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U.S. BANKRUPTCY COURT
ALBUQUERQUE N.M.

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7 Attorneys for Developers Diversified Realty Corporation

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF NEW MEXICO**

10 In re

11 **FURR'S SUPERMARKETS, INC.,**

12 Debtor.

In Proceedings Under Chapter 11

No. 11-01-10779-SA

**CONDITIONAL OBJECTION AND
RESERVATION OF RIGHTS RE:
DEBTOR'S MOTION FOR ORDER
APPROVING SALE OF SOME OR ALL
OF DEBTOR'S OPERATING ASSETS
AND GRANTING RELATED RELIEF**

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18 Developers Diversified Realty Corporation ("Developers") herewith files its
19 conditional objection and reservation of rights regarding the Motion for Order Approving Sale of
20 Some or All of Debtor's Operating Assets and Granting Related Relief (the "Sale Motion"). In
21 support of this Conditional Objection and Reservation of Rights, Developers states:

22 1. Pre-petition Developers entered into two leases with Furr's Supermarkets,
23 Inc. (the "Debtor") for the lease of certain non-residential real property. These properties are
24 located at 600 Trinity Drive, and 535 Central Avenue. Both properties are located in Los
25 Alamos, New Mexico (collectively referred to hereinafter as the "Properties").
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1 2. On shortened notice, Developers received notice of the Debtor's proposed
2 auction sale of some or all of its properties, including the Properties.

3 3. The Sale Motion identifies those properties, including the Properties,
4 which the Debtor intends to offer for auction sale on or about June 25, 2001.

5 4. The Sale Motion also purports to identify all applicable cure claims and by
6 the terms of the Motion Debtor proposes to forever bar and/or estop landlords, including
7 Developers, from receiving and recovering properly assessed cure claims under the leases based
8 on the Debtor's calculations.

9 5. Developers is entitled to recover, as its cure provided for under the Code,
10 11 U.S.C. § 365(b), all pre- and post-petition arrearages, not just subjective characterizations of
11 possible cure claims. As of June 13, 2001 the Debtor had outstanding arrearages of \$40,749.62
12 on Developers' Store #35002 and \$64,285.49 on Developers' Store #35003, for total arrearages
13 of \$105,035.11. In addition, Developers and other landlords are entitled to adequate assurance of
14 future performance by any purchasers.

15 6. The Sale Motion provides that these properties may be sold to unidentified
16 third parties. Developers expressly reserves its rights under 11 U.S.C. § 365(b) to review the
17 quality and character of any proposed assignee of the Debtor's leasehold interests.

18 **WHEREFORE**, Developers requests that this Court condition the Debtor's
19 assumption and assignment of the Developers' Properties (identified as the Debtor's Store
20 Numbers 887 and 897) upon the payment of all pre- and post-petition arrearages due and payable
21 under the applicable leases, irrespective of the subjective characterizations provided in Exhibit B
22 to the Sale Motion. Developers further asserts and reserves its rights to approve the assignment
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