

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC., )  
a Delaware corporation ) No. 11-01-10779-SA  
Tax I.D. No. 75-2364418 (Federal); )  
02-159595-0 (New Mexico) ) Chapter 11  
Debtor. )

**OBJECTION OF FLOHO PARTNERS TO THE DEBTOR'S  
THIRD MOTION TO SELL PERSONAL PROPERTY FREE AND CLEAR  
OF LIENS AND INTERESTS, AND FOR ORDER GRANTING THE DEBTOR  
ACCESS TO CERTAIN FORMER STORES**

FLOHO Partners ("FLOHO"), the owner and landlord of Store #949 (Carlsbad, New Mexico), and Store #927 (9348 Dyer, El Paso, Texas) (collectively "FLOHO Properties"), by and through its duly authorized attorneys, Kronish Lieb Weiner & Hellman LLP, hereby submits its objection to the Debtor's Third Motion to Sell Personal Property Free and Clear of Liens and Interests, and for an Order Granting the Debtor Access to certain Former Stores (the "Motion") as said Motion applies to the FLOHO Properties.

**The Relief Sought By the Debtor**

1. The Debtor proposes to sell its owned in-store equipment at Store #949 to Fenn Foods, Inc. ("Fenn") The Debtor requests that the Court order FLOHO to give the Debtor and/or Fenn access to Store #949 to do so. The Debtor also proposes to conduct auction sales of its owned in-store equipment at Store # 927 utilizing Walter Parker to auction the equipment. The Debtor requests that the Court order FLOHO to give the Debtor and/or Walter Parker access to Store #927 to do so.

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### **FLOHO's Objection to the Relief Sought By the Debtor**

2. FLOHO objects to the relief requested by the Debtor because (i) the Debtor has not made adequate plans to protect the FLOHO Properties from damage that will be caused by the removal of the in-store equipment, (ii) the Debtor does not have the financial resources (a) to reimburse FLOHO Properties for the costs and expenses incurred by FLOHO since September 1, 2001 in storing and protecting the in-store equipment and (b) to pay for the damage that will be caused by the removal of the in-store equipment.

3. Particularly, the FLOHO Properties contain freezers, walk in coolers, floor refrigerators, processing sinks and displays that cannot be moved without damaging the floors, walls and paint of the FLOHO Properties. In addition, equipment that is plumbed or wired cannot be safely removed unless an electrical company is on site to cap off the connections and determine and label which of the thousand breakers is tied to each abandoned line. Further, removal of the shelving aisle units and check out register platforms will damage the flooring. Finally, in the event plumbing fixtures are removed, the FLOHO Properties will experience leaks which will only be discovered after the water is returned to service.

4. FLOHO believes that the potential damage to the FLOHO Properties is greater than the value of the in-store equipment<sup>1</sup> and requests that the Court deny the Motion with respect to the FLOHO Properties until appropriate financial, insurance and construction safeguards have been provided.

5. Furthermore, the Debtor should not be permitted to sell the in-store equipment at the FLOHO Properties until it reimburses FLOHO for the costs and expenses incurred as a result of

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<sup>1</sup> Because the Debtor is leaving the FLOHO Properties in a cannibalized and unprotected state, FLOHO expects that repairs to the FLOHO Properties will be in excess of \$100,000.

storing and protecting that equipment. Since September 1, 2001, FLOHO has incurred over \$10,000 in utility charges and \$20,000 in charges for insurance, security and repairs. Storage rental for each location is \$13,500 per month plus property tax of approximately \$1,000 per week.

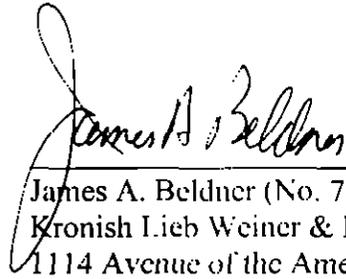
6. The Debtor's equipment was stored for approximately 6 weeks before FLOHO was contacted by the Debtor regarding entry into the FLOHO Properties to sell the equipment. Prior to being contacted, FLOHO believed that the in-store equipment had been abandoned by the Debtor since the leases for the FLOHO Properties have been rejected. Upon being contacted, FLOHO advised the Debtor that it could have access to the equipment provided the Debtor pay for the storage of the equipment<sup>2</sup>, and obtain insurance and a bond to cover the prospective damage that will be caused by the removal of the in-store equipment. The Debtor has ignored these commercially reasonable requests. Instead, the Debtor makes the Motion and fails to take appropriate measures to protect FLOHO and the FLOHO Properties. FLOHO has already been damaged in an amount exceeding \$266,000 as demonstrated in its proof of claim on file with the Court. It would be inequitable to now burden FLOHO further in asking it to sustain additional damages on an administrative basis.

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<sup>2</sup> Storage costs thus far are in excess of \$110,000.

**WHEREFORE**, it is respectfully requested, that the Motion be denied with respect to the FLOHO Properties, or in the alternative, that the Motion be denied with respect to the FLOHO Properties until appropriate financial, insurance and construction safeguards have been provided, together with such other and further relief as is just and proper.

Dated: New York, New York  
November 9, 2001



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James A. Beldner (No. 7166)  
Kronish Lieb Weiner & Hellman  
1114 Avenue of the Americas  
New York, NY 10036  
212-479-6000  
Counsel for FLOHO Partners

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO**

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**In re:**

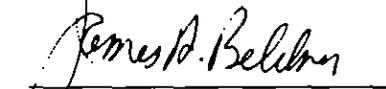
<b>FURR'S SUPERMARKETS, INC.,</b>	)	
<b>a Delaware corporation</b>	)	<b>No. 11-01-10779-SA</b>
<b>Tax I.D. No. 75-2364418 (Federal);</b>	)	
<b>02-159595-0 (New Mexico)</b>	)	
	)	
<b>Debtor.</b>	)	

**CERTIFICATE OF SERVICE**

JAMES A. BELDNER, being duly sworn, deposes and says:

1. That I am over 18 years of age and reside 3091 Riverside Drive, Wantagh, NY 11793 and I am a partner with the firm of Kronish Lieb Weiner & Hellman LLP, counsel for FLOHO Partners in the above entitled proceeding.

2. That on November 9, 2001, I caused to be served a true copy of the Objection of Floho Partners To The Debtor's Third Motion To Sell Personal Property Free And Clear Of Liens And Interests, And For Order Granting The Debtor Access To Certain Former Stores, upon the firm of Jacobvitz Thuma & Walker, P.C., 500 Marquette Avenue, N.W., Suite 650, Albuquerque, N.M. 87102, Attn. David T. Thuma, Esq.; by first class mail and by facsimile at (505) 766-9287.

  
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James A. Beldner