

## Fill in this information to identify the case:

Debtor 1 Sand Castle South Timeshare Owners Association, Inc.Debtor 2  
(Spouse, if filing) \_\_\_\_\_

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_ ▼

Case number 19-02764-jwSAND CASTLE TOA  
19-02764

Claim 1014

## Official Form 410

## Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

## Part 1: Identify the Claim

1. Who is the current creditor?

Cherokee Motels Inc.

Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?

☐ No☒ Yes. From whom? Sandcastle South Homeowners Association, Inc.

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Markham Law Firm, LLC

Name

PO Box 20074

Number Street

CharlestonSC29401

City

State

ZIP Code

Contact phone 888-327-0054Contact email sean@markhamlawsc.com

Where should payments to the creditor be sent? (if different)

Cherokee Motels Inc.

Name

PO Box 1362

Number Street

Myrtle BeachSC29578

City

State

ZIP Code

Contact phone 843-222-6163Contact email cfloyd@sandcastleresorts.comUniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. Does this claim amend one already filed?

☒ No☐ Yes. Claim number on court claims registry (if known) \_\_\_\_\_Filed on \_\_\_\_\_  
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☒ No☐ Yes. Who made the earlier filing? \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>360,000.00</u> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>An agreement to repay outstanding HOA Dues.</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate (when case was filed)</b> _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**☒ No☐ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.☒ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

09/18/2019  
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Henry Coan III		
	First name	Middle name	Last name
Title	President		
Company	Cherokee Motels, Inc.		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	PO Box 1362		
	Number	Street	
	Myrtle Beach	SC	29578
	City	State	ZIP Code
Contact phone	843-424-0143		Email tcoan@sc.rr.com

## PROMISSORY NOTE

Amount: \$600,000.00

September 25, 2013  
Horry County, South Carolina

1. Promise to Pay. FOR VALUE RECEIVED, and pursuant to the terms of this Note, Sand Castle South Timeshare Owners Association, Inc., a South Carolina non-profit corporation, ("Maker"), promises to pay to the order of Sand Castle South Homeowners' Association Inc., a South Carolina non-profit corporation ("HOA") and Cherokee Motels, Inc., a South Carolina corporation ("CM") as their interests may appear in the Escrow Agreement by and between Maker, CM, HOA, Festiva Development Group, LLC, a Nevada limited liability company, Sand Castle SouthBeach, LLC, a South Carolina limited liability company and Mullen Wylie, LLC, a South Carolina limited liability company of even date herewith ("Escrow Agreement"), in lawful money of the United States of America, and in immediately available funds, the sum of Six Hundred Thousand and No/100 Dollars (\$600,000.00), or so much thereof as may from time to time be outstanding, together with all other amounts added thereto, if any, as set forth in this Note ("Loan"). Hereinafter CM and HOA are collectively referred to as "Holder."

2. Payments; Application of Payments; Maturity Date.

(a) Payments. Maker shall make mandatory repayments to Holder on an annual basis, in the amount equal to Forty Thousand and No/100 Dollars (\$40,000.00), to be applied in accordance with this Note ("Mandatory Repayments"). The obligation of Maker to make Mandatory Repayments shall commence on December 15, 2013 and shall continue on same day each year thereafter until the Maturity Date. The first four Mandatory Repayments shall be made directly to the HOA, after which said Note shall be assigned to CM by the Escrow Agent, and all remaining Mandatory Repayments shall be made directly to CM.

(b) Application of Payments. All payments under this Note will be applied as follows:

- (i) First, to any outstanding Late Fees (defined below);
- (ii) Second, to the outstanding principal balance.

(c) Maturity Date. The Loan shall be due and payable fifteen (15) years from the date of this Note ("Maturity Date").

3. Late Fees. If Mandatory Repayments or any other amount due under the Note are not timely made or remain overdue for a period of fifteen (15) days, Maker, without notice or demand by Holder, promptly shall pay to Holder an amount ("Late Fee") equal to five percent (5%) of each delinquent payment.

4. Evidence of Indebtedness. This Note is given and accepted as evidence of indebtedness only and not in payment or satisfaction of any indebtedness or obligation.

5. Collections. If any attorney is engaged to collect the Loan or any fees due hereunder, then Maker shall pay to Holder all reasonable costs, attorneys' and paralegals' fees, and expenses incurred in connection therewith, whether in or out of court or trial, any appeals therefrom, and any administrative, bankruptcy, arbitration or mediation proceedings in addition to all other amounts due under this Note.

6. Severability. If one or more of the provisions of this Note shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Note, but this Note shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Note.

7. Modification. This Note shall not be modified, amended, changed, terminated, supplemented, or any term or condition hereof waived except in writing signed by Maker and Holder.

8. Assignment. Except as expressly set forth herein, neither Maker nor Holder shall not assign its obligations under this Note without the express written consent of the other parties hereto.

9. Headings. Headings are for convenience of reference only and shall not be deemed to modify, explain, enlarge, or restrict any of the provisions of this Note.

10. Notices. All notices, requests, demands and other communications hereunder shall be in writing, and shall be effective upon receipt and shall be sent by certified mail, return receipt requested to the following addresses:

If to Maker: Sand Castle South Timeshare Owners Association, Inc.  
One Vance Gap Road  
Asheville, North Carolina 28805

If to Holder: Cherokee Motels, Inc.  
P.O. Box 1362  
Myrtle Beach, SC 29578

Sand Castle South Homeowners' Association, Inc.,  
P.O. Box 7706  
Myrtle Beach SC 29572

The foregoing addressed may be changed by notice given in the manner set forth in this Section.

11. Successor and Assigns. The obligations and liabilities of Maker under this Note shall be binding on and enforceable against Maker and its successors and assigns.

12. Time of Essence. Time is of the essence of this Note and the performance of each of the covenants and agreements in this Note.

13. Choice of Law, Jurisdiction, and Venue. This Note shall be deemed to have been made and executed in the County of Horry, State of South Carolina, and this Note shall be interpreted, construed, and enforced in accordance with the laws of the State of South Carolina without regard to the principles of conflict of laws.

14. Jury Trial Waiver. MAKER AND HOLDER, EACH BY ACCEPTANCE OF THIS NOTE, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON, OR RELATED TO, THE SUBJECT MATTER OF THIS NOTE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY MAKER AND BY HOLDER, AND MAKER ACKNOWLEDGES THAT NEITHER HOLDER NOR ANY PERSON ACTING ON BEHALF OF HOLDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OR TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT.

----SIGNATURE PAGE TO FOLLOW----

IN WITNESS WHEREOF, the parties hereto have executed this Note as of the date first above written.

Maker:

Sand Castle South Timeshare  
Owners Association, Inc.

By \_\_\_\_\_

Name:

Title:

JAMES BOOBY  
PRESIDENT

Holder:

Sand Castle South Homeowners'  
Association, Inc.

By \_\_\_\_\_

Name:

Title:

Cherokee Motels, Inc.

By \_\_\_\_\_

Name:

Title:



IN WITNESS WHEREOF, the parties hereto have executed this Note as of the date first above written.

Maker:

Sand Castle South Timeshare  
Owners Association, Inc.


By \_\_\_\_\_

Name:

Title:

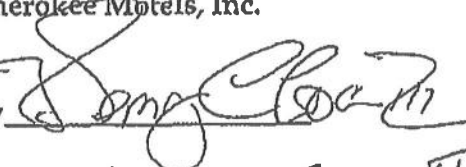
Holder:

Sand Castle South Homeowners'  
Association, Inc.

By 

Name: Chas D Floyd  
Title: Pres.

Cherokee Motels, Inc.

By 

Name: Henry C. Coan, III  
Title: President

STATE OF SOUTH CAROLINA       )  
  )  
COUNTY OF HORRY                )

**ASSIGNMENT  
OF NOTE  
AND GUARANTY**

**WHEREAS** Sandcastle South Homeowners Association, Inc. (Assignor) and Cherokee Motels, Inc. (Assignee) are the co-holders of that certain Promissory Note dated September 25, 2013 issued by Sandcastle South Timeshare Owners Association, Inc. (Maker);

**WHEREAS** said Promissory Note (the "Note") is secured by a Guaranty issued by Festiva Development Group, LLC ("Guaranty");

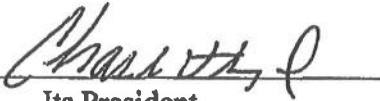
**WHEREAS** Assignor desires to assign all of its right, title and interest in the Note and Guaranty to Assignee;

**THEREFORE**, in consideration of the promises made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:


1. Assignor shall receive the \$40,000 payment under the Note which is due to be paid on or before December 15, 2016.
2. Assignor shall have the right to enforce the terms of the Note and Guaranty in the event the above-referenced \$40,000 payment is not timely made.
3. Subject to the above-referenced right to receive the \$40,000 December 2016 payment under the Note, Assignor hereby assigns, transfers and conveys to Assignee any and all of Assignors right, title and interest in and to the Note and Guaranty and the right to collect all sums due thereunder.
4. Assignor represents and warrants that is has the right, power and authority to execute this Assignment.
5. Assignee hereby accepts the foregoing assignment and agrees to fully indemnify, defend and hold harmless Assignor, its affiliates, agents, successors and assigns, from any and all claims, demands, actions, suits, proceedings, damages, liabilities, costs and expenses of any nature, including Attorneys fees, which arise from or relate to the Note or Guaranty.
6. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns

Executed this 11<sup>th</sup> day of April 2016.

Sandcastle South Homeowners Association, Inc.

by   
Its President

Cherokee Motels, Inc.

by   
Its President

### GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT ("Guaranty") by and between FESTIVA DEVELOPMENT GROUP, LLC, a Nevada limited liability company ("Guarantor") and SAND CASTLE SOUTH HOMEOWNERS' ASSOCIATION, INC., a South Carolina non-profit corporation (the "HOA") and CHEROKEE MOTELS, INC., a South Carolina corporation ("CM"), is made this 25<sup>th</sup> day of September, 2013.

WHEREAS, Sand Castle South Timeshare Owners Association, Inc., a South Carolina non-profit corporation (the "TOA") has entered into that certain Promissory Note dated on or of even date herewith ("Note") in the principal amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) with the HOA and CM ("Indebtedness"); and

WHEREAS, the rights and interests of the HOA and CM under the Note are set forth in and defined by the Escrow Agreement of even date herewith ("Escrow Agreement") by and between CM, HOA, Guarantor, TOA, Sand Castle SouthBeach, LLC, a South Carolina limited liability company and Mullen Wylie, LLC, a South Carolina limited liability company ("Escrow Agent");

WHEREAS, the HOA and CM are willing to enter into the Note with the TOA only if Guarantor agrees to guaranty the full, timely, faithful performance of, payment under and compliance with the Note.

NOW, THEREFORE, in order to induce the HOA and CM to enter into the Note with the TOA and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Guarantor hereby unconditionally covenants and agrees with the HOA as follows:

1. Guarantor hereby unconditionally guarantees to the HOA and CM as their interests appear in the Escrow Agreement:

(a) The full, complete and punctual performance by the TOA of all the terms, covenants, obligations and conditions contained in the Note ("Obligations"); and

(b) The payment of all sums at any time owed by the TOA under the Note as and when the same shall become due and payable according to the terms of the Note. In the case of any failure by the TOA to pay amounts due under the Note when such sums are due, Guarantor hereby unconditionally agrees to immediately make such payment as and when the same shall become due and payable.

2. Guarantor hereby agrees that its Obligations hereunder shall be unconditional, irrespective of:

(a) The absence of any attempt to collect from the TOA or any other Guarantor; or

(b) Whether any other action has been instituted or taken to enforce the same;

3. Guarantor hereby waives diligence, presentment, demand for payment, filing of claims with a court in the event of receivership or bankruptcy of the TOA, protest or notice with respect to the Indebtedness and all demands whatsoever and covenants that its Guaranty will not be discharged except by complete performance of the Obligations of the TOA contained in the Note.

4. Guarantor authorizes the HOA and/or CM as their interests appear in the Escrow Agreement without notice or demand and without affecting the liability of Guarantor hereunder, from time to time:

(a) Renew, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Indebtedness or any part thereof; or

(b) Accept partial payments on the Indebtedness.

5. Guarantor shall have no right of subrogation and Guarantor waives any right to enforce any remedy which the HOA and/or CM, as their interests appear in the Escrow Agreement, now has or may hereafter have against the TOA. Guarantor waives set-off, counterclaim, presentment, demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor and notice of acceptance of the Guaranty and of the existence, creation or incurring of new or additional Indebtedness.

6. No failure or delay by the HOA or CM, as their interests appear in the Escrow Agreement, or the holder or assignee of any agreement in exercising any right, power or privilege hereunder or thereunder shall operate as a waiver thereof; nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege.

7. In the event that one or more of the provisions of this Guaranty shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Guaranty, but this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8. This Guaranty and the rights of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws and public policies of the State of South Carolina, without regard to the principles of conflict of laws.

9. In any action to enforce the provisions of this Guaranty, personal jurisdiction and venue shall be in the Court of Common Pleas, Horry County, South Carolina or the United States District Court for the District of South Carolina.

10. Jury Trial Waiver. GUARANTOR AND THE HOA, EACH BY ACCEPTANCE OF THIS GUARANTY AGREEMENT, HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON, OR RELATED TO, THE SUBJECT MATTER OF THE AGREEMENT AND THE LENDING RELATIONSHIP THAT IS BEING ESTABLISHED. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY GUARANTOR AND BY THE HOA. GUARANTOR AND THE HOA FURTHER ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND SUBORDINATION AGREEMENT AND IN THE MAKING OF THIS WAIVER BY THEIR OWN LEGAL COUNSEL.

- SIGNATURE PAGE FOLLOWS -

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty Agreement as of the date first above written.

FESTIVA DEVELOPMENT  
GROUP, LLC

By Yvette S. Smith

Name: Yvette Smith

Title: Senior Vice President

SAND CASTLE SOUTH  
HOMEOWNERS'  
ASSOCIATION, INC.

By \_\_\_\_\_

Name:

Title:

CHEROKEE MOTELS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Guaranty Agreement as of the date first above written.

FESTIVA DEVELOPMENT  
GROUP, LLC

By \_\_\_\_\_

Name: Yvette Smith  
Title: Senior Vice President

SAND CASTLE SOUTH  
HOMEOWNERS'  
ASSOCIATION, INC.

By Chas D Floyd

Name: Chas D Floyd  
Title: Pres.

CHEROKEE MOTELS, INC.

By: Henry C. Coan III

Name: Henry C. Coan III  
Title: President



Sand Castle South		Vendor	Vendor ID	Date	Check Number
		Cherokee Motels Inc.	CHEROKEEMOTEL	01/12/2018	001369
Invoice Date	Invoice Number	Comment	Net Paid Amt	Discount Taken	Net Check Amt
12/31/2017	1217	SCS	\$40,000.00	\$0.00	\$40,000.00
<p>DUE 12/15/17 REC. JAN 2018 X</p>					
TOTALS:			\$40,000.00	\$0.00	\$40,000.00

Sand Castle South		Vendor	Vendor ID	Date	Check Number
		Cherokee Motels Inc.	CHEROKEEMOTEL	01/25/2019	001498
Invoice Date	Invoice Number	Comment	Net Paid Amt	Discount Taken	Net Check Amt
12/31/2018	1218	SCS	\$40,000.00	\$0.00	\$40,000.00
<p>DUE 12/15/18 REC. 1/28/19 X</p>					
TOTALS:			\$40,000.00	\$0.00	\$40,000.00