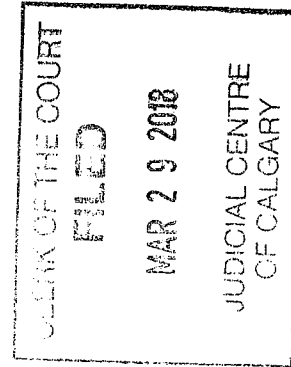


Clerk's stamp



COURT FILE NUMBER 1501-00955
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, as amended

LUTHERAN CHURCH – CANADA, THE
ALBERTA – BRITISH COLUMBIA DISTRICT,
ENCHARIS COMMUNITY HOUSING AND
SERVICES, ENCHARIS MANAGEMENT AND
SUPPORT SERVICES, AND LUTHERAN
CHURCH – CANADA, THE ALBERTA –
BRITISH COLUMBIA DISTRICT INVESTMENTS
LTD.

APPLICANT SAGE PROPERTIES CORP.
RESPONDENTS SEE SCHEDULE "A" TO THE APPLICATION,
FILED
DOCUMENT **AFFIDAVIT**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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Lawyers for the Applicant, Sage Properties Corp.
File no.: 10010880-1000154646

AFFIDAVIT OF SCOTT McCORQUODALE

Sworn (or Affirmed) on March 29, 2018.

I, Scott McCorquodale, of Calgary, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am the Director and CEO of the Applicant, Sage Properties Corp. (**Sage**). As such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief. Where so stated, I verily believe the same to be true.
2. Sage is a corporation duly registered pursuant to the laws of Alberta and carrying on business in Alberta. Attached hereto and marked as **Exhibit "A"** is a true copy of the corporate search for Sage.

REASONS FOR APPLICATION

3. Sage is appearing before the Court of Queen's Bench of Alberta for the following reasons:
 - (a) The Alberta Land Titles Office (the **LTO**) has suggested that this application be brought given the impracticality of obtaining the signatures required under section 73 of the *Land Titles Act* (the **Act**), to discharge Easement 374 and Easement 372 (as defined below). Due to: (i) the inordinate complexity resulting from the subdivisions and condominiumization of the lands in question; (ii) the changes to the legal descriptions of these lands; and (iii) the ownership issue concerning the Utilities (as defined below) embedded within Easement 374 (as defined below), the LTO has confirmed it would be prudent to apply under section 190 of the Act to have the Court remove these easements.
 - (b) We have attempted to negotiate with the Parcel C Owners (as defined below) through their legal counsel since October 2017, and while representations have been made to Sage indicating that negotiations will formally commence, no formal negotiations have occurred to date.
 - (c) Sage's mandate is to monetize its assets. Easement 374 and the ownership issue concerning the Utilities (as defined below) contained therein, is hindering Sage's ability to execute its mandate, and Easement 374 is adding additional costs and delay to Sage, and by extension its stakeholders including the District Depositors.

- (d) It is impractical to deal directly with all the Parcel C Owners (as defined below) to seek the remedy Sage requires to fulfil its mandate, as there are over 250 registered owners whose titles are encumbered by Easement 374 and Easement 372.

THE LANDS

4. Sage is the current registered owner of certain lands located in Rocky View County and legally described as:

Plan 9712096

Block 1

Containing 22.29 Hectares (55.08 Acres) More or Less

Excepting Thereout:

Plan	Number	Hectares	(Acres)	More or Less
Subdivision	0311251	1.90	4.70	

Excepting Thereout All Mines and Minerals

(Block 1)

- AND -

Plan 9712096

Block 2

Excepting Thereout All Mines and Minerals

Area: 12.88 Hectares (31.83 Acres) More or Less

(Block 2)

- AND -

Plan 0311251

Block 4

Lot 1

Excepting Thereout All Mines and Minerals

Area: 1.9 Hectares (4.7) Acres More or Less

(Block 4)

(collectively, the **Sage Lands**).

5. Attached hereto and marked as **Exhibits "B", "C", and "D"** are the certificates of title for Block 1, Block 2, and Block 4, respectively.
6. Immediately adjacent to the Sage Lands is a retirement community comprised of the following 192 condominium units (**Parcel C**).

- (a) 174 fee simple condominium units are owned by individual or corporate residents (the **Condominium Owners**);
 - (i) 6 of these units are life lease condominium units (the **Life Lease Owners**);
 - (b) 17 condominium units are owned by the Condominium Corporation (as herein defined); and
 - (c) 1 condominium unit is owned by Encharis Community Housing and Services (**ECHS**).
7. The Condominium Owners, the Life Lease Owners, the Condominium Corporation and ECHS collectively mean the **Parcel C Owners**.
8. There are 198 titles registered against Parcel C, legally described in **Appendix "A"** to my affidavit, and attached as **Exhibit "E"**.
9. Historically, the Lutheran Church-Canada, The Alberta-British Columbia District (the **District**) was the original owner of quarter section 28, township 24, range 19, west of the 4th Meridian (the **Quarter Section**), which is now comprised of Block 1, Block 2, Block 4, and Parcel C.
10. The evolution of the Sage Lands and Parcel C occurred as follows:
- (a) On October 29, 1997 the District filed a subdivision plan to subdivide the Quarter Section into 3 blocks, being Block 1, Block 2, and Parcel C.
 - (b) On September 8, 1998 the District registered Condominium Plan 9812469 (the **Original Condominium Plan**). Pursuant to section 25 of the *Condominium Property Act*, on the registration of the Original Condominium Plan, Condominium Corporation No. 9812469 was constituted (the **Condominium Corporation**).
 - (c) Concurrently, the District entered into a reciprocal easement agreement with itself, and on September 8, 1998 the District registered this easement against title to Block 1, Block 2, and Parcel C, registration number 981 274 372 (**Easement 372**), as described in detail below.

- (d) The District entered into a second reciprocal easement agreement with itself, and on February 15, 2000 the District registered this easement against titles to Block 1, Block 2, and Parcel C, registration number 001 042 374 (**Easement 374**), as described in detail below.
- (e) Pursuant to section 20 of the *Condominium Property Act*, the Original Condominium Plan was redivided by registration of the following condominium plans (collectively, the **Condominium Plans of Redivision**):
 - (i) Condominium Plan 0011410, registered by the District on June 6, 2000;
 - (ii) Condominium Plan 0013287, registered by the District on December 20, 2000;
 - (iii) Condominium Plan 0111629, registered by the District on June 13, 2001;
 - (iv) Condominium Plan 0113520, registered by the District on December 12, 2001; and
 - (v) Condominium Plan 0310076, registered by the District on January 8, 2003.
- (f) The Condominium Plans of Redivision did not create new condominium corporations, but instead, on the date of registration of each of the Condominium Plans of Redivision, they formed part of the Condominium Corporation.
- (g) Collectively, the Original Condominium Plan and the Condominium Plans of Redivision are the **Condominium Plans**.
- (h) Attached hereto and marked as **Exhibits "F", "G", "H", "I", "J", and "K"** are true copies of the Condominium Plans.
- (i) On the registration of each of the Condominium Plans, Easement 374 and Easement 372 were registered against all the individual titles to the individual condominium units as depicted in the Condominium Plans.

- (j) On May 6, 2003, the District filed another subdivision plan to subdivide Block 1 to create a new Block 4 and the remainder of Block 1. On the registration of this subdivision plan, Easement 374 and Easement 372 were registered against title to Block 4.
- (k) On June 10, 2006, the District transferred the lands registered in its name to ECHS.
- (l) On January 23, 2015, the District, ECHS, Encharis Management and Support Services (**EMSS**), and the Lutheran Church – Canada, the Alberta – British Columbia District Investment Ltd. (the **DIL**), obtained an initial order from the Court of Queen’s Bench of Alberta under the *Companies’ Creditors Arrangement Act* (the **CCAA**), and Deloitte Restructuring Inc. was appointed as the Monitor, in the CCAA proceedings.
- (m) Sage acquired the Sage Lands pursuant to:

- (i) The ECHS Sanction Order, filed January 20, 2016 (the **ECHS Sanction Order**), pursuant to section 13, which stipulates:

“The conveyance of the Core Assets [which includes the Sage Lands] to NewCo [Sage], further to and in accordance with the ECHS Plan (including Article 6.1(d) thereto), be and is hereby authorized and approved.”

- (ii) The District Sanction Order, filed August 5, 2016 (the **District Sanction Order**), pursuant to section 12, which stipulates:

“Following the Effective Date and subject to the satisfaction of the conditions precedent in Article 7.2 of the District Plan, the District is hereby authorised to incorporate NewCo [Sage] in accordance with Article 7.1(d) of the District Plan. The sequence of events stated in Article 6.1(d) of the ECHS Plan, and Article 6.1 of the EMSS Plan, which were authorized and approved by Orders granted on January 20, 2016, and in Article 7.1(e) and (f) of the District Plan, shall proceed.”

(iii) Unbeknownst to Sage on the closing date of the transaction, being October 31, 2016, the Parcel C Owners had a 1/3 ownership interest in the Utilities (as defined below).

11. Attached hereto and marked as Exhibits "L" and "M" are true copies of the ECHS Sanction Order and the District Sanction Order, respectively.
12. A sketch of the Sage Lands and Parcel C is attached hereto and marked as **Exhibit "N"**.
13. The Real Property Report for the Sage Lands and Parcel C is attached hereto and marked as **Exhibit "O"**.

TIMELINE

14. The facts mentioned above in paragraphs 4 to 13 are summarized below in chronological order.

<u>Date</u>	<u>Description</u>
Prior to October 1997	The District is the registered owner of the Quarter Section.
October 29, 1997	The District registers a subdivision plan to create Block 1, Block 2 and Parcel C.
September 8, 1998	The District registers Condominium Plan 9812469, and Condominium Corporation No. 9812469 is constituted.
September 8, 1998	The District registers Easement 372.
February 15, 2000	The District registers Easement 374.
June 6, 2000	The District registers Condominium Plan 0011410.
December 20, 2000	The District registers Condominium Plan 0013287.
June 13, 2001	The District registers Condominium Plan 0111629.

December 12, 2001	The District registers Condominium Plan 0113520.
January 8, 2003	The District registers Condominium Plan 0310076.
May 6, 2003	The District registers a subdivision plan to subdivide a portion of Block 1 to create a new Block 4 and the remainder of Block 1.
June 10, 2006	The District transferred the lands registered in its name to ECHS.
January 23, 2015	The District, ECHS, EMSS and the DIL obtained an initial order under the CCAA.
August 26, 2016	Sage is registered as an Alberta Corporation.
October 31, 2016	Closing date of the transaction, contemplated and pursuant to the ECHS Sanction Order and the District Sanction Order, and the effective date of the relevant transaction documents.
November 29, 2016	The court-ordered transfer was registered and Sage acquired the Sage Lands.

EASEMENT 374

15. Easement 374, which is registered against both the Sage Lands and each Parcel C's unit titles, pursuant to a Joint Use and Utility Agreement (the **Joint Use and Utility Agreement**) dated October 1, 1998, between the District, as Grantor, the District, as Grantee, and the Prince of Peace Congregation (in its capacity as operator of the church/school complex located on Block 1 (the **School**)). Attached hereto and marked as **Exhibit "P"** is a true copy of the Joint Use and Utility Agreement.

16. Pursuant to section 4.1 of the Joint Use and Utility Agreement, the owner of Block 1 and Block 4 (together), Block 2, and Parcel C each own a 1/3 interest in the Utilities, defined in the Joint Use and Utility Agreement as follows:

- (a) **Utilities** means, collectively, the Irrigation Pond, the Plant, the Lagoon, the Private Irrigation Lines, the Private Sewer Lines, and the Private Water Lines, together with the usual and ordinary appurtenances thereto as the case may be.
17. The Irrigation Pond, the Plant, the Lagoon, the Private Irrigation Lines, the Private Sewer Lines and the Private Water Lines are defined in the Joint Use and Utility Agreement as follows (modified to reflect the defined terms within this affidavit):
- (a) **Irrigation Pond** means the body of water from surface run off located on Block 1 and Block 4 and all facilities and improvements on Block 1 and Block 4 pertaining to and necessary for providing water from the said body of water for irrigation purposes.
- (b) **Plant** means all the equipment and improvements which comprise and are necessary for the proper operation of the water treatment facility constructed on Block 1 and Block 4, including without limiting the foregoing, all such equipment and improvements located within the School.
- (c) **Lagoon** means the sewage lagoons constructed on Block 2 and all facilities and improvements located on Block 2 pertaining to and necessary for the proper operation of the sewage lagoons.
- (d) **Private Irrigation Lines** means the irrigation and water lines extending from the Irrigation Pond to the facilities¹ located on Block 2 and Parcel C.
- (e) **Private Sewer Lines** means the deep sewer lines extending from the residential sewer lines on Parcel C to the Lagoon and from the School to the Lagoon.
- (f) **Private Water Lines** means the deep potable water lines extending from the Plant to the residential water lines on Parcel C and from the Plant to the Lagoon facilities on Block 2.

¹ This is not a defined term within the Easement 374 agreement.

18. Pursuant to section 4.1 of the Joint Use and Utility Agreement, the owner of Parcel C is fully responsible for the operation and maintenance of the Utilities and for paying the costs of operating and maintaining the Utilities out of funds collected from the owners of Block 1, Block 2, Block 4 and Parcel C.
19. Sections 4.3 through 4.15 set out the quantity of water from the Plant each owner is entitled to and the formula for calculating what percentage of costs each individual owner is required to contribute towards the costs of operating and maintaining the Utilities.
20. Section 4.14 stipulates that the owner of Parcel C is liable for its proportionate share of the cost of operating, maintaining, and repairing the Utilities and its proportionate share of the depreciation costs of all the Utilities.
21. In addition to setting out the rights and obligations of the owners with respect to the Utilities, Easement 374 also creates reciprocal rights of ways and easements.
22. Easement 374 was registered against each of the Parcel C Owners' unit titles, rather than against the Condominium Corporation's common property titles. I believe this was done inadvertently.
23. Section 6.1 stipulates that the rights, privileges and easements granted by Easement 374 may be assigned by the owner of Parcel C, in whole or in part, to the condominium corporation formed on the registration of a plan of subdivision for a bare land condominium on Parcel C, without further consent of any other party (emphasis added). I believe this confirms that Easement 374 should have only been registered against the Condominium Corporation's common property.
24. The Prince of Peace Congregation was a party to Easement 374 only in its capacity as operator of the School. The Prince of Peace Congregation is no longer the operator of the School. Sage is the landlord of the School and leases the School to The Board of Trustees of Rocky View School Division No. 41.

EASEMENT 372

25. Easement 372, which is registered against both the Sage Lands and each of the Parcel C Owners' unit titles, pursuant to a Joint Use & Deep Utility Easement (the

Joint Use & Deep Utility Easement) dated August 5, 1998, between the District, as Grantor, and the District, as Grantee. Attached hereto and marked as **Exhibit "Q"** is a true copy of the Joint Use & Deep Utility Easement.

26. Pursuant to the Joint Use & Deep Utility Easement, the owners of Block 1 and Block 4, the owner of Block 2, and the owner of Parcel C all granted each other easements and rights of way for the purpose of constructing, erecting, digging, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining and operating the Utilities.
27. The Joint Use & Deep Utility Agreement also creates an easement and right-of-way over and through those portions of the lands, as well as obligations to maintain roadways and pathways.
28. Article 3 of Easement 372 is almost identical to Article 3 of Easement 374. Attached hereto and marked as **Exhibit "R"** is a comparison document comparing Easement 372 to Easement 374, which highlights the main difference between the two easements as being the ownership provisions contained in Easement 374. The red strikethroughs indicate the wording that has been deleted, and the blue underlining indicate the wording that has been added.

THE UTILITIES EXPENSE

29. As stipulated in Easement 374, the Parcel C Owners own 1/3 of the Utilities and are liable for their proportionate share of the cost of operating, maintaining and repairing the Utilities and their proportionate share of the depreciation costs of the Utilities.
30. The following descriptions of costs are estimates only. Because of the inherent difficulty of predicting the actual amounts, the estimates below are approximations only. The actual costs and expenses to be incurred may vary, possibly significantly, from the estimates. The following estimates are based on: (i) the circumstances as Sage understands them at this time, (ii) what is currently known about the current site conditions to date, and (iii) reliance on third-party examiner reports which are based on limited due diligence and testing.
 - (a) From November 1, 2016 to November 30, 2017, Sage has incurred the Utilities operating cost of \$317,337.00. Attached hereto and marked as

Exhibit "S" is a true copy of the Utility Operating Income Statement. The estimated calculation cost breakdown is as follows:

Total Estimated Cost:	\$317,337.00
Parcel C's 1/3 Estimated Cost of Total Cost:	$\$317,337 / 3 = \$105,779.00$
Estimated Cost per condominium unit:	$\$105,779 / 192 = \550.93

- (b) The Parcel C Owners are also liable for their proportionate share of environmental damages and remediation costs. The estimated cost of same is around \$1,140,327.00. Attached hereto and marked as **Exhibit "T"** is a true copy of the Facilities Decommissioning, Wastewater Lagoon & Brackish Pond Remediation / Reclamation Statement. The estimated calculation cost breakdown is as follows:

Total Estimated Cost:	\$1,140,327.00
Parcel C's 1/3 Estimated Cost of Total Cost:	$\$1,140,327 / 3 = \$380,109.00$
Estimated Cost per condominium unit:	$\$380,109 / 192 = \$1,979.73$

31. The estimated proportionate cost of the Parcel C Owners due and owing to Sage is \$485,888.00, which is approximately \$2,530.67 per condominium unit, plus, but not limited to, any and all other present and future costs, expenses, or charges reasonably attributed and incurred by Sage associated with its operation, maintenance, and repair of the Utilities (the **Utilities Expense**).

NON-COMPLIANCE WITH THE EASEMENTS

32. Pursuant to Easement 374, the Parcel C Owners own 1/3 of the Utilities and are responsible for the maintenance and operation of the Utilities. Sage owns the remaining 2/3 of the Utilities and has no responsibility for their maintenance and operation.
33. Notwithstanding Easement 374, the Parcel C Owners do not maintain or operate, and never have maintained or operated the Utilities as contemplated by Easement 374.

Instead, Sage solely maintains, operates, and repairs the Utilities and has done so since acquiring the Sage Lands pursuant to the CCAA proceeding.

34. While Easement 374 stipulates that Sage is entitled to full compensation for the costs associated with operating and maintaining the Utilities from the Parcel C Owners, it does not currently receive compensation for these efforts.

DISCHARGE AND REPLACEMENT OF THE EASEMENTS

35. As Easement 372 and Easement 374 are duplicative and complicated, I believe both Easement 372 and Easement 374 should be discharged and replaced with a single updated easement that accurately reflects how the Utilities are, in reality, maintained and operated. We are in the process of drafting and negotiating a replacement easement on the following principal terms:

(a) a Mutual Access Easement Agreement between Sage and the Condominium Corporation, which will account for the right-of-way easements provided for in Easement 372 and Easement 374, specifically access to roadways and pathways for all pedestrian and vehicular traffic egress and ingress from and to the private homes and public facilities, and will contemplate being registered only against the common property within Parcel C.

36. I verily believe discharging Easement 372 and Easement 374 and replacing them with the Mutual Access Easement Agreement would be in the interest of Sage and the Parcel C Owners because:

(a) the Utilities could be managed by one entity within the same water management system yielding efficiencies and better service and maintenance; and

(b) the discharge of Easement 374 and Easement 372 is in alignment with the current realities of how the Utilities are managed, meaning the Parcel C Owners' use and practice is not altered in any way.

37. I verily believe that proceeding with this Application would be the most efficient, fair, reasonable, and cost-effective means of discharging Easement 374 and Easement 372.

38. I verily believe that discharging Easement 374 and Easement 372 will assist Sage in achieving its mandate to monetize its assets, including the Utilities, the sale of which might result in a profit or a loss.

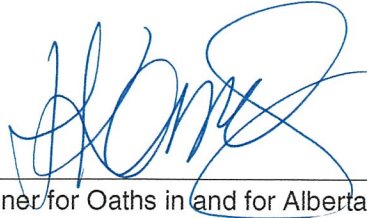
SAGE'S OPERATION OF THE UTILITIES AND THEIR POTENTIAL DISPOSITION

39. In the event Sage is the sole owner of the Utilities and in the event the Utilities are monetized and sold for a profit, Sage is willing to remit to the Parcel C Owners their (current) 1/3 ownership share of the value of the Utilities, only as it relates to the net profit, *less* the Utilities Expense. While Sage has not completed a valuation of the Utilities, based on the information known to Sage at this time, it is estimated that the value of the Utilities will be offset by the costs of the Utilities Expense.
40. In the event Sage is the sole owner of the Utilities, Sage will continue to operate a public water utility and provide services to the Parcel C Owners at a rate set by the Alberta Utilities Commission under the *Alberta Utilities Commission Act* (Alberta). Pursuant to Rule 011 – Rate Application Process for Water Utilities, the purpose is to provide an efficient and cost-effective process for investor-owned water utilities. Pursuant to the *Public Utilities Act* (Alberta) the rate, toll or charge to the end user is set by the Commissioner as it considers fair and reasonable.
41. In the event Sage is the sole owner of the Utilities and in the event Sage sells the Utilities at a loss and with no benefit to the Parcel C Owners, Sage is willing to forego the Utilities Expense.

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42. I swear this affidavit in support of Sage's application to discharge Easement 374 and Easement 372 off the Parcel C lands and the Sage Lands and for no improper purpose.

SWORN (OR AFFIRMED) BEFORE ME
at the City of Calgary, Alberta,
this 29th day of March, 2018.



(A Commissioner for Oaths in and for Alberta)

Jillian R. Karras
Barrister & Solicitor

Expiry:

(Print Name and Expiry of Lawyer)



(Signature)

Scott McCorquodale

(Print Name)