

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV030134-910

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)
)
Plaintiff,)
)
v.)
)
CUSTOM STONE NC INC.,)
)
Defendant.)

CONSENT JUDGMENT

The undersigned Superior Court Judge, having reviewed the signatures of the parties to this document, makes the following findings of fact, conclusions of law, and orders accordingly:

FINDINGS OF FACT

1. Plaintiff, the North Carolina Landscape Contractors' Licensing Board (hereinafter "Plaintiff Board"), is an agency of the State of North Carolina created under the authority of Chapter 89D of the North Carolina General Statutes.
2. Defendant Custom Stone NC Inc. ("Defendant") is:
 - a) Is a corporation organized under the laws of North Carolina with a principal place of business of 1001 Ellis Road, Durham, Durham County, North Carolina. Thomas Richard Benner is the Registered Agent and President for Defendant; and
 - b) Not presently or has been previously licensed by Plaintiff Board as a "Landscape Contractor," as that term is defined by N.C. Gen. Stat. § 89D-11(3).
3. Plaintiff Board is charged with the regulation of landscape contractors in North Carolina and is authorized to bring this action under N.C. Gen. Stat. § 89D-24(a) which provides:

If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

4. N.C. Gen. Stat. § 89D-11 defines “Landscape Contractor” as “Any person who, for compensation or other consideration does any of the following:
 - a) Engages in the business requiring the art, experience, ability, knowledge, science, and skill to prepare contracts and bid for the performance of landscape services, including installing, planting, repairing, and managing gardens, lawns, shrubs, vines, trees, or other decorative vegetation, including the finish grading and preparation of plots and areas of land for decorative utilitarian treatment and arrangement.
 - b) Practices the act of horticulture consultation or planting design for employment purposes.
 - c) Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
 - d) Designs, installs, or maintains low-voltage landscape lighting systems, provided (i) the work does not exceed the scope of the exception set forth in G.S. 87-43.1(7) and (ii) the low-voltage lighting systems do not exceed 50 volts and constitutes a Class II or Class III cord and plug connected power system.
 - e) Engages in the construction of garden pools, retaining walls, walks, patios, or other decorative landscape features.”
5. N.C. Gen. Stat. § 89D-11(2) defines “Landscape construction or contracting” as “The act of providing services as a landscape contractor, as defined in this section for compensation or other consideration.”
6. N.C. Gen. Stat. § 89D-12(a) provides:

Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation “landscape contractor,” or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.


7. N.C. Gen. Stat. § 89D-13(5) provides a limited exception for projects “where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than thirty thousand dollars (\$30,000).”
8. Upon information and belief, Defendant engaged in the practice of landscape construction or contracting in violation of N.C. Gen. Stat. § 89D-12(a). Specifically, on or about June 22, 2023, Steel Oak submitted an estimate to Theodore Lithgow (“Lithgow”) to provide landscaping services for a property located at 12562 Village Springs Rd., Raleigh, Wake County, North Carolina. The total cost breakdown was \$654,999.77.
9. As part of the above-referenced estimate, Defendant was listed as a subcontractor to perform extensive hardscape work at the above-referenced property. Defendant’s subtotal for the estimate was listed as \$182,632.84.
10. On February 28, 2024, Lithgow paid Defendant \$35,436.68 for the above-referenced project.
11. On March 31, 2024, Lithgow paid Defendant \$53,155.02 for the above referenced project.
12. On May 28, 2024, Lithgow paid Defendant \$15,326.34 for the above referenced project.
13. On February 28, 2024, Lithgow paid Defendant \$70,873.36 for the above referenced project.
14. By entering into a contract for landscaping services in excess of \$30,000.00 during a 12-month period without first obtaining requisite licensure from Plaintiff Board or qualifying for any of the licensure exemptions set forth in N.C. Gen. Stat. § 89D-13 Defendant has engaged in the unlicensed practice of landscape construction and contracting.
15. Plaintiff Board is entitled to have the Court restrain and permanently enjoin Defendant from any further conduct in violation of the law.
16. This Order is enforceable by the contempt powers of this Court, including the imposition of fines and/or imprisonment in the event of contempt of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

- I. That Defendant be permanently enjoined from the practice of landscape construction or contracting in North Carolina until such time, if ever, Defendant is properly licensed by Plaintiff Board.
- II. That the costs of this action, including Plaintiff Board's reasonable costs and attorneys' fees associated with the investigation and prosecution of Defendant's violation, be taxed against Defendant in the amount of \$224.74 Defendant shall remit payment to the Board within thirty (30) days after service of the fully-executed Order.
- III. That Defendant shall comply with all provisions set forth in N.C. Gen. Stat. § 89D-12 and 13.

IT IS SO ORDERED.

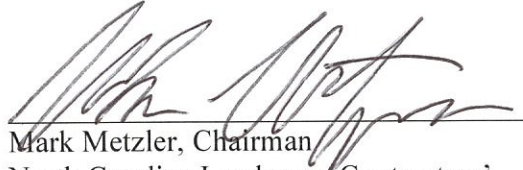
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Superior Court Judge Presiding
S. Thomas Currin II
Special Superior Court Judge

WE CONSENT:

Consent to entry of the foregoing is hereby acknowledged.

NORTH CAROLINA LANDSCAPE
CONTRACTORS' LICENSING BOARD

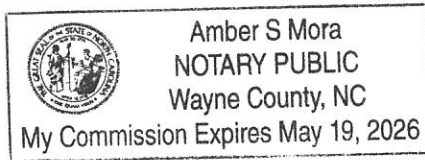


Mark Metzler, Chairman
North Carolina Landscape Contractors'
Licensing Board
3901 Barrett Drive, Suite 202
Raleigh, NC 27609

STATE OF NORTH CAROLINA)
) ss.:
COUNTY OF Wayne)

I, Amber S Mora, a Notary Public of the aforesaid County and State do hereby certify that Mark Metzler, appeared before me this day and acknowledged the due execution of the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and notarial seal, this the 23 day of February, 2026.



Amber S. Mora
Signature of Notary Public

My Commission Expires: 5/19/26

**HEDRICK GARDNER KINCHELOE
& GAROFALO, LLP**



A. Grant Simpkins
NC State Bar # 54990
2710 Wycliff Road, Suite 220
Raleigh, NC 27607
Phone: (919) 341-2636
Fax: (919) 647-4485
Email: gsimpkins@hedrickgardner.com

CUSTOM STONE NC INC.

[Handwritten Signature]
Signature

Thomas R. Benner - (President)
Printed Name and Title

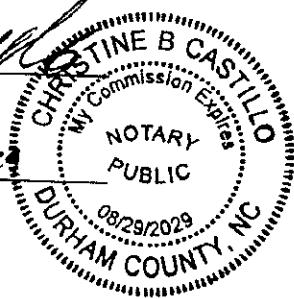
STATE OF NORTH CAROLINA)
COUNTY OF Durham) ss.:

I, Christine Castillo, a Notary Public of the aforesaid County and State do hereby certify that Thomas R. Benner, appeared before me this day and acknowledged the due execution of the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and notarial seal, this the 9th day of February, 2026.

Christine Castillo
Signature of Notary Public

My Commission Expires: 8/29/29



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

NORTH CAROLINA LANDSCAPE)
CONTRACTORS' LICENSING BOARD,)

Plaintiff,)

v.)

CUSTOM STONE NC INC.,)

Defendant.)

COMPLAINT AND APPLICATION
FOR INJUNCTIVE RELIEF

Pursuant to N.C. Gen. Stat. § 89D-24 and Rule 65 of the North Carolina Rules of Civil Procedure, Plaintiff complains against Defendant and moves for injunctive relief, and in support of which alleges and says as follows:

1. Plaintiff, the North Carolina Landscape Contractors' Licensing Board (hereinafter "Plaintiff Board"), is an agency of the State of North Carolina created under the authority of Chapter 89D of the North Carolina General Statutes.
2. Upon information and belief, Defendant Custom Stone NC Inc. ("Defendant"):
 - a) Is a corporation organized under the laws of North Carolina with a principal place of business of 1001 Ellis Road, Durham, Durham County, North Carolina. Thomas Richard Benner is the Registered Agent and President for Defendant; and
 - b) Not presently and was not previously licensed by Plaintiff Board as a "Landscape Contractor," as that term is defined by N.C. Gen. Stat. § 89D-11(3).
3. Steel Oak, LLC ("Steel Oak") is a limited liability company organized under the laws of the State of North Carolina. Steel Oak is not presently and was not previously licensed by Plaintiff Board as a "Landscape Contractor," as that term is defined by N.C. Gen. Stat. § 89D-11(3).
4. Upon information and belief, Steel Oak hired Defendant to work as a subcontractor for landscape construction on certain projects.

5. Plaintiff Board is charged with the regulation of landscape contractors in North Carolina and is authorized to bring this action under N.C. Gen. Stat. § 89D-24(a) which provides:

If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

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- b) Practices the act of horticulture consultation or planting design for employment purposes.
- c) Constructs, installs, or maintains landscape drainage systems and cisterns; provided the landscaping contractor makes no connection to pipes, fixtures, apparatus, or appurtenances installed upon the premises, or in a building to supply water thereto or convey sewage or other waste therefrom as defined in G.S. 87-21.
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8. N.C. Gen. Stat. § 89D-12(a) provides:

Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation “landscape contractor,” or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as

a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be performed under an individual who is readily available to exercise supervision over the landscape construction and contracting work and who is licensed by the Board under this Chapter.

9. N.C. Gen. Stat. § 89D-13(5) provides a limited exception for projects “where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than thirty thousand dollars (\$30,000).”
10. Upon information and belief, Defendant engaged in the practice of landscape construction or contracting in violation of N.C. Gen. Stat. § 89D-12(a). Specifically, on or about June 22, 2023, Steel Oak submitted an estimate to Theodore Lithgow (“Lithgow”) to provide landscaping services for a property located at 12562 Village Springs Rd., Raleigh, Wake County, North Carolina. The total cost breakdown was \$654,999.77. **Exhibit A.**
11. As part of the above-referenced estimate, Defendant was listed as a subcontractor to perform extensive hardscape work at the above-referenced property. Defendant’s subtotal for the estimate was listed as \$182,632.84. **Exhibit A.**
12. On February 28, 2024, Lithgow paid Defendant \$35,436.68 for the above-referenced project. **Exhibit B.**
13. On March 31, 2024, Lithgow paid Defendant \$53,155.02 for the above referenced project. **Exhibit C.**
14. On May 28, 2024, Lithgow paid Defendant \$15,326.34 for the above referenced project. **Exhibit D.**
15. On February 28, 2024, Lithgow paid Defendant \$70,873.36 for the above referenced project. **Exhibit E.**
16. By entering into a contract for landscaping services in excess of \$30,000.00 during a 12-month period without first obtaining requisite licensure from Plaintiff Board or qualifying for any of the licensure exemptions set forth in N.C. Gen. Stat. § 89D-13, Defendant has engaged in the unlicensed practice of landscape construction and contracting.

17. Plaintiff Board is entitled to have the Court restrain and permanently enjoin Defendant from any further conduct in violation of the law.

WHEREFORE, Plaintiff Board respectfully prays the Court for the following relief:

- I. That Defendant be permanently enjoined from the practice of landscape construction or contracting in North Carolina, where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is valued at an amount greater than thirty thousand dollars (\$30,000) unless and until such time as Defendant is properly licensed by Plaintiff Board.
- II. That cost of this action, including Plaintiff Board's reasonable costs associated with the investigation and prosecution of Defendants' violations, be taxed against Defendant.
- III. That Plaintiff Board have and recover such other and further relief against Defendant as the Court may deem proper.

This the 27th day of August, 2025.

**HEDRICK GARDNER KINCHELOE
& GAROFALO, LLP**



A. Grant Simpkins
NC State Bar # 54990
Ryan Mitiguy
NC State Bar # 62549
Catherine E. Lee
NC State Bar # 35375
2710 Wycliff Road, Suite 220
Raleigh, NC 27607
Phone: (919) 341-2636
Fax: (919) 647-4485
Email: gsimpkins@hedrickgardner.com
rmitiguy@hedrickgardner.com
clee@hedrickgardner.com

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Landscape Services Proposal

Lithgow 6/22/23
Telephone: 919-819-5754
Email: jaison@steeloaknc.com
tony@steeloaknc.com

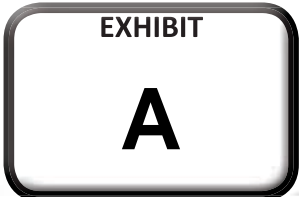
BELOW ARE ESTIMATES FROM THE FOLLOWING COMPANIES:

Aquatic Artists

Activity	Amount
Base pool price	\$243,250.00
17' x 56' concrete pool (3' - 8' depth)	
10' x 8' spa w/ 4' spillover	
Quartz plaster interior finish, 6" waterline tile	
(1) 5' lighted sheer, (2) 3' lighted sheer water features	
Pump, filter, control system, salt system, spa blower, gas heater,	
entry steps, (4) benches, (4) stools, (12) pool/spa lights, water fill	
raised sheer wall w/tile, electric/gas for pool and firepit	
*pool stool seat material TBD and not included in price	
*fire pit burner pan provided by homeowner	
*Excavated soils to remain on site	
*As built survey not included	
In floor cleaning/circulating system	\$13,750.00
*required due to swim up bar stools	
Natural stone waterfall and adjacent landscape boulders/dive rock	\$45,000.00
Total	\$302,000.00
Deposit	\$45,300.00 ✓
	(paid)

Seegars Fence Co

Activity	Amount
206 LF of 4'H aluminum pool code fence	\$7,488.00
(2) 4' wide gates	
(1) 5' wide gate	
14 LF 6'H wood privacy fence	
*actual LF of fencing installed will determine final price	
Total	\$7,488.00
Deposit	\$0.00



Luis Torres LLC

Activity	Amount
Replace sod after construction entrance removed	\$1,200.00
200 LF silt fence in backyard	\$650.00
Temporary downspout connections during construction	\$200.00
Demo existing hardscape materials	\$5,000.00
Pool soil haul	\$5,000.00
*allowance (priced as 20 truck loads)	
Rough grading	\$2,500.00
Finish grading	\$2,500.00
50/50 mix for plants	\$900.00
Cap irrigation in backyard	\$500.00
(2) irrigation drip zones for plantings	\$1,800.00
Plant package	\$18,418.00
(1) Acer 'Crimson Queen'	
(1) Acer 'Bloodgood'	
(1) Magnolia 'Little Gem'	
(6) Cornus 'Cherokee Brave'	
(9) Ilex 'Nellie Stevens'	
(7) Ilex 'Steeds'	
(9) Buxus 'Wintergreen'	
(9) Camellia 'Yuletide'	
(7) Buddleia 'Blue Chip'	
(27) Veronica 'Georgia Blue'	
(20) Hemerocallis 'Happy Returns'	
(25) Muhlenbergia capillaris	
(5) Loropetalum 'Darkfire'	
(18) Ligustrum japonicum	
(2) Panicum 'Shenandoah'	
(43) Ajuga 'Catlin's Giant'	
(18) Nepeta 'Walker's Low'	
Artificial turf with 3 golf cups/flags and french drains underneath	\$16,000.00
5,000 SF mulch	\$3,000.00
Total	\$57,668.00
	Deposit \$19,222.00 ✓

Trees of Carolina

Activity	Amount
Remove (4) tagged trees and stump grind	\$1,875.00
Total	\$1,875.00
	Deposit \$0.00

pd 7/24

Outdoor Lighting Perspectives

Activity	Amount
(17) uplights	\$5,015.00
(16) pathlights	\$4,720.00
(13) undercap step lights	\$3,835.00
(3) core drilled well lights	\$885.00
(2) downlights on spiral staircase	\$590.00
Tax	\$727.18
*all lights will use existing low voltage transformer	
Total	\$15,772.18
	Deposit \$7,886.09

✓

Davis Dunlap Electric

Activity	Amount
Disconnect existing electrical outlets in hardscaping	\$500.00
*allowance	
Total	\$500.00
	Deposit \$0.00

Moran Gas

Activity	Amount
Disconnect existing gas line in outdoor kitchen	\$500.00
*allowance	
Total	\$500.00
	Deposit \$0.00

Custom Stone

Activity	Amount
Footer and CMU construction	\$38,235.71
layout, excavation, forming, rebar, concrete footers and slabs, block construction, waterproof walls	
475 SF Techo Blu 60 (greyed nickel) patio on gravel base	\$12,670.72
872 SF Techo Blu 60 (champlain grey) patio on gravel base	\$23,788.65
718 SF Tennessee blue grey borders/caps/coping/tread/spillover 2 1/4" thick x 14" width pieces set in mortar bed	\$52,835.74
Tennessee squared natural stone veneer	\$19,439.18
walls, spa, columns, step risers, sunken kitchen area, fire pit	
Drainage	\$9,970.37
(4) 9x9 drainboxes, (1) 19 LF trough drain, 85 LF 4" PVC sleeves, (5) downspout drain lines, 56 LF french drain	
(8) Tennessee rough cut slab steps set on gravel	\$3,470.89
(20) tons of landscape boulders	\$14,881.13
(3) large stepping stones set in mortar bed	\$434.56
260 SF concrete driveway slab	\$3,819.89
demo existing, haul off debris, rebar grid, broom finish	
Demo 60 LF of existing retaining wall	\$2,500.00
*billed up to this amount based on incurred costs	
Install drawer under smoker in retaining wall	\$585.00
*drawer provided by homeowner	
Total	\$182,631.84

~~Reworking numbers~~

177,183.40
Deposit
70,873.36
July 2023

Steel Oak

Activity	Amount
Powerwashing	\$1,000.00
*allowance	
Porta-potty rental	\$85.00
*monthly rental cost, duration of project determines final price	
Drop-off/pick-up fee	\$45.00
Total	\$1,130.00

Items not included: carpentry items, outdoor kitchen, low voltage deck lights,
outdoor shower, granite countertops, railing on masonry steps

Total Cost Breakdown

Contractor	Amount
Aquatic Artists	\$302,000.00
Seegars Fence Co	\$7,488.00
Trees of Carolina	\$1,875.00
Outdoor Lighting Perspectives	\$15,772.18
Davis Dunlap Electric	\$500.00
Moran Gas	\$500.00
Luis Torres LLC	\$57,668.00
Custom Stone	\$182,631.84
Steel Oak Contracting	\$1,130.00
Contractor Total Cost	<u>\$569,565.02</u>
Steel Oak Consulting	\$85,434.75
Grand Total	<u><u>\$654,999.77</u></u>

25.2024



- Edited



THEODORE LITHGOW
 12502 VILLAGE SPRINGS RD
 RALEIGH, NC, 27614-6816

109
68-21/530 10505

Feb 28, 2024
Date

Pay to the Order of: Custom Stone, Inc. \$ 35,436.68

Twenty-five thousand, four hundred, thirty-six & 68/100 Dollars

Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

For: _____

Theodore Lithgow

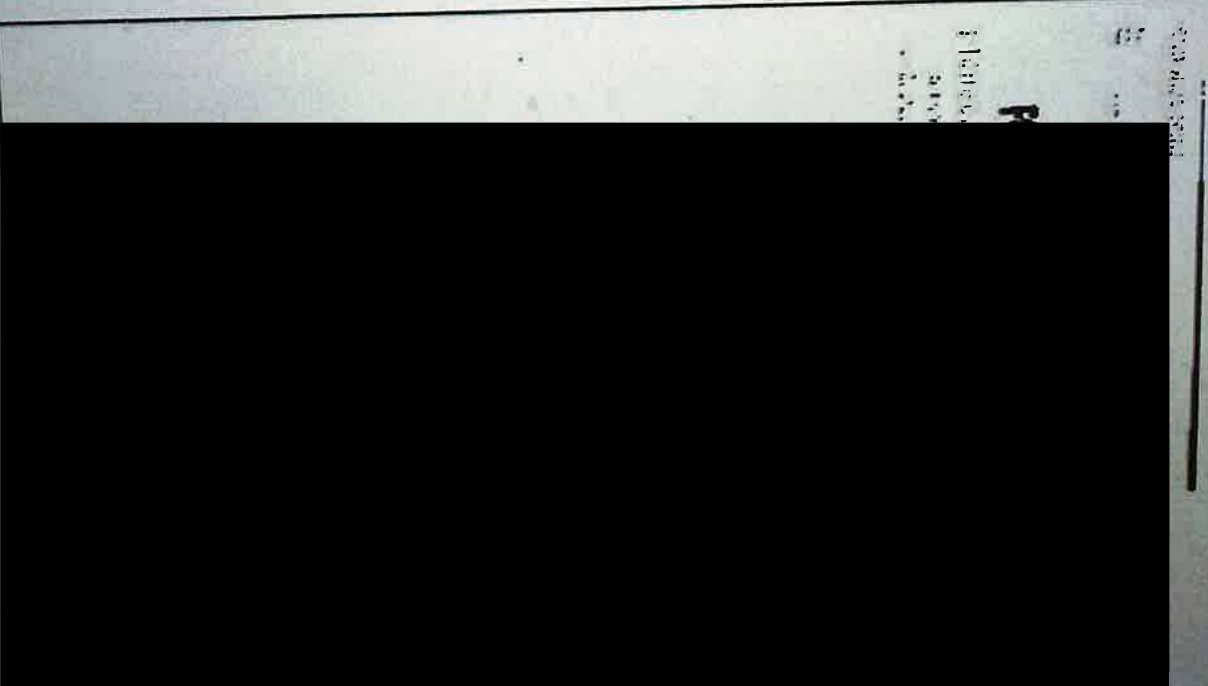


EXHIBIT
B

Edited



111
66-21/330 10505

THEODORE LITHGOW
12552 VILLAGE SPRINGS RD
RALEIGH, NC 27614-5818

March 31, 2024
Date

Pay to the Order of Custom Stone, Inc. \$ 53,155.02

Fifty three thousand, one hundred, fifty-five & 02/100 Dollars

Wells Fargo Bank, N.A.
North Carolina
wfbalago.com

For _____ Theodore Lithgow

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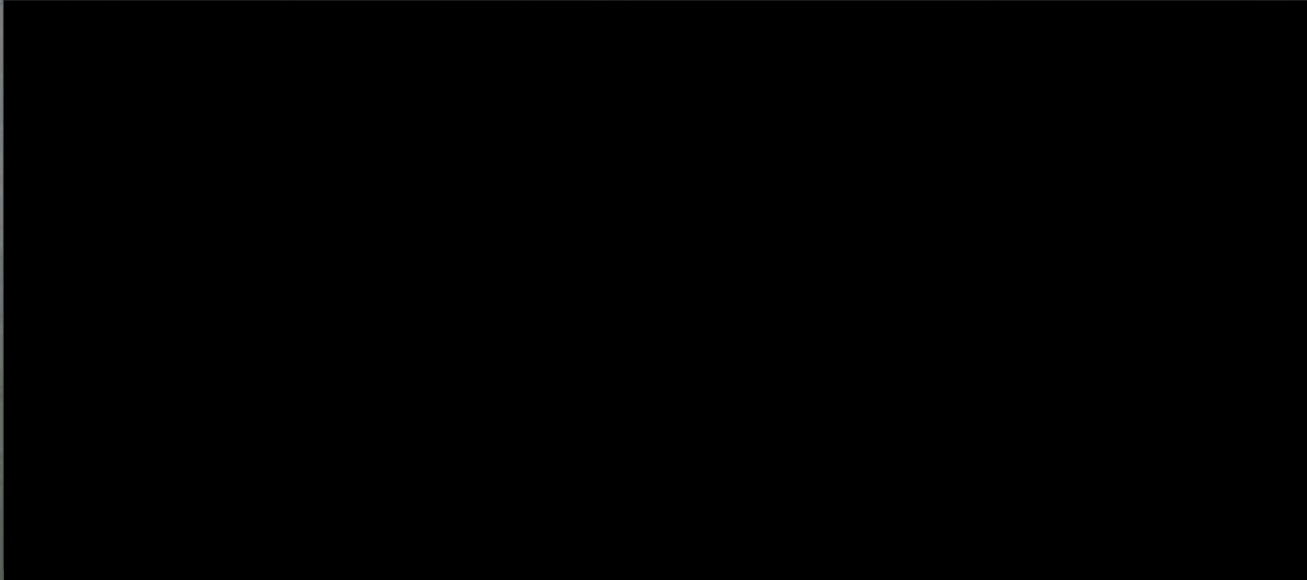


EXHIBIT
C



THEODORE LITHGOW
12562 VILLAGE SPRINGS RD
RALEIGH, NC 27814-0016

117

06-21/530 10606

May 28, 2024 Date

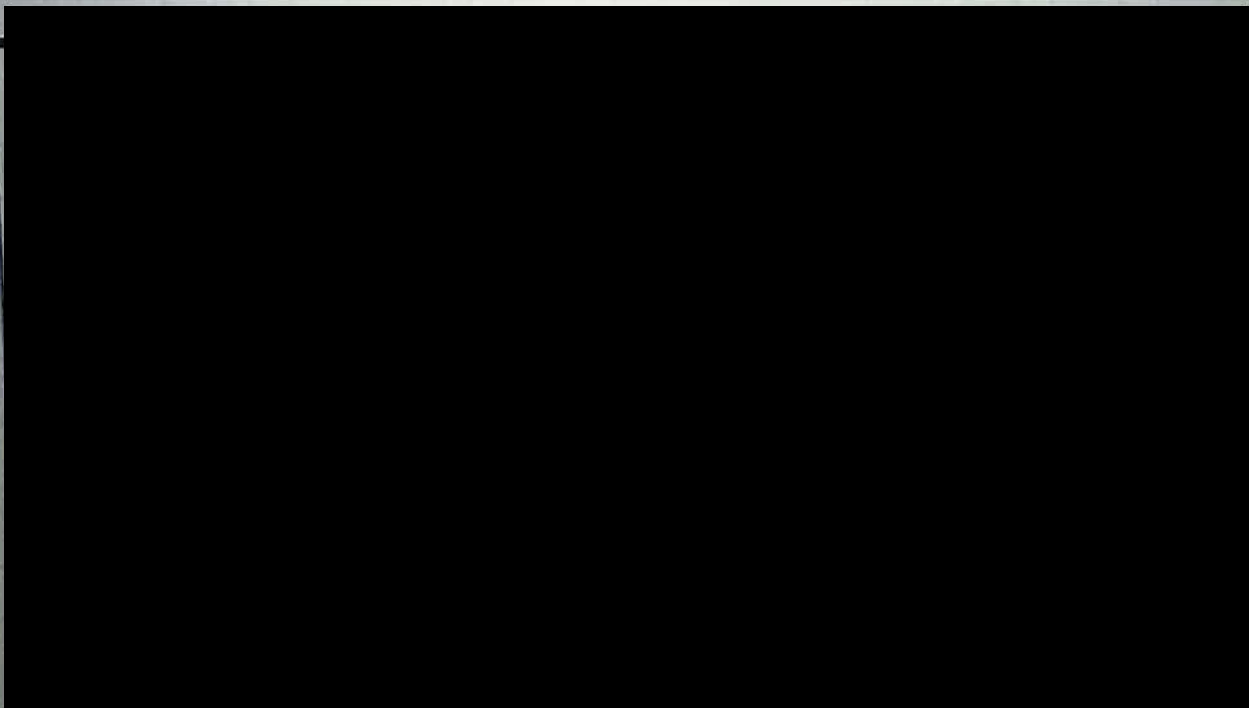
Pay to the Order of Custom Stone | \$ 15,324.34

Fifteen thousand, three hundred twenty six and 34/100 Dollars



For

Theodore Lithgow



EXHIBIT

D

THEODORE LITHGOW
12502 VILLAGE SPRINGS RD
RALEIGH, NC 27614-6816

219
66-21/630 19505

July 18 Date

Pay to the Order of Custom Store NC \$ 70,873.31

Seventy thousand, eight hundred seventy three and 31/100 Dollars

WELLS FARGO
Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

For _____ Theodore Lithgow

Serial _____

WELLS FARGO

MacBook Pro

EXHIBIT

E