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Committee Meetings: 5/10/2006

Board Meeting: 5/11/2006
Austin, Texas

Rita C. Clements, *Chairman*
H. Scott Caven, Jr.
Judith L. Craven, *M.D.*
Cyndi Taylor Krier
Robert B. Rowling

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6. U. T. Health Science Center - San Antonio: Mechanical Electrical Plumbing (MEP) Upgrades, Phase I - Amendment of the FY 2006-2011 Capital Improvement Program and the FY 2006-2007 Capital Budget to include project; approval of total project cost; approval of transfer of funds and authorization of expenditure; authorization of institutional management; and reduction of total project cost for the Children's Cancer Research Institute	11:45 a.m. Action <i>Mr. Dixon</i>	Action	126
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8. U. T. System Board of Regents: Adoption of Regents' <i>Rules and Regulations</i>, Series 40602, related to Organized Research Units	11:53 a.m. Action <i>Dr. Shine</i>	Action (Mtg of the Board)	130
9. U. T. M. D. Anderson Cancer Center: Discussion of U. T. M. D. Anderson Cancer Center's proposed participation in investment as a limited partner in The Madelin Fund, L.P.	11:55 a.m. Discussion <i>Dr. Shine</i>	Not on Agenda	130
C. ADJOURN	12:00 p.m.		

1. **U. T. Medical Branch - Galveston: Discussion of long-term plan for clinical activities and Jennie Sealy Hospital Replacement project**

See Item 15 on Pages 175 - 179 of the Facilities Planning and Construction Committee.

2. **U. T. System: Quarterly report on health issues by Executive Vice Chancellor Shine**

REPORT

Executive Vice Chancellor Shine will report on health matters of interest to the U. T. System. This is a quarterly update to the Health Affairs Committee of the U. T. System Board of Regents.

3. **U. T. Southwestern Medical Center - Dallas: Approval of revisions to U. T. Southwestern Health Systems Bylaws to add a new Article 6 on Affiliated-Physician-Related Committees**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Vice Chancellor and General Counsel, and President Wildenthal that the U. T. System Board of Regents approve the addition of Article 6, as set out on Pages 121 - 122, to the U. T. Southwestern Health Systems Bylaws. The Office of General Counsel has given input on the legal aspects of the proposal.

BACKGROUND INFORMATION

Authority to create certified nonprofit health corporations (CNPHCs) at each U. T. System health institution was granted by the Board of Regents on April 14, 1994, with the provision that each corporation adopt model articles of incorporation and model bylaws and submit a business plan for approval. The CNPHCs were designed to provide the health institutions with the necessary capability to react to market demands by ensuring (1) an adequate referral base of patients to meet the medical education needs of the institutions, and (2) the continued fiscal viability of their Medical Services, Research and Development Plans (MSRDP). The CNPHCs were an alternative to licensure as a health maintenance organization that would permit the institutions to accept risk contracts for physician services. CNPHCs are regulated by the Texas Medical Board, pursuant to *Texas Occupations Code* Section 162.001.

U. T. Southwestern Health Systems, a CNPHC, was established in 1994 to enhance revenues of U. T. Southwestern Medical Center - Dallas primarily by establishing health care joint ventures and contracting for delivery of inpatient and outpatient health care services. U. T. Southwestern Health Systems is certified by the Texas Medical Board and is a qualified tax-exempt organization under Section 501(c)(3) of the *Internal Revenue Code* of 1986.

Pursuant to the current Bylaws, the CNPHC has one Member who is the incumbent President of U. T. Southwestern Medical Center - Dallas. A Board of at least three directors, appointed by the Member, currently manages U. T. Southwestern Health Systems. Standing and special committees perform duties assigned by the Board of Directors. The current directors are Kern Wildenthal, M.D., Ph.D.; Willis C. Maddrey, M.D.; John McConnell, M.D.; and Robert Rege, M.D.

Numerous nonsubstantive revisions were made to the Bylaws of U. T. Southwestern Health Systems with approval of the Executive Vice Chancellor for Health Affairs in March 2006. The nonsubstantive changes were made to streamline the governance and operations of the organization.

Article 6 of the Bylaws, attached on Pages 121 - 122, is new and substantive. This addition was compelled by the recent acquisition of the assets and operations of St. Paul University Hospital by U. T. Southwestern Medical Center - Dallas and the desire to encourage community physicians to maintain their admitting privileges at the hospital. To further this goal, U. T. Southwestern Medical Center - Dallas initiated the creation of a physician network that would clinically integrate community physicians with U. T. Southwestern Medical Center - Dallas physicians at the now renamed University Hospital - St. Paul. This network, called U. T. Southwestern Clinically Affiliated Physicians (UTSCAP), will be administered by U. T. Southwestern Health Systems. Upon approval of Article 6, UTSCAP members will be included in managed care contracts negotiated by U. T. Southwestern Health Systems and in quality improvement efforts for University Hospital - St. Paul through a committee structure similar to that currently afforded to U. T. Southwestern Medical Center - Dallas physicians. The private physicians will pay a membership fee to UTSCAP in return for UTSCAP benefits.

ARTICLE 6.
AFFILIATED-PHYSICIAN-RELATED COMMITTEES

6.1 Affiliated-Physician-Related Committees

(a) Managed Care Committee. The Managed Care Committee shall approve managed care contracts for UT Southwestern Clinically Affiliated Physicians (“UTSCAP”), and make recommendations to the Board as appropriate. The Chairman of the Managed Care Committee shall be approved by the Medical Director of UTSCAP.

(b) Quality Improvement Committee. The Quality Improvement Committee is responsible for evaluating ongoing measurements of clinical care to assess the effectiveness of care delivered and to evaluate and develop preventative measures. In addition, it is charged with planning and implementing improvements related to clinical quality. The Committee reviews and approves Clinical Practice Guidelines. The Committee makes recommendations for improvement and reports to the UTSHS Board of Directors. The Chairman of the Quality Improvement Committee shall be approved by the Medical Director of UTSCAP. The Committee shall be comprised of physician members representative of multiple areas of practice. The Quality Improvement Committee shall have two subcommittees, the Credentialing Committee and the Utilization Management Committee. Other subcommittees may be appointed as the Quality Improvement Committee determines are necessary.

(i) Credentialing Committee: The Credentialing Committee shall develop policies for credentialing and recredentialing practitioners, and review and approve providers for participation within the provisions of the Credentialing Policies. This Committee has final authority for all credentialing and recredentialing decisions, and for termination of participating practitioners and providers, and shall make recommendations to the Quality Improvement Committee for other disciplinary action as appropriate. The Chairman of the Credentialing Committee shall be approved by the Medical Director of UTSCAP.

(ii) Utilization Management Committee. The Utilization Management (UM) Committee shall be chaired by a physician approved by the Chairman of the Board with the approval of the Medical Director of UTSCAP. Six committee members shall be appointed by the Chairman of the Board and approved by the Medical Director of the Clinically Affiliated Physicians. The Utilization Management Program is designed to ensure that patients receive access to timely, appropriate and affordable quality care and services. Key aspects of service addressed in the UM Program are medical necessity, appropriateness, availability, and accessibility. The Utilization Management Committee is charged with annual review and implementation of the UM Program, regular review of UM data, and implementation of corrective actions whenever indicated.

6.2 Special Committees. The Board may designate one or more special committees to perform such duties that are not inconsistent with the Articles of Incorporation or these Bylaws as shall be assigned by the Board. Each special committee shall consist of two (2) or more persons appointed by the chairman of the board, with the approval of the Board, who may, but need not be, directors of the Corporation. A special committee shall limit its activities to those for which it is designated and shall have no power to act except as specifically conferred by the Board. A special committee shall stand dissolved upon the completion of the duties assigned. All special committees shall operate in an advisory capacity to the Board, unless given specific authority to act by the Board.

6.3 Quorum and Voting. A majority of the members of a committee shall constitute a quorum for the transaction of business at any meeting of the committee and the act of a majority of those present and voting at meeting of the committee where such quorum is established shall be the act of the committee. Attendance or voting by proxy shall not be permitted.

6.4 Meetings and Notices. Meetings of a committee may be called by the chairman of the Board or the chairman of the committee. Each committee shall meet as often as is necessary to perform its duties. Notice may be given at any time and in any manner reasonably designed to inform the committee members of the time and place of the meetings. Meetings of Committees may be held via telephone or email when practicable. Each committee shall keep minutes of its proceedings.

6.5 Resignations and Removals. Any member of a committee may resign at any time by giving notice to the chairman of the committee or the secretary of the Corporation. Unless otherwise specified in the notice, such resignation shall take effect upon receipt. The acceptance of such resignation shall not be necessary to make it effective. The Board may remove a member of any committee at any time with or without being required to state a cause for removal.

6.6 Vacancies. A vacancy on a committee shall be filled for the unexpired portion of the term in the same manner in which an original appointment to such committee is made.

4. **U. T. Medical Branch - Galveston: Authorization to purchase real property and improvements located at 1314 Strand, Galveston, Galveston County, Texas, from Ms. Doris Rodriguez, at fair market value as established by an independent appraisal, for parking and for future programmed development of campus expansion**

RECOMMENDATION

The Chancellor concurs in the recommendation of the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, and President Stobo that authorization be granted by the U. T. System Board of Regents, on behalf of U. T. Medical Branch - Galveston, to

- a. purchase the real property and improvements located at 1314 Strand, Galveston, Galveston County, Texas, from Ms. Doris Rodriguez for \$95,000, plus all due diligence expenses, closing costs, and other costs and expenses to complete the acquisition of the property as deemed necessary or advisable by the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate, for parking and for future programmed development of campus expansion; and
- b. authorize the Executive Vice Chancellor for Business Affairs or the Executive Director of Real Estate to execute all documents, instruments, and other agreements, subject to approval of all such documents as to legal form by the Office of General Counsel, and to take all further actions deemed necessary or advisable to carry out the purpose and intent of the foregoing recommendation.

BACKGROUND INFORMATION

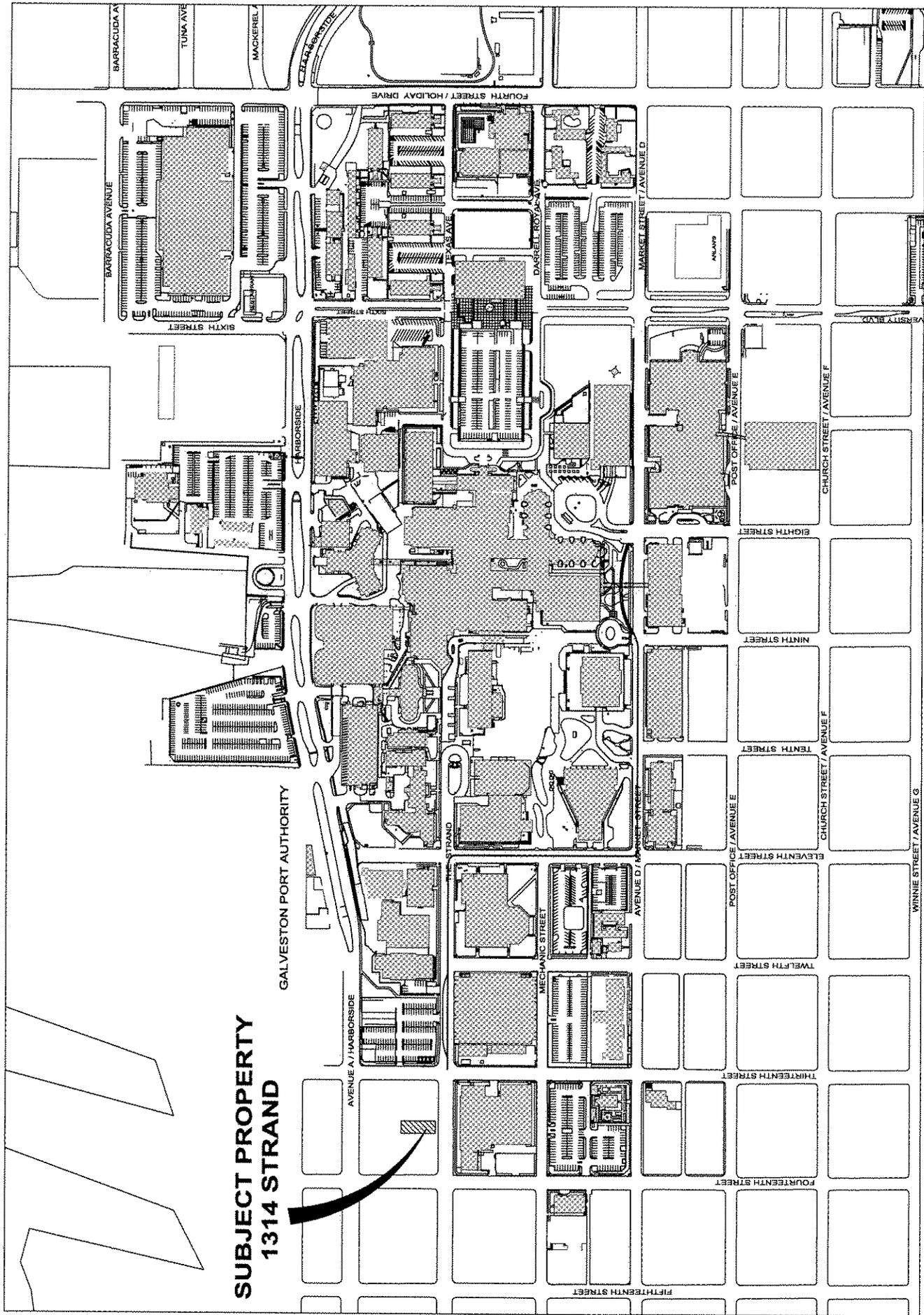
U. T. Medical Branch - Galveston desires to purchase the subject property and improvements, consisting of a 1,963-square foot frame house on a 5,160-square foot lot, for \$95,000, the value established by an independent appraisal. The property is across the street from the institution's materials management warehouse and Facilities Operations and Management offices, and will be used for parking and for future programmed development of campus expansion.

Previously, U. T. Medical Branch - Galveston sought and obtained Board approval for acquisition of properties contiguous to the campus, including the geographical area bounded by 13th and 14th Streets and Strand and Harborside, within which area the subject property is located. On December 2, 1993, the Board of Regents authorized the acquisition of several parcels of real property located within the same city block and several nearby blocks, and on November 13, 1996, the Board authorized the acquisition of additional properties near the subject property.

To fund the purchase, U. T. Medical Branch - Galveston will use institutional funds. The terms and conditions of the purchase are reflected in the transaction summary below:

Transaction Summary

Institution:	U. T. Medical Branch - Galveston
Type of Transaction:	Purchase
Total Area:	5,160-square foot residential lot
Improvements:	1,963-square foot frame house
Location:	1314 Strand, Galveston, Galveston County, Texas; see attached map
Seller:	Ms. Doris Rodriguez
Purchase Price:	\$95,000
Appraised Value:	\$95,000 (Bay Area Real Property Appraisers & Consultants, Inc., January 25, 2006)
Source of Funds:	Institutional Funds
Intended Use:	Immediate use for parking; long-term use for programmed development of campus expansion



**SUBJECT PROPERTY
1314 STRAND**

GALVESTON PORT AUTHORITY

UTMB CAMPUS

LEGEND
UTMB BUILDING

5. **U. T. M. D. Anderson Cancer Center: Report on quality improvement and patient safety**

REPORT

Sharon Martin, M.Ed., MT (ASCP) SC, Vice President for Quality Management at U. T. M. D. Anderson Cancer Center and the 2005 and 2006 Chancellor's Health Fellow in Quality of Care and Patient Safety, will outline some of the patient safety efforts underway at U. T. M. D. Anderson Cancer Center and the positive outcomes as a result of these programs using the PowerPoint presentation on Pages 165 - 176 in the Supplemental Materials (Volume 2) of the Agenda Book.

6. **U. T. Health Science Center - San Antonio: Mechanical Electrical Plumbing (MEP) Upgrades, Phase I - Amendment of the FY 2006-2011 Capital Improvement Program and the FY 2006-2007 Capital Budget to include project; approval of total project cost; approval of transfer of funds and authorization of expenditure; authorization of institutional management; and reduction of total project cost for the Children's Cancer Research Institute**

RECOMMENDATION

The Chancellor concurs with the Executive Vice Chancellor for Health Affairs, the Executive Vice Chancellor for Business Affairs, and President Cigarroa that the U. T. System Board of Regents amend the FY 2006-2011 Capital Improvement Program and the FY 2006-2007 Capital Budget to include the Mechanical Electrical Plumbing (MEP) Upgrades, Phase I project at The University of Texas Health Science Center at San Antonio as follows:

Project No.: 402-249

Architecturally or Historically Significant: Yes No

Institutionally Managed: Yes No

Project Delivery Method: Competitive Sealed Proposals

Substantial Completion Date: July 2006

Total Project Cost: Children's Cancer Research Institute	<u>Source</u> Revenue Financing System Bond Proceeds	<u>Current</u> \$49,500,000	<u>Proposed</u> \$47,507,972
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Total Project Cost: MEP Upgrades, Phase I	<u>Source</u> Revenue Financing System Bond Proceeds	<u>Proposed</u> \$1,992,028
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- a. approve a total project cost of \$1,992,028 with funding from Revenue Financing System Bond Proceeds;
- b. approve the transfer of Revenue Financing System Bond Proceeds in the amount of \$1,992,028 from the Children's Cancer Research Institute project and authorize expenditure;
- c. authorize U. T. Health Science Center - San Antonio to manage the total project budgets, appoint architects, approve facility programs, prepare final plans, and award contracts; and
- d. reduce the total project cost from \$49,500,000 to \$47,507,972 for the Children's Cancer Research Institute project.

BACKGROUND INFORMATION

Project Description

U. T. Health Science Center - San Antonio is requesting the transfer of the remaining appropriated funding of \$1,992,028 from Revenue Financing System Bond Proceeds from the completed Children's Cancer Research Institute project to provide for mechanical, electrical, and plumbing upgrades to the existing Medical School and Dental School located on the main campus.

U. T. Health Science Center - San Antonio Facilities Management personnel have the experience and capability to manage all aspects of the work.

This proposed off-cycle project has been approved by U. T. System staff and meets the criteria for inclusion in the Capital Improvement Program.

7. U. T. System: Report on FY 2005 post-tenure review

REPORT

Executive Vice Chancellor Shine will report on the Fiscal Year 2005 post-tenure review using the attachment on Pages 128 - 129.

**U. T. System Health Institutions
2004-2005 Post-Tenure Review Report**

During Fiscal Year 2005, 239 tenured faculty members at the five health institutions with tenured faculty were subject to post-tenure review. Of the 239 faculty members subject to review, 230 (or 96.2%) were evaluated as Performing Well; 6 (or 2.5%) received Needs Additional Support or Marginal evaluations; and 3 (or 1.3%) received Unsatisfactory evaluations.

The following summary tables provide additional details of the post-tenure review results for academic year 2004-05.

Summary of Post-Tenure Review Results

	Total Subject to Review	Total Performing Well	Total Needs Additional Support or Marginal	Total Unsatisfactory
UT SWMC-Dallas	37	36	1	0
UTMB-Galveston	50	50	0	0
UT HSC-Houston	42	36	5	1
UT HSC-San Antonio	65	65	0	0
UT MDACC *	45	43	0	2
Total	239	230	6	3
		96.2%	2.5%	1.3%

Post-Tenure Review Results by Gender

	Subject to Review		Performing Well		Needs Additional Support or Marginal		Unsatisfactory	
	Male	Female	Male	Female	Male	Female	Male	Female
UT SWMC-Dallas	28	9	27	9	1	0	0	0
UTMB-Galveston	41	9	41	9				
UT HSC-Houston	30	12	26	10	3	2	1	0
UT HSC-San Antonio	44	21	44	21				
UT MDACC *	36	9	34	9			2	
Total	179	60	172	58	4	2	3	0

* UTMDACC offers "term tenure."

Post-Tenure Review Results by Ethnicity

	Total Subject to Review					Performing Well				
	White	Black	Hispanic	Asian	Other	White	Black	Hispanic	Asian	Other
UT SWMC-Dallas	31	0	0	6	0	30	0	0	6	0
UTMB-Galveston	42	1	2	5	0	42	1	2	5	0
UT HSC-Houston	38	2	0	2	0	32	2	0	2	0
UT HSC-San Antonio	57	1	3	3	1	57	1	3	3	1
UT MDACC	36	0	3	6	0	35	0	3	5	0
Total	204	4	8	22	1	196	4	8	21	1

	Needs Additional Support or Marginal					Unsatisfactory				
	White	Black	Hispanic	Asian	Other	White	Black	Hispanic	Asian	Other
UT SWMC-Dallas	1	0	0	0	0					
UTMB-Galveston										
UT HSC-Houston	5	0	0	0	0	1	0	0	0	0
UT HSC-San Antonio										
UT MDACC						1	0	0	1	0
Total	6	0	0	0	0	2	0	0	1	0

8. **U. T. System Board of Regents: Adoption of Regents' Rules and Regulations, Series 40602, related to Organized Research Units**

See Item 4 on Pages 19 - 22 in Meeting of the Board. This item may also be considered by the Academic Affairs Committee and will be considered for Board of Regents' action under Meeting of the Board.

9. **U. T. M. D. Anderson Cancer Center: Discussion of U. T. M. D. Anderson Cancer Center's proposed participation in investment as a limited partner in The Madelin Fund, L.P.**

DISCUSSION

The purpose of this discussion is to propose participation by U. T. M. D. Anderson Cancer Center in an investment as a limited partner in The Madelin Fund, L.P., focused on cancer therapeutics in accordance with the term sheet on Pages 133 - 146. The Office of General Counsel has given input on the legal aspects of the proposal.

BACKGROUND INFORMATION

Over the course of the previous eight years, U. T. M. D. Anderson Cancer Center has expended substantial effort and resources to advance the environment at or near its main campus to promote technology advancement and commercialization. This is a critical part of the institution's mission to eradicate cancer, as its efforts are aimed at accelerating the process of developing novel inventions in the cancer treatment and prevention arena into products that will benefit cancer patients and the public at-large.

Efforts in this regard have included the nationwide search and retention of Dr. Chris Capelli, Vice President for Technology Commercialization, and the development of the U. T. Research Park in conjunction with U. T. System and U. T. Health Science Center - Houston. Additional accomplishments have included securing funding for development of infrastructure in the U. T. Research Park, as well as creating public/private partnerships through the use of the State of Texas Enterprise Fund and contributions from healthcare industry partners, such as General Electric Medical Systems.

Additionally, under the direction of Dr. Capelli, U. T. M. D. Anderson Cancer Center has created an Active Venture Development Program, which is aimed at taking novel inventions of U. T. M. D. Anderson Cancer Center and coupling them with inventions from other universities to develop beneficial products in the cancer care and prevention market.

In conjunction with the activity in the Active Venture Development Program, U. T. M. D. Anderson Cancer Center has recently been approached by a group of principals who have proposed the formation of The Madelin Fund, L.P., that will be aimed at providing privately negotiated venture capital investment in companies operating in the oncology and oncology-related healthcare sectors including, but not limited to, cancer prevention, diagnostics, therapeutics, medical devices, post-treatment cancer care opportunities, and such disease states that are representative of abnormal cell growth and proliferation.

As reflected in the attached term sheet, it is envisioned that U. T. M. D. Anderson Cancer Center would be a special limited partner with a capital commitment of 10% of the total capital commitments not to exceed \$5 million. The fund would be managed by a general partner made up of four principals whose background information is provided briefly below:

Edward Fagin, Esq.
Principal of the Fund's General Partner
Attorney and Investment banker
Raised over \$350 million in capital in past 25 years for various entities

Robin Smith, M.D., M.B.A.
Principal of the Fund's General Partner
Senior advisor and investor to both publicly traded and privately held companies with a focus on healthcare companies
Executive roles in a number of healthcare companies
M.D. from Yale, M.B.A. from Wharton

Cynthia Ekberg Tsai
Principal of the Fund's General Partner
Founder and General Partner in MassTech Ventures
Chairman of Maxim Pharmaceuticals

Fred H. Mermelstein, Ph.D.
Principal of the Fund's General Partner
Founder of several biotechnology companies
Executive of a number of biotechnology and pharmaceutical companies
Venture capitalist with Paramount Capital Investments, LLC and Orion Biomedical GP, LLC
Financial advisor to the Emerging Industries Fund, a development initiative administered on behalf of the City by the New York City Economic Development Corporation
Ph.D. in Pharmacology and Toxicology from Rutgers University and the University of Medicine and Dentistry of New Jersey-Robert Wood Johnson Medical School

As structured, U. T. M. D. Anderson Cancer Center's investment in the fund would only come about in the event that the fund were able to raise an initial capital amount

of \$22.5 million. Upon raising \$22.5 million, U. T. M. D. Anderson Cancer Center would then contribute \$2.5 million for its 10% position. Thereafter, capital will be raised up to a maximum of \$50 million for a total value of the fund, and \$5 million for the maximum contribution on the part of U. T. M. D. Anderson Cancer Center. U. T. M. D. Anderson Cancer Center would match every \$9 raised with \$1 of its own investment to maintain its 10% position.

As a limited partner, U. T. M. D. Anderson Cancer Center would not be required to make any further investment in the fund above the maximum amount of \$5 million. U. T. M. D. Anderson Cancer Center would share in the gains and profits of the fund commensurate with its percentage position. It would also receive a minority of the carried interest for its role as a special limited partner. U. T. M. D. Anderson Cancer Center would not participate in the investment decisions of the fund, as that would be the role of the general partner.

The fund would not be limited to investment opportunities involving U. T. M. D. Anderson Cancer Center inventions. The fund would be focused on cancer therapeutics and oncology-related products as described above. It is anticipated that inventions from other universities would be evaluated for potential investment opportunities through the U. T. M. D. Anderson Cancer Center Active Venture Development Program with the opportunity to enhance those inventions with scientific contributions from U. T. M. D. Anderson Cancer Center, or by coupling those inventions with U. T. M. D. Anderson Cancer Center inventions to advance both inventions toward a marketable product. The scientific feasibility and diligence services provided by U. T. M. D. Anderson Cancer Center would be on a fee-for-service basis pursuant to a separate contract.

It is the intention of U. T. M. D. Anderson Cancer Center to use unrestricted gift funds to provide the capital necessary for this investment. U. T. M. D. Anderson Cancer Center has determined that such funds may be legally invested as proposed. Further, U. T. M. D. Anderson Cancer Center's investment in the fund has been requested by the general partner to show support and commitment to the effort on the part of U. T. M. D. Anderson Cancer Center.

Over the course of the previous eight years as U. T. M. D. Anderson Cancer Center has advanced its technology development and commercialization program, it has become apparent to the institution that investment capital needed to fund the companies necessary to develop inventions into products is not readily available in the Houston market. This opportunity provides a unique chance to accelerate the process of raising interest in the capital markets necessary for the development of new products. The fund's organizers believe that the other 90% capital the general partners will raise for this fund will come largely from investors on both the east and west coasts of the United States, with some investors from overseas, such as the Asian market. That type of participation will undoubtedly create a higher level of interest in other capital markets as investment in new technology companies tends to be through a syndicated process of multiple venture capital funds.

SUMMARY OF PRINCIPAL TERMS

THE MADELIN FUND, L.P.

A Fund Investing in Cancer Related Opportunities Emanating from The University of Texas M. D. Anderson Cancer Center and Other Institutions, Entities and Individuals

The following is a summary of the principal terms of the offering of limited partnership interests in The Madelin, Fund, L.P. (the “**Fund**”), a Delaware limited partnership. This summary is qualified in its entirety by reference to this Memorandum and the Limited Partnership Agreement of the Fund (the “**Partnership Agreement**”), a copy of which will be provided to each prospective investor upon request. To the extent that a conflict exists between this document and the Partnership Agreement, the Partnership Agreement shall control.

- The Fund:** The Madelin Fund, L.P., a Delaware limited partnership.
- Investment Objective:** The Fund’s objective is to achieve investment returns primarily in the form of capital gains by making privately negotiated venture capital investments in companies operating in the oncology and oncology related healthcare sectors, including but not limited to cancer prevention, diagnostics, therapeutics, medical devices, post-treatment cancer care opportunities, and such disease states that are representative of abnormal cell growth and proliferation. The Fund will have a relationship with The University of Texas M. D. Anderson Cancer Center (UTMDACC) described below under “Special Limited Partner and Relationship with The University of Texas M. D. Anderson Cancer Center.”
- General Partner:** The General Partner of the Fund will be Madelin Investment Partners, L.P., a Delaware limited partnership. Edward A. Fagin, Cynthia Ekberg Tsai, Fred Mermelstein, Ph.D. and Robin Smith, M.D., M.B.A. (each a “**Principal**”) will be owners of the General Partner and _____, LLC, the general partner of the General Partner.
- Manager:** The Fund will engage Madelin Management, LLC (the “**Manager**”), an affiliate of the General Partner, to provide various investment advisory services to the Fund. The Manager will sub-contract with UTMDACC to provide certain advisory services, including deal sourcing, scientific or feasibility due diligence and technology validation.
- Special Limited Partner and Relationship with The University of Texas M. D. Anderson Cancer Center:** The Fund has formed an alliance with UTMDACC and its Active Venture Development Program to enhance the Fund’s ability to identify, evaluate and launch ventures based on technologies and services originating either with UTMDACC or

from institutions, entities and individuals unaffiliated with UTMDACC. The General Partner expects that the Fund's alliance with UTMDACC will provide the Fund with enhanced deal flow, assistance in assessing opportunities, and access to opportunities incubated within the UTMDACC Active Venture Development Program. UTMDACC's capital commitment to the Fund will be equal to 10% of the total capital commitments, not to exceed \$5 million, and UTMDACC will receive 20% of the carried interest of the Fund as a Special Limited Partner in addition to its proportionate interest as a Limited Partner. UTMDACC will use its best efforts to show the Fund all legally available investment opportunities emanating from UTMDACC which are within the scope of the Fund's investment objectives. UTMDACC will have the right to participate as an observer in all meetings of the Principals of the General Partner relating to investment decisions except where considerations of confidentiality and/or conflict of interest make such participation inappropriate or prohibited.

Offering:

The securities being offered are limited partnership interests ("**Interests**"). The Fund is seeking total capital commitments ("**Commitments**") of \$50 million. Commitments in excess of or less than this amount may be accepted at the discretion of the General Partner. Commitments in excess of \$50 million shall not affect UTMDACC's maximum total commitment of \$5 million. Investors that subscribe for interests will become limited partners of the Fund (the "**Limited Partners**" and, together with the General Partner and Special Limited Partner, the "**Partners**").

Minimum Investment:

The minimum Commitment for a Limited Partner will be \$500,000 for individuals and \$1,000,000 for institutions, although the General Partner reserves the right to waive these minimums. The General Partner may, in its discretion, decline to accept any subscriptions that are tendered.

Closings:

An initial closing of the Fund (the "**Initial Closing**") will be held upon the acceptance of subscriptions for Commitments aggregating at least \$25 million inclusive of UTMDACC's 10% commitment and not until such commitments are obtained. The General Partner, in its discretion, may admit additional Limited Partners to the Fund or allow existing Partners to increase their Commitments at subsequent closings (each a "**Subsequent Closing**") held at its discretion until the date of the first anniversary of the Initial Closing (such first anniversary referred to hereafter as the "**Final Closing Date**"). All Partners, regardless of the closings at which they are admitted to the

Fund, will share in every Fund investment and expense pro rata in accordance with their respective subscriptions.

Each Limited Partner admitted at any Subsequent Closing (or which increases its Commitment after the date of the Initial Closing) will be required to pay to the Fund an amount (the “**Later Closing Amount**”) equal to the sum of: (a) an amount equal to the same percentage of its Commitment that has been contributed by the other Limited Partners; plus (b) an amount of interest accruing at a per annum rate equal to 8% on the amount of such prior capital contributions from the dates when such prior capital contributions would have been required to be drawn down through the date of such Subsequent Closing (the “**Interest Component**”). The amount referred to in (a) above will be distributed to the Partners that participated in the prior capital contributions pro rata in accordance with each such Partner’s capital contributions, provided that amounts representing the Management Fee (as defined below) and the Interest Component thereon shall be paid to the Manager. Amounts so distributed in respect of prior capital contributions will be available to be redrawn by the General Partner in the same manner and to the same extent as unfunded Commitments. Interest Components paid as provided above will be distributed to the Partners that participated in prior capital contributions in amounts reflecting the timing and amounts of those prior capital contributions and will not be treated as capital contributions to the Fund.

Term: Ten years from the Final Closing Date, subject to extension by the General Partner for up to three additional one-year periods.

Investment Period: The Partners will have no obligation to make additional capital contributions to fund new investments after the third anniversary of the date of the Initial Closing (the “**Investment Period**”); provided, however, that the General Partner may extend the Investment Period for a one-year period in its discretion; and provided, further, that after the end of the Investment Period the Partners will have a continuing obligation to make contributions to finance then existing commitments and complete investments in transactions which were in process at the close of the Investment Period, follow-on investments and to pay Fund Expenses (as defined below), liabilities and obligations, including management fees. Nothing in this section entitled “Investment Period” shall serve to increase UTMDACC’s maximum total Commitment of \$5 million.

Key Persons:

If more than two of the Principals cease to remain actively involved in the affairs and activities of the Fund, the General Partner shall promptly notify the Limited Partners and shall not make any new investments (except for follow-on investments or investments pursuant to a then existing legally binding agreement) without the approval of the Advisory Committee (as defined below). Such suspension shall continue until the General Partner presents a management plan that is approved by the Advisory Committee or a majority in interest of the Limited Partners.

Capital Calls:

Upon admission to the Fund at the Initial Closing each Partner will be required to contribute to the Fund an amount equal to 50% of such Partner's Commitment. Thereafter, following the use of the initial contributions for investments, organizational, offering and other Fund expenses and the maintenance of reserves, capital calls generally will be made as necessary to fund investments, meet expenses and liabilities of the Fund, or to establish and maintain cash reserves for such purposes as the General Partner deems necessary and appropriate, with not less than ten business days' prior written notice.

Any amounts returned to the Partners either (i) as a return of Commitments called in anticipation of an unconsummated Fund investment or (ii) as repayment of a Bridge Financing (as defined in "Bridge Financing" below) made by the Fund will be available for future Fund investments and expenses.

Reinvestment:

In addition to the foregoing, the General Partner may retain and reinvest otherwise distributable proceeds or subject all or a portion of such proceeds to a subsequent drawdown in order to enable the Fund to invest 100% of Commitments in portfolio investments.

Distributions:

The Fund intends to distribute available cash (net of reserves for permitted reinvestment, Fund Expenses or withholdings) on a timely basis and to make in-kind distributions of publicly traded securities as soon as those companies have reached an appropriate level of development. Distributions prior to termination may be made in the form of cash or freely traded securities. Upon liquidation, distributions also may consist of restricted securities or property.

Distributions shall be made in the following amounts and order of priority:

(i) First, 100% to the Partners until each Partner has received distributions equal to their aggregate capital contributions; and

(ii) Thereafter, (a) 20% to the General Partner and Special Limited Partner and (b) 80% to the Partners (the distributions paid to the General Partner and Special Limited Partner under clause (a) are referred to as distributions of “**Carried Interest**”).

The General Partner and Special Limited Partner may elect in their sole and absolute discretion not to receive all or any portion of any Carried Interest distributions that would otherwise be made to them. Any such distribution shall be, in the General Partner and Special Limited Partner’s sole discretion, either retained by the Fund on the General Partner and Special Limited Partner’s behalf or distributed to the Limited Partners. To the extent that the General Partner and Special Limited Partner elect not to receive any Carried Interest distribution, subsequent distributions shall be made to the General Partner and Special Limited Partner until they have received the amount of Carried Interest distributions they would then have been entitled to receive without such election; provided that no interest shall accrue on or be paid to the General Partner and Special Limited Partner with respect to any such deferred Carried Interest distributions.

The Fund may make cash distributions to the General Partner and the Special Limited Partner in an amount sufficient to pay the General Partner’s and the Special Limited Partner (or their respective owners’) income taxes on income allocated for tax purposes to the General Partner and the Special Limited Partner.

Valuation of In-Kind Distributions:

Distributions of freely tradable securities will be valued at the average closing trade prices for the ten business days immediately preceding distribution if closing trade prices generally are reported, and otherwise at the average closing bid prices for the ten business days immediately preceding distribution. Distributions of in-kind of assets other than freely tradable securities will be valued by the General Partner, taking all factors it deems relevant into account, subject to an objection procedure where a majority of the Limited Partners may object to the General Partner’s valuation and request a new valuation. If the General Partner and a majority of the Limited Partners

cannot agree on a valuation, an independent chartered financial analyst will determine the valuation. Valuations determined in the above manner shall be binding on the Partners for all purposes, including determination of Carried Interest distributions to the General Partner and Special Limited Partner.

Clawback:

If, after the Fund has made its final liquidating distribution, the General Partner and Special Limited Partner have received aggregate distributions with respect to their Carried Interest in excess of 20% of the Fund's cumulative net profits, the General Partner and Special Limited Partner will return to the Fund the amount of that excess, net of tax distributions made to the General Partner and Special Limited Partner that are attributable to their Carried Interest (calculated in accordance with the Fund's Partnership Agreement).

Bridge Financing:

The Fund may provide interim financing ("**Bridge Financing**") in order to facilitate a portfolio investment. A Bridge Financing recouped within one year following the date of the closing of such financing may be retained by the Fund for reinvestment or used to pay Fund expenses or it may be returned to the Partners and added to unfunded Commitments that will be subject to recall by the Fund. During such one-year period, a Bridge Financing will be treated as a short-term investment and will not be subject to the carried interest provisions outlined in "Distributions" above.

A Bridge Financing not recouped within one year will be treated as a permanent investment in the portfolio company. Hence, after such one-year period, interest earned will not be treated as short-term interest income, and the Bridge Financing will be subject to the carried interest provisions outlined in "Distributions" above.

Management Fee:

A management fee for management and administrative services (the "**Management Fee**") will be payable by the Fund, quarterly in advance, to the Manager and will commence as of the Initial Closing. Until the first calendar year after the end of the Investment Period, the Management Fee will equal 2.5% per annum of the Fund's aggregate Commitments. Thereafter, the Management Fee will be reduced by 10% per year, but in no event shall be less than 1.5% of the Fund's aggregate Commitments.

Pursuant to the Manager's sub-advisory agreement with UTMDACC, the Manager will pay UTMDACC compensation in respect of the due diligence and other services to be provided by UTMDACC. In no event shall such services constitute

management and/or administrative services. Such compensation generally shall be in an amount up to 20% of the annual Management Fee as set forth in the attached Schedule A.

All transaction fees and break-up fees paid to the General Partner or Manager in any fiscal year by the Fund's portfolio companies will be used to reduce the Management Fee arising in the following fiscal year. All other remuneration paid to the General Partner or Manager by the Fund's portfolio companies, including director's fees, consulting fees, advisory fees or other similar remuneration, will not be offset against the Management Fee. In addition, any reimbursement of the Manager or its respective employees or affiliates for out-of-pocket expenses incurred on behalf of a portfolio company or for compensation for services as an employee or officer of a portfolio company will not be offset against the Management Fee.

The Management Fee will commence as of the Initial Closing Date based on total Commitments, regardless of when a Limited Partner is actually admitted.

Organizational and Offering Expenses:

The Fund will bear all reasonable organizational expenses of the Fund, the General Partner and the Manager, and all reasonable expenses (including fees and expenses of placement agents) incurred in connection with the offering of the Interests.

General Partner's and Manager's Expenses:

Each of the General Partner and Manager will be responsible for its normal operating expenses, including salaries and employee benefits, office expenses, office and equipment rental and bookkeeping.

Fund Expenses:

In addition to the Management Fee, to the extent the following fees, costs and expenses are not paid by portfolio companies or others, the Fund will pay and be responsible for all of its other expenses, including but not limited to: all fees, costs and expenses of and incidental to the holding, developing, negotiating, structuring, making and disposing of portfolio investments (whether or not consummated); the cost of the preparation of the annual audit, financial and tax reports to Partners, and other reports to and communications with Partners; fees and expenses of tax advisers, attorneys, accountants, auditors and consultants; all routine administrative expenses; litigation-related expenses; costs and expenses associated with meetings of the Limited Partners and of the Advisory Committee and Scientific Advisory Board of the Fund; all other legal fees, costs and expenses incident to the Fund, its formation, its management and activities; interest and

other expenses relating to any Fund indebtedness; insurance premiums; fees incurred by the Fund for special advisory or consulting services; brokerage commissions, custodial expenses, securities filing fees and other investment costs; any taxes, fees or other governmental charges levied against the Fund; expenses of liquidating the Fund, including without limitation any legal, accounting, advisory, financing and consulting costs and expenses in connection therewith and all extraordinary fees, costs and expenses (all of the foregoing, “**Fund Expenses**”).

Advisory Committee:

The Fund will have an Advisory Committee consisting of at least three persons chosen by the General Partner from Limited Partners or persons associated with the Limited Partners, including one person from or associated with UTMDACC (the “**Advisory Committee**”). The Advisory Committee will provide such advice and counsel as is requested by the General Partner in connection with potential conflicts of interest, portfolio valuation and other Fund matters. The Fund will reimburse each Advisory Committee member for reasonable out-of-pocket expenses.

Scientific Advisory Board:

The General Partner, with the assistance of UTMDACC, will form a Scientific Advisory Board of leading professionals from UTMDACC and other leading institutions to advise the Fund on matters relating to investment strategy, deal sourcing, due diligence and validation and related matters.

Indemnification:

The Fund will indemnify and hold harmless the General Partner, the Manager, the Special Limited Partner and any of their affiliates, shareholders, partners, officers, directors, employees, or agents, and any members of the Investment Committee (“**Indemnitees**”) for any and all claims, liabilities, losses, damages, costs and expenses incurred by such Indemnitee or to which such Indemnitee may be subject by reason of its activities on behalf of the Fund or in furtherance of the interest of the Fund or otherwise arising out of or in connection with the Fund and its portfolio companies and as otherwise provided for in the Partnership Agreement (including activities of any Indemnitees that relate to the offer or sale of Interests in the Fund in reliance on any representations or warranties made by any Limited Partner), except that this indemnity shall not apply to losses that are found by a court of competent jurisdiction or an arbitrator or arbitration panel to have resulted from such Indemnitee’s own fraud, wilful misconduct, gross negligence or wilful and material breach of the Partnership Agreement. Limited Partners will be obligated

to return amounts distributed to them to fund indemnity obligations (without regard to their Commitments), subject to certain limitations described in the Partnership Agreement. Members of the Advisory Committee will also be entitled to indemnification from the Fund as provided in the Partnership Agreement.

The Indemnitees also have the benefit of exculpation provisions similar to the foregoing as set forth in the Partnership Agreement. The Fund may agree to indemnify and exculpate certain finders and advisers engaged in connection with the placement of interests in the Fund to the maximum extent permitted by law.

**Transferability of Interests;
Withdrawal:**

A Limited Partner may not sell, assign or transfer its Interest except under certain limited circumstances and with the prior written consent of the General Partner. Withdrawals of capital are not permitted except under certain limited circumstances to comply with certain laws or regulations applicable to a Limited Partner.

Investment Guidelines:

The General Partner will not, without the prior approval of the Advisory Committee, (a) invest more than 20% of the Fund's total Commitments in the securities of any single issuer, (b) make open-market purchases of publicly-traded securities at a cost in excess of 10% of the Fund's total Commitments, (c) invest in any pooled investment vehicle requiring the payment of additional management fees or carried interest, or (d) invest initially in a portfolio company of any other investment vehicle managed by affiliates of the General Partner.

The Fund may borrow money only on a short-term basis pending drawdowns of Commitments, not to exceed at any time 10% of the Fund's total committed capital.

**Co-Investment
Opportunities:**

In the event that, after the General Partner determines the amount that the Fund should invest in a portfolio investment, and after taking into account any joint investment relationships, deal sourcing and strategic reasons to allocate any opportunity to invest additional amounts in such portfolio investment to third parties, there is still an opportunity to invest additional sums in such portfolio investment (any such additional amount being a "**Co-Investment Opportunity**"), then the General Partner shall offer a portion of such Co-Investment Opportunity to any Limited Partners that, at the time of their admission to the Fund, elected in writing with the General Partner to receive such offers. Each such Limited Partner will be entitled (but not

obligated) to invest outside the Fund in such Co-Investment Opportunities in an amount equal to the amount of such Co-Investment Opportunity multiplied by a fraction, the numerator of which is such Limited Partner's Commitment and the denominator of which is the aggregate Commitments of all Partners. All or any part of any remaining Co-Investment Opportunity may be offered by the General Partner in its sole discretion to any other person or persons (including, without limitation, any third parties, Limited Partners of the Fund, the General Partner or any of the Principals or their affiliates). The General Partner and its affiliates may establish an investment vehicle in connection with the making of co-investments.

Defaults by Limited Partners:

The Partnership Agreement will provide that any Limited Partner which defaults with respect to any payment of its Commitment when due shall be subject to various consequences specified therein, including the imposition of an interest charge, punitive dilution of its interest, set-off against or withholding of distributions payable to such Partner, the sale of its Interest, a loss of future participation in Fund profits and the cancellation of its remaining Commitment. A defaulting Limited Partner shall remain liable to the Fund, the General Partner and the Manager for its share of Fund Expenses, including the Management Fee, through the remaining life of the Fund. A default by any one Partner will not relieve any other Partner from its obligations to fund a capital call. The General Partner may require each non-defaulting Limited Partner to make an additional capital contribution in respect of such portfolio investment equal to its pro rata share of the defaulted capital contribution; provided that no Limited Partner will be required to fund amounts in excess of its unfunded Commitment. Any additional capital contributions made by a non-defaulting Limited Partner will reduce the unfunded Commitment of such Limited Partner.

Other Activities:

Without the consent of a majority in interest of the Limited Partners, neither the General Partner nor any affiliate will organize another investment fund with investment objectives substantially similar to those of the Fund until the earliest of (i) the date on which 75% of the Fund's total Commitments have been expended, invested or reserved for follow-on investments in existing portfolio companies or reserved for reasonably anticipated expenses of the Fund, (ii) the end of the Investment Period, and (iii) the dissolution of the Fund.

Reports: The General Partner will use commercially reasonable efforts to provide the Limited Partners, within 90 days of the conclusion of each fiscal year, with (i) an annual audited report and (ii) annual tax information necessary for completion of their income tax returns. The General Partner will use commercially reasonable efforts to provide the Limited Partners, within 60 days of the conclusion of each of the first three fiscal quarters, with unaudited quarterly financial statements. Limited Partners will keep such reports and all other Fund information strictly confidential.

Potential Parallel Investment Vehicle: The Fund is intended to comply with the Investment Company Act of 1940 (the “**Investment Company Act**”) by virtue of either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act. The General Partner may organize separate parallel partnerships to address any legal, tax or regulatory concerns of particular investors. If such parallel partnerships are established, such partnerships and the Fund will operate in parallel, participate proportionately in all investment opportunities and share proportionately in all investment expenses.

Employee Benefit Plan Regulations: The General Partner intends to conduct the operations of the Fund so that it will be an appropriate investment for employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”). In particular, the General Partner will use commercially reasonable efforts to ensure that the Fund will not be deemed to hold the “plan assets” of such employee benefit plans under the plan asset regulations promulgated by the Department of Labor. The fiduciary of each prospective plan investor must independently determine that the Fund is an appropriate investment for such plan, taking into account the fiduciary’s obligations under ERISA and the facts and circumstances of each investing plan.

Tax-Exempt Investors: The Fund will use commercially reasonable efforts to avoid causing any tax-exempt Limited Partner to realize “unrelated business taxable income.”

Confidentiality: The Limited Partners will be required to give an undertaking that they shall not, and shall make reasonable efforts to ensure that every person connected or associated with such Limited Partner shall not, disclose to any person, firm or corporation, or use to the detriment of the Fund, the General Partner or the Manager, any confidential information which may have come to its knowledge as a result of being a Limited Partner in the Fund and concerning the affairs of the Fund, the General Partner, the

Manager, the Special Limited Partner, any of the Limited Partners or concerning any actual or proposed investment by the Fund, unless required to do so by law or by the regulations of any relevant stock exchange or other regulatory authority which has jurisdiction over it.

Amendments; Entire Agreement:

The Partnership Agreement may be amended from time to time with the written consent of the General Partner and a majority in interest of the Limited Partners, except that no amendment may increase any Limited Partner's Commitment, reduce its share of the Fund's distributions, income or gains or increase such Limited Partner's share of losses or change the amendment provisions in a manner adverse to such Limited Partner, without the consent of such Limited Partner nor may any amendment change the percentage of interests of Limited Partners required for any consent without the approval of the percentage of such interests that would be required for the consent in question. Notwithstanding the foregoing, the General Partner may amend the Partnership Agreement without the consent of the Limited Partners in connection with a subsequent closing so long as the amendment does not adversely affect the rights and obligations of any existing Limited Partner as a whole in any material respect and the amendment is not objected to by Limited Partners representing 20% or more of the Fund's Commitments.

The Fund or the General Partner, without any further act, approval or vote of any Partner, may enter into side letters or other writings with individual Limited Partners which have the effect of establishing rights under, or altering or supplementing, the terms of the Partnership Agreement in regards to such Limited Partner, and only such Limited Partner. Any rights established, or any terms of the Partnership Agreement altered or supplemented, in a side letter with a Limited Partner shall govern solely with respect to such Limited Partner and only such Limited Partner (but not any of such Limited Partner's assignees or transferees unless so specified in such side letter) notwithstanding any other provision of the Partnership Agreement.

Legal Counsel:

Fulbright & Jaworski L.L.P. will act as counsel to the Fund.

Execution:

Execution of this document as provided below represents the intent but no obligations of the parties.

The Madelin Fund, L.P. By and Through

Date

Leon Leach
Executive Vice President
The University of Texas M. D. Anderson Cancer Center

Date

SCHEDULE A

Percentage of Management
Fee Payable to M.D.
Anderson Services Corp.

Size of Fund