

P98000039688

Holland & Knight LLP

Requestor's Name

315 SOUTH CALHOUN STREET

Address

Tallahassee, Florida 32301

City/State/Zip

Phone #

425-5686

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. Muzic Depot, Inc. (Corporation Name) Amended (Document #)
2. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #)
3. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #)
4. \_\_\_\_\_ (Corporation Name) \_\_\_\_\_ (Document #)

☒ Walk-in

☒ Pick up time 2:00

☐ Certified

☐ Mail Out

☐ Will wait

☐ Photocopy

☐ Certificate

FILED  
99 JUN 11 PM 1:09  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

NEW FILINGS	
<input type="checkbox"/>	Partic
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input checked="" type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A. Officer/ Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

100002901581--4  
-06/11/99--01026--012  
\*\*\*\*\*35.00 \*\*\*\*\*35.00

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Restatement
<input type="checkbox"/>	Trademark

TALLAHASSEE, FLORIDA  
SECRETARY OF STATE  
REGISTRATIONS  
DIVISION

99 JUN 11 AM 10:11

RECEIVED

ADR  
6/11/99

**ARTICLES OF AMENDMENT TO  
ARTICLES OF INCORPORATION OF  
MUZIC DEPOT, INC.**

Pursuant to the provisions of Section 607.1006 of the Florida Business Corporation Act, Muzic Depot, Inc. (the "Corporation") adopts the following Articles of Amendment to its Articles of Incorporation:

FILED  
99 JUN 11 PM 4:09  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**FIRST:** The name of the Corporation is **Muzic Depot, Inc.**

**SECOND:** Article IV of the Articles of Incorporation of the Corporation is hereby amended to read in its entirety as follows:

**ARTICLE IV -- CAPITAL STOCK**

The total number of shares of all classes of stock which the Corporation is authorized to issue is 55,000,000, consisting of 50,000,000 shares of Common Stock, par value \$.001 per share, and 5,000,000 shares of Preferred Stock, par value \$.001 per share. The authorized shares of Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board of Directors). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any series then outstanding) the number of shares of any series subsequent to the issue of shares of that series.

**Series A Preferred Stock**

(1) Designation. The first series of the Corporation's authorized Preferred Stock is hereby designated as the "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"), and the number of authorized shares constituting such series shall be 1,000,000.

(2) Dividends. The holders of the shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for such purpose, dividends at a rate *per annum* equal to 8% of the liquidation preference per share of Series A Preferred Stock. All dividends will be cumulative and shall accrue from and after the date of issuance (the "Issue Date") of the shares of Series A Preferred Stock. During the period commencing on the Issue Date and ending five years after the first day of the first calendar month following the date as of which the initial offering of the Series A Preferred Stock, pursuant to the Confidential Private Placement Memorandum, dated June 9, 1999, has been completed or terminated, as the case may be (the "Dividend Deferral Period"), the Corporation may, at its option (as determined by the Board of Directors), defer cash payment of accrued and unpaid dividends, provided that payment of all accrued and unpaid cash dividends shall be due within ten days after the closing date of (i) an underwritten registered public offering of the

Common Stock (an "IPO"), or (ii) a merger, acquisition or sale of substantially all of the assets of the Corporation (each, a "Dividend Triggering Event"). Upon expiration of the Dividend Deferral Period without a Dividend Triggering Event having occurred, the Corporation shall be obligated to make immediate payment of all accrued and unpaid dividends on the Series A Preferred Stock to the then holders of the shares thereof, in cash.

(3) Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution, or winding up of the Company, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of the Corporation to the holders of any other series of Preferred Stock which expressly provides by its terms that it ranks junior to the Series A Preferred Stock with respect to distributions upon liquidation, dissolution or winding up, and prior to any distribution to the holders of the Common Stock, an amount equal to \$7.00 for each outstanding share of Series A Preferred Stock, plus any accrued and unpaid dividends. If the assets and funds thus distributed to the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full amounts due, then the entire assets and funds of the Corporation legally available for distribution shall be distributed among the holders of the Series A Preferred Stock in proportion to the number of shares held by each such holder.

(4) Voting. The holders of the Series A Preferred Stock shall have the right to vote such shares with the holders of the Common Stock (as a single class) on all matters submitted for a vote of the shareholders of the Corporation, except as may otherwise be required by law, and the right to receive notices of meetings at which matters are to be submitted for a vote of shareholders. Each holder of Series A Preferred Stock shall have the number of votes equal to the number of shares of Common Stock into which such holder's shares of Series A Preferred Stock are then convertible, as adjusted from time to time pursuant to paragraph (5) hereof, at the record date for determination of the shareholders entitled to vote, or, if no record date is established, at the date such vote is taken or any written consent of shareholders is first solicited.

(5) Conversion. Each share of Series A Preferred Stock shall be convertible at any time at the option of the holder thereof, at the office of the Corporation or any transfer agent for the Corporation's securities, into such number of fully paid and nonassessable shares of Common Stock as is equal to the Conversion Rate (as defined below). The Conversion Rate shall initially be 1:1, and shall be subject to adjustment as herein provided.

(a) Automatic Conversion. Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate then in effect (i) upon the closing date of an IPO, or (ii) at such date at least two years subsequent to the Issue Date as fewer than 50,000 shares of Series A Preferred Stock (appropriately adjusted for any stock splits, combinations, consolidations or stock distributions or dividends with respect to such shares) shall remain outstanding. In such events, the Series A Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless certificates evidencing such shares of the Preferred Stock being converted are either delivered to the Corporation or its transfer agent, as hereinafter provided, or the holder notifies the Corporation or its transfer agent,

as hereinafter provided, that such certificates have been lost, stolen or destroyed and executed an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. Upon the automatic conversion of the Series A Preferred Stock, the holders of the Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or of any transfer agent for the Preferred Stock. Thereupon, there shall be issued and delivered to such holder, promptly at such office and in his name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

(b) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value per share of the Common Stock at the date of conversion, which shall be equal to the closing sale price of the Common Stock on the next preceding trading day on the principal securities exchange on which the Common Stock is then admitted to trading, or if the Common Stock is not so admitted to trading, as determined by the Board of Directors in good faith. Except as provided in paragraph (5)(a), before any holder of Series A Preferred Stock shall be entitled to convert the same into full shares of Common Stock, he shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Series A Preferred Stock, and shall give written notice by mail, postage prepaid, to the Corporation at its principal corporate office, of the election to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series A Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid and a check payable to the holder in the amount of any cash payable in lieu of fractional shares of Common Stock (after aggregating all shares of Common Stock issuable to such holder of Series A Preferred Stock upon conversion of the aggregate number of shares of Series A Preferred Stock then being converted). In addition, if fewer than all of the shares represented by such certificates are surrendered for conversion pursuant to this paragraph (5), the Corporation shall issue and deliver to such holder a new certificate for the balance of the shares of Series A Preferred Stock not so converted. Except as provided in paragraph (5)(b) above, such conversion shall be deemed to have been made immediately prior to the close of business on the date of the surrender of the shares of such Series A Preferred Stock to be converted, and the person or persons 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 as of such date.

(c) Conversion Adjustments for Certain Events. If the Corporation shall issue additional shares of Common Stock pursuant to a stock dividend, stock distribution or subdivision, the Conversion Rate in effect immediately prior to such stock dividend, stock distribution or subdivision shall concurrently therewith be proportionately decreased (that is, the number of shares of Common Stock into which the Series A Preferred Stock is convertible shall be proportionately increased). If the outstanding shares of Common Stock shall be combined or consolidated, by reclassification or otherwise, into a lesser number of shares of Common Stock, the Conversion Rate in effect immediately prior to such combination or consolidation shall, concurrently with the effectiveness of such combination or consolidation, be proportionately increased. If the Common Stock issuable upon conversion of the Series A Preferred Stock shall

be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), the applicable Conversion Rate then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that the Series A Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of their Series A Preferred Stock immediately before that change.

(d) Status of Dividend Accrual. Dividends shall cease to accrue on shares of Series A Preferred Stock from and after the date of conversion thereof. Should the Series A Preferred Stock be automatically converted to Common Stock because the Corporation has completed an IPO, the Corporation shall be obligated to pay the holders of the Series A Preferred Stock all accrued and unpaid dividends thereon, to the date of conversion, as provided in paragraph (2) above. Voluntary conversion of the Series A Preferred Stock, or automatic conversion other than due to the completion of an IPO, shall not affect the Corporation's right to continue to defer cash payment of accrued and unpaid dividends on the shares of Series A Preferred Stock so converted, as provided in paragraph (2) above.

(e) No Impairment. The Corporation will not, by amendment of its Articles 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 other terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this paragraph (5) and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(f) Reservation of Stock Issuable Upon Conversion. The Corporation 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 Series A Preferred Stock, such number of shares of its Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A 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 Series A Preferred Stock, in addition to such other remedies as shall be available to the holders of Series A Preferred Stock, the Corporation shall take such corporate actions 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 purposes.

(g) Notices. In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution upon the Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus; or

- (ii) to offer for subscription to the holders of any class or series of its capital stock any additional shares of stock of any class or series or any other rights; or
- (iii) to effect a reclassification or recapitalization; or
- (iv) to merge or consolidate with or into any other corporation, or sell, lease or convey all or substantially all its property or business, or to liquidate, dissolve or wind up its business;

then, in connection with each such event, the Corporation shall send to the holders of the Series A Preferred Stock:

(1) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining the rights to vote in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days' prior written notice of the date of a shareholders meeting at which a vote on such matters shall take place or the effective date of any written consent (and specifying the material terms and conditions of the proposed transaction or event and the date on which the holders of Series A Preferred Stock shall be entitled to exchange their Series A Preferred Stock for securities or other property deliverable upon the occurrence of such event and the amount of securities or other property deliverable upon such event).

Each such written notice shall be given personally or by first class mail, postage prepaid, addressed to the holders of Series A Preferred Stock at the address for each such holder as shown on the books of the Corporation.

(h) Reissuance of Preferred Stock. Shares of Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be restored to the status of authorized but unissued shares of Preferred Stock undesignated as to series.

(6) Redemption. The Series A Preferred Stock may be redeemed (the "Redemption Shares") (subject to contractual and other restrictions with respect thereto and to the legal availability of funds therefor) at any time, in whole or in part, at the option of the Company, at a price equal to the liquidation preference plus all accrued and unpaid dividends (the "Redemption Price"). The Corporation shall redeem the Redemption Shares no later than ninety (90) days following delivery of the Redemption Notice, by paying the Redemption Price to the holders of the Series A Preferred Stock in immediately available funds. Shares of Series A Preferred Stock issued and reacquired will, upon compliance with applicable requirements of law, have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Company be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company.

The Company will send a written notice of redemption ("Redemption Notice") by delivery in person, certified or registered mail, return receipt requested, telecopier or telex, to each holder of record (at the close of business on the business day next preceding the day on which such Redemption Notice is given) of shares of Series A Preferred Stock, not less than 30 nor more than 60 days prior to the date fixed for such redemption (the "Redemption Date"). The Redemption Notice shall set forth the aggregate purchase price to be paid, plus all accrued and unpaid dividends with respect to such shares to be redeemed by the Corporation. The Redemption Notice shall be addressed to each holder of Series A Preferred Stock at his or her address as shown by the records of the Corporation. From and after the close of business on the Redemption Date, unless there shall have been a default in the payment of the Redemption Price, all rights of holders of shares of Series A Preferred Stock (except the right to receive the Redemption Price) shall cease with respect to the shares to be redeemed on such Redemption Date, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of the Corporation legally available for redemption of shares of Series A Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series A Preferred Stock to be redeemed on such date, the holders of such shares shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on such Redemption Date were actually redeemed. The shares of Series A Preferred Stock not so redeemed shall remain outstanding and entitled to all rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series A Preferred Stock, such funds will be used, at the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above. In lieu of redemption, at any time prior to the Redemption Date, the holders of shares of Series A Preferred Stock may alternatively elect to convert such shares into shares of the Company's Common Stock at the Conversion Rate.

**THIRD:** The amendment was duly adopted by the holders of a majority of the shares entitled to vote thereon on June 9, 1999 pursuant to action by written consent in lieu of a meeting.

**FOURTH:** The number of votes cast in favor of the amendment by the shareholders was sufficient for approval thereof.

**IN WITNESS WHEREOF**, these Articles of Amendment have been executed as of June 9, 1999.



Christian J. Hainsworth  
Chief Executive Officer

WPB1 #152913 v1