

<p>COLORADO COURT OF APPEALS  2 East 14th Avenue  Denver, CO 80203  (720) 625-5150</p>	
<p>Park County, Hon. Stephen A. Groome, J.  2014CV30056</p>	
<p>Opinion by Judge Freyre  Taubman and Dailey, JJ., concur</p>	
<p><b>Appellant/Cross-Appellee:</b>   INDIAN MOUNTAIN CORP.   v.   <b>Appellee/Cross-Appellant:</b>   INDIAN MOUNTAIN METROPOLITAN  DISTRICT</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Peter J. Ampe, # 23452  Matthew A. Montgomery, #44039  Hill &amp; Robbins, P.C.  1660 Lincoln Street, Suite 2720  Denver, CO 80264  Phone: (303) 296-8100  Fax: (303) 296-2388  E-mail: peterampe@hillandrobbsins.com  matthewmontgomery@hillandrobbsins.com</p>	<p>Case Number: 2015CA1055   Ctrm/Div: _____</p>
<p><b>PETITION FOR REHEARING</b></p>	

Appellee/Cross-Appellant, Indian Mountain Metropolitan District, through undersigned counsel, Hill & Robbins, P.C., submits the following Petition for Rehearing:

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 32 and C.A.R. 40, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The brief complies with the applicable word limits set forth in C.A.R. 40(b).**

It contains 285 words.

/s Peter J. Ampe  
Matthew A. Montgomery  
Peter J. Ampe

At trial, IMMD pursued three counterclaims: (1) declaratory relief regarding the ownership of the Plan based on a theory of constructive trust; (2) declaratory relief, in the alternative, that if IMMD has no ownership rights in the Plan, IMC is operating as a Public Utility; and (3) Injunctive Relief for IMC to continue operation of the Plan, subject to reimbursement for actual expenses. Trial Court Order at 2. (attached as Exhibit A). After trial, the Trial Court entered judgment in favor of IMMD on its first counterclaim. *Id.* at 8-9. The Trial Court, however, did not resolve IMMD's second and third counterclaims because it concluded that they were moot as a result of the judgment in favor of IMMD on its first counterclaim. *Id.* at 9.

On August 11, 2016, this Court issued an opinion reversing the Trial Court's judgment in favor of IMMD on its first counterclaim. The remand instructions directed the Trial Court "to enter a judgment in favor of IMC consistent with this opinion." Opinion at 34. The remand instructions, however, did not address Indian Mountain Metropolitan District's (IMMD's) remaining claims. The remand instructions should include directions to the Trial Court to resolve IMMD's remaining claims consistent with this Court's opinion. *See, e.g., Busse v. City of Golden*, 73 P.3d 660, 667 (Colo. 2003).<sup>1</sup>

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<sup>1</sup> At oral argument, counsel for IMMD was specifically asked about IMMD's remaining claims in the event of a reversal, and counsel indicated that a remand for further proceedings to address those additional claims would be necessary.

WHEREFORE, IMMD respectfully requests that the Court modify its remand instructions to expressly include additional proceedings to address the previously unaddressed counterclaims of IMMD.

Respectfully submitted this 25<sup>th</sup> day of August, 2016

HILL & ROBBINS, P.C.

/s/ Peter J. Ampe  
Matthew A. Montgomery  
Peter J. Ampe  
*Attorneys for IMMD*

### **CERTIFICATE OF SERVICE**

I certify that on the 25<sup>th</sup> day of August, 2016, a true and correct copy of the above Petition For Rehearing was served by e-filing via ICCES and addressed to the following:

Adam C. Davenport  
Indian Mountain Corp.  
112 North Rubey Drive, Ste. 101  
Golden, Colorado 80403

s/ Jeri MacAllister  
Jeri MacAllister