

Court File Number: CV-19-616261-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS  
AMENDED, AND RULE 10 OF THE ONTARIO RULES OF CIVIL PROCEDURE,  
R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF  
ADELAIDE STREET LOFTS INC.**

**RESPONDING APPLICATION RECORD OF THE RESPONDENTS, NADEEM GHORI  
AND UZMA GHORI**

April 11, 2019

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RCP-E 34A (July 1, 2007)

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STREET LOFTS INC.**

**RESPONDING APPLICATION RECORD OF THE RESPONDENTS, NADEEM GHORI AND UZMA  
GHORI**

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# TAB 1

**ONTARIO  
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**IN THE MATTER OF SECTION 60 OF THE TRUSTEE ACT, R.S.O. 1990, C. T.23, AS  
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R.R.O. 1990, REG. 194, AS AMENDED**

**AND IN THE MATTER OF HI-RISE CAPITAL LTD. AND IN THE MATTER OF  
ADELAIDE STREET LOFTS INC.**

**AFFIDAVIT OF NADEEM MOHAMMED GHORI SWORN APRIL 11,  
2019**

I, Nadeem Mohammed Ghori, of the City of Mississauga, in the Province of Ontario,  
MAKE OATH AND SAY:

1. I am a beneficiary under a trust agreement dated December 12, 2014 (the “**Trust Agreement**”) with Hi Rise Capital Ltd. (the “**Trustee**”), which Trust Agreement relates to a syndicated mortgage securing a loan to Adelaide Street Lofts Inc. (“**Adelaide**”). A copy of the Trust Agreement is attached hereto as Exhibit “**A**”.
2. The Trust Agreement matured on February 1, 2018. To date, I have not received the principal and interest amounts owed to me by the Trustee under the Trust Agreement.
3. To date, I have not received any financial information as to how my investment was managed by the Trustee. I have concerns that the money that I invested in connection with the Trust Agreement has been mismanaged by the Trustee and its directors, employees, officers and agents.

4. I have been advised by my lawyers, Rory McGovern, Jasdeep Bal and Daniel Perlin (the “**Lawyers**”) that the Trustee had originally advised investors that it would be providing offers to investors on March 29, 2019. To date, I have not received any offer from the Trustee in respect of my investment.

5. I have also been advised by my Lawyers that the current process that is being proposed by the Trustee will affect the rights I have under the Trust Agreement. My understanding of the Trust Agreement is that the Trustee is required to pay all of the principal and interest amounts owed to me prior to the discharge of the mortgage registered by the Trustee against Adelaide.

6. I am concerned that if this application is successful that my rights under the Trust Agreement will be altered without my consent and without the benefit of reviewing information related to how the trust funds were managed by the Trustee.

7. I have also been advised by my Lawyers that the Trustee is seeking to secure the legal fees it owes to its lawyers by registering a charge against Adelaide which will be in priority to all other interests with the exception of the existing first mortgage in favour of Meridian Credit Union Limited (the “**Cassels’ Charge**”).

8. I do not know how much the Trustee has spent on legal fees to date nor do I know the current value of the Trustee’s lawyers’ work in progress. As such, I do not know what the value of the Cassels’ Charge would be and how it would affect the recovery of any funds that would be payable to myself and the other beneficiaries under the trust agreements. I would like to know this information prior to Cassel’s Charge being registered against Adelaide and affecting my rights.

9. I have also been advised by my Lawyers that Representative Counsel is seeking to secure its fees for work that was done prior to being appointed as Representative Counsel on March 21, 2019 (the “**Representative Counsel Charge**”). To date, I have not been provided with any information as to the quantum of the proposed Representative Counsel Charge. I would like to know this information prior to Representative Counsel Charge being registered against Adelaide and affecting my rights.

10. I have also been advised by my Lawyers that as a result of the process that has been adopted by the court, that I may not receive the same information that Representative Counsel and the Consultative Committee receives in connection with negotiating and reviewing any offer provided by the Trustee. I would like my lawyers to have access to the information exchanged between Representative Counsel and the Trustee so I can make an informed decision about whether to accept any offers that will be provided to investors by the Trustee.

11. I swear this affidavit in response to the Applicant’s application and for no other or improper purpose.

**AFFIRMED BEFORE ME** at the City of Toronto, in the Province of Ontario on April 11, 2019

 (LSU(# 65633H)  
\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
**NADEEM MOHAMMED GHORI**

**RORY P. MCGOVERN**



# EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Nadeem Mohammed Ghori sworn (or affirmed) before me at Toronto, ON this 11<sup>th</sup> day of April 2019.

MORTGAGE ADMINISTRATION AGREEMENT

[Signature] (LSO#65633H)  
A Commissioner/Notary Public for the Province of Ontario

THIS AGREEMENT DATED the 17 day of December, 2014

BETWEEN:

HI-RISE CAPITAL LTD.

of the City of Toronto, Province of Ontario  
(hereinafter called the "Trustee")

AND

Nadeem Mohammad Ghori

of the City of Mississauga Province of ONTARIO  
(hereinafter called the "Beneficiary" individually and the "Beneficiaries" collectively)

WHEREAS the Trustee will hold an interest in the second mortgage registered against 268 Adelaide Street West, Toronto (the "Investment") in the name of Hi-Rise Capital Ltd.;

AND WHEREAS the Beneficiaries have paid and advanced the sum of [Redacted] Dollars as a portion of the Mortgage to the Trustee;

AND WHEREAS the Trustee holds the amount advanced by the Beneficiaries as trustee for the Beneficiaries;

AND WHEREAS the Beneficiaries have an undivided beneficial interest in the Investment to the extent of the portion advanced;

AND WHEREAS the rights and obligations of the parties are more particularly set out in the attached Loan Participation Agreement # 10-1010-2 and the Beneficiary is known as the "Participant";

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

THE TRUSTEE ACKNOWLEDGES AND AGREES that he is the mortgagee and investor pursuant to the Investment as trustee for the Beneficiaries;

THE TRUSTEE UNDERTAKES AND AGREES to deliver a conveyance of the Beneficiaries' entire interest in the Investment upon the Beneficiaries' request for the same and undertakes and agrees to execute any and all documentation necessary to give effect to the same with all costs to be borne by the Beneficiaries;

THE PARTIES HERETO AGREE that this Agreement shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have herein set their hands and seals.

SIGNED, SEALED AND DELIVERED

HI-RISE CAPITAL LTD.  
Mortgage Brokerage # 10897  
Mortgage Administrator # 11893

[Signature]

Jim Neilas, Managing Director

Nadeem M. Ghori

Beneficiary

[Signature]

Signature

LOAN PARTICIPATION AGREEMENT

Participation Agreement #10-1010

THIS PARTICIPATION AGREEMENT MADE

BETWEEN

HI-RISE CAPITAL LTD.  
(hereinafter called "HRC")

-AND-

OF THE FIRST PART

PERSON(S) AND/OR ENTITY AS PER THE MORTGAGE ADMINISTRATION AGREEMENT  
TO WHICH THIS AGREEMENT IS ATTACHED  
(hereinafter called the "Participant")

OF THE SECOND PART

WHEREAS HRC has given to the Participant the opportunity to participate in a certain loan which is a participating loan, (hereinafter called the "Loan") made or to be made to the borrower hereinafter set out (hereinafter called the "Borrower") upon the terms set out in the Participant's Participation documentation between the Borrower and HRC;

AND WHEREAS HRC and the Participant agree that the relationship between HRC and the Participant shall be governed by the following terms and conditions:

Name of Borrower: **Adelaide Street Lofts Inc.**

Participant's Participation: **Amount set out in the Mortgage Administration Agreement**

Participating Lender: **Hi-Rise Capital Ltd.**

Priority in Mortgage Loan: *There is a second mortgage registered against the subject property in the name of both Hi-Rise Capital Ltd. and Canadian Western Trust. Canadian Western Trust will hold an interest of \$9,500,000.00 ahead of Hi-Rise Capital Ltd.*  
*As a registered investor, you participate in this second mortgage through Canadian Western Trust. As between the second mortgagees, Hi-Rise Capital Ltd. is subordinated to Canadian Western Trust. In the event of an insolvency or liquidation of the borrower, the claims of Canadian West Trust. will rank senior to the claims of Hi-Rise Capital Ltd..*

Project Name: **Adelaide Street Lofts (the "Project")**

Security: **2<sup>nd</sup> Mortgage**  
*I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority. I hereby understand, consent, and agree that other charges/ mortgages and/or development agreement may be registered in priority to the charge of the Property.*

Prior Mortgages: **1<sup>st</sup> Mortgage (VTB – Refer to Disclosure Documents)**

Amount of Loan: **\$40,000,000**  
*(I understand that the mortgage shall be initially registered indicating a face value of \$40,000,000 and from time to time, the loan amount will increase upon the completion of certain development and construction milestones on the Property by the Borrower, eventually replaced by construction/project financing).*

Term of the Mortgage/Investment: **4 Years**  
*Maturity Date: (February 1, 2018) – At the Borrower's option (to be exercised in writing not less than one (1) month prior to Maturity Date); the Borrower may extend the Maturity Date for twenty-four (24) additional months.*

Initial: NS

Fixed Interest Rate: HRC agrees to pay the Participant a fixed rate of 10.5% per annum (less 0.5% mortgage administration fee) as and when received from the Borrower  
(The right of interest on delayed interest payments does not apply).

\*Bonus Interest Payment: 2% Accrued per annum payable upon completion of the project.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants herein contained and the sum of TEN (\$10.00) DOLLARS now paid by each of the parties (the "Parties") to the other (the receipt of which is hereby acknowledged by each of the Parties) and other good and valuable consideration, the Parties hereto hereby agree as follows:

## 1. Acknowledgement

- i. Canadian Western Trust will rank ahead of Hi-Rise Capital Ltd. in the second mortgage. Hi-Rise Capital Ltd. is postponing to Canadian Western Trust for \$9,500,000.00 plus 18% interest per annum minus the administration fee. Canadian Western Trust's interest in the mortgage may increase from time to time.
- ii. I understand that sometime in the future, the Borrower will renew or replace the first charge/mortgage on the property.
- iii. I understand that during the course of this investment, the Borrower anticipates obtaining additional construction financing for the Property which is expected to take priority to the first charge/mortgage, changing its position to a second charge/mortgage.
- iv. I understand, consent and agree that other charges/mortgages and/or development agreements may be registered in priority to the first/second charge/mortgage against the property during the term of my investment in the second charge/mortgage registered in the name of Hi-Rise Capital Ltd.
- v. I hereby confirm, understand and agree that the second charge/mortgage in which I have invested shall be required to postpone and standstill to prior charges/mortgages to a sum of \$93,000,000 plus a 20% contingency if required, in priority financing. I understand that priority financing is expected to periodically increase over the term of the second charge/mortgage and that such postponements shall be permitted.
- vi. I hereby confirm, understand and agree that the second charge/mortgage in which I have invested shall be required to postpone and standstill to permit the registration of certain agreements for the purpose of facilitating the planned development of the property. The trustees of this charge/mortgage may execute such documents when needed. An example of such agreements includes (but not limited to):
  - Site plans
  - Mezzanine financing
  - Insurance on purchase deposits
  - Condominium registration docs, etc.
- vii. I understand that additional priority financing may be required if there is a shortfall pursuant to the terms of the charge/mortgage in which I am investing. In the event of a shortfall in the funding of this charge/mortgage, I understand and agree that other charges/mortgages may be registered against the property to fund and secure any such shortfall.
- viii. I understand that the additional priority, construction and other financing will change the LTV ratios of the project.

## 2. Use of Funds

HRC agrees to advance the Participant's Participation to the Borrower upon the terms and conditions contained in the Loan Commitment issued by HRC to the Borrower.

Initial:           NY

### 3. Redemption of Participant's Participation

The following redemption will apply to redemption of any part of the Participant's Participation:

- i. On or before the first 12 months from the date HRC receives the Participant's Participation, if the Participant wants to redeem its Participation, the Participant will pay a fee equal to 25% of the amount redeemed;
- ii. On or before the first 24 months from the date HRC receives the Participant's Participation, if the Participant wants to redeem its Participation, the Participant will pay a fee equal to 20% of the amount redeemed;
- iii. On or before the first 36 months from the date HRC receives the Participant's Participation, if the Participant wants to redeem its Participation, the Participant will pay a fee equal to 15% of the amount redeemed;
- iv. At any time before the first 48 months from the date HRC receives the Participant's Participation, if the Participant wants to redeem its Participation, the Participant will pay a fee equal to 10% of the amount redeemed;

And in addition to the above fees, HRC shall deduct all interest payments received by the Participant for the amount being redeemed.

### 4. Priority of Return

Subject to the terms and conditions hereinafter set out, the Parties agree that all monies received by HRC on account of the Loan shall be applied in the following manner:

Firstly: Pay all costs, charges and expenses of, and incidental to, collecting, demanding, recovering and enforcing payment of the Loan;

Secondly: Any and all remaining monies shall be distributed pro-rata to each Participant based on each Participant's proportionate share of the total amount invested by all of the Participants and the share of profits received from HRC on behalf of all of the Participants from the Borrower or of any proceeds of disposition from any action taken by HRC to enforce its security against the Borrower.

The above excludes monies received by HRC if it markets another Participant's Participation during the term of the Loan and receives monies for the sale of that other Participant's Participation. Those monies shall be considered trust funds of the other Participant and shall not be distributed according to the Priority of Return set out above but shall be distributed to the other Participant in their entirety or according to the brokerage agreement between the Participant and HRC.

### 5. Syndication, Asset Management, and other Fees

The Participant acknowledges that fees are payable to HRC and Neilas Inc. or a related entity for its role in the Loan pursuant to and in accordance with the disclosure documentation provided to the Participant, as same may be amended from time to time. A 5% administration fee is paid to HRC.

### 6. Remittance of Proceeds

Forthwith upon the receipt of payments on account of the Loan by way of certified cheque and/or forthwith upon clearance by HRC or its banker of any uncertified cheques received on account of payments representing the Participant's Participation, HRC agrees to remit to the Participant the Participant's share of all monies to which it is

Initial:     *AK*

entitled under this agreement.

HRC shall be entitled a period of ten business days from the date of receipt of funds or clearance of funds to determine the amount the Participant is entitled to receive after deducting any costs or expenses related to the Participant's Participation which HRC is entitled to deduct. HRC, in its discretion, may make specific distributions to a Participant if and when it deems appropriate. This means HRC may make a distribution to one Participant and not another.

#### 7. Closing of the Participant's Participation

The Parties agree that in the event HRC shall not advance the entire amount of the Participant's Participation to the Borrower for any reason whatsoever, then the Participant's Participation shall be returned forthwith to the Participant without interest or reduction, and this Agreement shall become null and void.

In the event that HRC shall advance only part of the Participant's Participation to the Borrower for any reason whatsoever, then HRC may, at its option, either return a part or the whole of the Participant's Participation forthwith to the Participant, without interest or deduction, in which event this Agreement shall become null and void or this Agreement shall apply only to the portion of the Participant's Participation that was advanced to the Borrower. Furthermore, HRC may proceed to subscribe for the remaining amount of the Participant's Participation for its own account.

#### 8. Default of Participant's Participation

Upon default being made under the Loan Agreement by the Borrower, the Participant agrees that HRC shall be vested with the following rights:

- i. To make such decisions, to take such action and exercise all such rights and remedies as HRC may, in its absolute discretion, deem advisable in the best interests of all Participants in the Loan, including the right to re-negotiate the Loan upon such terms as HRC shall deem advisable;
- ii. To hire, or otherwise retain the services of a receiver, solicitor, appraiser and such other parties who HRC, in its discretion, deems necessary or advisable to enforce the rights of HRC and to pay reasonable fees for all such services;
- iii. To request that each Participant in the Loan advance such further monies (the "Required Funds") which HRC in its discretion deems desirable or necessary in order to protect the Loan and the Participant's Participation. In the event the Participants fails to advance the Required Funds, HRC and/or any other participants in the Loan may advance the Required Funds and, in such event, the party or parties which advanced the Required Funds shall have a lien and charge against the Participant's Participation. Such advances made shall bear interest on the amount advanced at the rate of 25% per annum, calculated monthly, in arrears not in advance;
- iv. The administrator shall promptly notify each lender or investor if the borrower defaults under the Loan.

#### 9. HRC Administrator and Trustee Powers

The Participant expressly authorizes HRC to make all decisions and take any actions it may deem necessary to protect principal advanced under the Loan and enhance the value of the security including without limitation changing the nature and scope of the mortgage security.

#### 10. Notifications Re Encumbrances

HRC will promptly notify Participants if it becomes aware of a subsequent encumbrance on the mortgaged property or any significant change in circumstances affecting the Loan.

#### 11. Relationship of Participant to HRC

It is expressly understood and agreed that the Participant's Participation is in no way to be deemed an investment in

Initial: NY

HRC, or any of its affiliates, subsidiaries, employees or officers, or a borrowing by HRC or any of its affiliates, subsidiaries, employees or offices from the Participant, and repayment of the Participant's Participation is in no way, either directly or indirectly, guaranteed by HRC or any of its affiliates, subsidiaries, employees or officers, other than any the corporate guarantee for the amount of the Participant's Participation being provided by HRC.

The parties hereto further acknowledge and agree that the Participant's decision to participate in the Loan has not been induced by, nor does the Participant rely upon or regard as material, any representation or promise whatsoever with respect to the Loan, whether oral or otherwise, by whomsoever made, except as set out in this document, and the Investor/Lender Disclosure required under FSCO Regulations the Mortgage Administration Agreement executed between HRC and the Participant.

#### 12. Registration of Interest on Title

The Participant covenants and agrees, which covenant and agreement shall be binding upon his heirs, administrators, successors and assigns, not to register on title to the property which is the subject matter of the Participant's Participation as set out herein, the within Agreement, any notice thereof, or any assignment, mortgage, hypothecation, or transfer thereof, whether directly or indirectly, and it is expressly understood and agreed that if the within Agreement, any notice thereof or any assignment, hypothecation, or transfer thereof, whether directly or indirectly, shall be registered contrary to the provisions hereof, then in any such event, HRC may, at its option, declare this Agreement terminated and pay to the Participant, in full and complete satisfaction of any claims by the Participant, four-fifths ( $\frac{4}{5}$ <sup>ths</sup>) of the balance of the Participant's Participation then outstanding, without interest, and the balance shall be retained by HRC as liquidated damages and not as a penalty.

#### 13. Discharge of Security

It is further understood and agreed, that HRC is hereby empowered to give a good and valid discharge or assignment of the Loan without the consent of the Participants in the Loan, provided all monies due under the Loan as originally agreed upon or as amended, together with all other costs and charges, have been fully repaid or will be fully repaid under the terms of any discharge or assignment.

#### 14. Duty of HRC

HRC, so long as it acts in good faith, shall not be responsible with respect to the exercise and/or non-exercise of its powers hereunder. HRC shall only be liable for wrongful acts or breaches of this Agreement and HRC shall not be liable for any error in judgement.

#### 15. Transfer of Interest

The Participant covenants and agrees that he will not sell, assign, transfer, pledge, mortgage, charge, hypothecate or otherwise dispose of, encumber or deal with his Participation except with the prior written consent of HRC which consent may be unreasonably withheld. In the event that the Participant obtains the said written consent of HRC, no such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of or encumbrance of dealing with the Participant's Participation shall be valid or effective unless or until the person, firm or corporation to whom the Participant's Participation has been sold, assigned, transferred, pledged, mortgaged, charged, hypothecated or otherwise disposed of, encumbered or dealt with shall have entered into an agreement with HRC consenting to the terms hereof and agreeing to assume all of the obligations of the Participant and to be bound by all of the terms hereof as though he were the Participant.

Provided further that, notwithstanding any such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of, encumbrance or dealing with the Participant's Participation, the Participant shall continue to be liable hereunder as though no such sale, assignment, transfer, pledge, mortgage, charge, hypothecation or other disposition of, encumbrance or dealing with the interest of the Participant in the Participant's Participation has been made.

Initial: MM

## 16. Loan Documents

The Parties hereto agree that all relevant documents pertaining to the Loan and the Participant's Participation shall remain in the possession of HRC and shall be held by HRC for and on behalf of HRC and all the Participants in the Loan, subject to the terms of this Agreement. It is understood and agreed that the Participants in the Loan shall be entitled to examine said documents at the office of HRC during normal business hours and upon giving reasonable advance notice of their desire to examine such documents. HRC, as part of its reporting to Participants as asset manager shall forward a closing book containing, among other things, all security documentation executed by the Borrower.

## 17. Tax Act

Notwithstanding any other provision contained in this Agreement, if any Participant in the Loan is a trust which is governed by a registered retirement savings plan, then any provision in this Agreement which shall be interpreted to mean that the Participant's Participation is not a qualified Participant's Participation within the meaning of Paragraph 146(1) (g) of the Income Tax Act, shall not be applicable to the said Participant.

## 18. Entire Agreement

This Agreement expresses the entire and final agreement between the Parties hereto with respect to all matters herein and the Parties agree that the execution of this Agreement has not been induced by, nor do any of the Parties hereto rely upon or regard as material, any representation or promises whatsoever, whether oral or otherwise, by whomsoever made, except as hereinbefore expressly set out, nor shall any such representations, whether oral or otherwise, have the effect of varying or altering the terms of this Agreement.

## 19. Jurisdiction

The Parties hereto covenant and agree that in the interpretation and application of any of the provisions and terms of this Agreement, the laws of the Province of Ontario shall apply and the Participant hereby attorns to the jurisdiction of Ontario in the event of any dispute arising from this or any other agreement between HRC and the Participant.

## 20. Interpretation

The term "Participant", "Parties", "Borrower" and the personal pronouns "he", "his", and/or "their" relating thereto and used therewith shall be used and construed as the number and gender of the party referred to in each case requires, and the verb agreeing therewith shall be construed as agreeing with the said word or pronouns so substituted.

## 21. Successors and Assigns

This Agreement shall be binding upon the Participant and everything herein contained shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

## 22. Closing Subscriptions

The Participant agrees that should HRC have subscriptions from Participants for less than the full amount of the Loan HRC may close on the Loan and advance the Participants Participation. The Participant acknowledges that HRC may not be able to raise the remaining amount of the Loan from other participants, which would pose a risk to the security of the Loan and the Participant's Participation.

Initial: ML



HI-RISE CAPITAL LTD.  
Applicant

-and- SUPERINTENDENT OF FINANCIAL SERVICES et al.  
Respondents

Court File No. CV-19-616261-00CL

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

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**AFFIDAVIT OF NADEEM MOHAMMED GHORI**  
**SWORN APRIL 11, 2019**

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Lawyers for the respondents, Nadeem and Uzma Ghori  
**File Number:**

RCP-E 4C (May 1, 2016)

HI-RISE CAPITAL LTD.  
Applicant

-and- SUPERINTENDENT OF FINANCIAL SERVICES et al.  
Respondents

Court File No. CV-19-616261-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

**RESPONDING APPLICATION RECORD OF THE  
RESPONDENTS, NADEEM GHORI AND UZMA  
GHORI**

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RCP-E 4C (May 1, 2016)