
CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
DIVISION: 01- MONTRÉAL
Court No.: 500-11-058403-201
File No.: 41-2653429

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF:

MODASUITE INC., legal person duly incorporated according to law having its principal place of business at 160 Saint-Viateur Street East, Suite 702, in the city of Montreal, province of Quebec, H2T 1A8

Applicant / Debtor

- and -

KPMG INC., a corporation duly incorporated under the *Canada Business Corporations Act* (Canada), having a place of business at 600, boul. De Maisonneuve Blvd. West, Suite 1500, in the city of Montreal, province of Quebec, H3A 0A3

Trustee

**FIRST REPORT OF THE TRUSTEE ON THE STATE OF THE APPLICANT'S BUSINESS AND
FINANCIAL AFFAIRS**

I, Stéphane De Broux, CPA, CA, CIRP, LIT, of KPMG Inc., in my capacity as trustee under the Notice of Intention to make a Proposal filed by the Applicant, report to this honorable Court as follows.

INTRODUCTION

1. On June 22, 2019, Modasuite Inc. ("**Modasuite**" or the "**Company**" or the "**Debtor**") filed a Notice of Intention to make a Proposal ("**NOI**") under the provisions of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**BIA**") and KPMG Inc. was named as trustee to the NOI (in such capacity, the "**Trustee**").
2. The purpose of this First Report is to provide this Honorable Court with information regarding the following:
 - a) Background information regarding Modasuite;
 - b) Principal causes of Modasuite's financial difficulties;
 - c) Overview of Modasuite's financial situation;
 - d) The contemplated restructuring;
 - e) Overview of Modasuite's preliminary cash flow forecast;
 - f) The Trustee's recommendation relating to the following orders sought by Modasuite to :
 - i) Authorize Modasuite to conduct the Sale (as defined below) in the Potentially Closing Stores (as defined below) in accordance with the terms of the Sale Guidelines (as defined below);

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- ii) Grant an Administration Charge and a D&O Charge (as such terms are defined below); and
- iii) Authorize Modasuite to make its rental payments to landlords on a bi-monthly basis, as opposed to a monthly basis.

RESTRICTIONS AND SCOPE LIMITATIONS

3. In preparing this report, the Trustee has been provided with and has relied upon unaudited financial information, books and records (the "**Information**") prepared by management of the Company ("**Management**"), and following discussions with Management. Except as further described in this report:
 - a) The Trustee has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Trustee has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
 - b) Some of the Information referred to in this report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
4. Future oriented financial information referred to in this report was prepared based on Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
5. The information contained in this report is not intended to be relied upon by any prospective purchaser or investor in any transaction with Modasuite.
6. Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars, which is Modasuite's common reporting currency.

BACKGROUND INFORMATION

7. Modasuite is a privately owned company incorporated in 2009. The company's head office is located at 160 Saint-Viateur Street East, Suite 702, in the City and District of Montreal, Province of Quebec.
8. Modasuite, doing business as Frank And Oak, sells modern men's and women's clothing, footwear and accessories, with a focus on using eco-conscious materials and methods for its products and ethical practices throughout its supply chain. As of the date of this report, Modasuite is employing more than 300 employees.
9. The Company sells its merchandise through its e-commerce platform. In addition, Modasuite operates a retail business through its 20 stores in Québec, British Columbia, Alberta and Ontario (each a "**Store**", collectively, the "**Stores**"), located in several of Canada's major cities. Finally, the Company has one distribution centre located in Montréal, Québec.
10. The Company sells its merchandise under the "Frank And Oak" brand and all intellectual property rights in connection therewith are owned by Modasuite.

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11. As the date hereof, Modasuite operates 20 retail stores operating in the following provinces:

Retail stores by province	
Province	# Stores
Alberta	1
British Columbia	2
Ontario	8
Quebec	9
Total	20

12. Although the shareholders have supported the business since its foundation, the business has deteriorated recently mainly due to COVID-19 and is now facing serious liquidity constraints.

PRINCIPAL CAUSES OF FINANCIAL DIFFICULTIES

13. On March 18, 2020, Modasuite was forced to close its Stores in the context of the collective efforts to help limit the spread of COVID-19 and in an effort to protect the health and well-being of its employees and customers. Its online sales have continued to operate without interruption through the crisis period.
14. As a result of the foregoing and concurrently therewith, Modasuite had no alternative but to temporarily lay off its Stores' employees. In an effort to manage its cash reserves, Modasuite also reduced its head office operations, resulting in a temporary lay off of approximately 30% of its head office employees.
15. As of the date hereof, in compliance with decrees of relevant governmental authorities, 13 Stores have reopened their doors, albeit with reduced hours and increased safety measures.
16. In addition to the significant losses and disruptions caused by Stores' closings, the COVID-19 crisis has had the following material impact on Modasuite's business:
- a) The profitability of Stores that have reopened is dramatically decreased due to significant costs associated with safety measures and limited client traffic; and
 - b) The investor landscape has been dramatically affected, hindering Modasuite from attracting additional investors.
17. Furthermore, similar to many retailers, Modasuite's brick-and-mortar business fell victim in recent years to changing consumer preferences, expensive leases and a general shift away from brick-and-mortar shopping.
18. In addition, Management attributes the negative trending to a number of factors including:
- a) Too many stores for the size of the market, particularly, given the continuing trend towards online purchases;
 - b) Unsustainable occupancy cost, with a high proportion of stores not being profitable;
 - c) The low profitability of the wholesale division, which is now closed;
 - d) Overhead cost structure too high for the level of sales;
 - e) Challenging retail environment across Canada.
19. The shareholders advised that Modasuite of their clear intention to no longer fund the losses of the Company.

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20. In light of the above-noted challenges, Modasuite attempted to restructure the business, but ultimately came to the conclusion that a formal restructuring was the only viable alternative for preserving going concern operations.
21. Modasuite intends to restructure its business and focus its efforts on strengthening the Company's growing e-commerce operation, which has always been at the core of the brand since its early days.

OVERVIEW OF MODASUITE'S FINANCIAL SITUATION

Statement of Earnings (Loss)

22. The financial data referred to herein is based upon the Information provided by Management, Modasuite's books and records, and discussions with Modasuite's representatives. The Trustee has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of such information. This information is submitted solely to assist the reader in assessing the financial position of Modasuite. The Trustee makes no representation or warranty as to the accuracy of said financial information.
23. Modasuite reported earnings before interest, taxes, depreciation and amortization ("**EBITDA**") of negative \$6.5 million for the 10-month period ended April 30, 2020 ("**FY20 YTD**"). The financial statements for the FY20 YTD are presented under seal in **Appendix 1**, together with a table summarizing said financial results.
24. Modasuite has recorded an EBITDA loss during fiscal years 2018 ("**FY18**") and 2019 ("**FY19**") of \$7.6 million and \$3.8 million respectively. The financial statements for FY18 and FY19 are presented under seal in **Appendix 2**.
25. In FY20 YTD, we note that the contribution margin decreased as a percentage of net revenue compared to FY19 from 22.2% to 19.3%.

Balance Sheet

26. Modasuite's balances sheet as at April 30, 2020, and the last two fiscal years are presented in more details as part of **Appendix 1**, under seal, and are otherwise summarized below.

Assets

27. As of April 30, 2020, Modasuite's balance sheet reflected assets of approximately \$25.2 million.
28. Modasuite's tangible assets consist primarily of:
 - a) Cash and restricted cash: as at June 14, 2020, the cash balance totaled \$2.8 million including \$1 million of restricted cash;
 - b) Receivables (\$4.5 million): composed of receivables from the wholesale business, tax credits and drawback receivables;
 - c) Inventory (\$7.1 million): composed of men's and women's clothing, footwear and accessories; and
 - d) Fixed assets (\$2.6 million): composed of leasehold improvements, furnitures, fixtures and computer equipment.
29. In addition to the above, the assets also include deposits, prepaid expenses and trademarks.

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30. Modasuite operates from leased premises and does not own any real estate.

Liabilities

31. As appears from the list of creditors to the NOI, as at June 22, 2020, the total indebtedness of Modasuite amounts to approximately \$19 million, presented as follows :

Estimated Liabilities	
As at June 22, 2020	
(In \$000's)	
Secured Creditors	
Desjardins line of credit	881 \$
Desjardins term loan	4 839
	<hr/>
	5 720
Priority claims / Preferred Creditors	
Vacation payable	725
Sales tax payable	1 248
Other preferred creditors, if any	TBD
	<hr/>
	1 973
Unsecured Creditors	
Trade creditors	10 719
Customers' gift cards	545
	<hr/>
	11 264
	<hr/>
Total	18 957 \$

Secured Creditors

32. At the time of the NOI filing, Modasuite had one secured creditor, Fédération des Caisses Desjardins du Québec ("**Desjardins**"). As of June 21, 2019, Modasuite and Desjardins entered into an agreement pursuant to which Desjardins provides Modasuite with a secured term loan (the "**Term Loan**"), a secured line of credit (the "**Revolving Credit**") and certain other secured credit facilities (all facilities including the Term Loan and the Revolving Credit are hereafter collectively referred to as the "**Desjardins Loan**").
33. The Trustee is informed that Desjardins has registered a charge on all of the Company's assets that would be first ranking. The Trustee will, in due course, obtain a legal opinion from its independent legal advisors as to the validity of the Desjardins security and any other secured charges that may have been registered on the Company's assets.
34. As a result of the recent breach of certain covenants, Modasuite entered into a Forbearance Agreement (the "**Forbearance Agreement**") with Desjardins, a copy of which is presented under seal in **Appendix 3**.
35. Under the terms of the Forbearance Agreement, Desjardins has agreed to tolerate the various defaults and to continue to finance Modasuite's operations during the restructuring period, subject to certain conditions being respected. The Forbearance Agreement also provides for the full repayment of the line of credit of \$884,000 and partial repayment of the Term Loan of \$1 million.
36. As part of the Forbearance Agreement, Desjardins was provided with management's weekly cash flow projections.
37. On June 19, 2020, in the context of the Forbearance Agreement, Desjardins issued to Modasuite a Notice of Intention to Enforce Security pursuant to section 244 of the BIA.

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Priority claims and Preferred Creditors

38. Modasuite's employees are paid (through payroll services) on a bi-weekly basis, and it is projected that Modasuite will continue to remain current in the payment of salaries to its employees. Statutory deductions from employee salaries are made, as required, and remitted to the appropriate governmental authorities, where applicable. These deductions are also current. Modasuite does not maintain any pension or retirement plans.
39. The accrued vacations amount to approximately \$725,000 as of the date hereof.
40. Sales tax payable amount to approximately \$1.2M as of the date hereof, mainly composed of unremitted sales taxes for the months of November 2019 to February 2020.

Unsecured Creditors

41. Trade creditors: the amount of \$11.3 million referred to above is based on the books and records of Modasuite.
42. As for the landlords, the base rent in arrears totals approximately \$1.1M for the months of April, May and June 2020 that have not been paid, before taking into account any further claims which may result from eventual Store closures.
43. Modasuite offers credits and gift cards to its customers that, according to Modasuite's records, total approximately \$545,000. In the interest of maintaining customer loyalty and confidence of the customer base, Modasuite will seek permission from the Court to honor these credits and gift cards.
44. The Trustee cautions that these amounts may change as proofs of claims are filed, as is customary in any insolvency proceedings.

PROPOSED RESTRUCTURING

45. The Company intends to restructure its business to refocus on its core e-commerce operation which has always been its strength and generating most of its revenues. The current restructuring strategy of Modasuite contemplates a liquidation of merchandise in unprofitable Stores and closing of same, and the restructuring of the remaining activities and operations.

Restructuring plan

46. With the assistance of the Trustee and its other advisors, Modasuite determined that the best course of action in the current circumstances is to (i) reduce its retail footprint through the liquidation and closure of certain Stores (collectively the "**Potentially Closing Stores**"), (ii) implement measures to reduce operating costs the whole with the view to reaching profitability as soon as possible, and (iii) launch a sale and investment solicitation process ("**SISP**").
47. The contemplated SISP is expected to be launched no later than June 29, 2020, with the assistance of an external advisor and in consultation with Desjardins, with the deadline to receive letters of intent and binding offers being set no later than August 7, 2020, and September 2, 2020, respectively.
48. In order to achieve the objectives outlined above, Modasuite is seeking this Court's issuance of the orders more fully described below.

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Closing Stores Liquidation

49. The Company, in consultation with the Trustee, is conducting an analysis of the performance of each of its Stores and considers that it would be in the best interest of all of its stakeholders to proceed with the liquidation and closing of certain underperforming Stores.
50. To that effect, Modasuite intends to proceed with a sale of all the retail inventory located in some or all of the Potentially Closing Stores and all of the furnishings, fixtures and equipment located therein (the "**Sale**").
51. Modasuite intends to conduct the Sale in accordance the sale guidelines (the "**Sale Guidelines**"), presented in **Appendix 4**.
52. The Sale, expected to last for up to 60 days, will be conducted by Modasuite and not by a third-party liquidator.
53. The Company will be honouring all gift cards and credits redeemed during the Sale. All sales made in the context of the Sale will be final.
54. The Company is seeking Court approval of the Sale Guidelines.

DEBTOR'S PRELIMINARY CASH FLOW FORECAST

55. The representatives of Modasuite have prepared a preliminary cash flow (the "**Preliminary Cash Flow**") for the period from June 15 to September 13, 2020 (the "**Cash Flow Period**"), presented under seal in **Appendix 5**.
56. The Trustee has assessed the reasonableness of the Preliminary Cash Flow. The Trustee's assessment of the Preliminary Cash Flow consisted of inquiries, analyses and discussions related to information supplied to it by certain key members of Management and employees of Modasuite. The Trustee's procedures with respect to the Preliminary Cash Flow assumptions were limited to evaluating whether they were consistent with the purpose of the Preliminary Cash Flow.
57. Based on the Trustee's review, nothing has come to its attention that raises a material doubt in respect of the following:
 - a) The Preliminary Cash Flow assumptions are consistent with the purpose of the Cash Flow;
 - b) As at the date of this First Report, the Preliminary Cash Flow assumptions are suitably supported and consistent with the proposed plans for Modasuite and provide a reasonable basis for the Preliminary Cash Flow given the Preliminary Cash Flow assumptions; or
 - c) The Preliminary Cash Flow reflects the Preliminary Cash Flow assumptions.
58. A summary of the Preliminary Cash Flow is set out in the table below and presents cash inflows, outflows and costs related to the NOI Proceedings for the Cash Flow Period:

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Modasuite Inc.	
Financial Model	
Projected Cash flow	
For the period from June 15, 2020 to September 13, 2020	
<i>('000)</i>	<u>Total</u>
Cash Receipts (net)	\$ 8 528
Cash Disbursements	
Inventory purchases	(542)
Inventory deposits	(600)
Payable payments (vacation & returns)	(502)
Salaries, benefits & bonus (net of subsidy)	(1 911)
Operational direct costs	(1 066)
Rent	(1 081)
SG&A and marketing	(1 392)
Deposits (utilities & payment processors)	(200)
Capital & interest repayments on debt	(129)
Contingencies	(65)
	<u>(7 489)</u>
Cash flow before professional fees	1 039
Professional fees	(450)
Net cash flow	\$ 589
Cash balance - opening balance	\$ 1 761
Net cash flow	589
Line of credit Desjardins repayment	(884)
Term loan Desjardins repayment	(1 000)
Cash bal. after reimb. line of credit/term loan	\$ 465

59. The Trustee notes the following with respect to the Preliminary Cash Flow:
- As at June 15, 2020, the opening cash balance was approximately \$1,761,000;
 - The Preliminary Cash Flow reflects total cash receipts from go-forward stores and online sales of approximately \$8,528,000;
 - The Preliminary Cash Flow reflects total cash disbursements of approximately \$7,489,000;
 - The Preliminary Cash Flow reflects a positive net cash flow of approximately \$589,000.
60. The Preliminary Cash Flow includes the full repayment of the line of credit of \$884,000 and partial repayment of the Term Loan of \$1 million as agreed in the Forbearance Agreement.
61. Based on the Preliminary Cash Flow, Modasuite will have sufficient liquidity to fund its operations during the Cash Flow Period.

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COURT ORDERS SOUGHT BY MODASUITE

- a) Sale Guidelines;
- b) Priority Charges; and
- c) Bi-Monthly Rent Payments.

Sale Guidelines

- 62. Modasuite is asking this Court to approve the Sale Guidelines.
- 63. The Trustee supports the Sale Guidelines for the following reasons:
 - a) Similar sale guidelines have substantially been approved in the context of multiple court-approved closing sales, notably in Québec. In this case, the Sale Guidelines have been adapted to reflect the fact that the Sale will be conducted by Modasuite, rather than by a third-party consultant.
 - b) It is in Modasuite's stakeholders' best interest that the Sale Guidelines be approved by the Court, in order to proceed with the commencement of the Sale in the briefest of delays with a view to maximizing recoveries for all stakeholders.

Priority Charges

- 64. The Company requests that this Court grant the following super-priority charges on all of the present and future assets, property and undertakings of Modasuite, ranking ahead of the claims of all secured and unsecured creditors, in the following order of priority:
 - a) A charge to the benefit of the Trustee and its counsel and counsel to Modasuite as security for their respective fees and disbursements relating to services rendered in respect of Modasuite up to a maximum amount of \$150,000 (the "**Administration Charge**");
 - b) The first tranche of a charge to the benefit of the Directors and Officers (as defined below, the "**D&O Charge**") in the amount of \$375,000;
 - c) The second tranche of the D&O Charge in the amount of \$375,000, provided, however, that the second tranche of the D&O Charge shall rank after and be subordinated to the Desjardins security, but in priority to any other security interest.

Administration Charge

- 65. Given the work to be performed, and the estimated costs associated thereto, the Trustee is of the view that the Administration Charge is reasonable and appropriate under the circumstances, having regard to the significant amount of work which is anticipated to be performed by Modasuite's legal counsel, the Trustee and its legal counsel in respect of its monitoring duties, as well as the size of similar charges in comparable cases.

D&O charge

- 66. Modasuite will only be able to bring the current proceedings to fruition with the continued participation of the Company's directors and officers (the "**Directors and Officers**"), its management and employees. These personnel are essential to the viability of the Company's restructuring efforts.

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67. Although Modasuite intends to comply with all applicable laws and regulations, including the timely remittance of deductions at source and federal and provincial sales tax incurred after the date of the NOI, the Directors and Officers are nevertheless concerned about the potential liability in the context of the present proceedings.
68. The Directors and Officers currently benefit from directors and officers' insurance coverage. However this coverage may prove insufficient or be subject to standard exclusions which could make it difficult to cover all potential liabilities that can arise in the context of an insolvency process, including liabilities for unremitted sales taxes, as well as employee wages and vacations.
69. The amount of the D&O Charge takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by the Company in the normal course.
70. The D&O Charge will allow for indemnification of the Directors and Officers in respect of any potential liabilities in the context of the present proceedings, but only to the extent that such claims are not covered by the current insurance coverage in place for the Directors and Officers.
71. The D&O Charge is intended to allow the Directors and Officers to focus their efforts on these restructuring proceedings, for the benefit of all stakeholders.
72. The Trustee reviewed the calculation of the D&O Charge that was prepared by the Company, taking into consideration the amount and timing of Modasuite's payroll, vacation pay and certain tax liabilities. The Trustee is of the view that the D&O Charge is reasonable and appropriate in the circumstances.

Bi-Monthly Rent Payments

73. Modasuite seeks authorization to make its rental payments to landlords on a bi-monthly basis, as opposed to a monthly basis.
74. The Trustee supports this request for the following reasons:
 - a) This measure will ease the pressure on the Company's cash flow during the restructuring;
 - b) The Company's landlords will continue to receive rental payments for the post-filing period under their respective leases and will not suffer any material prejudice from this measure.

CONCLUSIONS

75. The Trustee respectfully makes the following preliminary observations and comments to this Honourable Court:
 - a) The Trustee has been involved in this matter for a limited period of time but nonetheless, has received from Management and other parties an adequate description of the financial information which has allowed it to ascertain the state of the affairs and finances of Modasuite;
 - b) The Sale and Sale Guidelines appear reasonable and appropriate under the circumstances; and
 - c) The Priority Charges appear necessary, reasonable and appropriate to implement the proposed restructuring process.

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All of which is respectively submitted this 25th day of June, 2020.

KPMG INC., in its capacity
as Licensed Insolvency Trustee
of Modasuite Inc.

A handwritten signature in blue ink, appearing to read "Stéphane De Broux". The signature is stylized and written in a cursive-like font.

Per: Stéphane De Broux, CPA, CA, CIRP, LIT
Partner

APPENDIX 1
(Under seal)

APPENDIX 2
(Under seal)

APPENDIX 3
(Under seal)

APPENDIX 4

SALE GUIDELINES

The following procedures shall apply to any sales to be held by Modasuite Inc. (“**Modasuite**”) at stores (the “**Stores**”) listed in Schedule II of the Order (as defined below). Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the order rendered by the Superior Court of Québec (Commercial Division) (the “**Court**”) in the file bearing number 500-11-058403-201 on June ●, 2020 (the “**Order**”).

Except as otherwise expressly set out herein, and subject to: (i) the Order; or (ii) the provisions of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and any further Order of the Court; or (iii) any subsequent written agreement between Modasuite and its applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable leases and other occupancy agreements for each of the Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Modasuite any additional restrictions not contained in the applicable Lease or other occupancy agreement.

1. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the expiry of the notice period provided for in the BIA with respect to Leases that are disclaimed or resiliated, or as may be otherwise agreed between Modasuite and the applicable Landlord or ordered by the Court, and in all cases by no later than August 31, 2020 (the “**Vacate Date**”).
2. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
3. All display and hanging signs used in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Modasuite may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and that “liquidation” is permitted to be used in French language signs). Forthwith upon request, Modasuite shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Modasuite of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Modasuite shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, Modasuite and the Landlord will work together to resolve the dispute. Nothing contained herein shall be construed to create or impose upon Modasuite any additional restrictions not contained in the applicable Leases. In addition, Modasuite shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, then no banners shall be used absent further order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner,

such damage shall be professionally repaired at the expense of Modasuite. Modasuite shall not utilize any commercial trucks to advertise the Sale on Landlord's property or mall ring roads.

4. Modasuite shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
5. Modasuite shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of Modasuite or any of its affiliates (including in their warehouses) or has previously been ordered by or on behalf of Modasuite or its affiliates; and (b) the additional merchandise is of like kind and category and no lesser quality to Modasuite merchandise, and consistent with any restriction on usage of the Stores set out in applicable Leases.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to contact Modasuite.
7. Modasuite shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, Modasuite may solicit customers in the Stores themselves. Modasuite shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Modasuite shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Modasuite FF&E (as defined below) for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Modasuite shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
9. Subject to the terms of paragraph 8 above, Modasuite may sell its furniture, fixtures and equipment ("**FF&E**") located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression and fire alarm systems. Modasuite may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Order. Modasuite shall repair any damage to the Stores resulting from the removal of any FF&E by third party purchasers of FF&E. Any FF&E not sold as at the Vacate Date shall be deemed abandoned.
10. Modasuite shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Modasuite hereby provides notice to the Landlords of its intention to sell and remove FF&E from the Stores. Modasuite shall make commercially reasonable efforts to arrange with each Landlord

that so requests, a walk-through to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled upon request to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes Modasuite's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Modasuite and such Landlord, or by further order of the Court upon application by Modasuite on at least two (2) days' notice to such Landlord and the Monitor. If Modasuite has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Modasuite's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Modasuite and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Modasuite in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
13. Modasuite and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Modasuite shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. Modasuite shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact shall be Simon Paquette who may be reached by phone at 1-866-930-4911 or email at simonpaquette@kpmg.ca. If the parties are unable to resolve the dispute between themselves, the Landlord or Modasuite shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time Modasuite shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, Modasuite shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein is or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between Modasuite and the applicable Landlord.

SCHEDULE II

LIST OF POTENTIALLY CLOSING STORES

Store Code	Store Address
DONST	CF Shops at Don Mills, 15 Karl Fraser Road, Unit N004, Don Mills, Ontario, M3C 0E6
LAVST	Le Carrefour Laval, 3035 Boulevard le Carrefour, Unit H013A, Laval, Québec, H7T 1C8
LIMST	Limeridge Mall, 999 Upper Wentworth Street, Unit 0160C, Hamilton, Ontario, L9A 4X5
METST	Metropolis at Metrotown 4700 Kingsway Street, Suite 1205, Burnaby, British Columbia, V5H 4M1
MPOST	Premium Outlets, 19001 Chemin Notre Dame, Unit 363, Mirabel, Québec, J7J 0T1
TOST	735 Queen Street West, Toronto, Ontario, M6J 1G1
QUEST	634 Queen Street West, Toronto, Ontario, M6J 1E4
RDWST/RIDST	Rideau Center, 50 Rideau Street, Suite E303, Ottawa, Ontario, K1N 9J7
BRUST	Promenades Saint-Bruno, 181 boul. des Promenades, Store B007, St-Bruno-de-Montarville, Québec, J3V 5K2
SHEST	CF Sherway Gardens, 25 The West Mall, Store 1751, Etobicoke, Ontario, M9C 1B8
EDMST	West Edmonton Mall, 8882 - 170 Street NW, Unit U-227, Edmonton, Alberta, T5T 4M2
DIXST	Quartier Dix30, 9130 boulevard Leduc, Unit S7B-150, Brossard, Québec, J4Y 0L3
FOYST	Place Ste-Foy, 2450 Boulevard Laurier, Unit 009, Québec, Québec, G1V 2L1
TECST	Toronto Eaton Centre, 220 Yonge Street, Unit 2117, Toronto, Ontario, M5B 2H1

VANST	316 West Cordova Street, Vancouver, British Columbia, V6B 5A4
KITS	102 - 2201 West 4th Avenue, Vancouver, British Columbia, V6K 1N9
STANST/STWST	1420-1422 and 1432 Stanley Street, Montréal, Québec, H3A 1P7

APPENDIX 5
(Under seal)