

Dec. 14 Draft
Clark to BOC

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this "Agreement"), is made and entered into as of _____, 200_, by and among THE FULTON-DEKALB HOSPITAL AUTHORITY, a public body corporate and politic, created and existing under the laws of the State of Georgia (the "Authority"); and GRADY MEMORIAL HOSPITAL CORPORATION, a nonprofit corporation organized, existing and in good standing under the laws of the State of Georgia (the "Corporation").

WITNESSETH:

WHEREAS, the Authority owns and operates Grady Health System, a comprehensive health services delivery system which includes Grady Memorial Hospital with 953-licensed beds, Hughes Spalding Children's Hospital with 84-licensed beds, nine primary care health centers, a long-term nursing facility with 388-beds, an infectious disease center, hospital-based outpatient clinics and an emergency medical service (the "System"), and such System includes affiliations with public health organizations, medical education programs and community advocates providing health care to residents of Fulton and DeKalb Counties and to citizens of the State of Georgia; and

WHEREAS, the Authority has entered into (i) a Contract dated July 1, 1984 with Emory University (the "Emory Agreement") and (ii) an Affiliation Agreement dated January 1, 2001 with Morehouse School of Medicine, Inc. (the "Morehouse Agreement") (collectively, the "Medical School Agreements") for the provision of professional medical services and supervision of medical services offered at the System; and

WHEREAS, in recognition of the current adverse financial and operational conditions existing at the System, the Authority has determined that it is in its best interest to restructure, through the long-term lease of the System and related facilities and assets of the Authority for operation by the Corporation, in order to gain increased flexibility in the operation of the System and related facilities; and

WHEREAS, the Authority believes the continuation of the high quality and level of health care services currently rendered at the System can best be accomplished by transferring the operations, assets and liabilities of the System to the Corporation; and

WHEREAS, to accomplish these ends, the Authority and the Corporation will execute that certain Lease and Transfer Agreement dated as of the date hereof (the "Lease"), whereby the Corporation will lease and assume from the Authority certain facilities, assets, operations, and liabilities of the System and the Authority as set forth in the Lease; and

WHEREAS, in conjunction with the Lease, the parties wish to ensure the financial viability and continuity of health care services provided by the System and other related facilities after entering into the Lease; and

WHEREAS, to accomplish this end and as a condition to the Lease, the parties desire for the Corporation to obtain a certain amount of capital, or a commitment to such capital, to ensure that adequate funding is available to operate and manage the System and to commit to certain findings regarding the Medical School Agreements;

NOW THEREFORE, for and in consideration of the premises and the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The recitals above are true and correct, are incorporated herein and form an integral part of this Agreement.

2. Defined Terms. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Lease.

3. Funds Required Prior to the Execution of the Lease.

(a) *Community Funds.* On or before the date hereof, the Corporation hereby agrees to obtain from representatives of the business, charitable and/or philanthropic communities a written commitment for funds in an amount not less than TWO HUNDRED MILLION AND 00/100 DOLLARS (\$200,000,000.00) to be made available over a four (4) year period commencing upon the execution of the Lease to be used for capital and/or operational needs of the System and other related facilities (the "Community Funds"). The first installment payment of the Community Funds shall be an amount not less than FIFTY MILLION AND 00/100 DOLLARS (\$50,000,000.00) paid in cash or placed in escrow on or before the date hereof.

(b) *Capital Campaign.* On or before the date hereof, the Corporation hereby agrees to obtain from certain business and philanthropic leaders of the community a written commitment to undertake, on a good faith, best efforts basis, a campaign to raise in private donations an amount not less than ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000.00) over a three (3) year period commencing from the date hereof to be used for capital improvements to the System and other related facilities.

4. Medical School Agreements. On or before the date hereof, the Corporation shall cause Emory University and Morehouse School of Medicine, Inc. (collectively, the "Medical Schools") shall provide written confirmation of the following: (i) commitment to maintain their residency and medical school programs at the System and related facilities at their current levels, (ii) commitment to enter into negotiations with the Authority and the Corporation to restructure any and all outstanding obligations owed by the Authority to the Medical Schools as of December 31, 2007, and (iii) commitment to enter into negotiations at an agreed upon schedule to renegotiated the Medical School Agreements, including but not limited to the closed medical staff provisions therein.

5. Discretion of Authority. Notwithstanding the terms and conditions under Section 3 and Section 4, the Authority has the discretion to permit the Corporation to obtain less than the amounts stated in Section 3 and to permit the Medical Schools to comply with the terms and conditions of Section 4 at lesser levels.

6. Time Period. The parties agree that satisfaction of all of the requirements under Section 3 and Section 4 (except for the payment schedule specified in Section 3(a) hereof) shall occur not later than two (2) years from the date hereof.

7. Representations and Warranties of the Authority. The Authority makes the following representations and warranties as of the date hereof:

(a) The Authority is a hospital authority, duly organized and validly existing under the Hospital Authorities Law of the State of Georgia.

(b) The Authority has the power and authority to enter into this Agreement and to carry out the obligations contemplated hereunder, and this Agreement does not violate any provision of law or any governing instrument or bylaws of the Authority or any provision of any indenture or agreement to which the Authority is a party or any provision of any other indenture or agreement or any order, decree, rule, regulation, or requirement of a court or a public body, agency or authority by which the Authority is bound.

(c) The Authority is duly authorized to execute, deliver and perform this Agreement.

8. Representations and Warranties of the Corporation. The Corporation makes the following representations and warranties as of the date hereof:

(a) The Corporation is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia.

(b) The Corporation has the power and authority to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated hereunder, and this Agreement does not violate the articles of incorporation or bylaws of the Corporation or any provision of any agreement to which the Corporation is a party or any provision of any agreement or any order, decree, judgment, rule, regulation, or requirement of a court or a public agency, body or other authority by which the Corporation is bound.

(c) The Corporation is duly authorized to execute, deliver and perform this Agreement.

9. Representations and Warranties of Emory. Emory makes the following representations and warranties as of the date hereof:

(a) Emory is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia.

(b) Emory has the power and authority to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated hereunder, and this Agreement does not violate the articles of incorporation or bylaws of Emory or any provision of any agreement to which Emory is a party or any provision of any agreement or any order, decree, judgment, rule, regulation, or requirement of a court or a public agency, body or other authority by which Emory is bound.

(c) Emory is duly authorized to execute, deliver and perform this Agreement.

10. Representations and Warranties of Morehouse. Morehouse makes the following representations and warranties as of the date hereof:

(a) Morehouse is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia.

(b) Morehouse has the power and authority to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated hereunder, and this Agreement does not violate the articles of incorporation or bylaws of Morehouse or any provision of any agreement to which Morehouse is a party or any provision of any agreement or any order, decree, judgment, rule, regulation, or requirement of a court or a public agency, body or other authority by which Morehouse is bound.

(c) Morehouse is duly authorized to execute, deliver and perform this Agreement.

11. Conditions Precedent. Unless the Authority and the Corporation otherwise agree,

(a) the Corporation shall not file a notice of a Commencement Date as permitted under the Lease until the terms and conditions under Section 3 and Section 4 are satisfied.

(b) the failure to obtain all of the required funds and satisfy all the conditions within the time period set forth under Section 6 shall cause the automatic and immediate termination of the Lease.

12. No Third Party Beneficiary. This Agreement is not intended to, and shall not, create any rights in or confer any benefits upon anyone other than the parties hereto.

13. Construction and Waiver. To the extent that there is any ambiguity or inconsistency between any term or condition of this Agreement and any term or condition of the Lease, the terms and conditions of this Agreement shall govern, and the parties hereby waive any and all rights that might arise under any such conflicting terms and conditions.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

15. Amendments. This Agreement may not be modified or amended except by a writing executed by all parties hereto.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and all previous representations of the parties, whether oral or written, are merged herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

“AUTHORITY”

**THE FULTON DEKALB HOSPITAL
AUTHORITY**

By: _____
Name: _____
Title: _____

“CORPORATION”

**GRADY MEMORIAL HOSPITAL
CORPORATION**

By: _____
Name: _____
Title: _____