

# UNOFFICIAL COPY

***This Document Prepared By And  
When Recorded Return To:***

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Eugene "Gene" Moore Fee: \$46.50  
Cook County Recorder of Deeds  
Date: 08/09/2004 03:47 PM Pg: 1 of 12

For Recorder's Use Only

## **SECOND AMENDMENT TO BORROWING BASE REVOLVING CREDIT AGREEMENT**

THIS AGREEMENT dated as of the 31<sup>st</sup> day of December, 2003, by and between ALIVIO MEDICAL CENTER, INC., an Illinois not-for-profit corporation ("**Borrower**"), and COLE TAYLOR BANK, an Illinois banking association ("**Lender**").

### **WITNESSETH**

WHEREAS, on or about March 24, 2003, Lender made a loan to Borrower governed by the terms and provisions of the Borrowing Base Revolving Credit Agreement dated March 24, 2003 ("**Borrowing Base Agreement**"), pursuant to which Lender provided a secured revolving line of credit to Borrower in the amount of \$1,250,000.00 ("**Revolving Credit**");

WHEREAS, the Revolving Credit is evidenced by the Revolving Credit Note dated March 24, 2003 made by Borrower payable to Lender in the principal amount of \$1,250,000.00 ("**LOC Note**");

WHEREAS, the Revolving Credit is secured by a Security Agreement dated March 24, 2003, pursuant to which Borrower pledged to Lender a security interest in all personal property and accounts receivable of Borrower ("**LOC Security Agreement**");

WHEREAS, the Revolving Credit Agreement is further secured by the Mortgage, Security Agreement and Financing Statement dated March 24, 2003, recorded in the Cook County Recorder's Office, Cook County, Illinois, on April 1, 2003, as Document No. 0030439011 ("**LOC Mortgage**") from Borrower to Lender covering the vacant parcel of real estate located at Morgan Street, north of 21<sup>st</sup> Avenue, in Chicago, Illinois ("**Vacant Property**"), and legally described in Exhibit A attached hereto;

WHEREAS, the Revolving Credit Agreement is further secured by the following mortgages, pursuant to the terms and provisions of the Cross-Collateralization/Cross-Default Agreement dated March 24, 2003 executed by and between Borrower and Lender:

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(a) the Mortgage given by Borrower to Lender dated February 18, 1999, recorded in the Cook County Recorder's Office, Cook County, Illinois, on April 7, 1999 as Document No. 99332558 (the "**Western Mortgage**"), affecting the parcel of real property commonly known as 2355-59 South Western Avenue, Chicago, Illinois, as legally described on Exhibit "B" attached hereto (the "**Western Property**").

WHEREAS, the LOC Mortgage, the LOC Security Agreement, the Western Mortgage and all other documents securing the Revolving Credit are hereinafter jointly referred to as "**LOC Security Documents**";

WHEREAS, default has occurred and exists in the performance of Borrower's obligations under the terms of the Borrowing Base Agreement;

WHEREAS, there remains a principal balance due and owing on the Revolving Credit in the amount of \$1,212,662.50 as of December 31, 2003, plus accrued interest and other charges thereafter as provided in the LOC Note;

WHEREAS, the Borrowing Base Revolving Credit Agreement was amended by the First Amendment to Borrowing Base Revolving Credit Agreement dated November 21, 2003 ("**First Amendment**");

WHEREAS, Borrower and Lender have agreed to amend the Borrowing Base Agreement and related loan documents so as to convert the Secured Over – Facility Advance to a term obligation, as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Amendments to Borrowing Base Agreement. The terms and provisions of the Borrowing Base Agreement are hereby amended as follows:

(a) Section 1.a. of the Borrowing Base Agreement is hereby amended so as to provide as follows:

“a. *Agreement to Borrow and Lend.* Subject to the terms and provisions, and relying upon the representations and warranties herein contained, and provided that no Event of Default has occurred or exists hereunder (whether or not notice of such Event of Default has been given to the Borrower and whether or not any lapse or cure period has expired with respect thereto), Lender agrees as follows: (1) Lender shall make the Term Loan to Borrower, as evidenced by the Term Note, and (2) Lender shall lend from time to time to and including the Maturity Date (as such term and capitalized terms not otherwise herein are defined in paragraph 10 below), an aggregate amount not to exceed at any one time outstanding the lesser of:

i. The Credit Limit; or

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## ii. The Collateral Value of the Borrowing Base,

which shall be disbursed by Lender in periodic increments pursuant to a “revolving credit” arrangement, as defined in the Illinois Interest Act, 815 ILCS 205/4.1 (“**Revolving Credit**”). Amounts borrowed hereunder and repaid may be reborrowed as provided herein, it being agreed and understood that the credit facility evidenced hereby is a revolving credit facility.”

(b) Section 2.a. of the Borrowing Base Agreement is hereby modified and amended so as to provide as follows:

“b. *Notes.* The obligations of the Borrower to repay the Loan shall be evidenced by the following notes (hereinafter jointly referred to as the “**Note**”):

i. Second Amended and Restated Revolving Credit Note dated December 31, 2003 (the “**Revolving Note**”), made by Borrower payable to the order of Lender in the original principal amount of SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$700,000.00) (the “**Credit Limit**”); and

ii. Term Note dated December 31, 2003 (the “**Term Note**”), made by Borrower payable to the order of Lender in the original principal amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00). The Term Note evidences part of the indebtedness outstanding on the Revolving Credit as of the date hereof.”

(c) Section 5.c of the Borrowing Base Agreement is hereby modified and amended so as to add the following affirmative covenants:

“iii. not cause or permit cash receipts and billings, as determined by Lender based upon information certified by Borrower, to vary by more than ten percent (10%) from projections provided by Borrower;

iv. not cause or permit expenses, as determined by Lender each month based upon information certified by Borrower, to exceed one hundred ten percent (110%) of projections by Borrower;

v. cause fifty percent (50%) of all actual income in excess of projected income to be paid to Lender and applied to the Term Note, not later than fifteen (15) days after the month-end report.”

(d) The following Sections 5.g and 5.r shall be added to the Borrowing Base Agreement:

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“g. Borrower shall deliver to Lender weekly cash flow reports showing all variances from the budget approved by Lender, which must be certified by Rally Capital Corporation.

r. Borrower shall deliver to Lender, within ten (10) days from the date hereof, a memorandum, together with supporting documentation, establishing the dates and amounts of all grant funds paid to Borrower and the scope of services covered by the grant funds.”

(e) Section 10 of the Borrowing Base Agreement is hereby amended so as to modify and amend the following definitions:

“**Credit Limit**” shall mean Seven Hundred Thousand and No/100 Dollars (\$700,000.00), as evidenced by the Revolving Note, and as such amount may be increased or decreased by written agreement of Lender and Borrower.

\* \* \*

“**Loan**” shall mean the aggregate indebtedness and liabilities evidenced by the Revolving Note and the Term Note.”

“**Term Loan**” shall mean the loan from Lender to Borrower in the principal amount of \$1,000,000.00, evidencing the Secured Over – Facility Advance, as defined in the First Amendment.”

(f) Section 10 of the Borrowing Base Agreement is hereby amended so as to delete the following definition:

“**Secured Over-Facility Advance**” or “**SOFA**” shall mean an amount disbursed by Lender from time to time, in excess of the Collateral Value of the Borrowing Base to pay payroll and other expenses approved by Lender, which shall not exceed One Million One Hundred Eighty Six Thousand and No/100 Dollars (\$1,186,000.00) in the aggregate.

(g) Borrower shall execute and deliver to Lender the following Notes evidencing the obligations created by this Second Amendment to Borrowing Base Revolving Credit Agreement (hereinafter jointly referred to as “**Notes**”):

(ii) Second Amended and Restated Revolving Credit Note in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), payable with interest at a rate equal to the Prime Rate, and maturing on December 31, 2004;

(iii) Term Note in the principal amount of One Million and No/100 Dollars (\$1,000,000.00), payable with interest at the rate of three percent (3%) plus the Prime Rate, and maturing on December 31, 2004 (“**Term Note**”).

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(h) As additional security for the Term Note, Borrower shall execute and deliver to Lender a Second Mortgage covering the Vacant Property, in form and content acceptable to Lender. Lender agrees that the Second Mortgage shall not be recorded before the earlier of (i) the occurrence of an event of default by Borrower under the Term of the Notes; or (ii) May 15, 2004.

## 2. Additional Miscellaneous Provisions.

(a) *No Assignment.* The Borrower may not assign its rights or obligations under this Agreement without the prior written consent of the Lender. Any purported assignment by the Borrower in violation of the previous sentence shall be automatically deemed null and void. Subject to the foregoing, all provisions contained in this Agreement or any document or agreement referred to herein or relating hereto shall inure to the benefit of the Lender, its successors and assigns, and shall be binding upon the Borrower, its successors and assigns.

(b) *Amendment; No Waiver.* This Agreement may not be amended or terms or provisions hereof waived unless such amendment or waiver is in writing and signed by the Lender and the Borrower. It is expressly agreed and understood that the failure by the Lender to elect to accelerate amounts outstanding hereunder and/or to terminate the obligation of the Lender to make Loans hereunder shall not constitute an amendment or waiver of any term or provision of this Agreement or any other Loan Document. No delay or failure by the Lender to exercise any right, power, or remedy shall constitute a waiver thereof by the Lender, and no single or partial exercise by the Lender of any right, power, or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers, or remedies.

(c) *Cumulative Rights.* The rights, powers, and remedies of the Lender hereunder are cumulative and in addition to all rights, powers, and remedies provided under any and all agreements between the Borrower and the Lender relating hereto, at law, in equity or otherwise.

(d) *Entire Agreement.* This Agreement and the documents and agreements referred to herein embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof and thereof.

(e) *Survival.* All representations, warranties, covenants, and agreements herein contained on the part of the Borrower shall survive the termination of this Agreement and shall be effective until the Obligations are paid and performed in full or longer as expressly provided herein.

(f) *Notices.* Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below:

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**IF TO LENDER:** COLE TAYLOR BANK  
9550 West Higgins Road  
Rosemont, Illinois 60018  
Attn: Ms. Bryn E. Perna  
Senior Vice President

**WITH A COPY TO:** JONES & JACOBS  
77 W. Washington Street  
Suite 1615  
Chicago, Illinois 60602  
Attn: Richard C. Jones, Jr., Esq.

**IF TO BORROWER:** ALIVIO MEDICAL CENTER, INC.  
966 West 21st Street  
Chicago, Illinois 60608  
Attn: Ms. Carmen Velasquez  
Executive Director

**WITH A COPY TO:** SEYFARTH SHAW  
55 East Monroe Street  
42nd Floor  
Chicago, Illinois 60603  
Attn: James A. Schraidt, Esq.

or to such other address as the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Lender herein is required to be given.

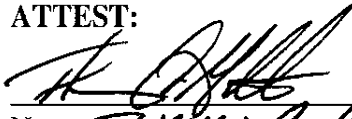
(g) *Severability.* The illegality or unenforceability of any provision of this Agreement or any other Loan Document or any instrument or agreement required hereunder or thereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions hereof or thereof.

(h) *No Third Parties Benefited.* This Agreement and the other Loan Documents are made and entered into for the sole protection and legal benefit of the Borrowers and the Lender, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. The Lender has no obligation to any Person not a party to this Agreement or other Loan Documents.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

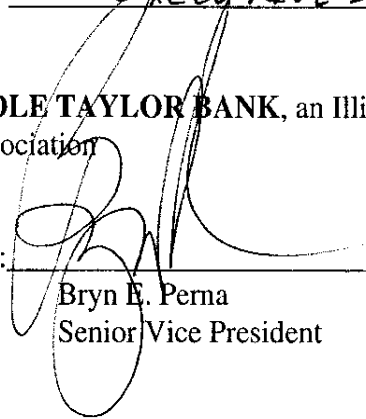
ATTEST:

  
Name: Matthew C. Galis  
Its: Trotman CPO

ALIVIO MEDICAL CENTER, INC., an Illinois not-for-profit corporation

By: Carmen Velazquez 4-26-04  
Name: CARMEN VELAZQUEZ  
Its: EXECUTIVE DIRECTOR

COLE TAYLOR BANK, an Illinois banking association

  
By: \_\_\_\_\_  
Bryn E. Perna  
Senior Vice President

Property of Cook County Clerk's Office

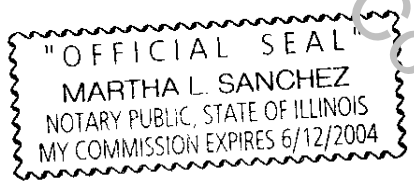
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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that CARMEN VELASQUEZ and THURMAN GILLS, personally known to me to be the EX-DIRECTOR and INTERIM CFO, respectively, of ALIVIO MEDICAL CENTER, INC., an Illinois not-for-profit corporation, and the same persons whose names are subscribed to the foregoing instrument as such EX-DIRECTOR and INTERIM CFO, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26<sup>th</sup> day of April, 2004.

Martha L. Sanchez  
NOTARY PUBLIC



My Commission Expires:  
6/12/04

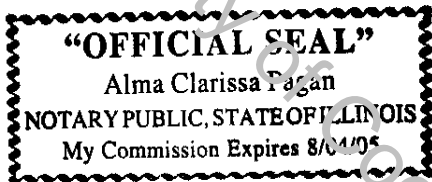


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STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that BRYN E. PERNA, personally known to me to be the Senior Vice President of **COLE TAYLOR BANK**, an Illinois banking association, and the same person whose name is subscribed to the foregoing instrument as such Senior Vice President, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of April, 2004.



Alma C. Pagan  
NOTARY PUBLIC

My Commission Expires:

8/4/05

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## EXHIBIT A

### LEGAL DESCRIPTION - VACANT LAND

BLOCK 18 (EXCEPT THE NORTH 120.8 FEET THEREOF AND EXCEPT THE SOUTH 220.80 FEET THEREOF) IN WALSH AND MCMULLIN'S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: parcel vacant land on Morgan Street, north of 21<sup>st</sup> Street,  
Chicago, Illinois

Permanent Index No.: 17-20-433-005-0000

Property of Cook County Clerk's Office

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## EXHIBIT B

### LEGAL DESCRIPTION – WESTERN PROPERTY

#### Parcel 1:

LOT 79 OF CHILD'S SUBDIVISION OF BLOCK 3 OF LAUGHTON'S SUBDIVISION BEING PART OF THE NORTHWEST 1/4 OF SECTION 30 TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Common Address: 2359 S. Western Avenue  
Chicago, Illinois

Permanent Index No.: 17-30-112-010

#### Parcel 2:

LOTS 73 TO 78 AND THE SOUTH 5.94 FEET OF LOT 72 OF CHILD'S SUBDIVISION OF BLOCK 3 OF LAUGHTON'S SUBDIVISION BEING PART OF THE NORTHWEST 1/4 OF SECTION 30 TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Common Address: 2355 S. Western Avenue  
Chicago, Illinois

Permanent Index No.: 17-30-112-036

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## EXHIBIT C

### LEGAL DESCRIPTION – MEDICAL CENTER PROPERTY

THE SOUTH 220.80 FEET OF BLOCK 18 IN WALSH AND MCMULLIN'S SUBDIVISION OF THE SOUTH 3/4 OF THE SOUTHEAST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 966 West 21st Street  
Chicago, Illinois

Property Index No.: 17-20-433-006-0000

Property of Cook County Clerk's Office