

<b>DISTRICT COURT, PARK COUNTY, STATE OF COLORADO</b> P. O. Box 190 Fairplay, Colorado 80440	DATE FILED: August 13, 2014 11:10 AM FILING ID: 96F0659EA2B3A CASE NUMBER: 2014CV30056
<b>Plaintiff: INDIAN MOUNTAIN CORP.</b>  v.  <b>Defendant: INDIAN MOUNTAIN METROPOLITAN DISTRICT</b>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>Attorneys for Plaintiff</b> Matthew L. Merrill, #37918 Philip E. Lopez, #40484 Adam C. Davenport, #45342 WHITE & JANKOWSKI, LLP 511 Sixteenth Street, #500 Denver, Colorado 80202 Tele: (303) 595-9441 Fax: (303) 825-5632 Email: matthewm@white-jankowski.com philipl@white-jankowski.com adamd@white-jankowski.com	Case No. 14CV30056
<b>INDIAN MOUNTAIN CORP.'S REPLY TO DEFENDANT'S COUNTERCLAIMS</b>	

Plaintiff Indian Mountain Corp (“IMC”), by and through its undersigned attorneys, files the following reply to Defendant Indian Mountain Metropolitan District’s (“IMMD”) Counterclaims, and states as follows:

**REPLY TO COUNTERCLAIMS**

- 65. IMC admits the allegations contained in paragraph 65 of the Counterclaim.<sup>1</sup>
- 66. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 66, and therefore denies the same.
- 67. IMC denies the allegations in paragraph 67. IMC further denies that an entity named “Meridian Property Development” existed. IMC does admit that Meridian Properties, Inc. participated in the development of the Indian Mountain subdivision.

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<sup>1</sup> IMC’s paragraph numbering corresponds to the numbering of Defendant’s Counterclaim.

68. IMC denies the allegations in paragraph 68.
69. IMC denies that Indian Mountain subdivision was originally conceived by “Meridian Property Development” or Meridian Properties, Inc. IMC admits the remainder of the allegations in paragraph 69.
70. IMC denies the allegations in paragraph 70. IMC admits that Park Development Company recorded the approved plat for Indian Mountain Filing No. 1 with the Park County Clerk and Recorder on August 27, 1970.
71. IMC denies the allegations in paragraph 71.
72. IMC denies the allegations in paragraph 72.
73. IMC denies the allegations in paragraph 73.
74. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 74, and therefore denies the same.
75. IMC admits that a homeowners association or similar entity was never established to hold water rights for the Indian Mountain Subdivision or the Indian Mountain Lot Owners. IMC denies the remainder of the allegations in paragraph 75.
76. IMC admits that the application in Case No. W-7389 was filed on May 31, 1973. IMC denies the rest of the allegations in paragraph 76.
77. The W-7389 Application speaks for itself. To the extent paragraph 77 requires a response, IMC denies the allegations in paragraph 77.
78. IMC admits that on January 2, 1974, the Water Court for Water Division 1 entered its Findings of Fact, Conclusions of Law and Decree Modifying Water Rights and Approving Plan of Augmentation in Case No. W-7389, nunc pro tunc October 1, 1973. As to the remainder of the allegations in paragraph 78, the W-7389 Decree speaks for itself. To the extent the remainder of paragraph 78 requires a response, IMC denies the allegations contained therein.
79. The W-7389 Decree speaks for itself. To the extent paragraph 79 requires a response, IMC denies the allegations in paragraph 79.
80. The W-7389 Decree speaks for itself. To the extent paragraph 80 requires a response, IMC denies the allegations in paragraph 80.
81. IMC admits the allegations in paragraph 81.

82. IMC denies the allegations in paragraph 82. However, IMC admits that after entry of the Decree in Case No. W-7389 nunc pro tunc on October 1, 1973, Park Development Company filed plats for Filings 22-24 of the Indian Mountain subdivision, IMC filed plats for Filings 25 and 26 of the Indian Mountain subdivision, and Rainbow Development, Inc. filed a plat for Filing 27 of the Indian Mountain subdivision.
83. IMC denies the allegations in paragraph 83.
84. IMC admits that James Campbell signed the plats for Indian Mountain Filings 25 and 26, but denies that he signed them on behalf of Meridian Properties, Inc. IMC denies that James Campbell signed the plats for Indian Mountain Filings 1-24. As to the remainder of the allegations in paragraph 84, IMC is without knowledge or information sufficient to form a belief as to those remaining allegations and therefore denies the same.
85. IMC admits that Park Development Company, and later IMC, conveyed lots located in the Indian Mountain subdivision. As to the remaining allegations in paragraph 85, IMC is without knowledge or information sufficient to form a belief as to the allegations, and therefore denies the same.
86. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 86, and therefore denies the same.
87. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 87, and therefore denies the same. However, IMC admits that it provided a document to potential purchasers that stated “Warning – There is no assurance of a sufficient supply of water for the anticipated population of the subdivision.”
88. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 88, and therefore denies the same.
89. IMC denies the allegations in paragraph 89. IMC does admit that a legal dispute involving IMC and Meridian Properties, Inc. occurred.
90. IMC denies the allegations in paragraph 90. However, IMC admits that it is the successor in interest to Park Development Company. IMC also admits that it owns water rights included in the plan for augmentation decreed in Case No. W-7389.
91. IMC admits that James Campbell owned 100% of the outstanding shares of IMC on July 22, 2013, when he sold all of the outstanding shares to Bar Star Land, LLC. IMC is without knowledge or information sufficient to form a belief as to James Campbell’s ownership prior to that date, and therefore denies the allegations in paragraph 91. IMC denies that James Campbell owned any interest in IMC after July 22, 2013.

92. IMC admits that lots in the Indian Mountain subdivision were sold after the entry of the decree in Case No. W-7389. However, IMC is without knowledge or information sufficient to form a belief as to the remainder of the allegations in paragraph 92, and therefore denies the same. Also, any permit issued by the State Engineer speaks for itself. To the extent the allegations regarding well permits issued by the State Engineer calls for response, IMC denies the same.
93. IMC denies the allegations in paragraph 93. In addition, paragraph 93 calls for a legal conclusion that the Park County District Court does not have subject matter jurisdiction to decide.
94. IMC denies the allegations in paragraph 94 and its subparagraphs.
95. IMC admits that the Recreation District could not legally provide water services on behalf of the Indian Mountain Lot Owners. As to the remainder of the allegations in paragraph 95, IMC is without knowledge or information sufficient to form a belief as to those allegations, and therefore denies the same.
96. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 96, and therefore denies the same.
97. With regard to the first sentence in paragraph 97, IMC is without knowledge or information sufficient to form a belief as to those allegations, and therefore denies the same. With regard to the second sentence in paragraph 97, the Amended and Restated Service Plan speaks for itself. To extent the allegations in the second sentence of paragraph 97 requires a response, IMC denies those allegations.
98. IMC admits the allegations in paragraph 98, except that a hearing was held on December 13, 2012 rather than December 12, 2012.
99. IMC admits the allegations in paragraph 99, except that the order of the Park County District Court was entered in Case No. 1975CV4062 rather than 1975CW4062.
100. IMC is without knowledge or information sufficient to form a belief as to the allegations in paragraph 100, and therefore denies the same.
101. IMC denies the allegations in paragraph 101.
102. IMC admits the allegations in paragraph 102, except that the address of Bar Star Land, LLC is listed as 4848 Bobolink Court rather than 848 Bobolink Court.
103. IMC admits the allegations in paragraph 103.

104. IMC admits that Mr. Goosmann and Mr. Ingalls attended an IMMD Board meeting on August 10, 2013. IMC denies the remaining allegations in paragraph 104. However, IMC admits that it offered to sell to IMMD the plan for augmentation decreed in Case No. W-7389.
105. IMC admits that it has operated and maintained structures associated with the Indian Mountain plan for augmentation. IMC denies it has been paid reasonable sums for those services provided. IMC is without knowledge or information sufficient to form a belief as to the remaining allegations in paragraph 105, and therefore denies the same.
106. IMC denies the allegations in paragraph 106.
107. IMC denies the allegations in paragraph 107.
108. IMC admits that IMC sent to IMMD two invoices on the dates alleged in paragraph 108 and admits that IMMD refused to pay IMC the amount owing under those invoices. As to the first sentence in paragraph 108, IMC denies the invoice was payable in 14 days, and denies that the invoice was another type of document “styled” as an invoice. As to the second sentence, IMC denies that the invoice was a “so-called” invoice.
109. IMC denies that it made unreasonable demands for payment. IMC admits the remainder of the allegations in paragraph 109.
110. IMC denies the allegations contained in paragraph 110. However, IMC admits that on April 9, 2014, James Campbell signed a quit claim deed and assignment as a surviving director of the last acting board of directors of Meridian Properties, Inc., which is the general partner of Park Development Company, to clarify previous transactions. IMC further admits that on April 9, 2014, James Campbell signed an affidavit to clarify previous transactions. The quit claim deed and affidavit speak for themselves.
111. IMC admits that it is the owner of water rights included in the plan for augmentation decreed in Case No. W-7389. IMC denies the remaining allegations in paragraph 111.
112. IMC incorporates by reference all preceding paragraphs herein.
113. C.R.C.P. 57 speaks for itself. Paragraph 113 also calls for a legal conclusion to which no response is required. To the extent paragraph 113 contains any factual allegations, IMC denies the same.
114. C.R.C.P. 57 speaks for itself. Paragraph 114 also calls for a legal conclusion, to which no response is required. To the extent paragraph 114 contains any factual allegations, IMC denies the same.

115. C.R.C.P. 57 speaks for itself. Paragraph 115 also calls for a legal conclusion, to which no response is required. To the extent paragraph 115 contains any factual allegations, IMC denies the same.
116. IMC admits the allegations in paragraph 116.
117. Paragraph 117 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 117 contains any factual allegations, IMC denies the same.
118. Paragraph 118 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 118 contains any factual allegations, IMC denies the same.
119. Paragraph 119 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 119 contains any factual allegations, IMC denies the same.
120. Paragraph 120 and its subparagraphs appear to call for a legal conclusion, to which no response is required. To the extent paragraph 120 contains any factual allegations, IMC denies the same.
121. IMC incorporates by reference all preceding paragraphs herein.
122. Paragraph 122 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 122 contains any factual allegations, IMC denies the same.
123. C.R.S. § 40-1-103 speaks for itself. Paragraph 123 also appears to call for a legal conclusion, to which no response is required. To the extent paragraph 123 contains any factual allegations, IMC denies the same.
124. C.R.S. § 40-1-103 speaks for itself. Paragraph 124 also appears to call for a legal conclusion, to which no response is required. To the extent paragraph 124 contains any factual allegations, IMC denies the same.
125. C.R.S. § 40-3-101 speaks for itself. Paragraph 125 also appears to call for a legal conclusion, to which no response is required. To the extent paragraph 125 contains any factual allegations, IMC denies the same.
126. 4 Colo. Code Regs. § 723-5:5109 speaks for itself. Paragraph 126 also appears to call for a legal conclusion, to which no response is required. To the extent paragraph 126 contains any factual allegations, IMC denies the same.
127. Paragraph 127 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 127 contains any factual allegations, IMC denies the same.

128. Paragraph 128 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 128 contains any factual allegations, IMC denies the same. In addition, paragraph 128 calls for a legal conclusion that the Park County District Court does not have subject matter jurisdiction to decide.
129. IMC incorporates by reference all preceding paragraphs herein.
130. IMC admits that the decree in Case No. W-7389 was entered on January 2, 1974, nunc pro tunc October 1, 1973. With regard to the remaining allegations in paragraph 130, the W-7389 Decree speaks for itself. To the extent the remaining allegations in paragraph 130 require a response, IMC denies those allegations.
131. IMC denies the allegations in paragraph 131. In addition, paragraph 131 calls for a legal conclusion that the Park County District Court does not have subject matter jurisdiction to decide.
132. IMC denies the allegations in paragraph 132.
133. IMC admits that IMC sent to IMMD two invoices on the dates alleged in paragraph 133 and admits that IMMD refused to pay IMC the amount owing under those invoices. As to the first sentence in paragraph 133, IMC denies the invoice was payable in 14 days, and denies that the invoice was another type of document “styled” as an invoice. As to the second sentence, IMC denies that the invoice was a “so-called” invoice.
134. IMC denies the allegations in paragraph 134.
135. Paragraph 135 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 135 contains any factual allegations, IMC admits the same.
136. Paragraph 136 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 136 contains any factual allegations, IMC denies the same.
137. Paragraph 137 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 137 contains any factual allegations, IMC denies the same.
138. Paragraph 138 appears to call for a legal conclusion, to which no response is required. To the extent paragraph 138 contains any factual allegations, IMC denies the same.

#### **AFFIRMATIVE DEFENSES**

1. Defendant’s counterclaims fail for lack of standing.
2. Defendant’s counterclaims fail to state a claim on which relief may be granted.

3. Defendant's counterclaims fail for lack of subject matter jurisdiction.
4. Defendant's counterclaims are not ripe.
5. Defendant's counterclaims are barred by the statute of frauds.
6. Defendant's counterclaims are barred by the statute of limitations.
7. Defendant's counterclaims are barred in whole or in part by the equitable doctrines of laches, estoppel, waiver and unclean hands.
8. Defendant's counterclaims are barred due to bad faith.
9. Defendant's counterclaims are barred due to res judicata (aka claim preclusion) or issue preclusion.
10. Defendant's counterclaims are barred due to accord and satisfaction.
11. Defendant's counterclaims are barred due to failure of consideration.
12. Defendant's counterclaims are barred due to the election of remedies
13. Defendant's counterclaims are barred due to lack of authority.
14. Defendant's counterclaims are barred due to set off.
15. Defendant's counterclaims are barred due to lack of performance.
16. Defendant's counterclaims are barred due to failure to join indispensable parties.
17. Defendant's counterclaims are barred due to failure to exhaust administrative remedies.
18. Defendant's counterclaims are barred for failure to comply with C.R.C.P. 9.

DATED this 13th day of August, 2014.

WHITE & JANKOWSKI, LLP

By: \*S/

  
Matthew L. Merrill

\*Philip E. Lopez

Adam C. Davenport

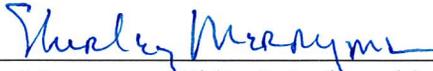
Efiled per C.R.C.P. 121

Duly signed original on file at White & Jankowski, LLP

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of August, 2014, a true and correct copy of **Indian Mountain Corp.'s Reply to Defendant's Counterclaims** for **Case 2014CV30056, Park County** was served by e-filing via ICCES and addressed to the following:

\*S/ 

\* Shirley Merryman, White & Jankowski, LLP  
Efiled per C.R.C.P. 121  
Duly signed original on file at White & Jankowski, LLP

Party Name	Party Type	Attorney Name
Indian Mountain Metropolitan District	Defendant	Andrew Rottman Nathan Flynn Peter Ampe