

**OFFICER'S CERTIFICATE RE: INVESTMENT COMPANY ACT
& PUBLIC UTILITY HOLDING COMPANY ACT**

OFFICER'S CERTIFICATE

ABC COMPANY INC.

The undersigned hereby certifies as follows:

1. I am the duly elected officer, holding the office specified below my signature of **ABC Company Inc.** (“ABC”), and am authorized to execute and deliver this Officer's Certificate on behalf of **ABC**.

2. I am executing this Certificate knowing that it will be relied upon by counsel in connection with legal opinions to be delivered on the date hereof in connection with the **\$amount Loan Agreement Name** (e.g. Restated Credit Agreement), dated as of **Month Day, Year**, by and among **ABC Company Inc.**, [specify other credit parties] the lending institutions party thereto, **Big Bank**, as Administrative Agent, and **BB Securities Inc.**, as Syndication Agent, **specify other agents(?)**.

3. (a) **ABC**:

(i) is not and does not hold itself out as being engaged primarily, and does not propose to engage primarily, in the business of investing, reinvesting or trading in Securities (as such term is defined in clause (b) of this paragraph 3);

(ii) is not and does not propose to engage in the business of issuing Face-Amount Certificates of the Installment Type (as such term is defined in clause (b) of this paragraph 3), and has not been engaged in such business or have any such certificate outstanding; and

[(iii) is not engaged and does not propose to engage in the business of investing, reinvesting, owning, holding or trading in Securities, and does not own or propose to acquire Investment Securities (as such term is defined in clause (b) of this paragraph 3) having a value exceeding 40% of the value of its total assets, exclusive of Government Securities (as such term is defined in clause (b) of this paragraph 3)

and cash items, on an unconsolidated basis.]

[(iii) is primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in Securities (as such term is defined in clause (b) of this paragraph 3).]¹

(b) For purposes of clause (a), the following terms have the following meanings:

"Face-Amount Certificate of the Installment Type" means any certificate, investment contract, or other Security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount.

["Government Security" means any Security issued or guaranteed as to principal or interest by the United States, or by as person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

"Investment Securities" includes all Securities except (A) Government Securities, (B) Securities issued by employees' securities companies, and (C) Securities issued by majority-owned subsidiaries of Agere which are not themselves investment companies. In considering whether a majority-owned subsidiary is not an investment company for this purpose, it is understood that (i) the exemption under Rule 3(c)(1) of the Investment Company Act of 1940, as amended (the "ICA"), may not be relied upon (such exemption could be available to a company whose outstanding securities (other than short-term paper) are beneficially owned by less than 100 persons and which is not making and does not presently propose to make a public offering of its securities) and (ii) the exemption under Rule 3(c)(7) of the ICA may not be relied upon (such exemption could be available to a company (a) whose outstanding securities are owned exclusively by "qualified purchasers" (i.e., a natural person, trust or company that, in addition to other qualifications, owns at least \$5

¹ The first version of this paragraph is preferred. If the borrower is concerned whether it would at all times meet the 40% test, the second version may be used instead. If the first version is used, the bracketed definitions of "Government Securities" and "Investment Securities" should be included.

million in investments) or, subject to certain conditions, whose outstanding securities are beneficially owned by both qualified purchasers and not more than 100 people who are not qualified purchasers and (b) which is not making and does not propose to make a public offering of its securities).]

"Securities" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

4. Neither Agere nor any subsidiary or affiliate of Agere:

(i) owns or operates facilities used for the generation, transmission or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale (an "Electric Utility Company"); or

(ii) owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power (a "Gas Utility Company"); or

(iii) directly or indirectly owns, controls or holds with power to vote 10% or more of the outstanding voting securities of any Electric Utility Company or Gas Utility Company (or of any company that so owns, controls, is affiliated with or holds such voting power with respect to an Electric Utility Company or a Gas Utility Company); or

(iv) exercises a controlling influence, directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more other

NOT A PRECEDENT—FOR TEACHING PURPOSES ONLY

persons), over the management or policies of any Electric Utility Company, Gas Utility Company, any affiliate thereof, or any company that, directly or indirectly, so owns, controls, is affiliated with or holds with power to vote 10% or more of the outstanding voting securities of an Electric Utility Company or a Gas Utility Company; or

(v) has been determined by the Securities and Exchange Commission to exercise such a controlling influence (as described in (iv) above) as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Agere, or any subsidiary or affiliate thereof, be subject to regulation under the Public Utility Holding Company Act of 1935.

IN WITNESS WHEREOF, the undersigned has signed this Officer's Certificate as of the _____ day of _____, _____.

ABC COMPANY INC.

By: _____

Title: _____