



**MINUTES OF THE GENERAL MEETING OF THE COMMUNITY OF OWNERS  
LAGUNA DE BANÚS, HELD ON 20<sup>th</sup> APRIL 2019**

The Community of Owners Laguna de Banús met on second call at 10.30 a.m. on 20<sup>th</sup> April 2019, in Marbella, at the appointed place: Block 5, Urbanization Laguna de Banús, Marbella. The Annual General Meeting, which had been duly called for the date referred to above, having notified all the owners in accordance with the legal requirements thereon, was declared open for the purposes of dealing with the items on the following **Agenda**:

- 1. To read and to approve, where appropriate, the minutes of the previous General Meeting;**
- 2. To present and to approve the Accounts for the year January-December 2018**
- 3. To approve the debtor's list and legal action to claim the outstanding debts;**
- 4. To present and to approve the draft Annual Budget;**
- 5. Renovation Project (Mr. Manuel del Valle);**
  - **Update/Discussion;**
- 6. Report on all legal issues by our Community lawyer, Mr. José Hinojosa (N&H Abogados). Action to be taken;**
- 7. Voting;**
  - a) Whether the Community wants to accept the offer from Caser
  - b) Additional financing to cover the "Shortfall" from the Renovation Project
- 8. To elect or re-election of President, Vice-President, Administrator and other members of the Executive Committee;**
- 9. Any other business.**

Those in attendance, either in person or by proxy, signed the attendance register, which was used to produce the following list of those present or represented:

**Assistants:**

Properties	Quota coef. %	Position
APTO 113	1,9284	
APTO 201	2,3730	
APTO 213	1,9166	
APTO 311	1,5646	
APTO 321	3,0907	
APTO 421	3,0907	
APTO 422	3,0907	
APTO 541	0,9885	

### **Represented:**

Properties	Quota coef. %	Represented by
APTO 102	3,0298	GLORIA ZIZZOLA
APTO 112	2,4580	LOUIS PRANDI
APTO 401	2,373	ANDREI GLODEAN

### **Excluded from voting for non-payment of debts:**

Properties	Quota coef. %	Amount of the debt
APTO 322	3,0907	5,391,72€
APTO 112	2,458	4.303,40 €

The meeting was opened at 10:30 on second call.

The President of the Community, Mr. Marcel Wolf, then introduced the members of the top table, namely, José María Hinojosa, the Community's lawyer, Mr. Manuel del Valle, technical and legal adviser for the renovation works, Michael Kane, the Vice-President, Carlos Jiménez, the Community's Manager, Patrick Fay, the Financial Auditor/Administrator, Antony Wheatley, the interpreter, and Nati and Marina from the administration office, who were responsible for taking notes to produce the minutes.

The meeting proceeded to discuss the items on the Agenda:

#### **1. To read and to approve, where appropriate, the minutes of the previous General Meeting.**

It was voted unanimously not to read the minutes of the previous General Meeting.

The minutes of the previous AGM were then approved by majority with one vote against. The reasons for the vote against are explained below.

Before the meeting had been officially opened, the owner of apartment 501, demanded the Committee to cancel the meeting on the grounds that they had not received the Spanish version of the Notice of Meeting for the AGM with sufficient notice, which it was claimed should have been received at least ten days prior to the meeting. However, it was then established that, according to the Community's Bylaws, the minimum notice required was fifteen days.

It was confirmed that the Spanish version of the Notice of Meeting had been sent out on 9<sup>th</sup> April 2019, thereby giving all owners six working days' notice (seven week days only one of which had been a bank holiday). After the owners of apartment 501 confirmed receiving the Spanish version of the Notice of Meeting on 9<sup>th</sup> of April, their petition was overruled. The owners of apartment 501 allowed the AGM to proceed but stated they reserved the right to contest the meeting at a later date. During the AGM, they voted against all the motions tabled as a form of protest.

## **2. To present and to approve the Accounts for the year January-December 2018.**

The President began with the following statement:

*“Before we start discussing the accounts of last year, I would like to make a few comments. Laguna de Banus aspires to be among, if not THE top Complex in the Costa del Sol. This ambition has several consequences*

- *higher costs and yearly fees than other Complexes; but against that*
- *the Owners expect and can expect an immaculate 5 Star Urbanisation with;*
- *attention to detail, cleanliness, safety, aesthetics etc.*
- *spotless and perfectly functioning SPA and GYM*
- *and most importantly motivated and qualified Management, Administration and staff which understands the requirements of Laguna de Banus and its Owners.*

*This requires a mind-set and approach to the job and the workplace which is different than, and I do not mean this disrespectfully, compared to the standard of other Urbanisations.*

*You might remember that in previous years I have expressed my dissatisfaction about this very important issue and again this year I cannot report that I was entirely satisfied with the state of our Urbanisation. Obviously, the extensive works carried for the Renovation Project impeded to some extent the realisation of all targets and the accomplishments of the last year will have to be further analysed. “*

The President invited the owners to ask any questions or make any comments on the accounts for the year January-December 2018.

It was requested that it be recorded in the minutes that no owners had any questions or comments regarding the accounts, including the owners that had voted against them. The owners concerned stated they had voted against the accounts for the reasons indicated under item 1.

The Accounts for the year January- December 2018 were approved by majority with one vote against.

## **3. To approve the debtor’s list and legal action to claim the outstanding debts.**

A list of debtors, as at the very morning of the AGM, was presented to the meeting. It included debts for ordinary fees as well as those relating to the renovation works.

The owners were invited to discuss the Administration’s procedures in dealing with such debtors.

In reply to a comment that debtors should be taken to court sooner, the President clarified that the Community could not take legal action against debtors until this had been approved by the AGM.

The owner of apartment 213 then made the proposal that all debts that were outstanding by more than 3 months and were over 5,000.00€, should be referred to court immediately and that the legal fees incurred should be paid by the debtor.

Another owner, was against this proposal and explained that she would have been taken to court over a debt that had been caused by an accounts error. She felt that the proposed threshold of 5,000.00€ over which legal action was proposed against debtors was too severe because it was only equivalent to one quarterly instalment.

In reply to a comment from the owner of apartment 213 regarding the practice of a 10% penalty fee for late payment of community fees in other communities of owners, the President confirmed that, this was decided the previous year, .

It was then emphasised that that the main problem was caused by permanent debtors

who never paid their debts, and it was explained that often after the AGM, some of the short-term debtors would pay their fees, thereby reducing the overall debt.

The lawyer, Mr. José María Hinojosa, addressed the meeting to say that, firstly, even if a system were set in place to automatically take certain debtors to court, the judicial process was lengthy, could yield uncertain results and the Community might not necessarily receive any compensation. Secondly, he pointed out that any legal action had to be approved by the Community as a whole and not just the President or the Committee. The owner of apartment 213 then asked to be sent a link with the appropriate information, saying that he wished to study the matter further and requesting permission to share any legal loopholes he uncovered, that might allow the Community to take debtors to court in a more systematic way.

The President closed the discussion and brought the Committee's proposal to a vote: to take legal action for any outstanding fees 10,000.00€ or more and longer than 6 months due and that the AGM should decide every year which debtors should be taken to court. On this occasion, it was proposed that legal actions should start against the owners of apartments of 101, 104, 301, 203, 221 and 304,

The debtor's list and this last proposal were approved by majority with one vote against on the same grounds as mentioned under item 1 of these minutes.

#### **4. To present and to approve the draft Annual Budget.**

The Annual Budget was approved by majority with one vote against. The vote against was made on the same grounds as mentioned under item 1 of these minutes, but also as a protest that the maintenance of the private swimming pools is included in the annual budget and accounts.

It was then explained that the decision regarding the maintenance of private swimming pools had been approved at a previous AGM in the interests of maintaining the highest possible standards and the appearance of the Community.

The President's requested that any suggestions or questions and proposals should be sent if possible before the AGM and that new proposals should be worded carefully and, if necessary, in consultations with the Community's lawyer. The owner of apartment 213 asked that, in the future, the Annual Budget be provided in Spanish and with sufficient notice.

#### **5. Renovation Project (Mr Manuel del Valle).**

Update report/ discussion

The President hoped that most of the renovation works would be completed before the summer and that any works that had not been completed before Summer would not affect the residents. He went on to explain that during the Renovation Project many existing defects were uncovered and had left them with no option other than to repair such defects to reduce any impact on the renovated areas in the future. He also reiterated that the Architect Company, AQ omitted considerable items in the tender. He then explained to the owners that at the meeting, an increase of the overall budget of 218.000 euros is proposed. From this amount which AQ had recommended 106.000€ for further repairs and the community 112.000€ for further improvements. , (explained on page 5 and in enclosure 2 in the AGM's documentation) n The President reported that he estimated that over 200 issues, ranging from small to large, had cropped up during the renovations and had had to be dealt with by the architects, the construction company, the Community's Administration and himself.

He commended the lawyer, Mr. Hinojosa on his handling of the Zarco case and thanked him for his availability and help concerning the renovation works. He further explained that

the Community was challenging overruns for a total of 316,000.00€, (explained on page 5 and 6). , and referred owners to Mr. Manuel del Valle's report for (see Enclosure 2).

He pointed out that after the Community had challenged the overruns, the relationship with A.Q. had deteriorated, but that the relationship with Campano had remained positive. Indeed, the Community's patient and lengthy talks with the construction company had prevented them from walking away and leaving the renovations unfinished. The President spoke of his cautious optimism, following his talks with the Owner of Campano, that they would be able to reach a mutually acceptable agreement. He emphasised the additional cost and time that would be needed in a legal dispute might leave the Renovation Project unfinished with all its negative consequences.,

He proceeded to summarise what the various options about the additional expenditure and anticipated overruns.

Concerning the extra costs of 106,000.00€ and 112,000.00€, he proposed that the Community ratify this amount as part of the budget. Indeed, the combined sum of 218,000.00€ corresponded to the works that had mostly been carried out, and he pointed out that ratifying this sum as part of the Budget would also facilitate the negotiations with Campano.

With regard to the additional amount of 316,000.00€, he explained that there were three options:

1. The Community could pay them;
2. The Community could try to negotiate a settlement or
3. The Community could walk away from Campano and sign another contractor.

However, he recommended that the Owners do not decide on the issue of 316,000.00€ at that AGM, on the understanding that if the Community's decision were leaked to Campano, this could seriously weaken the Community's ability to negotiate with Campano.

The owner of apartment 213 noted that without wishing to offend anyone, he could not understand how there were 316,000,00€ in overruns and queried why the owners were being asked to decide what to do about them: either they corresponded to fictitious works and therefore should not be paid and should be contested at court, or they were in respect of works that had been completed and had to be paid.

The President explained that when the Community had noticed these overruns in the invoices in January 2019, which had been signed off by the architect, it immediately protected its interests and specified in the payments that any payments made were payments with regard to the signed contract.

He then invited Mr. del Valle and Mr. Hinojosa to share their expertise and help the owners make an informed decision.

Mr. del Valle introduced himself as the technical and legal advisor for the overruns incurred during the renovation. He explained that he had been contracted by the Community following the discovery of overruns in the invoices of 31st December 2018. He went on to liken his position in negotiating with Campano to a carrot and stick approach: if the Community had not agreed to negotiating with them the month before the AGM, Campano would have walked out, leaving the place in a dreadful condition. To ensure that works continued until Easter, Mr. del Valle had reassured Campano that they would receive some payments. He also made it clear to the Community that his aim was for the Community to only pay the items that could be fully justified by Campano. He concluded that the Community had one of the best contracts with building contractors he had ever seen in his career.

Mr. Hinojosa then spoke and reminded the owners that A.Q. and Campano were liable for separate matters as they had caused overruns for different reasons.

Indeed, according to Mr Del Valle, A.Q. had caused additional costs amounting to 120,000.00€, because they lacked adequate foresight and planning not only in their design but also in the very solutions, they had then offered to remedy their faulty design.

According to Mr del Valle, Campano had caused 181,813.00€ in overruns due to measurement and quantity issues.

He added that the issue of the overruns was complex because some overruns were a breach of contract, but others were incurred because of extra works the Community had agreed to.

It was his opinion that the Community should first try to reach a favourable agreement with Campano. He explained that if this was not possible, legal actions should be considered. t. He recommended the owners to approve the recommended 218,000.00€ so that he could negotiate better with Campano.

The owner of apartment 213 asked whether refusing to pay the 218,000.00€ would give them a better bargaining position.

In reply, the President clarified that he had not meant to propose paying for the overruns of 218,000.00€, but simply to acknowledge the works carried out by ratifying this sum as part of the budget.

Mr. Hinojosa was asked whether the renovation works would be left unfinished if the Community went to court with either A.Q. or Campano. He replied that the works would not be left unfinished. But of course, would need another construction company to finish the project. He pointed out that the only scenario where that could happen would be if the town council took them to court, and reminded the meeting that the works had been undertaken in the first place because of an enforcement order to that effect from the town council. However, the Community had not met the deadline and could therefore be penalised for this by having the works suspended.

He also explained that although the town council had not issued the Community with a building licence for the works (due to the irregular planning circumstances that were common to all communities of owners in Marbella), the works could not be considered illegal.

#### **6. Report on all legal issues by our Community lawyer, Mr José Hinojosa (N&H Abogados). Action to be taken.**

Mr. Hinojosa proceeded to give an update on the Community's case against Zarco: The Court of First Instance had ruled in their favour and had ordered Zarco and his insurance company, Caser, to pay the Community a total of 800,000.00€. Caser had been ordered to pay 600,000€ plus interest and costs and Zarco had been ordered to pay 200,000.00€ plus interest and costs. Both had appealed the judgement. Caser had already paid 600,000.00€ in escrow with the Court to avoid further interest payments, which the Community would soon receive. He went on explain that the reason that Caser wanted to settle was due to Article 20 of the Insurance Contract Law, which stipulated that, for the first 2 years, the interest on compensation payments is 5%. After that period of time, it increases to 50%. Because the Court had ruled that the interest was to be paid from when the lawsuit had been originally filed, over 10 years earlier, the total amount payable by Caser could be as much as 1,500,000.00€.

Mr. Hinojosa reported that Caser had suggested an out-of-court settlement of 600,000.00€ and a further 150,000.00€ in respect of interest and costs.

Mr Hinojosa pointed out that the High Provincial Court of Appeal might rule in Caser's favour concerning the plea that interest should be set from the date of Caser's official court summons and that was always the possibility that the Courts would reverse the now presented verdict. For these reasons, he recommended reaching a settlement of 600,000.00€ plus a further 150,000.00€ for interest and costs.

Moving onto the subject of Zarco, Mr. Hinojosa recommended the Community

continue legal action against Zarco. When asked whether Zarco was solvent and therefore worth suing, he replied that he had checked Zarco's assets, which included over 200,000.00€ in their accounts and numerous properties. He also added that Zarco was being sued as a physical person and not as a company.

At the request of the President, Mr. Hinojosa gave an update on the claim against Luxshield SL: The Community had won the case and the owner concerned had been ordered to return their terrace to its original condition.

## **7. Voting.**

- a) Whether the Community wants to accept the offer from Caser

The owners voted in favour of reaching a settlement with Caser for 750,000.00€, with one vote against on the same grounds as mentioned under item 1 of these minutes.

The motion to continue legal action against Zarco had been approved at previous AGMs and was therefore not voted on again.

- b) Additional finance to cover the "Shortfall" for the Renovation Project

The President summarised from the previous discussion that there were three proposals concerning the disputes with A.Q. and Campano.

The first proposal made earlier by the owner of apartment 213 included terminating the work and business relationship with Campano and A.Q., demand starting immediate legal actions.

This first proposal was rejected.

The second proposal was the Committee's recommendation based on the previous six weeks of negotiations with Campano. The Committee proposed to ratify the sum of 218,000.00€ as part of the budget, in respect of the works completed in 2019 by Campano, at the behest of the Community, thus increasing the Community's budget as at the date of the AGM to 2,341,000.00€. Once a settlement had been reached with Campano, an EGM would be scheduled to approve or reject it.

The proposal also included delaying the previous AGM's financing decision of 473,000.00€ (193,000.00€ to be paid in two instalments, on 14/05/2019 and 15/09/2019, and 280,000.00€ that did not have a specific payment date) until the outcome of the negotiations with Campano is clear. It was explained that the 750,000.00€ settlement from Caser together with the cash currently available of 345,000.00€ will reduce the Community's total outstanding bills from 1,491,000.00€ to 396,000.00€. The 396,000.00€ would still include the overruns that were being negotiated. To this amount, the now delayed payments of 473,000,00 will have to be added. The President concluded that this sum might be reduced after negotiations for a settlement. He added that any decision on financing the remainder of the Renovation Project should therefore be delayed until the negotiations had ended.

Some discussion ensued before the proposal was put to vote.

The owner of apartment 213 voiced his concern that the AGM and the decisions taken that day, might be contested as the Spanish Notice of Meeting for the AGM had not been sent with sufficient notice.

The President then asked Mr. Hinojosa whether the AGM being contested would delay the decision to accept Caser's settlement. Mr Hinojosa assured the meeting that all decisions taken at the AGM were enforceable as of the date of the AGM and the Community would not have to delay reaching a settlement with Caser.

The proposal was then brought to a vote and was approved by majority with one vote against on the same grounds as mentioned under item 1 of these minutes.

The President then talked about the Community's disputes with A.Q. He explained that, the Community had paid A.Q. approximately 2,000.00€ more than had originally been agreed in their contract in order to ensure continuation of the works. However, it would be possible that legal proceeding might begin between the two parties. A If that were to. He informed that, if A.Q. were to walk away from the renovations, Mr. del Valle would take over as architect.

The third proposal, made by the owner of apartment 213 was not paying or acknowledging any fees due and to continue negotiations.

This proposal was rejected by majority, with two votes in favour.

### **8. Election or re-election of President, Vice-President, Administrator and other members of the Executive Committee.**

The President stated that he always promised that he would not leave before finishing the renovation Project and leave the uncompleted and complex Project to a successor. He thanked Mr. Stig Abildso for submitting his nomination for President. He also thanked Mr. Kane who was resigning from his position as Vice-President.

The President reiterated htat he wanted Mr. Abildso's tenure as President to be unencumbered by the renovation works. To that effect, he volunteered to remain in his position as president until the project was terminated andthat, in the event he was re-elected, Mr. Abildso be elected as Vice-President. The president explained that he and Mr. Abildso agreed that they will change functions during the year at their discretion, meaning that Mr. Abildso would take over the role as president and Mr. Wolf the role as vice-president.

Mr. Abildso introduced himself and explained that he lived at the Community seven to eight months of the year and also expressed his commitment to reinstate top standards at the Community.

The owners then voted on the Committee posts as follows:

- Mr. Marcel Wolf was elected by majority as President of the Community.
- Mr. Abildso was elected by majority as Vice-President.
- PFV Accountants represented by Mr Patrick Fay was elected by majority as Secretary-Administrator.

### **9. Any other business.**

The issue of the unsightliness of the metal trim underneath the roof tiles, on all of the buildings was raised. Despite the architect and the builders having agreed that the metal trim did not fit in aesthetically with the Community's architecture, no measures had been taken to remove it. The President replied that this issue could be addressed at the negotiations.

The owner of apartment 213 requested that the next AGM provide simultaneous interpreting services instead of consecutive interpreting services.

He also raised the issue of excessively loud music after 11 p.m. He suggested, as a solution that the Manager could warn tenants first and then, if they carried on making noise, call the police. The President answered that, in order to do this, an amendment to the



Community rules would have to be made and approved, whilst reminding owners that they were entitled to call the police themselves.

The President thanked everyone for attending and the meeting was closed at 15.35 p.m.

Signed: **Mr. Marcel Wolf**

Signed: **Mr. Carlos Jiménez**

Signed: **Mr. Patrick Fay**