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ARIZONA DEPARTMENT OF WATER RESOURCES

BEFORE THE DIRECTOR

IN THE MATTER OF THE MANAGEMENT PLAN
FOR THE PHOENIX ACTIVE MANAGEMENT
AREA FOR THE FIFTH MANAGEMENT PERIOD,
2020-2025

**STIPULATION AND
ORDER ON REVIEW**

APPLICATION FOR ADMINISTRATIVE REVIEW
PURSUANT TO A.R.S. § 45-575(A)

APPLICANT: The Dobson Association, Inc. aka
Dobson Ranch Homeowners Association

The Arizona Department of Water Resources (“Department”), and the Dobson Association, Inc., aka Dobson Ranch Homeowners Association (“Dobson”) stipulate and agree as follows:

RECITALS

Background of Dobson Ranch

1. Dobson Ranch is a housing development in the Phoenix Active Management Area (“AMA”). Dobson Ranch consists of houses and a common area on approximately 1,600 acres of land in the City of Mesa (“Mesa”) (the lands on which the houses and common area are located are collectively referred to herein as “Dobson Ranch”).

2. The houses within Dobson Ranch are located on lots individually owned by the residents.

3. The Dobson Ranch lands are within the boundaries of the Salt River Valley Water Users’ Association (“SRP”).

4. The common area of Dobson Ranch consists of interconnected bodies of water (“lakes”) which have a total water surface area of 78.22 acres, and 22 “turf acres” as that term is defined in Section 6-501 (18) of the Fifth Management Plan (“5MP”) for the Phoenix AMA. Ownership of the lakes is as follows: 67.58 acres are owned by Dobson, 6.9 acres are owned by Mesa (Lake #6), 2.1 acres are owned by Lake Park Condos, and 1.64 acres are owned by The Landings. The common area is a “turf-related facility,” as that term is defined in Section 6- 501(19) of the 5MP.

1 cannot be modified within economic reason to curb seepage occurring with those drains. Dobson also
2 filed an action against the Department and the Director in the Superior Court of Arizona seeking, among
3 other things, an order vacating the Director's decision to establish an application rate of 6.2 acre-feet
4 per acre per year for total water surface area.

5 10. On February 26, 1993, Dobson and the Department entered into a stipulation resolving
6 Dobson's application for administrative review of and variance from the 2MP maximum annual water
7 allotment ("Second Management Plan Stipulation"). The Second Management Plan Stipulation
8 provided that the 2MP maximum annual water allotment would be replaced with separate maximum
9 annual allotments for the lakes and the turf acres. The Second Management Plan Stipulation further
10 provided that the Director would calculate the maximum annual allotment for the lakes by adding the
11 following:

12 a. An allocation of 542.13 acre-feet for evaporation (6.9 acre-feet per acre per year
13 X 78.22 acres).

14 b. An allocation of 458.85 acre-feet for seepage (5.84 acre-feet per acre per year X
15 78.22 acres).

16 c. The portion of water delivered by SRP to the lakes during the year that was
17 delivered pursuant to the surface water rights appurtenant to the 78.22 acres of lakes.

18 d. The amount of spill water delivered by SRP to the lakes during the year.

19 11. The Second Management Plan Stipulation provided that if the total amount of water
20 from any source used in the lakes during a year exceeds the adjusted maximum annual allotment for
21 the year, Dobson shall cause to be delivered to the lakes in the following year make-up water (effluent,
22 CAP water or any other renewable water approved in writing by the Director) in an amount equal to
23 the difference. In a subsequent letter, the Department agreed that if the amount of water used in the
24 lakes during a year exceeds the allotment for that year, delivery of make-up water to the lakes could be
25 delayed until the first year in which spill water is not used in the lakes.

26 12. During the years 1992 through 1999, water deliveries as measured by SRP to the lakes
27 varied from a low of 898.55 in 1993 to a high of 1,778.22 acre-feet in 1996. The average annual yearly

1 allotment for the 1992-1999 time-period was 1,405.66 acre-feet while the average annual use was
2 1,291.47 acre-feet or 114.9 acre-feet per year less than the annual allotted amount.

3 13. Beginning in 1996, the water use at the lakes as measured by SRP exceeded the average
4 historical reported water use levels at the lakes.

5 14. The total amount of water delivered by SRP to the lakes in 1996, 1997, 1998 and 1999
6 exceeded the lakes maximum annual allotments for those years. The Department contended that by the
7 end of 2000, Dobson was required by the terms of the Second Management Plan Stipulation to use
8 make-up water in the lakes in the cumulative amount of 1,158.88 acre-feet. Dobson did not use any
9 make-up water in the lakes. Dobson disputed the Department's make-up water calculations and
10 approach.

11 Third Management Plan

12 15. On January 3, 2000, Dobson received from the Director, by certified mail, an official
13 notice of the conservation requirements and monitoring and reporting requirements established for the
14 lakes in the Third Management Plan ("3MP Notice"). The 3MP Notice, dated December 20, 1999, set
15 forth the water application rates established for landscaped areas within turf-related facilities in the
16 Phoenix AMA, including an application rate of 6.2 acre-feet per acre per year for total water surface
17 area. The 3MP Notice provided that based on the application rate for total water surface area and the
18 78.22 acres of lakes within Dobson Ranch, the maximum annual water allotment for the lakes from
19 January 1, 2002 until the first compliance date for any substitute requirement in the 4MP for the Phoenix
20 AMA is 487.13 acre-feet per year ("3MP maximum annual water allotment").

21 16. The application rate of 6.2 acre-feet per acre for total surface area was established by
22 the Director based upon a decision that the evaporation and seepage losses from a body of water lined
23 with a well-maintained clay or plastic liner would not exceed 6.2 acre-feet per acre per year.

24 17. On March 22, 2000, Dobson filed an application for an administrative review of the
25 3MP maximum annual water allotment.

26 18. Dobson also filed an action against the Department and the Director in the Superior
27 Court of the State of Arizona, Maricopa County, Case No. CV2000-002348, seeking, among other

1 things, an order vacating the Director's decision to establish an application rate of 6.2 acre-feet per acre
2 per year for total water surface area in the 3MP.

3 19. In May of 2001, Dobson and the Department entered into a Stipulation resolving
4 Dobson's application for administrative review of its 3MP maximum annual water allotment ("Third
5 Management Plan Stipulation").

6 20. Based on evidence submitted by Dobson, the Department determined the following in
7 the Third Management Plan Stipulation:

8 a. At the time the Department and Dobson executed the Second Management Plan
9 Stipulation, neither the Department nor Dobson expected the lakes' average annual reported use figures
10 to deviate significantly from average historical reported use levels during the later portion of the Second
11 Management Period.

12 b. Evaporation from the lakes appears to exceed 6.2 acre-feet per acre per year.

13 c. The lakes are not lined. Thus, significant seepage of water occurs through the
14 sides and bottom of the lakes and through the storm drains entering the lakes. Due to original design
15 and construction, age and condition of the lakes, and existence of numerous storm drains entering the
16 lakes, resealing may be inefficient or cost prohibitive.

17 d. A study of the lakes would be useful to determine what factors caused the
18 increased reported water usage after 1995 and whether any affordable corrective measures are available
19 to reduce seepage from the lakes.

20
21 21. The Third Management Plan Stipulation resolved Dobson's application for
22 administrative review as follows:

23 a. Rather than requiring Dobson to comply with a maximum annual water
24 allotment for the lakes, Dobson was required to contribute a fixed amount of money each year into a
25 Conservation Fund. Monies in the fund could be used throughout the period in which the Third
26 Management Plan was in effect for one or more of the following purposes: (1) a study of the lakes,
27 including consumptive use and losses from the lakes and whether any affordable corrective measures

1 are available to reduce seepage from the lakes; (2) the implementation of reasonable corrective
2 measures to reduce seepage and losses from the lakes; (3) subject to approval by the Department, a
3 study of and/or the implementation of conservation measures and programs for the common areas
4 within Dobson Ranch; (4) subject to approval by the Department, implementation of a voluntary
5 community-wide conservation program for members of Dobson; and (5) no earlier than calendar year
6 2004, the purchase of effluent, CAP water or other alternative water supplies that are approved by the
7 Director for use in the lakes to make-up for any water used in the lakes in excess of the lakes' yearly
8 conservation allotment/goal.

9 b. Dobson could apply to the Department for the use of conservation assistance
10 monies for the purposes described in paragraph 21(a) above, except for item No. 5 (purchase of effluent,
11 CAP water or other alternative water supplies). Any matching contribution by Dobson would come
12 solely from the Conservation Fund, and Dobson's maximum contribution would be limited by the
13 amount that contained in such fund.

14 22. The Third Management Plan Stipulation resolved all disputes between the parties
15 relating to the Second Management Plan Stipulation between the Department and Dobson dated
16 February 26, 1993 and the Third Management Plan Conservation requirements for the lakes.

17 23. The Third Management Plan Stipulation through its creation of the Conservation Fund
18 and Dobson's collaboration with the Department each year led to substantial water savings by Dobson
19 during the 3MP. These savings included:

20 a. During the 3MP period, Dobson reduced water use on its turf areas from
21 approximately 40 million gallons per year to approximately 26 million gallons per year (35%
22 reduction). These reductions were accomplished in part through: (1) purchase and use of smart
23 controllers and central control system of irrigation controllers; (2) close oversight of water use and
24 sprinkler maintenance by the Dobson Water Resources Director; (3) substantial modification of
25 common areas to reduce water use, including converting grass to artificial turf, dirt, concrete and gravel
26 borders; (4) implementation of reverse season irrigation reducing water use in the summer months by
27 allowing common area landscape to go dormant during summer months; and (5) water harvesting at

1 Dobson's La Casita Recreation Center.

2 b. During the 3MP, Dobson reduced losses in the lakes through erosion control and
3 repair of shelves and other lake structures, and close monitoring of lake levels and other actions to
4 reduce losses.

5 c. During the 3MP, through the Conservation Fund and other sources, Dobson
6 provided extensive and continual water conservation education outreach to Dobson Ranch
7 Homeowners leading to conversion of numerous lawns to desert landscaping and better water
8 management by Dobson homeowners through the use of smart controllers and other water conservation
9 methods.

10 d. During the 3MP, Dobson contracted for various studies to better understand the
11 lakes and how to best operate, maintain the lakes, and to monitor lake water levels to minimize flooding,
12 maximize detention and look for ways to reduce water losses.

13 e. During the 3MP, Dobson contracted for a study that resulted in the promulgation
14 of a Drought management Plan. The plan, originally prepared in 2003 and later updated in 2014,
15 identifies steps to be taken should a drought condition be declared by the City of Mesa or others.

16 Fourth Management Plan

17 24. On March 19, 2020, ADWR sent by first class mail an official notice of the conservation
18 requirements and monitoring and reporting requirements established for Dobson's lakes ("4MP
19 Notice"). Due to a database error, ADWR sent a corrected 4MP Notice on April 14, 2020. The corrected
20 4MP Notice, dated April 13, 2020, set forth the water application rates established for landscaped areas
21 within turf-related facilities in the Phoenix AMA, including an application rate of 6.2 acre-feet per acre
22 per year for total water surface area. The 4MP Notice provided that based on the application rate for
23 total water surface area and the 78.22 acres of lakes within Dobson Ranch, the maximum annual water
24 allotment for the lakes from January 1, 2023 until the first compliance date for any substitute
25 requirement in the Fifth Management Plan for the Phoenix AMA is 484.96 acre-feet per year ("4MP
26 maximum annual water allotment").

27 25. The application rate of 6.2 acre-feet per acre for total surface area was established by

1 the Director based upon a decision that the evaporation and seepage losses from a body of water lined
2 with a well-maintained clay or plastic liner would not exceed 6.2 acre-feet per acre per year.

3 26. On April 13, 2020, Dobson filed an application for an administrative review of the 4MP
4 maximum annual water allotment.

5 27. On April 20, 2020, Dobson and the Department entered into a Stipulation resolving
6 Dobson's application for administrative review of its 4MP maximum annual water allotment ("Fourth
7 Management Plan Stipulation").

8 28. Based on evidence submitted by Dobson, the Department determined the following in
9 the Fourth Management Plan Stipulation:

10 a. Evaporation from the lakes appears to exceed 6.2 acre-feet per acre per year.

11 b. The lakes are not lined. Thus, significant seepage of water occurs through the
12 sides and bottom of the lakes and through the storm drains entering the lakes. Due to the original design
13 and construction primarily as flood control and flood detention facilities, the age and condition of the
14 lakes, and the existence of numerous storm drains entering the lakes, resealing may be
15 counterproductive, inefficient and cost prohibitive.

16 c. The continued study of the lakes would be useful to determine what affordable
17 corrective measures are available to reduce erosion or seepage from the lakes.

18 29. The Fourth Management Plan Stipulation resolved Dobson's application for
19 administrative review as follows:

20 a. Rather than requiring Dobson to comply with a maximum annual water
21 allotment for the lakes, Dobson was required to contribute \$20,000 into a Conservation Fund by July
22 1, 2023 and by July 1 of each calendar year thereafter until the first calendar year in which the 5th
23 Management Plan (5MP) conservation requirements are in effect. Monies in the fund can be used
24 throughout the period in which the 4MP is in effect for one or more of the following purposes: (1)
25 subject to approval by the Department, a study of the lakes, including consumptive use and losses from
26 the lakes and whether any affordable corrective measures are available to reduce seepage from the
27 lakes; (2) the implementation of reasonable corrective measures to reduce seepage and losses from the

1 c. Numerous storm drains owned by Mesa enter Dobson's lakes. It may not be
2 economically feasible to modify these storm drains to curb seepage occurring within those drains.

3 34. Based on the evidence set forth in Paragraph 33 above, the Department has determined
4 the following:

5 a. Dobson Ranch – Turf (24-224103.0000) has historically stayed within their
6 maximum annual conservation allotments and no changes will be made to the 5MP allotment for this
7 facility.

8 b. Dobson Ranch – Lakes (24-224102.0000) typically uses surface water or spill
9 water from SRP, although historically some years water from SRP includes groundwater based upon
10 the composition of the Kent Decree rights applicable to the Dobson Ranch lakes.

11 c. Evaporation from the lakes appears to exceed 6.2 acre-feet per acre per year.

12 d. The lakes are not lined. Thus, significant seepage of water occurs through the
13 sides and bottom of the lakes and through the storm drains entering the lakes. Due to the original design
14 and construction which included flood control and flood detention functions, the age and condition of
15 the lakes, and the existence of numerous storm drains entering the lakes, options for resealing or
16 otherwise limiting losses from the lakes may be limited.

17 e. The continued study of the lakes would be useful to determine what affordable
18 corrective measures are available to reduce erosion or seepage from the lakes.

19 f. Rather than requiring Dobson to comply with one maximum annual water
20 allotment for the common areas, the Department will continue to allow Dobson Ranch to be split into
21 two facilities with separate maximum allotments: Dobson Ranch – Lakes (24-224102.0000) and
22 Dobson Ranch – Turf (24-2224103.0000). The continuation of separate maximum allotments will allow
23 Dobson Ranch to exceed the standard 5MP conservation allotment for lakes, if no groundwater is used
24 in the lakes, in accordance with Chapter 7 of the 5MP. The Department would also require Dobson to
25 contribute a fixed amount of money each year into a Conservation Fund. Monies in the Conservation
26 Fund may be used throughout the period in which the 5MP is in effect for one or more of the following
27 purposes: (1) subject to approval by the Department, a study of the lakes, including consumptive use

1 and losses from the lakes and whether any affordable and reasonable corrective measures are available
2 to reduce seepage from the lakes; (2) subject to approval by the Department, a study of and/or the
3 implementation of conservation measures and programs for the turf and lake common areas within
4 Dobson Ranch; and (3) subject to approval by the Department, implementation of a voluntary
5 community-wide conservation program for members of Dobson, and shall be used on the
6 implementation of reasonable corrective measures to reduce seepage and losses from the lakes.

7 g. Dobson may apply for and the Department will consider the use of conservation
8 assistance monies for the purposes described in subparagraph (f) above. Any matching contribution by
9 Dobson would come solely from the Conservation Fund, and Dobson's maximum contribution would
10 be limited by the amount that is contained in such fund.

11 STIPULATION

12 In order to resolve Dobson's application for administrative review, Dobson and the Department
13 stipulate and agree to the following:

14 35. The above recitals are hereby incorporated herein by reference and made a part hereof.

15 36. By January 1, 2025, Dobson shall contribute \$15,000, and by January 1 of each calendar
16 year thereafter for 10 years or until the first calendar year in which a subsequent Management Plan's
17 conservation requirements are in effect, Dobson shall contribute \$30,000 per year to a fund
18 ("Conservation Fund"). On January 1, 2035, and every 10 years thereafter or until the first calendar
19 year in which a subsequent Management Plan's conservation requirements are in effect, the amount
20 Dobson contributes annually to the Conservation Fund shall increase by \$10,000.00. The Conservation
21 Fund shall be maintained by Dobson as a separate account on its books. Monies in the account shall be
22 used only for the purposes described in paragraph 37 below. Dobson shall contribute \$30,000 or the
23 adjusted amount as set forth above each year regardless of the reported consumptive water use figures
24 for the lakes. Dobson's liability for failing to meet the conservation goal/allotment established for the
25 lakes in paragraph 40 below shall be limited to the Conservation Fund or as detailed in paragraph 41.
26 There is no requirement that the money contributed into the Conservation Fund be spent in the same
27 year as contributed. Dobson may also prepay money that would be due a subsequent year in the

1 Conservation Fund. Any monies remaining in the Conservation Fund at the end of a calendar year plus
2 interest earned on the monies shall remain in the Conservation Fund and carry over into following years
3 until spent. Dobson shall not spend any money from the Conservation Fund unless the expenditure is
4 first approved, in writing, in a timely manner by a representative of the Department. However, for any
5 particular project that has been approved in writing by the Department, Dobson shall not be required to
6 obtain the Department's written approval for routine expenditures that do not cumulatively exceed
7 \$1,000. Dobson shall make available for the Department's review a yearly accounting of Conservation
8 Funds spent.

9 37. Monies from the Conservation Fund may be used on one or more of the following
10 purposes: (1) subject to approval from by the Department, studies of the lakes, including consumptive
11 uses and losses from the lakes, preparing documentation of the layout of the lakes; and whether any
12 affordable and reasonable corrective measures are available to reduce erosion or seepage from the lakes;
13 (2) subject to approval by the Department, a study of and/or the implementation of conservation
14 measures and programs for the common areas within Dobson Ranch; and (3) subject to approval by the
15 Department, the implementation of voluntary community-wide conservation programs for members of
16 Dobson; and shall be used on the implementation of reasonable corrective measures to reduce seepage
17 and losses from the lakes.

18 38. The Department and Dobson shall annually confer and meet to jointly determine how
19 the money paid by Dobson to the Conservation Fund, plus interest that has accrued in the Conservation
20 Fund account, should be spent, and Dobson shall present such expenditures in writing. In the event of
21 disagreements between the Department and Dobson regarding how the money should be spent, the
22 Department shall have the final say, except that the money must be used for one or more of the purposes
23 listed in paragraph 37 above or to purchase or extinguish long-term storage credits or other alternative
24 water supplies as provided in paragraph 41 below.

25 39. Dobson may apply for, and the Department shall consider the use of, conservation
26 assistance monies to help pay for any of the items listed in paragraph 37 above.

27 40. Beginning on January 1, 2025, and continuing until the effective date of any substitute

1 requirement in a subsequent Management Plan for the Phoenix AMA, at the end of each year, the
2 Director shall calculate an annual conservation allotment/goal for the lakes as described in the 5MP
3 (484.96 AF). However, Dobson Ranch – Lakes will not have to abide by that allotment, in accordance
4 with Chapter 7 of the 5MP.

5 41. The parties recognize that Dobson may be unable to achieve its conservation
6 allotment/goal. If groundwater is used and the total amount of water used in the lakes in any year
7 exceeds the 5MP maximum annual allotment, the Department shall require Dobson to use monies in
8 the Conservation Fund or from other sources to purchase or extinguish long term storage credits or
9 other alternative water supplies that are approved by the Director for use in the lakes in subsequent
10 years, to offset the amount of groundwater used in the lakes, subject to the limitation that the total cost
11 of long term storage credits or other alternative water supplies required to be purchased shall not exceed
12 the annual contribution amount to the Conservation Fund or the total balance of the Conservation Fund,
13 whichever is greater. The Director may (1) waive the requirement in any given year to purchase or
14 extinguish long term storage credits or other alternative water supplies completely if the Director finds
15 Dobson has been working diligently to reduce water losses from the lakes or (2) reduce or eliminate
16 the volume of credits or alternative supplies to be purchased in a given year, if those monies would
17 instead be used for specific efforts to reduce water losses from the lakes. Dobson shall not be subject
18 to any penalty for failing to meet the conservation allotment/goal for the lakes provided Dobson
19 complies with its financial obligations to contribute \$30,000 (as may be increased pursuant to Paragraph
20 36 of this Stipulation) to the Conservation Fund per year under this Stipulation.

21 42. The Department may conduct official audits of the Dobson Ranch to determine accuracy
22 of annual reports, review facility processes, and verify suspected problems to ensure compliance with
23 the stipulations included in this document. These audits may include working with Dobson and ADWR
24 working with Salt River Project staff to ensure the blend of water delivered is properly accounted for
25 in Dobson's annual reports.

26 43. Dobson shall be responsible for complying with all conservation requirements and
27 monitoring and reporting requirements contained in the 5MP Notice, except as provided in paragraphs

1 35 through 41 above.

2 44. This Stipulation and Order on Review resolves all issues raised by Dobson in its
3 application for administrative review of its 5MP maximum annual water allotment.

4 45. This Stipulation and Order does not determine or affect the surface water rights held by
5 Dobson and its individual members who are the owners of individual lots within Dobson Ranch.

6 46. Dobson waives the right to a hearing on its application for administrative review of its
7 5MP maximum annual water allotment and agrees that the Order on Review, when signed and approved
8 by the Director or the Director's designated representative, shall have the force and effect of a final
9 Decision and Order in this case, and shall be effective as of that date. Dobson waives the right to appeal
10 the Order on Review to the Superior Court.

11 47. This Stipulation and Order on Review shall be binding on the parties' successors or
12 assigns. Dobson agrees to give a copy of this Stipulation and the Order on Review to any potential
13 purchaser of the common area prior to closing of the purchase.

14 48. By their signatures, the undersigned acknowledge their authority to bind the parties on
15 whose behalf their signatures are made to the provisions of this Stipulation.

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The Dobson Association, Inc. aka
Dobson Ranch Homeowners Association

By: Nicole Lynam Digitally signed by Nicole Lynam
Date: 2022.11.30 09:51:47 -07'00'
Name: Nicole A. Lynam
Its: Board President

Date: November 30, 2022

Arizona Department of Water Resources

By: Clint Chandler or
Name: Clint Chandler
Its: Deputy Director
Date: December 14, 2022

Approved as to form:

By: Kelly Brown Digitally signed by Kelly Brown
Date: 2022.12.15 07:42:36 -07'00'
Name: Kelly Brown
Its: Deputy Counsel

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ORDER ON REVIEW

IT IS ORDERED that the terms of the foregoing Stipulation are approved and adopted as the final Decision and Order in this case.

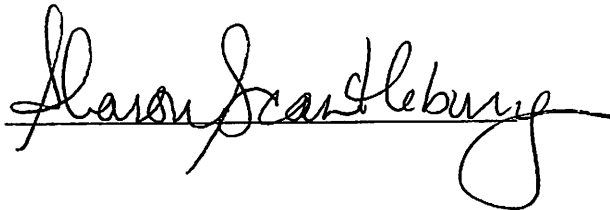
BE IT SO APPROVED this 15th day of December, 2022.

Digitally signed by Thomas Buschatzke
Date: 2022.12.15 10:37:23 -07'00'
Thomas Buschatzke
Thomas Buschatzke
Director

A copy of the foregoing Stipulation and Order on Review is sent by certified mail this 15 day of December, 2022 to:

The Dobson Association, Inc. aka
Dobson Ranch Homeowner Association
c/o William Anger
Engelman Berger, P.C.
2800 Central Avenue, Suite 1200
Phoenix, Arizona 85004

Certified Mail Number: 7020 0640 0000 7687 8652





Client Care: 877.350.8698

Deliver To

Contact: Nicole Lynam
Company: Dobson Ranch
Address: 2719 South Reyes
Mesa, AZ 85202
Phone: 000-000-0000
Delivery date: 12/21/2022
Delivery time: 12:30
Return Service:

Special Instructions

Please pickup Stipulation and Order On Review from Engelman Berger, P.C. and deliver to Nicole Lynam at the Dobson Association.

Order Number: 10493011

Requested Service

Ordered By: amoomaw

Service: Messenger Service

Pick-up From

Type: ASAP

Client Matter No./Ref: 1391.0001

Contact: Alyssa Moomaw
Company: Engelman Berger P.C
Address:
2800 North Central Avenue Suite 1200
Phoenix, AZ 85004
Phone: 602-271-9090
Pick-up date: 12/21/2022

Claim #:

Insurance Company:

Insurance Adjuster:

Order Details

Case Number:

Case Name:

General Description of Documents:

Stipulation and Order on Review

Attached Documents

No documents uploaded