

**MEMORANDUM**

To: The Board of Directors of the Red Rocks Valley Homeowners Association, Inc.  
From: Andrew Teske and Kari Henning  
Date: November 13, 2025  
Subject: Red Rocks Valley Drainage Issues

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**Background**

The Red Rocks Valley Homeowners Association (the “HOA”) Board of Directors (the “Board”) retained this firm following an unusually heavy rain event on September 4, 2025, which flooded portions of the Red Rocks Valley Community (the “Community”) and surrounding properties. We understand that the areas around Red Vale Court, Rocky Knoll Court, and Trail Ridge Road were particularly impacted.

The Community’s drainage facilities were subsequently investigated by Rolland Consulting Engineers, LLC (“RCE”) on behalf of Conquest Homes, LLC (“Conquest”). Conquest is the successor Declarant for the Community and is continuing to develop portions of the property. RCE issued a report of its findings on September 11, 2025 (the “2025 RCE Report”). *See* Ex. A. According to the 2025 RCE Report,<sup>1</sup> stormwater from the September 4<sup>th</sup> storm either overtopped Trail Ridge Road near the shared driveway for 2295 and 2297 Trail Ridge Road (the “North Driveway”) or the shared driveway for 2287, 2289, and 2291 Trail Ridge Road (the “South Driveway”), or backed up through the storm drain system on Red Vale Court. *See id.* The 2025 RCE Report concludes that there were design and/or construction issues with the drainage system near the North and South Driveways, and that the drainage channel along Trail Ridge Road should be cleaned and excavated to prevent future flooding. *See id.*

In the event that the work recommended by RCE, or by other professionals, is deemed necessary or advisable, the Board asked this firm to review the Community’s development

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<sup>1</sup> The Board has not adopted the 2025 RCE Report and is instead seeking an independent evaluation of the drainage issues in the Community and of RCE’s findings. The Board reserves the right to object or otherwise respond to the 2025 RCE report should the results of its independent engineering investigation differ.

history and governing documents to determine which party or parties are legally responsible for that work.<sup>2</sup>

## **Community History**

The Community was originally platted as part of Blocks C and D in the Monument Valley Subdivision in 1998. *See* Ex. B. Blocks C and D were conveyed to Surf View Development Co. and annexed into the City of Grand Junction in 2006, and were then conveyed to Redlands Valley Cache, LLC (“Cache”). Cache re-platted Blocks C and D in the 2008 Red Rocks Valley Plat, which included various drainage easements for the benefit of the HOA, including on Tracts K, T, and H (the “Drainage Tracts”), which encompass the existing drainage channel adjacent to Trail Ridge Road. *See* Ex. C. The Declaration of Covenants, Conditions and Restrictions of Red Rocks Valley Subdivision (the “Original CCRs”) were also recorded near this time. *See* Ex. D. Cache was the Declarant under the Original CCRs. Cache conveyed the private drives (the “Courts”), and other property to the HOA in 2008, and additional property, including the Drainage Tracts, in 2009.

Cache conveyed property including the platted lots around Red Vale Court and Rocky Knoll Court to Red Rocks Real Estate Solutions, LLC (“Solutions”) in 2011. Cache also assigned its Declarant rights and entitlements to Solutions at that time. Later that year, Solutions conveyed the relevant property and assigned its Declarant rights and entitlements to Red Rocks Real Estate Partners, LLC (“Partners”).

In September 2012, Partners recorded an Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Red Rocks Valley (the “Amended and Restated CCRs”) as the successor Declarant for the Community. *See* Ex. E. Among other things, the Amended and Restated CCRs removed certain property, including the Drainage Tracts and other property owned by the HOA, from the Community.

The areas surrounding Red Vista Court, Red Vale Court, Red Wash Court, and Rocky Knoll Court were re-platted in the 2014 Red Rocks Patio Home Plat, which, somewhat counterintuitively, removed the individual lots in those areas. *See* Ex. F. Then, in 2015,

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<sup>2</sup> This memorandum assumes that there are no unexpired claims for construction and/or design defects related to the Community’s drainage system. The statute of repose for such claims in Colorado is six years from the date of the project’s substantial completion. We are unaware of any component of the drainage facilities that was constructed within that timeframe, but our analysis of legal responsibility may change if improvements to the drainage system were constructed within the statute of repose.

Partners recorded the First Amendment to the Amended and Restated CCRs, in an effort to correct the omission of HOA property, including the Drainage Tracts, from the Community under the Amended and Restated CCRs. *See Ex. G.* Ten days later, Partners recorded a First Supplemental Declaration to the Amended and Restated CCRs. *See Ex. H.* A Second Supplemental Declaration to the Amended and Restated CCRs was recorded in May 2015. *See Ex. I.* Both the First and Second Supplemental CCRs purport to add property to the Community and make other changes and additions to the CCRs.

The area around Red Vista Court was then re-platted in the June 2015 Red Rocks Homes Filing 1 Plat. *See Ex. J.* Later in 2015, the property surrounding Red Wash Court, Rocky Knoll Court, and Red Vale Court was conveyed to Conquest, which also received an assignment of declarant rights from Partners. Conquest then recorded a Third Supplemental Declaration to the Amended and Restated CCRs in July 2017, which again purported to add property to the Community and made other amendments and additions to the covenants. *See Ex. K.*

In 2021, Conquest recorded the Red Rocks Homes Filing 2 Plat, which re-platted the area around Red Wash Court. *See Ex. L.* Conquest also recorded a First Amendment to the Third Supplemental Declaration to the Amended and Restated CCRs at that time. *See Ex. M.* The First Amendment to the Third Supplemental CCRs corrected an error in the Third Supplemental CCRs and made other amendments. *See id.*

In 2023, the HOA recorded an Amendment to the Amended and Restated CCRs, and Conquest recorded a Fourth Supplemental Declaration to the Amended and Restated CCRs in February 2024. *See Exs. N and O.* The Fourth Supplemental CCRs added the area around Rocky Knoll Court to the Community, which was re-platted in the Red Rocks Homes Filing 3 Plat, also recorded in February 2024. *See Ex. P.*

As of the date of this memorandum, the area around Red Vale Court (Block 4 of Red Rocks Patio Homes), mentioned in the 2025 RCE Report, has not been added to the Community and is still owned by Conquest.

There have been a number of technical errors throughout this complex history which could have an impact on the rights and obligations relative to the Community's drainage system. If Lots or Tracts were not properly annexed into the Community, the obligations under the CCRs would not apply to those portions of the property. Similarly, attempts to amend the CCRs without the proper authority may be invalid.

Significantly, the original assignment of declarant rights from Cache to Solutions may have been ineffective. *See* Ex. Q. The Original CCRs, under which Cache was the Declarant, required any assignment of declarant rights to be signed by the *assignee*, as well as by the assignor. *See* Ex. D at Art. XII Sec. 12. The 2011 assignment was only signed by the assignor (Cache) and not the assignee (Solutions). Thus, to the extent Solutions and subsequent successor declarants (Partners and Conquest) acted through a purported exercise of their declarant rights, they may not have technically had the authority to do so.

The Amended and Restated CCRs were also technically deficient in that they were not signed by the HOA as required by Art. XII Sec 6(e) of the Original CCRs. Those deficiencies were addressed by the First Amendment to the Amended and Restated CCRs, which was signed by the HOA. However, there are similar issues with that instrument because it is unclear whether the owners of 67% of the Units then in the Community approved the revisions as required by Ch. 6 Sec. 5.a. of the Amended and Restated CCRs. It seems that potential weakness in the documentary background was addressed by a 2014 Memorandum of Acknowledgement of Approval, evidencing owner approval of the First Amendment. The Original CCRs also provide that “[n]o action to challenge the validity of an amendment adopted by the Association...may be brought more than one (1) year after the amendment is recorded.” *See id.* at Art. XII Sec. 6(b), *see also* Ex. E at Ch. 6, Sec. 5.b. The HOA’s approval thus appears to validate the Amended and Restated CCRs and it is also likely that the HOA’s approval can no longer be properly challenged legally even if it were incorrect at the time.

The First Supplemental Declaration and the subsequent amendments and supplements to the Amended and Restated CCRs have similar issues, in that the Declarants likely did not have the proper authority to add properties to the Community unilaterally, and the HOA and owners in the Community did not sign those documents.

As relevant with respect to the September 4 rain event, the homes utilizing the South Driveway (Red Rocks Valley Lots 4-6 Block 2) and the North Driveway (Red Rocks Valley Lots 8-9 Block 2) were purportedly annexed into the Community (or recognized as having been previously annexed into the Community) by the First Supplemental CCRs, and the Fourth Supplemental CCRs purported to add Red Rocks Homes Filing 3, around Rocky Knoll Court, to the Community. The HOA did not sign those supplements, so the one-year limit on challenging their validity does not appear to apply. Accordingly, it is unclear whether those properties are bound by the Amended and Restated CCRs.

## **Drainage Maintenance**

Based in part on that background, the responsibility for drainage maintenance varies throughout the Community and the surrounding property, as set forth below.

### *Drainage Tracts*

To the extent the issues observed in September stem from the Community's Drainage Tracts, the HOA is likely responsible. Before those tracts were conveyed to the HOA, a prior owner and developer, Cache, entered into a Post-Construction Stormwater Control Operations and Maintenance Agreement with the City for the Red Rocks Valley Subdivision. *See* Ex. R (the "2009 Stormwater Agreement"). Under the 2009 Stormwater Agreement, the landowner is required to perpetually operate, inspect, maintain, and repair drainage facilities within the subdivision. While the City has a right to step in and conduct such work itself, it is not obligated to do so. The 2009 Stormwater Agreement was binding not only on Cache, but on subsequent landowners as well. The Drainage Tracts were conveyed to the HOA in 2009, and it is now the "landowner" with respect to those Tracts under the 2009 Stormwater Agreement.

The HOA also has obligations related to the Drainage Tracts under the CCRs. Under the Amended and Restated CCRs, "[m]aintenance, repair, and replacement of all Common Elements, Improvements located thereon, and of any drainage structure or facility, or other public improvements required by the local governmental entity... shall be the responsibility of the Association ..." *See* Ex. E at Ch. 4 Art. I Sec. 19; Ch. 4 Art. III Sec. 1.a. Because the Drainage Tracts are Common Elements and because the drainage facilities therein were required as part of the City's approval process, the HOA is responsible for their maintenance, repair, and replacement if deemed necessary.

However, it is possible that even if the drainage system was properly designed, constructed, and maintained, it still would not have fully contained the exceptional amount of precipitation which fell on September 4. It is our understanding from other discussions we have been involved in concerning the September 4 rain event that the volume of water exceeded a 100-year flood event, which is generally the engineering design standard for drainage facilities. In other words, the system may have been overwhelmed by this particular storm regardless of whether it was properly maintained. If that is the case, then it may not be

necessary to make changes to the system at this stage. A qualified engineer should be retained to assess these issues.

*North Driveway, South Driveway*

At least according to the 2025 RCE Report, the culverts and related drainage facilities under or adjacent to the North and South Driveways may need to be modified. The North and South Driveways are located within shared driveway easements crossing the property owned by the HOA (Tract T), as shown on the Red Rocks Valley Plat. *See Ex. C; see also E.* The Driveways are solely for the use of the Lots served by them, as set forth on the Red Rocks Valley Plat. Even if some of those Lots were not properly added to the Community, they are still the dominant estate owners of the Driveway easements. Generally, owners of easements are responsible for the maintenance of those easements, and cannot unreasonably interfere with the use of the servient property (here, Tract T). To the extent work must be performed within the easement areas, including on the culverts under the Driveways, the Lots owning the easement areas are likely responsible for the costs of that work.

*Red Rocks Homes Filing 3*

Flooding was also observed around Rocky Knoll Court (Red Rocks Homes Filing 3). To the extent maintenance or repair of the drainage facilities in that area is needed, the HOA, Conquest, and certain homeowners may all bear some responsibility.

The area around Rocky Knoll Court was platted as Lots 38-52 Block 5 and Tract X in the 2008 Red Rocks Valley Plat. Though the area was subsequently re-platted, the 2009 Stormwater Agreement likely remains binding on landowners to the extent there are drainage facilities which were part of the 2008 development located on their property.<sup>3</sup> Additionally, Conquest entered into a second Post-Construction Stormwater Agreement with the City in 2020 for Red Rocks Homes Filings 2, 3, and 4 (the “2020 Stormwater Agreement”). *See Ex. S.* As under the 2009 Stormwater Agreement, subsequent landowners are required to operate, inspect, maintain, and repair drainage facilities on their land.

Following a series of conveyances, Conquest is the current owner of most of the Lots in Red Rocks Homes Filing 3, with third parties owning Lots 35, 36, 37, and 40. The HOA is

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<sup>3</sup> A quick review of approved construction plans associated with this filing suggests that storm drains are generally not located within the private road itself but are adjacent to the road on the surrounding lots.

the record title owner of Tracts H and I, as well as Rocky Knoll Court. These landowners are responsible for drainage maintenance to the extent there are facilities subject to the 2009 and/or 2020 Stormwater Agreements located on their properties.<sup>4</sup>

There are also various platted drainage easements within Red Rocks Homes Filing 3. Conquest conveyed all drainage easements in Filing 3 to the HOA in 2021. It may have lacked the authority to do so as a result of problems with the assignment of reserved development rights. According to the Red Rocks Homes Filing 3 Plat, several of the Lots in that Filing have 5' and/or 10' drainage easements located on them. As a matter of record title, the HOA is obligated to maintain these easements, but it may be properly Conquest's responsibility.

This part of the property was purportedly annexed into the Community by the Fourth Supplemental CCRs. Under the Fourth Supplemental CCRs, the storm drains on that property were designed as Limited Common Elements. The HOA is responsible for maintaining the limited common elements, but the owners of any lots with storm drain grates are responsible for keeping the inlets free from debris. These obligations, and the obligations in the Amended and Restated CCRs, may not be enforceable if the properties were not properly added to the Community, as discussed above, leaving these obligations with Conquest.

#### *Red Rocks Homes Filing 4*

Conquest is responsible for drainage maintenance on the area surrounding Red Vale Court (Red Rocks Homes Filing 4). That area was platted as Lots 1-12 Block 5 and Tract V in the 2008 Red Rocks Valley Plat. As such, the 2009 Stormwater Agreement for the Red Rocks Valley Subdivision applies to that property. The 2020 Stormwater Agreement also applies to Red Rocks Homes Filing 4. Both of the Stormwater Agreements obligate the current landowners to maintain any drainage facilities installed there as part of the subdivision process. Conquest currently owns all of Red Rocks Homes Filing 4 (except Red Vale Court itself), and is bound by the Stormwater Agreements.

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<sup>4</sup> We are suspicious that the conveyance of Tracts H and I to the HOA may have been improper/ineffective. In that event, Conquest may be responsible for any storm drainage facilities located on those tracts. Our investigation also revealed a recorded memorandum of a Development Improvement Agreement between Conquest and the City related to Filing 3 which evidently has not been released. That agreement may place additional obligations on Conquest.

While Red Vale Ct. itself was conveyed to the HOA with the initial phase, unlike other areas addressed in this memorandum, there is no suggestion that Red Rocks Homes Filing 4 is part of the Community, so the CCRs’ allocation of drainage maintenance responsibilities does not apply in that area. As with the other private streets, it appears from construction plans that storm drainage facilities are not located in the streets themselves but are on the adjacent lots. Moreover, while a prior developer and Conquest both generally conveyed all drainage easements on this part of the property to the HOA in 2021, there were no drainage easements shown on the relevant plat (Red Rocks Patio Homes) in this particular area at that time. Thus, the HOA does not appear to have obligations as the benefitted owner of any express drainage easements on that portion of the property. On the other hand, uphill landowners do benefit from natural drainage easements across downhill properties under Colorado law, and may discharge water across those properties so long as water is not “sent down in a manner or quantity causing more harm than it formerly had done.” *See Hoff v. Ehrlich*, 511 P.2d 523, 525 (Colo. App. 1973). As such, uphill owners have a continued right to discharge water across Red Rocks Homes Filing 4.

### Conclusions

To summarize the above discussion, it is our conclusion based on the information we have reviewed to date that the following parties are responsible for the maintenance of the following areas. To the extent that flood waters moved from those areas to any other area as a result of improper maintenance and caused damage, the party with maintenance responsibility would be responsible.

<b>Location</b>	<b>Responsible Party</b>	<b>Notes</b>
Drainage Tracts	HOA	Unclear whether these facilities were overwhelmed as a result of improper maintenance
North Driveway	Lots 8 and 9, Block 2	Only an issue to the extent that design or maintenance of these facilities interfered with the performance of the HOA’s drainage facilities
South Driveway	Lots 4, 5 and 6, Block 2	Same as North Driveway

Red Rocks Homes Filing 3	Conquests and third-party lot owners	Conveyance of Tracts H and I, and designation of storm drain facilities as “limited common elements” subject to HOA maintenance is problematic
Rock Knoll Ct.	HOA	No storm drain facilities appear to be located here
Red Rocks Homes Filing 4	Conquest	
Red Vale Ct.	HOA	No storm drain facilities appear to be located here