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**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between The United States of America, acting by and through the Deputy Assistant Secretary of the Army (Installations and Housing) (the "Grantor"), and the People of the State of New York (the "Grantee"), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that "Environmental Easement" shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to the hazardous waste or petroleum; and

**WHEREAS**, the Grantor, is the owner of real property located in the Town of Romulus, Seneca County, New York, known and designated on the tax map of the Town of Romulus as contained in tax map parcel numbers 11-1-2 and 7-1-7 being a portion of the property identified as Military Lot Numbers 72, 73, 79, 80 and 86, comprised of approximately 502.093 acres and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36;

**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein, and in order to implement the land use restriction identified in the "Finding of Suitability to Transfer (FOST), Seneca Army Depot Activity, Airfield Parcel," dated August 2005, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following control applies to the use of the Controlled Property, runs with the land, and is binding on the Grantor and the Grantor's successors and assigns, and is enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for commercial/industrial uses as long as the following long-term institutional control is employed:

The Controlled Property shall be used solely for commercial and industrial purposes and not for residential purposes, the Controlled Property having been remediated only for commercial and industrial uses. Commercial and industrial uses include, but are not limited to, administrative/office space; manufacturing; warehousing; restaurants; hotels/motels; and retail activities. Residential use includes, but is not limited to, housing; childcare facilities; schools (excluding education and training programs for persons over 18 years of age); assisted living facilities; and outdoor recreational activities (excluding recreational activities by employees and their families incidental to authorized commercial and industrial uses on the Controlled Property). The restriction to commercial and industrial uses applies to all areas within the Controlled Property. Future owners or users of land within the Controlled Property may request a waiver from said restriction on a location by location basis at such time as the concentrations of hazardous substances are reduced to levels that allow for unlimited exposure and unrestricted use. The owner or user making such a request must develop and submit with the request sufficient data and information, subject to review and approval by the Grantee, the Grantor and

the U.S. Environmental Protection Agency ("EPA"), to substantiate its request that the identified location is suitable for unlimited exposure and unrestricted use.

B. The Controlled Property may not be used for residential or any other use other than a commercial or industrial use and the above-stated institutional control may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The Grantor covenants and agrees for itself, its successors and assigns that until such time as the Environmental Easement is extinguished in accordance with the requirements of this instrument and Article 71, Title 36 of the ECL, all subsequent deeds and instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

D. The Grantor covenants and agrees for itself, its successors and assigns that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. The Grantor covenants and agrees for itself, its successors and assigns that the owner of the Controlled Property shall annually, from the date of this Environmental Easement, or within such additional time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the institutional controls employed at the Controlled Property are unchanged from the previous certification or that any changes to such controls employed at the Controlled Property were approved by the NYSDEC; that nothing has occurred that would impair the ability of such controls to protect the public health and environment or constitute a violation or failure to comply with such controls; and that access to the Controlled Property was provided to such expert to evaluate the continued maintenance of such controls.

3. Right to Enter and Inspect. The Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. The Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Controlled Property, all rights as fee owner of the Controlled Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement; and

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement.

5. Enforcement.

A. This Environmental Easement is enforceable in law or equity in perpetuity by the Grantor, the Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Controlled Property, any lessees, and any person using the Controlled Property. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. The Grantee shall notify the Grantor and the owner of the Controlled Property of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how the owner of the Controlled Property can cure such breach or suspected breach and give the owner of the Controlled Property a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify the Grantor and the owner of the Controlled Property of any failure to adequately cure the breach or suspected breach. The owner of the Controlled Property shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, the Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

C. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of, or noncompliance with, any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the Grantee (including the annual certification) or approval from the Grantee or the Grantor is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/identification number and address its correspondence if to the Grantee, to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-5500

and, if to Grantor, to:

Headquarters, Department of the Army  
ATTN: DAIM-ZA  
600 Army Pentagon  
Washington, DC 20310-0600

and, if to EPA, to:

U.S. Environmental Protection Agency  
Emergency & Remedial Response Division  
290 Broadway, 18<sup>th</sup> Floor, E-3  
New York, New York 10007-1866

Such correspondence shall be delivered by hand, or by registered mail or by certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses.

7. Recordation. The Grantor shall record this instrument within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law of the State of New York.

8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law of the State of New York.

9. Extinguishment. This Environmental Easement may be extinguished only by a release executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county where the Controlled Property is situated in the manner prescribed by Article 9 of the Real Property Law of the State of New York.

10. Grantor's Opportunity to Review and Comment. The Grantee shall provide the Grantor and EPA with a notice of, and a reasonable opportunity to review and comment upon, requested approvals or actions under this Environmental Easement, including, without limitation, requests for amendment pursuant to Paragraph 8 hereof and extinguishment pursuant to Paragraph 9 hereof.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name.

UNITED STATES OF AMERICA

By: *Scott L. Whiteford*  
SCOTT L. WHITEFORD  
Director of Real Estate  
Headquarters U.S. Army Corps of Engineers

Grantor's Acknowledgment

NOTARIAL CERTIFICATE

DISTRICT OF COLUMBIA : SS

I, *Barbara J. Davis*, a Notary Public in and for the District of Columbia, do hereby certify that this *8th* day of *June*, 20*09* Scott L. Whiteford, Director of Real Estate, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by him for the purposes therein stated and that he had due authority to sign the document in the capacity therein stated.

*Barbara J. Davis*  
Notary Public

Notary Registration No. *N.A.*

My commission expires the *30th* day of *June*, 20*11*.



## Schedule A Property Description

### DESCRIPTION OF PREMISES

All that tract or parcel of land containing 502.093 acres, more or less, situate in the Town of Romulus, County of Seneca, State of New York, all as shown on a map entitled "Seneca Army Depot, Boundary Map" prepared by Sear-Brown, last revised November 3, 2003, having Drawing No. 2730A-1 and more particularly bounded and described as follows:

Beginning at the point of intersection of the centerline of New York State Route 96A (width varies) with the centerline of Sutton Road (49.5 feet wide); thence

1. S 83°00'53" E, along the centerline of Sutton Road, a distance of 877.28 feet to a point of intersection with the common line dividing lands now or formerly of M. and C. Dubendorf on the west and lands now or formerly of the United States of America on the east; thence the following six (6) courses along said common line
2. N 05°06'16" E, a distance of 720.00 feet to a point; thence
3. N 17°43'00" W, a distance of 1979.47 feet to a point; thence
4. N 72°17'00" E, a distance of 589.11 feet to a point; thence
5. N 06°03'50" E, a distance of 275.00 feet to a point; thence
6. N 17°43'00" W, a distance of 1944.06 feet to a point; thence
7. S 34°30'00" W, a distance of 304.33 feet to a point of intersection with the northerly line of lands conveyed to Warne per Liber 439 of Deeds, Page 77; thence
8. N 83°31'32" W, along said northerly line of lands of Warne, a distance of 469.24 feet to a point of intersection with the centerline of said New York State Route 96A; thence
9. N 24°41'50" E, along said centerline, a distance of 9.74 feet to a point; thence
10. N 24°49'33" E, continuing along said centerline, a distance of 1422.76 feet to a point of intersection with the westerly line of lands conveyed to the United States of America per Liber 448 of Deeds, Page 322; thence
11. N 17°43'00" W, along said westerly line, a distance of 459.11 feet to a point; thence
12. N 72°17'00" E, along the northerly line of said lands, a distance of 281.65 feet to a point of intersection with the centerline of said New York State Route 96A; thence

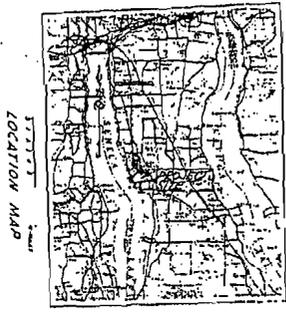
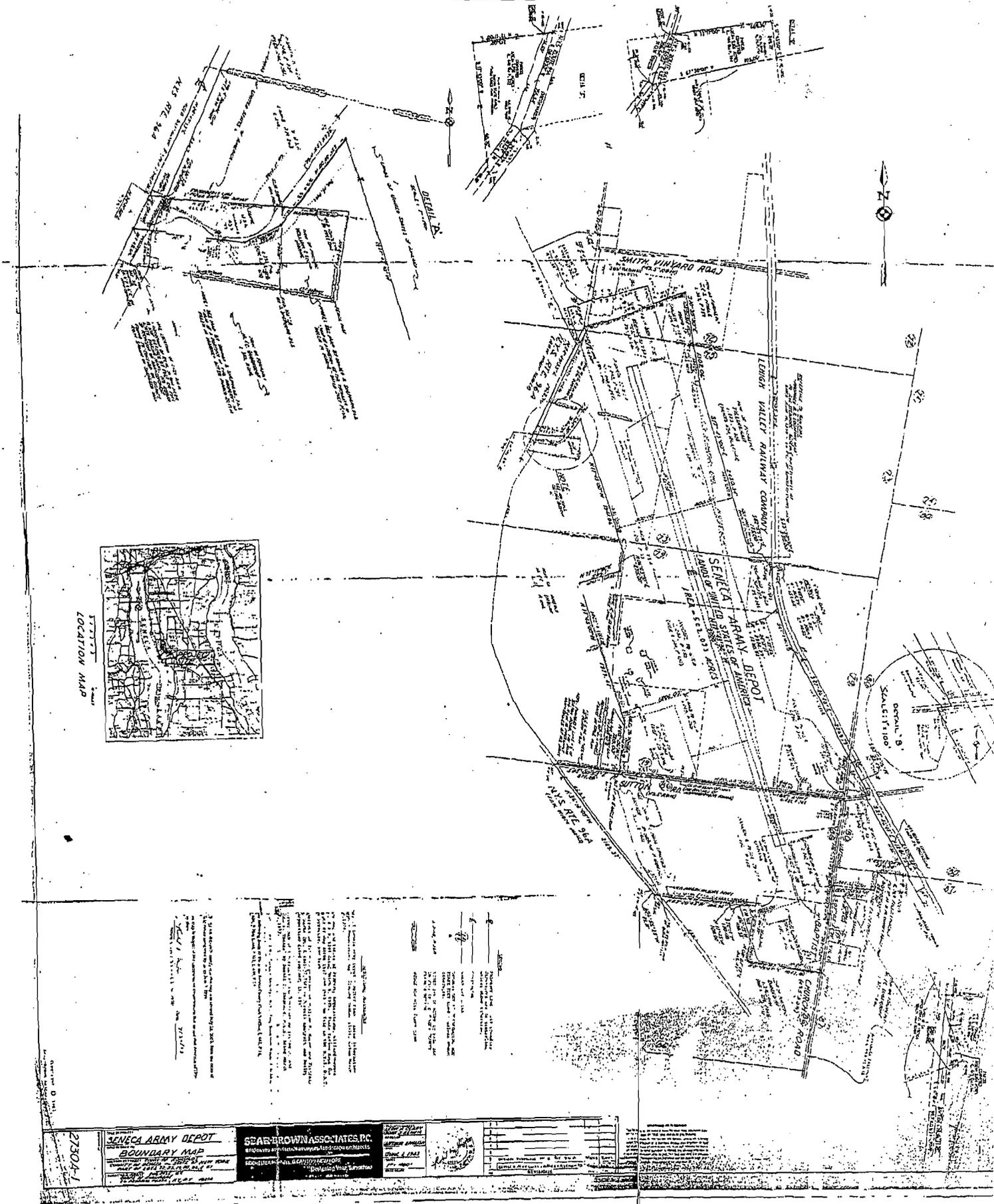
**Schedule A Property Description (Continued)**

13. N 72°17'00" E, along the northerly line of lands conveyed to the United States of America per Liber 404 of Deeds, Page 764, a distance of 718.35 feet to a point; thence
14. S 17°43'00" E, along the easterly line of the last mentioned lands, a distance of 249.71 feet to a point of intersection with the common line dividing lands of the United States of America on the south and lands now or formerly of Joseph Bednar on the north; thence
15. N 67°30'00" E, along said common line and continuing along the common line between said lands of the United States of America on the south and lands now or formerly of J. and S. Nogle on the north, a total distance of 463.11 feet to a point; thence
16. S 10°35'30" E, along the common line dividing said lands of the United States of America on the west and lands now or formerly of Nogle and lands now or formerly of Tillinghast on the east, a distance of 1302.06 feet to a point; thence the following three (3) courses along said last mentioned common line:
17. S 17°43'00" E, a distance of 2430.34 feet to a point; thence
18. S 82°59'19" E, a distance of 175.00 feet to a point; thence
19. S 33°30'00" E, a distance of 250.00 feet to a point of intersection with the westerly line of lands now or formerly of the Lehigh Valley Railway Company; thence the following four (4) courses along said westerly line:
20. Southerly, along a non-tangent curve to the left, having a radius of 2914.79 feet, through a central angle of 24°11'17", a distance of 1230.51 feet to a point of tangency; thence
21. S 27°46'48" E, a distance of 2269.79 feet to a point; thence
22. S 83°02'16" W, a distance of 53.49 feet to a point; thence
23. S 27°46'48" E, a distance of 1281.75 feet to a point of intersection with the common line dividing lands of the United States of America on the north and lands now or formerly of M. and C. Dubendorf on the south; thence the following three (3) courses along said common line:
24. N 82°51'04" W, a distance of 429.28 feet to a point; thence
25. S 09°02'02" W, a distance of 255.20 feet to a point; thence
26. N 82°58'13" W, a distance of 578.02 feet to a point of intersection with the centerline of Baptist Church Road (49.5' wide); thence

**Schedule A Property Description (Continued)**

27. S 07°05'54" W, along said centerline, a distance of 53.42 feet to a point of intersection with the easterly line of lands conveyed to the United States of America per Liber 443 of Deeds, Page 18; thence the following two (2) courses along said easterly line:
  28. S 17°43'00" E, a distance of 191.33 feet to a point; thence
  29. S 72°17'00" W, a distance of 88.47 feet to a point of intersection with the aforementioned centerline of Baptist Church Road; thence
  30. S 07°05'54" W, along said centerline, a distance of 976.85 feet to a point of intersection with the common line dividing lands of the United States of America on the north and lands now or formerly of Dubendorf on the south; thence the following six (6) courses along said common line:
  31. N 81°19'47" W, a distance of 1042.40 feet to a point; thence
  32. N 08°07'17" E, a distance of 303.41 feet to a point; thence
  33. N 17°43'00" W, a distance of 488.32 feet to a point; thence
  34. S 72°17'00" W, a distance of 130.00 feet to a point; thence
  35. N 17°43'00" W, a distance of 100.00 feet to a point; thence
  36. N 83°20'43" W, a distance of 1011.98 feet to a point of intersection with the centerline of the aforementioned New York State Route 96A; thence
  37. N 36°55'23" W, along said centerline, a distance of 81.11 feet to an angle point; thence
  38. N 36°18'05" W, continuing along said centerline, a distance of 2189.37 feet to the Point of Beginning.
- Subject to any right, title or interest that the public may have to the rights-of-way of New York State Route 96A, Sutton Road and Baptist Church Road.
  - Subject to any easements or encumbrances of record.

**SURVEY**



**NOTICE TO CONTRACTORS**

1. This map is a boundary map and does not show the location of any structures, utilities, or other features. It is intended to show the boundaries of the property and any easements or rights of way.

2. The survey was conducted on or about the date shown on the map. The surveyor is not responsible for any errors or omissions in the map.

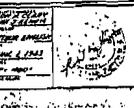
3. The map is a true and correct copy of the original survey. It is intended to be used as a guide for construction and other purposes.

4. The map is subject to change without notice. The surveyor is not responsible for any changes or updates to the map.

5. The map is a public document and is available for inspection and copying by anyone.

**SENECA ARMY DEPOT**  
**BOUNDARY MAP**  
 MAP OF 1971  
 27304-1

**SPAR-BROWN ASSOCIATES, P.C.**  
 1000 N. STATE ST. SUITE 100  
 SENeca, NY 13850  
 (315) 752-1111



DATE	1971
BY	[Signature]
CHECKED BY	[Signature]
SCALE	AS SHOWN
PROJECT	SENECA ARMY DEPOT
NO. OF SHEETS	11
SHEET NO.	11