

RECORDATION FORM COVER SHEET  
PATENTS ONLY

Atty Ref/Docket No.: 781.000001

Patent and Trademark Office

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To the Director of the U.S. Patent and Trademark Office: Please record the attached original documents or copy thereof.

---

1. Name of conveying party(ies):

Aesgen, Inc.

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement ☐ Change of Name☒ Other: Correction of previously submitted Recorded

Merger to correct Assignee address information

Execution Date: September 28, 2004

2. Name and address of receiving party(ies):

Name: MGI Pharma, Inc.

Street Address: 5775 West Old Shakopee Road, Suite 100

City: BloomingtonState: MNZip: 55431Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

**SEE ATTACHED APPENDIX A (1 pg.)**Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Monique M. Perdok Shonka

Address:

Schwegman, Lundberg &amp; Woessner, P.A.

P.O. Box 2938

Minneapolis, MN 55402-0938

6. Total number of applications and patents involved: 127. Total fee (37 CFR 3.41):\$ 0.00☐ Enclosed☐ Authorized to be charged to deposit account  
19-0743

8. Please charge any additional fees or credit any over payments to our Deposit Account No.: 19-0743


**DO NOT USE THIS SPACE**

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Monique M. Perdok Shonka/Reg. No. 42,989

Name of Person Signing

 09/28/04

Signature

Date

Total number of pages including cover sheet: 42

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Mail Stop Assignment Recordation Services  
P.O. Box 1450  
Alexandria, VA 22313-1450

## APPENDIX A

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<u>Serial No.:</u>	<u>Filing Date</u>	<u>U.S. Patent No.</u>	<u>Issue Date</u>
09/209,153	December 10, 1998	6,160,165	December 12, 2000
09/639,366	August 15, 2000	6,268,524	July 31, 2001
09/456,460	December 8, 1999	6,794,536	September 21, 2004
08/039,905	March 30, 1993	5,438,075	August 1, 1995
08/341,348	November 17, 1994	5,545,668	August 13, 1996
10/847,810	May 18, 2004	RE 29,485	February 6, 2007
09/993,465	November 14, 2001	6,734,170	May 11, 2004
10/796,261	March 9, 2004	7,041,651	March 9, 2006
11/679,517	February 27, 2007		
10/633,402	August 1, 2003		
10/903,500	July 30, 2004	7,186,517	March 6, 2007
11/615,123	December 22, 2006		

USPTO

5/7/2008 12:03:28 PM

PAGE

3/045

Fax Server

TO: MONIQUE M. PERDOK SHONKA COMPANY: SCHWEGMAN LUNDBERG &amp; WOESSNER, P.A.

05/01/08 14:37 FAX 6123393061

SCHWEGMAN, LUNDBERG, WOES

002

05/01/2008  
700369846  
RECORDATION FORM COVER SHEET  
PATENTS ONLY

Atty Ref/Docket No.: 781.0000001

Patent and Trademark Office

To the Director of the U.S. Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

2. Name and address of receiving party(ies):

Aesgen Inc.

Name: MGI Pharma, Inc.

Additional name(s) of conveying party(ies) attached?

Additional name(s) &amp; address(es) attached? [ ] Yes [X] No

[ ] Yes [X] No

3. Nature of conveyance:

[ ] Assignment [X] Merger

[ ] Security Agreement [ ] Change of Name

[ ] Other

Execution Date:

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

**SEE ATTACHED APPENDIX A (1 pg.)**

Additional numbers attached? [X] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed:

6. Total number of applications and patents involved: 1

Name: Monique M. Perdok Shonka

[ ] Enclosed

Address:

[X] Authorized to be charged to deposit account  
19-0743

Schwegman, Lundberg &amp; Woessner, P.A.

P.O. Box 2938

Minneapolis, MN 55402-0938

8. Please charge any additional fees or credit any over payments to our Deposit Account No.: 19-0743

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Monique M. Perdok Shonka/Reg. No. 42,989

Name of Person Signing

Signature

Date

Total number of pages including cover sheet: 42

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Mail Stop Assignment Recordation Services  
P.O. Box 1450  
Alexandria, VA 22313-1450

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09/17/2007 13:37 FAX 410 631 6485

MGI PHARMA

002

**JOINT WRITTEN ACTION OF  
SOLE STOCKHOLDER AND  
THE SOLE DIRECTOR OF  
MGIP ACQUISITION CORP.**

The undersigned, being the sole stockholder and the sole director of MGIP ACQUISITION CORP., a Delaware corporation (the "Corporation"), in accordance with the authority contained in Sections 228 and 141 of the Delaware General Corporation Law, in lieu of holding a meeting to consider the same, hereby adopt and approve the following corporate resolutions and instruct the secretary of the Corporation to file this written action with the minutes of the Corporation:

**WHEREAS**, MGI PHARMA, INC., a Minnesota corporation ("Parent") owns all of the outstanding shares of the Corporation;

**WHEREAS**, Parent has entered into that certain Agreement and Plan of Merger and Reorganization (the "Plan of Merger") attached hereto as Exhibit A, pursuant to which the Corporation shall merge (the "Merger") with and into AESGEN INC., a Delaware corporation ("AESGEN");

**WHEREAS**, AESGEN desires to merge the Corporation with and into itself, and the Corporation desires to merge with and into AESGEN, pursuant to the authority contained in Sections 252 and 253 of the Delaware General Corporation Law

**BE IT RESOLVED**, that the Plan of Merger and all of the transaction contemplated therein are hereby adopted and approved in all respects.

**RESOLVED**, that in accordance with the Plan of Merger, on or after the date on which the Merger shall become effective in the State of Delaware, all of the outstanding capital stock of AESGEN shall be cancelled and extinguished, and each share of common stock of the Corporation shall be converted into and become a right to receive one (1) share of common stock of AESGEN, as the surviving corporation of the Merger and wholly-owned subsidiary of the Parent.

**RESOLVED**, that all actions taken by the officers of the Corporation, or any of them, prior to the date hereof in order to accomplish the intent and purposes of the foregoing resolutions are hereby ratified, approved and confirmed.

**RESOLVED**, that the officers of the Corporation are, and each of them hereby is, authorized and directed to take any action necessary or appropriate to carry out the purposes of the foregoing resolutions and to make, execute and deliver, or authorize and cause to be made, executed and delivered all agreements, undertakings, documents, certificates, orders, requests or instruments as such officer may deem necessary or advisable.

*[The remainder of this page is left intentionally blank. Signature page to follow.]*

DN: Z29366 Ver: 2

09/17/2007 13:38 FAX 410 631 6485


MGI PHARMA

003

IN WITNESS WHEREOF, the undersigned hereby execute this written action as of the date set forth below.

**SOLE SHAREHOLDER:**

**MGI PHARMA, INC.,**  
a Minnesota corporation

By: Name: Leon O. Moulder Jr.Its: Chief Executive OfficerDate: 26 August 2004**SOLE DIRECTOR:**  
Eric LoukasDate: 26 August 2004

09/17/2007 13:38 FAX 410 831 6485

MGI PHARMA

004

# Delaware

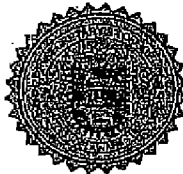
PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"MGIP ACQUISITION CORP.", A DELAWARE CORPORATION,  
WITH AND INTO "AESGEN, INC." UNDER THE NAME OF "AESGEN,  
INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF  
THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE  
TWENTY-EIGHTH DAY OF SEPTEMBER, A.D. 2004, AT 1:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE  
NEW CASTLE COUNTY RECORDER OF DEEDS.



2416772 8100M

040700643

*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3378598

DATE: 09-28-04

09/17/2007 13:39 FAX 410 631 6485

MGI PHARMA

005

**CERTIFICATE OF MERGER  
OF  
AESGEN, INC.  
AND  
MGIP ACQUISITION CORP.**

It is hereby certified that:

1. The constituent business corporations (the "Constituent Corporations") participating in the merger herein certified are:

(i) Aesgen, Inc., which is incorporated under the laws of the State of Delaware (the "Company"); and

(ii) MGIP Acquisition Corp., which is incorporated under the laws of the State of Delaware (the "Merger Sub").

2. An Agreement and Plan of Merger and Reorganization (the "Plan of Merger") has been approved, adopted, certified, executed and acknowledged by the Company, the Merger Sub and MGI Pharma, Inc., a Minnesota corporation that is the sole stockholder of the Merger Sub, in accordance with the provisions of subsection (c) of Section 251 of the General Corporation Law of the State of Delaware.

3. The Company shall be the surviving corporation.

4. The Amended and Restated Certificate of Incorporation of the Company, as now in effect, shall be the Certificate of Incorporation of the surviving corporation until amended and changed pursuant to the provisions of the General Corporation Law of the State of Delaware.

5. The directors and officers of Merger Sub shall be the initial directors and officers of the Company, each to hold office in accordance with the Certificate of Incorporation and Bylaws of the Company, in each case until their respective successors are duly elected or appointed and qualified.

6. The executed Plan of Merger shall be on file at the offices of the Company located at: 2 Research Way, Third Level East, Princeton, NJ 08540.

7. A copy of the Plan of Merger will be furnished by the Company, on request and without cost, to any stockholder of each of the Constituent Corporations.

DN: 231051

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:03 PM 09/28/2004  
FILED 01:59 PM 09/28/2004  
SRV 040700643 - 2416772 FILE

09/17/2007 13:39 FAX 410 631 6485

MGI PHARMA

008

7. The Plan of Merger provides that the merger herein certified shall be effective as of the date of filing this Certificate.

Dated: September 29, 2004

ARSGEN, INC.

By: 

Name: Edward C. Shinal, Ph.D.

Title: President and Chief Operating Officer

Dated: September \_\_\_\_, 2004

MGIP ACQUISITION CORP.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



09/17/2007 13:39 FAX 410 631 6485

MGI PHARMA

007

7. The Plan of Merger provides that the merger herein certified shall be effective as of the date of filing this Certificate.

Dated: September \_\_, 2004

AESGEN, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: September 22, 2004

MGIP ACQUISITION CORP.

By: 

Name: Leon O. Mordkin, Jr.

Title: President and Chief Executive Officer

05/29/2007 11:00 FAX 410 631 6485

MGI PHARMA

002



I, Terence C. Green, Vice President and Assistant General Counsel of MGI PHARMA, INC., do hereby certify that the following information is true and accurate.

On September 28, 2004, MGIP Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of MGI PHARMA, Inc. merged with and into Aesgen, Inc., a Delaware corporation ("Aesgen"), with Aesgen surviving as a wholly owned subsidiary. Aesgen, Inc. was a privately held company focused on treating side effects associated with cancer treatments. Aesgen's lead product is Saboris, an oral suspension for treatment of oral mucositis.

Aesgen was subsequently merged into MGI PHARMA, INC.

NAME: PRINT NAME: Terence C. GreenTITLE: Vice President + Assist. General Counsel

Given and signed in the City of Bloomington, State of Minnesota, this 24 day of May, 2007.

Before me, on this day personally appeared Terence C. Green, known to me to be the person whose name is subscribed to the foregoing instrument.

Given under my hand and seal of office this 24 day of May, A.D., 2007.

  
Notary Public

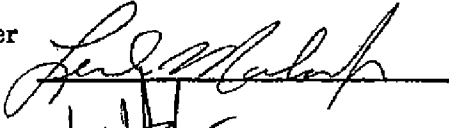
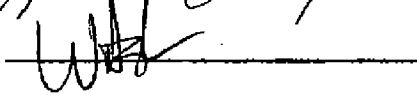


MGI OM, INC.  
SECRETARY'S CERTIFICATE

Pursuant to Section 4.01(c) of the Credit Agreement (the "Credit Agreement") among MGI PHARMA, INC., MGI GP, Inc., MGI OM, Inc., a Delaware corporation (the "Company"), certain direct and indirect subsidiaries of MGI PHARMA, INC. as Loan Guarantors, the Lenders, and JP Morgan Chase Bank, N.A., as administrative agent, sole bookrunner and sole lead arranger, the undersigned, Eric P. Loukas, does hereby certify as follows:

- (1) I am the Secretary of the Company.
- (2) Attached as Exhibit A hereto is a true and complete copy of the Amended and Restated Certificate of Incorporation (the "Charter") of the Company as certified by the Secretary of State of the State of Delaware ("SSSD") on October 5, 2006. The Charter is complete, accurate and in effect on the date hereof and no action has been taken by the Company in contemplation of any amendment thereto.
- (3) Attached as Exhibit B hereto is a true and complete copy of the Bylaws of the Company in effect on the date hereof.
- (4) Attached as Exhibit C hereto is a complete and correct copy of the Written Consent adopted by the Board of Directors of the Company on October 13, 2006 relating to the Credit Agreement, and such Written Consent has not been amended, modified or rescinded, and is in full force and effect on the date hereof.
- (5) Attached as Exhibit D hereto is a certificate of good standing issued by the SSSD on September 20, 2006.

(6) Each person listed below is a duly elected and acting officer of the Company in the capacity set forth opposite his or her respective name, and the signature set forth opposite each name is the actual and genuine signature of each such person so named.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
Leon O. Moulder, Jr.	Chief Executive Officer and President	
William F. Spengler	Treasurer and Chief Financial Officer	

[Signature Page Follows]

Signature Page to  
Secretary Certificate  
Of MGI OM, INC.  
Re: Chase Agreement

IN WITNESS WHEREOF, the undersigned has executed this  
Secretary's Certificate as of this \_\_\_\_ day of October, 2006.



Eric P. Loukas  
Secretary

I, William F. Spengler, hereby certify that:

- (a) I am the duly elected, qualified and acting Treasurer and Chief Financial Officer of the Company; and
- (b) Eric P. Loukas is the duly elected, qualified and acting Secretary of the Company; and
- (c) The signature of Eric P. Loukas set forth above is his true and genuine signature.

WITNESS my signature this \_\_\_\_ day of October, 2006.



William F. Spengler  
Treasurer and Chief Financial Officer

Exhibit A  
Certificate of Incorporation

\\BA-025958\000011-214810 v4

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "MGI OM, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "AESGEN, INC." TO "MGI OM, INC.", FILED THE FIRST DAY OF OCTOBER, A.D. 2004, AT 2:10 O'CLOCK P.M.



2416772 8100X

060918054

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5094389

DATE: 10-05-06

PATENT  
REEL: 021064 FRAME: 0021

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 02:19 PM 10/01/2004  
FILED 02:10 PM 10/01/2004  
SRV 040712209 - 2416772 FILE

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AESGEN, INC.**

Aesgen, Inc., a corporation organized and existing under and by virtue of the Delaware General Corporation Law (the "Corporation"), **DOES HEREBY CERTIFY:**

**FIRST:** That the Corporation was originally incorporated on July 7, 1994, pursuant to the Delaware General Corporations Law ("DGCL") under the name Aesgen, Inc.

**SECOND:** That the sole director and sole stockholder of the Corporation duly adopted and approved resolutions by written action proposing the amendment and restatement of the Restated Certificate of Incorporation of the Corporation (the "Restated Certificate") and authorizing and directing the appropriate officers of the Corporation to execute and file the Restated Certificate. The resolution setting forth the Restated Certificate is as follows:

**RESOLVED,** that the proposed amendment of the Restated Certificate of Incorporation of the Corporation be amended and restated in its entirety as follows:

**ARTICLE 1. NAME**

The name of the Corporation is MGI OM, INC.

**ARTICLE 2. REGISTERED OFFICE AND AGENT**

The address of the registered office of the Corporation in Delaware is Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, County of New Castle, and the name of its registered agent at that address is Corporation Trust Company.

**ARTICLE 3. PURPOSES**

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

**ARTICLE 4. AUTHORIZED SHARES**

The total number of shares of stock that the Corporation is authorized to issue is one hundred (100) shares, par value \$0.01 per share, all of which shares are designated as common stock. The Board of Directors is hereby expressly granted the authority to issue shares of preferred stock from time to time in one or more classes or series and by resolution or resolutions to establish the number of shares to be included in each such class or series and to fix the designations, powers, preferences and rights of the shares of each such class or series and the qualifications, limitations and restrictions thereof.

**ARTICLE 5. NO CUMULATIVE VOTING**

There shall be no cumulative voting by the stockholders of the Corporation.

DN: 202510 Ver: 3



**ARTICLE 6. NO PREEMPTIVE RIGHTS**

The stockholders of the Corporation shall not have any preemptive rights to subscribe for or acquire securities or rights to purchase securities of any class, kind, or series of the Corporation.

**ARTICLE 7. INCORPORATOR**

The name and mailing address of the incorporator are Robert A. Kukuljan, c/o Halleland Lewis Nilan Sipkins and Johnson, P.A., 220 South Sixth Street, Suite 600, Minneapolis, MN 55402.

**ARTICLE 8. WRITTEN ACTION BY DIRECTORS**

Any action required or permitted to be taken at a meeting of the Board of Directors of the Corporation may be taken by a written action signed, or counterparts of a written action signed in the aggregate by all of the directors.

**ARTICLE 9. DIRECTOR LIABILITY**

The personal liability of the directors of the Corporation shall be eliminated to the fullest extent permitted by law. The Corporation is authorized to indemnify (and advance expenses to) its directors and officers to the fullest extent permitted by law. Neither the amendment, modification or repeal of this Article 9 nor the adoption of any provision in this Certificate of Incorporation inconsistent with this Article 9 shall adversely affect any right or protection of a director or officer of the Corporation with respect to any act or omission that occurred prior to the time of such amendment, modification, repeal or adoption.

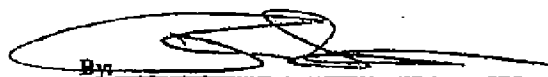
**ARTICLE 10. BYLAWS**

The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

**THIRD:** That the foregoing amendment and restatement was approved by the sole director and sole stockholder of the Corporation in accordance with Sections 242 and 245 of the DGCL.

**FOURTH:** That said amendment and restatement was duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused this Restated Certificate to be signed by the officer identified below this 29<sup>th</sup> day of September, 2004.



Eric P. Loukas,  
Secretary

**Exhibit B**  
**Bylaws**

\\BA-025958\000011-214810 v4

**MGIP ACQUISITION CORP.**

**BYLAWS**

**AUGUST 2004**

ON: 229350 Ver: 2

**PATENT**  
**REEL: 021064 FRAME: 0026**

## Table of Contents

	<u>Page</u>
<b>Article 1. Stockholders' Meetings</b>	<b>1</b>
1.1. Place of Meetings	1
1.2. Annual Meeting	1
1.3. Special Meetings	1
1.4. Remote Communications	1
1.5. Notice of Meetings	1
1.6. Quorum	2
1.7. Adjournment of Meetings	2
1.8. Voting List	2
1.9. Vote Required	3
1.10. Chair, Secretary	3
1.11. Rules of Conduct	3
1.12. Inspectors of Elections	3
1.13. Record Date	3
1.14. Written Consent	3
<b>Article 2. Directors</b>	<b>4</b>
2.1. Number and Qualifications	4
2.2. Term of Office	4
2.3. Resignation	4
2.4. Vacancies	4
2.5. Regular Meetings	4
2.6. Special Meetings	4
2.7. Notice	4
2.8. Quorum	5
2.9. Vote Required	5
2.10. Chair, Secretary	5
2.11. Use of Communications Equipment	5
2.12. Action Without a Meeting	5
2.13. Compensation of Directors	5
2.14. Committees	5
2.15. Chair and Vice Chair of the Board	6
<b>Article 3. Officers</b>	<b>6</b>
3.1. Offices Created; Qualifications; Election	6
3.2. Term of Office	6
3.3. Removal of Officers	6
3.4. Resignation	6
3.5. Vacancies	6
3.6. Compensation	6
3.7. Powers	7
3.8. Chair of the Board	7

3.9.	President and Chief Executive Officer .....	7
3.10.	Vice Presidents .....	7
3.11.	Treasurer .....	7
3.12.	Secretary .....	7
<b>Article 4. Capital Stock .....</b>		<b>8</b>
4.1.	Stock Certificates .....	8
4.2.	Registration; Registered Owners .....	8
4.3.	Stockholder Addresses .....	8
4.4.	Transfer of Shares .....	8
4.5.	Lost, Stolen, Destroyed or Mutilated Certificates .....	9
<b>Article 5. General Provisions .....</b>		<b>9</b>
5.1.	Waiver of Notice .....	9
5.2.	Electronic Transmissions .....	9
5.3.	Fiscal Year .....	9
5.4.	Voting Stock of Other Organizations .....	9
5.5.	Corporate Seal .....	9
5.6.	Amendment of Bylaws .....	9
<b>Article 6. Indemnification .....</b>		<b>9</b>
6.1.	Indemnification .....	9
6.2.	Advancement of Expenses .....	10
6.3.	Non-Exclusivity .....	10
6.4.	Heirs and Beneficiaries .....	10
6.5.	Effect of Amendment .....	10

**BYLAWS  
OF  
MGIP ACQUISITION CORP.**

**Article 1. Stockholders' Meetings**

1.1. Place of Meetings. Meetings of the stockholders of MGIP Acquisition Corp. (the "Corporation") shall be held at such place, either within or without the State of Delaware, as the Board of Directors shall determine. Rather than holding a meeting at any place, the Board of Directors may determine that a meeting shall be held solely by means of remote communications, which means shall meet the requirements of the Delaware General Corporation Law.

1.2. Annual Meeting. The annual meeting of the stockholders for the election of the directors and the transaction of such other business as may properly be brought before the meeting shall be held on the date and at the time designated by the Board of Directors.

1.3. Special Meetings. Special meetings of the stockholders for any purpose or purposes may be called by the Board of Directors. No other person or persons may call a special meeting. The business to be transacted at any special meeting shall be limited to the purposes stated in the notice.

1.4. Remote Communications. The Board of Directors may permit the stockholders and their proxy holders to participate in meetings of the stockholders (whether such meetings are held at a designated place or solely by means of remote communication) using one or more methods of remote communication that satisfy the requirements of the Delaware General Corporation Law. The Board of Directors may adopt such guidelines and procedures applicable to participation in stockholders' meetings by means of remote communication as it deems appropriate. Participation in a stockholders' meeting by means of a method of remote communication permitted by the Board of Directors shall constitute presence in person at the meeting.

1.5. Notice of Meetings. Notice of the place, if any, date and hour of any stockholders' meeting shall be given to each stockholder entitled to vote. The notice shall state the means of remote communications, if any, by which stockholders and proxy holders may be deemed present in person and vote at the meeting. If the voting list for the meeting is to be made available by means of an electronic network or if the meeting is to be held solely by remote communication, the notice shall include the information required to access the reasonably accessible electronic network on which the Corporation will make its voting list available either prior to the meeting or, in the case of a meeting held solely by remote communication, during the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting has been called. Unless otherwise provided in the Delaware General Corporation Law, notice shall be given at least ten (10) days but not more than sixty (60) days before the date of the meeting. Without limiting the manner by which notice may otherwise be given, notice may be given by a form of electronic transmission that satisfies the requirements of the Delaware General Corporation Law and has been consented to by the stockholder to whom notice is given.

If mailed, notice shall be deemed given when deposited in the U.S. mail, postage prepaid, directed to the stockholder's address as it appears in the Corporation's records. If given by a form of electronic transmission consented to by the stockholder to whom notice is given, notice shall be deemed given at the times specified with respect to the giving of notice by electronic transmission in the Delaware General Corporation Law. An affidavit of the Corporation's secretary, an assistant secretary or an agent of the Corporation that notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated in the affidavit.

1.6. Quorum. The presence, in person or by proxy, of the holders of a majority of the voting power of the stock entitled to vote at a meeting shall constitute a quorum. Where a separate vote by a class or series or classes or series of stock is required at a meeting, the presence, in person or by proxy, of the holders of a majority of the voting power of each such class or series shall also be required to constitute a quorum. In the absence of a quorum, either the chair of the meeting or the holders of a majority of the voting power of the stock present, in person or by proxy, and entitled to vote at the meeting may adjourn the meeting in the manner provided in Section 1.7 until a quorum shall be present. A quorum, once established at a meeting, shall not be broken by the withdrawal of the holders of enough voting power to leave less than a quorum. If a quorum is present at an original meeting, a quorum need not be present at an adjourned session of that meeting.

1.7. Adjournment of Meetings. Either the chair of the meeting or the holders of a majority of the voting power of the stock present, in person or by proxy, and entitled to vote at the meeting may adjourn any meeting of stockholders from time to time. At any adjourned meeting the stockholders may transact any business that they might have transacted at the original meeting. Notice of an adjourned meeting need not be given if the time and place, if any, or the means of remote communications to be used rather than holding the meeting at any place, are announced at the meeting so adjourned, except that notice of the adjourned meeting shall be required if the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting.

1.8. Voting List. At least ten (10) days before every meeting of the stockholders, the secretary of the Corporation shall prepare a complete alphabetical list of the stockholders entitled to vote at the meeting showing each stockholder's address and number of shares. This voting list does not need to include electronic mail addresses or other electronic contact information for any stockholder nor need it contain any information with respect to beneficial owners of the shares of stock owned, although it may do so. For a period of at least ten (10) days before the meeting, the voting list shall be open to the examination of any stockholder for any purpose germane to the meeting either on a reasonably accessible electronic network (*provided* that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the Corporation's principal place of business. If the list is made available on an electronic network, the Corporation may take reasonable steps to ensure that it is available only to stockholders. If the stockholders' meeting is held at a place, the voting list shall be produced and kept at that place during the whole time of the meeting. If the stockholders' meeting is held solely by means of remote communications, the voting list shall be made available for inspection on a reasonably accessible electronic network during the whole time of the meeting. In either case, any stockholder may inspect the voting list at any time during the meeting.



1.9. Vote Required. Subject to the provisions of the Delaware General Corporation Law requiring a higher level of votes to take certain specified actions and to the terms of the Corporation's Certificate of Incorporation that set special voting requirements, the stockholders shall take action on all matters other than the election of directors by a majority of the voting power of the stock present, in person or by proxy, at the meeting and entitled to vote on the matter. The stockholders shall elect directors by a plurality of the voting power of the stock present, in person or by proxy, at the meeting and entitled to vote on the matter.

1.10. Chair, Secretary. The following people shall preside over any meeting of the stockholders: the Chair of the Board of Directors, if any, or, in the absence of the Chair, the Vice Chair of the Board of Directors, if any, or in the absence of a Vice Chair, the President and Chief Executive Officer, or, in the absence of all of the foregoing persons, a chairperson designated by the Board of Directors, or, in the absence of a chairperson designated by the Board of Directors, a chairperson chosen by the stockholders at the meeting. In the absence of the Secretary and any Assistant Secretary, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

1.11. Rules of Conduct. The Board of Directors may adopt such rules, regulations and procedures for the conduct of any meeting of the stockholders as it deems appropriate including rules, regulations and procedures regarding participation in the meeting by means of remote communication. Except to the extent inconsistent with any applicable rules, regulations or procedures adopted by the Board of Directors, the Chair of any meeting may adopt such rules, regulations and procedures for the meeting, and take such actions with respect to the conduct of the meeting, as the Chair of the meeting deems appropriate. The rules, regulations and procedures adopted may include, without limitation, ones that (i) establish an agenda or order of business, (ii) are intended to maintain order and safety at the meeting, (iii) restrict entry to the meeting after the time fixed for its commencement and (iv) limit the time allotted to stockholder questions or comments. Unless otherwise determined by the Board of Directors or the Chair of the meeting, meetings of the stockholders need not be held in accordance with the rules of parliamentary procedure.

1.12. Inspectors of Elections. The Board of Directors or the Chair of a stockholders' meeting may appoint one or more inspectors of election and any substitute inspectors to act at the meeting or any adjournment thereof. Inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering on the discharge of the inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. Inspectors shall have the duties prescribed by the Delaware General Corporation Law. At the request of the Chair of the meeting, the inspector or inspectors shall prepare a written report of the results of the votes taken and of any other question or matter that that inspector or inspectors determined.

1.13. Record Date. If the Corporation proposes to take any action for which the Delaware General Corporation Law would permit it to set a record date, the Board of Directors may set such a record date as provided under the Delaware General Corporation Law.

1.14. Written Consent. Any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting, without prior notice and without a vote by means

of a stockholder written consent meeting the requirements of the Delaware General Corporation Law. Prompt notice of the taking of action without a meeting by less than a unanimous written consent shall be given to those stockholders who have not consented as required by the Delaware General Corporation Law.

## Article 2. Directors

2.1. Number and Qualifications. The Board of Directors shall consist of such number as may be fixed from time to time by resolution of the Board of Directors. The initial number of directors shall be one (1). Directors need not be stockholders.

2.2. Term of Office. Each director shall hold office until his or her successor is elected or until his or her earlier death, resignation or removal.

2.3. Resignation. A director may resign, as a director or as a committee member or both, at any time by giving notice in writing or by electronic transmission to the Corporation addressed to the Board of Directors, the Chair of the Board of Directors, the President and Chief Executive Officer or the Secretary. A resignation will be effective upon its receipt by the Corporation unless the resignation specifies that it is to be effective at some later time or upon the occurrence of some specified later event.

2.4. Vacancies. Any vacancy in the Board of Directors, including a vacancy resulting from an enlargement of the Board of Directors, may be filled by a vote of the majority of the remaining directors, although less than a quorum, or by a sole remaining director. If the Corporation at the time has outstanding any classes or series or class or series of stock that have or has the right, alone or with one or more other classes or series or class or series, to elect one or more directors, then any vacancy in the Board of Directors caused by the death, resignation or removal of a director so elected shall be filled only by a vote of the majority of the remaining directors so elected, by a sole remaining director so elected or, if no director so elected remains, by the holders of those classes or series or that class or series. A director appointed by the Board of Directors shall hold office for the remainder of the term of the director he or she is replacing.

2.5. Regular Meetings. The Board of Directors may hold regular meetings without notice at such times and places as it may from time to time determine, *provided* that notice of any such determination shall be given to any director who is absent when such a determination is made. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of the stockholders.

2.6. Special Meetings. Special meetings of the Board of Directors may be called by the Chair of the Board of Directors, the President and Chief Executive Officer or by any director. Notice of any special meeting shall be given to each director and shall state the time and place for the special meeting.

2.7. Notice. Any time it is necessary to give notice of a Board of Directors' meeting, notice shall be given (i) in person or by telephone to the director at least twenty-four (24) hours in advance of the meeting, (ii) by personally delivering written notice to the director's last known business or home address at least forty-eight (48) hours in advance of the meeting, (iii) by delivering an electronic transmission (including, without limitation, via telefacsimile or

electronic mail) to the director's last known number or address for receiving electronic transmissions of that type at least forty-eight (48) hours in advance of the meeting, (iv) by depositing written notice with a reputable delivery service or overnight carrier addressed to the director's last known business or home address for delivery to that address no later than the business day preceding the date of the meeting or (v) by depositing written notice in the U.S. mail, postage prepaid, addressed to the director's last known business or home address no later than the third business day preceding the date of the meeting. Notice of a meeting need not be given to any director who attends a meeting without protesting prior to the meeting or at its commencement to the lack of notice to that director. A notice of meeting need not specify the purposes of the meeting.

2.8. Quorum. A majority of the directors in office at the time shall constitute a quorum. Thereafter, a quorum shall be deemed present for purposes of conducting business and determining the vote required to take action for so long as at least a third of the total number of directors are present. In the absence of a quorum, the directors present may adjourn the meeting without notice until a quorum shall be present, at which point the meeting may be held.

2.9. Vote Required. The Board of Directors shall act by the vote of a majority of the directors present at a meeting at which a quorum is present.

2.10. Chair, Secretary. If the Chair and any Vice Chair are not present at any meeting of the Board of Directors, or if no such officers have been elected, then the Board of Directors shall choose a director who is present at the meeting to preside over it. In the absence of the secretary and any assistant secretary, the Chair may appoint any person to act as secretary of the meeting.

2.11. Use of Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner shall constitute presence in person at the meeting.

2.12. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all of the directors consent to the action in writing or by electronic transmission. The writing or writings or electronic transmission or transmissions shall be filed with the minutes of the proceedings of the Board of Directors or of the relevant committee.

2.13. Compensation of Directors. The Board of Directors shall from time to time determine the amount and type of compensation to be paid to directors for their service on the Board of Directors and its committees.

2.14. Committees. The Board of Directors may designate one or more committees, each of which shall consist of one or more directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified

from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any committee shall, to the extent provided in a resolution of the Board of Directors and subject to the limitations contained in the Delaware General Corporation Law, have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep such records and report to the Board of Directors in such manner as the Board of Directors may from time to time determine. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business. Unless otherwise provided in a resolution of the Board of Directors or in rules adopted by the committee, each committee shall conduct its business as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors.

2.15. Chair and Vice Chair of the Board. The Board of Directors may elect from its members a Chair of the Board and a Vice Chair. If a Chair has been elected and is present, the Chair shall preside at all meetings of the Board of Directors and the stockholders. The Chair shall have such other powers and perform such other duties as the Board of Directors may designate. If the Board of Directors elects a Vice Chair, the Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair and have such other powers and perform such other duties as the Board of Directors may designate.

### Article 3. Officers

3.1. Offices Created; Qualifications; Election. The Corporation shall have a President and Chief Executive Officer, a Secretary, a Treasurer and such other officers, if any, as the Board of Directors from time to time may appoint. Any officer may be, but need not be, a director or stockholder. The same person may hold any two or more offices. The Board of Directors may elect officers at any time.

3.2. Term of Office. Each officer shall hold office until his or her successor has been elected, unless a different term is specified in the resolution electing the officer, or until his or her earlier death, resignation or removal.

3.3. Removal of Officers. Any officer may be removed from office at any time, with or without cause, by the Board of Directors.

3.4. Resignation. An officer may resign at any time by giving notice in writing or by electronic transmission to the Corporation addressed to the Board of Directors, the Chair of the Board of Directors or the secretary. A resignation will be effective upon its receipt by the Corporation unless the resignation specifies that it is to be effective at some later time or upon the occurrence of some specified later event.

3.5. Vacancies. A vacancy in any office may be filled by the Board of Directors.

3.6. Compensation. Officers shall receive such amounts and types of compensation for their services as shall be fixed by the Board of Directors.

3.7. Powers. Unless otherwise specified by the Board of Directors, each officer shall have those powers and shall perform those duties that are (i) set forth in these Bylaws (if any are so set forth), (ii) set forth in the resolution of the Board of Directors electing that officer or any subsequent resolution of the Board of Directors with respect to that officer's duties or (iii) commonly incident to the office held.

3.8. Chair of the Board. The Chair of the board, if one is elected, shall preside at all meetings of the stockholders and directors and shall have such other duties as may be prescribed, from time to time, by the Board of Directors.

3.9. President and Chief Executive Officer. The President and Chief Executive Officer shall have general active management responsibilities of the business of the Corporation. He or she shall preside at all meetings of the stockholders and directors. He or she shall be the President and Chief Executive Officer of the Corporation and shall see that all orders and resolutions of the directors are carried into effect. He or she shall be ex officio a member of all standing committees. He or she may execute and deliver in the name of the Corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the Corporation and in general shall perform all duties usually incident to the office of the President and Chief Executive Officer. He or she shall have such other duties as may, from time to time, be prescribed by the Board of Directors.

3.10. Vice Presidents. The Vice Presidents, if any, shall be subject to the direction and control of the Board of Directors or the President and Chief Executive Officer and shall have such powers and duties as the Board of Directors or the President and Chief Executive Officer may assign to them. If the Board of Directors elects more than one Vice President, then it shall determine their respective titles, seniority and duties. If the President and Chief Executive Officer is absent, disqualified from acting, unable to act or refuses to act, the most senior in rank of the Vice Presidents (as determined by the Board of Directors) shall have the powers of, and shall perform the duties of, the President and Chief Executive Officer.

3.11. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds, securities and valuable papers of the Corporation. The Treasurer shall deposit all funds in the depositories or invest them in the investments designated or approved by the Board of Directors or any officer or officers authorized by Board of Directors to make such determinations. The Treasurer shall disburse funds under the direction of the Board of Directors or any officer or officers authorized by the Board of Directors to make such determinations. The Treasurer shall keep full and accurate accounts of all funds received and paid on account of the Corporation and shall render a statement of these accounts whenever the Board of Directors or the President and Chief Executive Officer shall so request. If the Board of Directors has not elected a chief financial officer, the Treasurer shall be the chief financial officer. If the Board of Directors has not elected a controller, the Treasurer shall be the controller.

3.12. Secretary. The Secretary shall, to the extent practicable, attend all meetings of the stockholders and the Board of Directors. The Secretary shall record the proceedings of the stockholders and the Board of Directors, including all actions by written consent, in a book or series of books to be kept for that purpose. The Secretary shall perform like duties for any committee of the Board of Directors if the committee so requests. The Secretary shall give, or

cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors. Unless the Corporation has appointed a transfer agent, the Secretary shall keep or cause to be kept the stock and transfer records of the Corporation. The Secretary shall have such other powers and duties as the Board of Directors or the President and Chief Executive Officer may determine.

#### Article 4. Capital Stock

4.1. Stock Certificates. The Corporation's shares of stock shall be represented by certificates, *provided* that the Board of Directors may, subject to the limits imposed by law, provide by resolution or resolutions that some or all of any or all classes or series shall be uncertificated shares. Notwithstanding the adoption of such a resolution, every holder of shares of stock represented by certificates and every holder of uncertificated shares, upon request, shall be entitled to have a certificate representing such shares in such form as shall be approved by the Board of Directors. Stock certificates shall be numbered in the order of their issue and shall be signed by or in the name of the Corporation by (i) the Chair or Vice Chair, if any, of the Board of Directors, or the President and Chief Executive Officer, and (ii) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who signed or whose facsimile signature has been placed upon a certificate shall have ceased to be an officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Each certificate that is subject to any restriction on transfer shall have conspicuously noted on its face or back either the full text of the restriction or a statement of the existence of the restriction. Each certificate shall have on its face or back a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

4.2. Registration; Registered Owners. The name of each person owning a share of the Corporation's capital stock shall be entered on the books of the Corporation together with the number of shares owned, the number or numbers of the certificate or certificates covering such shares and the dates of issue of each certificate. The Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes regardless of any transfer, pledge or other disposition of such stock until the shares have been properly transferred on the books of the Corporation.

4.3. Stockholder Addresses. It shall be the duty of each stockholder to notify the Corporation of the stockholder's address.

4.4. Transfer of Shares. Registration of transfer of shares of the Corporation's stock shall be made only on the books of the Corporation at the request of the registered holder or of the registered holder's duly authorized attorney (as evidenced by a duly executed power of attorney provided to the Corporation) and upon surrender of the certificate or certificates representing those shares properly endorsed or accompanied by a duly executed stock power. The Board of Directors may make further rules and regulations concerning the transfer and registration of shares of stock and the certificates representing them and may appoint a transfer

agent or registrar or both and may require all stock certificates to bear the signature of either or both.

4.5. Lost, Stolen, Destroyed or Mutilated Certificates. The Corporation may issue a new stock certificate of stock in the place of any certificate theretofore issued by it alleged to have been lost, stolen, destroyed or mutilated. The Board of Directors may require the owner of the allegedly lost, stolen or destroyed certificate, or the owner's legal representatives, to give the Corporation such bond or such surety or sureties as the Board of Directors, in its sole discretion, deems sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction or the issuance of such new certificate and, in the case of a certificate alleged to have been mutilated, to surrender the mutilated certificate.

#### Article 5. General Provisions

5.1. Waiver of Notice. Any stockholder or director, may execute a written waiver or give a waiver by electronic transmission of notice of the meeting, either before or after such meeting. Any such waiver shall be filed with the records of the Corporation. If any stockholder or director shall be present at any meeting it shall constitute a waiver of notice of the meeting, except when that stockholder or director attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. A waiver of notice of meeting need not specify the purposes of the meeting.

5.2. Electronic Transmissions. For purposes of these Bylaws, "electronic transmission" shall mean a form of communication not directly involving the physical transmission of paper that satisfies the requirements with respect to such communications contained in the Delaware General Corporation Law.

5.3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

5.4. Voting Stock of Other Organizations. Except as the Board of Directors may otherwise designate, each of the President and Chief Executive Officer and the treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Corporation (with power of substitution) at any meeting of the stockholders, members or other owners of any other corporation or organization the securities or ownership interests of which are owned by the Corporation.

5.5. Corporate Seal. The Corporation shall have no seal.

5.6. Amendment of Bylaws. These Bylaws, including any Bylaws adopted or amended by the stockholders, may be amended or repealed by the Board of Directors.

#### Article 6. Indemnification

6.1. Indemnification. The Corporation shall, to the fullest extent permitted by law, indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative (an "Action"), by reason of the fact that such person is or was a director or officer of the Corporation or is or

was serving at the request of the Corporation as a director, officer, trustee, plan administrator or plan fiduciary of another corporation, partnership, limited liability company, trust, employee benefit plan or other enterprise (an "Indemnified Person"), against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement or other disposition that the Indemnified Person actually and reasonably incurs in connection with the Action and shall reimburse each such person for all legal fees and expenses reasonably incurred by such person in seeking to enforce its rights to indemnification under this Article (by means of legal action or otherwise).

6.2. Advancement of Expenses. Upon written request from an Indemnified Person, the Corporation shall pay the expenses (including attorneys' fees) incurred by such Indemnified Person in connection with any Action in advance of the final disposition of such Action. The Corporation's obligation to pay expenses pursuant to this Section shall be contingent upon the Indemnified Person providing the undertaking required by the Delaware General Corporation Law.

6.3. Non-Exclusivity. The rights of indemnification and advancement of expenses contained in this Article shall not be exclusive of any other rights to indemnification or similar protection to which any Indemnified Person may be entitled under any agreement, vote of stockholders or disinterested directors, insurance policy or otherwise.

6.4. Heirs and Beneficiaries. The rights created by this Article shall inure to the benefit of each Indemnified Person and each heir, executor and administrator of such Indemnified Person.

6.5. Effect of Amendment. Neither the amendment, modification or repeal of this Article nor the adoption of any provision in these Bylaws inconsistent with this Article shall adversely affect any right or protection of an Indemnified Person with respect to any act or omission that occurred prior to the time of such amendment, modification, repeal or adoption.



**Exhibit C**  
**Board of Director's Resolutions**

**ACTION BY UNANIMOUS WRITTEN CONSENT OF  
THE BOARD OF DIRECTORS  
OF MGI OM, INC.  
A Delaware Corporation**

In accordance with Section 141(f) of the Delaware General Corporation Law, the undersigned, constituting all of the directors of the Board of Directors (the "Board") of MGI OM, Inc., a Delaware corporation (the "Company"), hereby adopt the following resolutions and take the following actions by written consent effective as of October 13, 2006:

**I. APPOINTMENT OF OFFICERS**

WHEREAS, the Board deems it advisable and in the best interest of the Company that the current officers of the Company be removed and new officers be appointed.

NOW, THEREFORE, BE IT RESOLVED, that the current officers of the Company are hereby removed; and

FURTHER RESOLVED, that the following persons are hereby appointed to serve as officers of the Company, holding the offices indicated opposite their names, until their respective successors are appointed and qualified or until their earlier resignation or removal:

Name	Office
Leon O. Moulder, Jr.	President and Chief Executive Officer
Eric P. Loukas	Secretary
William F. Spengler	Treasurer and Chief Financial Officer

**II. APPROVAL OF CREDIT AGREEMENT**

WHEREAS, the Board has determined that it is advisable and in the best interests of the Company to secure revolving credit facilities under a credit agreement (the "Credit Agreement") among the Company, MGI PHARMA, INC., a Minnesota corporation ("MGI"), and MGI GP, Inc., a Delaware corporation ("MGI GP", together with the Company and MGI, the "Borrowers"), certain direct and indirect subsidiaries of MGI as Loan Guarantors (as defined in the Credit Agreement, the "Loan Guarantors"), the Lenders (as defined in the Credit Agreement, the "Lenders"), JP Morgan Chase Bank, N.A. ("Chase"), as sole bookrunner, sole lead arranger and administrative agent (the "Administrative

Agent”), which Credit Agreement will provide extensions of credit to the Borrowers of revolving loan commitments in the aggregate of up to \$75,000,000, with the option to increase the revolving loan commitments by an additional \$25,000,000, of which a portion of this amount shall be available as a letter of credit subfacility and as a swing line loan subfacility;

WHEREAS, there has been submitted to the Board a copy of the most recent draft of the Credit Agreement, which draft is attached hereto as Exhibit A; and

WHEREAS, the Board has determined that it is advisable and in the best interests of the Company to enter into the Credit Agreement and the transactions contemplated therein, and to execute, deliver and perform the Loan Documents (as defined in the Credit Agreement, the “Loan Documents”) and other agreements, instruments and documents contemplated by or required in connection with the transactions contemplated by the Credit Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the terms and provisions of the Credit Agreement substantially in the form submitted to the Board be, and the same hereby are, in all respects approved and authorized;

FURTHER RESOLVED, that the Company entering into the Credit Agreement is necessary and convenient to the conduct, promotion and attainment of the business of the Company;

FURTHER RESOLVED, that each of the President, Secretary, and Treasurer of the Company and each of their successors in office, and each person from time to time designated by the President of the Company (each such President, Secretary, Treasurer, successor and designated person being hereinafter referred to as an “Authorized Person”) is hereby authorized, in the name of and on behalf of the Company, to execute and deliver the Credit Agreement and the Loan Documents; provided, however, that each Authorized Person is hereby authorized in such Authorized Person's discretion to approve such changes in the form, substance and content of the Credit Agreement and the Loan Documents as such Authorized Person may deem necessary or appropriate, any Authorized Person's execution and/or delivery of the Credit Agreement and the Loan Documents to be conclusive evidence of such approval;

FURTHER RESOLVED, that each Authorized Person is hereby authorized to execute and deliver to or for the benefit of any of the Lenders, from time to time in the name of and on behalf of the Company, in addition to the Credit Agreement and the Loan Documents such promissory notes and other instruments, drafts, acceptances, security agreements, pledge agreements, leases, assignments, indemnification agreements, subordination agreements, applications and

agreements for letters of credit, mortgages, deeds of trust, guaranties of the obligations to any of the Lenders of other persons, deposit account agreements, safe deposit contracts, lock box agreements, hedge agreements, certificates and other agreements and documents (collectively, together with the Credit Agreement and the Loan Documents, "Documents," and individually, a "Document") in such form and containing such terms and conditions as may be approved by any Authorized Person, in such Authorized Person's discretion, any Authorized Person's execution and/or delivery of any Document to be conclusive evidence of such approval;

**FURTHER RESOLVED**, that the Company pays and performs all of its obligations, indebtedness and liabilities to the Lenders now or hereafter existing from time to time under or evidenced by the Documents and otherwise;

**FURTHER RESOLVED**, that, in order to secure (i) any or all obligations of the Company to the Lenders existing at any time or from time to time under the Credit Agreement and any of the other Loan Documents, and/or (ii) any or all obligations of the other Borrowers existing at any time or from time to time under the Credit Agreement and/or any of the other Documents, each Authorized Person is hereby authorized, in the name of and on behalf of the Company, to mortgage, encumber, pledge, assign or hypothecate to or for the benefit of the Administrative Agent or any of the other Lenders for the benefit of the Lenders from time to time, or to grant to the Administrative Agent for the benefit of the Lenders from time to time a security interest in, certain personal property of the Company as contemplated by the Loan Documents, both now owned and hereafter acquired by the Company, together with all proceeds thereof, upon such terms and conditions and pursuant to such Documents as may be approved by any Authorized Person in such Authorized Person's discretion;

**FURTHER RESOLVED**, that each Authorized Person is hereby authorized to enter into, from time to time, such amendments, modifications, extensions, renewals, supplements, increases, refinancings, consolidations and replacements of any Document or any obligations of the Company to the Administrative Agent and/or any of the other Lenders as may be approved by any Authorized Person, in such Authorized Person's discretion;

**FURTHER RESOLVED**, that each Authorized Person is hereby authorized to do such further acts and things as may be necessary or appropriate, in such Authorized Person's discretion, to carry out the terms of any Document and the purposes of these resolutions;

**FURTHER RESOLVED**, that all obligations heretofore incurred to the Administrative Agent and/or any of the other Lenders, and all contracts and agreements heretofore made with the Administrative Agent and/or any of the other Lenders, by or on behalf of the Company, and any Document heretofore executed

and delivered by or on behalf of the Company in connection therewith, and all acts of officers in connection therewith, are hereby approved, ratified and confirmed; and

**FURTHER RESOLVED**, that, to induce the Administrative Agent to rely thereon, the Secretary of the Company is hereby authorized and empowered to certify to the Administrative Agent or the other Lenders (as necessary) a copy of these resolutions and the specimen signature of officers and agents of the Company, and the Lenders may consider such officers and agents to continue in office and agency, and these resolutions to remain in full force and effect, until written notice to the contrary shall be received by the Administrative Agent from the Board of the Company.

### III. GENERAL AUTHORITY


**RESOLVED**, that the officers of the Company be, and they hereby are, authorized and directed to take or cause to be taken all such further actions, to execute and deliver or cause to be executed and delivered all such further instruments and documents in the name and on behalf of the Company and to incur all such fees and expenses as in their judgment shall be necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions and each of them;


**FURTHER RESOLVED**, that all actions heretofore taken by any officer of the Company in connection with the transactions contemplated by the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects as actions on behalf of the Company; and


**FURTHER RESOLVED**, that this Unanimous Written Consent of the Board of Directors shall be filed with the minutes of the proceedings of the Board of Directors of MGI OM, Inc.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this  
Unanimous Written Consent of the Board of Directors as of the date set forth above.

  
Name: Leon O. Moulder, Jr.  
Title: Director

  
Name: Eric P. Loukas  
Title: Director

  
Name: William F. Spengler  
Title: Director

**EXHIBIT A**  
**Credit Agreement**

\\BA-026958/000011-213624 v5

**PATENT**  
**REEL: 021064 FRAME: 0045**

**Exhibit D**  
**Certificate of Good Standing**



# Delaware

PAGE 1

## *The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "MGI OM, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

THE FOLLOWING DOCUMENTS HAVE BEEN FILED:

CERTIFICATE OF INCORPORATION, FILED THE SEVENTH DAY OF JULY, A.D. 1994, AT 9 O'CLOCK A.M.

RESTATED CERTIFICATE, FILED THE FOURTH DAY OF APRIL, A.D. 1995, AT 11:15 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE SEVENTEENTH DAY OF JANUARY, A.D. 1996, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE NINETEENTH DAY OF JULY, A.D. 1996, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTY-FIRST DAY OF MARCH, A.D. 1997, AT 1:30 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE SIXTH DAY OF FEBRUARY, A.D. 1998, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTIETH DAY OF



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*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5055609

DATE: 09-20-06

PATENT  
REEL: 021064 FRAME: 0047

# Delaware

PAGE 2

## *The First State*

JANUARY, A.D. 2001, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE THIRTY-FIRST DAY OF  
OCTOBER, A.D. 2001, AT 9 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE THIRTY-FIRST DAY OF  
OCTOBER, A.D. 2001, AT 9 O'CLOCK A.M.

CERTIFICATE OF RENEWAL, FILED THE TWELFTH DAY OF JULY, A.D.  
2002, AT 9 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, FILED THE SEVENTH DAY OF AUGUST,  
A.D. 2003, AT 4:35 O'CLOCK P.M.

CERTIFICATE OF MERGER, FILED THE TWENTY-EIGHTH DAY OF  
SEPTEMBER, A.D. 2004, AT 1:59 O'CLOCK P.M.

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "AESGEN, INC."  
TO "MGI OM, INC.", FILED THE FIRST DAY OF OCTOBER, A.D. 2004, AT  
2:10 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID  
CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE  
AFORESAID CORPORATION, "MGI OM, INC.".

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "MGI OM, INC."  
WAS INCORPORATED ON THE SEVENTH DAY OF JULY, A.D. 1994.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES

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*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5055609

DATE: 09-20-06

# Delaware

PAGE 3

*The First State*

HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE  
BEEN FILED TO DATE.



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*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5055609

DATE: 09-20-06