

EXECUTIVE SUMMARY

In August 2001 the Board of Regents approved a series of documents that upon execution would create a limited liability limited partnership to secure the necessary debt and equity for the construction and commencement of operations of a proton therapy center. The center is to be located on land leased to the partnership by the U. T. System Board of Regents and is to be constructed and will commence operations utilizing private capital raised from equity investors and lenders. The Board approved the execution of a series of documents to accomplish the transaction. Those documents included:

- a. A Ground Lease of approximately 3.6 acres of land on Old Spanish Trail in Houston, Harris County, Texas, between the U. T. System Board of Regents, on behalf of U. T. M. D. Anderson Cancer Center, and the Proton Therapy Center-Houston, Ltd., L.L.L.P.
- b. A Limited Partnership Agreement between PTC Houston Management, L.P., PTC-Houston Investors, L.L.C., and U. T. M. D. Anderson Cancer Center.
- c. Related agreements with Proton Therapy Center – Houston, Ltd., L.L.L.P. as follows:
 1. Medical Direction Agreement which, for a fee equal to the cost of employing the Medical Director for the Proton Therapy Center to be received by the Cancer Center, provides that the Division Head for Radiation Oncology be appointed as the Medical Director of the facility;
 2. Professional Services Agreement under which the Cancer Center provides the doctors, dosimetrists, and physicists for the delivery of proton therapy and bills and collects the professional fees generated;
 3. Staffing and Operations Agreement which provides for other services that will be purchased by the Limited Liability Limited Partnership (LLLP) from the Cancer Center for support services (such as triage nurses and other support personnel);
 4. Utilization Agreement which provides certain obligations of the LLLP to provide facilities and resources to Cancer Center researchers; and
 5. Sublicense Agreement for the use of the Cancer Center name for the promotion of proton therapy services.

Since approval of the transaction in August 2001, Sanders, Morris, Harris, the general partner and investment bankers for the project, have successfully raised an additional \$28 million in equity from a variety of private investors and secured approximately \$95 million in real estate, equipment, and construction loans to fully fund the project.

The Board of Regents in August 2001 also granted broad authority to the President of U. T. M. D. Anderson to take appropriate and necessary actions to close the transaction.

In order to close the transaction, U. T. M. D. Anderson agreed to invest an additional amount in the limited partnership of up to, but not to exceed \$3 million of unrestricted gift funds that had been previously reserved for any reasonable contingencies that might arise in order to secure the project. These funds will only be called upon to secure any intellectual property licenses, agreements, or resolutions, if needed, to operate the facility.

As a second item, U. T. M. D. Anderson negotiated for a portion of its 15% interest in the limited partnership to have preferential status for distributions of cash with other investors that had provided cash equity for the project. The preferred interest for U. T. M. D. Anderson was a result of the contribution of the value of the U. T. System land lease to the partnership's capital. This preferential status, a benefit to U. T. M. D. Anderson, was accomplished by entering into a single-purpose limited liability corporation with other cash investors. The limited liability corporation's single purpose is to invest as a limited partner in the partnership and have preferential status when cash is distributed to the partners. U. T. M. D. Anderson's total interest in the partnership remains the same as it was when approved by the Board of Regents in August 2001. However, its 15% interest is split between a 6.5% preferred interest plus an 8.5% non-preferred interest. Further, as it was in the August 2001 transaction, depending on the return received by the other investors, U. T. M. D. Anderson's total interest may grow to as much as 25% (6.5% preferred plus 18.5% non-preferred).

The third item concerns a determination by the Board of Regents that the leasing of land for the construction and operation of a proton therapy center will serve a public purpose of providing cancer therapy to the citizens of the State of Texas and others. Although no recent determination has been made as to the value of the particular parcel of land leased to the partnership, recent appraisals of land in the area indicate that the value of this parcel may exceed the \$2.5 million appraised value that existed in August 2001. Accordingly, to ensure clarity of the record in the unlikely event that the validity of the lease was ever challenged, the Board of Regents is requested to record its determination, through the Board Minutes, that this land is being leased to the limited partnership for a public purpose of providing cancer therapy to the citizens of the State of Texas.