

THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA  
GENERAL CIVIL DIVISION

MARK D. REYNOLDS,

Plaintiff,

vs.

Case No.:

08 28944

Division:

DIVISION F

LOWRY PARK ZOOLOGICAL SOCIETY  
OF TAMPA, INC., a non-profit Florida corporation;  
and SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT, a political subdivision  
of the State of Florida,

Defendants.

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COMPLAINT

COMES NOW, the Plaintiff, MARK D. REYNOLDS (hereinafter referred to as "REYNOLDS"), by and through the undersigned attorney, and sues Defendants, LOWRY PARK ZOOLOGICAL SOCIETY OF TAMPA, INC. (hereinafter referred to as "LOWRY"); and SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (hereinafter referred to as "SWIFTMUD"), and alleges and says:

GENERAL ALLEGATIONS

1. This is an action for money damages of \$15,000.00, exclusive of costs and attorney's fees, thus requiring the jurisdiction of Circuit Court.
2. That the Plaintiff is an individual who resides in Hillsborough County, Florida.
3. That Defendant, LOWRY, is a non-profit Florida corporation that operates LOWRY PARK ZOO in Tampa, Florida. That LOWRY has its principal place of business in Tampa,

Hillsborough County, Florida.

4. That Defendant, **SWIFTMUD**, is the Southwest Florida Water Management District that is a political subdivision of the sovereign, the State of Florida. That prior to filing this suit, **REYNOLDS** has complied with the Florida waiver of sovereign immunity statute. That **SWIFTMUD** maintains an office in Hillsborough County, Florida.

5. That venue of this proceeding is correctly placed in Hillsborough County, Florida.

#### COUNT I – BREACH OF CONTRACT

Plaintiff sues Defendant, **LOWRY**, for breach of contract, and would respectfully show as follows:

6. **REYNOLDS** re-alleges paragraphs 1, 2, 3 and 5 above.

7. That on or about August 1, 2005, **REYNOLDS** and **LOWRY**, entered into an agreement whereby **REYNOLDS** agreed to upgrade an apartment on lands owned by **SWIFTMUD** which were leased by them to **LOWRY**. A copy of that agreement is attached hereto, incorporated herein and marked Exhibit "A". Although the agreement is not signed by **LOWRY**, the agreement has been acknowledged by **LOWRY** (see Exhibit AA attached hereto) and **REYNOLDS** actually performed and/or paid for the renovations pursuant to the agreement.

8. That the employment of **REYNOLDS** was terminated at the two (2) year mark and **LOWRY** was to repay to **REYNOLDS** \$15,000.00 pursuant to the agreement.

9. That **REYNOLDS** has made demands upon **LOWRY** for the repayment of \$15,000.00 pursuant to the agreement but **LOWRY** has not repaid these sums.

10. That **REYNOLDS** has retained the undersigned and agreed to pay him a reasonable fee for his services. That Plaintiff would allege that there is a complete absence of justiciable issues of law or fact herein and Plaintiff is entitled to the award of a reasonable attorney's fee pursuant

to Florida Statute 57.105.

11. That the amount due is liquidated and **REYNOLDS** demands prejudgment interest.

WHEREFORE, Plaintiff demands judgment for damages against Defendant, **LOWRY PARK ZOOLOGICAL SOCIETY OF TAMPA, INC.**, in the amount of \$15,000.00, plus costs and attorney's fees.

**COUNT II – UNJUST ENRICHMENT**  
**(AS TO SWIFTMUD)**

Plaintiff sues Defendant, **SWIFTMUD**, for unjust enrichment, and would respectfully show as follows:

12. **REYNOLDS** re-alleges paragraphs 1, 2, 4 and 5 above.

13. That **SWIFTMUD** leased lands to Defendant, **LOWRY**. As part of the lease agreement, Defendant, **SWIFTMUD**, and Defendant, **LOWRY**, agreed upon certain upgrades and construction projects including the upgrades to be performed by **REYNOLDS**. A true and correct copy of the lease and attachments are attached hereto, incorporated herein and marked Exhibit "B".

14. That because of the agreements in Exhibit "B", **SWIFTMUD** knew of the improvements to be made by or on behalf of **LOWRY**, and on information and belief, actually funded the construction project and improvements including those made by **REYNOLDS**.

15. **SWIFTMUD** thus had actual knowledge of the improvements to be made; ordered and approved the improvements; and with actual knowledge accepted, retained and kept the improvements to their real property thus causing **REYNOLDS** to confer a benefit on themselves that they voluntarily accepted by increasing the value of their property.

16. That at the end of the lease, all improvements to the subject property are to belong to **SWIFTMUD**. **SWIFTMUD** has and will retain the benefits conferred upon them.

17. That REYNOLDS has conferred a law suit upon SWIFTMUD and it would be inequitable to allow them to retain that benefit.

Respectfully submitted,  
JOSEPH R. FRITZ, P.A.

BY: 

**JOSEPH R. FRITZ, ESQUIRE**

FBN: 0321931

4204 North Nebraska Avenue

Tampa, Florida 33603

Office: (813) 237-4646

Fax: (813) 238-5182

(Attorney for Plaintiff)

Construction and upgrade agreement between  
Tampa's Lowry Park Zoo's Green Swamp, Lex Salisbury and Mark D. Reynolds

Mr. Mark Reynolds will be adding on to the existing 1 bedroom, 1 bathroom living facility located at:  
7438 Us Highway 98 South, Kathleen, Florida 33849.

The upgrades will include:

- Three (3) additional bedrooms, all with walk-in closets, new window units (air conditioning), hardwood type flooring, upgraded insulation
- One (1) additional bathroom (handicap equip), walk in shower, handicap toilet, new vanity
- One washer and dryer
- New stove and new refrigerator
- Old carpet coming up, new flooring going down
- Upgrade Indoor Lighting on all rooms with ceiling fan/light combo or new light
- New paint on all walls
- Change old bedroom to new dining room and incorporate new dining room and existing living room together.

Total cost of upgrades to equal \$25,000.00

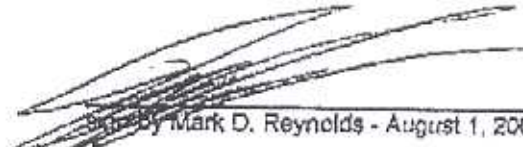
The agreement is as follows. Mr. Mark Reynolds is to pay for all upgrades in full, if Mr. Reynolds is terminated with in 5 years of the upgrades Lowry Park Zoo will pay Mr. Reynolds the agreed upon amount of -\$5,000. per year up to the 5 years from the start date of construction being August 1, 2005.

Example as follows:

Terminated August 1, 2006 - Mr Reynolds would be owed \$20,000.00 by Tampa' Lowry Park Zoo.

Terminated August 1, 2007 - Mr Reynolds would be owed \$15, 000.00 by Tampa's Lowry Park Zoo.

If before the month of August payment will then be negotiated by Mr Mark Reynolds and Tampa's Lowry Park Zoo.

  
Mark D. Reynolds - August 1, 2005

  
Mark D. Reynolds - August 1, 2005

cc: Lex Salisbury  
bcc: Carmen Sanders (02/22/2005)

Exhibit "A"

Lisa Carrasquillo

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From: mlreynolds02@aol.com  
Sent: Tuesday, October 23, 2007 9:39 AM  
To: Lisa Carrasquillo  
Subject: Fwd:

----- Original Message -----

From: Sanders, Carmen (Assistant General Curator) <carmen.sanders@lowryparkzoo.com>  
To: mlreynolds02@aol.com  
Sent: Mon, 23 Jul 2007 5:35 pm

Mark and Laura,

I spoke with Lex about our conversation on Wednesday July 19, 2007. His response was the same as discussed on July 5th. He does not dispute the agreement, but as agreed upon by Mark and Lex proper documentation of the work completed copies of invoices and cancelled checks must be submitted for reimbursement. The invoice you provided would not be acceptable to our auditors. The invoice needs to be from a licensed contractor, detailing the work completed and we need documentation showing that you paid for the work. If you purchased any construction materials for the renovations, we will need copies of that as well. Please understand that we too must provide documentation to our auditors for funds paid out and we must do so in a documented manner. If you will give us these types of documentation we will be able to reimburse you for the money spent. Until such time, we are obligated by our auditors to base our figures on documentation provided by the general contractor.

Thank you,

Carmen Sanders  
Assistant General Curator  
Tampa's Lowry Park Zoo  
1101 West Sligh Ave  
Tampa, FL 33604

Phone: 813.935.8552 Ext: 315

Fax: 813.930.0108

Email: carmen.sanders@lowryparkzoo.com

Web-site: www.lowryparkzoo.com

**Exhibit "AA"**

SWF Parcel No. 10-411-109X

Approved by Attorney: *CWA*

## LICENSE AND LAND USE AGREEMENT

This Agreement, made and entered into this 30<sup>th</sup> day of August, 1995, by and between the Southwest Florida Water Management District, a public corporation created by Chapter 61-691, Laws of Florida, as amended, whose address is 2379 Broad Street, Brooksville, Florida 34609-6899, hereinafter referred to as the "District", and the Lowry Park Zoological Society of Tampa, a not-for-profit organization, whose address is c/o Executive Director, 7530 North Boulevard, Tampa, Florida 33604-4756, hereinafter referred to as the "Zoological Society".

### WITNESSETH:

Whereas, the District owns certain real property located in Pasco County, Florida, known as the Green Swamp Wilderness Preserve, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, hereinafter referred to as the "Project Lands"; and

Whereas, certain facilities exist on the lands which are more specifically described in Exhibit "B", attached hereto and hereinafter referred to as the "Facilities"; and

Whereas, the District and the Zoological Society recognize the importance of protecting and maintaining the natural systems of the Project Lands in order to support their natural hydrologic and ecologic functions, including the habitat of endangered native species; and

Whereas, the Zoological Society desires to establish on the Project Lands certain conservation, captive-breeding, education and research activities for Florida's threatened and endangered species as an extension of current programs being conducted by the Animal Department at the Lowry Park Zoological Garden in Tampa, said activities hereinafter referred to as the "Project"; and

Whereas, the conceptual plan for these Project activities is more specifically described in Exhibit "C", attached hereto and hereinafter referred to as the "Project Master Plan"; and

Whereas, the Zoological Society will develop and present to the District for approval construction plans for the development and maintenance of additional physical facilities on the Project Lands to support, operate and maintain the Project, and the conceptual plan for that construction and maintenance is more specifically described in Exhibit "D" attached hereto and hereinafter referred to as the Construction Plans; and

Whereas, any future physical facilities constructed upon the Project Lands will be included under the term "Facilities".

**Exhibit "B"**

Now, Therefore, the District and the Zoological Society, in consideration of ten dollars and no cents (\$10.00) and other good and valuable consideration paid to the District by the Society, the receipt of which is acknowledged, hereby mutually and voluntarily agree as follows:

1. TERM: The initial term of this Agreement shall be for a period of ten (10) years commencing on the date hereof to and including August 29, 2004<sup>5</sup>

2. RENEWAL TERM: Upon the expiration of the initial term of this Agreement, the Zoological Society may renew this Agreement for additional incremental periods of five (5) years up to a maximum of twenty-five years upon terms and conditions set forth by the District at each 5-year renewal term. In the event the Zoological Society does not accept the terms and conditions for each renewal period set forth by the District prior to the expiration of this Agreement or any renewal term, this Agreement shall expire automatically and the District shall have the right to possession of the lands and the improvements thereon.

3. USE: Upon execution of this Agreement, the Zoological Society may use the Project Lands for the activities identified in the Project Master Plan and the Construction Plan.

4. OWNERSHIP OF PROPERTY AT TERMINATION OF Agreement: It is the intent of the parties that any additional or future property of any kind or description, whether realty or personalty, placed or constructed as a permanent fixture on the Project Lands by the Zoological Society after the execution of the Agreement shall become the property of the District at termination of this Agreement. Any property remaining on the Project Lands after termination will also become the property of the District. Future construction plans will be developed with this intent in mind.

5. ZOOLOGICAL SOCIETY RESPONSIBILITIES:

(A) Prior to construction or renovation of any facilities or improvements, the Zoological Society shall submit to the District for written approval all final design plans, specifications and construction drawings for the incremental or phased construction of the improvements as identified in the Construction Plan.

(B) Prior to the establishment or institution of any captive breeding activities, education activities, research activities or any other activities contemplated as preserve activities, the Zoological Society shall submit plans and specifications of the activities to the District for written approval.

(C) The Zoological Society acknowledges that it has examined the Project Lands and the improvements thereon and is satisfied as to all existing conditions, including but not limited to the availability of access roads, communications, electrical power, sanitary systems and water.

(D) The Zoological Society acknowledges that there are existing physical improvements on the Project Lands as shown on Exhibit "B". In case of partial or total damage or destruction of these existing improvements for whatever reason, the Zoological Society agrees to rebuild, repair or restore these structures to at least their original condition as of the date this Agreement was executed. The District reserves the right to approve said reconstruction of any improvement on the

Project Lands.

(E) The Zoological Society shall be responsible for the operation, maintenance and management of the Project Lands and the improvements thereon, including but not limited to perimeter fencing, security, mowing, road systems, water, sewage and other utilities. The Project Lands and the improvements thereon shall be maintained in a neat and clean manner. The method of operation and the rules and regulations for the Project shall be consistent with the District Governing Board adopted Plan for the Use and Management of the Green Swamp Preserve and shall serve the public's interest.

(F) The Zoological Society shall obtain all permits and authorizations(s) that may be necessary to operate, maintain and manage the Project Lands and the Facilities and Project thereon.

(G) The Zoological Society shall submit to the District bi-annual reports of ecosystem management, project activities, including number of visitors to the Preserve.

(H) The Zoological Society shall submit an audited financial statement to the District each year evidencing all income, costs and expenditures relating to the project.

6. DISTRICT RESPONSIBILITIES:

(A) The District shall allow use of the Project Lands for the purposes described herein.

(B) The District shall coordinate in advance all necessary land management activities such as plans for prescribed burning and land restoration with the Zoological Society.

7. GENERAL USE RESTRICTIONS:

(A) Subject to the terms and conditions hereof, the Zoological Society, and its duly authorized agents, employees, officers or guests, may occupy and use the Project Lands for the purposes provided herein. This Agreement shall not be deemed to create or vest in the Zoological Society any interest in or title to the Project Lands.

(B) The Zoological Society shall not construct any buildings, facilities or improvements on the Project Lands without prior written approval from the District. The Zoological Society shall submit final design plans to the District for their review and approval and said value of the additional improvement(s) shall be mutually agreed upon by the District and the Zoological Society. Upon the completion of the construction of any additional improvements by the Zoological Society, the Zoological Society shall prepare and present to the District a current map/drawing showing all improvement or physical facilities located on the Project Lands and indicate in writing the value of improvements that will become a permanent part of the Project Lands.

(C) All vehicular travel within the Project Lands shall be done on the existing roadways and trails as shown on Exhibit "B". The western leg of the nature trail lies within a floodplain and will be

inaccessible to vehicular traffic most of the year without improvements. No existing roadway/trail shall be improved or altered in any way and no new roadways/trails shall be established on the Project Lands without express written consent of the District.

(D) The possession, consumption, or other use of any alcoholic beverage, intoxicant and unlawful drug or substance by anyone within or on the Project Lands and the improvements thereon, shall be specifically prohibited.

(E) The Zoological Society shall not do, or cause to be done, anything whereby the waters from, upon, or under the Project Lands will suffer degradation or diminishment in quality.

(F) The Zoological Society shall not discriminate against any person or persons because of race, color, creed, religion, sex, or national origin in its uses of the Project Lands stated herein.

(G) The possession or use of any weapons or firearms on the Project Lands shall be prohibited with the exception of law enforcement officials.

(H) The escape of or discharge of any sewage or effluent into the waters upon, under or from the Project Lands shall be prohibited except for those purposes currently permitted in connection with the existing improvements on the Project Lands.

(I) Hunting, trapping or the removal or destruction of fauna or flora from the Project Lands shall be prohibited. However, control of exotic species may be necessary to preserve the lands in their natural condition. The Zoological Society may control such populations with prior written approval by the District of an exotics control plan.

8. ASSIGNABILITY: The Zoological Society shall not transfer or assign, individually or collectively, its interests in this Agreement, or lease or sub-lease any of the Project Lands and the improvements thereon, nor shall it grant any interest, privilege, or license to third parties whatsoever, without the prior written approval by the District.

9. RIGHT TO INSPECT: The District shall have the right, at any reasonable time, to inspect the Project Lands and the improvements thereon, and the operation and maintenance activities of the Zoological Society to insure compliance with the approved terms and conditions of this Agreement. The right is reserved to the District, its officers, agents, employees and assigns, to enter upon and travel upon, over, or across the Project Lands at any time. The District's officers, agents, employees and assigns shall identify themselves and present sufficient identification to the Zoological Society upon request.

10. COSTS: The Zoological Society shall have the sole and exclusive responsibility for all costs of operation, maintenance, repair, reconstruction, or renovation of the Project and Facilities thereon.

11. INDEMNIFICATION AND RISK OF LOSS: The Zoological Society shall fully defend, indemnify and save harmless the District and its agents, employees and officers from and against any and all actions,

causes, claims, demands, judgments, losses, payments, recoveries and suits of any kind arising under or resulting from this Agreement, including but not limited to personal injury to or death of persons arising under or resulting from any act or omission of the Zoological Society or its agents, contractors, employees, invitees and licensees.

12. INSURANCE: The Zoological Society shall maintain during the entire term of this Agreement, insurance in the following kinds and amounts or limits with a company or companies authorized to do business in the State of Florida and shall not commence work under the Agreement until the District has received an acceptable certificate or certificates of insurance showing evidence of such coverage:

(A) Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office without restrictive endorsements, or equivalent, with the following minimum limits:

\$250,000 per occurrence  
\$500,000 in the aggregate

(B) First, flood and extended coverage insurance on all improvements made to licensed premises at a minimum limit of the value of the improvements.

(C) The District and its employees, agents, and officers shall be named as additional insureds on the general liability policy to the extent of the District's interests arising from the Agreement.

(D) Vehicle liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Bodily Injury Liability per Person	\$100,000
Bodily Injury Liability per Occurrence	\$300,000
Property Damage Liability	\$100,000
or	
Combined Single Limit	\$500,000

(E) Workers compensation insurance in accordance with Florida Statute 440, and/or maritime law, if applicable.

(F) Certificates of insurance shall provide for mandatory thirty (30) days prior written notice to the District of any material change or cancellation of any of the required insurance coverage.

13. WORKS OF THE DISTRICT: The parties hereto expressly acknowledge and agree that the District reserves the right to operate, use and maintain the Project Lands and the improvements thereon for the primary purposes of water management and/or water supply, which rights are paramount and superior to the uses authorized by this Agreement, and the parties hereto recognize that said uses are subordinate thereto. It is agreed between the parties that in the event it is necessary for the District to use all or a large portion of the Project Lands for any purposes relating to the works of the District, as provided for by the Laws of the State

of Florida and its own rules and procedures, then this Agreement shall be cancelled and be of no force and effect upon the District's giving one hundred eighty (180) days notice, in writing, to the Zoological Society that it is necessary for the District to use said property for said purposes. The Zoological Society shall thereupon remove itself and any and all personal property and equipment from the lands within said one hundred eighty (180) day period. In the event the District requires the use of only a part of the lands, then the District shall notify the Zoological Society, in writing, of the necessity for the said use, and upon said notification and within one hundred eighty (180) days thereof, the Zoological Society shall remove itself and any and all personal property and equipment from the said portion of the lands necessary for the use of the District.

14. TAXES/ASSESSMENTS: If any ad valorem taxes, intangible property taxes, personal property taxes, or other taxes or assessments of any kind are assessed or levied lawfully on the lands and the improvements thereon based on the Zoological Society's use thereof during the term of this Agreement, the Zoological Society shall pay said taxes within thirty (30) days after receiving written notice thereof from the District. In the event the Zoological Society fails to pay all said taxes assessed or levied on the lands and the improvements thereon within thirty (30) days after receiving written notice thereof from the District, the District may, at its sole option, pay said taxes subject to immediate reimbursement thereof in full together with any interest thereon at the maximum rate allowed by law and any administrative costs thereof incurred by the District, including reasonable attorney's fees. Failure of the Zoological Society to pay said taxes shall constitute a material breach of this Agreement.

15. DISTRICT RECOGNITION: The Zoological Society shall develop a public awareness plan to announce and promote the Project, subject to written District approval. Acknowledgement of assistance by the District will be integral to the public awareness effort. The public awareness effort will include a press release at the initiation of each phase of the Project and signage at the Project site. The signage at the Project site shall include recognition that the lands were made available to the Zoological Society by the District. All signage must meet with District written approval as to form, content and location, and must be in accordance with local sign ordinances.

16. PROJECT RECORDS AND DOCUMENTS: The Zoological Society will permit the District, upon request, to examine all Project (including any use of the Project Lands under this Agreement) records, the right to audit any Project books, documents and papers during the license or following completion of the Project. The Zoological Society shall maintain the records, books, documents and papers for at least three (3) years following completion of the Project. The Zoological Society recognizes and agrees that the District is subject to the Public Records provisions of Chapter 119, Florida Statutes, and that all documents, papers, letters and other materials made or received by the Zoological Society in conjunction with this Agreement and use thereunder are subject to said provisions.

17. FEES: Pursuant to Section 373.1395, Florida Statutes, the District is statutorily protected from any ordinary tort claim connected with the Project Lands provided that no charge is made for entering or using the same and provided that no commercial or other activity from which profit is derived is conducted on the Project Lands. Therefore, no fees or charges connected with the Project shall be instituted by the Zoological Society or allowed by the Zoological Society. If the Zoological Society does institute or allow any fees or charges connected with the Preserve, the Zoological Society does hereby, to the extent allowed by law and

subject to the provisions of Section 768.28, Florida Statutes, indemnify the District from any liability incurred by the District as a result of the fees or charge instituted by the Zoological Society as contemplated pursuant to Section 373.1395, Florida Statute, regardless of the District's knowledge or ignorance of any such fees or charges.

18. TERMINATION:

(A) If either party violates any of the terms and conditions of this Agreement, and does not correct the violation with forty-five (45) days after receipt of written notice from the other party, either party may terminate this Agreement. If either party violates the terms and conditions of this Agreement, and the other party elects to enforce the terms and conditions hereof, then the party who violated this Agreement shall pay all the other party's costs incurred to enforce, correct, or settle the terms or conditions violated, including reasonable attorney's fees and costs of suit.

(B) This Agreement may also be terminated pursuant to paragraph 13 for any statutory use required by the District.

(C) Upon termination of this Agreement, the Zoological Society shall remove, at its own expense, any interior fencing or improvements that may be deemed necessary by the District in order to return the land to its original condition.

(D) Should the Zoological Society Board of Trustees determine that the operation of this proposed facility under this License and Land Use Agreement to be an economic hardship and disadvantageous to the primary goals of the Zoological Society, the Zoological Society shall have the right to terminate the License and Land Use Agreement by giving ninety (90) days written notice to the District. The Zoological Society shall either: (1) obtain a party acceptable to the District to assume this License and Land Use Agreement or (2) remove all of the improvements to the Project Lands which the Zoological Society has installed in connection with its Red Wolf, Greater Sand Hill Crane and endangered Whooping Crane Program and thereafter shall have no further liability to the District under this License.

19. NOTICES: All written notices to the District under this Agreement shall be hand-delivered or sent by certified mail, return receipt requested to Green Swamp Wilderness Preserve Project Manager, 2379 Broad Street, Brooksville, Florida 34609-6899. All written notices to the Zoological Society under this Agreement shall be hand-delivered or sent by certified mail, return receipt requested to c/o Executive Director, 7530 North Boulevard, Tampa, Florida 33604-4756.

In Witness Whereof, the lawful representatives of the parties hereto have executed this Agreement on the day and year above first written.

Attest: Southwest Florida Water Management District

Sally Thompson  
Sally Thompson, Secretary

By: Joe L. Davis, Jr.  
Joe L. Davis, Jr., Chairman

(SEAL)

Attest: Lowry Park Zoological Society

Sally Lowry Baldwin  
Sally Lowry Baldwin, Trustee

By: Chris Sullivan  
Chris Sullivan, Chairman and President.

Paul A. Kelly  
Executive Director