

THE CORPORATION OF THE CITY OF THOROLD

BY-LAW NO. 62-2000

**BEING A BY-LAW TO AUTHORIZE THE EXECUTION
OF A LEASE AGREEMENT WITH THE ST.
LAWRENCE SEAWAY MANAGEMENT
CORPORATION REGARDING PART OF TOWNSHIP
LOTS 25 AND 26**

WHEREAS:


1. The Corporation of the City of Thorold enter into an agreement with the The St. Lawrence Seaway Management Corporation to lease for the purposes of a Conservation Park on a designated historic heritage site, being Part of Township Lots 25 and 26 subject to the following terms and conditions.

**NOW THEREFORE, THE COUNCIL OF THE CORPORATION
OF THE CITY OF THOROLD HEREBY ENACTS AS FOLLOWS:**

1. Entry by the Corporation of the City of Thorold into a lease agreement with The St. Lawrence Seaway management Corporation in the form annexed as Schedule "A" to this by-law, be and the same is hereby authorized and approved.
2. The Mayor and Clerk are hereby authorized to execute under the corporate seal a lease agreement in the form annexed as Schedule "A" to this by-law subject to any changes as may be recommended by staff in the interests of the City of Thorold.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED BY
COUNCIL**

THIS 19th DAY OF SEPTEMBER 2000.



Mayor



City Clerk

N° 66-1476

LEASE

TO

THE CITY OF THOROLD
P. O. Box 1044
8 Carleton Street South
Thorold, Ontario
L2V 4A7

Date of Lease:	September 5, 2000
Location:	Welland Canal
Lands or Rights Demised:	Parcel of Welland Canal reserve land, situate and lying in the City of Thorold, in the Regional Municipality of Niagara, Province of Ontario, containing an area of 27.12 hectares ±
Beginning of Term:	October 1, 2000
End of Term:	March 31, 2018 (17 yrs. 6 mos.)
Rental:	\$100.00 per annum
File :	37-66-1476

LEASE made this 5th day of September two thousand

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
represented by the Minister of Transport, hereinafter called
"**LESSOR**",

AND

**THE CORPORATION OF THE
CITY OF THOROLD
P. O. Box 1044
8 Carleton Street South
Thorold, Ontario
L2V 4A7**

hereinafter called "**LESSEE**",

The Lessor, in consideration of the rents and provisos mentioned below, leases to the Lessee:

DESCRIPTION

All and singular that certain parcel or tract of the Welland Canal reserve land, situate and lying, in the City of Thorold, in the Regional Municipality of Niagara, Province of Ontario, and being composed of part of Township Lots 25 and 26, in the Regional Municipality of Niagara, Province of Ontario; containing an area of 27.12 hectares, more or less, the location of the said land being indicated on Plan No. 66-1476 hereto annexed, hereinafter called "land and premises".

Whereas the land and premises were transferred by The St. Lawrence Seaway Authority (hereinafter called "Authority") to the Lessor on October 1, 1998 pursuant to a directive of the Minister of Transport in accordance with subsection 80(1) of the Canada Marine Act.

Whereas the Lessor in a Managed Asset Agreement entered into on September 30, 1998 between the Lessor, the Authority and the St. Lawrence Seaway Management Corporation (hereinafter called "Corporation") agreed that the Corporation should enter into agreements pertaining to the land and premises in accordance with authorizations and directions provided by the Lessor to the Corporation.

Whereas the Lessor authorized and directed the Corporation to name an officer to be accountable for establishing real property procedures and practices and to sign, seal and deliver agreements pertaining to the land and premises.

And Whereas the Corporation has authorized and directed its Chief, Administrative Services to be accountable for establishing real property procedures and practices and to sign, seal and deliver leases and licenses and ancillary documents pertaining to the land and premises.

TERM AND RENEWAL

For a term of **17 years 6 months** commencing on the **1st day of October, 2000**, and expiring on the **31st day of March, 2018**.

RENT

PAYING in advance to the **St. Lawrence Seaway Management Corporation "In Trust"** on the **first day of month** in each year, during the term, the **yearly** rent or sum of

ONE HUNDRED DOLLARS (\$100.00) + G.S.T.

(The first payment of which rent, being for the **year** commencing on the **1st day of October, 2000**, to be made on or immediately before the delivery of this Lease.). Said rent being subject to review every **3 years** of the term and renewal thereof.

PURPOSE

1. The land and premises shall be used for the following purposes:

for a natural park

and shall not be used for any other purposes, except as expressly permitted by the Lessor in writing. The Lessee shall not hold the Lessor responsible should the purpose of this Lease for any reason whatsoever not be fulfilled, nor shall the Lessee be entitled to any abatement of rent in such case.

ACCEPTANCE OF LAND AND PREMISES

2. Taking possession of all or any portion of the land and premises by the Lessee shall be conclusive as against the Lessee that the land and premises or such portion thereof are in satisfactory condition on the date of taking possession.

TAXES

3. The Lessee shall pay all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of this Lease be lawfully imposed, or become due and payable, upon, or in respect of the land and premises, or any part thereof.

ASSIGNMENT

4. The Lessee shall not assign, transfer, sublease, part with possession or dispose of all or any part of the land and premises of this Lease, or any privileges or interests hereby granted to the Lessee without the written consent of the Lessor which consent shall not unreasonably be withheld. Unless the approval of the Minister of Transport is obtained, any assignee shall abide by all the covenants contained in the present Lease.

RESERVATION

5. The Lessor shall, at all times and for all purposes, have full and free access to any and every part of the land and premises and the Lessor reserves the right to issue a license to third parties to use or to enjoy privileges affecting any part of the land and premises, provided that these do not unduly interfere with the Lessee's use and enjoyment of the land and premises, and the Lessee shall not at any time during the duration of this Lease, do or allow anything which will interfere with these rights or the enjoyment of any license thereunder.

RISK OF LESSEE

6.1 The Lessee shall not have any claim or demand against the Lessor for detriment, damage or injury of any nature to the land and premises or to any building, structure, materials, supplies, articles, effects or things at any time erected, brought, placed, made or being upon the land and premises and the rent shall be payable without any abatement or deduction whatsoever.

6.2 Any damage which may, during the existence of this Lease, be occasioned to the property of the Lessor, or any part thereof, or works connected therewith, by reason or on account of the execution of this Lease or of anything done as a result thereof, shall immediately, upon notice from the Lessor or its duly authorized agent, given either verbally or in writing, be repaired, rebuilt, replaced or restored by the Lessee to the entire satisfaction of the Lessor; or the Lessor, at its option, may repair such damage, in which case the Lessee shall, upon demand, immediately repay the Lessor for all costs connected therewith.

INDEMNITY

7. The Lessee shall at all times indemnify and save harmless the Lessor and the Corporation from and against all losses, damages, injury, death and all actions, suits, proceedings, costs, charges, expenses, claims, or demands in any manner based upon, arising out of or connected with the existence of this Lease, or anything done or maintained hereunder, whether arising on land or related to water.


COMPLIANCE WITH LAW

8. The Lessee shall in all respects abide by and comply with all lawful rules, regulations and by-laws of the Federal Government, the Provincial Government, municipalities and other governing bodies, in any manner affecting the land and premises.

INSURANCE: COMPREHENSIVE GENERAL LIABILITY

9. The Lessee shall, at the Lessee's expense, maintain during the existence of this Lease a Comprehensive General Liability insurance policy in respect of the land and premises and all buildings erected thereon with insurance companies approved by the Lessor. The said policy shall have a minimum limit of \$2,000,000 per incident including environmental impairments, with defence costs over and above the said minimum limit. All insurance contracts maintained by the Lessee pursuant to this Lease shall name the Lessee as "Named Insured", and the Lessor and the Corporation as additional insured and the insurance afforded is to apply separately to each insured against whom a claim is made or a suit is brought, in the same manner and to the same extent as though individual policies had been issued to each except with respect to the limit of liability. The insurance afforded shall stipulate that the insurer cannot cancel or amend the terms of the insurance policy without giving the Lessor 60 days prior written notice. The Lessee shall obtain and deliver to the Lessor certificates of insurance, of all the insurance policies maintained by the Lessee pursuant to this Lease upon commencement of this Lease and yearly thereafter on the anniversary date of this Lease.

PROPERTY INSURANCE

10.1 Unless the Lessee leases a single residential unit, the Lessee shall, at the Lessee's expense, maintain during the existence of this Lease a Property Insurance policy for fire, extended coverage and all-risks which includes Demolition coverage in respect of the land and premises leased or constructed thereon in an amount equal to 100% of the full replacement and reconstruction cost of the leased land and premises. This amount is agreed to be \$15,000,000.00 at inception of this Lease. Such policy shall be on a replacement cost basis with permission to replace at any site. The amount of insurance shall be increased by the Lessee in conjunction with the Lessee's insurance broker yearly on the anniversary date of this Lease by an amount which results from applying a rate of increase equal to the rate at which the non residential property is indexed for the closest city as published by Statistics Canada-Catalogue No. 62-007 Quarterly-Construction Price Statistics or any publication which may replace such index. 

10.2 All the proceeds of such property insurance policies shall belong to and be payable to the Lessor, and in such event, the Lessee hereby waives any right, title, interest or claim to such policies and the proceeds therefrom. The Lessee, in such an event, agrees to execute forthwith and deliver to the Lessor any releases, directions or other instruments that may be required for the Lessor to settle and effect collection on such policies.

10.3 The insurance afforded shall name the Lessor as the insured and shall stipulate that the insurer cannot cancel or amend the terms of the insurance policy without giving the Lessor 60 days prior written notice. If for any reason the insurance afforded becomes void, the Lessee is responsible to the Lessor for any uninsured loss. The Lessee shall obtain and deliver to the Lessor the originals and renewals (or certified true copies) of the afforded insurance upon commencement of the lease and yearly thereafter on the anniversary date of this Lease.

RESTORATION OF SITE

11. Upon cancellation or termination of this Lease, the Lessee shall at the option of the Lessor forthwith remove at the Lessee's cost, as designated by the Lessor, buildings, structures and other property erected during the term of this Lease or brought onto the land and premises during the term of this Lease, restoring the land and premises to a neat, clean, and environmentally safe condition to the entire satisfaction of the Lessor, provided that no buildings, structures or property shall be removed from the land and premises until all rent has been fully paid. In case of default of the Lessee in the removal of designated buildings, structures or property and the restoration of the land and premises within a reasonable period as determined by the Lessor, such removal or restoration may be carried out by the Lessor at the expense of the Lessee, or at the option of the Lessor, the said buildings, structures or property shall become the property of and shall vest in the Lessor without any right of compensation to the Lessee. If the Lessor requests that soil testing be carried out to ensure that the land and premises are environmentally safe, the Lessee shall carry out such testing at the Lessee's expense and in the manner prescribed by the Lessor. In case of default of the Lessee in the carrying out such testing within a reasonable period as determined by the Lessor, such testing may be carried out by the Lessor at the expense of the Lessee.

RIGHT OF RE-ENTRY

12. If the rent, or any part thereof, shall be in arrears for thirty days, whether or not the same shall have been in any manner demanded, or, if the Lessee at any time makes or suffers a breach or non-observance of any proviso of this Lease or of any covenant, proviso in any Appendix to this Lease, then and in every such case, it shall be lawful for the Lessor to immediately cancel this Lease without prior notice, to re-enter and thereafter to have, possess and enjoy the said land and premises and all improvements thereon; and no acceptance of rent subsequent to any breach or default, other than non-payment of rent, nor any condoning or overlooking by the Lessor on previous occasions of breaches or defaults similar to that for which re-entry is made shall be taken to operate as a waiver of this condition nor in any way to defeat or affect the rights of the Lessor hereunder.

CONTROL OF LESSOR

13.1 The Lessee shall not construct any structure of any description on the land and premises, and the Lessee shall not make any changes in the nature of the land and premises without the written approval of the Lessor.

13.2 The Lessee shall, at all times, during the existence of this Lease, at the Lessee's own cost and expense, keep and maintain the land and premises in a clean and tidy condition, to the entire satisfaction of the Lessor.

13.3 In the event the Lessor considers it necessary that any part of the perimeter of the land and premises or any of the Lessee's installations thereon be fenced, it shall be done at the expense of the Lessee.

13.4 Any structure or change mentioned in 13.1 shall be constructed or made at the expense of the Lessee to the satisfaction of the Lessor.

VESTING OF IMPROVEMENTS UPON TERMINATION

14.1 Upon cancellation or termination of this Lease, buildings, structures and improvements remaining on the land and premises shall become the property of and shall vest in the Lessor without any right of compensation to the Lessee unless the Lessor decides otherwise in accordance with section 11.

14.2 In the event that the vesting of the property does not occur as stated in paragraph 14.1, the Lessee irrevocably appoints the Minister of Transport as the Lessee's attorney with full power and authority to execute and deliver in the name of the Lessee, all documents necessary to effect the transfer to the Lessor of the title to or the ownership of any building or structure, lock, canal, bridge, tunnel, infrastructure, facility, utility, plant and any other improvement used or held for use in connection with the management and operation of the St. Lawrence Seaway and located on, in, over, under or through the land and premises or other existing assets of such nature but including any addition to, improvement to, alteration of or replacement of any such building, structure, lock, canal, bridge, tunnel, infrastructure, facility, utility, plant and other improvement.

ARM'S LENGTH TRANSACTIONS

15. If a Lessee is not at Arm's length with the Corporation, the members of the Corporation's Board and the members of the Corporation, the Lessee shall lease the land and premises as a member of the public.

CANCELLATION

16.1 The Lessor may at any time terminate this Lease by giving to the Lessee six months' notice in writing.

16.2 The Lessee may at any time terminate this Lease by giving to the Lessor six months' notice in writing.

NOTICES

All notices permitted or required hereunder shall be sufficiently given:

17.1 To the Lessor, if signed by or on behalf of the Lessee by the Lessee's authorized officers and delivered to, faxed or mailed by prepaid registered or certified post and addressed to the Lessor at

**The St. Lawrence Seaway Management Corporation
202 Pitt Street
Cornwall, Ontario
K6J 3P7
Attention: Chief, Administrative Services**

17.2 To the Lessee, if signed by or on behalf of the Lessor by the Lessor's authorized officers and delivered to, faxed or mailed by prepaid registered or certified post and addressed to the Lessee at

The Corporation of the City of Thorold
P. O. Box 1044
8 Carleton Street South
Thorold, Ontario
L2V 4A7

and all such notices shall be deemed to have been received on the date of delivery, or faxed message, or if mailed, then on the third day date following the date of mailing.

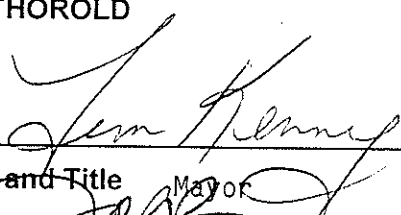
IN WITNESS WHEREOF the Lessor and Lessee have executed this Lease the day and year first above written.

SIGNED, SEALED AND
DELIVERED by the
LESSEE in the presence of:

Witness

Witness

THE CORPORATION OF THE
CITY OF THOROLD



Signature and Title Mayor




Signature and Title Clerk

SIGNED AND DELIVERED
by the LESSOR
in the presence of:



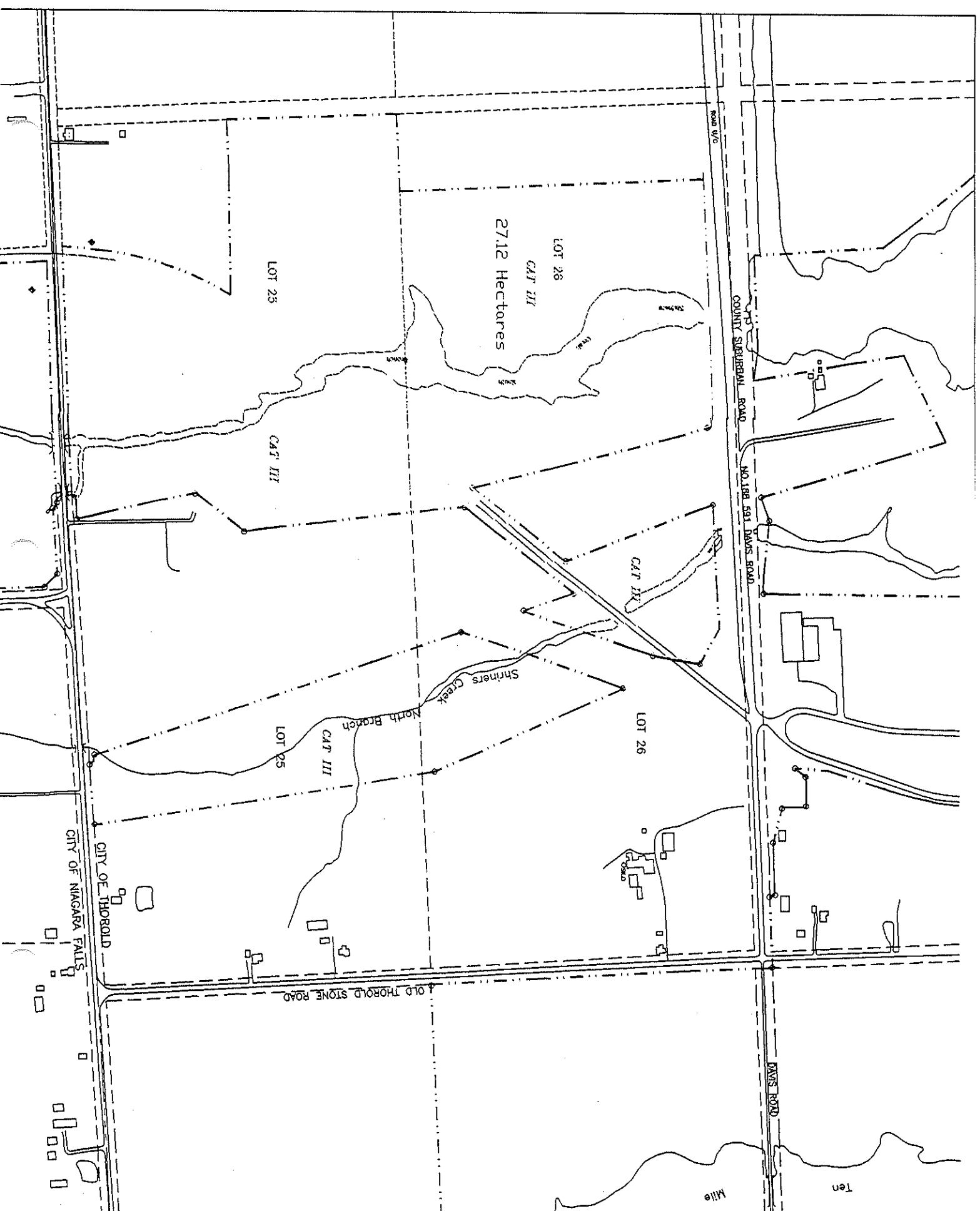
Witness

Her Majesty the Queen in Right of Canada
represented by the Minister of Transport



the Corporation's Chief, Administrative Services

CITY OF THOROLD REGIONAL MUNICIPALITY OF NIAGARA



 The St. Lawrence Seaway Management Corporation
Corporation de Gestion de la Voie Maritime du Saint-Laurent

HEAD OFFICE / SIÈGE SOCIAL

LOCATION OF 27.12 HECTARES OF LAND IN THE CITY OF THOROLD TO BE LEASED TO THE CORPORATION OF THE CITY OF THOROLD

Designated Consent	Designated G.M.	Recommended Recommendation	Approved Approval
Scale	W&A N.T.S.	Date	
		2000/09/05	
Drawn	G.M.	Prep. No.	
Checked			

66-1476