

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.) FRIDAY, THE 23rd DAY
)
JUSTICE KOEHNEN) OF JULY, 2021

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the “**Receiver**”), of the undertaking, property, and assets of O2 Industries Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement among the Receiver, the Debtor and 2841551 Ontario Limited (“**2841551**”) made as of May 28, 2021 (the “**Asset Purchase Agreement**”) and appended to the first report of the Receiver dated July 14, 2021 (the “**First Report**”), and vesting in 2841551 or

such other person(s) as 2841551 may designate in accordance with the Asset Purchase Agreement (the “**Purchaser**”) the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets (as defined in the Asset Purchase Agreement), was heard this day virtually by Zoom videoconference due to the COVID-19 crisis.

ON READING the First Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and the Applicant, no one else appearing for any other person on the service list, although properly served as evidenced by the affidavit of service filed with the Court,

1. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined in this Order shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver and the Debtor is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser agree. The Receiver and the Debtor are 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 of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets shall vest absolutely in the Purchaser, 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, constructive or otherwise),

liens, executions, levies, charges, causes of action, or other financial or monetary claims (including all Excluded Liabilities), 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: (i) any encumbrances or charges created by the Receivership Order of The Honourable Madam Justice Conway dated May 27, 2021 or any other Order of the Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”). For greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that (a) following completion of the Transaction, the Receiver or the Debtor are hereby authorized and permitted to execute and file articles of amendment or

such other documents or instruments as may be required to change the legal name of the Debtor, and such articles, documents or instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the Ontario Ministry of Government Services or other official without the requirement (if any) of obtaining director, shareholder or other approval pursuant to any federal or provincial legislation, and (b) upon the official change of the legal name of the Debtor, the name of the Debtor in the within title of proceedings shall be deleted and replaced with the new legal name of the Debtor, and any document filed thereafter in these proceedings (other than the Receiver's Certificate) shall be filed using such revised title of proceedings.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.


8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets 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 nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA 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. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction to give effect to this Order and to assist the Receiver and the Debtor and their respective 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 Debtor and 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 Debtor and the Receiver and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.



Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00663208-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 27, 2021, RSM Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of O2 Industries Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated July 23, 2021 (the “**Order**”), the Court approved the asset purchase agreement made as of May 28, 2021 (the “**Asset Purchase Agreement**”) among the Receiver, the Debtor and 2841551 Ontario Limited (“**2841551**”), and provided for the vesting in 2841551 or such other person(s) as it may designate in accordance with the Asset

Purchase Agreement (the “**Purchaser**”) of the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____, 2021.

**RSM CANADA LIMITED,
in its capacity as Receiver of the undertaking,
property and assets of O2 Industries Inc., and
not in its personal capacity**

Per: _____

Name:

Title:

KENSINGTON PRIVATE EQUITY FUND
Applicant

- and -

O2 INDUSTRIES INC.
Respondent

Court File No. CV-21-00663208-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSO #51399S)

Tel: (416) 218-1137

E-mail: samr@chaitons.com

Lawyers for RSM Canada Limited,
Court-appointed Receiver