

CLERK OF THE COURT

1 COMPB  
Steven J. Parsons  
2 Nevada Bar No. 363  
LAW OFFICES OF STEVEN J. PARSONS  
3 7201 W Lake Mead Blvd Ste 108  
Las Vegas, NV 89128-8354  
4 (702)384-9900  
(702)384-5900 (fax)  
5 [Steve@SJPlawyer.com](mailto:Steve@SJPlawyer.com)

6 Steven E. Goren  
Michigan Bar No. P36581  
7 pending admission SCR 49  
GOREN, GOREN & HARRIS, P.C.  
8 30400 Telegraph Rd Ste 470  
Bingham Farms, MI 48025-5818  
9 (248) 540-3100  
(248) 540-3136 (fax)  
10 [sgoren@gorenlaw.com](mailto:sgoren@gorenlaw.com)

11 Attorneys for Plaintiff  
DAN RAIDER, an individual  
12 on his own behalf and on behalf  
of others similarly situated

DISTRICT COURT

CLARK COUNTY, NEVADA

15 DAN RAIDER, an individual on his own  
behalf and on behalf of others similarly  
16 situated,

Case No.: A-15-712113-B

Dept. No.: XIII

17 Plaintiff,  
18 v.

COMPLAINT

19 ARCHON CORPORATION, a Nevada  
corporation; PAUL W. LOWDEN, an  
individual; and SUZANNE LOWDEN, an  
20 individual,

BUSINESS COURT – EDCR 1.61(a)(1)

JURY DEMAND

21 Defendants.

EXEMPT FROM ARBITRATION:  
(NAR 3(A) - Declaratory Relief;  
NAR 3(A) - Value Exceeds \$50,000)

22  
23 1. DECLARATORY RELIEF;  
2. BREACH OF CONTRACT (UNPAID BALANCE OF THE REDEMPTION PRICE);  
24 3. BREACH OF CONTRACT (POST-AUGUST 31, 2007 DIVIDENDS)  
4. UNJUST ENRICHMENT;  
25 5. CONSTRUCTIVE TRUST AND OTHER EQUITABLE RELIEF; and  
6. BREACH OF FIDUCIARY DUTY.

26 Plaintiff DAN RAIDER, an individual on his own behalf and on behalf of others similarly  
27 situated, by his attorneys, Steven J. Parsons of LAW OFFICES OF STEVEN J. PARSONS and Steven

1 E. Goren, of GOREN, GOREN & HARRIS, P.C., a Member of the Michigan Bar, pending admission  
2 to this Court, Pro Hac Vice, within SCR 49, complains of Defendant ARCHON CORPORATION,  
3 a Nevada corporation, PAUL W. LOWDEN, an individual; and SUZANNE LOWDEN, an  
4 individual, and as causes of action against Defendants, complains and alleges as follows:

5 PARTIES, JURISDICTION and VENUE

6 1. Plaintiff Dan Raider ("Plaintiff and/or "Raider") is a resident of California.

7 2. Defendant Archon Corporation ("Defendant" and/or "Archon") is a Nevada  
8 corporation whose principal place of business is in Las Vegas, Clark County, Nevada.

9 3. Defendant Paul W. Lowden is a resident of Clark County, Nevada.

10 4. Defendant Suzanne Lowden is a resident of Clark County, Nevada.

11 5. Plaintiff's Complaint states a controversy over which this Honorable Court has  
12 jurisdiction and venue is properly in this Court as Defendants are residents and domiciliaries  
13 of Clark County, Nevada, doing business principally in Clark County, Nevada; the wrongful  
14 conduct complained of by Plaintiff all allegedly occurred in Clark County, Nevada; relevant  
15 benefits due from the Redemption, supra, and damages claimed by Plaintiff Raider on behalf  
16 of himself and the other members of the putative class were due and payable in Clark County,  
17 Nevada.

18 6. The matters in controversy exceed, exclusive of interest and costs, the minimum  
19 jurisdictional amount of the Court of Ten Thousand Dollars (\$10,000.00).

20 a. Plaintiff Raider was the owner of 7,000 shares of Archon preferred stock  
21 that Archon purported to redeem and claims damages, inter alia, of \$3.449 per share (the  
22 unpaid balance of the redemption price, infra) and dividends that have continued to accrue  
23 since August 31, 2007 on each share.

24 b. The members of the putative class on whose behalf this action has been  
25 brought collectively owned a total of at least 1,432,270 shares of the Archon preferred stock  
26 and each member of the putative class is entitled to damages inter alia of \$3.449 per share  
27 (the unpaid balance of the redemption price, infra) and dividends that have continued to

1 accrue since August 31, 2007 on each share.

2 STATEMENT OF THE CASE

3 7. On or about August 20, 1993, Defendant Archon, formerly and then known as  
4 "Sahara Gaming Corporation," adopted a resolution ("Resolution") creating nine million  
5 (9,000,000) shares of Preferred Stock.

6 8. On or about September 30, 1993, Defendant Archon filed a Certificate of  
7 Designation ("Certificate") for the Preferred Stock with the Secretary of State of the State of  
8 Nevada. The Resolution was set forth in the Certificate. A copy of the Certificate is attached  
9 hereto and incorporated herein as if set forth fully, as Exhibit "1."

10 9. Defendant Archon subsequently issued shares of Preferred Stock, denominated  
11 as Exchangeable Redeemable Preferred Stock ("Preferred Stock").

12 10. Defendant Archon purported to redeem its outstanding Preferred Stock as of the  
13 close of business on August 31, 2007 ("Redemption").

14 11. The Redemption price was required by the Certificate to be \$2.14 per share plus  
15 the amount of all accrued and unpaid dividends to August 31, 2007. Defendant Archon did  
16 not properly calculate the amount of the redemption price and paid its preferred shareholders  
17 only \$5.241 per share.

18 12. As set forth more fully, infra, it has been determined judicially, authoritatively  
19 and with finality that Defendant Archon should have paid its preferred shareholders \$8.69 per  
20 share. In addition, under the Certificate, dividends have continued to accrue in favor of any  
21 shareholder who was not paid in full.

22 13. Plaintiff Raider was an owner of Archon Preferred Stock as of the close of  
23 business on August 31, 2007.

24 14. According to the Proxy Statement filed by Defendant Archon on June 1, 2007  
25 with the Securities and Exchange Commission, as of May 11, 2007, there were four million  
26 four hundred thirteen thousand seven hundred seventy-seven (4,413,777) shares of the  
27 Preferred Stock issued and outstanding. According to the Proxy Statement, as of May 1,

1 2007, Defendant Paul W. Lowden, Chairman and CEO of Archon owned 18.4% of the  
2 Preferred Stock and 74.7% of Defendant Archon's common stock and all directors and officers  
3 of Defendant Archon, collectively, owned 18.9% of the Preferred Stock and 75.4% of the  
4 common stock.

5 THE REDEMPTION OF THE PREFERRED STOCK

6 15. Paragraph 3(a)(i) of the Resolution and Certificate provided that the shares of  
7 the Preferred Stock could be redeemed at any time or from time to time, in whole or in-part,  
8 at the election of Defendant Archon.

9 16. On July 31, 2007, Defendant Archon issued a Notice of Redemption ("Notice")  
10 to the holders of outstanding shares of the Preferred Stock announcing its intent to "redeem  
11 all of the outstanding shares of the Preferred Stock issued and outstanding as of the close of  
12 business on August 31, 2007". The Notice stated that issued and outstanding shares of the  
13 Preferred Stock would be redeemed at "the redemption price of \$5.241 per share".

14 17. The Notice also stated that upon redemption, the Preferred Stock would "be  
15 delisted from further trading."

16 18. Archon paid its preferred shareholders \$5.241, the amount stated in the Notice.

17 THE REDEMPTION PRICE

18 19. Paragraph 3(a)(i) of the Resolution and the Certificate provided that the  
19 redemption price is "equal to the Liquidation Preference".

20 20. The "Liquidation Preference", in turn, was defined in paragraph 7 of the  
21 Resolution and the Certificate to be equal to "...the sum of (i) \$2.14, plus (ii) an amount  
22 equal to all accrued and unpaid dividends for the then current Dividend Period, through the  
23 date of liquidation, dissolution or winding up, plus all prior Dividend Periods, whether or not  
24 declared".

25 21. Paragraph 2(a) of the Resolution and the Certificate provided that semi-annual  
26 dividend periods "(each a 'Dividend Period') shall commence on and include the 31st day of  
27 March and the 30th day of September of each year and shall end on and include the date next

1 preceding the following Dividend Payment Date.” Paragraph 2(a) of the Resolution and the  
2 Certificate also provided that Dividend Payment Dates were March 31st and September 30th  
3 or the next business day, if the date was a non-business day.

4 22. The amount of the accrued and unpaid dividends must be determined to  
5 calculate and determine the Redemption Price.

6 THE AMOUNT OF THE ACCRUED AND UNPAID DIVIDENDS

7 23. Paragraph 2(a) of the Resolution and the Certificate provided for payment to  
8 holders of the Preferred Stock of cumulative cash dividends calculated as follows:

9 “a rate per annum per share (the ‘Dividend Rate’”) initially set at  
10 8% of (i) \$2.14 plus (ii) accrued but unpaid dividends as to  
11 which a Dividend Payment Date has occurred. Dividends shall  
12 accrue from the date of issuance and are payable semi-annually  
13 on...[the Dividend Payment Date]”.

14 24. Paragraph 2 of the Resolution and the Certificate further provided that initial  
15 Dividend Rate was eight percent (8%) per annum and that after the tenth (10<sup>th</sup>) Dividend  
16 Payment Date, the Dividend Rate would increase periodically to a maximum of sixteen percent  
17 (16%) per annum. The Dividend Rate was sixteen percent (16%) per annum prior to the  
18 redemption of the Preferred Stock.

19 25. Paragraph 2(a) of the Resolution and the Certificate also provided the dividends  
20 “shall be fully cumulative and shall accrue (whether or not declared), on a daily basis...”

21 26. Paragraph 2 of the Resolution and the Certificate also provided that “on any or  
22 all of the first six Dividend Payment Dates [Defendant Archon] may, at its option, pay dividends  
23 on the Exchangeable [Redeemable] Preferred Stock in the form of additional shares of  
24 Exchangeable [Redeemable] Preferred Stock at the rate per annum of 0.08 shares of  
25 additional Exchangeable [Redeemable] Preferred Stock for every share entitled to receive a  
26 dividend.

27 27. On the first six (6) Dividend Payment Dates, Archon elected to pay dividends in

1 the form of additional shares of the Preferred Stock as provided in Paragraph 2 of the  
2 Resolution and the Certificate.

3 28. After the sixth (6<sup>th</sup>) Dividend Payment Date, Defendant Archon did not pay any  
4 dividends on the Preferred Stock and, in particular, did not pay any cash dividends.

5 29. Because Defendant Archon did not pay any cash dividends on the Preferred  
6 Stock, all dividends due subsequent to the sixth (6<sup>th</sup>) Dividend Payment Date accumulated.

7 30. Paragraph 2(a) of the Resolution and the Certificate requires that each of the  
8 accrued and unpaid dividends be calculated by applying the applicable Dividend Rate of eight  
9 to sixteen percent (8 to 16%) annually to the sum of \$2.14 and the accrued but unpaid  
10 dividends as to which a Dividend Payment Date had then occurred.

11 31. Calculated as required by the Resolution and the Certificate, the unpaid and  
12 accrued dividends to August 31, 2007 totaled \$6.55. The required Redemption Price was  
13 therefore \$8.69 (\$2.14 + \$6.55).

14 32. In calculating the respective accrued and unpaid dividends, Defendant Archon  
15 applied the Dividend Rate only to \$2.14, not to the sum of \$2.14 and the accrued but unpaid  
16 dividends as to which a Dividend Payment Date had occurred. As a result, the Redemption  
17 Price calculated by Defendant Archon was \$3.45 lower than it would have been had it been  
18 calculated properly, as required by the Resolution and the Certificate.

19 CLASS ACTION ALLEGATIONS

20 33. Plaintiff Raider brings this action on his own behalf and on behalf of a class of  
21 those similarly situated, defined as all holders of outstanding Preferred Stock as of the close  
22 of business on August 31, 2007, except:

- 23 a. Paul W. Lowden, Suzanne Lowden, John W. Delaney,  
24 William J. Raggio, Howard Foster, Richard H. Taggart, and  
any other officer or director of Archon Corporation;
- 25 b. D. E. Shaw Laminar Portfolios, LLC, LC Capital Master  
26 Fund, Ltd., LC Capital/Capital Z SPV, LP, Magten Asset  
27 Management Corp, Mercury Real Estate Securities Fund  
LP, Mercury Real Estate Securities Offshore Fund Limited,  
Black Horse Capital LP, Black Horse Capital (QP) LP, Black

Horse Capital Offshore Ltd. and Plainfield Special  
Situations Master Fund Limited; and

c. Leeward Capital, L.P.

34. The Class is so numerous that joinder of all members is impractical. There are over five hundred sixty (560) members of the Class.

35. There are questions of law and fact common to the Class.

36. Plaintiff's claims are typical of the claims of the Class. The claims all arise from the same operative facts and are based on the same legal theories.

37. Plaintiff will fairly and adequately protect the interests of the Class.

38. The prosecution of separate actions by individual members of the Class would create a risk of:

a. Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants;

b. Adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

39. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as whole.

40. The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

41. There is one central and overriding issue in this case: "What is the proper method under the Resolution and the Certificate for calculating the Liquidation Preference?" As explained in the following section, that issue has been decided adverse to Defendant Archon judicially, authoritatively and with finality. All of the other liability issues are issues common to the Class. Furthermore, the damages per share are the same for each share and

1 the damages of each member of the Class is simply equal to the damages per share multiplied  
2 by the number of shares held by the class member.

3 PRIOR LITIGATION REGARDING THE CALCULATION OF THE REDEMPTION PRICE

4 42. Three actions by Archon preferred shareholders were filed against Archon in the  
5 U.S. District Court for the District of Nevada:

6 a. The first action was filed by D. E. Shaw Laminar Portfolios, L.L.C. et al.,  
7 on August 27, 2007 and was assigned to Philip M. Pro, U.S. District Judge, docketed as case  
8 number 2:07-cv-01146-PMP-(LRL).

9 b. The second action was filed by David Rainero on November 20, 2007  
10 and was brought on behalf of all of the preferred stockholders except the plaintiffs in D. E.  
11 Shaw and officers and directors of Archon who were preferred shareholders. It was assigned  
12 to Robert Clive Jones, U.S. District Judge and later reassigned to Gloria M. Navarro, U.S.  
13 District Judge, docketed as case number 2:07-cv-01553-GMN-(PAL).

14 c. The third action was filed by Leeward Capital, L.P. on January 2, 2008  
15 and was also assigned to Judge Pro, docketed as case number 2:08-cv-00007-PMP-(LRL).

16 43. In both D. E. Shaw and Leeward, summary judgment was granted in favor of  
17 Plaintiffs and final judgment was entered in each. Judge Pro determined and entered  
18 Judgment that the redemption price should have been of \$8.69 per share, the sum of \$2.14  
19 and the unpaid dividends in the amount of \$6.55 that had accrued to August 31, 2007.

20 44. Defendant Archon appealed both judgments to the U.S. Court of Appeals for the  
21 Ninth Circuit. On September 19, 2012, the judgments in D.E. Shaw and Leeward were  
22 affirmed by the U.S. Court of Appeals for the Ninth Circuit.

23 45. After the judgments in D.E. Shaw and Leeward were affirmed by the U.S. Court  
24 of Appeals for the Ninth Circuit, Archon did not file a petition for panel rehearing, a petition for  
25 rehearing, en banc, a petition for certiorari or otherwise challenge or appeal the judgments  
26 further.

27 46. Upon information and belief, Plaintiff alleges Archon paid the judgments in D.E.



1 Shaw and Leeward.

2 47. On November 7, 2013, partial summary judgment was granted in favor of the  
3 plaintiff in Rainero. Finding that Archon was collaterally estopped, Judge Navarro ruled:

4 “Because the Court finds that the D.E. Shaw and Leeward  
5 summary judgment decisions should have preclusive effect on the  
6 issue presented here, the Court accordingly finds that the issue  
7 of how to construe the Certificate so as to determine the correct  
8 method of calculating the redemption price is settled. The  
Certificate’s terms are unambiguous. The Liquidation Preference  
is \$8.69, as calculated by adding the total amount of accrued  
but unpaid dividends on August 31, 2007 (\$6.55), plus \$2.14,  
as provided in the Certificate.”

9 48. However, subsequently in Rainero, on September 11, 2014, nearly seven (7)  
10 years after the action was filed, the U.S. District Court, sua sponte, issued a show cause order  
11 questioning whether it was divested of jurisdiction by 28 U.S.C. § 1332(d)(9). Briefs were  
12 submitted by the parties. On September 29, 2014, the U.S. District Court issued an order  
13 holding that it did not have subject matter jurisdiction and a judgment dismissing the action  
14 without prejudice was entered in favor of Archon. An appeal to the U.S. Court of Appeals for  
15 the Ninth Circuit has been taken by the Plaintiff Rainero and is pending.

16 49. At the time Rainero was dismissed, Plaintiff’s Amended Motion for Class  
17 Certification and his Motion for Partial Summary Judgment as to Post-August 31, 2007  
18 Damages were pending.

19 50. Archon has not paid Plaintiff Raider and the members of the putative class the  
20 unpaid balance of the redemption price or the dividends which have continued to accrue since  
21 August 31, 2007.

22 COUNT I – DECLARATORY RELIEF

23 51. Plaintiff incorporates by reference the balance of the Complaint as though set  
24 forth fully in this claim for relief.

25 52. An actual controversy exists between Plaintiff Raider and the members of the  
26 putative class on the one-hand and Defendant Archon on the other-hand, arising out of the  
27 events, as alleged herein.

53. Specifically, Plaintiff Raider contends on behalf of himself and the members of the putative class that Defendant Archon has no legal basis for refusing to pay fully the benefits due Plaintiff Raider and the members of the putative class in accordance with the terms of the Redemption and within Nevada law as determined by the U.S. District Court for the District of Nevada and the U.S. Court of Appeals for the Ninth Circuit in D.E. Shaw and Leeward.

54. Plaintiff is informed and believes and based thereon alleges that Defendant disputes its contentions, as evidenced by Defendant's failure to tender Plaintiff benefits due from the Redemption.

55. Plaintiff Raider seeks on behalf of himself and the members of the putative class -a declaration from this Court with respect to said controversies, and a judicial determination of the rights and responsibilities of the parties and of all appropriate remedies available to them.

## COUNT II – BREACH OF CONTRACT

(UNPAID BALANCE OF THE REDEMPTION PRICE)

56. Plaintiff incorporates by reference the balance of the Complaint as though set forth fully in this claim for relief.

57. Defendant Archon was required by the Resolution and the Certificate and otherwise by law to pay Plaintiff Raider and the members of the putative class an amount equal to the Liquidation Preference for each share of Preferred Stock it redeemed.

58. Defendant Archon was required by the Resolution and the Certificate and otherwise by law to calculate the Liquidation Preference in the manner required by the Resolution and the Certificate.

59. Defendant Archon calculated the Liquidation Preference was \$5.241 per share.

60. Defendant Archon did not calculate the Liquidation Preference in the manner required by the Resolution and the Certificate.

61. Calculated in the manner required by the Resolution and the Certificate, the

1 Liquidation Preference is \$8.69 per share.

2 62. Plaintiff Raider and the members of the putative class have been damaged in  
3 the amount of \$3.45 per share.

4 COUNT III – BREACH OF CONTRACT (POST-AUGUST 31, 2007 DIVIDENDS)

5 63. Plaintiff incorporates by reference the balance of the Complaint as though set  
6 forth fully in this claim for relief.

7 64. Section 3(a)(i) of the Certificate of Redemption provides in pertinent part:

8 “On and after such redemption date, dividends shall cease to  
9 accrue on the shares redeemed, and such shares shall be  
10 deemed to cease to be outstanding, provided that the  
11 redemption price (including any accrued and unpaid dividends  
to the date fixed for redemption) has been duly paid or provided  
for.” (Emphasis added.)

12 65. The “redemption price (including any accrued and unpaid dividends)” has yet  
13 to be “duly paid or provided for.”

14 66. Under Section 3(a)(i), dividends have continued to accrue.

15 67. Under Section 2(a) of the Certificate of Redemption, the dividend rate is sixteen  
16 percent (16%) payable semi-annually on March 31 and September 30.

17 68. Since the redemption price has yet to be “duly paid or provided for”, dividends  
18 have continued to accrue.

19 69. Plaintiff Raider and the members of the putative class have been damaged in  
20 the amount of the unpaid dividends which have accrued on each share since August 31,  
21 2007.

22 COUNT IV – UNJUST ENRICHMENT

23 70. Plaintiff incorporates by reference the balance of the Complaint as though set  
24 forth fully in this claim for relief.

25 71. Once the time for filing a petition for panel rehearing, a petition for rehearing en  
26 banc and a petition for certiorari had passed after the U.S. Court of Appeals for the Ninth  
27 Circuit’s affirming the judgments in D.E. Shaw and Leeward, there was no basis in law or equity

1 for Defendant Archon to retain the unpaid balance of the redemption price and the dividends  
2 which continued to accrue.

3 72. Defendant Archon has unjustly retained money belonging to Plaintiff Raider and  
4 the members of the putative class against the fundamental principles of justice and equity,  
5 good faith and good conscience.

6 73. Defendant Archon has retained the unpaid balance of the redemption price and  
7 the dividends which continued to accrue which in equity and good conscience belong to  
8 Plaintiff Raider the members of the putative class.

9 74. Plaintiff Raider and the members of the putative class have been damaged in  
10 the amount per share equal to the unpaid balance of the redemption price of \$3.449 plus the  
11 unpaid dividends which have accrued since August 31, 2007.

12 COUNT V – CONSTRUCTIVE TRUST AND OTHER EQUITABLE RELIEF

13 75. Plaintiff incorporates by reference the balance of the Complaint as though set  
14 forth fully in this claim for relief.

15 76. There is a confidential relationship between Plaintiff Raider and the members  
16 of the putative class on the one hand and Archon on the other hand within the meaning of the  
17 rule enunciated in Locken v. Locken, 98 Nev. 369, 650 P.2d 303 (1982).

18 77. Archon's retention of the unpaid balance of the redemption price and the  
19 dividends which have continued to accrue would be inequitable.

20 78. The imposition of a constructive trust is essential to the effectuation of justice.

21 79. Plaintiff Raider, individually and on behalf of the members of the putative class,  
22 requests that:

23 a. This Court declare that Archon is indebted to Plaintiff Raider and the  
24 members of the putative class in the amount per share equal to \$3.449 plus the unpaid  
25 dividends which have accrued since August 31, 2007.

26 b. A constructive trust be imposed on the assets of Defendant Archon  
27 Corporation for the benefit of Plaintiff Raider and the members of the putative class in an

1 amount per share equal to the unpaid balance of the redemption price of \$3.449 plus the  
2 unpaid dividends which have accrued since August 31, 2007.

3 c. Archon be enjoined from paying any dividends to the holders of its  
4 common stock until Plaintiff Raider and the members of the putative class have been paid in  
5 full.

6 d. Archon be enjoined from paying any bonuses or any extraordinary  
7 compensation to Defendants Paul W. Lowden and Suzanne Lowden, any other Archon officer  
8 or director and any Archon executive until Plaintiff Raider and the members of the putative  
9 class have been paid in full.

10 e. Archon be enjoined from transferring any assets except in the ordinary  
11 course of business until Plaintiff Raider and the members of the putative class have been paid  
12 in full.

13 f. Archon be ordered to pay to Plaintiff Raider and the members of the  
14 putative class an amount per share equal to \$3.449 plus the unpaid dividends which have  
15 accrued since August 31, 2007 together with interest.

16 g. Plaintiff Raider and the members of the putative class be awarded costs,  
17 interest and attorney's fees.

18 COUNT VI - BREACH OF FIDUCIARY DUTY

19 80. Plaintiff incorporates by reference the balance of the Complaint as though set  
20 forth fully in this claim for relief.

21 81. Defendant Paul W. Lowden:

22 a. Has been the president of Defendant Archon since September 1993.

23 b. Has been a director of Defendant Archon since September 1993.

24 c. Was the chairman of the board of Defendant Archon from September  
25 1993 through at least September 2010 and, upon belief, has continued to be the chairman  
26 of the board.

27 d. Was the chief executive officer of Defendant Archon from September

1 1993 through at least September 2010 and, upon belief, has continued to be its chief  
2 executive officer.

3 e. Together with LICO, a company wholly owned by him, owned a substantial  
4 majority of the common stock of Defendant Archon between at least September 2006 and  
5 September 2010, ranging from approximately 70% to 80%, and, upon belief, has continued  
6 to own a substantial majority of the common stock of Archon.

7 82. Defendant Suzanne Lowden:

8 a. Has been the secretary of Defendant Archon since at least May 30,  
9 2008.

10 b. Has been the treasurer of Defendant Archon since at least July 27, 2007.

11 c. Has been a director of Defendant Archon since September 1993.

12 d. Was the executive vice president of Defendant Archon from September  
13 1993 through at least September 2010 and, upon belief, has continued to be its executive  
14 vice president.

15 e. Was an owner of Archon common stock from at least September 2006  
16 through September 2010 and, upon belief, has continued to be an owner of its common  
17 stock.

18 83. Defendants Paul W. Lowden and Suzanne Lowden have been married to each  
19 other since approximately 1983, and in all apparent respects, act with unanimity of intent and  
20 purpose such as to have merged into one unit or entity, acting in concert.

21 84. Defendants Paul W. Lowden and Suzanne Lowden have at all relevant times  
22 been controlling shareholders.

23 85. As an Archon officer and director, majority shareholder and controlling  
24 shareholder, Defendant Paul W. Lowden had a fiduciary duty to Archon's preferred  
25 shareholders, including Plaintiff Raider and the members of the putative class.

26 86. As an Archon officer and director and controlling shareholder, Defendant  
27 Suzanne Lowden had a fiduciary duty to Archon's preferred shareholders, including Plaintiff

1 Raider and the members of the putative class.

2 87. All other Archon officers and directors had a fiduciary duty to Archon's preferred  
3 shareholders, including Plaintiff Raider and the members of the putative class.

4 88. Defendant Archon had a fiduciary duty to Archon's preferred shareholders,  
5 including Plaintiff Raider and the members of the putative class.

6 89. Once the time had passed in D.E. Shaw and Leeward for filing a petition for  
7 panel rehearing, a petition for rehearing en banc and a petition for certiorari, supra, otherwise  
8 challenging the judgment, Archon's obligation to pay the unpaid balance of the redemption  
9 price and to continue to pay dividends until all accrued dividends had been paid became fixed  
10 and indisputable.

11 90. Defendants Paul W. Lowden and Suzanne Lowden breached the fiduciary duties  
12 of loyalty and good faith to Plaintiff Raider and the members of the putative class in numerous  
13 respects including, without limitation, by:

14 a. Failing, neglecting and refusing to cause Archon to pay Plaintiff Raider  
15 and the members of the putative class the unpaid balance of the redemption price after it had  
16 been determined judicially, authoritatively and with finality in D.E. Shaw and Leeward that the  
17 redemption price should have been \$8.69;

18 b. Discriminating against Plaintiff Raider and the members of the putative  
19 class by causing Archon to pay the unpaid balance of the redemption price to some of the  
20 largest holders of Archon preferred stock, the plaintiffs in D.E. Shaw and Leeward (holders of  
21 approximately 2,259,311 shares of the Archon preferred stock, approximately 51% of the total  
22 number of shares), but failing, neglecting and refusing to cause Archon to pay the unpaid  
23 balance of the redemption price to Plaintiff Raider and the members of the putative class;

24 c. Failing, neglecting and refusing to cause Archon to pay Plaintiff Raider  
25 and the members of the putative class the dividends which have continued to accrue since  
26 August 31, 2007 when it had been determined judicially, authoritatively and with finality in  
27 D.E. Shaw and Leeward that the \$5.241 redemption price that had been paid by Archon to

1 Plaintiff Raider and the members of the putative class did not include all accrued and unpaid  
2 dividends to August 31, 2007 and the Certificate of Designation provided that dividends would  
3 cease to accrue “provided that the redemption price (including any accrued and unpaid  
4 dividends to the date fixed for redemption) has been duly paid or provided for”;

5 d. Acting with a conflict of interest and putting their personal financial  
6 interests as majority and controlling holders of common stock ahead of the interests of Plaintiff  
7 Raider and the members of the putative class by refusing to cause Archon to pay Plaintiff  
8 Raider and the members of the putative class the unpaid balance of the redemption price and  
9 the dividends which have continued to accrue since August 31, 2007 because it would have  
10 been against their self-interests and detrimental to their personal financial interests to do so;

11 e. Otherwise failing to act with loyalty and in good faith.

12 91. Defendants Paul W. Lowden and Suzanne Lowden breached the fiduciary duty  
13 of care owed to Plaintiff Raider and the members of the putative class in numerous respects  
14 including without limitation, by:

15 a. Disregarding the judicial, authoritative and final decisions in D.E. Shaw  
16 and Leeward that the redemption price had not been properly calculated and paid;

17 b. Disregarding the judicial, authoritative and final decisions in D.E. Shaw  
18 and Leeward that the \$5.241 per share paid by Archon did not include all accrued and unpaid  
19 dividends to August 31, 2007 and disregarding the provision in the Certificate of Designation  
20 that dividends would cease to accrue “provided that the redemption price (including any  
21 accrued and unpaid dividends to the date fixed for redemption) has been duly paid or provided  
22 for”;

23 c. Otherwise failing to act on an informed basis.

24 92. All other Archon officers and directors breached the fiduciary duties of loyalty  
25 and good faith to Plaintiff Raider and the members of the putative class in numerous respects  
26 including, without limitation, by:

27 a. Failing, neglecting and refusing to cause Archon to pay Plaintiff Raider



1 and the members of the putative class the unpaid balance of the redemption price after it had  
2 been determined judicially, authoritatively and with finality in D.E. Shaw and Leeward that the  
3 redemption price should have been \$8.69;

4 b. Discriminating against Plaintiff Raider and the members of the putative  
5 class by causing Archon to pay the unpaid balance of the redemption to some of the largest  
6 holders of Archon preferred stock, the plaintiffs in D.E. Shaw and Leeward (holders of  
7 approximately 2,259,311 shares of the Archon preferred stock, approximately 51% of the total  
8 number of shares), but failing, neglecting and refusing to cause Archon to pay the unpaid  
9 balance of the redemption price to Plaintiff Raider and the members of the putative class;

10 c. Failing, neglecting and refusing to cause Archon to pay Plaintiff Raider  
11 and the members of the putative class the dividends which have continued to accrue since  
12 August 31, 2007 when it had been determined judicially, authoritatively and with finality in  
13 D.E. Shaw and Leeward that the \$5.241 redemption price that had been paid by Archon to  
14 Plaintiff Raider and the members of the putative class did not include all accrued and unpaid  
15 dividends to August 31, 2007 and the Certificate of Designation provided that dividends would  
16 cease to accrue "provided that the redemption price (including any accrued and unpaid  
17 dividends to the date fixed for redemption) has been duly paid or provided for";

18 d. Allowing Defendants Paul W. Lowden and Suzanne Lowden to put their  
19 personal financial interests as majority and controlling holders of common stock ahead of the  
20 interests of Plaintiff Raider and the members of the putative class by refusing to cause Archon  
21 to pay Plaintiff Raider and the members of the putative class the unpaid balance of the  
22 redemption price and the dividends which have continued to accrue since August 31, 2007  
23 because it would have been detrimental to the self-interests and the personal financial  
24 interests of Defendants Paul W. Lowden and Suzanne Lowden to do so;

25 e. Otherwise failing to act with loyalty and in good faith.

26 93. All other Archon officers and directors breached the fiduciary duty of care to  
27 Plaintiff Raider and the members of the putative class in numerous respects including without

1 limitation, by:

2 a. Disregarding the judicial, authoritative and final decisions in D.E. Shaw  
3 and Leeward that the redemption price had not been properly calculated;

4 b. Disregarding the judicial, authoritative and final decisions in D.E. Shaw  
5 and Leeward that the \$5.241 per share paid by Archon did not include all accrued and unpaid  
6 dividends to August 31, 2007 and disregarding the provision in the Certificate of Designation  
7 that dividends would cease to accrue “provided that the redemption price (including any  
8 accrued and unpaid dividends to the date fixed for redemption) has been duly paid or provided  
9 for”;

10 c. Otherwise failing to act on an informed basis.

11 94. The breaches of their fiduciary duty by Archon’s officers and directors involved  
12 a knowing violation of the law because, inter alia, they knew that it had been determined  
13 judicially, authoritatively and with finality that under the law, the redemption price should have  
14 been \$8.69 per share.

15 95. Defendant Archon breached the fiduciary duties of loyalty and good faith to  
16 Plaintiff Raider and the members of the putative class in numerous respects including, without  
17 limitation, by:

18 a. Failing, neglecting and refusing to pay Plaintiff Raider and the members  
19 of the putative class the unpaid balance of the redemption price after it had been determined  
20 judicially, authoritatively and with finality in D.E. Shaw and Leeward that the redemption price  
21 should have been \$8.69;

22 b. Discriminating against Plaintiff Raider and the members of the putative  
23 class by paying the unpaid balance of the redemption to some of the largest holders of Archon  
24 preferred stock, the plaintiffs in D.E. Shaw and Leeward (holders of approximately 2,259,311  
25 shares of the Archon preferred stock, approximately 51% of the total number of shares), but  
26 failing, neglecting and refusing to pay the unpaid balance of the redemption price to Plaintiff  
27 Raider and the members of the putative class;

1                   c.       Failing, neglecting and refusing to pay Plaintiff Raider and the members  
2 of the putative class the dividends which have continued to accrue since August 31, 2007  
3 when it had been determined judicially, authoritatively and with finality in D.E. Shaw and  
4 Leeward that the \$5.241 redemption price that had been paid by Archon to Plaintiff Raider  
5 and the members of the putative class did not include all accrued and unpaid dividends to  
6 August 31, 2007 and the Certificate of Designation provided that dividends would cease to  
7 accrue “provided that the redemption price (including any accrued and unpaid dividends to the  
8 date fixed for redemption) has been duly paid or provided for”;

9                   d.       Putting the personal financial interests of Defendants Paul W. Lowden  
10 and Suzanne Lowden, the majority and controlling holders of its common stock, ahead of the  
11 interests of Plaintiff Raider and the members of the putative class by refusing to pay Plaintiff  
12 Raider and the members of the putative class the unpaid balance of the redemption price and  
13 the dividends which have continued to accrue since August 31, 2007 because it would have  
14 been detrimental to the self-interests and personal financial interests of Defendants Paul W.  
15 Lowden and Suzanne Lowden to do so;

16                   e.       Otherwise failing to act with loyalty and in good faith.

17       96.     Defendant Archon breached the fiduciary duty of care to Plaintiff Raider and the  
18 members of the putative class in numerous respects including without limitation, by:

19                   a.       Disregarding the decisions in D.E. Shaw and Leeward that the redemption  
20 price had not been properly calculated;

21                   b.       Disregarding the decisions in D.E. Shaw and Leeward that the \$5.241  
22 per share paid by Archon did not include all accrued and unpaid dividends to August 31, 2007  
23 and disregarding the provision in the Certificate of Designation that dividends would cease to  
24 accrue “provided that the redemption price (including any accrued and unpaid dividends to the  
25 date fixed for redemption) has been duly paid or provided for”;

26                   c.       Otherwise failing to act on an informed basis.

27       97.     Plaintiff Raider and the members of the putative class have been damaged in

1 an amount per share equal to the unpaid balance of the redemption price of \$3.449 plus the  
2 unpaid dividends which have accrued since August 31, 2007.

3 98. As a further proximate result of the wrongful conduct of Defendants and its  
4 wrongful denial of Plaintiff's claims and claims of the members of the putative class, Plaintiff  
5 was compelled to retain legal counsel to obtain the benefits due under the Redemption.  
6 Defendants are liable to Plaintiff Raider and the members of the putative class for attorney's  
7 fees and costs reasonably necessary and incurred by Plaintiff Raider and the members of the  
8 putative class to enforce the terms of the Redemption, in a sum to be determined at the time  
9 of trial.

10 99. Defendants' conduct described herein was intended to cause injury to Plaintiff  
11 Raider and the members of the putative class, was despicable conduct which was engaged  
12 in with conscious disregard of the rights of Plaintiff Raider and the members of the putative  
13 class and was conduct in conscious disregard for the rights of Plaintiff Raider and the members  
14 of the putative class which constituted an act of subjecting them to cruel and unjust hardship  
15 and Defendants were otherwise guilty of oppression, malice and bad faith, entitling Plaintiff  
16 Raider and the members of the putative class to punitive and/or exemplary damages within  
17 Nev. Rev. Stat. §42.005, in an amount appropriate to punish and/or set an example of  
18 Defendants.

19 WHEREFORE, Plaintiff Dan Raider on behalf of himself and others similarly situated,  
20 prays for the following relief:

21 1. That this Court declare that Defendant Archon Corporation is indebted to Plaintiff  
22 Raider and the members of the putative class in the amount per share equal to \$3.449 plus  
23 the unpaid dividends which have accrued since August 31, 2007.

24 2. That the Court certify the class as prayed for, herein, within Nev. R. Civ. P., Rule  
25 23.

26 3. That a constructive trust be imposed on the assets of Defendant Archon  
27 Corporation for the benefit of Plaintiff Raider and the members of the putative class in an

1 amount per share equal to the unpaid balance of the redemption price of \$3.449 plus the  
2 unpaid dividends which have accrued since August 31, 2007.

3 4. That Defendant Archon Corporation be enjoined from paying any dividends to  
4 the holders of its common stock until Plaintiff Raider and the members of the putative class  
5 have been paid in full.

6 5. That Defendant Archon Corporation be enjoined from paying any bonuses or any  
7 extraordinary compensation or distributions to Defendants Paul W. Lowden and Suzanne  
8 Lowden, any other Archon officer or director and any Archon executive until Plaintiff Raider and  
9 the members of the putative class have been paid in full.

10 6. That Defendant Archon Corporation be enjoined from transferring any assets  
11 except in the ordinary course of business until Plaintiff Raider and the members of the putative  
12 class have been paid in full.

13 7. That Defendant Archon Corporation be ordered to pay to Plaintiff Raider and the  
14 members of the putative class an amount per share equal to \$3.449 plus the unpaid  
15 dividends which have accrued since August 31, 2007 together with interest.

16 8. In the alternative, that a judgment be entered in favor of Plaintiff Raider and the  
17 members of the putative class against Defendants Archon Corporation, Paul W. Lowden and  
18 Suzanne Lowden, jointly and severally, in an amount per share equal to \$3.449 plus the  
19 unpaid dividends which have accrued since August 31, 2007 together with all accrued  
20 interest.

21 9. That Plaintiff Raider and the members of the putative class be awarded punitive  
22 and/or exemplary damages pursuant to Nev. Rev. Stat. §42.005 in an amount appropriate to  
23 punish and/or set an example of Defendants (Fifth Claim for Relief).

24 10. That Plaintiff Raider and the members of the putative class be awarded  
25 attorney's fees pursuant to applicable law including Nev. Rev. Stat. §§18.010 and 689A.410.

26 11. That Plaintiff Raider and the members of the putative class be awarded costs  
27 of suit.

12. That such further relief as the Court may deem appropriate be granted.

## JURY DEMAND

Plaintiff, DAN RAIDER, and the members of the putative class, by his attorneys, Steven J. Parsons of LAW OFFICES OF STEVEN J. PARSONS, hereby demands a jury trial as provided by Nev. R. Civ. P., Rule 38(a), or as otherwise may be provided for by law.

Dated: Friday, January 9, 2015.

STEVEN E. GOREN  
GOREN, GOREN & HARRIS, P.C.; and  
LAW OFFICES OF STEVEN J. PARSONS

/s/ Steven J. Parsons  
STEVEN J. PARSONS  
Nevada Bar No. 363

Attorney for Plaintiff  
DAN RAIDER, an individual on his own behalf and  
on behalf of others similarly situated

Exhibit “1”

Exhibit “1”

EX-99.2 3 dex992.htm CERTIFICATE OF DESIGNATION

EXHIBIT 99.2

**FILED**  
 IN THE OFFICE OF THE  
 SECRETARY OF STATE OF THE  
 STATE OF NEVADA  
**SEP 30 1993**  
 CHERYL A. LAU SECRETARY OF STATE  
*Cheryl A. Lau*  
 No. 7679-93

CERTIFICATE OF DESIGNATION  
 OF THE  
 EXCHANGEABLE REDEEMABLE PREFERRED  
 STOCK  
 (Par Value \$.01 Per Share)  
 OF  
 SAHARA GAMING CORPORATION

Pursuant to Section 78.195 of the  
 Nevada Revised Statutes

The undersigned duly authorized officers of Sahara Gaming Corporation, a corporation organized and existing under the Nevada Revised Statutes, as amended (the "Company"), in accordance with the provisions of Section 78.195 therefore, DO HEREBY CERTIFY;

That pursuant to the authority conferred upon the Board of Directors by the Articles of Incorporation of the Company, the Board of Directors of the Company (the "Board of Directors") on August 20, 1993, adopted the following resolution creating a series of 9,000,000 shares of Preferred Stock, \$.01 per share par value;

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors by provisions of the Articles of Incorporation of the Company (the "Articles of Incorporation"), and the Nevada Revised Statutes, as amended, the issuance of a series of the Company's preferred stock, par value \$.01 per share (the "Preferred Stock"), which shall consist of 9,000,000 of the 20,000,000 shares of Preferred Stock that the Company now has authority to issue, be and the same hereby is, authorized, and the Board of Directors hereby fixes the voting powers, designations, preferences, limitations, restrictions and relative rights, and the qualifications, limitations and restrictions of such rights, of the shares of such series (in addition to the voting powers, designations, preferences, limitations, restrictions and relative rights and the qualifications, limitations and restrictions of such rights, set forth in the Articles of Incorporation that may be applicable to the Preferred Stock) as follows:

1. *Designation and Rank.* The designation of such series of the Preferred Stock authorized by this resolution shall be the Exchangeable Redeemable Preferred Stock (the "Exchangeable Preferred Stock"). The maximum number of shares of Exchangeable Preferred Stock shall be 9,000,000. Shares of the Exchangeable Preferred Stock shall have a liquidation preference of \$2.14 per share plus accrued and unpaid dividends, thereon, subject to Section 7(a). The Exchangeable Preferred Stock shall rank prior to the common stock, par value \$0.01 per share (the "Common Stock") and to all other classes and series of equity securities of the Company now or hereafter authorized, issued or outstanding (the Common Stock and such other classes and series of equity securities collectively may be referred to herein as the "Junior Stock"), other than any class or series of equity securities of the Company ranking on a parity with (the "Parity Stock") or senior to (the "Senior Stock") the Exchangeable Preferred Stock as to dividend rights and/or rights upon liquidation, dissolution or winding up of the Company. The Exchangeable Preferred Stock shall be subordinate to and rank junior to all indebtedness of the Company now or hereafter outstanding. The Exchangeable Preferred Stock shall be subject to creation of Senior Stock, Parity Stock and Junior Stock, to the extent not expressly prohibited by the Company's Articles of Incorporation, with respect to the payment of dividends and/or rights upon liquidation, dissolution or winding up of the company.

2. *Cumulative Dividends Priority.*

(a) *Payment of Dividends.* The holders of record of shares of Exchangeable Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefore, cumulative cash dividends at a rate



per annum per share (the "Dividend Rate") initially set at 8% of (i) \$2.14 plus (ii) accrued but unpaid dividends as to which a Dividend Payment Date (as defined below) has occurred. Dividends shall accrue from the date of issuance and be payable semi-annually in arrears on the 31st day of March and the 30th day of September in each year (or if such day is a non-business day, on the next business day), commencing on March 31, 1994 (each of such dates a "Dividend Payment Date"); provided, however, that on any or all of the first six Dividend Payment Dates the Company may, at its option, pay dividends on the Exchangeable Preferred Stock in the form of additional shares of Exchangeable Preferred Stock at the rate per annum of 0.08 shares of additional Exchangeable Preferred Stock for every share of Exchangeable Preferred Stock entitled to received a dividend. If all Exchangeable Preferred Stock has not been redeemed prior to the tenth Dividend Payment Date, the Dividend Rate will increase on the tenth Dividend Payment Date to the rate per annum per share of 11% and will thereafter increase by an additional 0.50% per annum per share on each Dividend Payment Date until either the Dividend Rate reaches a rate per annum per share of 16% or the Exchangeable Preferred Stock is redeemed or exchanged by the Company as set forth herein. In no circumstances will the Dividend Rate exceed 16% per annum per share. Each declared dividend shall be payable to holders of record as they appear on the stock books of the Company at the close of business on such record dates as are determined by the Board of Directors or a duly authorized committee thereof (each of such dates a "Record Date"), which Record Dates shall be not more than 45 calendar days nor fewer than 10 calendar days preceding the Dividend Payment Dates therefor. Semi-annual dividend periods (each a "Dividend Period") shall commence on and include the 31st day of March and the 30th day of September of each year and shall end on and include the date next preceding the next following Dividend Payment Date. Dividends on the Exchangeable Preferred Stock shall be fully cumulative and shall accrue (whether or not declared), on a daily basis, from the first day of each Dividend Period; provided, however, that the initial semi-annual dividend payable on March 31, 1994 and the amount of any dividend payable for any other Dividend Period shorter than a full Dividend Period shall be computed on the basis of a 360-day year composed of twelve 30-day months and the actual number of days elapsed in the relevant Dividend Period.

*(b) Priority as a Dividends.*

(i) No dividends in any form shall be declared or paid or set apart for payment on any Preferred Stock that constitutes Parity Stock with respect to dividends for any period unless full dividends on the Exchangeable Preferred Stock for the immediately preceding Dividend Period have been or contemporaneously are declared and paid. No cash dividends shall be declared or paid or set apart for payment on any Parity Stock for any period unless full cash dividends on the Exchangeable Preferred Stock for the immediately preceding Dividend Period have been or contemporaneously are declared and paid (or declared and a sum sufficient for the payment thereof set apart for such payment). When dividends are not paid in full (or not declared and a sum sufficient for such full payment not so set apart) upon the Exchangeable Preferred Stock and any Parity Stock all dividends declared upon shares of Exchangeable Preferred Stock and any Parity Stock shall be declared pro rata with respect thereto, so that in all cases the amount of dividends declared per share on the Exchangeable Preferred Stock and such Parity Stock shall bear to each other the same ratio that accrued dividends per share for the then-current Dividend Period on the shares of Exchangeable Preferred Stock (which shall include any accumulation in respect of unpaid dividends for prior Dividend Periods) and dividends, including accumulations, if any, on such Parity Stock, bear to each other.

(ii) Before (1) any dividend or other distribution (other than in Common Stock or other Junior Stock) shall be declared or paid or set aside for payment upon the Common Stock or any other Junior Stock or (2) any Common Stock or any other Junior Stock is redeemed, purchased or otherwise acquired by the Company for any consideration (or any moneys are paid to or made available for a sinking fund for the redemption of any shares of any such stock) except by conversion into or exchange for Common Stock or any other Junior Stock, (A) full cash dividends on the Exchangeable Preferred Stock must be declared and paid or funds paid over to the dividend disbursing agent of the Company for payment

of such dividends for the immediately preceding two Dividend Periods (or such lesser number of Dividend Periods during which the shares of Exchangeable Preferred Stock have been outstanding) and (B) a full cash dividend on the Exchangeable Preferred Stock must be declared at the annual Dividend Rate for the current Dividend Period, and sufficient funds paid over to the dividend disbursing agent of the Company for the payment of a cash dividend at the end of such Dividend Period. The Company shall not permit any subsidiary of the Company to purchase or otherwise acquire for consideration any shares of stock of the Company if under the preceding sentence the Company would be prohibited from purchasing or otherwise acquiring such shares at such time and in such manner.

(iii) No dividend shall be paid or set aside for holders of Exchangeable Preferred Stock for any Dividend Period unless full dividends on any Preferred Stock that constitutes Senior Stock with respect to dividends for that period have been or contemporaneously are declared and paid (or declared and a sum sufficient for the payment thereof set apart for such payment).

### 3. *Optional Redemption.*

#### (a) *General.*

(i) Subject to the applicable restrictions set forth in this Section 3 and applicable law, the shares of Exchangeable Preferred Stock may be redeemed, in whole or in part, at the election of the Company, upon notice as provided in Section 3(b), by resolution of the Board of Directors, at any time or from time to time, at a redemption price equal to the Liquidation Preference. On and after any such redemption date, dividends shall cease to accrue on the shares redeemed, and such shares shall be deemed to cease to be outstanding, provided that the redemption price (including any accrued and unpaid dividends to the date fixed for redemption) has been duly paid or provided for.

(ii) If less than all the outstanding shares of Exchangeable Preferred Stock are to be redeemed, the Company shall select at its absolute discretion the shares to be redeemed pro rata or by lot.

#### (b) *Notice of Redemption.*

(i) Notice of any redemption of shares of Exchangeable Preferred Stock, setting forth (1) the date and place fixed for said redemption, (2) the redemption price, (3) a statement that dividends on the shares to be redeemed will cease to accrue on such redemption date and (4) the method(s) by which the holders may surrender their redeemed shares and obtain payment therefor, shall be mailed, postage prepaid, at least 30 days but not more than 90 days prior to said redemption date to each holder of record of the Exchangeable Preferred Stock to be redeemed at his or her address as the same shall appear on the books of the Company. If less than all the shares of the Exchangeable Preferred Stock owned by such holder are then to be redeemed, the notice shall specify the number of shares thereof are to be redeemed and the numbers of the certificates representing such shares.

(ii) If such notice of redemption shall have been so mailed, and if on or before the redemption date specified in such notice all funds necessary for such redemption shall have been set aside by the Company separate and apart from its funds, in trust for the account of the holders of the shares so to be redeemed, so as to be and continue to be available therefor, then, on and after said redemption date, notwithstanding that any certificate for shares of the Exchangeable Preferred Stock so called for redemption shall not have been surrendered for cancellation, the shares represented thereby so called for redemption shall be deemed to be no longer outstanding, the dividends thereon shall cease to accrue, and all rights with respect to such shares of the Exchangeable Preferred Stock, so called for redemption shall forthwith cease and terminate, except only the right of the holders thereof to receive out of the funds so set aside in trust the amount payable on redemption thereof, but without interest, upon surrender (and endorsement or assignment for transfer, if required by the Company) of their certificates.

(iii) If such notice of redemption shall have been so mailed, and if on or before the date of redemption specified in such notice all said funds necessary for such redemption shall have been irrevocably deposited in trust, for the account of the holders of the shares of the Exchangeable Preferred Stock to be redeemed (and so as to be and continue to be available therefor), with a bank or trust company named in such notice doing business in the City of New York or the State of Nevada and having combined capital and surplus of at least \$50,000,000, thereupon and without awaiting the redemption date, all shares of the Exchangeable Preferred Stock with respect to which such notice shall have been so mailed and such deposit shall have been so made, shall be deemed to be no longer outstanding, and all rights with respect to such shares of the Exchangeable Preferred Stock shall forthwith upon such deposit in trust cease and terminate, except only the right of the holders thereof on, or after the redemption date to receive from such deposit the amount payable on redemption thereof, but without interest, upon surrender (and endorsement or assignment to transfer, if required by the Company) of their certificates. In case the holders of shares of the Exchangeable Preferred Stock that shall have been redeemed shall not within two years (or any longer period if required by law) after the redemption date claim any amount to deposited in trust for the redemption of such shares, such bank or trust company shall, upon demand and if permitted by applicable law, pay over to the Company any such unclaimed amount so deposited with it, and shall thereupon be relieved of all responsibility in respect thereof, and thereafter the holders of such shares shall, subject to applicable escheat laws, look only to the Company for payment of the redemption price thereof, but without interest.

(c) *Status of Shares Redeemed.* Shares of Exchangeable Preferred Stock redeemed, purchased or otherwise acquired for value by the Company, shall, after such acquisition, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Company at any time as shares of any series of Preferred Stock other than as shares of Exchangeable Preferred Stock.

#### 4. *Optional Exchange.*

(a) *Exchange; Terms of Subordinated Notes.* Any Exchangeable Preferred Stock that has not been redeemed on or prior to the tenth Dividend Payment Date may be exchanged, in whole or in part, at the election of the Company, upon notice as provided in Section 4(c), by resolution of the Board of Directors, at any time or from time to time on or after the Tenth Dividend Payment Date, for Junior Subordinated Notes (the "Junior Subordinated Notes") issued by the Company. If any Exchangeable Preferred Stock is exchanged in part by the Company, such exchange shall be pro rata or by lot. The principal amount of any Junior Subordinated Notes issued in exchange for Exchangeable Preferred Stock shall be equal to the Liquidation Preference of such Exchangeable Preferred Stock. The Junior Subordinated Notes will mature on the 15th anniversary of the date of the original issuance of the Exchangeable Preferred Stock and will bear interest at an annual rate of 11%, payable semi-annually on the Dividend Payment Dates. The Junior Subordinated Notes may be redeemed, in whole or in part, at the election of the Company, by resolution of the Board of Directors, at any time and from time to time for an amount equal to the principal amount plus accrued but unpaid interest at the date of redemption. No sinking fund payments will be required with respect to the Junior Subordinated Notes.

(b) *Other Terms.* The Junior Subordinated Notes will be governed by an indenture containing in addition to the terms described in Section 4(a), such terms and conditions as the Board of Directors may approve and such terms and conditions as may be required by then applicable law.

#### (c) *Notice of Exchange.*

(i) Notice of any such exchange, setting forth (1) the date and place fixed for said exchange, (2) the principal value of the Junior Subordinated Notes to be exchanged for outstanding Exchangeable Preferred Stock, (3) a statement that dividends on the shares to be exchanged will cease to accrue on such exchange date and (4) the method(s) by which the holders may surrender their shares of Exchangeable Preferred Stock and obtain Junior Subordinated Notes in exchange therefor, shall be mailed, postage prepaid, at least 30 days but not more than 90 days prior to said exchange date so each holder of record of the Exchangeable Preferred Stock to be redeemed at his or her address as the same shall appear on the books of the Company.

(ii) If such notice of exchange shall have been so mailed and on or before the exchange date specified in the notice, the Company has delivered the Junior Subordinated Notes to an exchange agent then, on and after said exchange date, notwithstanding that any certificate for shares of the Exchangeable Preferred Stock so called for exchange shall not have been surrendered for cancellation, the shares represented thereby so called for exchange shall be deemed to be no longer outstanding, the dividends thereon shall cease to accrue, and all rights with respect to such shares of the Exchangeable Preferred Stock so called for exchange shall forthwith cease and terminate, except only the right of the holders thereof to receive Junior Subordinated Notes in exchange therefor upon surrender of their certificates.

(d) *Status of Shares Exchanged.* Shares of Exchangeable Preferred Stock exchanged for Junior Subordinated Notes shall, after such exchange, have the status of authorized and unissued shares of Preferred Stock and may be reissued by the Company at any time as shares of any series of Preferred Stock other than as shares of Exchangeable Preferred Stock.

#### 5. *Voting Rights.*

(a) *General Voting Rights.* Except as expressly provided hereinafter in this Section 5, or at otherwise from time to time required by applicable law, the Exchangeable Preferred Stock shall have no voting rights.

(b) *Voting Rights on Extraordinary Matters.* So long as any shares of Exchangeable Preferred Stock are outstanding and unless the consent or approval of a greater number of shares shall then be required by applicable law, without first obtaining the approval of the holders of at least two-thirds of the number of shares of Exchangeable Preferred Stock at the time outstanding (voting separately as a class) given in person or by proxy at a meeting at which the holders of such shares shall be entitled to vote separately as a class or, by written consent in lieu thereof, the Company shall not, either directly or indirectly or through merger, consolidation, reorganization or other business combination with any other company, (i) authorize, create, issue or increase the authorized or issued amount of any Preferred Stock that constitutes Senior Stock or Parity Stock, or any warrants, options or other rights convertible or exchangeable into Senior Stock or Parity Stock or (ii) amend, alter, repeal, or otherwise change any provision of its Articles of Incorporation or this resolution so as to materially and adversely affect the rights, preferences, power or privileges of the Exchangeable Preferred Stock. The creation or issuance of Preferred Stock that constitutes Exchangeable Preferred Stock or Junior Stock, or a merger, consolidation or reorganization or other business combination in which the Company is not the surviving entity, or any amendment that increases the number of authorized shares of Preferred Stock that constitutes Exchangeable Preferred Stock or Junior Stock or substitutes the surviving entity in a merger, consolidation, reorganization or other business combination for the Company, shall not be considered to be such a material and adverse change requiring a separate vote of the holders of the Exchangeable Preferred Stock.

(c) *Election of special directors.* If dividends in an amount equal to dividend payments for one Dividend Period have accrued and remain unpaid for two years, holders of Sahara Gaming Preferred Stock will have the right to a separate class vote to elect two special directors to the board of Sahara Gaming (in addition to the then authorized number of directors) at the next annual meeting of stockholders. Upon payment of all dividend arrearages, holders of Sahara Gaming Preferred Stock will be divested of such voting rights until any future time when dividends in an amount equal to dividend payments for one Dividend Period have accrued and remained unpaid for two years. The terms of the special directors will thereupon nominate and the authorized number of directors will be reduced by two.

(d) *One Vote Per Share.* In connection with any matter on which holders of the Exchangeable Preferred Stock are entitled to vote as provided in subparagraphs (b) or (c) above, or any matter on which the holders of the Exchangeable Preferred Stock are entitled to vote as one class or otherwise pursuant to law or the provisions of the Articles of Incorporation, each holder of Exchangeable Preferred Stock shall be entitled to one vote for each share of Exchangeable Preferred Stock held by such holder.

6. *No Sinking Fund.* No sinking fund will be established for the retirement or redemption of shares of Exchangeable Preferred Stock.

7. *Liquidation Rights; Priority.*

(a) In the event of the liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Company and after payment or provision for payment of Preferred Stock that constitutes Senior Stock with respect to the liquidation, dissolution or winding up of the affairs of the Company, the holders of shares of the Exchangeable Preferred Stock shall be entitled to receive, out of the assets of the Company, whether such assets are capital or surplus, whether or not any dividends as such are declared and before any distribution shall be made to the holders of the Common Stock or any other class of stock or series thereof ranking junior to the Exchangeable Preferred Stock with respect to the distribution of assets, an amount (the "Liquidation Preference") per share equal to the sum of (i) \$2.14, plus (ii) an amount equal to all accrued and unpaid dividends for the then current Dividend Period, through the date of liquidation, dissolution or winding up, plus all prior Dividend Periods, whether or not declared, plus (iii) if, within five years of the initial issuance of the Exchangeable Preferred Stock, all or substantially all of the assets of the Company are sold or the Company merges with or into any entity as a result of which the stockholders of the Company hold less than 50% of the equity interests of the surviving entity, an amount equal to the lesser of (1) the Designated Amount (as defined below) divided by the total number of shares of Exchangeable Preferred Stock then outstanding and (2) \$0.7143. The "Designated Amount" shall be an amount equal to \$5 million less the result of (x) the aggregate amount distributable to all holders of shares of Exchangeable Preferred Stock pursuant to (i) above minus (y) \$14.98 million. Unless specifically designated as junior or senior to the Exchangeable Preferred Stock with respect to the distribution of assets, all other series or classes of Preferred Stock of the Company shall rank on a parity with the Exchangeable Preferred Stock with respect to the distribution of assets.

(b) Nothing contained in this Section 7 shall be deemed to prevent redemption or exchange of shares of the Exchangeable Preferred Stock by the Company in the manner provided in Section 3 or Section 4, as the case may be. Neither the merger nor consolidation of the Company into or with any other company, nor the merger or consolidation of any other company into or with the Company, nor a sale, transfer or lease 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 Section 7.

(c) Written notice of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, stating a payment date and the place where the distributable amounts shall be payable, shall be given by mail, postage prepaid, no less than 30 days prior to the payment date stated therein, to the holders of record of the Exchangeable Preferred Stock at their respective addresses as the same shall appear on the books of the Company.

(d) If the amounts available for distribution with respect to the Exchangeable Preferred Stock and all other outstanding stock of the Company ranking on a parity with the Exchangeable Preferred Stock upon liquidation are not sufficient to satisfy the full liquidation rights of all the outstanding Exchangeable Preferred Stock and stock ranking on a parity therewith, then the holders of each series of such stock will share ratably in any such distribution of assets in proportion to the full respective preferential amount (which in the case of the Exchangeable Preferred Stock shall mean the amounts specified in Section 7(a) and in the case of any other series of Preferred Stock may include accumulated dividends if contemplated by such series) to which they are entitled.

IN WITNESS WHEREOF, this certificate has been signed by Paul W. Lowden and Stephen J. Szapor, Jr. as of September 30, 1993.

## SAHARA GAMING CORPORATION

By: 

Name: Paul W. Lowden

Title: President and Chairman of the Board

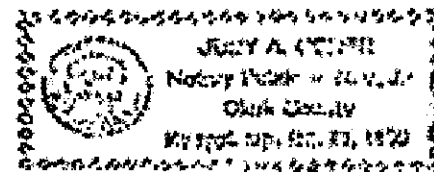
By: 


Name: Stephen J. Szapor, Jr.

Title: Assistant Secretary

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

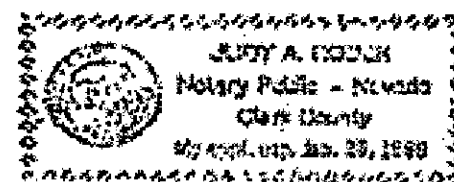
On 9-30-93, personally appeared before me, a notary public, Paul W. Lowden, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.



  
Notary Public

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

On 9-30-93, personally appeared before me, a notary public, Stephen J. Szapor, Jr., personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.



  
Notary Public