



**GOVERNING BOARD AGENDA ITEM  
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

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**DATE OF MEETING:**      **March 9, 2021**

**TITLE:**                      **Review and Approve Resolution Authorizing the District to Sign Documents to Settle the Lawsuit Filed by Vistoso Partners, LLC in Pima County Superior Court Case No. C20210162 and to Execute a Quit Claim Deed to Vistoso Partners for the Real Property Obtained at No Cost from Vistoso Partners, LLC Pursuant to a Special Warranty Deed with Right of Reversion and for which the Reversionary Condition Has Occurred.**

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**BACKGROUND:**

**Explanation of Property History**

The zoning plan that Vistoso Partners, LLC (“Vistoso”) submitted to the Town of Oro Valley to develop the Rancho Vistoso community included plans for multiple schools to be developed by Amphitheater Public Schools in Rancho Vistoso. As part of the zoning plan, Vistoso offered to transfer certain parcels of real property to Amphitheater Public Schools to construct the schools. The District agreed to accept these properties under the proposed terms and conditions and has, over the years, constructed schools on these sites to address student and community needs in the area.

As part of this process, Vistoso transferred approximately 40.72 acres (“Property”) in Pima County, Arizona to the District on or about December 23, 2009, through a Special Warranty Deed with Right of Reversion. A copy of that deed is attached as Exhibit 1 to the proposed Resolution provided with this agenda item. The Property was provided to the District for purposes of building a school site in the event that the District would need a middle school in the area to address student enrollment increases from new housing developments being planned.

The Special Warranty Deed with Right of Reversion contained a condition that the District substantially complete the construction of at least 3,000 useable square feet of classroom space on the Property within ten (10) years of the recording of the Special Warranty Deed with Right of Reversion, and expressly states:

*“If Grantee [District] does not substantially complete the construction of at least 3,000 square feet of classroom space on or before said date, all right, title and interest in and to the Property shall automatically revert back to Grantor [Vistoso Partners] and Grantor’s heirs, devisees, assigns and successors in interest”;*

The Special Warranty Deed with Right of Reversion was recorded on December 28, 2009 in the Pima County Recorder’s Office at Docket 13713, Pages 03724-03729.

**Explanation for No School Being Built on Property**

Vistoso provided the Property to the District under the Special Warranty Deed with Right of Reversion at no cost to the District. The District regularly examines student enrollment to plan and address District and

community needs. In fact, administration presents student enrollment projections to the Governing Board bi-annually each year. First, each spring as part of the staffing allocation process. Second, in the fall, the Board examines actual enrollment numbers after the 40<sup>th</sup> day of school as part of the District budget process. There has not been a need to construct a school on the Property since Vistoso recorded the deed to transfer the Property to the District more than ten (10) years ago.

Instead, the District has been able to absorb any new student enrollment from the housing developments in the area through existing District schools. Therefore, the District has never developed a need to spend District funds to construct a school on the Property to meet the Deed's prerequisite in order to avoid reversion of the Property to Vistoso. Notwithstanding this, the District likewise does not currently anticipate a future need for a school on the Property so as to warrant current use of District funds to attempt to retain the Property.

### **Lawsuit filed by Vistoso**

On December 2, 2020, Vistoso sent the Quit Claim Deed attached as Exhibit 2 to the proposed Resolution to counsel for the District to demand return of the Property. Vistoso claims that the Property has reverted to Vistoso because the District did not construct a school of at least 3,000 square feet of classroom space on or before December 29, 2019.

When the District did not execute the Quit Claim Deed in response to the demand, Vistoso filed a lawsuit against the District in the Pima County Superior Court, Case No. C20210162 ("Lawsuit") on or about January 13, 2021. The Lawsuit seeks relief from the Pima County Superior Court in the form of an Order from the Court that provides the following:

1. Quieting title to the Property in favor of Vistoso,
2. Declaring that the Property has reverted to Vistoso and that the District does not have any interest in the Property, and
3. An Order that requires the District to reimburse Vistoso for its attorney's fees incurred with respect to the Lawsuit.

### **Proposed Terms of Settlement**

After the Lawsuit was served, counsel for the District obtained an extension to answer the Lawsuit in an effort to determine first whether a resolution could be reached between the parties that would protect the District's interests and avoid expending District funds unnecessarily associated with the Lawsuit. Since then, counsel for the District has worked with Vistoso to develop a proposed resolution that would resolve the Lawsuit in a manner that is in the best interest of the District.

The proposed terms of settlement require Vistoso to dismiss the Lawsuit with prejudice, with each party to be responsible for their own attorney's fees and costs associated with the Lawsuit, in return for the District's agreement to execute the Quit Claim Deed attached as Exhibit 2 to the proposed Resolution on or before March 30, 2021. The District can still request and accept voluntary financial contributions from developers of the Property pursuant to the District's standard developer donation agreement. This is an important benefit since the District uses these financial contributions to mitigate the impact of the increased student population of a development on the District and to mitigate the limitation of the District's ability to build and furnish facilities.

### **Proposed Resolution**

In Arizona, decisions about property transfers rests with the Governing Board of the school district. Administration cannot proceed with the proposed terms of settlement absent a Resolution from the Governing Board that approves the terms of settlement and authorizes the execution of the Quit Claim deed for the Property. Therefore, administration has prepared the proposed Resolution provided with this agenda item for this purpose. If approved and adopted by the Board, the proposed Resolution will demonstrate the Board's approval of and authorization for the following:

1. Settlement of the Lawsuit under the proposed terms and conditions as described in this agenda item;
2. Execution of the Quit Claim Deed attached as Exhibit 2 to the proposed Resolution; and
3. Authorization for the Associate to the Superintendent and General Counsel to execute, acknowledge and deliver a settlement agreement with Vistoso with any changes, insertions and omissions therein as may be approved by her, together with the Quit Claim Deed attached as Exhibit 2 to the proposed Resolution, as well as to do, or cause to be done, any and all other acts and things necessary or proper for carrying out the proposed Resolution.

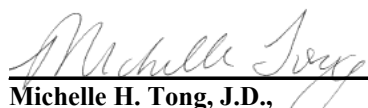
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#### **RECOMMENDATION:**

Administration recommends that the Board approve a Resolution authorizing: (1) the terms of the settlement of the Lawsuit with Vistoso; (2) execution of the Quit Claim Deed attached as Exhibit 2 to the proposed Resolution, and (3) permitting the Associate to the Superintendent to execute all necessary documents to effect the transition of the Property to Vistoso Partners under the conditions set forth above.

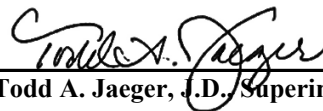
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#### **INITIATED BY:**



**Michelle H. Tong, J.D.,**  
Associate to the Superintendent and General Counsel

**Date: March 8, 2021**



**Todd A. Jaeger, J.D., Superintendent**