



**HERKIMER COUNTY – STATE OF NEW YORK**  
**SYLVIA M. ROWAN COUNTY CLERK**  
 109 MARY STREET, SUITE 1111, HERKIMER, NY 13350-2923

**COUNTY CLERK'S RECORDING PAGE**  
**\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\***



**INSTRUMENT #: RP2021-914**

**Receipt#: 465146**  
**Clerk: KC**  
**Rec Date: 02/22/2021 09:51:24 AM**  
**Doc Grp: RP**  
**Descrip: EASEMENT/RIGHT OF WAY**  
**Num Pgs: 12**  
**Rec'd Frm: FIDELITY NATIONAL TITLE NYC**

**Party1: AMES COMPANIES INC NKA**  
**Party2: PEOPLE OF THE STATE OF NEW YORK**  
**Town: FRANKFORT V FRANKFORT**

**Recording:**

|                           |       |
|---------------------------|-------|
| Cover Page                | 5.00  |
| Recording Fee             | 75.00 |
| Cultural Ed               | 14.25 |
| Records Management - Coun | 1.00  |
| Records Management - Stat | 4.75  |
| TP584                     | 5.00  |

**Sub Total:** 105.00

|                      |      |
|----------------------|------|
| Transfer Tax         |      |
| Transfer Tax - State | 0.00 |

**Sub Total:** 0.00

**Total:** 105.00

**\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\***

**\*\*\*\*\* Transfer Tax \*\*\*\*\***  
**Transfer Tax #: 1441**  
**Transfer Tax**

**Total:** 0.00

**Record and Return To:**

**ELECTRONICALLY RECORDED BY CSC**

**WARNING\*\*\***

I hereby certify that the within and foregoing was recorded in the Herkimer County Clerk's Office, State of New York. This sheet constitutes the Clerks endorsement required by Section 316 of the Real Property Law of the State of New York.

Sylvia M. Rowan  
 Herkimer County Clerk

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

**THIS INDENTURE** made this 12<sup>th</sup> day of January, 2021, between Owner The Ames Companies, Inc., formerly known as Ames True Temper, Inc., formerly known as Acorn Products, Inc., formerly known as UnionTools, Inc., formerly known as Union Tools, Inc., formerly known as The Union Fork and Hoe Company, having an office at 253 East Main Street, Frankfort, New York 13340, County of Herkimer, State of New York (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 the 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 hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 253 East Main Street in the Town of Frankfort, County of Herkimer and State of New York, known and designated on the tax map of the County Clerk of Herkimer as tax map parcel numbers: Section 112.74 Block 1 Lots 52, 53, 54, 56, 57, 58 and 63, and Section 112.82 Block 3 Lots 1, 2, 3 and 35.1, being the same as that property conveyed to Grantor or its predecessors by the following deeds:

- 1) Deed dated September 20, 1913 and recorded in the Herkimer County Clerk's Office in Liber and Page 217/439.
- 2) Deed dated April 22, 1916 and recorded in the Herkimer County Clerk's Office in Liber and Page 228/563.

- 3) Deed dated August 25, 1920 and recorded in the Herkimer County Clerk's Office in Liber and Page 250/359.
- 4) Deed dated July 9, 1913 and recorded in the Herkimer County Clerk's Office in Liber and Page 216/508.
- 5) Deed dated November 2, 1912 and recorded in the Herkimer County Clerk's Office in Liber and Page 214/296.
- 6) Deed dated August 16, 1938 and recorded in the Herkimer County Clerk's Office in Liber and Page 329/400.
- 7) Deed dated July 18, 1951 and recorded in the Herkimer County Clerk's Office in Liber and Page 454/301.
- 8) Deed dated August 25, 1959 and recorded in the Herkimer County Clerk's Office in Liber and Page 536/457.
- 9) Deed dated January 7, 1964 and recorded in the Herkimer County Clerk's Office in Liber and Page 567/16.
- 10) Deed dated June 27, 1977 and recorded in the Herkimer County Clerk's Office in Liber and Page 652/280.
- 11) Deed dated July 14, 1981 and recorded in the Herkimer County Clerk's Office in Liber and Page 678/26.
- 12) Deed dated June, 1986 and recorded in the Herkimer County Clerk's Office in Liber and Page 707/706.
- 13) Deed dated February 26, 1992 and recorded in the Herkimer County Clerk's Office in Liber and Page 792/695.
- 14) Deed dated December 21, 1959 and recorded in the Herkimer County Clerk's Office in Liber and Page 538/163.

**WHEREAS**, the property subject to this Environmental Easement (the "Controlled Property") comprises approximately 32.74 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 28, 2020 prepared by Joseph G. Malinoski, P.L.S. of MJ Engineering and Land Surveying, P.C., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

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

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: A6-0667-06-11, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Herkimer County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent 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.

F. Grantor covenants and agrees 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.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. 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. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

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

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against

the owner of the Property, any lessees, and any person using the land. 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. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor 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 Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 622011  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:                                      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, 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 to requests for approval.

7. Recordation. 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 Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

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

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

11. Consistency with the SMP. To the extent there is any conflict or inconsistency between the terms of this Environmental Easement and the SMP, regarding matters specifically addressed by the SMP, the terms of the SMP will control.

**Remainder of Page Intentionally Left Blank**



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

The Ames Companies, Inc.:

By: 

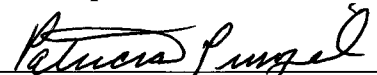
Print Name: Brian G. Harris

Title: Vice President Date: November 18, 2020

**Grantor's Acknowledgment**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF New York )

On the 18th day of November, in the year 20 20, before me, the undersigned, personally appeared Brian G. Harris, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public - State of New York

PATRICIA PINZEL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PI4938025  
Qualified in Queens County  
My Commission Expires 07-18-2022

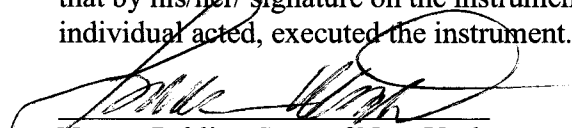
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting by and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Michael J. Ryan, Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF ALBANY    )

On the 12<sup>th</sup> day of January, in the year 2021, before me, the undersigned, personally appeared Michael J. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

**LAWRENCE H. WEINTRAUB**  
Notary Public, State of New York  
Registration No. 02WE6408234  
Qualified in Schenectady County  
Commission Expires August 17, 2024

**SCHEDULE "A" PROPERTY DESCRIPTION**

All the certain piece or parcel of land, situated in the Village and Town of Frankfort, County of Herkimer and State of New York and being more particularly bounded and described as follows:

Beginning at a point on the northerly street boundary of East Main Street, at its intersection with the property division line between lands now or formerly of Acme Road Industrial Park, Inc., as described in Instrument #2017-2479, on the east and the parcel described herein, on the west; thence along said northerly street boundary the following three (3) courses and distances:

1. North 36° 50' 03" West, a distance of 12.84 feet to a point,
2. North 37° 41' 21" West, a distance of 1,061.42 feet to a point, and
3. North 38° 57' 38" West, a distance of 477.27 feet to a point at its intersection with the property division line between the parcel described herein, on the east and lands now or formerly of Ralph Cavo, as described in Instrument #2018-2636, on the west;

thence along said property division line the following three (3) courses and distances:

1. North 51° 00' 49" East, a distance of 100.00 feet to a point,
2. North 38° 59' 11" West, a distance of 165.00 feet to a point, and
3. South 51° 00' 49" West, a distance of 100.00 feet to a point on said northerly street boundary of East Main Street; thence North 38° 59' 00" West, along said northerly street boundary of East Main Street, a distance of 456.36 feet to a point at its intersection with the property division line between the parcel described herein, on the east and lands now or formerly of 245 East Main Street, LLC, as described in Instrument #2019-1602, on the west;

thence along said property division line and along lands now or formerly of The Village of Frankfort, as described in Book 343 of Deeds at Page 401 and other lands now or formerly of The Village of Frankfort, as described in Book 315 of Deeds at Page 562 the following five (5) courses and distances:

1. North 49° 58' 23" East, a distance of 147.78 feet to a point,
2. South 41° 24' 55" East, a distance of 70.49 feet to a point,
3. North 45° 31' 05" East, a distance of 56.75 feet to a point,
4. North 40° 12' 55" West, a distance of 126.00 feet to a point, and
5. South 49° 59' 25" West, a distance of 204.58 feet to a point on said northerly street boundary of East Main Street; thence North 38° 59' 11" West, along said northerly street boundary of East Main Street, a distance of 361.46 feet to a point at its intersection with the property division line between the parcel described herein, on the east and lands now or formerly of Easy Property Solutions, as described in Instrument #2018-2852, on the west;

thence North 49° 47' 15" East, along said property division line, a distance of 120.00 feet to a point at its intersection with the property division line between the parcel described herein, on the north and said lands now or formerly of Easy Property Solutions, on the south; thence North 38° 59' 11" West, along said property division line and along lands now or formerly of Daniel P.

Lipic, as described in Book 1145 of Deeds at Page 101, a distance of 164.44 feet to a point at its intersection with the property division line between the parcel described herein, on the east and lands now or formerly of James and Denise Luther, as described in Instrument #2017-5574, on the west; thence North 49° 47' 15" East, along said property division line, a distance of 115.00 feet to a point at its intersection with the property line between the parcel described herein, on the south and lands now or formerly of Samuel Ameduri, as described in Book 1469 of Deeds at Page 284, on the north; thence South 39° 20' 34" East, along said property division line, a distance of 170.40 feet to a point at its intersection with the property division line between the parcel described herein, on the east and said lands now or formerly of Samuel Ameduri, on the west; thence North 51° 22' 53" East, along said property division line and along lands now or formerly of Reuben Pratt, as described in Book 1298 of Deeds at Page 17, the easterly terminus of Orchard Street, and lands now or formerly of Channing Murdock, as described in Book 1533 of Deeds at Page 347, a distance of 337.66 feet to a point at its intersection with the property division line between the parcel described herein, on the south and lands now or formerly of the Village of Frankfort (SBL: 112.74-1-66.1), on the north; thence along said property division line, lands now or formerly of Rocco Branck and David Branck, as described in Book 1496 of Deeds at Page 854, other lands now or formerly of the Village of Frankfort, as described in Book 845 of Deeds at Page 259, said lands now or formerly of the Village of Frankfort (SBL: 112.74-1-66.1), and lands now or formerly of Herkimer County Sewer Department, as described in Instrument #2019-1750, the following five (5) courses and distances:

1. Along a curve to the right having a radius of 5,689.65 feet, an arc length of 862.56 feet, a chord bearing of South 38° 54' 44" East, and a chord length of 861.73 feet to a point,
2. South 34° 34' 09" East, a distance of 951.76 feet, to a point,
3. North 55° 25' 51" East, a distance of 30.00 feet to a point,
4. South 34° 34' 09" East, a distance of 952.64 feet to a point, and
5. South 55° 25' 51" West, a distance of 163.99 feet to a point at its intersection with the property division line between the parcel described herein on the north and said lands of Acme Road Industrial Park, Inc., as described in Instrument #2017-2479, on the south;

thence along said property division line the following four (4) courses and distances:

1. North 35° 56' 09" West, a distance of 180.39 feet to a point,
2. South 52° 57' 21" West, a distance of 174.00 feet to a point,
3. South 37° 02' 39" East, a distance of 32.00 feet to a point, and
4. South 52° 57' 21" West, a distance of 151.71 feet to the point or place of beginning and being 32.74 acres of land, more or less.

Bearings based on True North at the 74° 30' Meridian of West Longitude

Subject to any rights, easements, covenants, or restrictions of record.