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EXHIBIT 1

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benefit of Secured Party, and shall obtain the recovery of such Collateral for the benefit of Secured Party within fifteen (15) days of such notice.

(k) **Return of Funds.** To the extent that Grantors receive any funds or amounts in connection with the Cash Flow Note, and it is later determined that Grantors received an amount in excess of the amount to which Grantors are otherwise entitled under the Cash Flow Note, upon written notice to Grantors from Secured Party, Grantors shall promptly, but in no event later than three (3) Business Days from such notice, repay such amount directly to Secured Party. In the event that Secured Party is determined to have received any amounts in excess of the amount to which Secured Party is entitled under the Cash Flow Note, this Agreement and/or the other Security Documents, upon written notice from Grantors, Grantors shall offset from future payments under the Cash Flow Note due to Secured Party such excess amount received by Secured Party.

(l) **Findings.** In connection with the confirmation of the Plan, Debtors will incorporate the following findings into the confirmation order to be entered by the Bankruptcy Court, the form and substance of which is satisfactory to Secured Party and Debtors, and a copy of which is attached hereto as Exhibit D (the "Confirmation Order"):

(1) The Collateral is the sole and separate property of each of the Grantors, and Grantors have all right, title and interest in and to, and subject to the provisions of Section 4(e) above, Grantors are the legal and beneficial owner of, the Collateral, free from any Liens of any kind, other than the security interest created herein and the Priority Claims.

(2) This Agreement and the other Security Documents, including, without limitation, any instrument, document or agreement required hereunder or thereunder, when delivered, will constitute, legal, valid and binding obligations of each Grantor and Grantors, taken as a whole, enforceable against it and them in accordance with their respective express written terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(3) No additional consent or approval is required in connection with this Agreement, the Notes, the other Security Documents, and the transactions contemplated herein and therein.

(4) The Security Documents do not provide for the grant of a security interest in the Ownership Interests in the Portfolio and/or Intermediate Entities or real estate held by the Portfolio Entities.

(i) Pursuant to the Plan, Debtors are issuing to the Secured Party two promissory notes: (1) the Cash Flow Note, which is secured as described in this Agreement, and (2) the Secondary Note, which is unsecured.

(ii) The Cash Flow Note is secured by means of a grant of a security interest in certain Collateral, which Collateral consists of all distributions received by Debtors in connection with the Ownership Interests held by Debtors in the Portfolio Entities and the Intermediate Entities, as well as certain claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of setoff and rights of recoupment relating to such distributions, and all substitutions, replacements, products derived or attributable with respect to any of the above-mentioned, and proceeds from any and all of the foregoing.

(iii) Neither the Security Agreement nor any other Security Document (1) grants a security interest in or other lien upon all or any part of the Ownership Interests held by Debtors in the Portfolio Entities and/or Intermediate Entities, (2) assigns, transfers or creates by its terms any lien on all or any part of the Ownership Interests of Debtors in the Portfolio Entities and Intermediate Entities, or (3) grants the Secured Party any security interest or lien of whatsoever kind in any real property owned by any Portfolio Entity. The Official Committee of Unsecured Creditors ("Creditors' Committee") and the Debtors, for themselves and for their respective successors and assigns, including any trustees that may be appointed in either or both of the Cases, acknowledge that, to the extent the Term Sheet (the "Term Sheet") purported to provide for a grant of any collateral, beyond what is actually granted in the Security Documents, the Security Documents (as interpreted in this section) shall control.

(5) Debtors and the Creditors' Trust are bound by the terms and conditions of the Plan and the Security Documents; the Debtors, and other partners, members and owners in the Portfolio Entities and Intermediate Entities (the "Other Owners") are bound by such entities' operative Governing Documents. The Security Documents do not bind the other Owners because the Other Owners are not parties to the Security Documents; in a similar vein, the Governing Documents do not bind the Creditors' Trust because it is not a party to such documents. In particular, the Security Documents do not grant the Creditors' Trust any right to be admitted as an owner, partner or member of any Portfolio Entity or Intermediate Entity, or to participate in any manner in the decision-making process, management and/or operations, of any Portfolio Entity or Intermediate Entity, including, without limitation, any right to vote or otherwise participate in decisions regarding the assets of the Portfolio Entities or Intermediate Entities. The Creditors' Trust and the Debtors understand that the Other Owners are not waiving any right to object to any action taken by the Creditors' Trust in the future, including without limitation any effort to intervene in any way with partnership/company operations and decision making, and that the Other Owners are specifically reserving the right to challenge any such action and to prevent the same and/or have the same declared void, just as the Other Owners should recognize that the Creditors' Trust is not waiving any right to object to any action taken by Debtors and/or the Other Owners now or in the future relating to the terms and conditions of the Security Documents, including, without limitation, any effort to intervene in any way with the terms and conditions of the Security Documents and the obligations of the parties thereto, and that the Creditors' Trust is specifically reserving the right to challenge any such action and to prevent the same and/or have the same declared void.

(6) The Security Documents, in addition to providing for a lien on distributions paid to Debtors and/or deposited into the Control Account, do place certain obligations on Debtors with respect to any sale, transfer or assignment by Debtors of any interest in the Ownership Interests (but not interests of the Other Owners). These obligations are designed to, among other things, protect the rights and remedies granted to the Creditors' Trust under the Security Documents to receive payments under the Cash Flow Note from certain payments made to Debtors in connection with the ownership, sale, transfer, assignment or financing of the Ownership Interests. To be clear, however, the consent of the Creditors' Trust is not required under the Security Documents for any sale, transfer or assignment of the Ownership Interests by Debtors or for any sale, transfer or refinance of any of the assets now or hereafter owned by the Portfolio Entities or Intermediate Entities, including, without limitation, any real property owned or held by any Portfolio Entity. Those obligations would also not prohibit any transfers of Ownership Interests that are required to be made by Debtors to Other Owners under the Governing Documents.

(7) Any Sale Transaction with respect to Ownership Interests shall require the prior written consent of the Trustee, which consent shall not be unreasonably withheld, except that the Trustee shall not have any right to consent to (a) the dilution or transfer of an Ownership Interest resulting from a Capital Call Transaction or (b) the sale, transfer and/or assignment (and not encumbrance) of an

Ownership Interest to any Other Owner(s) in instances in which such sale, transfer and/or assignment is (i) solely initiated by an Other Owner(s) pursuant to any right of an Other Owner(s) to purchase the Ownership Interest of a Debtor under any Governing Document or (ii) not initiated by the Debtor but is required by the Governing Documents; provided such sale, transfer and/or assignment is effected pursuant to and in accordance with the terms and conditions of such Governing Document; provided, further that the exceptions set forth in subsections (a) and (b) above shall not apply to any Ownership Interest in River Knolls, LP, a California limited partnership, River Knolls, LLC, GVSC, LP, a California limited partnership, and Grass Valley Shopping Center, LLC.

(8) The consent of the Secured Party is not required to sell, transfer, assign, encumber, finance or refinance any asset or property (including, without limitation, real property) owned and/or held by any Portfolio Entity or Intermediate Entity. Secured Party will remove the Negative Pledge of record within seven (7) days of written request, if provided with evidence that a lender alleges the same is a default, or evidence that removal is required by a proposed lender in connection with refinance of a property owned by a Portfolio Entity or Intermediate Entity; provided that the removal of the Negative Pledge of record shall not impair, amend, modify or otherwise affect the provisions set forth in the Negative Pledge.

(m) **Negative Pledge.** The Grantors and Secured Party hereby agree that promptly after the confirmation of the Plan, the Secured Party may file (a) the Negative Pledge with the recorder in any County in which any real property owned by a Portfolio Entity is located or in which any Grantor is located and (b) any applicable UCC filings containing the language from the Negative Pledge with the secretary of state in any State in which real property owned by a Portfolio Entity is located or in which any Grantor is located. The Negative Pledge shall state that the consent of the Secured Party is not required to sell, transfer, assign, encumber, finance or refinance any asset or property (including, without limitation, real property) owned and/or held by any Portfolio Entity or Intermediate Entity. Secured Party will remove the Negative Pledge of record within seven (7) days of written request, if provided with evidence that a lender alleges the same is a default, or evidence that removal is required by a proposed lender in connection with refinance of a property owned by a Portfolio Entity or Intermediate Entity; provided that the removal of the Negative Pledge of record shall not impair, amend, modify or otherwise affect the provisions set forth in the Negative Pledge.

(n) **Further Assurances.** Each Grantor shall take such actions and/or provide such assistance as reasonable and appropriate and/or as Secured Party may reasonably determine to be necessary or advisable to carry out the provisions of the Cash Flow Note, this Agreement and the other Security Documents, and the transactions and actions contemplated hereunder and thereunder. Without limiting the generality of the foregoing, each of the Grantors covenants and agrees that it will defend its and their right, title and security interest in and to the Collateral against the claims and demands of all Persons whomsoever, subject to the provisions of Section 4 above.

(o) **Exercise of Rights and Remedies by Debtors in Portfolio and Intermediate Entities.** Debtors expressly acknowledge and agree that (i) (A) in the event that Debtors receive disparate treatment from any other holder of a Venture Interest in a Portfolio Entity or Intermediate Entity, which treatment is in violation of the provisions of the Governing Documents, including, without limitation, the failure of such entity to distribute funds to Debtors that are otherwise distributed to other holders of a Venture Interest in such entity when such disparate distributions are not called for by the Governing Documents, and/or (B) from and after the occurrence of a breach of a Portfolio Entity's or Intermediate Entity's Governing Documents, which breach has not been consented to by Other Owners holding the requisite