

# UNOFFICIAL COPY

Doc#: 2106234101 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 03/03/2021 02:08 PM Pg: 1 of 10

This instrument was prepared by  
and after recording return to:

Mark F. Kalina, Esq.  
Guerard Kalina & Butkus  
310 S. County Farm Road, Suite H  
Wheaton IL 60187

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "Agreement") is made and entered into as of February 11, 2021 by and among IFF Capital 26 LLC, an Illinois limited liability company ("QLICI Lender") IFF, an Illinois not for profit corporation ("IFF"), and FAMILY CHRISTIAN HEALTH CENTER, an Illinois not-for-profit corporation ("Borrower").

### RECITALS

WHEREAS, Borrower owns certain property located at 31 West 155<sup>th</sup> Street, Harvey, IL 60426 (the "Property"), all as more particularly described on Exhibit A attached hereto; and

WHEREAS, Borrower and the QLICI Lender have entered into that certain Loan Agreement dated as of April 25, 2019 (as the same may be amended, modified, restated, supplemented or extended, the "QLICI Loan Agreement"), pursuant to which QLICI Lender made a loan to Borrower in the aggregate original principal amount of \$1,000,000, subject to the conditions set forth therein (the "QLICI Loan"); and

WHEREAS, to evidence the QLICI Loan, Borrower has executed and delivered a Promissory Note A in the amount of \$744,694.00 and a Promissory Note B in the amount of \$255,306.00 (collectively, as the same may be amended from time to time, the "QLICI Notes") each delivered pursuant to the QLICI Loan Agreement; and

WHEREAS, the QLICI Loan is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing covering certain assets of Borrower including among other things the Property (the "QLICI Mortgage"); and

WHEREAS, IFF is making a loan to Borrower in the principal amount of \$3,500,000.00 (the "IFF Loan"); and

WHEREAS, to evidence the IFF Loan, Borrower has executed and delivered a Promissory Note in the amount of \$3,500,000 (as the same may be amended from time to time, the "IFF Note"); and

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Whereas, the IFF Loan is secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing covering certain assets of Borrower, including, among other things, the Property (the "IFF Mortgage"); and

WHEREAS, IFF and the QLICI Lender desire to enter into this Agreement for the purpose of establishing the priorities of the application of payments by Borrower as between the QLICI Loan and the IFF Loan.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereby agree as follows:

**Section 1. Definitions.** For purposes of this Agreement, the following terms shall have the meanings specified with respect thereto below:

"Agreement" or "this Agreement" means this Intercreditor Agreement together with all amendments, modifications and supplements hereto.

"IFF Loan Documents" shall mean the IFF Note and the IFF Mortgage and every other document executed between IFF and Borrower evidencing, securing or pertaining to the IFF Loan.

"Lender" shall mean IFF and/or the QLICI Lender, as the context may require.

"Loan" shall mean the IFF Loan and/or the QLICI Loan, as the context may require.

"Loan Documents" shall mean the IFF Loan Documents and/or the QLICI Loan Documents, as the context may require.

"Payment in Full" and "Paid in Full" shall mean with respect to the IFF Loan or any QLICI Loan, as the case may be, that such Loan and all other amounts due under the IFF Loan Documents or QLICI Loan Documents, as the case may be, under which such Loan is outstanding have been fully and indefeasibly paid and satisfied, and neither IFF nor QLICI Lender, as the case may be, has any further obligation under the IFF Loan Documents or QLICI Loan Documents, as the case may be, evidencing or pertaining to such Loan to extend financial accommodations to Borrower.

"QLICI Loan Documents" shall mean the QLICI Loan Agreement, the QLICI Notes, the QLICI Mortgage and every other document executed between the QLICI Lender and Borrower evidencing or securing the QLICI Loans.

**Section 2. Security Interests; Priority.** Notwithstanding the date, manner, or order of perfection of the security interests granted by Borrower to IFF and the QLICI Lender, and notwithstanding any priorities that ordinarily would result under the Uniform Commercial Code and other applicable law from the order of granting or perfecting of any security interests (including, without limitation, purchase money security interests) referred to herein, the parties shall have the following priorities:

(a) IFF shall have a first priority lien and security interest in the Property and collateral noted in the IFF Mortgage;

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(b) QLICI Lender shall have a second priority lien and security interest in the Property and collateral noted in the QLICI Mortgage;

(c) IFF shall not, solely by virtue of the IFF Loan Documents, have or obtain any liens or security interests in property or assets of Borrower other than the Property and other collateral described in the IFF Mortgage;

(d) QLICI Lender shall not, solely by virtue of the QLICI Loan Documents, have or obtain any liens or security interests in any property or assets of Borrower other than the Property and collateral noted in the QLICI Mortgage;

(e) Unless otherwise approved by each Lender in writing, in the event there is a limited amount of funds from Borrower for Loan payments, any amounts received from Borrower shall be applied (i) first to principal payable by Borrower under the IFF Loan, (ii) then, on a pro rata basis based upon the amount of principal outstanding, to unpaid fees, late charges and expenses then due to the QLICI Lender and IFF and to accrued and unpaid interest, expenses, and other obligations (other than principal) payable by Borrower under the QLICI Loan Documents and IFF Loan Documents, (iii) then to principal payable by Borrower under the QLICI Loan;

(f) The parties each shall cooperate to effect the agreement expressed in this Section, and from time to time shall execute such other and further documents, including subordination agreements, assignments of claim, and otherwise as may be necessary or appropriate to implement the provisions of this Agreement;

(g) In the event that a Lender receives a payment in respect of its Loan that is not permitted under this Agreement, such Lender shall (unless otherwise restricted or prohibited by law) hold the same in trust for and promptly pay over the same (with any endorsements and assignments necessary to effectuate such payment) to the Lender to which such payment is required to be made hereunder; and

(h) No Lender will amend, assign, renew, restate, modify, or supplement the terms of their respective Loan Documents in any way that would (i) increase the interest rate on their Loan, (ii) shorten the amortization schedule or maturity date thereof, (iii) increase the principal amount of their Loan (excluding protective advances made under the applicable Loan Documents), (iv) adversely impact Borrower's compliance with New Markets Tax Credit requirements, or (v) demand, receive or accept any additional collateral to secure such Lender's Loan, in each case without the prior written consent of the other Lender, not to be unreasonably withheld, conditioned or delayed.

**Section 3. Continuing Agreement/Termination.** The subordinations, agreements, and priorities set forth hereinabove shall remain in full force and effect regardless of whether any party hereto in the future seeks to rescind, amend, terminate, or reform, by litigation or otherwise, its agreements with Borrower. Upon Payment in Full of the IFF Loan, in accordance with this Agreement and the IFF Loan Documents, IFF shall have no further rights or obligations pursuant to this Agreement. Upon Payment in Full of the QLICI Loan, in accordance with this Agreement

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and the QLICI Loan Documents, the QLICI Lender shall have no further rights or obligations pursuant to this Agreement.

**Section 4. Obligations Absolute.** Nothing herein shall impair, as between Borrower and IFF, the obligations of Borrower, which are unconditional and absolute, to guarantee and pay to IFF the principal and interest due on the IFF Loan and any other liabilities pursuant to the IFF Loan Documents, all in accordance with their respective terms but subject in all instances to the terms of this Agreement. Likewise, nothing herein shall impair, as between Borrower and the QLICI Lender, the obligations of Borrower, which are unconditional and absolute, to pay to the QLICI Lender the principal and interest due on the QLICI Loans and any other liabilities pursuant to the QLICI Loan Documents, all in accordance with their respective terms but subject in all instances to the terms of this Agreement.

**Section 5. Subordination Not Conditioned on Perfection.** The subordinations and relative priority agreements set forth above are not conditioned upon the perfection of the security interests described herein.

**Section 6. Relationship of Parties.** This Agreement is entered into solely for the purposes set forth herein, and except as expressly provided herein, no party assumes any other duties or responsibilities to the other regarding the financial condition of Borrower, or regarding any collateral, or regarding any other circumstance bearing upon the risk of nonpayment of the obligations of Borrower under any of the agreements hereinabove referred to. Each party shall be responsible for managing its credit relationships with Borrower, and except as expressly set forth herein, no party shall be deemed to be the agent of the other for any purpose.

**Section 7. No Partnership Created.** Neither the execution of this Agreement, nor any action taken by any parties hereto is intended to be, nor shall it be construed to be, the formation of a partnership or joint venture between any of the parties, in their respective capacities as such.

**Section 8. Benefit of Agreement.**

This Agreement is entered into solely for the benefit of IFF and the QLICI Lender and their respective successors and permitted assigns, and none of Borrower nor any other persons or entities whatsoever shall have any right, benefit, priority or interest under or because of the existence of this Agreement.

**Section 9. Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three (3) business days after mailing; (c) if by Federal Express or other reliable overnight courier service, on the next business day after delivered to such courier service or (d) if by facsimile on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

If to QLICI Lender: IFF Capital 26 LLC  
333 S. Wabash Ave., Suite 2800  
Chicago, Illinois 60604  
Attention: Vice-President of Capital Solutions

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If to IFF: IFF  
 333 S. Wabash Ave., Suite 2800  
 Chicago, Illinois 60604  
 Attention: Vice-President of Capital Solutions

Copy to: Mark F. Kalina, Esq.  
 Guerard Kalina & Butkus  
 310 S. County Farm Road, Suite H  
 Wheaton IL 60187

If to Borrower: Family Christian Health Center  
 31 West 155<sup>th</sup> Street  
 Harvey, IL 60426  
 Attention: Dr. Lisa Green

with copies to : Hoogendoorn & Talbot LLP  
 122 S. Michigan Ave.  
 Suite 1220  
 Chicago, IL 60603  
 Attention: G. A. Finch

## Section 10. Miscellaneous.

(a) This Agreement may be amended, modified or terminated only by a written instrument signed by the parties hereto. No waiver of any term or provision of this Agreement shall be effective unless it is in writing and signed by the party against whom such waiver is sought to be enforced.

(b) To the extent any part of this Agreement shall conflict with any of the terms of the IFF Loan Documents or the QLICI Loan Documents, whether existing as of the date hereof, or hereafter arising or amended, the terms of this Agreement shall control.

(c) Each party hereto has cooperated in the drafting and preparation of this Agreement and therefore, in any construction hereof, this Agreement shall not be construed against any party hereto as the draftsman thereof.

(d) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

(e) This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. This Agreement may not be assigned by any party unless such party shall cause the assignee to assume the obligations of the assignor under this Agreement pursuant to a written instrument, reasonably satisfactory in form and substance to the non-assigning parties, executed by the assignee and delivered to the non-assigning parties.

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(f) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

(g) If any obligation or portion of this Agreement is determined to be invalid or unenforceable under law, it shall not affect the validity or enforceability of any remaining obligations or portions hereof.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of laws of such state.

(i) TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

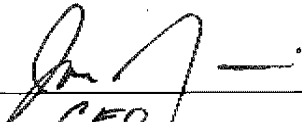
*[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGES FOLLOW]*

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WITNESS the hand and seal of QLIC Lender the day and year first above written.

**IFF Capital 26 LLC,**  
an Illinois limited liability company

By: IFF, an Illinois not-for-profit corporation,  
its managing member

By:   
Its: CEO

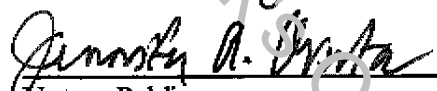
Property of COOK COUNTY

STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF UNK

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Joe Men personally known to me to be the CEO of IFF Capital 26 LLC an Illinois not for profit corporation, appeared before me this day in person and acknowledged that, as such CEO, he/she signed and delivered such instrument as his/her free and voluntary act, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 9<sup>th</sup> day of February, 2021.



  
Notary Public

My Commission Expires: 6/1/2024

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WITNESS the hand and seal of IFF the day and year first above written.

**IFF,**  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Its: CEO

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF SMC

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Joe New personally known to me to be the CEO of IFF, an Illinois not for profit corporation, appeared before me this day in person and acknowledged that, as such CEO, he/she signed and delivered such instrument as his/her free and voluntary act, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 9<sup>th</sup> day of February, 2021.



Jennifer A. Overton  
Notary Public


My Commission Expires 6/1/2024



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WITNESS the hand and seal of Borrower the day and year first above written.

**Family Christian Health Center,**  
an Illinois not-for-profit corporation

By:   
Dr. Lisa Green, CEO

STATE OF ILLINOIS)  
COUNTY OF Cook, SS.

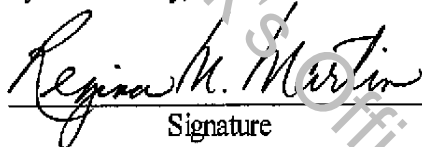
On February 10, 2021 before me, Regina M. Martin, a Notary Public, personally appeared Dr. Lisa Green, CEO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of Ohio that the foregoing paragraph is true and correct.

Witness my hand and official seal this 10<sup>th</sup> day of February, 2021.

Seal



  
Signature

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## EXHIBIT A

### Legal Description – The Property

LOT 1 IN THE FAMILY CHRISTIAN HEALTH CENTER CONSOLIDATION OF LOTS 23 THRU 42 AND THAT PART OF THE EAST-WEST ALLEY LYING EAST OF THE WEST LINE OF SAID LOT 29 EXTENDED SOUTH AND WEST OF THE EAST LINE OF SAID LOT 29 EXTENDED SOUTH, IN BLOCK 129 IN HARVEY, A SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 31 W 155th Street, Harvey, IL 60626

PIN: 29-18-230-045-0000

Property of Cook County Clerk's Office