



No. S0150937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF CHINA

PLAINTIFF/ JUDGMENT CREDITOR

AND:

XU CHAO FAN, also known as Hui Yat Fai;
XU GAO JUN, also known as Xu Juo Jun, Xu Guo Jun, Kit Sun Hui; Hui Kit Shun
Hui Kit Sun and Hui Kit Chun;
YU ZHEN DONG, also known as Xu Zhen Dong, Yu Zhen-Dong, Yu Wing Chung,
Yu Zhan Dong, Yu Wing Chong and Yu Chun Tung;
KWONG WA PO;
CINDY CHING YIU-CHU, also known as Sindy Ching, Ching Yu-Chu Sindy, Ching
Fo-Chu and Ching Yu-Chu;
KUANG WAN FANG, also known as Wendy Wan Fang Kuang;
YING YI YU, also known as Yu Yung Yi;
FION XU HUI YU, also known as Fion Yu and Xu Hu Yu;
LI CONG XU
SIU LING YAN
XIA LI XU, also known as Carolyn Xia Li Xu and Carolyn X Xu;
FAL KWONG CHING, also known as Fo Kong Ching, Fo Kong Cheung and Connie
Fal Kwong Ching;
WEN JING TAN;
XU LIE MING;
XU GANG QIANG;
XU BIN YAN;
TANG JIE YU, also known as Jie Yu Tang, Tan Jie Yu and Jie Yu Tan;
YU BAO QUON, also known as Bao Quon Yu, Yu Bao Quan and Quan Bao Yu;
LIANG BIN JIN;
LIANG CUI E; and
JOHN DOE

DEFENDANTS/ JUDGMENT DEBTOR

NOTICE OF APPLICATION

Name of applicant: Alvarez & Marsal Canada Inc., Court-appointed Receiver of Kuang Wan Fang, also known as Wendy Wan Fang Kuang, also known as Wan Fang Kuang and not in its personal or corporate capacity.

To: KUANG WAN FANG, also known as WENDY WAN FANG KUANG and BANK OF CHINA

TAKE NOTICE that an application will be made by the Applicant to the presiding Judge at the courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on Friday, September 8, 2023, at 9:45 a.m. for the order set out in Part 1 below. e

Part 1: ORDER(S) SOUGHT

1. An order (the "**Approval and Vesting Order**") substantially in the form attached hereto as **Schedule "A"**.

Part 2: FACTUAL BASIS

Background and Orders Made

1. On April 16, 2015, the Bank of China (the "**Petitioner**" or "**Judgment Creditor**") was granted judgment (the "**Judgment**") against Kuang Wan Fang, also known as Wendy Wan Fang Kuang, also known as Wan Fang Kuang (the "**Debtor**") in the amount of \$670,015,201 plus pre-judgment interest in the amount of \$2,166,076.54 for a total of \$672,181,277.54.
2. The Debtor is the registered owner of a residential property located in Richmond, British Columbia, legally described as:

PID: 004-014-111
Lot 14 Block 3 Section 18 Block 4 North Range 6 West
New Westminster District Plan 15790

(the "**Lands**")
3. The Judgment was registered against the Lands on January 26, 2016 under registration number CA4949695 in favour of the Judgment Creditor, and renewed on May 29, 2018, April 22, 2020, and April 19, 2022 under registration numbers CA6826969, CA8150067 and CA9864146 respectively.
4. The Judgment Creditor was granted an Order prohibiting dealings with the property of the Debtor by Mr. Justice Hood on October 26, 2001 (the "**2001 Freezing Order**"). The 2001 Freezing Order was registered on the title to the Lands under charge number BR347468.
5. The Debtor has failed, neglected or refused to pay the amounts owing under the Judgment.
6. On January 6, 2023, the Judgment Creditor filed an application seeking to appoint a receiver.
7. On March 3, 2023, the Honourable Justice Groves made an order (the "**Receivership Order**") appointing Alvarez & Marsal Canada Inc., as the receiver without security, of all of the assets, undertakings and property of the Debtor in Canada, including all proceeds.

8. The Receivership Order was made pursuant to Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended.
9. The Receivership Order authorized the Receiver to, among other things:
 - (a) To take possession of and exercise control over the Lands and any and all receipts and disbursements arising out of or from the Lands;
 - (b) to market any or all of the Lands, including advertising and soliciting offers in respect of the Lands or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;
 - (c) to sell, convey, transfer, lease or assign the Lands or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of a single transaction for consideration up to \$10,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above;

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C., 1996, c. 359 shall not be required.

 - (d) to apply for any vesting order or other orders necessary to convey the Lands or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
 - (e) to register a copy of this Order and any other Orders in respect of the Lands against title to any of the Lands; and
 - (f) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order.

Marketing and Solicitation of Offers

10. The Receiver requested proposals from two listing brokerages and/or agents and upon review, retained Pacific Realty Ltd. (the "**Listing Agent**") to market the Lands through the Multiple Listing Service ("**MLS**") and local and international social media, which included property features and photos of the unit.
11. Prior to and in preparation of the sales listing of the property, the Receiver obtained two appraisals completed by Adlaw Appraisals Ltd. dated March 31, 2023 and Niemi Laporte & Dowle Appraisals Ltd. dated May 27, 2023 (the "**Appraisals**"), which suggested

market values of \$2.70 million and \$2.63 million, respectively. The 2022 property tax assessment valued the Lands at \$3.0 million at July 1, 2022 (the "**Property Tax Assessment**").

12. On August 2, 2023 (the "**Listing Date**"), the Lands was listed for sale at \$2,599,000 following consultation with the Listing Agent. The listing price was considered reasonable based on the slowdown of residential property sales in the market since the date of the Appraisals.
13. The Listing Agent, on behalf of the Receiver, undertook the following marketing activities:
 - (a) arranged for the property to be professionally cleaned, landscaped, and photographed;
 - (b) through MLS, automatically emailed the listing out to 672 parties and made the listing publicly available online resulting in over 1,292 views from prospective purchasers;
 - (c) advertised the sales listing on various local and international social media platforms, which generated over 3,000 views;
 - (d) undertook direct telemarketing efforts to 483 local real estate agents;
 - (e) emailed the sales listing to the listing brokerage's internal database of agents, which is comprised of approximately 900 parties; and
 - (f) coordinated multiple site visits with 11 private showings and 61 open house group viewings to date.
14. After being on the market for six days, on August 8, 2023, five offers were submitted and presented to the Receiver. Following the review of the offers and revisions to the terms and conditions, the Receiver accepted the offer from Mr. Zhenghong Tian (the "**Purchaser**") for \$2.58 million on August 11, 2023, after consultation with the Bank of China.

Contract of Purchase and Sale

15. On August 8, 2023, the Receiver and the Purchaser entered in a contract of purchase and sale for the Lands (the "**Sale Agreement**").
16. The Sale Agreement provides, *inter alia*, that the purchase price of the Lands will be \$2,580,000.00 and the acceptance of the offer pursuant to the Sale Agreement is subject to approval of this Court.
17. The Receiver, in consultation with the Petitioner, is of the view that the Sale Agreement represents the best price that can be obtained for the Lands after a commercially

reasonable marketing process and the approval of the Sale Agreement is in the best interest of all the parties.

Part 3: LEGAL BASIS

18. In *Royal Bank of Canada v. Soundair Corp.* the Court identified several considerations that must be taken into account when deciding whether to approve a sale negotiated by a Court-appointed receiver, including:

- (a) whether the receiver made sufficient efforts to obtain the best price and did not act improvidently;
- (b) the interest of all parties;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been any unfairness in the sale process.

(the "***Soundair Test***")

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 [*Soundair*],
at para 16

19. In applying the *Soundair Test*, the court assesses whether the receiver acted in a commercially reasonable manner in the circumstances with a view to obtaining the best price having regards to the competing interest of the interested parties. The court's function is not to consider whether a receiver has failed to get the best price.

Royal Bank v. Soundair Corp., 1991 CarswellOnt 205 [*Soundair*],
at para 16

20. Only in exceptional circumstances will the Court intervene or proceed contrary to a receiver's recommendations to approve a sale if it is satisfied that the receiver acted reasonably, prudently, fairly and not arbitrarily.

Soundair, at para 58

Part 4: MATERIAL TO BE RELIED ON

21. The Receivership Order granted March 3, 2023;

22. First Report of the Receiver, dated September 1, 2023; and

23. Such further and other materials as counsel may advise and this Honourable Court may permit

The Receiver estimates that this application will take 15 mins

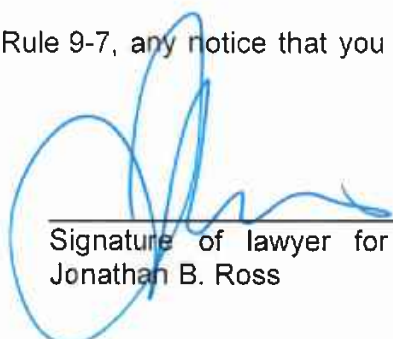
☐ This matter is within the jurisdiction of a master. e

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: Sept 1, 2023



Signature of lawyer for the Receiver
Jonathan B. Ross

To be completed by the court only:	
Order made	
[]	in the terms requested in paragraphs _____ of Part 1 of this notice of application
[]	with the following variations and additional terms:

Date: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- | | |
|--------------------------|-----------------------------------------------|
| <input type="checkbox"/> | discovery: comply with demand for documents |
| <input type="checkbox"/> | discovery: production of additional documents |
| <input type="checkbox"/> | other matters concerning document discovery |
| <input type="checkbox"/> | extend oral discovery |
| <input type="checkbox"/> | other matter concerning oral discovery |
| <input type="checkbox"/> | amend pleadings |
| <input type="checkbox"/> | add/change parties |
| <input type="checkbox"/> | summary judgment |
| <input type="checkbox"/> | summary trial |
| <input type="checkbox"/> | service |
| <input type="checkbox"/> | mediation |
| <input type="checkbox"/> | adjournments |
| <input type="checkbox"/> | proceedings at trial |
| <input type="checkbox"/> | case plan orders: amend |
| <input type="checkbox"/> | case plan orders: other |
| <input type="checkbox"/> | experts |

Schedule "A"

No. S0150937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF CHINA

PLAINTIFF/ JUDGMENT CREDITOR

AND:

XU CHAO FAN, also known as Hui Yat Fai; XU GAO JUN, also known as Xu Juo Jun, Xu Guo Jun, Kit Sun Hui; Hui Kit Shun Hui Kit Sun and Hui Kit Chun; YU ZHEN DONG, also known as Xu Zhen Dong, Yu Zhen-Dong, Yu Wing Chung, Yu Zhan Dong, Yu Wing Chong and Yu Chun Tung; KWONG WA PO; CINDY CHING YIU-CHU, also known as Sindy Ching, Ching Yu-Chu Sindy, Ching Fo-Chu and Ching Yu-Chu; KUANG WAN FANG, also known as Wendy Wan Fang Kuang; YING YI YU, also known as Yu Yung Yi; FION XU HUI YU, also known as Fion Yu and Xu Hu Yu; LI CONG XU; SIU LING YAN; XIA LI XU, also known as Carolyn Xia Li Xu and Carolyn X Xu; FAL KWONG CHING, also known as Fo Kong Ching, Fo Kong Cheung and Connie Fal Kwong Ching; WEN JING TAN; XU LIE MING; XU GANG QIANG; XU BIN YAN; TANG JIE YU, also known as Jie Yu Tang, Tan Jie Yu and Jie Yu Tan; YU BAO QUON, also known as Bao Quon Yu, Yu Bao Quan and Quan Bao Yu; LIANG BIN JIN; LIANG CUI E; and JOHN DOE

DEFENDANTS/ JUDGMENT DEBTOR

ORDER MADE AFTER APPLICATION

(APPROVAL AND VESTING ORDER)

BEFORE THE HONOURABLE

)
)
)

8 SEPTEMBER, 2023

THE APPLICATION of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Receiver (in such capacity the "**Receiver**") of the assets, undertaking, property and assets of Kuang Wan Fang, also known as Wendy Wan Fang Kuang, also known as Wan Fang Kuang (the "**Debtor**") in Canada, including all proceeds, coming on for hearing this day at Vancouver, British Columbia; AND ON HEARING Jonathan B. Ross, counsel for the Receiver, and _____ Counsel for the Petitioner, and no one else appearing, although duly served; AND UPON READING the material filed, including the Report of the Receiver dated September 1, 2023 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") contemplated by the Contract of Purchase and Sale dated August 8, 2023 (the "**Sale Agreement**") between the Receiver and Zhenghong Tian (the "**Purchaser**") for the property legally described as:

PID: 004-014-111

Lot 14 Block 3 Section 18 Block 4 North Range 6 West

New Westminster District Plan 15790

(the "**Lands**")

a copy of which is attached as Appendix "F" to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the Lands.

2. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Lands shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing any encumbrances or charges created by the Order of this Court in this proceeding dated March 3, 2023 (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Lands are hereby expunged and discharged as against the Lands.
3. Upon presentation for registration in the Land Title Office of a certified copy of this Order, together with a letter from Gowling WLG (Canada) LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:
 - (a) enter the Purchaser as the owner of the Lands together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and
 - (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances.

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Lands and any Property (as defined in the Receivership Order made in this proceeding on March 3, 2023) derived therefrom, including any withholding or other tax that may be payable to the Canada Revenue Agency, or any refunds of such withholding or other tax paid to Canada Revenue Agency in relation to the sale of the Lands, shall be paid to the Receiver, shall be held by the Receiver and shall stand in the place and stead of the Lands, and from and after the delivery of the Receiver's Certificate all Claims shall attach to the net proceeds from the sale of the Lands with the same priority as they had with respect to the Lands immediately prior to the sale, as if the Lands had not been sold and remained in the possession or control of the Receiver, being the person having had possession or control immediately prior to the sale.
5. The Receiver is to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof.
6. Subject to the terms of the Sale Agreement, vacant possession of the Lands shall be delivered by the Receiver to the Purchaser at 10:00 a.m. on the Possession Date (as defined in the Sale Agreement).
7. The Receiver, with the consent of the Purchaser, shall be at liberty to extend the Closing Date (as defined in the Sale Agreement) to such later date as those parties may agree without the necessity of a further Order of this Court.
8. Notwithstanding:
 - (a) these proceedings;
 - (b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made by or in respect of the Debtor,the vesting of the Lands in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.
9. The Receiver is empowered and authorized, but not obligated,
 - (a) to apply to Canada Revenue Agency for a certificate in the prescribed form (the "**Clearance Certificate**") pursuant to section 116 of the *Income Tax Act* (Canada) and/or a comfort letter (the "**Comfort Letter**") in relation to the Transaction for and on behalf of the Debtor and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;

- (b) to apply to Canada Revenue Agency for an Individual Tax Number (the "ITN") for and on behalf of the Debtor and, if considered necessary or appropriate by the Receiver, in the name of the Debtor;
 - (c) take all such steps as may be necessary, including communicating with Canada Revenue Agency and executing documents on behalf of the Debtor and updating the address of the Debtor, to obtain the Clearance Certificate, Comfort Letter, and ITN, including without limitation acting as the Debtor's "authorized representative" and, as required, appointing others to act as the Debtor's "authorized representative" for purposes of communicating with Canada Revenue Agency;
 - (d) to file income tax returns in the name and on behalf of the Debtor, if deemed advisable by the Receiver;
 - (e) to execute, assign, issue and endorse documents of whatever nature in respect of the sale of the Lands, whether in the Receiver's name or in the name of the Debtor, including without limitation any documents to be delivered to Canada Revenue Agency; and
 - (f) take possession of and exercise control over all receipts and disbursements arising out of or from tax refunds payable in respect of the Property.
10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
11. The Receiver or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Jonathan B. Ross

☐ Party ☒ Lawyer for the Receiver

Signature of Jeffrey Bradshaw

☐ Party ☒ Lawyer for the Petitioner

BY THE COURT

REGISTRAR

SCHEDULE A

No. S0150937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF CHINA

PLAINTIFF/ JUDGMENT CREDITOR

AND:

XU CHAO FAN, also known as Hui Yat Fai et al

DEFENDANTS/ JUDGMENT DEBTOR

RECEIVER'S CERTIFICATE

- A. On March 3, 2023, the Honourable Justice Groves made an order (the "**Receivership Order**") appointing Alvarez & Marsal Canada Inc., as the receiver (the "**Receiver**") of all of the assets, undertakings and property of Wendy Wan Fang Kuang, also known as Wan Fang Kuang (the "**Debtor**") in Canada.
- B. Unless otherwise stated herein, all capitalized terms in this Receiver's Certificate shall have the meaning set out in the Contract of Purchase and Sale dated August 8, 2023 (the "**Contract**") between the Receiver and Zhenghong Tian (the "**Buyer**").
- C. Pursuant to an Order of the Court dated [DATE] (the "**Approval and Vesting Order**"), the Court approved the sale of the Property to the Purchaser, providing for the vesting in the Purchaser of all of all of the Debtor's right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the delivery by the Receiver to the Buyer of a certificate confirming the transaction contemplated by the Contract has been completed to the satisfaction of the Receiver.

THE RECEIVER HEREBY CERTIFIES that the Receiver has received written confirmation from the Buyer that all conditions to completion have been satisfied and/or waived and that the Purchase Price has been paid in full.

ALVAREZ & MARSAL CANADA INC., in its capacity as the Receiver of Wendy Wan Fang Kuang, also known as Wan Fang Kuang, and not in its personal capacity:

Per: _____
Name:
Title:

No. S0150937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF CHINA

PLAINTIFF/ JUDGMENT CREDITOR

AND:

XU CHAO FAN, also known as Hui Yat Fai et al

DEFENDANTS/ JUDGMENT DEBTOR

**ORDER
(APPROVAL AND VESTING ORDER)**

GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5
Attention: Jonathan B. Ross

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V53261

JBR/msh

No. S0150937
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF CHINA

PLAINTIFF/ JUDGMENT CREDITOR

AND:

XU CHAO FAN, also known as Hui Yat Fai et al

DEFENDANTS/ JUDGMENT DEBTOR

NOTICE OF APPLICATION

GOWLING WLG (Canada) LLP
Barristers & Solicitors
Suite 2300, 550 Burrard Street
Vancouver, BC V6C 2B5
Attention : Jonathan B. Ross

Tel. No. 604.683.6498
Fax No. 604.683.3558

File No. V53261

JRB/msh