

# **EXHIBIT A**

ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "**Agreement**") is made and entered into as of this 3rd day of April, 2008, by and between The Healthy Back Store, LLC, a Delaware limited liability company (the "**Buyer**"), on the one hand, and Joanne's Bed & Back Stores, Inc., a Maryland corporation (the "**Seller**"). The Seller is, substantially concurrently herewith, filing a bankruptcy petition and becoming a Debtor and Debtor in Possession in the United States Bankruptcy Court for the District of Maryland (the "**Bankruptcy Court**").

RECITALS

A. Seller is engaged in the business of owning, managing and operating the specialty retail stores set forth on **Schedule A** annexed hereto (the "**Facilities**") and a related web site (such business is referred to herein as the "**Business**").

B. Seller wishes to sell to Buyer, pursuant to Section 363 of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), substantially all of the assets used in connection with and arising out of the operation of the Business at the price and on the other terms and conditions specified in detail below and Buyer wishes to so purchase and acquire such assets from Seller.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, such Seller's right, title and interest in the following assets and to all assets used in connection with the Business, including without limitation the following assets (collectively, the "**Property**"):

1.1.1 Leases. The real property leases described on **Schedule 1.1.1** attached to this Agreement and incorporated herein by reference (collectively, subject to the possible exclusion of certain leases set forth therein pursuant to **Section 8(b)**, the "**Real Property Leases**"; the property leased pursuant to such Real Property Leases, the "**Leased Real Property**") and all improvements, and appurtenances to such improvements, located on the Leased Real Property, and all store fixtures and displays located at any of the Facilities (collectively, the "**Leasehold Improvements**").

1.1.2 The equipment, personal property (excluding the Seller's cash) and intangible property leases, rental agreements, licenses, contracts, agreements and similar arrangements described on **Schedule 1.1.2** attached to this Agreement and incorporated herein by reference (collectively, the "**Other Leases and Contracts**").

1.1.3 Personal Property. All other tangible personal property now or hereafter owned by Seller and used in connection with the Business, including, without limitation, all such furniture, vehicles, machinery, equipment, tools, spare parts, computers, fixtures and furnishings located at or on the Facilities (collectively, the "**Personal Property**"). The Personal Property shall exclude any vehicles, equipment or other tangible property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement (a "**Contract**") where Buyer does not assume the underlying Contract relating to such personal property at the Closing.

1.1.4 Intangible Property. All intangible personal property owned or held by Seller and used in connection with the Business, together with all books, records and like items pertaining to the facilities, including, without limitation the name "Joanne's Bed & Back" and all other tradenames, the goodwill of the Business related to the Facilities, patents, processes, trademarks, trade names, service marks, websites, URL's, catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone numbers and any investments of Seller in any other entity (collectively, the "**Intangible Property**"). As used in this Agreement, Intangible Property shall in all events exclude any software held by Seller pursuant to a license or other Contract where Buyer does not assume the underlying Contract relating to such intangible personal property at the Closing.

1.1.5 Inventory. All inventory and stock in trade owned, including all floor samples and display samples, all spare parts and all supplies, held by Seller (collectively, the "**Inventory**").

1.1.6 Governmental Permits. To the extent transferable and assignable, all of Seller's respective interests in all licenses, certificates of occupancy, permits, registrations, approvals, licenses, easements, authorizations and operating rights relating to any of the Facilities or the Business issued or granted by third party or any governmental authority having jurisdiction over any of the Facilities.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall exclude all of the following (collectively, the "**Excluded Assets**"): (i) those items specifically excluded pursuant to the provisions of Section 1.1 above; (ii) Seller's rights under this Agreement and all consideration payable or deliverable to the Seller pursuant to the terms and provisions hereof; (iii) insurance proceeds, claims and causes of action with respect to or arising in connection with any Contract which is not assigned to Buyer at the Closing; (iv) any real property lease, other lease, or other contract to which Seller is a party which is not listed or described on **Schedule 1.1.1** or **Schedule 1.1.2** (collectively, "**Excluded Contracts**"), (v) all rights and claims in or to any refunds or credits of or with respect to any taxes, assessments or similar charges paid by or on behalf of Seller, in each case to the extent applicable to any period prior to the Closing; (vi) tax records, minute books, stock transfer books and corporate seals of Seller; (vii) all suits, rights, claims, choses in action and causes of action of Seller against any third party, including any current or former officers, directors, employees, members, principals, agents, and representatives of Seller, and (viii) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Chapter 5 of the Bankruptcy Code.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property to Buyer.

2. Consideration.

2.1 Purchase Price.

2.1.1 Subject to the provisions of Section 2.4 below, the cash consideration to be paid by Buyer to Seller for the Property (the "**Purchase Price**") shall be an amount equal to six hundred thousand (\$600,000) Dollars, subject to adjustment as provided in Section 2.1.2.

2.1.2 (a) The Purchase Price shall be increased or decreased, as the case may be, by an amount equal to (i) the book value of new Inventory acquired in the ordinary course of business by Seller from and after the date hereof through and including the Closing Date minus (ii) the book value of Inventory disposed of by Seller (including in fulfillment of any customer deposit) from and after the date hereof through and including the Closing Date (with a positive amount being an increase in the Purchase Price and a negative amount being a decrease in the Purchase Price) (such increase or decrease, the "**Inventory Adjustment**"). The book value of such Inventory shall be computed in accordance with U.S. generally accepted accounting principles on a basis consistent with those applied by Seller.

(b) Inventory Adjustment. Two business days before the Closing Date, Seller shall deliver to Buyer a statement (the "**Inventory Statement**"), which shall set forth in reasonable detail Buyer's calculation of the Inventory Adjustment as of the Closing Date (the "**Preliminary Inventory Adjustment**"). In connection therewith, Seller shall conduct a physical count of such Inventory observed by Buyer, and Buyer shall at Buyer's expense provide such personnel and assistance as Seller may reasonably require in connection with such physical inventory count. Seller agrees to give Buyer and its authorized representatives access to such employees, officers and other facilities and such books and records of Seller as are reasonably necessary to allow Buyer and its authorized representatives to review the Inventory Statement. Seller and Buyer shall in good faith attempt to resolve any disagreement concerning the Preliminary Inventory Adjustment prior to the Closing Date. If Seller and Buyer agree on the Inventory Adjustment prior to the Closing Date, the Purchase Price paid by Buyer at Closing shall reflect such Inventory Adjustment. If Seller and Buyer have not agreed on the Inventory Adjustment prior to the Closing Date, (i) the amount payable at closing shall be increased or decreased, as applicable, by the Preliminary Inventory Adjustment, and (ii) Buyer and Seller shall each submit their proposed Inventory Adjustment to Beers & Cutler PLLC or such other independent accounting firm as shall be approved by Buyer and Seller ("**Independent Accountants**"), with the amount to be submitted by Seller to not result in a greater adjustment than the Preliminary Inventory Adjustment. Within 10 business days after such amounts are submitted to the Independent Accountants, the Independent Accountants shall select as the Inventory Adjustment either the amount proposed by Seller or Buyer. Any determination of the

Inventory Adjustment by the Independent Accountants shall be final and binding upon Buyer and Seller.

2.1.3 The Purchase Price shall be paid as follows: At the Closing, (i) if Buyer and Seller have agreed on the Inventory Adjustment, the Purchase Price as so adjusted shall be paid in full, and (ii) if Buyer and Seller have not agreed on the Inventory Adjustment, an amount equal to \$500,000 plus or minus the Preliminary Inventory Adjustment shall be paid by Buyer to Seller and \$100,000 shall be held by Buyer (the "**Inventory Escrow**"). When the Inventory Adjustment is finally determined pursuant to Section 2.1.2(b), if the Inventory Adjustment as finally determined results in a Purchase Price less than the Purchase Price as adjusted by the Preliminary Inventory Adjustment, to such extent, the Inventory Escrow shall be retained by Buyer and the balance shall be paid to Seller; and (ii) in all other cases the Inventory Escrow shall be paid to Seller. Without limiting the foregoing, if Buyer has provided financing to Seller, Buyer may apply the amount owed by Seller to Buyer in connection with such financing as part of the payment of the Purchase Price hereunder.

2.2 Assumed Liabilities. Buyer shall, effective as of the Closing Date, be assigned Seller's interest under the Real Property Leases and Other Leases and Contracts (specifically excluding the Excluded Contracts) to be assigned by Seller under this Agreement and shall assume all then existing liabilities and obligations of Seller (i) for cure payments payable to counter-parties thereto in connection with the assumption and assignment of the Real Property Leases and Other Leases and Contracts in accordance with the Approval Order (as defined in Section 7(a) below), (ii) accruing under the Real Property Leases and under the Other Leases and Contracts on and after the Closing Date, and (iii) subject to the other provisions of this Agreement, with respect to orders for which customer deposits were accepted in the ordinary course of business through and including the date of this Agreement as set forth on **Schedule 5.8** and which have not been fulfilled or cancelled on or prior to the Closing Date, the obligation to deliver such product in fulfillment of such orders. For the avoidance of doubt, Buyer is not assuming any liability with respect to the cancellation of any such order either prior to, on or after the Closing Date.

2.3 Purchase Price Allocation. Not later than thirty (30) days after the Closing Date, Buyer shall prepare and deliver to Seller a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property. Buyer and Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with such mutually agreed Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms.

### 3. Closing Transactions.

3.1 Closing. The Closing of the transactions provided for herein (the "**Closing**") shall take place at Shulman, Rogers, Gandal, Pordy & Ecker, P.A., 11921 Rockville Pike, Rockville, Maryland 20852.

3.2 Closing Date. The Closing shall be held, subject to the satisfaction of the conditions set forth in Sections 4.1 and 4.2 below, five (5) business days following the Sale Hearing (the "**Closing Date**").

3.3 Seller's Deliveries to Buyer at Closing. On the Closing Date, Seller shall make the following deliveries to Buyer:

3.3.1 An Assignment and Assumption of Leases and Contracts substantially in the form attached as **Exhibit "A"** hereto, duly executed by Seller pursuant to which Seller shall assign to Buyer its interest, if any, in the Real Property Leases and Other Leases and Contracts and the Leasehold Improvements (the "**Assignment of Leases**").

3.3.2 A bill of sale, duly executed by Seller substantially in the form attached hereto as **Exhibit "B,"** pursuant to which Seller shall transfer its right, title and interest in and to the Personal Property and the Inventory to Buyer (the "**Bill of Sale**").

3.3.3 An assignment of intangible property, duly executed by Seller, substantially in the form of the assignment attached as **Exhibit "C"** hereto, pursuant to which Seller shall assign to Buyer its interest, if any, in and to the Intangible Property (the "**Assignment of Intangible Property**").

3.3.4 Such other instruments of transfer as may result in the request by Buyer.

3.4 Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1 That portion of the Purchase Price to be delivered by Buyer at the Closing under Section 2.1.

3.4.2 A counterpart of the Assignment of Leases, duly executed by Buyer.

3.5 Sales, Use and Other Taxes. Any sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, which may be payable by reason of the sale of the Property under this Agreement or the transactions contemplated herein shall be borne and timely paid by Seller.

3.6 Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date.

4. Conditions Precedent to Closing.

4.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the transactions contemplated herein shall be subject to the satisfaction or waiver by Seller of each of the following conditions:

4.1.1 Buyer shall have executed and delivered to Seller the Assignment of Leases.

4.1.2 Buyer shall have delivered, or shall be prepared to deliver to Seller at the Closing, the portion of the Purchase Price and other documents required of Buyer to be delivered at the Closing.

4.1.3 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.4 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 7(a) and 7(b) below and the Approval Order shall not have been stayed as of the Closing Date.

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing, and to otherwise close the transaction contemplated herein, shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1 All of the representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.2 Seller shall have executed and delivered to Buyer the Assignment of Leases and Contracts, the Bill of Sale, and the Assignment of Intangible Property.

4.2.3 Seller shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Seller to be delivered at the Closing.

4.2.4 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.5 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 7(a) and 7(b) below and the Approval Order shall not have been stayed as of the Closing Date.

4.3 Termination. If any of the above conditions is neither satisfied nor waived on or before the date by which the condition is required to be satisfied, such of Buyer or Seller who is not then in default hereunder may terminate this Agreement by delivering to the other written notice of termination. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving party; provided, however, that the consent of either

party hereto to the Closing shall constitute a waiver by such party of any conditions to Closing not satisfied as of the Closing Date.

5. Seller's Representations and Warranties.

5.1 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer that the statements contained in this Article 5 are true, correct and complete as of the date of this Agreement and as of the Closing Date.

5.2 Good Standing and Authority. Seller is a corporation organized, validly existing and in good standing under the laws of the state of its organization. Seller (i) has all requisite corporate or entity power and authority to own its properties and assets and to carry on its business as now being conducted, subject to any required Bankruptcy Court approval and (ii) has all requisite power and authority (A) to execute, deliver and perform its obligations under this Agreement and all documents contemplated by this Agreement (the "**Attendant Documents**") to which Seller is a party, and the consummation of the transactions contemplated hereby and thereby, and (B) subject to approval of the Sale Order, has been duly authorized and approved by all necessary and proper corporate action on the part of Seller to consummate the transactions contemplated hereby. This Agreement, and all of the Attendant Documents to which Seller is a party, have been (or to the extent to be entered into on or prior to the Closing, will be) duly and validly executed and delivered, and constitute legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, subject to approval and entry of the Sale Order.

5.3 Assets. Other than the Excluded Assets, there are no assets (including without limitation any intellectual property) used in or necessary to the operation of the Business which are not included in the Property to be transferred to Buyer on the Closing Date Seller does not conduct the Business through any other person or entity. Upon consummation of the transactions contemplated hereby and pursuant to the entry of the Sale Order, Buyer will have acquired good and marketable title in and to, or a valid leasehold interest in or assignment of Sellers' rights in and to all of the Property to be acquired by it, free and clear of all Encumbrances, except for Assumed Liabilities.

5.4 Certain Actions. There are no actions or proceedings pending or, to Seller's knowledge, threatened against, relating to or affecting Seller or any of the Property.

5.5 Compliance with Applicable Laws and Regulations. To Seller's knowledge, Seller is in compliance with all Laws that are applicable to the Business, the Facilities, the Property or Seller and to which Seller may be subject which might reasonably be expected to have a material adverse effect on the business or the Property. The Leased Real Property is not in violation in any material respect of any building, zoning, anti-pollution, health, occupational safety or other law or any order or permit applicable to any Facility or Real Property.

5.6 Environmental Matters. To Seller's knowledge there are no environmental liabilities related to the Facilities or the Property.

5.7 Inventory. As of the date of this Agreement the book value of the Inventory is approximately \$1,000,000. **Schedule 5.7** sets forth a detailed listing of Inventory as of the date of the Agreement. All of the Inventory is located at the Facilities, is reflected on the books and records of Seller at cost and is saleable in the ordinary course of business at normal margins; except that floor models and samples are saleable at not less than cost.

5.8 Customer Records; Customer Deposits. Seller has separate customer records from its stores and the website, which include associated address, phone number and email address (if from website) and relevant store, if applicable; provided, that such information may not be currently valid and not all such information may be on each record. There are approximately 18,000 records on the Storis system, 45,000 on the old system and 2,000 records on the website list server. Set forth on **Schedule 5.8** is a list of all customer deposits held by Seller as of date hereof, including the order number, the date of the order, the product ordered, the amount of the order and the amount of the deposit.

5.9 Survival of Representations and Warranties. The representations and warranties of Sellers and Buyer contained in this Agreement shall survive until the Closing Date and shall then expire.

6. "AS IS" TRANSACTION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PROPERTY EXCEPT AS PROVIDED HEREIN. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE AS TO ANY PORTION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF ALL PORTIONS THE PROPERTY AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PROPERTY AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PROPERTY, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, EXCEPT ONLY FOR THOSE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, BUYER WILL ACCEPT THE PROPERTY AT THE CLOSING "AS IS, "WHERE IS," AND "WITH ALL FAULTS."

7. Bankruptcy Court Approvals.

(a) Promptly following the Execution Date (and in no event later than April 1, 2008), Seller will make a motion (the "**Sale Motion**") for an order (the "**Approval Order**") from the Bankruptcy Court which (i) approves the sale of the Property to Buyer on the terms and conditions set forth in this Agreement and authorizes the Seller to proceed with this transaction, (ii) includes a specific finding that buyer is a good faith Buyer of the Property, and (iii) states that the sale of the Property to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever. Following the filing of the Sale Motion, Seller shall use its best efforts to obtain the Approval Order. Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement which the Buyer and Seller may

hereafter enter into shall be conditioned upon the Bankruptcy Court's entry of the Approval Order. If the Bankruptcy Court refuses to issue the Approval Order or to approve any third party buyer at the hearing on the Sale Motion (the "**Sale Hearing**"), then this transaction shall automatically terminate and the Seller and the Buyer shall be relieved of any further liability or obligation hereunder.

(b) At the same time the Sale Motion is filed, Seller shall also request and use its best efforts to obtain from the Bankruptcy Court an order (the "**Procedures Order**") which approves the following bidding procedures and expense reimbursements (the "**Bidding Procedures**"): (i) Buyer will conduct an auction (the "**Auction**") if Buyer receives other Qualified Bids (as defined in the Bidding Procedures); (ii) Buyer will be entitled to receive from the Seller expense reimbursement in the amount of Eighty Thousand (\$80,000) Dollars, in cash or other immediately available good funds in the event that (x) Buyer is not approved by the Bankruptcy Court as the Buyer of the Property and (y) notwithstanding the Buyer's willingness and ability to consummate the transactions contemplated by this Agreement, within 180 days following the Bankruptcy Court hearing on the Sale Motion a sale of all or any part of the Property to any third party is consummated, which expense reimbursement shall be made to the Buyer concurrently with the consummation of such third party sale, (iii) all third-party offers to be considered at the Auction shall be in writing and delivered to the Seller (and a copy delivered by the Seller to Buyer) no later than three (3) business days prior to the Auction, together with satisfactory evidence of such third party's financial ability to perform its obligations under such offer, (iv) no prospective buyer will be permitted to bid at the Auction unless such party has been deemed "financially qualified" by the Seller, (v) no prospective buyer who bids for the Property at the Auction shall be entitled to bid at the auction unless such prospective Buyer makes a good faith deposit into escrow of \$50,000 or purchase the Property unless such prospective Buyer offers to purchase the Property for consideration at least \$130,000 greater than the consideration set forth in this Agreement (including all cash consideration and assumed liabilities) and otherwise on terms at least as favorable to the Seller as those set forth in this Agreement, and (vi) after any initial overbid, all further overbids (which, if Seller so allows, consist of a cumulation of one or more separate bids) must be in increments of at least \$10,000 and Seller shall, in Seller's discretion, have determined that such overbids satisfy such bidding increment requirement. Should overbidding take place, the Buyer shall have the right, but not the obligation, to participate in the overbidding and to be approved as an overbidder at the hearing on the Sale Motion based upon any such overbid. At Buyer's option, Buyer's obligations under this Agreement shall terminate if the Procedures Order is for any reason whatsoever not entered by the Bankruptcy Court on or before April 18, 2008 or if the Closing hereunder has not been consummated on or before May 30, 2008.

8. Employee Matters; Leases; Conduct of Business.

(a) Buyer shall offer employment, commencing on the Closing Date, to those employees of Seller designated by Buyer by written notice to Seller 48 hours prior to the Bankruptcy auction. Those employees under to whom offers of employment are made and who commence employment as of the Closing Date or such other applicable date shall be collectively referred to as the "**Transferred Employees.**" Buyer will offer retention payments of approximately \$43,500 in the aggregate for employees of Seller as of the Date hereof to be

specified by Buyer, conditioned on such employees becoming employed by Buyer for a period to be designated by Buyer of up to sixty days after the Closing Date.

(b) At any time or times between the date of this Agreement and the Closing Date, Buyer may, by notice to seller, designate one or more Real Property Leases or Other Leases and Contracts as being excluded from the Property. Upon any such designation by Buyer such Real Property Leases or Other Leases and Contracts shall be deemed to be Excluded Assets hereunder, and any liabilities thereunder (including without limitation any cure costs) shall not be an Assumed Liability hereunder.

(c) Between the date hereof and the Closing Date, Seller shall conduct the Business at the Leased Real Property in the ordinary course on a basis consistent with past practices and shall use its best efforts to preserve intact the Business, including retaining employees, continuing efforts to dispose of Inventory at reasonably normal margins and promptly paying when due all post-petition obligations under the Real Property Leases. However, upon notification under Section 8(b) above, Seller may stop paying such obligations and seek to reject any such Real Property Lease. Without limiting the generality of the foregoing, between the date hereof and the Closing Date, unless otherwise agreed by Buyer:

(i) Between the date hereof and the Closing Date, Seller will not accept any customer deposits for items not in Inventory, unless such customer deposits are separately tracked and used for the payment for inventory ordered to fulfill such order or delivered to Buyer as provided herein. From and after such filing, Seller shall not accept customer deposits for any sales unless it will be able to fulfill such order prior to the Closing Date; provided, Seller may accept a customer deposit for any order not fulfilled prior to the Closing Date if the amount of such customer deposit will be transferred to Buyer at Closing. Seller shall not sell Inventory to any customer on approval, or any other basis which entitles the customer to return or may obligate Seller or Buyer to repurchase or accept the return of such Inventory. All sales by Seller must be on a final, non-returnable basis and signs to such effect must be displayed in each store and all receipts must be stamped to such effect; provided, that Seller may sell Tempurpedic products and allow returns in accordance with Tempurpedic's return policies; further provided, that Buyer will, after Closing, direct any pre-Closing customer with a warranty claim to the appropriate manufacturer;

(ii) Seller shall move all Inventory at Facilities which are closed into the Leased Real Property or Seller's warehouse. Seller shall provide Buyer with notice of any such moves. All such Inventory shall be moved and stored as first quality merchandise, including double bagging all mattresses, and floor model and returned Inventory shall be segregated from new Inventory;

(iii) Seller shall not order Inventory except (i) to the extent necessary to fulfill customer orders for which it has received a deposit equal to the purchase price of such order, or (ii) stock orders approved in advance by Buyer;

(iv) Seller shall provide Buyer on a weekly basis with a report showing sales by store for each of the Facilities, marketing expenditures (with copies of all collateral material), changes in employees, changes in vendor pricing and bills paid;

(v) Seller shall not hire any employees except as necessary to replace store employees who have left or increase the compensation of any employee.

(d) Promptly after the entry of the Approval Order Seller will send an notice by email (or, if no email address is available, a notice by mail) to each person on its customer list advising them of a change in the Seller's privacy policy to allow a sale of the customer list in connection with a sale of substantially all of the assets or business of the Seller and giving such customers the right to opt out of Seller's customer list, such notice to be in form acceptable to Buyer.

9. Access to Records and Properties of Seller. From and after the date of this Agreement until the Closing Date, Seller shall afford to Buyer's officers, independent public accountants, counsel, lenders, consultants and other representatives, reasonable access for examination at all reasonable times to the Property and all records pertaining to the Property or the Business. Until Seller has finished its liquidation in the Bankruptcy Court, but not more than twelve (12) months from Closing, Seller shall be able to keep possession of, and use, its head office computer server and related software to access its books and records; provided, that Buyer shall have reasonable access to such items as well.

10. Miscellaneous.

10.1 Attorneys' Fees. If either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

10.2 Entire Agreement. This Agreement and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

10.3 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of mailing. Mailed notices shall be addressed as set forth below, but each Party may change his address by written notice in accordance with this Section 10.3.

To Buyers:                   The Healthy Back Store, LLC  
8245-Backlick Road  
Newington, VA 22079  
Attn.: Anthony Mazlish

With a copy to:           Moses & Singer LLP  
The Chrysler Building  
405 Lexington Avenue

New York, NY 10174-1299  
Attn: Howard Herman

To Seller: Joanne's Bed & Back Stores, Inc.  
11714 Baltimore Avenue  
Beltsville, MD 20708  
Attn: Jon Studner, President

With a copy to: Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
11921 Rockville Pike  
Rockville, Maryland 20852  
Attn: Michael Lichtenstein

10.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

10.5 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

10.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

10.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

10.8 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

10.9 Payment of Fees and Expenses. Except as provided in Section 10.1 above, each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

10.10 Assignments. This Agreement shall not be assigned by any party hereto without the prior written consent of the other party hereto, which consent the parties may grant or withhold in their sole and absolute discretion.

10.11 Binding Effect. Subject to the provisions of Section 10.12, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

10.12 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

10.13 Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

10.14 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

10.15 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages.

10.16 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

10.17 Bankruptcy Court Jurisdiction. THE PARTIES AGREE THAT IF ANY DISPUTE ARISES OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED HEREUNDER OR IN CONNECTION HEREWITH, THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE PERSONAL AND SUBJECT MATTER JURISDICTION AND SHALL BE THE EXCLUSIVE VENUE TO RESOLVE ANY AND ALL DISPUTES RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. SUCH COURT SHALL HAVE SOLE JURISDICTION OVER SUCH MATTERS AND THE PARTIES AFFECTED THEREBY AND BUYER AND SELLER EACH HEREBY CONSENTS AND SUBMITS TO SUCH JURISDICTION.

10.18 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

10.18.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

10.18.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

10.18.3 whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

10.18.4 the words "hereof," "herein" and "hereunder" and works of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

10.18.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

10.18.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

10.18.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

10.18.8 references to a person are also to its permitted successors and assigns; and

10.18.9 the use of "or" is not intended to be exclusive unless expressly indicated otherwise.

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**THE HEALTHY BACK STORE, LLC**

By: \_\_\_\_\_

Name:

Its:

*[Signature]*  
Anthony Marzish  
Chief Executive Officer

**SELLER:**

**JOANNE'S BED & BACK STORES, INC.**

By: \_\_\_\_\_

Name:

Its:

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:**

**THE HEALTHY BACK STORE, LLC**

By: \_\_\_\_\_  
Name:  
Its:

**SELLER:**

**JOANNE'S BED & BACK STORES, INC.**

By: \_\_\_\_\_  
Name: *JOHN M. STUDNER*  
Its: *President*

## Exhibit "A"

### ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS

This Assignment and Assumption of Leases and Contracts (this "**Assignment**") is entered into as of this \_\_\_ day of \_\_\_\_\_, 2008, among Joanne's Bed & Back Store, Inc., a Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court for the District of Maryland (collectively, the "**Assignor**"), on the one hand, and The Healthy Bank Store, LLC, a Delaware limited liability company (the "**Assignee**"), on the other hand, with respect to the following facts and circumstances:

A. Assignor, as Seller, and Assignee, as Buyer, have heretofore entered into that certain Asset Purchase Agreement dated March \_\_, 2008 (the "**Purchase Agreement**"). Except for terms specifically defined herein, the capitalized terms used in this Assignment shall have the same meanings as capitalized terms used in the Purchase Agreement.

B. Concurrently with the mutual execution and delivery of this Assignment, Assignor and Assignee are consummating the transactions contemplated by the Purchase Agreement. Assignor and Assignee are executing and delivering this Assignment in satisfaction of their respective obligations pursuant to Sections 3.3.1 and 3.4.2 of the Purchase Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Assignor and Assignee hereby acknowledge, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the Closing Date, to the extent of their respective interests therein, the parties comprising Assignor hereby assign to Assignee all of their right, title and interest in and to the Real Property Leases and Other Contracts and Leases described on **Exhibit "A"** attached hereto and incorporated herein by this reference (collectively, the "**Assigned Contracts**"), and all Leasehold Improvements relating to the Leased Real Property.

2. Assumption. Effective as of the Closing Date, Assignee hereby accepts the foregoing assignment and assumes and agrees to be bound by the terms and provisions of the Assigned Contracts and to faithfully perform all of Assignor's obligations thereunder to be performed from and after the Closing Date as though Assignee had been the original contracting party thereunder, including cure costs in connection therewith to the extent provided in the Purchase Agreement.

3. Amendments. This Assignment may only be amended by a writing signed by both Assignor and Assignee.

4. Execution in Counterparts. This Assignment may be executed in counterparts and delivered by the delivery of facsimile signatures; provided, however, that if the parties exchange facsimile signatures, each of them agrees to provide the other with a copy of this Assignment bearing their original signature as soon thereafter as possible.

5. Delivery Pursuant to Purchase Agreement. Notwithstanding anything to the contrary herein, Assignor and Assignee are executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement.

6. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment as of the day and year first set forth above.

**ASSIGNOR:**

**JOANNE'S BED & BACK STORES, INC.,**  
Debtor and Debtor in Possession

By: \_\_\_\_\_  
Name:  
Its:

**ASSIGNEE:**

**THE HEALTHY BACK STORE, LLC**

By: \_\_\_\_\_  
Name:  
Its:

**Exhibit "B"**

**BILL OF SALE**

Pursuant to that certain Asset Purchase Agreement dated as of March \_\_, 2008 (the "**Agreement**"), by and between The Healthy Back Store, LLC, a Delaware limited liability company (the "**Buyer**"), on the one hand, and Joanne's Bed & Back Store, Inc., Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court for the District of Maryland (the "**Seller**"), on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Seller hereby expressly acknowledges, Seller hereby sells, transfers, assigns and delivers to Buyer all of its right, title and interest in and to (i) the Personal Property, and (ii) the Inventory.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Agreement.

Notwithstanding anything to the contrary herein, Seller is executing and delivering this Bill of Sale in accordance with and subject to all of the terms and provisions of the Agreement, including without limitation **Section 6** thereof.

**IN WITNESS WHEREOF**, Seller has caused this Bill of Sale to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2008.

**SELLER:**

**JOANNE'S BED & BACK STORES, INC.,**  
Debtor and Debtor in Possession

**By:** \_\_\_\_\_

**Name:**

**Its:**