

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
Greenbelt Division**

<b>IN RE:</b>	)	
	)	
<b>JOANNE'S BED &amp; BACK STORES, INC.</b>	)	<b>Case No. 08-14606 (TJC)</b>
	)	<b>(Chapter 11)</b>
<b>Debtor</b>	)	

**MOTION TO REJECT NON-RESIDENTIAL  
REAL ESTATE LEASE AS OF APRIL 8, 2008**

JoAnne's Bed & Back Stores, Inc., a Maryland corporation, debtor and debtor-in-possession herein (the "Debtor"), by and through its undersigned counsel, hereby moves this Court for entry of an order Rejecting Non-Residential Real Estate Lease *Nunc Pro Tunc* (the "Motion"). In further support of this Motion, the Debtor alleges:

**BACKGROUND**

1. On April 2, 2008 (the "Petition Date"), the Debtor filed in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. The Debtor has continued in possession of its property and has continued to operate and manage its business as debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is 11 U.S.C. § 365.
4. Prior to the Petition Date, the Debtor operated sixteen (16) retail stores including a warehouse in Maryland, Washington, DC and Virginia, which sell ergonomic mattresses,

adjustable beds, office, lounge and massage chairs, seat lift chairs, comfort accessories and other furniture.

### **RELIEF REQUESTED**

5. The Debtor entered into certain pre-petition leases with various parties for non-residential real property. The property subject to the lease the Debtor is seeking to reject (the “Rejected Lesae”) is located at 1958 York Road, Timonium, Maryland 21093.

6. In its business judgment, the Debtor has decided to consolidate its business operations prior to a sale of substantially all of its assets and has vacated the properties under the Rejected Lease. The property was vacated on April 8, 2008.

7. The Debtor seeks entry of an order authorizing the rejection of the Rejected Lease pursuant to section 365(a) of the Bankruptcy Code effective as of April 8, 2008.

### **AUTHORITIES**

8. Section 365 of the Bankruptcy Code states that a debtor-in-possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. See Nat’l Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (stating that “the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgement’ test”). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of “bad faith, whim or caprice.” Lubrizon Enters. v. Richmond Metal Finishes, 756 F.2d 1043, 1047 (4<sup>th</sup> Cir. 1980).

