

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

EMBLEM ASSOCIATES, LLC,)
)
 Complainant,)
)
 v.) PSC DOCKET NO. 16-0008
)
 ARTESIAN WATER COMPANY, INC.)
)
 Respondent.

**STIPULATION AND PROPOSED CONSENT ORDER RESOLVING
COMPLAINANT EMBLEM ASSOCIATES, LLC'S
MOTION FOR EXPEDITED RELIEF**

Complainant Emblem Associates, LLC (“Emblem Associates”) and Respondent Artesian Water Company, Inc. (“Artesian Water”) present for the approval of the Public Service Commission (the “Commission”) the within stipulation to resolve the issues raised in the Motion for Expedited Relief filed in this docket by Emblem Associates on January 6, 2016. Emblem Associates and Artesian Water, through their respective undersigned attorneys, hereby stipulate and agree to resolve the Motion for Expedited Relief according to the express terms of this Agreed Order (“Order”) as follows:

1. The terms of this Order are the result of a negotiated resolution between Emblem Associates and Artesian Water (collectively, the “Parties”). Accordingly, this Order shall not be construed as an admission of liability on the part of Artesian Water or Emblem Associates.
2. On January 6, 2016, Emblem Associates filed a Complaint against Artesian Water with the Commission challenging the legality of Artesian Water demanding a Contribution In-aid-of Construction (“CIAC”) in the amount of \$459,000 from Emblem Associates for completed off-site facilities constructed by Artesian Water.

3. Contemporaneously therewith, Emblem Associates filed a Motion for Expedited Relief, seeking an Order from the Commission requiring Artesian Water to begin providing water service immediately to Emblem Associates so that Emblem Associates may proceed according to schedule with the construction and opening of its apartment complex, the Emblem at Christiana.

4. On January ~~26~~²⁶, 2016, the Parties entered into a Water Services Agreement to govern Artesian Water's provision of water service to Emblem Associates for the Emblem at Christiana. The Water Services Agreement is attached hereto as Exhibit A, and its terms are incorporated into this Order as though fully set forth herein.

5. Paragraph 1 of the Water Services Agreement provides that Artesian Water will provide water service to the Emblem at Christiana.

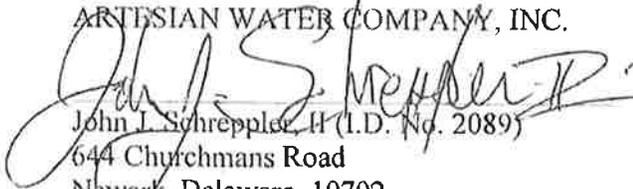
6. Paragraph 2 of the Water Services Agreement provides that Emblem Associates will, under protest, pay to Artesian Water the \$459,000 demanded by Artesian Water, but that Artesian Water will refund to Emblem Associates so much of that amount as the Commission determines was improperly assessed and will do so within thirty days of a final order by the Commission in this docket. The Parties agree that such final order by the Commission shall not be subject to appeal and the Parties hereby waive any such statutory or common law rights of appeal.

7. The Parties consent to the jurisdiction of the Delaware Public Service Commission. The Commission shall retain jurisdiction to enforce this Order, and the Parties consent to the exclusive jurisdiction of the Commission to resolve any issues arising out of this Order.

8. The Parties specifically acknowledge and agree to each of the provisions of this Order and authorize their attorneys to enter this Order on their behalf.

ACCEPTED AND AGREED:

ARTESIAN WATER COMPANY, INC.

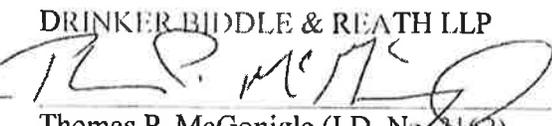

John J. Schreppler, II (I.D. No. 2089)

644 Churchmans Road
Newark, Delaware 19702
Tel: (302) 453-6900
Fax: (302)-453-6957
jschreppler@artesianwater.com

*Counsel for Respondent
Artesian Water Company, Inc.*

Dated: January 28, 2016

DRINKER, BIDDLE & REATH LLP


Thomas P. McGonigle (I.D. No. 3162)

Lindsay B. Orr (I.D. No. 5321)
222 Delaware Avenue, Suite 1410
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Tel: (302) 467-4200
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*Counsel for Complainant
Emblem Associates, LLC*

Accordingly, it is ORDERED that the Delaware Public Service Commission, having received the stipulation of Complainant Emblem Associates, LLC and Respondent Artesian Water Company, Inc., approves the stipulation according to its terms and ENTERS the Agreed Order Resolving the Motion to Expedite.

IT IS SO ORDERED this _____ day of _____, 2016

EXHIBIT A

WATER SERVICES AGREEMENT

FOR

EMBLEM AT CHRISTIANA (AKA: CHURCHMANS MEADOWS)

THIS AGREEMENT, entered into this 26th day of January, 2016, between **EMBLEM ASSOCIATES, LLC**, a Delaware limited liability company, (hereinafter referred to as "OWNER") and **ARTESIAN WATER COMPANY, INC.**, a Delaware corporation (hereinafter referred to as "ARTESIAN") (and together referred to as the "PARTIES").

WHEREAS, OWNER is developing a certain tract of land situate in White Clay Creek Hundred, New Castle County, Delaware, known as **EMBLEM AT CHRISTIANA** (the "PROJECT"), consisting of 245 residential apartments within nine (9) buildings and one (1) clubhouse and maintenance garage, all on the single parcel known as EMBLEM AT CHRISTIANA.

WHEREAS, OWNER requests public water service for the PROJECT; and ARTESIAN agrees to provide said public water service.

NOW, THEREFORE, in consideration of the mutual covenants contained herein it is agreed as follows:

1. ARTESIAN agrees to furnish water service to the apartment complex planned for improvement in the PROJECT, pursuant to its rates, rules and regulations on file with the Delaware Public Service Commission (the "PSC"). The Parties agree that time is of the essence and will exercise their best efforts ensure that water service to the Project is provided on or before March 1, 2016.

2. OWNER agrees UNDER PROTEST to make a contribution in aid of construction (CIAC) of **FOUR HUNDRED FIFTY-NINE THOUSAND AND 00/100 DOLLARS (\$459,000.00)** for their portion of an off-site water main extension that provides a second source of water for appropriate reliability of supply to the PROJECT, the Christiana Mall area and other areas. Artesian contends that the CIAC it has calculated for OWNER does not include any water main extension for other areas beyond the PROJECT and the Christiana Mall. This amount, as calculated by ARTESIAN, is equal to 34% of the total cost of the offsite water main project excluding the booster station. Said Contribution is payable to ARTESIAN by OWNER upon execution of this Agreement. Owner has filed a formal complaint with the Delaware Public Service Commission ("PSC") (PSC Docket No. 16-0008) challenging the legality of ARTESIAN requiring any CIAC from OWNER for the PROJECT or, in the alternative, the amount of the CIAC that properly may be demanded by ARTESIAN. ARTESIAN covenants that it will refund to OWNER so much of the CIAC, if any, that is determined by the PSC to be improper within thirty (30) days after the final order by the PSC. The Parties agree that such final order by the PSC shall not be subject to appeal and the Parties hereby waive any such statutory or common law rights of appeal.

3. ARTESIAN shall, at the sole expense of OWNER, relocate approximately 15-foot of 16" diameter water main out of conflict with OWNER'S proposed sanitary sewer line and

install one (1) 8-inch water service necessary to serve the PROJECT ("Main Construction"). Said mains are now and shall in perpetuity remain the property of ARTESIAN, its successors and assigns, and ARTESIAN shall be solely responsible for maintenance and repair thereof.

4. OWNER shall initially pay ARTESIAN the estimated cost of the Main Construction to be installed under this Agreement. The amount shall be adjusted to final actual cost upon completion of installation, and said final actual cost shall be non-refundable, all as more specifically and completely described hereinafter:

a. The estimated cost of said Main Construction shall be **TWENTY NINE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$29,500.00)**, payable to ARTESIAN by OWNER upon execution of this Agreement. The estimated cost herein specified includes (i) the estimated vendor invoice amount for the required material, (ii) the estimated contractor cost for installation, and (iii) an allowance, equal to eighteen percent (18%) of the total of the estimated vendor invoice amount for the required material and the estimated contract cost for installation, to cover ARTESIAN's costs of planning, engineering, designing and obtaining permits; purchasing, ordering and expediting; freight expense; inspection and handling of material; storage and inventory carrying costs; contractual negotiations, including related legal charges; bidding; coordination with contractor and inspection of contractor's work; sterilization of mains and interconnection within the ARTESIAN system; administrative overhead; and such other costs as may be incurred by ARTESIAN in the performance of its obligations.

b. Upon completion of installation, the final actual cost of said Main Construction will be computed. The final actual cost will be the total of (1) the actual vendor invoice amount of the material used, (2) and the actual contract cost of installation, and (3) an allowance to cover ARTESIAN's own costs of said Main Construction in an amount equal to eighteen percent (18%) of the total of the actual vendor invoice amount of the material used and the actual contract cost of the installation. In the event the final actual cost of said Main Construction exceeds the estimated cost, such additional cost shall be payable by OWNER to ARTESIAN within thirty (30) days of ARTESIAN's billing. In the event the final actual cost is less than the estimated cost, a refund of any overcharge paid by OWNER shall be paid by ARTESIAN to OWNER within thirty (30) days of the determination of the final actual cost.

5. No water well shall be constructed for potable water use in the PROJECT at any time without the express written consent of ARTESIAN. In the event ARTESIAN consents to a potable water well, OWNER agrees it shall be "temporary" in nature and shall not be used after the date water service provided by ARTESIAN becomes available to the PROJECT via its construction of the Main Construction as projected under the terms of this Agreement, and OWNER agrees to abandon such temporary well in accordance with all local, county and State requirements. OWNER shall submit to ARTESIAN, for ARTESIAN's approval, a copy of the proposed permit application for the temporary potable well prior to its submission to the Department of Natural Resources and Environmental Control.

6. All water services shall be metered by ARTESIAN, and remote meter reading devices shall be installed with respect to each meter. OWNER shall install at OWNER's expense, subject to ARTESIAN's supervision, specifications, rules and regulations a meter pit, related piping and settings for the water service to be furnished hereunder. The meter pit will

remain the sole property of OWNER, its successors and assigns, and OWNER shall be responsible for maintenance and repair of same. ARTESIAN shall furnish and install, at its expense, a 6-inch meter and remote meter reading devices, which are now and shall remain in perpetuity the sole property of ARTESIAN.

7. The PROJECT to be furnished with water service under the terms of this Agreement shall be supplied by an eight inch (8") service line, installed by ARTESIAN from the main to the property line and a six inch (6") meter.

8. OWNER agrees to provide notice of occupancy and/or use to ARTESIAN, in writing and at least ten (10) days prior to the scheduled date of occupancy and/or other use of water, in order for ARTESIAN to establish a water account for the customer. Failure to so notify ARTESIAN will cause OWNER to be liable to ARTESIAN in the amount of **TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$25,000.00)**.

9. This Agreement is conditional upon and subject to all necessary governmental approvals and permits from the State Department of Natural Resources and Environmental Control, Division of Public Health, State Fire Marshal, and any other applicable governmental agencies, whether Federal, State, County or Municipal. OWNER and ARTESIAN, respectively, agree that all such applications for necessary governmental approval(s) and permits shall be promptly filed and diligently prosecuted by them, respectively, as the case may be, and each agrees to cooperate fully with the other to execute such documents as may be necessary or appropriate in this endeavor. OWNER and ARTESIAN stipulate and agree that each of them shall be bound by present and future rules and regulations of the aforementioned agencies. Should new rules and regulations be adopted or standards, requirements, permits or orders be issued by the aforementioned agencies and/or by any other governmental agency, by reason of which it becomes necessary to make changes or additions to the contemplated or constructed water system installation, or which affects any of the provisions of this agreement relating to the same, then and in such case, this Agreement shall be deemed to be amended or supplemented as required to comply therewith, and any increased costs necessary to conform thereto shall thereupon be promptly paid by OWNER. OWNER agrees it will observe any additional rules, regulations, standards or requirements, imposed on the use or conduction of such water system.

10. ARTESIAN is authorized to provide water service to the geographical location where this PROJECT is situated, and there is no other public utility supplying water service to this area.

11. The Parties hereto shall, and do hereby, waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other as to any dispute or disputes arising out of or in any way connected with this Agreement or the performance, or lack thereof, by a party hereto of such party's obligations hereunder.

12. Each party hereby consents to the exclusive jurisdiction of the courts of the State of Delaware in all matters relating to the enforcement, interpretation or validity of this Agreement. The Parties agree that this Agreement may be enforced in equity, and that specific performance or other equitable relief would be an appropriate remedy in any such action, in addition to any monetary or other damages that may be proved.

13. Each of the Parties to this Agreement participated in the drafting of this Agreement and the interpretation of any ambiguity contained in the Agreement will not be affected by the claim that a particular party drafted any provision hereof.

14. In the event of any action for breach or enforcement of this Agreement, the prevailing party shall be entitled to have its attorneys' fees, fees of any legal assistants, experts, and other legal costs (whether incurred during investigation, litigation, trial, appeal, or otherwise) paid by the other party.

15. This Agreement will become a legally binding, valid and enforceable obligation only upon execution under seal and delivery by all Parties hereto.

16. This Agreement is governed by the laws of the State of Delaware except those laws regarding choice of law and choice of forum.

17. The Parties intend that this Agreement constitutes a contract under seal.

18. Any notices given or required to be given hereunder shall be by hand delivery, by overnight courier with receipt confirmation, or by registered or certified mail, return receipt requested. Notices shall be deemed given on the date sent for hand delivery and on the day after the date sent for overnight courier and registered or certified mail. All notices shall be sent to the following addresses, or to such other addresses as the Parties may direct by written notice:

If to ARTESIAN:

ARTESIAN WATER COMPANY, INC.
664 Churchmans Road
Newark, DE 19702
Attn: Joseph A. DiNunzio, Executive Vice President
Telephone: (302) 453-6900 Fax: (302) 453-6957
E-mail: jdinunzio@artesianwater.com

with a copy to:

ARTESIAN WATER COMPANY, INC.
664 Churchmans Road
Newark, DE 19702
ATTN: John J. Schreppler II, Vice President & General Counsel
Telephone: (302) 453-6900 Fax: (302) 453-6957
E-mail: jschreppler@artesianwater.com

If to OWNER:

EMBLEM ASSOCIATES, LLC
4 Denny Road, Suite 1
Wilmington, DE 19808
Attn: Debra L. Finocchiaro, Vice-President

Telephone: (312) 761-7365
E-mail: dlinocchiaro@lnwa.com

And to:

Thomas McGonigle, Esquire
Drinker Biddle & Reath
222 Delaware Avenue, 14th Floor
Wilmington, Delaware 19801

Either party may at any time change its address for notification purposes by mailing to the other party, in the manner aforesaid, a notice stating the change and setting forth the new address.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, intending to be legally bound, **EMBLEM ASSOCIATES, LLC**, Tax Identification # 46-3974490, has caused its name by Kevin P. Kelley to be hereunto set; and **ARTESIAN WATER COMPANY, INC.**, Tax Identification # 51-0280061, has caused its name, by Dian C. Taylor, its President and Chief Executive Officer, to be hereunto set; all as of the day and year first above written.

WITNESS:

EMBLEM ASSOCIATES, LLC

By its co-Managing Member:

M-C Development Associates LLC

By its Managing Member:

Weiner Partners, LLC.

By its Manager:

Leon N. Weiner & Associates, Inc.

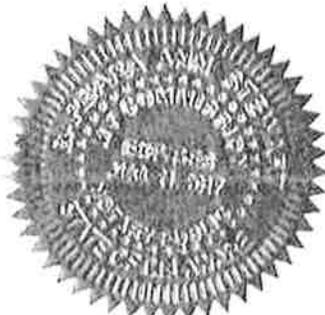
By: *Kevin P. Kelly*
Kevin P. Kelly, President

Christopher K. Bartges
Name Christopher K. Bartges

STATE OF DELAWARE :
: ss.
NEW CASTLE COUNTY :

BE IT REMEMBERED, that on this 26 day of January, 2016, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, KEVIN P. KELLY, known or satisfactorily proven to me to be the President of Leon N. Weiner & Associates, Inc. a Delaware corporation existing under the laws of the State of Delaware, and the Manager of Weiner Partners, LLC, which is the Managing Member of M-C Development Associates LLC, which is the co-Managing Member of Emblem Associates, LLC, a party to this agreement, and in his capacity as such, being authorized so to do, acknowledged that he executed this Agreement in his own hand for the company.

AS GIVEN under my Hand and Seal of Office the day and year aforesaid.



Barbara Stewart
Notary Public

BARBARA A. STEWART
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires Aug 21, 2017

