

THE SURFACE RIGHTS BOARD of MANITOBA

BOARD ORDER

Under The Surface Rights Act – C.C.S.M. c. S235.

APPLICATION FILE NO: **04B-2018**

ORDER NO: 01-2019

Date of Hearing: February 21, 2019
Location of Hearing: Municipal Office, Town of Virden, including
Site Visit SW ¼ of 18-10-27 WPM

Date Order Issued: February 28, 2019

BEFORE: Todd Thomson, Presiding Member

BETWEEN:

Applicant: Corex Resources Ltd. (the “**Operator**”)

- And –

Respondent: Ronald George and Cindy George / Parkvale Farms Ltd. (the “**Occupants**”)
*John Snoeck and Rita Leroy Snoeck (the “**Owners**” – not in attendance)*

APPEARANCES:

COUNSEL:

Mr. Murray W. Douglas, Kanuka Thuringer LLP
Counsel for the Applicant /Operator

WITNESSES FOR THE APPLICANT:

Mr. Kirk Gilliard (Sworn)

Mr. David McGuinness via teleconference (Affirmed)
Executive Vice President, Land - Corex Resources Ltd.

FOR THE RESPONDENT:

Mr. Ronald George
Occupant

WITNESS FOR THE RESPONDENT:

Mr. Ronald George (Sworn)

EXHIBITS:

- Schedule "A" - Individual Ownership Plan – showing Right of Way in S.W. ¼ Sec. 18 – Twp.10- Rge. 27 WPM
- Schedule "B" - Easement Agreement re: SW ¼ of 18-10-27 WPM dated October 2, 2018
- Schedule "C" - Temporary Workspace Agreement
- Schedule "D" - Terms and Conditions of Order

PURPOSE OF HEARING:

To hear and receive evidence regarding an application under Section 27 of *The Surface Rights Act* – C.C.S.M. c. S235 (the "**Act**") for an interim order to grant surface rights required by the Operator to install service line(s) tying in wells drilled on the NW ¼ of 18-10-27 WPM (the "**NW ¼ of 18**") to the wells drilled on SW ¼ of 18-10-27 WPM (the "**Lands**") that in turn connect to the Operator's existing service line(s) leading to Corex's battery site located at 11-10-28 WPM.

ISSUES:

1. Is the hearing of the within matter precluded for failure of the Occupants to file the objection within the seven day period prescribed in Section 27(2) of the Act?
2. Is the Board satisfied that undue hardship would result to the Operator if the order is not made, and does that the undue hardship outweigh any prejudice to the interests of the Occupants?

BACKGROUND:

1. **Is the hearing of the within matter precluded for failure of the Occupants to file the objection within the seven day period prescribed in Section 27(2) of the Act?**

A preliminary issue was raised by the Operator as to the timeliness of the objection filed by the Occupants. The Operator's position was that the objection was not filed within the seven day time period set forth in Sections 27(2) of the Act, and cited the deemed receipt provisions of Sections 23 and 24 of the Act with respect to the commencement date of the period within which any objection need be filled under Section 27(2) in support of that position. The Occupants submitted that they only received the notice from the Board on January 4, 2019 and filed their objection on January 9, 2019 in a timely manner and within the seven day period prescribed by the Act. They indicated they live 12 miles from the post office and that given holiday schedules/post office hours and poor winter weather and driving conditions kept them from being able to actually receive the notice prior to the January 4, 2019 date.

2. Is the Board satisfied that undue hardship would result to the Operator if the order is not made, and does that the undue hardship outweigh any prejudice to the interests of the Occupants?

The Applicant applied on November 5, 2018 for an order (among other things) granting a right of way to enter the Lands for the purpose of running a service line(s) across the Lands and setting the compensation payable for this right of entry (the "**Original Application**").

On November 6, 2018, the Applicant submitted a separate application for an Interim Order under Section 27 of the Act (being the application that is the subject of this hearing) for surface rights for:

1. The right to enter upon the land for the purpose of making surveys, examinations and other necessary arrangements for fixing the site of the service line(s);
2. The right to enter upon, use, occupy or take the land or an interest therein for the purpose of laying, constructing, maintaining and repairing a service line(s);
3. The right to condition, reclaim and restore the surface of the land described as right-of-way on the Individual Ownership Plan attached hereto as Schedule "A"; and
4. The right to enter upon, use, occupy or take that portion of the land as outlined as temporary workspace on the attached Individual Ownership Plan marked as Schedule "A" for the purposes outlined above.

Section 27 of the Act provides:

Interim order for surface rights

27(1) Notwithstanding anything in this Act or in the rules of practice and procedure of the board, an operator may at any time after the filing of a notice with the board under section 21 apply to the board for an interim order granting surface rights.

Objection by owner or occupant

27(2) Upon receiving an application under subsection (1) the board shall notify the owner or occupant, if any, and the owner or occupant, if any, may file an objection with the board provided the objection is filed within seven days of receipt of the notice by the owner or occupant, if any.

Board shall hold hearing

27(3) Where the board receives an objection after serving the notice referred to in subsection (1), the board shall hold a hearing with respect to the application and the presiding member of the board, or any member of the board appointed by the presiding member for that purpose, has jurisdiction to conduct the hearing and make a decision.

Undue hardship

27(4) The board shall not grant an interim order unless it is satisfied that undue hardship would result to the operator if the order is not made, and that the undue hardship outweighs any prejudice to the interests of the owner or occupant, if any.

Terms and conditions of interim order

27(5) The board may make an interim order subject to terms and conditions and to the provision of security for the protection of the interests of the owner or occupant, if any.

Position of the Operator

The Operator provided evidence that:

1. In March, 2018 the Owners and the Occupants granted the Operator consent to survey for the proposed right of way.
2. The initial survey was revised on two occasions at the request of the owner of the NW ¼ of 18, Ashlee Dawn Mitchell.
3. In July and August, 2018 four wells were drilled on the NW 1/4 of 18.
4. On August 24, 2018 the owner of the NW ¼ of 18 executed an Easement in favour of the Operator permitting construction of a service line(s) tying in the four new wells drilled on the NW ¼ of 18.
5. The said wells have been equipped and have been capable of producing since the end of August, 2018.
6. On October 2, 2018 the Owners executed an Easement (Schedule "B") and Temporary Workspace Agreement (Schedule "C"). The Operator was awaiting the Occupants' consent before executing.

The Operator in its Application indicated that delay in constructing the service line(s) tying in the four new wells on the NW ¼ of 18 will cause undue hardship including, *inter alia*:

1. There will be an increased potential for vapour odours.
2. There will be increased tanker traffic and adverse effect to the owner of the NW ¼ of 18, whose residence is immediately south of the four new wells.
3. Additional expenses anticipated to exceed \$70,000.00 would be required to equip the wells as single well batteries until the appropriate service line(s) can be constructed, and there will be significant additional operational costs until the wells are pipelined.
4. The wells are shut in because of the Occupants' refusal to consent to the Easement Agreement that has been signed by the Owners.

Mr. David McGuinness, Executive Vice President, Land for the Operator provided further evidence that the Operator has invested approximately \$4.8 million in the four wells on the NW ¼ of 18 and that the Operator has not been able to operate the wells to date because they have

not been tied-in to the wells on the Lands to the south. Mr. McGuinness further submitted that the installation of tanks is not a viable option to service the four wells on the NW ¼ of 18 because of a number of factors including the significant volume of emulsion produced from the wells, which would require one or more trucks per day emptying the tanks and hauling past the homestead of the owner the NW ¼ of 18 on a daily basis (which homestead is in close proximity to the 4 wells on the NW ¼ of 18).

Mr. McGuinness estimated that the Operator is foregoing between \$300,000 and \$400,000 per month in field net back revenue because of not being able to tie-in and operate the four wells on the NW ¼ of 18 to the existing service line(s) on the Lands.

The Operator confirmed that it intended to use its best efforts to bore the lines (instead of trenching) at a depth of eight feet deep (as opposed to the standard 1.5 meters (approximately 5 feet)) to address certain of the concerns of the Occupants, as outlined below, including with respect to winter construction and the ability of the Occupants to infill low lying areas and install drainage tiles given the deeper-than-standard installation proposed.

Mr. Kirk Gilliard also provided evidence that it was impractical to route the service line(s) along the access road and then turn the service line(s) at a right angle into the Lands as proposed by the Occupants due to a number of issues, including risk of joint failure, increased friction at the joints, line servicing (including concerns with cleaning pigs possibly getting stuck in the lines) as well as potential issues arising from frost.

Position of the Occupants

The Occupants put forward the position that service line(s) permanently affect the ability to manage the Land. The Occupants provided evidence that they had conducted some preliminary research into installing drainage tiles on the Lands and possibly infilling lower lying areas with materials taken from an area that was immediately over top of easement in question. The Occupants confirmed that they believed the maximum depth of the insertion of any such tiles would be five feet deep. The Occupants also are against having any construction occur in the winter given prior concerns of earlier construction completed by the Operator that the Occupants contend has permanently damaged soil in the affected area.

On cross examination Mr. George confirmed that he had not yet applied for a drainage permit, that the drainage tiles cost approximately \$1000 per acre to install, that he had not installed tiles on any of the land that he owned or rented and that if he were to install such tiles, he would start with land that he already owns. Mr. George also confirmed that he did not have a call option on the Lands but did have a right of first refusal in the event the Lands were to be sold in the future.

DECISION:

Upon hearing the presentations of each of the parties and the oral evidence on February 21, 2019, and reviewing the submissions into evidence:

1. Is the hearing of the within matter precluded for failure of the Occupants to file the objection within the seven day period prescribed in Section 27(2) of the Act?

Section 27(1) allows an operator to seek an Interim Order at any time after filing a notice under Section 21. When an application is made for an Interim Order, Section 27(2) gives an occupant or owner seven days to object. If such an objection is made on time, then Section 27(3) says the Board "shall hold a hearing".

Section 27(4) says the Board "shall not grant an Interim Order", unless it is satisfied in relation to matters of undue hardship to the operator and that undue hardship outweighs prejudice to the interests of the occupant or owner. Clearly, the legislation requires consideration of both sides' interests before a final decision can be made about an Interim Order.

In the present case, for reasons that are entirely understandable, the Occupants may have taken slightly more than 7 days to file their objection on the assumption that the deemed receipt provisions in Sections 23 and 24 of the Act apply to Section 27. That being said, while Section 27(3) says the Board "shall" hold a hearing if an objection is made within the seven days, the provision is otherwise silent about whether the Board can nevertheless hold a hearing if no objection is received, or if an objection is received after the 7 days.

Section 27 does not say that a failure of an occupant or owner to meet the seven-day deadline prohibits the Board from proceeding as it deems advisable before undertaking the inquiry that is required under Section 27(4). The seven-day period only says that when the seven-day deadline is met, the Board is compelled to hold a hearing. Otherwise, the board retains the ability to decide for itself how it will proceed in dealing with an application for an Interim Order. On that basis, a hearing has been held and the Occupants have been heard.

2. Is the Board satisfied that undue hardship would result to the Operator if the order is not made, and does that the undue hardship outweigh any prejudice to the interests of the Occupants?

The Board is satisfied that undue hardship would result to the Operator if the requested order is not made, and such undue hardship outweighs any prejudice to the interests of the Occupants. Accordingly, the Board makes the Order that:

1. The Operator has the right to enter upon the Lands for the purpose of making surveys, examinations and other necessary arrangements for fixing the site of the service line(s);
2. The Operator has the right to enter upon, use, occupy or take that portion of the Lands or an interest therein for the purpose of laying, constructing, maintaining and repairing a service line(s);
3. The Operator shall condition, reclaim and restore the surface of the Lands described as right-of-way on the Individual Ownership Plan attached hereto as Schedule "A" following such construction; and

4. The Operator has the right to enter upon, use, occupy or take that portion of the land as outlined as temporary workspace on the attached Individual Ownership Plan marked as Schedule "A" for the purposes outlined above.

all subject to the terms and conditions set forth in the attached Schedule "D" hereto (noting that the Operator has confirmed that it will use its best efforts to bore the lines (instead of trenching) at a depth of eight feet deep (as opposed to the standard 1.5 meters (approximately five feet)) to address certain of the concerns of the Occupants in order to minimize the impact on the Occupants and the Owner from the installation of the service line(s).

Reasons

The Operator has invested approximately \$4.8 million in the four wells on the NW ¼ of 18 and has not been able to operate the wells to date because they have not been tied-in to the wells on the Lands to the south. The installation of tanks is not a viable option to service the four wells on the NW ¼ of 18 because of a number of factors including the significant volume of emulsion produced from the wells, which would require one or more trucks per day emptying the tanks and hauling past the homestead of the owner the NW ¼ of 18 on a daily basis, which is in close proximity to the 4 wells on the NW ¼ of 18.

The Operator is foregoing between \$300,000 and \$400,000 per month in field net back revenue by not being able to tie-in and operate the four wells on the NW ¼ of 18 to the existing service line(s) on the Lands. The Operator confirmed that it was prepared to use its best efforts to bore the lines (instead of trenching) at a depth of eight feet deep (as opposed to the standard 1.5 meters (approximately 5 feet)) to address certain of the concerns of the Occupants thereby minimizing any prejudice the Occupants may suffer.

The Occupants' future plans for the Lands while reasonable and credible, are somewhat remote and were not concrete enough at this stage to establish that the undue hardship the Operator is suffering outweighs any prejudice being suffered by the Occupants. This is especially so given the concessions offered by the Operator as to depth and method of installation that form part of the terms and conditions of the Order of the Board set out in the attached Schedule "D".

Costs and Compensation

The Board makes no award for costs and compensation at this time and directs such matters to be heard with the Original Application.

DECISION delivered this 28th day of February, 2019.



Todd Thomson, Presiding Member

Job No.: 207323
Initials: BM - MW

SCHEDULE "B"

E1239

Easement

I/We, JOHN SNOECK and RITA LEROY SNOECK, of Brandon, in the Province of Manitoba, as joint tenants, hereinafter called the "Grantor", being the registered owner of an estate in fee simple, subject however to such encumbrances, liens and interests as may be notified by memorandum underwritten in all that certain tract of land more particularly described as follows, namely:

ALL THAT PORTION OF THE SW 1/4 OF SECTION 18-10-27 WPM
EXC ALL MINES AND MINERALS
REQUIRED FOR AN EASEMENT AS SHOWN ON A PLAN OF EASEMENT
BLTO (DEPOSIT NUMBER 0702-2018) PREPARED BY BRENDAN LEE WOOD, M.L.S.

Initial
125

in the Province of Manitoba, as described in Certificate of Title No(s). 1910460/2 of record in the Land Titles Office for the Brandon Land Registration District hereinafter called the said "Lands".

In consideration of the sum of —Ten and 00/100— (\$10.00) Dollars (receipt of which is hereby acknowledged) paid to me by COREX RESOURCES LTD. hereinafter called the "Grantee", and in consideration of the covenants herein contained, DO HEREBY GRANT, CONVEY, TRANSFER AND SET OVER to and unto the Grantee, its successors and assigns, a right-of-way across, over, under, on and through the said lands to construct a pipeline or lines including all pipe or pipes, pumps, valves, drips, cleanout traps, meters, connections, cathodic protection apparatus, communications systems, poles and any other equipment and appurtenances that the Grantee shall deem necessary, which notwithstanding any rule of law or equity shall at all times remain the property of the Grantee even though attached to the land, together with the right, license, liberty and privilege to enter upon the said lands in order to conduct surveys, construct, operate, maintain, inspect, control, alter, improve, remove, reconstruct, replace and repair the said pipeline or lines and the said appurtenances thereto and hereby covenant and agree to the following terms and conditions:

1. Should the Grantee not deposit with the Registrar of the appropriate Land Titles Office a Plan of Survey of the right-of-way Twenty (20) metres in width across the said lands on or before one year from the date hereof, or should the Grantee not forward to me a plan showing the said right-of-way across the said lands outlined in red thereon, on or before one year from the date hereof the Grantee shall thereupon execute and register such documents as may be necessary to effect termination of its rights under this instrument.
2. The Grantee, having deposited or forwarded the plan as aforesaid, it shall cause to be registered such document as shall restrict this easement and the rights herein granted to the right-of-way shown upon such plan excepting the right of ingress and egress to and from the said right-of-way.
3. The Grantee shall pay to the Grantor or to those interested in the said land by encumbrance or occupation a sum calculated at the rate of ~~—ONE THOUSAND TWO HUNDRED AND 00/100— (\$1,200.00)~~ Dollars Per Acre of right-of-way across the said lands as shown on such plan, within a reasonable period of time of the registration of the said plan or at the time a copy of the plan is forwarded to the Grantor.
4. In addition to the monies payable under paragraph 3 hereof, the Grantee will pay to the Grantor compensation for all damages done to growing crops, fences, timber and livestock occurring as a result of the Grantee's operations and the grantee will, as soon as weather and soil conditions permit, bury all pipelines and, insofar as it is practical to do so, restore the said lands to their condition prior to the Grantee's entry thereon.
5. The Grantee will pay all rates and taxes that may be assessed and levied from time to time against its interest in the said lands or in connection with its operations thereon.
6. The Grantor shall have the right to use and enjoy the right-of-way for any purpose except any use which would interfere with the rights herein granted to the Grantee and the Grantor shall not without the prior written consent of the Grantee first had and obtained excavate, drill, install, erect or permit to be excavated, drilled, installed or erected on or under the right-of-way any pit, well, pipeline, foundation, pavement, building or other structure or installation or do any mining, quarrying, drilling or other work or activity of any nature on, in or under the building or other structure or installation or do any mining, quarrying, drilling or other work or activity of any nature on, in or under the right-of-way and the Grantor will at all times control and if necessary cut down or root out all noxious weeds growing on the right-of-way.
7. The Grantor hereby covenants with the Grantee for quiet enjoyment; and shall do all acts and execute all such further assurances as may be required to give effect to the within grant.
8. This Easement Agreement shall be deemed to have created a covenant running with the land and these presents including all covenants and conditions herein contained shall extend to, be binding upon and ensure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.
9. For further clarification it is hereby declared that nothing herein shall be deemed to vest in the Grantee any title to mines, ores, metals, coal, slate, oil, gas or other minerals in or under the land comprising the right-of-way excepting only the parts thereof that are necessary to be dug, carried away or used in construction of the works of the Grantee.

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125

10. All notices and payments to be made hereunder may be made by a letter addressed to the parties at the addresses stated immediately following their signatures hereto or such other address as the Grantor and the Grantee may respectively from time to time designate in writing and any such notice shall be deemed to have been given to and received by the addressee three (3) days after mailing thereof, postage paid.

11. The Grantee shall at any time or from time to time have the right to quit-claim or surrender by appropriate instrument, all or part of the right or interest acquired by it hereunder and the Grantee may, but shall not be obligated to, remove all or any installations, equipment or appurtenances which, under the provision hereof, the Grantee has installed or placed upon the easement herein granted, or part thereof which has been so surrendered.

12. If the demised premises covered by this Easement are not entered upon, except for survey purposes, within 365 days of the date of this Easement, the Grantee shall pay to the Grantor the sum of \$ 100.00 for the right to survey and all other inconveniences and the said Easement shall terminate.

13. The Grantee covenants and agrees to indemnify and save harmless the Grantor from any and all liabilities, damages, costs, claims, suits or actions caused by or resulting from the exercise by the Grantee of the Easement Rights, including, without limitation, the construction, operation, maintenance and/or repairs of the said pipeline or pipelines and/or any related fixtures and appurtenances affixed to the right-of-way other than through willful damage or negligence by the Grantor.

IN WITNESS WHEREOF:

I, the Grantor, have hereunto set my hand and seal this 2nd day of October, A.D. 2018.

Signed by the said
in the presence of:



TOM FESCIUC



TOM FESCIUC



JOHN SNOECK



RITA LEROY SNOECK

1103 - 4th Street North, Brandon, Manitoba R7A 6H2
Address

COREX RESOURCES LTD.

Per: _____

Per: _____
3100, 525 - 8th Avenue S.W., Calgary, Alberta T2P 1G1

SCHEDULE "C"

Corex # 922 (2/2)
E1239

TEMPORARY WORKSPACE AGREEMENT

KNOW ALL MEN by the presents, that I/WE, JOHN SNOECK AND RITA LEROY SNOECK (Owner), of Brandon, in the Province of Manitoba, registered owner(s) of the following lands:

THE SOUTH WEST QUARTER OF SECTION EIGHTEEN (18), IN TOWNSHIP TEN (10), IN RANGE TWENTY-SEVEN (27), WEST OF THE PRINCIPAL MERIDIAN

(hereinafter referred to as "the said lands")

I) DO HEREBY give my consent to Corex Resources Ltd. (Corex), its contractors and representatives to enter upon and occupy the said lands as shown outlined in red on the attached sketch plan(s), for temporary working space for use during the construction and installation of a pipeline on the said lands.

In consideration, of the sum —ONE THOUSAND TWO HUNDRED AND 00/100— (\$1,200.00) Dollars Per Acre (receipt of which sum is hereby acknowledged and agreed to), as full and complete compensation for the use of the temporary working space. Payment for the use of the Temporary Workspace, as described specifically in this agreement, must be made prior to the use of any, or all, of the said area.

Corex covenants and agrees to indemnify and save harmless the Owner from any and all liabilities, damages, costs, claims, suits or actions caused by or resulting from the use of the temporary work space other than through willful damage or gross negligence by the Owner.

Corex agrees to compensate the owner for additional damages, should they occur, to growing crops, fences or livestock caused by Corex its contractors and representatives, associated with the temporary working space.

Corex shall restore the temporary working space so far as may be practicable to do so, to the same as prior to the entry thereon and the use thereof by Corex, its contractors and representatives.

The Temporary Working Space Agreement will automatically expire following completion of the work and restoration of the lands or should Corex acquire the lands under easement.

AGREED TO AND ACCEPTED this 2nd day of October, 2018.


Witness TOM FESCIUG


Witness TOM FESCIUG


JOHN SNOECK


RITA LEROY SNOECK

SCHEDULE "D"

TERMS AND CONDITIONS OF THE ORDER

1. The Operator shall, on a best efforts basis, bore the service lines with a minimum cover of eight feet on a horizontal plane, with the exception of the entry and end points of the bore line. If the service lines cannot be bored, they may be installed by one excavation with a minimum cover of eight feet on a horizontal plane into which shall be placed a maximum of five service lines.
2. The Occupant, for the purposes of access, construction of the service lines, clean-up and restoration of the right of way, shall allow the Operator to enter upon, use and occupy, all and singular those parts shown as temporary workspaces and/or temporary access roads upon the Individual Ownership Plan attached to the Order as Schedule "A".
3. The Operator shall use good construction practices as may be required under good oil field practices and in compliance with any existing regulations, permit and licenses, in constructing the service lines and in reclaiming the affected areas of the right of way and in respect of any temporary work spaces or temporary access roads and shall complete such construction so as not to cause any unnecessary damage including any damage which may arise as a result of adverse soil and weather condition. After installation of the service lines and any temporary work spaces or temporary access roads, the Operator shall restore the right of way and the area of all temporary workspaces and/or temporary access roads to the same condition so far as may be practicable to do, as it was prior to the entry thereon and the use thereof by the Operator, its contractors, agents, servants and/or representatives.
4. If the service lines cannot be installed by boring:
 - a. the Operator shall pick and remove rocks disturbed by stripping which are of a size greater than 6 inches to prevent interference with the operation of farm equipment; and
 - b. insofar as it may be practicable to do so, the Operator shall, unless otherwise requested by the Occupant, strip from the ditch line prior to construction such width as may be required under good oil field practices and in compliance with any existing regulations, permits and licenses, and replace topsoil as near as possible to its original condition following construction.

5. No permanent above-ground structures will be established by the Operator on the area taken for the right of way which lies outside of the wellsite.
6. In the event of winter construction, the Operator will take steps to prevent erosion from runoff or water movement across or along the right of way.
7. The Operator shall cease construction should weather and soil conditions become adverse or should road use restrictions be in place.
8. The Operator shall compensate the Occupant or Owner at the consideration determined in connection with the Original Application, if applicable, for right of entry and for damages that occur in the area covered by the right of way, the temporary work spaces and/or temporary access roads.
9. The Operator shall take all reasonable measures to ensure that all equipment is clean and free of contaminants prior to entry onto the land for construction of the service lines so as to deter the spread of weeds and/or disease.
10. The Operator shall in the event of a line break forthwith notify the Occupant with particulars of the date on which the line failed and the amount of fluid lost or spilled. The Operator shall utilize its best efforts to clean up the affected area as soon as soil and weather conditions permit, and proceed to restore the land as near as possible to the condition existing prior to the line break.
11. The Operator will indemnify and save harmless the Occupant from and against all actions, suits, claims and demands by any person in respect of any loss, injury, damage or obligation arising out of its (or its contractors, agents, servants and/or representatives) operations on the right of way as described in this Order, unless such loss, injury or damage was caused by the willful damage or gross negligence of the Owners or the Occupant.
12. The Occupant is to be notified at least forty-eight (48) hours prior to installation of the service lines by telephone, email or fax.