

## **Ticonderoga Revitalization Alliance**

### **Board of Directors Special Meeting November 25, 2019**

Present: Nancy Archer, Lance Cark, Scott Hearburg, Pat Ida, Chris Mallon, Sandy Morhouse, Pam Nolan, Bob Porter, Peter Reale

Guests: Jim Major

Staff: Donna Wotton

The special meeting was called to discuss the potential purchase of the Hacker Building on Montcalm Street in downtown Ticonderoga. The building has been boarded up for over a year presenting an eyesore in a strategic downtown area where Ti-Alliance has for some years hoped to create a downtown attraction anchor.

Donna Wotton opened the meeting and requested Sandy Morhouse to give the board a brief on the various activities that led up to the meeting. Prior to the meeting a written brief had been circulated to all board members.

Background: James Cawley let it be known many months ago that he would like to expand his Star Trek Tours business and that the location of the Hacker building was ideal to do this. Similarly, the Alliance had shown an interest for some time in the Hacker Building due to its prime location and blight on the face of downtown. Nancy and Lance made contact with Erin Badcock in 2016 regarding making a charitable donation of the Hacker building to Ti-Alliance, which was rejected. In 2017 there was near closure on a deal for the building to be turned back to PRIDE, when at the last minute it was purchased by Greg Cunningham from Port Henry, who then failed to pay the mortgage (held by Badcock) and taxes. The property was in tax arrears with Essex County for around \$40,000 including penalties and interest. Badcock isn't going to pay the taxes and doesn't want the building back, nor does PRIDE.

Negotiation with Essex County: In September 2019, Sandy reached out to Mike Diskin, Essex County Treasurer, and Dan Manning, Essex County Attorney, regarding the possible direct purchase of the building by Ti-Alliance. The Alliance's status as a local development company (LDC) makes it possible for the County to conduct a direct sale, which would avoid the need for a public auction, which could risk the building getting into the wrong hands again and possibly continuing to be a blight on the face of the Town. The County has expressed willingness to foreclose the tax lien and immediately conduct a private sale to Ti-Alliance in return for the tax arrearage of \$29,577.11 (the tax arrears less the penalties and interest, which the County has agreed to waive). The Town of Ticonderoga is engaged and is advocating for the sale to go forward.

James Cawley wants to establish his "Next Generation" Star Trek studio in the Hacker Building. Its proximity to his current studio makes it an ideal location. He is very familiar with the building and its state of disrepair and is willing to take it on as a renovation project, using his capital, network and sweat to get it done.

Current Status and Structure of the Agreement: Sandy has raised the \$35,700 needed to effect the sale from Ti-Alliance board members and “friends of Ti-Alliance” (tax arrears of \$29, 577 plus closing costs, recording costs, title insurance premium, and a small fee for Ti-Alliance).

In an agreement between Joe Giordano, Mike Diskin, Dan Manning, and Sandy (on behalf of The Alliance) it was agreed to do a direct sale to Ti-Alliance. Mike and Dan will bring the proposal before the Essex County Board of Supervisors at their meeting on December 2, 2019. Dan would then get a judge to issue a foreclosure order, and the transfer to Ti-Alliance would occur immediately upon the County’s obtaining title.

Once Ti-Alliance holds the title, we will flip the building to Trek Tour, LLC (James Cawley’s company) and take back a debt-like security as opposed to equity. This is “debt-like” because this security has elements of both debt and equity. Because James is ready, willing and able to restore and repair the building at considerable personal expense, and is the person best poised to do so, Sandy proposed that the security be crafted in the amount \$32,000 to be repayable, with interest at one and one-half percent per annum, out of 25% of net positive cash flow to be derived from the building over and above a threshold of \$10,000 per year. This affords him flexibility to restore the building, recoup his investment and, most importantly, to succeed, without being burdened by traditional debt or saddled with partners. He can also prepay the security at will without penalty. Given that James’ track record with Star Trek I is very good, Ti-Alliance should expect to recoup its investment fairly promptly. This investment security is not uncommon in this kind of situation. Appendix I is a draft of the proposed agreement.

Timeline: Dan predicts that the deal will be complete by the end of the calendar year, and James has scoped out the steps (and their timing) which he will take thereafter.

Questions and Answers: Questions and answers regarding the purchase and its structure were circulated prior to the meeting as well as taken during the meeting. The answers to the circulated questions and those by board members in the meeting are found below:

1. Structure of the agreement is outlined above, as is the agreement with the County and Town.
2. As far as James’ plan for the front - street side of the building, he has talked in general about tourism-related uses, and he is talking with Matt Courtright about attracting new businesses. Anything will be better than the boarded up disgrace that now exists. As far as Ti-Alliance’s “influencing” future use, the answer is not as a legal matter, but the goodwill which Ti-Alliance is generating will go far in assuring that our thoughts will be given weight. Also, acquiring into friendly hands the stretch of buildings from the Burleigh House to the Hacker Building opens several grant possibilities. As for the Town of Ticonderoga’s understanding and participation, Joe Giordano reached out to Sandy early in this process in response to his emails. He has a clear understanding of the Hacker Building’s history and a keen desire to get it back on the tax rolls and to cease being an eyesore. It was Joe who arranged the conference call in which Mike Diskin, Dan Manning, Joe and Sandy “shook hands” on the outline of a deal. It is fair to say that the Town government is very happy that this is happening.

3. "Change of County Position," A few things have been going on. Sandy had initially understood that the County was reluctant to foreclose the tax lien for fear of being stuck owning a dilapidated building. He reached out to Mike Diskin in the fall to raise the possibility of The Alliance or a private investor either purchasing the tax lien or agreeing to purchase the property immediately upon the County's foreclosure, in either case for consideration equal to the tax arrearage. With an immediate buyer in hand, Mike encouraged Dan Manning to find a way to get this done. Mike, of course, is a resident and native of Ticonderoga and wanted to do right by the Town. Dan Manning, for his part, has been very cooperative. After investigating the issue, he concluded that the County did not have the legal power to sell the lien to a private investor or to Ti-Alliance, but he was more than willing to flip the deed to us immediately upon foreclosure if we put the tax arrearage in escrow. This solved two problems for him: (1) the County was not "giving" the property away; after all, it's only economic interest in the property was the tax arrearage; and (2) deeding it to Ti-Alliance allowed him to do a "private sale" under the NY Real Property Tax Law and to avoid a public auction which would have left the County holding the property if no one bid. The issue of using the property for the "public good" did not come up in any of our conversations which perhaps speaks to the commercial nature of the property and the fact that we would be paying real money.

4. "Use of the Benefits of Ti-Alliance's LDC Status" – The direct sale to The Alliance is permissible because of its LDC status, which allows the county to move forward without a public auction. Also, it is our understanding that Dan will provide the minimum amount of public announcements allowable under the law. Once we/James acquire title, we can, of course, make whatever announcements we want. We did not devote a lot of attention to using the other LDC "tools" to assist development going forward because that would have required an extended equity investment which we felt was better to be avoided for a number of reasons.

5. "Assessment of Rehab Needs and Costs," We have not done a significant rehab needs assessment since the structure of the deal takes these issues off of The Alliance's plate altogether. PRIDE would have been the ultimate property owner under the deal that did not go through and was, frankly, hobbled by all of these issues. James Cawley is intimately familiar with every aspect of the Hacker Building and has the skill set and wherewithal to tackle the problems, not to mention the willingness to invest in excess of \$100,000 of his own money. He has a very good idea what it will cost, in what order to do the work, and on what timeline. TRA has no exposure in any of these respects. James will simply undertake contractually with TRA to "use reasonable efforts to secure the property structurally and to restore it to commercial viability." He has already begun working with Bill Ball and has his work plan and finances in place.

6. "Liability and Responsibility for Repairs" - We cannot guarantee that The Alliance has no legal liability. We certainly have no responsibility for repairs. We do share with the County that tiny environmental risk which occurs by reason of the nano-second during which we each (Ti-Alliance and the County) owned the property. That risk is finite, however, limited to asbestos and mold abatement, and it is a risk for which James is primarily responsible. Suffice it to say that I am confident that James is more than adequately capitalized to restore the property. He enjoys a strong cash flow on Star Trek I and has received six figured grants that he is willing to put into the new project. We believe that the structure and economics that we are contemplating

reduce any risk to Ti-Alliance to its barest minimum. Balancing risk with the corresponding benefit to the community, it is an easy choice.

7. “Political Risks.” This transaction will do much to enhance Ti-Alliance’s reputation in the community. The Town and County governments are fully behind it. The Chamber of Commerce is fully behind it. If someone were to begrudge us the opportunity to clean up the Hacker Building for want of a public auction, we am more than willing to shoulder the criticism.

8. Mold Abatement: Concern was expressed that the mold abatement be done correctly to prevent the possible health risk to mold abatement workers and future visitors. Ti-Alliance has no liability for mold or other issues other than for the “nano second” that the organization holds ownership of the building before it is flipped to Star Trek Tours. It was suggested that a “Hold Harmless” clause could be inserted in the agreement.

**ACTION:** **Sandy** to insert a Hold Harmless clause in the contract between Ti-Alliance and Trek Tour LLC.

9. Tax Relief for Trek Tours: It was suggested and agreed that tax relief for Trek Tour LLC should be sought aggressively given the investment of time and money that James will invest in the building, which will be an ongoing asset to the community.

**ACTION:** **Scott, Bob and Jim Major** will discuss tax abatement with James and then with Patty the Town Assessor to ensure that the property is assessed at its current actual value of approximately \$30,000 (the highest bid at the 2018 auction for the building) and a possible reduction over five to ten years to help the business succeed.

A motion was put forth, seconded and approved unanimously to move forward with the purchase of the Hacker Building as outlined and then with the sale to Trek Tours. A resolution was circulated and signed by all members of the board and is presented as Appendix II.

Adjourned at 5:55 p.m.

APPENDIX I  
PURCHASE MONEY LOAN AGREEMENT

This PURCHASE MONEY LOAN AGREEMENT (as amended or supplemented from time to time, this "Agreement"), dated as of the \_\_\_\_ day of December, 2019, between TICONDEROGA REVITALIZATION ALLIANCE, INC., a New York local development company having an address at P.O. Box 247, Ticonderoga, NY 12883 (the "Lender"), and TREK TOUR, LLC, a New York limited liability company having an address at 112 Montcalm Street, Ticonderoga, NY 12883 (the "Borrower"), WITNESSETH that:

The Lender hereby agrees to purchase (the "Initial Purchase") the real property located in the Town of Ticonderoga in Essex County, New York, as more fully described in the annexed Schedule A hereto, together with all structures, improvements and fixtures thereon or with respect thereto (herein collectively called the "Property") from the County of Essex (the "County") upon the County's having foreclosed a tax lien on the Property pursuant to a Procedure in Rem under Title 3 of Article 11 of the New York Real Property Tax Law.

Simultaneously with the Initial Purchase, the Lender hereby agrees to convey, transfer and sell the Property to the Borrower, and the Borrower hereby agrees to purchase the Property from the Lender, in consideration of the purchase money loan (the "Loan") evidenced by this Agreement.

The Borrower promises to repay the Loan in accordance with the provisions hereof and agrees to use reasonable efforts to secure the Property structurally and to restore it to commercial viability.

1. Loan Amount and Interest.

(a) Principal. As of the date hereof, the principal balance of the Loan is [\$32,000], which amount is duly recorded in the ledger (the "Ledger") attached hereto as Schedule B. All principal payments in respect of the Loan (together with the dates on which they were made) will be recorded in the Ledger resulting in the Ledger's providing a record of the outstanding principal balance of the Loan from time to time.

(b) Interest. Interest shall accrue and be payable (as hereinafter provided) on the outstanding principal balance from time to time of the Loan at the rate per annum of one and one half (1½ %) percent from the date hereof until the entire principal balance of the Loan is paid in full.

2. Payments and Prepayments. The Loan does not mature on a date certain. Neither are there fixed dates when stated amounts of principal and interest must be paid. Rather, the principal of, and interest on, the Loan shall be paid in accordance with the following formula:

(a) Net Cash Flow. On February 1, 2021 and on every February 1 thereafter until the entire principal balance of the Loan shall have been paid in full (each, a Payment Date"), the Borrower shall pay (the "Payment") to the Lender twenty-five (25%) percent of any net positive cash flow derived from the use, occupancy and/or rental of the Property during the immediately preceding calendar year over and above an annual threshold (the "Threshold") of Ten Thousand (\$10,000) Dollars. If net cash flow in excess of the Threshold is not realized in any calendar year no Payment shall be due in respect of such calendar year.

(b) Application of Payment. Each Payment made pursuant to Section 2(a) above shall be applied

first to the payment of interest accrued and unpaid on the Loan to the date of such Payment, and the balance, if any, shall be applied to the payment of principal, with any such principal payment being recorded in the Ledger as aforesaid.

(c) Inspection Right. Upon reasonable notice and at the Lender's expense, the Borrower shall allow the Lender or its representatives during business hours or at other reasonable times to inspect the Borrower's business books and records and to make copies thereof.

(d) Prepayment. The Borrower may prepay the Loan, in whole or in part, at any time without penalty so long as all interest accrued and unpaid on the Loan shall have been paid to the date of each such prepayment.

3. Default. Notwithstanding anything to the contrary in this Agreement, if the Borrower defaults in the performance of any obligation under this Agreement (subject to a three-day grace period with respect to any Payment), then the Lender may declare the entire unpaid principal balance of the Loan, together with interest accrued and unpaid thereon, to be immediately due and payable.

4. Governing Law. This Agreement will be construed in accordance with and governed by the laws of the State of New York.

5. Costs. All costs, expenses and expenditures incurred in the enforcement of this Agreement as a result of any default by the Borrower will immediately be paid by the Borrower.

6. Binding Effect. This Agreement will accrue to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Borrower and the Lender. The Borrower waives presentment for payment, notice of nonpayment and dishonor.

7. Amendments. This Agreement may only be amended or modified by a written instrument executed by both the Borrower and the Lender.

8. Severability. The clauses, paragraphs and sections contained in this Agreement are intended to be read and construed independently of each other. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the parties' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision enforceable, and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

9. Notices. Any notice or demand which under the terms of this Agreement or under any statute must or may be given or made by a party hereto shall be in writing and shall be deemed given or made upon the mailing of the same by certified or registered mail addressed to the recipient party at the address set forth in this Agreement or at such other address or addresses as such recipient party shall have provided to the sending party by notice given as herein provided.

10. General Provisions. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine or the neuter, as the case may be, and vice versa.

11. Entire Agreement. This Agreement, together with records of principal payments hereunder, including those duly recorded in the Ledger as aforesaid, constitute the entire agreement between the parties, and there are no further items or provisions, either oral or otherwise, it being understood that this Agreement, together with such records, are also the equivalent of a promissory note and constitute the evidence of the indebtedness constituting the Loan.

IN WITNESS WHEREOF, the parties have duly affixed their signatures under hand and seal as of the date of this Agreement.

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TICONDEROGA REVITALIZATION  
ALLIANCE, INC.  
Donna Wotton, Executive Director

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TREK TOUR, LLC  
James M. Cawley, Managing Member



### CONSENT TO ACTION

Written consent to action of the board of directors of Ticonderoga Revitalization Alliance dated this 25th day of November, 2019.

#### IT IS RESOLVED THAT:

1. The Ticonderoga Revitalization Alliance will complete a transaction with Essex County to satisfy a tax lien in the amount of \$29,577 to deed the building known as The Hacker Building to Ti-Alliance.
2. The amount of \$32,000 (to include fees and closing costs) will be raised through individual donations to Ti-Alliance.
3. Immediately upon obtaining title, Ti-Alliance will transfer the deed to the building to James Cawley and Trek Tour, LLC in exchange for a \$32,000 note in the form of a Purchase Money Loan Agreement, ~~terms to be determined~~ *DO 11/25/19*
4. Trek Tour, LLC will undertake to renovate the building at the earliest possible time.

By signature below, the Board of Directors of Ticonderoga Revitalization Alliance do hereby agree to take the above actions.

Dated in the State of New York on the 25th day of November, 2019.

 Nancy Archer	 Chris Mallon
 Lance Clark	 Sandy Morhouse
 Joe Giordano	 Pam Nolan
 Scott Hearburg	 Bob Porter
 Pat Ida	 Peter Reale

*Ticonderoga Revitalization Alliance is a not-for-profit, local development corporation whose mission is to restore economic prosperity in the Ticonderoga region by serving as a catalyst for innovative ideas and resources, and for public-private partnerships and investment opportunities.*

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