suites 120 & 110) after the construction period outlined in Paragraph 5.

7. Landlord and Tenant agree that Tenant may expand into an additional 4,050 square feet of space located at 11525 Stonehollow Drive (Stonehollow 1) Suite 130 as outlined on the attached Exhibit "A" as "expansion space #2" provided that Tenant gives Landlord written notice of its intention to expand into expansion space #2 by April 1, 2001.

8. Commencement Date for "expansion space #2" (Suite 130) shall depend upon vacation of the existing tenant, Video Associates Laboratories, Inc. Estimated vacation date of Video Associates Laboratories, Inc. is July 31, 2001. "Expansion Space #2" shall be coterminous with the other suites expiring March 31, 2003. In the event the existing tenant has not been removed from expansion space #2 by October 31, 2001; then Tenant may terminate its intent to expand into expansion space #2 by giving Landlord thirty (30) days written notice. This termination shall only apply to expansion space #2.

9. Landlord is leasing the "expansion space #2" (Suite 130) to Tenant "as is" "where is" without representation or warranty, without any obligation to alter, remodel, improve, repair or decorate any part of the "expansion space #2" (Suite 130). Any provisions in the Lease conflicting herewith shall be amended accordingly. Landlord agrees to deliver the "expansion space #2" (Suite 130) to Tenant in broom-clean condition. With respect to the "expansion space #2" (Suite 130), Landlord agrees that all plumbing, electrical and HVAC systems shall be in good working order as of the Commencement Date and agrees to provide a limited warranty of thirty (30) days from commencement with respect thereto. Tenant must notify Landlord in writing of any warranty item within such thirty (30) day period or such warranty shall be deemed null and void

10. Monthly Base Rental Rate shall be as defined below:

Stonehollow 1
"Expansion Space #1" (Suite 120) 7,466 square feet

Period		Rate
Commencement - 2/28/01	=	$0.90/sf ($6,719.40 per month)
03/01/01 - 03/31/01	=	$0.95/sf ($7,092.70 per month)

Stonehollow 1
"Expansion Space #1" (Suite 110) 4,200square feet

Period		Rate
Commencement - 03/31/03	=	$0.95/sf ($3,990.00 per month)

Stonehollow 1
Existing Space (Suite 135) 8,100 square feet

Period		Rate
06/01/01 - 03/31/03	=	$0.87/sf ($7,047.00 per month)

Stonehollow 1
"Expansion Space #2" (Suite 130) 4,050 square feet

Period		Rate
Commencement (est. 8/1/01) - 3/31/03	=	$0.85/sf ($3,442.50 per month)

Stonehollow 2
Existing Space (Suite 255) 15,080 square feet

Period		Rate
11/01/00 - 03/31/03	=	$0.74/sf ($11,159.20 per month)

11. Tenant agrees to pay to Landlord an Additional Security Deposit in the amount of $10,500.00.

12. Tenant shall have the right and option to renew this Lease for one (1) additional twelve (12) month term by delivering written notice thereof to Landlord at least One Hundred Twenty (120) days prior to the expiration date of the lease term, provided that at the time of such notice and at the end of the lease term, Tenant is not in default hereunder. Upon the delivery of said notice and subject to the conditions set forth in the preceding sentence, this Lease shall be extended upon the same terms, covenants and conditions as provided in this Lease, except that the rental payable during said extended term shall be the prevailing market rental rate for space of comparable size, quality and location at the commencement of such extended term. If a conflict arises in the determination of such a FMV rental rate, a three-member committee, selected from the Austin Board of Realtors, shall determine the FMV rental rate. The first two members of such committee shall be selected by Landlord and Tenant respectively, which two members shall select the third. In no event shall the rate decrease below the rate Tenant is currently paying.

13. Except as specifically amended hereby, the Lease shall remain unaffected hereby and in full force and effect as originally written.

Signatures on Next Page

DATED AS OF THE 9 DAY OF FEBRUARY, 2000.

WITNESS:

____

LANDLORD:
Metropolitan Life Insurance Company, a New York corporation, on behalf of a commingled separate account

By: SSR Realty Advisors, Inc., a Delaware corporation, as Investment Advisor to Metropolitan Life Insurance Company

By:
Name: /s/ A. Alan Bates
Title: Senior Asset Manager
Address: ______________________________
____
____
Telephone: 914-422-6828
Fax: 914-422-6884

DATED AS OF THE ___DAY OF _______________, 2000.

WITNESS:

____

TENANT:
ACTIVE POWER, INC.

By: /s/ David Gino
Name: David Gino
Title: CFO
Address: ______________________________
____
____
Telephone: 512-491-3134
Fax: 512-836-4511

Exhibit "A"

Stonehollow 1

Address: 11525 Stonehollow Drive, Suite 135 (existing space)
11525 Stonehollow Drive, Suite 120 (expansion space #1)
11525 Stonehollow Drive, Suite 110 (expansion space #1)
11525 Stonehollow Drive, Suite 130 (expansion space #2)

Legal Description: Lot 1-A, Block A, Stonehollow Section 4-A Resubdivision of Lots 2 and 3 Stonehollow Section Four, a subdivision in Travis County, Texas according to the map or plat of record in Volume 98, Pages 36-37 in the Plat Records of Travis County, Texas

Stonehollow 2

Address: 11525 Stonehollow Drive, Suite 135 (existing space)

Legal Description: Lot 2-A, Block A, Stonehollow Section 4-A Resubdivision of Lots 2 and 3 Stonehollow Section Four, a subdivision in Travis County, Texas according to the map or plat of record in Volume 98, Pages 36-37 in the Plat Records of Travis County, Texas

EXHIBIT 10.15

SUBLEASE AGREEMENT

This Sublease is made this 5th day of April, 1999 at Travis County, Texas by and between Video Associates Laboratories, Inc., (herein, "Sublessor"), and Active Power, Inc., (herein, "Sublessee").

Sublessor is the Lessee under that certain Lease, (the "Main Lease"), by and between Metropolitan Life Insurance Company, a New York corporation; on behalf of a commingled separate account by: SSR Realty Advisors, Inc., a Delaware corporation, as Investment Advisor to Metropolitan Life Insurance Company, as Landlord, (herein, "Lessor"), and Video Associates Laboratories, Inc., as Tenant, (herein "Sublessor"), executed on or about May 24, 1996, Amended August 13, 1996 and Estoppel Certificate dated December 11, 1996 (Ownership from Braker Phase III, Ltd., as Landlord to above referenced Metropolitan Life, as Landlord), for a portion of the premises described in the Main Lease and Exhibit "B", (herein, "Leased Premises"), a true and correct copy of which Main Lease is attached hereto as Exhibit "A" and incorporated herein by this reference.

In consideration of the mutual promises contained herein, Sublessor hereby subleases Leased Premises to Sublessee, subject to the terms of the Main Lease, and subject further to the provisions of this Sublease Agreement, as follows:

1. Sublessee hereby agrees to abide by and observe all the terms, covenants and conditions of the Main Lease.

2. The premises for the sublease shall be approximately 2,079 square feet.

3. The term of this Sublease shall commence April 12, 1999, provided, however, that this Sublease shall sooner terminate upon the termination for any cause whatsoever of the Main Lease. The term of the sublease will be approximately twelve and one-half (12 1/2) months, expiring April 30, 2000.

4. Insofar as the provisions of the Main Lease do not conflict with the specific provisions of this Sublease Agreement, they and each of them are incorporated into this Sublease as if fully completely rewritten herein, and Sublessee agrees to be bound to the Sublessor by all the terms of the Main Lease and to assume towards Sublessor and perform all the obligations and responsibilities that Sublessor, by the Main Lease, assumes towards the Lessor, except for the payment of rent by Sublessee to Sublessor, which is governed by Paragraph 5 herein. Sublessee further agrees to indemnify and hold harmless Sublessor from any claim or liability under the Main Lease that is a direct result of actions by Sublessee. The relationship between Sublessee and Sublessor shall be the same as that between Sublessor and Lessor under the Main Lease.

5. Sublessee agrees to pay Sublessor, as rent for the Leased Premises its proportionate share of Base Rent and Escrow Deposits in the Main Lease. The estimated monthly payments for 1999 are as follows:

Through 7/31/99	$ 1,927.61
08/01/99 through 12/31/99	$ 1,992.00

6. The following events shall be deemed to be events of default by Sublessee under this Sublease: any events of default by Sublessee, listed as events of default by Tenant set forth in the Main Lease, or any default in the provisions of this Sublease Agreement. Upon the occurrence of any such events of default, and in addition to any other available remedies provided by law or in equity, Sublessor shall have all remedies granted to Lessor in the Main Lease.

7. Upon Execution of this Sublease, Sublessee shall deposit with Sublessor the sum of two thousand five hundred and 00/100 dollars ($2,500.00), as a security deposit to be held by Sublessor pursuant to the provisions of the Main Lease. Security deposit shall be returned to Sublessee within thirty (30) calendar days of termination of the sublease provided Sublessee's obligations under this Sublease Agreement have been fulfilled.

8. Time is of the essence of this Sublease, and each and all the terms hereof.

9. Any notice or other communication required or permitted to be given under this Sublease or under the Main Lease shall be in writing and shall be deemed to be delivered on the date it is hand delivered to the party to whom such notice is given, at the address set forth below, or if such notice is mailed, on the date on which it is deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the party to whom such notice is directed, at the address set forth below:

If to Sublessor:	If to Sublessee:
Video Associates Laboratories, Inc.	Active Power, Inc.
11525 Stonehollow Drive, Suite 130	11525 Stonehollow Drive, Suite 135
Austin, Texas 78758	Austin, Texas 78758

10. Sublessee shall have no right to assign or sublet any interest in this Sublease without first obtaining the written consent of the Lessor and Sublessor, which consent may or may not be granted by the Lessor or Sublessor in their sole opinion, judgment or discretion.

11. In the event any one or more of the provisions contained in this Sublease Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

12. This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings and written or oral agreements between the parties respecting the subject matter of this Sublease Agreement.

13. Sublessee agrees to pay Sublessor its proportionate share (53%) of the monthly electric bill. If the electric bill reasonably exceeds the Sublessor's bill from the previous year, then Sublessee shall be responsible for this overage.

14. Any alterations made to demise the sublease premises shall be paid by Sublessee. Furthermore, upon expiration of sublease term, Sublessee shall return the sublease

premises to its original condition disregarding reasonable wear and tear and improvements.

15. Sublessee shall not create any objectional or unpleasant noise or vibrations.

16. Sublessee shall not use Sublessor's trash dumpster.

17. Sublessee shall maintain and repair HVAC equipment per Section 5 of the Main Lease.

EXECUTED on the day and year first above written.

SUBLESSOR:	SUBLESSEE:
Video Associates Laboratories, Inc.	Active Power, Inc.
By:/s/ ________________________________	By: /s/ ______________________________
Title:_____________________________	Title:____________________________

CONSENT BY LESSOR

Metropolitan Life Insurance Company, Lessor under the Main Lease referred to in this Sublease Agreement, hereby consents to the foregoing Sublease Agreement.

LESSOR:

Metropolitan Life Insurance Company, a New York corporation;
On behalf of a commingled separate account

BY: SSR Realty Advisors, Inc., a Delaware corporation, as
Investment Advisor to Metropolitan Life Insurance Company

By:/s/ ________________________________

Title:_____________________________

FIRST AMENDMENT TO SUBLEASE AGREEMENT

To be attached to and form a part of Sublease made the 5th day of April 1999 (which together with any amendments, modifications and extensions thereof, is hereinafter called the Sublease), between Sublessor and Sublessee for space in Stonehollow, Building 1, a portion of Suite 130.

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (this "First Amendment") made and entered into as of the 31 day of January , 2000 by and between Video Associates Laboratories, Inc. (Sublessor) and Active Power, Inc. (Sublessee).

Sublessor and Sublessee now desire to further amend the Sublease Agreement as more fully hereinafter set forth. Sublessor and Sublessee agree as follows:

1. Sublessor and Sublessee agree to extend the term of the 2,079 square foot sublease space for an additional fifteen (15) months. Effective date shall be May 1, 2000 and the Expiration Date shall be July 31, 2001.

2. Sublessee agrees to pay Sublessor, as rent for the Leased Premises it proportionate share of Base Rent and Escrow Deposit in the Main Lease, for the extended term.

3. Sublessor consents to the attached proposed improvements subject to Section 6 of the Main Lease. Sublessor reserves the right to require Sublessee to return the sublease premises to its original condition disregarding reasonable wear and tear.

4. Except as specifically amended hereby, the Sublease shall remain unaffected hereby and in full force and effect as originally written.

SUBLESSOR:	SUBLESSEE:
Video Associates Laboratories, Inc.	Active Power, Inc.
By: /s/	By: /s/
Name:______________________________	Name:_____________________________
Title:_____________________________	Title:____________________________

CONSENT BY LESSOR

Metropolitan Life Insurance Company, Lessor under the Main Lease referred to in this Sublease Agreement, hereby consents to the foregoing Sublease Agreement.

LESSOR:

Metropolitan Life Insurance Company, a New York corporation;
On behalf of a commingled separate account

BY: SSR Realty Advisors, Inc., a Delaware corporation, as
Investment Advisor to Metropolitan Life Insurance Company

By: /s/

Title:______________________________

Date:_______________________________

Proposed Improvements

EXHIBIT 10.16

Active Power
11525 Stonehollow Drive, Suite 135 Austin, Texas 78758
Phone: 512.836.6464 Fax: 512.836.4511

November 2, 1999

David Gino
8110 Talbot Lane
Austin, TX 78746

Dear David:

Below is the modified letter we discussed late last week. When you get a chance, please sign both copies and mail one back to me. Thanks.

Your employment with Active Power, Inc. ("Active Power") as its Chief Financial Officer will commence on December 1, 1999. In consideration of the services to be provided by you during the term of your employment your initial compensation shall be as follows:

(a) biweekly (every 14 days) pay of $7,692.31. Should a change in corporate control take place during your employment with Active Power and a significant reduction in responsibility relative to your initial position take place in your view within 12 months of the change in control event, Active Power will pay your base salary until you find a new position for a period of up to 6 months.

(b) Cash bonus up to 30% of base pay, contingent upon meeting three to six pre-defined MBOs. Objectives will be mutually agreed upon by you and Joe Pinkerton. Once notified that a particular MBO has been achieved, payment will follow within four weeks.

(c) 15 days vacation with pay during each 12 months of employment. Accrued vacation, up to a maximum of 15 days, will be paid upon termination.

(d) 10 days paid sick leave during each 12 months of employment. Unused sick leave may not be carried over from year to year and is not paid out upon termination.

(e) 100,000 option shares to vest over 4 years of employment (quarterly) subject to Board approval, to be granted upon commencement of employment. A Notice of Grant of Stock Option will be provided following Board approval. Should a change in corporate control take place during your employment with Active Power and a significant reduction in assignment and/or responsibility relative to your current position take place, then 75% of your then unvested options will accelerate and vest immediately.

(f) Miscellaneous: entitled to participate in any pension or profit-sharing plan, group life insurance plan, hospitalization insurance plan, medical services plan, or any other plan or arrangement of Active Power now or hereafter existing for the benefit of employees generally.

Please note that your employment at Active Power is "at will", meaning either you or Active Power can terminate the employment relationship at any time, with or without notice and with or without cause. Nothing contained in this offer of employment, or in any other communication, oral or written, between you and

Active Power, may modify the at-will relationship, which may only be modified by a written agreement signed by the President of Active Power designating a specific term of employment.

Health Plan:

Active Power currently uses BlueCross BlueShield as its health plan for employees. You can choose between the HMO plan or the PPO plan. Active Power pays for the employee's insurance cost and family members may be added to the plan by deducting the cost of dependents from biweekly pay. Currently, spouses are about $150-170 per month (depending upon which plan is chosen) and an entire family costs about $250-300 per month.

Regarding pre-existing conditions, as long as you have had health insurance for at least 18 months with your present employer and join Active Power's plan within 30 days of your hire date, then, under federal law (HIPAA), our insurance company cannot deny coverage due to pre-existing conditions.

Both plans have a large list of doctors from which to choose and access to most of the major medical facilities in the Austin area.

Long-Term Disability:

Active Power has in place a long-term disability policy, through Fortis Benefits, that covers all full-time employees. This plan is fully funded by Active Power. This policy will pay 60% of your base pay if you are disabled for greater than 90 days, and will continue to pay benefits through age 65 if necessary.

Retirement Plans:

Active Power has an employee funded 401k plan in which all employees over 21 years old are eligible to participate at the start of each calendar quarter. The 401k is managed by CIGNA and a list of investment options is provided for your information (there are no commissions charged from trading between the listed funds).

Looking forward to working with you to make Active Power a great company.

Sincerely,	Accepted:/s/ David Gino
/s/ Joe Pinkerton	Date: 11/4/99
Joe Pinkerton	David Gino

EXHIBIT 23.1

CONSENT OF INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated February 26, 2000 (except for Note 12, as to which the date is March 31, 2000) in the Registration Statement (Form S-1) and related Prospectus of Active Power, Inc. to be filed on or about May 11, 2000 for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Austin, Texas
May 10, 2000

This Schedule contains summary financial information extracted from the audited financial statements for the year ended December 31, 1999 and the unaudited financial statements for the three months ended March 31, 2000 and is qualified in its entirety by reference to such financial statements.

YEAR	3-MOS
DEC-31-1999	DEC-31-2000
JAN-01-1999	JAN-01-2000
DEC-31-1999	MAR-31-2000
24,856,497	18,605,977
1,408,822	4,754,002
63,734	225,642
25,976	29,613
933,692	1,231,321
27,242,100	24,818,224
2,302,657	2,892,012
1,178,934	1,332,875
28,365,823	26,377,361
848,006	1,157,133
0	0
51,841,224	54,961,737
420	420
2,590	2,845
(27,427,260)	(34,400,774)
28,365,823	26,377,361
1,046,811	181,836
5,046,811	181,836
3,006,174	521,055
0	0
10,441,443	4,764,065
0	0
17,947	4,372
(7,418,753)	(5,107,656)
0	0
(7,418,753)	(7,418,753)
0	0
0	0
0	0
(7,418,753)	(5,107,656)
(2.75)	(1.68)
(2.75)	(1.68)