

## **SCHOOL DISTRICT NO. 53 (Okanagan Similkameen)**

### **Restrictive Covenant in Favour of Town of Osoyoos, Osoyoos Elementary School Bylaw No. 9**

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A bylaw to grant a restrictive covenant in the terms and over the lands described herein.

#### PREAMBLE

#### WHEREAS

A. Under the School Act of British Columbia, the Board may, by bylaw, with the approval of the Ministry of Education, dispose of property or an interest therein owned by the Board;

B. The Board is the registered owner of the following lands:

Parcel Identifier	Legal Description
010-503-595	Lot 2 Blk 785 DL 2450S Similkameen Division Yale District Plan 4706 (Lot "2")
010-503-706	Lot 12 Blk 785 DL 2450S Similkameen Division Yale District Plan 4706 (Lot "12")
023-287-306	That portion of closed road in DL 2450S Similkameen Division Yale District lying adjacent to that part of Lot 12 Plan 4706 shown on Plan B 7929 (the "Old Road Lot")

(collectively called the "Lands")

C. The Board wishes to re-construct the Osoyoos Elementary School adjacent to the existing Primary School; however, the proposed building, constructed mainly on Lot 12, will encroach on Lot 2 and the Old Road Lot;

D. The Town of Osoyoos has requested a restrictive covenant in the terms described herein before the Town will permit encroachment of the construction over the lot lines.

NOW THEREFORE the Board of School Trustees enacts as follows:

1. That a restrictive covenant pursuant to section 219 of the Land Title Act ("Section 219 Covenant") be granted in favour of the Town of Osoyoos which provides that the Lands will not be sold or otherwise transferred or disposed of separately and which provides that the restrictive covenant will be discharged when the encroachments no longer exist or when the Lands have been consolidated into one lot:
2. That the Section 219 Covenant shall be in substantially the form attached hereto as Schedule "A";

3. That the Secretary-Treasurer shall execute and apply the Common Seal of the Board to the Section 219 Covenant;
4. This bylaw may be cited as “School District No. 53 (Okanagan Similkameen) Restrictive Covenant Osoyoos Elementary School Bylaw No. 9”.

Read a first time the 31st day of May, 2000.

Read a second time the 31st day of May, 2000.

Read a third time, passed and adopted the 31st day of May, 2000.

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Chairperson of the Board

(Corporate Seal)

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Secretary-Treasurer

## Schedule "A" To Bylaw No. 9

Section 219 Covenant  
(Section 219 Land Title Act)

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 2000;

BETWEEN:

THE BOARD OF SCHOOL TRUSTEES OF  
SCHOOL DISTRICT NO. 53 (OKANAGAN SIMILKAMEEN)  
35061 - 101 Street, Box 5000  
Oliver, BC, V0H 1T0

(hereinafter called the "Developer")

AND:

THE TOWN OF OSOYOOS  
a municipal corporation  
Box 3010  
Osoyoos, BC, V0H 1V0

(hereinafter called the "Municipality")

WHEREAS:

A. The Developer is the registered owner of or has an equity of redemption in that parcel of land and premises situate in the Town of Osoyoos, in the Province of British Columbia, and described as:

PID 010-503-595      Lot 2 Blk 785 DL 2450S Similkameen Division Yale District Plan 4706

PID 010-503-706      Lot 12 Blk 785 DL 2450S Similkameen Division Yale District Plan 4706

PID 023-287-306      That portion of closed road in DL 2450S Similkameen Division Yale District lying adjacent to that part of Lot 12 Plan 4706 shown on Plan B 7929

(hereinafter called the "Lands");

- B. The Developer wishes to construct a building on the Lands which will encroach on various lot lines; and,
- C. Section 219 of the Land Title Act provides, inter alia, that a covenant, whether of a negative or positive nature, that provides that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately, in favour of a Municipality or the Crown, may be registered as a charge against the title to that land.

NOW THEREFORE THIS AGREEMENT WITNESSETH that pursuant to Section 219 of the Land Title Act, and in consideration of the premises and the mutual covenants and agreements contained herein and the sum of One Dollar (\$1.00) now paid to the Developer by the Municipality (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

1. THE DEVELOPER COVENANTS AND AGREES with the Municipality that:
  - a) the Lands shall not be sold or otherwise transferred or disposed of separately;
  - b) the Municipality will, at the expense and request of the Developer, discharge and release this covenant with respect to all or a portion of the Lands when:
    - (i) the Lands have been consolidated into one lot so that all encroachments over lot lines no longer exist; or,
    - (ii) the building to be constructed on the Lands has been reconfigured so that no further encroachments over lot lines exist; or,
    - (iii) the building to be constructed on the Lands is demolished;
  - c) the Developer will, at the expense of the Developer, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands in the Lower Mainland Land Title Office save and except those specifically approved in writing by the Municipality or in favour of the Municipality; and
  - d) the Developer will pay all legal fees and other costs relating to the preparation and registration of this Agreement.
2. IT IS MUTUALLY UNDERSTOOD, agreed and declared by and between the parties hereto that:
  - a) nothing contained or implied herein shall prejudice or affect the rights and powers of the Municipality in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Developer;
  - b) the covenants set forth herein shall charge the Lands pursuant to Section 219 of this Land Title Act and shall be covenants the burden of which shall run with the Lands. It is further expressly agreed that the benefit of all covenants made by the Developer herein shall accrue solely to the Municipality and that this Agreement may be modified by agreement of the Municipality with the Developer, or discharged by the Municipality, pursuant to the provisions of Section 219(9) of the Land Title Act;
  - c) wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context or the parties so require and, where the Developer consists of more than one person, the term "Developer" shall mean all such persons jointly and severally;
  - d) this Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns; and

- e) the parties hereto shall do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement