



Americano Beach Resort Lodge Condominium Association, Inc.

Several general questions from Owners were presented to the Board at the last Board of Directors meeting. The following responses are given with the understanding that the Board and, according to the Developer, ARC, both remain committed to a redevelopment plan to restore the property for those owners desiring to remain an Owner atAmericano. However, despite this commitment, nothing contained herein should be considered a guaranty as to the success of any plan as it will take a commitment from existing owners, the Board, ARC, and the availability of third party financing. Further, this process is a continual process and may change from time to time, including the information provided herein, and your Board will continue to keep you updated. Your Board appreciates the interest and involvement of the owners and we encourage your continued assistance and cooperation in reaching this goal.

1. [ABR/ ARC states that there are three \(3\) phases in the repair /rebuilding ofAmericano. How many SPECIAL ASSESSMENTS are planned for owners and what is the time frame for these assessments?](#)

There are no plans for additional special assessments of the owners. The Association Board is unanimous in insisting that any plan for the redevelopment of the property and continued operation be based on external financing. The reason that there have been references to multiple phases of repair is because it is a primary goal to re-open the facility as quickly as possible. Some of the units require total reconstruction, while others require fewer repairs. It could take 1½ to 2 years to complete all of the interior reconstruction, so “Phase 1” is to get as many units open as possible, as soon as possible, and the remaining repairs and unit upgrades will occur after that.

2. [Due to the lengthy closure of theAmericano, costs for operation should be approximately 20-25% of the annual budgeted amount. Owners request an official accounting of the amount of special assessments received and distributed to date, i.e. which ABR funds received these amounts and what services were paid?](#)

When operating normally, the operating costs of the property have been approximately \$406,600 per month. Through the first four months of 2018, operating costs have averaged \$111,347 per month, or 27% of the regular operating cost.

Owners representing 1,245 intervals have paid all or some of the special assessment totaling \$1,292,867.37. As of June 20, the cash balances in the Association’s bank accounts total \$2,808,107.53.

Construction, repair and remediation funds expended since Hurricane Irma total \$1,319,727.86 as outlined below. This does not include legal, architectural and engineering fees or minor repairs.

Roof replacement:	\$421,917.78	Post-storm remediation:	\$568,832.08
Flood remediation:	\$14,678.00	Lobby roof repair:	\$26,320.00
Window/concrete test unit:	\$11,515.00	Roof anchor davits:	\$26,465.00
Glass deposit:	\$150,000.00	Concrete repair deposit:	\$100,000.00

3. You state that it is possible that non-paying owners will be terminated from the program in order to consolidate the ones that choose to remain into a smaller portion of the building. How do you propose to complete this action?

The goal is to retain all owners. Some have elected to deed their interests to the Association in lieu of further payment of assessments under the Hardship Policy that has been in place for many years. Upon payment of the assessments to the Association under the Hardship Policy, owners are being offered options including acquisition of intervals at other resorts by the Developer. Eventually, title to intervals held by owners who do not pay the special assessment and all prior assessments will be recovered through the Florida non-judicial foreclosure process. The Association will not be reporting this process or any delinquency to any credit bureau, but we have no control over any third party reporting. All money paid when the owners elect to deed to the Association are retained by the Association.

4. In relation to question 3 above, what will be the estimated initial and ongoing cost to owners who wish to remain in the program? Will fees increase or decrease.

The future operating budget can't be determined with certainty until the number of owners remaining has been confirmed and the redevelopment plan approved. It is management's opinion that the maintenance fees for timeshare owners could decrease because the bad debt expense created by owners who have stopped paying their maintenance fees will be substantially eliminated, and the Reserve Funds will be fully-funded because most of the capital components of the property will have been replaced or updated. However, management also believes the resort has substantially under-budgeted for repairs and maintenance in the past, so there are many factors to consider in preparing the 2019 budget.

5. In relation to question 3 above, will owners have to pay anything to make the changes to the new program?

Owners will not have to pay anything to be relocated into a similar unit type and season as they are presently deeded. Owners who seek to upgrade their unit type or season will be required to pay a fee for that to the Association, though no such fees have been determined.

6. In relation to question 3 above, what action(s) will be required of owners in order to make this adjustment?

Owners will be required to deed their current interval(s) to the Association and will be deeded a new interval in the new timeshare units in return.

7. In relation to question 3 above, what compensation will be given to owners who will lose prime locations/unit weeks (such as upper floors) for which owners have paid premium prices and fees?

AlthoughAmericano owners are deeded a specific unit and week, an owner does not have the right to occupy any particular unit – rather, they are entitled to a reservation in any available unit of the type they were deeded. This is part of the Floating Use Plan that has been in place since the property's conversion to timeshare in the 1990's. Owners will receive the same season of ownership or "fixed week" that they own currently and will continue to have the right to occupy the unit type they were deeded, but they may not always be located in the specific unit they were deeded. Specific unit requests will be managed on a first come, first

served basis, with priority given to full-week reservations. Some units will be off-line for repairs and refurbishment from time to time.

As has been discussed, the Board recognizes that owners who purchased “event” weeks like Race Week or Bike Week have suffered because the City of Daytona Beach has changed the dates of those events, and they no longer always correspond with calendar weeks 6 and 9. An enhancement to the proposed use plan will allow those owners to reserve the week of the event, regardless of when it is scheduled. Additionally, the proposed plan will allow owners to check in on any day for a full week’s stay, and not just Saturday as the current plan requires. So, for example, a Race Week owner could stay Monday to Monday and enjoy the pre-race activities and the day of the Race without having to rent additional nights.

8. In relation to question 3 above, will owners be responsible for any costs associated with remodel or redesign of floors no longer in the timeshare program?

As noted previously, it is the goal of the Board and Management to obtain all costs of executing the redevelopment plan from external sources, and not from additional fees or assessments from the remaining owners.

9. In relation to question 3 above, you have previously stated in several documents to owners that "options" will be made available to owners who no longer wish to remain in the timeshare program because of changes and increased fees and assessments. What EXACTLY are those options?

It's important to restate that the first goal is forAmericano owners to remainAmericano owners. TheAmericano staff has been instructed to be as flexible as possible in working out payments plans with owners wishing to remain. ARC, the Developer, has offered several options which have been detailed in previous correspondence to the membership. Currently, the Developer has three other Florida resorts managed by ARC – Magic Tree Resort in Kissimmee, Sea Club IV in Daytona Beach Shores and Marina Bay Resort in Ft. Walton Beach – at which the Associations own intervals for which they have engaged ARC to sell on their behalf. In addition, ARC sponsors a travel & leisure discount program called Freedom 365 which affords its members steep discounts on cruises, hotel & resort stays and consumer products. ARC Freedom 365 is not a deeded product, and the Member may remain so for as long as they like or may cancel their membership at any time.

10. Who is the actual "owner" of the gym/spa/pool/cafe/game room and other such areas of theAmericano for which owners are assessed annual fees? Your 2018 budget states that the annual cost for the Health Club is \$362,390. Why are the annual costs associated with these areas, particularly the health club, so high?

Since the project’s inception in 1992, the Health Club has been part of the “Developer Retained Property” or DRP. The DRP includes the health club, indoor pool, administrative offices, sales center, game room/guest laundry, and the housekeeping offices.

ARC’s parent company, the American Resort Coalition, Inc. acquired the DRP, the Developer Rights, the Management Contract, and 1,972 intervals from the prior developer in January 2016. The Health Club Fees and the Management Fees have been included in the operating budget since inception in 1992. Although the Declaration provides for annual increases in both fees, ARC has not changed them since it acquired

the assets, and, in fact, has billed the Association substantially less than those agreements provide. Although these fees have always been shown separately on the operating budget, they were first shown separately on the owners' maintenance fee statements in 2017.

11. Long-time owners with "fixed-week" deeds have been able to use their time during other weeks of the year when time is available. With ARC's takeover, owners are now forced to use their fixed week and not allowed to change. Why are you making this change?

Management has stated consistently that it is required under Florida Law to enforce the Declaration, Bylaws and Rules & Regulations of the Association consistently among all owners. One element of the proposed new use plan will allow owners to reserve their designated unit type and season or event week, or if they elect, a smaller unit type or lower-demand use period 12 months in advance. At 9 months in advance any owner may reserve any available time within their unit type. This will give greater flexibility to the purchasers who spent more to get an event week or high-demand use period and give lower-season owners a chance to reserve prime weeks when they go unreserved. Additionally, though an owner may rent their interval to another person whenever they like, the Association will not rent delinquent or unreserved timeshare inventory until 6 months in advance.

12. You have stated that the cost of repair of theAmericano now exceeds \$15 million. The building was adequately insured against the damage caused by the hurricanes. According to the December 31, 2016 Financial Statement, damages in the amount of \$1,284,000 were sustained in Hurricane Matthew. Therefore, the remainder of the damages you are claiming are presumed to be a result of Hurricane Irma and are in excess of \$13.5 million. Owners request documentation of the ACTUAL claims and assessments by professional adjusters for damages filed with ALL insurance carriers responsible, including photographic documents, structural and environmental reports and assessments, for wind, flood or any other claimed damage. How many claims have been paid and for those that have not, what reasons are being given by the insurers for denying the claims?

The amounts presented in the 2016 Audit were the expenses paid by the Association as of 12/31/2016, and the final claims had not yet been submitted. In 2016, Management had the property appraised for insurance purposes, and the indicated value for insurance was \$21,342,864. Our Insurance Agent updated our property insurance policies to provide for full coverage. The claims and payments are summarized below.

Claimed		Received
Hurricane Matthew		
Wind – Ariel Specialty	\$8,007,991.16 less deductible of \$649,000 \$7,358,991.16	\$1,182,220.18
Flood - Wright	\$380,354.75 (per revised estimate 8/28/17)	\$271,881.63 (prior payments) Pending current negotiations on the remaining amounts due Americano expects the total amount paid on the flood claim to exceed \$350,000.
Hurricane Irma		
Wind – Ariel Specialty	Pending. Anticipated to total approximately \$5,600,000	Landmark deductible payment \$622,148. (Policy Limits) Ariel \$117,439.62 plus \$301,071.20 of \$1,100,000 total BI claim.
Flood - Wright	\$21,800.17	\$21,800.17

The deductible for the wind policy is 3% of building value, or \$722,148. After Hurricane Matthew, the Board elected to purchase a “wind deductible buy-down policy” from Landmark Insurance reducing the wind deductible to \$100,000. The policy cost \$45,000. After Hurricane Irma (in April 2018) Landmark paid the Association the full policy limit of \$622,148.

The majority of the Matthew claim relates to the windows. A “glazing” expert hired by the Association after the hurricane concluded that the windows had not reached the end of their useful life and were compromised by the hurricane. The wind insurer disagreed, and that is the main source of the dispute on the Matthew wind claims. Although the Association was moving ahead with plans to replace the windows during the summer of 2017, work was not permitted to begin until the insurers made final inspections of the facility. Those inspections were postponed by the insurer and didn’t occur before Hurricane Irma. Although the final claim for wind and related damages from Hurricane Irma are yet to be filed because final estimates of the total repairs are not yet available it is expected that the wind insurer will object to any additional payments under Irma. All disputed amounts are being pursued through the Association’s special counsel for insurance claims, Berger Singerman. The unpaid Matthew claims are now being litigated, and as such much of the claim documentation is not available for public dissemination.

Although the Association does carry “Law & Ordinance” coverage in its property policy to cover things like changes in code requirements, the full costs of restoring all units to a modern

specification and bringing the property into compliance with current codes and ADA standards, there may be costs of a total redevelopment of the property that would not be paid for even if all insurance claims were paid in full.

13. In relation to question 12 above, owners request documentation on WHERE have any insurance proceeds been spent, including copies of requests for proposals, bids, signed contracts and payments made or required to be paid, including any past-due balances or court action associated therewith.

As noted above, much of the claim-related documentation is not available for public dissemination. The documentation relating to the bids, proposals and work performed using insurance proceeds is voluminous, and is available for inspection by any owner upon appointment. Proposals received are reviewed by the Board and its legal counsel, and contracts are awarded upon the vote of a majority of Board members.

One of the remediation companies retained after Matthew made claims againstAmericano for final payment of their services. We had hoped that the applicable insurance company would issue payment promptly to avoid litigation with the company however, due to legal time constraints, the remediation company filed an action againstAmericano before a resolution of the insurance dispute could be reached. The matter as filed in Volusia County has been released and dismissed and any non-payment was not the fault of ABR or its management, and was not due to a lack of funds, but instead to an insurance dispute as these insurance matters are extremely complicated. There is a pending resolution of the insurance claim which was the source of the dispute with the remediation contractor which will reimburse ABR for the amounts paid to settle the dispute with the remediation contractor.

14. How much of ARC's own capital has been or is being put toward the remodel/refurbishment/repair of theAmericano?

In addition to the funds required to acquire the assets described in question 10 above, according to the Developer, all of the funds expended on repairs, maintenance and remodeling of the DRP, the costs of food & beverage operations plus the costs associated with the remodeling of the model unit 108 have come from ARC. ARC is seeking to raise approximately \$10,000,000 of debt or equity capital to pay for the balance of costs required to repair and renovate the facility and to bring it to current compliance standards. Additionally, ARC's costs of registering theAmericano for sale after the 2016 acquisition and starting the marketing and sales program were significant.

15. In a news release dated October 3, 2016, it was stated that ARC has partnered with Hospitality Resources & Design to begin renovation and redesign of theAmericano and has hired a firm to "help with the company's new vision" for theAmericana. How is it that ARC 'suggested' they had the funds to go through with a redesign but now claims it does not do not have the funds to pay for the remainder of repairs after insurance proceeds should pay for the vast majority?

As is common for this type of timeshare redevelopment, according to the Developer, ARC's original plan had been to conduct sales of the intervals it acquired first, and then to sell additional intervals to be acquired from the Association and delinquent owners, and to commit a portion of those sales proceeds to the costs of refurbishing the unit interiors over a period of

five to six years. August of 2017 – the month before Hurricane Irma - was the first month ARC approached the sales volume necessary to cover its costs of marketing and sales and to begin reinvesting in the real estate.

Unfortunately, no one can control two back to back acts of nature, such as Hurricane Mathew and Irma. The Developer, ARC sustained a significant loss to its assets and business, just as any owner at the property, but to a much larger degree. The Developer is seeking investment to help restore theAmericano for it and the owners. Further, due to the contested claims with the insurance carriers, currently the resort must find a way to restore the property without relying on insurance proceeds. The proposed plan to reduce the timeshare plan to fit the number of owners that wish to remain seems to be the best alternative.

16. Please explain how a building assessed on property records at approximately \$14.5 million can have sustained damages, according to your statements, of OVER \$15 million and NOT BE declared a total loss!

Please refer to Question 12 above.

17. TheAmericano was insured against loss of revenue and loss of use. Since the "timeshare owners" have lost their usage of the facility they have paid for, why are some of these funds not used to reimburse owners for maintenance fees paid for time that cannot be used nor reimbursed?

A Business Interruption and Extra Expense Claim was filed on behalf of the Association. We haven't found an insurer yet that will reimburse maintenance fees. Their position is that maintenance fees are a personal obligation of the individual owners and they should file claims on their own individual policies. What they will reimburse is extra wages incurred to relocate people and lost business income like rental income.

After Hurricane Matthew, the Association was awarded \$191,152.91 in Extra Expense related 100% to the Association payroll costs related to the post-storm clean-up and efforts to reopen the property. After Irma, the insurer would not reimburse for labor as the property was closed, which they apparently viewed differently than the labor expense expended to reopen the property after Matthew. But the Association did receive \$171,197.10 for lost rents for the period of September 11, 2017 through March 31, 2018. This would not have been possible if the Association had not realized net rental income in 2017. Through September 10, the Association had received \$129,874.53 in net rental revenues – and this was the first time in at least six years that the Association had earned any rental income.

18. In the April 2, 2018 letter to owners, you state "the number of paying owners has dwindled over many years to less than 50% of paying owners versus non-paying owners." A less-than-60% owner base cannot reasonably be expected to maintain a timeshare with thousands of units that remain unfunded. At what point does it become feasible for the timeshare to be dissolved?

Although there are several paths a timeshare association in Florida could seek to terminate the condominium and liquidate the property, including bankruptcy, it requires a vote of 80% of all voting members including delinquent members* to terminate the condominium plan. Without funds from a developer, the Association members would be responsible for all legal fees associated with that plan, and all of the title costs required to allow the building to be

resold. Management estimates the title costs under the proposed redevelopment plan alone to exceed \$1million. During the lengthy process of condominium and plan termination, title, and eventual sale, theAmericano could not be occupied. In consultation with the Board's legal counsel and representatives of the Florida Department of Condominiums, Timeshares and Mobile Homes, the Board and Management determined that continued operating of the facility for the owners wishing to remain was a far better alternative than an indefinite closure with very low likelihood of a successful liquidation.

* Many of the laws in the State of Florida regulating timeshares are in Chapter 718 which was intended for whole-ownership condominiums. Resorts like theAmericano which are based on a condominium plan are substantially regulated by Chapter 718, and rules like the voting by delinquent owners on substantive matters facing the Association are intended to protect owners of primary residences and are not well-suited to the timeshare environment. Chapter 721 which governs timeshare plans relates more to the registration & filing requirements for the sales of timeshare interests than to the governance of timeshare associations.

19. In relation to question 18 above, what procedure is required by owners to bring this action to a vote?

It would require a vote of 60% of all members, including delinquent members to terminate the timeshare plan, and a vote of 80% of all members to terminate the condominium.

20. Owners are concerned that their assessments are not being applied appropriately, therefore many owners have abstained from or refused to pay these assessments. Owners have suggested that these assessments be paid into an established escrow account until all questions and concerns regarding theAmericano have been resolved to owners' satisfaction.

Any Special Assessment paid is being held in theAmericano Construction Fund and checks may only be issued by the Board's legal counsel upon certification by the Association's Architect that any work performed was permitted and completed properly.

The Association must continue to operate and escrowing operating funds, including the weekly payment of invoices and payroll, would be impractical. In the event the State determined malfeasance has been proven, they may elect to appoint a Trustee. However, the State has determined and communicated to owners that have filed inquiries that the property is being operated in compliance with State law, and lacking evidence to the contrary, will not intervene in the resort's operation.

Obviously like any business, owners of the business must continue to pay operating costs, including restoration costs, if any, to maintain, restore, and operate the business. If the business plan changes due to an act of god or otherwise, like any business, those issues must be addressed in order to keep the business repaired and operating. Timesharing is no different. To make theAmericano a success again, all owners that wish to remain involved with the resort will need to cooperate and pay what they are obligated to pay in order to achieve the goal of restoring and operating theAmericano. Of course, it remains your free will and choice to make a decision as to your continued involvement, but the operations must remain funded to enable the continued operation and restoration of the resort.