

County of Mathews Administration Office

mathewscountyva.gov



January 24, 2023

Hole in the Wall Waterfront Grill, LLC  
384 Old Ferry Road  
Gwynn, VA 23066

**Notice of Unsafe Structure**  
**384 Old Ferry Rd. - Tax Map Parcel #11A5 (A) 6**

Dear Hole in the Wall Waterfront Grill, LLC:

Pursuant to the Lease entered into by Hole in the Wall Waterfront Grill, LLC (“Tenant”) and Mathews County, Virginia (“County”), dated November 29, 2016, Tenant was required to invest at least \$138,000.00 in Capital Improvements over the first three years of the Lease Term, including lifting the Demised Premises out of the flood plain. (*See* Lease, page 4). The attached building permits, obtained by Tenant’s contractors between 2016 and 2018, are attached and show County permitted work of \$118,200.

On May 11, 2022, The Structures Group, Inc., at the behest of and with Mathews County (“County”) personnel, conducted an onsite inspection of the above referenced property to determine if the as-built construction of the raised foundation met the construction documents and specifications submitted to the County by and on behalf of the Tenant. On May 24, 2022, the County received The Structures Group, Inc. Engineer’s Report detailing multiple structural deficiencies at the above noted address as well as unpermitted additions to the property. (*See* attached Report.) On May 25, 2022, a Notice of Unsafe Structure was issued to the current Owner, Mathews County, Virginia. (*See* attached Notice.) On that same day, and in response to the Notice of Unsafe Structure, the Notice was posted on the property and the building was closed to the public.

As noted in the May 25, 2022 Notice, pursuant to the Virginia Uniform Statewide Building Code 13VAC5-63-180. Section 118 Unsafe buildings or structures, there are three possible paths forward for this unsafe structure:

1. Boarding up of structure as per Virginia Maintenance code, Appendix A
2. Demolition of unsafe portion of structure.
3. Any abatement plan proposed by the owner and approved by the Mathews County Building Official.

On May 26, 2022, the County and Tenant entered into a Payment Agreement whereby the Parties agreed, in part, that

Tenant hereby agrees to reimburse the County for all costs related to temporary construction in order to make the structure located at 384 Old Ferry Road, Gwynn Virginia, 23066, a County owed facility safe for temporary occupancy.

Tenant also agrees to pay for securing of guardrails and building of a handrail in order to make the building acceptable for temporary use with the Building Official of Mathews County.(See attached Payment Agreement.)

Pursuant to the Payment Agreement, the County provided emergency temporary repairs in the form of temporary shoring of the property. Tenant reimbursed the County for that work which allowed the building to reopen for business on May 28, 2022. Once the temporary repairs were in place, on June 8, 2022, the County notified the Mathews County Building Official that pursuant to the May 25, 2022 Notice, it had “opted to provide an abatement plan to correct the structural deficiencies” at the property. (See attached June 8, 2022 Letter). The County then requested and paid for the design of a permanent solution – Foundation Reconstruction Hole in the Wall Restaurant 384 Old Ferry Road – that could be let for bid to correct the unsafe structure.

As part of the abatement plan to correct the unsafe structure, the County issued two Invitations for Bid (“IFB”), the purpose of which was to

to demo temporary shoring of the building located at 384 Old Ferry Road, Gwynn VA and supply and install permanent foundation supports that meet Virginia Uniform Statewide Building Code 2018 Edition, Virginia Construction Code 2018 edition and all applicable state and local codes, ordinances and regulations.

The IFB specifically noted that “[t]he project requires demolition of the existing CMU supports with wood shoring and removal of all incorrectly built footings.”

The first IFB received no responses, requiring the issuance of a second IFB to which one contractor responded. The bid to fix what was previously constructed by Tenant’s contractors and correctly lift the property out of the flood zone as required by the Lease was \$307,692.00.

In order to move forward on the work identified in the County’s IFB, and avoid the boarding up of the structure or its demolition, the County is seeking payment from Tenant for the work to be performed in order to correct the unsafe structure. Your response is requested by **February 24, 2023.**

Sincerely,



Ramona Wilson, P.E., MPA  
County Administrator

cc: Board of Supervisors, Mathews County, PO Box 839, Mathews, VA 23109

## LEASE

THIS LEASE, is made and entered into this 29 day of November, 2016, by and between the **BOARD OF SUPERVISORS OF MATHEWS COUNTY**, party of the first part, hereinafter referred to as "Landlord" and Hole in the Wall Waterfront Grill, LLC, party of the second part, hereinafter referred to as "Tenant" whose address is 384 Old Ferry Road, Gwynn, Virginia 23066.

WHEREAS, Landlord is the owner of a certain parcel of land (the "Property") conveyed to it by Deed of William Lester Forrest and Virginia Forrest, his wife, dated June 8, 1957, recorded in the Clerk's Office of the Circuit Court of Mathews County, Virginia on June 13, 1957, in Deed Book 57, page 59, and further conveyed to Landlord by Deed of The Gwynn's Island Civic League, a non-profit Virginia Corporation, by Deed dated March 15, 1996, recorded in the aforesaid Clerk's Office on July 12, 1996, in Deed Book 201, page 170, and described as follows:

All that certain piece, parcel or tract of land together with improvements thereon and the appurtenances thereunto belonging, including all riparian rights and rights-of way, situate, lying and being on Gwynn's Island in the Piankitant Magisterial District of Mathews, County, Virginia containing nine hundred and twenty-seven thousandths (.927) of an acre, being triangular in shape, and bounded as follows: On the Northeast by the land now or formerly of Clarice B. Callis, the land now or formerly of Leone Page Morrison and Robert C. Morrison, and the land now or formerly of Earl C. Weir, Jr. and Nancy C. Weir; on the South by Milford Haven and the land now or formerly of Otwood L. Fernald and Christine F. Fernald; and on the Northwest by Virginia State Highway Route No. 633; and being more fully accurately described on a certain plat of survey made by C. F. Dawson, Land Surveyor, dated October 10, 1990, revised February 6, 1996, a copy of which plat of survey is recorded in the aforesaid Clerk's Office in Plat Book 20, page 121.

WHEREAS, Tenant wishes to lease the building on the Property for the purposes of operating a restaurant in said building and on the curtilage thereof.

**WITNESSETH:**

That for and in consideration of the payment of rent by Tenant and the performance by Tenant of the covenants and agreements hereinafter agreed to be performed by Tenant and in accordance with all the provisions hereinafter set forth Landlord does hereby lease, let and demise unto Tenant, its permitted successors and or assigns and Tenant does hereby take, lease and hire from Landlord, the one-story frame and masonry building known as the Seabreeze Restaurant as it is shown and described on a certain plat of survey made by Charles F. Dawson, Certified Land Surveyor, dated October 10, 1990, revised February 6, 1996, recorded in the aforesaid Clerk's Office in Plat Book 20, page 121, and nine (9) parking spaces for employees and patrons of the restaurant as said parking places are shown and described on said plat of survey and the pier immediately adjacent to the building attached to the real estate shown on said plat of survey (collectively, the "Demised Premises").

**DEFINITIONS**

As used herein, "Capital Improvements" shall mean alterations that increase the value, prolong the life, or change the use, of property. "Repair and Maintenance" shall mean alterations that do not add to the value, prolong the life, or change the use of property, but keep it in ordinarily efficient operating condition. "Operating Expenses" shall mean the ordinary and necessary cost of operation, including the costs of Repair and Maintenance.

**TERM**

The term of this Lease shall be for a period of five (5) years, commencing on the first day of the month after the septic system serving the Demised Premises is operational and approved by

the Mathews County Health Department or other appropriate authority, and for five (5) years thereafter.

Provided the Lease has not been so terminated, and Tenant is not otherwise in default, Tenant shall have the option to renew this lease for two (2) additional five (5) year periods to be exercised by notice to Landlord given at least four (4) months prior to the expiration of the then current term. Said notice of desire to exercise such option shall be made to Landlord in writing by Tenant. The terms and conditions of this Lease during such additional periods shall be the same as herein provided except that base annual rent shall be adjusted by an amount equal to the percentage increase or decrease, if any, in the Consumer Price Index ("CPI") (as hereinafter defined) since the beginning of the previous term, provided that such increase shall not exceed two percent (2%) per annum. As used herein, the Consumer Price Index shall mean the United States Department of Labor's Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. Cities Average, All Items, Base Period 1982-1984 = 100), or the successor to that index. The CPI used to calculate such adjustment shall be the figure published most recently as of the renewal date.

#### RENT

Commencing on the first day of the term as hereinabove set forth, and annually thereafter during the term, Tenant shall pay to Landlord in advance, without demand and without notice, as rent, the minimum amount of \$8,100.00.

### **CAPITAL IMPROVEMENTS**

Subject to Landlord's approval, Tenant shall invest at least \$138,000.00 in Capital Improvements to the Demised Premises over the first three years of the Term, including lifting the Demised Premises out of the flood plain. 

### **RIGHT OF FIRST REFUSAL**

Landlord hereby grants to Tenant the right of first refusal to purchase the Demised Premises or the Property. Should Landlord receive an offer from a third party to purchase the Demised Premises or the Property during the term of this Lease or within twenty-four months of its termination, which offer Landlord determines to accept, Landlord shall first offer the Demised Premises or the Property to Tenant on the terms and conditions of the third party offer. Tenant shall be entitled to a credit in the amount of any increase in value of the Demised Premises on account of Capital Improvements made by Tenant. For purposes of the foregoing sentence, the parties agree that the value of the Demised Premises as of the execution of this Lease is \$126,100.00. Should Tenant match the offer, after taking into consideration said credit, Landlord shall convey the Demised Premises or the Property to Tenant under the terms and conditions of the third party offer with closing to occur within a reasonable time thereafter, not to exceed thirty (30) days. Should Tenant not match the offer within fifteen (15) days, Landlord shall be free to accept the offer from the third party.

### **LATE CHARGES AND INTEREST**

If the Tenant fails to pay within seven (7) days after the date when due any installment of rent or any other payment due hereunder, any and all such unpaid amounts shall bear interest at the rate of one and one-half percent (1½ %) per month beginning on the due date and continuing until paid. In addition to the interest which tenant is required to pay pursuant to the preceding

sentence, Tenant agrees to immediately pay Landlord a late charge (the "Late Charge") equal to five (5%) percent of the amount of rent or other payment when due. Tenant acknowledges that the Late Charge is equitable compensation to Landlord, which is intended to reasonably compensate Landlord for the administrative, accounting, processing and collection costs which are caused by Tenant's failure to pay the amounts due hereunder. Tenant further acknowledges that the exact amount of Landlord's extra cost is difficult or impractical to specifically establish. Acceptance by Landlord of the Late Charge shall not constitute a waiver of any rights or remedies.

#### **SECURITY DEPOSIT**

Concurrently with Tenant's execution of this lease, Tenant shall deposit with Landlord \$1,350.00 as security for damage due to Tenant's failure to pay sums due hereunder, misuse of the Demised Premises, damages beyond minor and customary wear and tear, etc. (the "Security Deposit"). Landlord shall not be required to pay interest on the Security Deposit or to maintain it in a separate account. Within three (3) days after written notice of Landlord's use of the Security Deposit, Tenant shall deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its prior amount. Within ninety (90) days after (a) the expiration or earlier termination of the lease term, or (b) Tenant's vacating the Demised Premises, Landlord shall return the Security Deposit less such portion thereof as Landlord may have used to satisfy Tenant's obligations, including without limitation repairs or rehabilitation made necessary for damages beyond minor and customary wear and tear. If Landlord transfers the Security Deposit to a transferee of the Demised Premises or Landlord's interest therein, then such transferee (and not Landlord) shall be liable for its return. The holder of any mortgage shall not be liable for the return of the Security Deposit unless such holder actually receives the Security Deposit.

### **DAMAGE OR DESTRUCTION BY CASUALTY**

If during the term of this Lease, the Demised Premises are damaged by fire, flood, wind storms, strikes, riots, act of public enemy, act of God or casualty, so that the same are rendered wholly unfit for occupancy, and if the Demised Premises cannot be repaired within 180 days from the time of said damage, then this lease shall terminate as of the date of such damage. In such case, Landlord shall be entitled to all insurance proceeds on account thereof; Tenant shall pay the rent apportioned to the time of damage; Tenant shall immediately surrender the Demised Premises to Landlord, who may enter upon and repossess the same; and Tenant shall be relieved from further liability hereunder.

If the Demised Premises shall be partially damaged by any of the above casualties so as to be partially unfit for occupancy, Landlord shall be entitled to all insurance proceeds on account thereof, and shall repair the Demised Premises promptly, and, during the period from the date of such damage until the repairs are completed, the rent shall be apportioned so that Tenant shall pay as rent an amount which bears the same ratio to the entire monthly rent as the portion of the Demised Premises which Tenant is able to occupy (without disturbance) during such period bears to the entire premises. If any damage by the above casualties is so slight that Tenant is not disturbed substantially in its possession and enjoyment of the Demised Premises, Landlord shall be entitled to all insurance proceeds on account thereof, and Landlord shall repair the same promptly and in that case the rent shall not abate.

No compensation or claim or lowering of rent will be allowed or paid by Landlord by reason of inconvenience, annoyance or injury to business arising from the necessity of repairing the Demised Premises or any portion of the building of which the Demised Premises are a part,

however the necessity may occur. Tenant understands and agrees that for this reason it shall maintain adequate insurance to protect its interest in the event of such a casualty.

### INSURANCE

Tenant shall procure and maintain, at its sole expense, "all-risk" property insurance in an amount not less than one hundred percent (100%) of the replacement cost covering (a) the Demised Premises, and (b) Tenant's trade fixtures, equipment and other personal property from time to time situated in the Demised Premises. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Tenant shall also procure and maintain, at its sole expense, commercial general liability insurance applying to the use and occupancy of the Demised Premises and the business operated thereon by Tenant. Such insurance shall have a minimum combined single limit of liability of at least Two Million Dollars and No Cents (\$2,000,000.00). Landlord shall procure and maintain, at Tenant's sole expense, flood insurance in an amount sufficient to assure the renovations and/or rebuilding of the Demised Premises, and Tenant shall reimburse Landlord for the cost thereof as additional rent.

All such insurance policies shall include Landlord as a named insured and shall be in amounts satisfactory to Landlord, in its sole discretion. Tenant shall provide evidence of insurance to Landlord upon request. No insurance policies under this Section shall be terminated without at least thirty (30) days prior written notice having been delivered to Landlord.

Tenant shall indemnify and save the Landlord harmless against any and all liabilities, claims, demands, actions, costs and expenses of any kind and nature whatsoever which may be sustained by Landlord, by reason of any of the causes set forth in the above paragraphs entitled "Damage or Destruction by Casualty" or by reason of Tenant's acts, omissions, use or occupancy of the Demised Premises.

### **LOSS OR DAMAGE TO PROPERTY OF PERSONS**

All personal property belonging to the Tenant located on or about the Demised Premises shall be there at the sole risk of the Tenant, and Landlord shall not be liable for the theft or misappropriation thereof, nor for any damage or injury thereto, or for damage or injury to the Tenant or any of its officers, agents, invitees, patrons, or employees or to other persons or to any property, caused by fire, explosion, water, gas, electricity, leaks from the roof, or other portion of the building, the bursting or leaking of pipes, plumbing, electrical wiring, and equipment or fixtures of any kind or by any act of neglect of other tenants or occupants of the Demised Premises, or due to any cause whatsoever, unless resulting from the willful acts of Landlord, its employees, agents, or representatives. Tenant shall give immediate notice to Landlord in case of fire or accident on the Demised Premises or any defect, damage or injury therein or in any fixture and equipment.

### **WELL AND SEPTIC SYSTEM**

Landlord shall operate the well and septic system serving the Demised Premises. Landlord is responsible for Operating Expenses (including Repair and Maintenance) of the well and septic system. Landlord is not responsible for Capital Improvements to the well and septic system. Tenant shall reimburse Landlord upon presentation of bills therefore seventy-five percent (75%) of the Operating Expenses (including Repair and Maintenance) of the well and septic system serving the Demised Premises, provided that Tenant shall not be required to reimburse Landlord for more than \$3,000 per year of the Lease.

### **REPAIRS AND MAINTENANCE**

Except as otherwise provided herein, Tenant shall be solely responsible for Repair and Maintenance of the Demised Premises, including any Capital Improvements, and any fixtures

therein located. Tenant is responsible for painting or structural repairs to the interior or exterior of the Demised Premises and for any Capital Improvements to the well and septic system serving the Demised Premises at its sole expense. Notwithstanding the foregoing, if the cost of Individual Repairs exceeds Five Thousand Dollars and No Cents (\$5,000.00), the excess over Five Thousand Dollars and No Cents (\$5,000.00) shall be borne jointly and equally by Landlord and Tenant. For purposes of the foregoing sentence, "Individual Repairs" shall mean repair of damage to a particular element of the Demised Premises (e.g. a wall, the roof, or a foundation pillar) arising from a single identifiable incident, and shall not include damage caused by ordinary wear and tear, or any Capital Improvements. Except with regard to the well and septic system, which must be in working condition, Tenant accepts the Demised Premises in "as is condition" and understands that the Landlord makes no commitment to improve or renovate the Demised Premises over its present condition. If Tenant fails to make any repairs reasonably required, in Landlord's sole discretion, Landlord may make those repairs at the expense of the Tenant and such costs of repair shall become due and payable upon delivery of a statement of such costs by Landlord to Tenant as Additional Rent.

At the expiration or earlier termination or cancellation of this lease, Tenant shall surrender the Demised Premises in as good condition as at the time of delivery, subject to minor and customary wear and tear.

## **SERVICE AND UTILITIES**

At its sole expense, Tenant shall furnish (a) all utilities to the Demised Premises other than water and septic; (b) all necessary air conditioning, both heated and refrigerated, properly humidified and in such amount as to maintain an even, comfortable temperature at all applicable hours; (c) water at all outlets; and (d) all reasonably necessary building security.

## **PUBLIC RESTROOMS**

Tenant shall be solely responsible for the Repair and Maintenance of public restrooms within the Demised Premises, which shall be open to the general public during normal business hours, who shall gain access to said facilities through keys kept and distributed by Tenant. The cost of any Capital Improvements to the public restrooms shall be borne equally by Landlord and Tenant.

## **COMMON AREAS AND PARKING**

Tenants and Tenants' customers, employees and/or visitors, shall have the right throughout the term of this Lease to the exclusive use of nine (9) parking spaces to be demarcated by Landlord in front of and in the area immediately adjoining the Demised Premises. Landlord shall surface, arrange and adequately maintain in good and usable condition through the term of this lease, all exterior common areas and maintain adequate lighting facilities in the said parking areas at all times during the business hours of the Demised Premises. Tenant shall be responsible for any snow removal required in the parking areas.

## **QUIET ENJOYMENT**

Upon payment by Tenant of all rent and other sums provided to be paid in this Lease, and the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall have the peaceful and quiet use of the Demised Premises,

and all rights, servitudes, and privileges belonging to, or in any way appertaining thereto, or granted hereby for the terms stated without hindrance, or interruption by Landlord or any other person or persons lawfully claiming by, through or under Landlord; subject, nevertheless, to the terms and conditions of this Lease.

#### **USE OF PREMISES**

**Tenant to maintain ongoing business.** Tenant shall maintain a restaurant on the Demised Premises throughout the term and conduct an ongoing business throughout the entire term. A failure to maintain an ongoing restaurant business shall be deemed a breach of the Lease, except for closures (a) for reasonable vacations not exceeding two months per year; or (b) for renovations not exceeding ninety (90) days per year; or (c) for causes beyond Tenant's control not exceeding thirty (30) days per year. Tenant shall not be required to occupy or operate a business on the Demised Premises during the first ninety (90) days following signing of this Lease.

**Type of use.** The premises shall only be used by Tenant as and for a restaurant, provided that such use shall be carried on in compliance with all requirements of law or of any governmental agency. No other use may be made of the Demised Premises without the express written consent of the Landlord.

**Rules and regulations.** Tenant agrees to observe all reasonable rules and regulations from time to time promulgated by Landlord which, in Landlord's judgment (to be reasonably exercised), are needed for the general well-being, safety, care and cleanliness of the Demised Premises and the building of which they are a part; provided, however, that any such rules and regulations shall be of general application to all tenants and occupants of said building. Such rules and regulations are incorporated herein as if fully set forth. A breach of a rule or regulation

shall constitute a breach of this lease. The rules and regulations may, in the sole discretion of Landlord, be modified from time to time, so long as they do not affect a material change in the lease. Such rules shall include, but are not limited to, the following:

- (a) Tenant shall not obstruct or use for any other purpose other than ingress and egress to the parking spaces assigned to the Demised Premises, the remaining non-assigned parking spaces (open to the general public) docks and landing adjacent to the Demised Premises.
- (b) The Tenant shall not install or permit the installation of any awnings, shades, signs, lighting and the like other than those approved by Landlord in writing and comply with all applicable codes.
- (c) No additional locks shall be placed upon any doors in or upon the Demised Premises unless keys therefore are given to Landlord for use in emergencies; and the doors leading to corridors or main halls shall be kept closed during business hours except as they may be used for ingress and egress.
- (d) Tenant shall not construct, maintain, use or operate within the Demised Premises any equipment or machinery which produces music, sound or noise which is audible beyond the Demised Premises.
- (e) Electric and telephone floor distribution boxes must remain accessible at all times.
- (f) Tenant shall not utilize in the Demised Premises equipment requiring electrical energy other than the normal or ordinary restaurant equipment.
- (g) Tenant shall comply with all Virginia Health Department water and sewer codes.

### **IMPROVEMENTS BY TENANT**

Subject to Landlord's approval, Tenant may make such alterations, additions or Capital Improvements in or to the Demised Premises as it shall consider necessary or desirable for the conduct of its business, provided that all such work shall be done in a good and workmanlike manner, using the same quality workmanship and materials as exist on the Demised Premises, and provided that the structural integrity of said building or premises shall not be impaired, and that no liens shall attach to the Demised Premises by reason thereof. Prior notice of such proposed alterations, additions or improvements shall be submitted in writing for Landlord's approval, which shall not be unreasonably withheld. Upon the termination of this Lease such alterations, additions or improvements shall become the property of Landlord, subject to the provisions of the paragraph concerning the removal, if required, by Landlord of fixtures, machines, equipment and items of a similar permanent nature. Tenant shall pay the entire cost of construction, installation, removal and repair of such alterations, additions or improvements.

### **COMPLIANCE WITH REGULATIONS**

Tenant shall at its own expense properly and promptly comply with all laws, ordinances, rules, regulations and requirements, as the same now exist or as the same may hereafter be enacted, amended or promulgated by any federal, state or municipal authority, and/or any department or agency thereof, and of the Board of Fire Underwriters, or any similar organizations, relating to Tenant's use of the Demised Premises or to the operation of Tenant's business therein; provided, however, that Landlord covenants and agrees that at the commencement of the term of this lease the Demised Premises will be in compliance with any such ordinances, rules, regulations or requirements; and further provided, that Tenant shall not be

required to perform any structural work or make any repairs to the Building as the result of any such laws, ordinances, rules, regulations or requirements.

#### **DEFAULT BY TENANT**

Tenant shall be deemed to be in default hereunder if:

- (a) Tenant shall fail to pay any installment of rent due hereunder or any other costs and expenses for which Tenant shall be responsible hereunder, within thirty (30) days after notice from Landlord specifying the item or items alleged to be due and unpaid, unless Tenant shall in good faith dispute its liability therefore or the propriety of the amount claimed (other than the rent);
- (b) Tenant shall fail or neglect to keep and perform each and every one of the other covenants, conditions and agreements herein contained and on the part of Tenant to be kept and performed, within thirty (30) days after written notice from Landlord specifying the items alleged to be in default, unless (1) the curing of such default will take more than thirty (30) days, in which event Tenant shall be deemed to be in default only if it does not commence the curing of such default within the said thirty (30) day period and carry it, in good faith, to prompt completion; or (2) Tenant shall, in good faith, dispute the existence of any default or the extent of its liability therefore, in which event Tenant shall be deemed to be in default only if it fails, within thirty (30) days after the agreement or final adjudication, to commence the curing of such default as is adjudged to exist or which Landlord and Tenant shall agree exists, and to carry it, in good faith, to prompt completion.
- (c) If Tenant shall make an assignment of its assets for the benefit of creditors, or if Tenant shall file a voluntary petition in bankruptcy, or if an involuntary petition in

bankruptcy for receivership be instituted against Tenant and the same be not dismissed within thirty (30) days of the filing therefore, or if Tenant be adjudged bankrupt then, and in any of said events, this lease shall immediately cease and terminate at the option of Landlord with the same force and effect as though the date of said event was the day herein fixed for expiration of the term of the lease.

- (d) If Tenant fails to operate a restaurant in the Demised Premises in excess of ninety (90) days in any twelve (12) month period.

If default shall exist, because of any reason set out in this lease, Tenant's right to possession shall thereupon cease and Landlord shall be entitled to the possession of the Demised Premises and to re-enter the same without demand for rent or for possession. Landlord may proceed forthwith to recover possession of said premise by process of law, any notice to quit or of intention to exercise such option or to re-enter the Demised Premises being hereby expressly waived by Tenant. Further Landlord at its sole option may accelerate the unpaid rent for the unexpired portion of the Lease, giving credit for any proceeds from the re-letting, in whole or in part, of the Demised Premises by Landlord to others. Tenant will be liable to Landlord for all court costs and reasonable attorney's fees in the event Tenant is in default and Landlord incurs court costs and attorney's fees in obtaining possession of the Demised Premises or in the enforcement of any covenant, condition or agreement herein contained, whether through legal proceedings or otherwise, and whether or not any such legal proceedings be prosecuted to a final judgment. To establish reasonable attorney's fees, Landlord may present a signed affidavit from his counsel as to the fees claimed and the services rendered and anticipated to be rendered to collect the unpaid claim of Landlord. All objections to this method of proof are hereby expressly waived by Tenant. The parties agree that future attorney's fees may be claimed hereunder.

### **DEFAULT BY LANDLORD**

Landlord shall be deemed to be in default under this Lease if it shall fail to provide the Demised Premises in the condition agreed free from any interference with Tenant's use and enjoyment thereof, or all services within the standards and hours agreed, or any other obligations undertaken by Landlord under this Lease.

Tenant shall have the option of canceling this Lease for any substantial default by Landlord. Such default shall include, but not be limited to, denying Tenant access to the Demised Premises for any reason other than Tenant's prior default, or failure to perform with all reasonable speed and efficiency any repair which is the obligation of the Landlord under this Lease. In addition, if any default by Landlord is due to its failure to make such repairs with reasonable dispatch after notice from Tenant shall such repairs are needed, Tenant may cause the repairs to be made at its own expense. The reasonable expense of such repairs may then be deducted by Tenant from its next due rent.

### **SURRENDER OF THE PREMISES**

Upon expiration or other termination of this Lease or any renewals or extensions thereof, Tenant shall quit and surrender the Demised Premises to Landlord in good order and condition, minor and customary wear and tear, acts of God, fire and other casualty (not resulting from Tenant's acts or omissions) excepted. Tenant shall on the date of termination of this Lease or prior to such date, remove all property of Tenant and Tenant shall, within two (2) weeks after termination, repair all damage to the Demised Premises caused by such removal and make reasonable restoration to the Demised Premises to the condition in which they were prior to the installation of the property so removed.

### **SIGNS AND LOGOS**

Tenant shall have no right to erect or install canopies, marquees or advertising devises, including signs, on the exterior of the building on the Demised Premises without the prior consent of Landlord. Landlord agrees that during the term of this Lease no company which is a competitor of Tenant shall be allowed to display its name or logo on the exterior of the building or on the Property, nor shall Landlord change the name of the building so as to adversely affect Tenant's business.

### **ASSIGNMENT**

Tenant shall not assign or sublet the Demised Premises or any part thereof without prior written consent of Landlord which shall not be unreasonable withheld.

### **WARRANTY**

Landlord warrants that it has full legal authority and right to grant to Tenant the real estate hereby demised.

### **ACKNOWLEDGMENT**

The parties hereto expressly acknowledge that the present lease shall not be renewed if the real estate herein described is required by Landlord for the purposes mentioned in Section 15.2-1639 of the Code of Virginia of 1950 or other state or federal mandate and that upon termination of the present lease, all improvements erected upon said real estate shall revert to the County, and the County of Mathews shall be free from any encumbrance at the time of such reversion.

Pursuant to Section 15.2-1800 of the Code of Virginia of 1950, as amended, the parties hereto expressly acknowledge that the present Lease was brought to a public hearing in the County of Mathews at a regularly scheduled meeting of the Board of Supervisors of said county

after timely notice as required by law on June 24, 2016. A resolution, a copy of which is hereto attached authorizing the chairman of the Board of Supervisors to execute the present lease on behalf of the County of Mathews was subsequent to said hearing unanimously passed. This lease is executed by Edwina J. Casey, Chairman.

#### **NOTICES**

Any notices required or permitted by this Lease to be given by either party to the other may be either personally delivered or sent by registered mail, postage prepaid, deposited and properly addressed in the US Postal Service Office. The date of such depositing being taken as the date of giving such notice.

All notices required by this Lease, unless otherwise designated in writing, shall be given to: Tenant: Hole in the Wall Waterfront Grill, LLC, Landlord: Board of Supervisors of Mathews County, P.O. Box 839, Mathews, Virginia 23109.

#### **WAIVER**

Any particular waiver of any covenant or condition of this Lease shall extend to the particular instance only and in the manner specified, and shall not be construed as applying to or in any manner waiving any further covenants, conditions or rights hereunder.

#### **ESTOPPEL CERTIFICATES**

Tenant agrees, at any time and from time to time, upon not less than five (5) days prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the lease is in full force and effect as modified and stating the modifications), (b) stating the dates to which the rent and other charges hereunder have been paid by Tenant, (c) stating whether or not to the best knowledge of Tenant, Landlord is in default in

the performance of any covenant, agreement or condition contained in this lease, and, if so, specifying each such default of which the Tenant may have knowledge, and (d) stating the address to which notices to Tenant should be sent. Any such statement delivered pursuant hereto may be relied upon by any owner of the Building, any prospective purchaser of the Building, any mortgage or prospective mortgagee of the Building, or of an interest in the Building, or any prospective assignee or any such mortgagee.

#### **NO PARTNERSHIP CREATED**

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

#### **ENTIRE AGREEMENT**

This Lease, together with exhibits attached hereto and made a part hereof, represents the entire understanding between the parties, and there are no collateral or oral agreements or understandings, and this lease shall not be modified, changed or terminated unless in writing of equal dignity signed by both parties.

#### **PARTIAL INVALIDITY**

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

**BINDING EFFECT**

It is agreed that all of the terms and conditions of this Lease are binding upon the parties hereto, their administrators, heirs, successors and assigns, unless otherwise specified herein. All terms and conditions herein are also covenants.

IN WITNESS WHEREOF, the parties have executed this Lease.

BOARD OF SUPERVISORS OF MATHEWS COUNTY

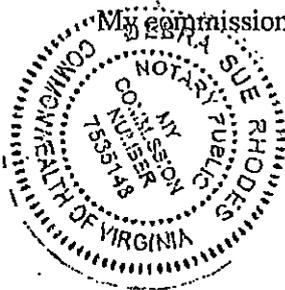
By: *Edwina Casey*  
Edwina Casey, Chairman

STATE OF VIRGINIA  
COUNTY OF MATHEWS, to-wit:

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of December 2016, by EDWINA CASEY, CHAIRMAN OF THE BOARD OF SUPERVISORS OF MATHEWS COUNTY.

*Debra Sue Rhodes*  
Notary Public

My commission expires: 4-30-16

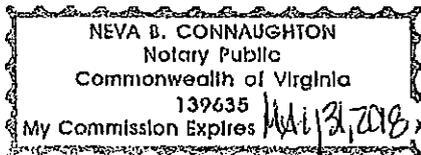


*[Signature]*  
Tenant

*[Signature]*  
Tenant

STATE OF VIRGINIA  
COUNTY OF MATHEWS, to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of NOVEMBER, 2016, by MICHAEL CASALE and CONSTANTINE N. TSAMOURAS



My commission expires: \_\_\_\_\_

*Neva B. Connaughton*  
Notary Public

County Of Mathews

Flood Zone

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012  
APPLICATION DATE: 9/27/2016  
ISSUANCE DATE: 7/06/2017  
RENEWAL DATE: 5/02/2022

|   |   |  |
|---|---|--|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>C W HUDGINS LANDSCAPING<br>PO BOX 307<br>MATHEWS, VA 23109<br>PHONE: 000 000 0000 |
|---|---|--|

|   |  |
|---|--|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6                  | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.:   |
| SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY:<br>DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

|   |   |          |
|---|---|----------|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior; elevation of existing structure (elevati<br>on only, updated to include renovations) | SQ FEET: |
|---|---|----------|

|        |         |   |            |           |    |
|--------|---------|---|------------|-----------|----|
| A Zone | AE Zone | 7 | Flood Zone | CAZ-LIMWA | VE |
|--------|---------|---|------------|-----------|----|

JOB VALUE: 10,000.00

PERMIT FEE:

TOTAL FEES:

REQUIRED SIGNATURES

Permit Tech/Building Official

County Of Mathews

Plumbing Permit

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012  
APPLICATION DATE: 9/27/2016  
ISSUANCE DATE: 5/12/2017  
RENEWAL DATE: 5/02/2022

|   |   |   |
|---|---|---|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>CHRISTOPHER K. WILSON<br>451 MORGANS BRANCH<br>DUTTON, VA<br>PHONE: 804 725 6080 |
|---|---|---|

|   |  |
|---|--|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6                  | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.:   |
| SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY:<br>DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

|   |   |          |
|---|---|----------|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior; elevation of existing structure (elevati<br>on only, updated to include renovations) | SQ FEET: |
|---|---|----------|

|                       |        |                         |            |
|-----------------------|--------|-------------------------|------------|
| Plumb Fix 4<br>Boiler | Septic | Plumbing Permit<br>HRSD | Water Heat |
|-----------------------|--------|-------------------------|------------|

JOB VALUE: 1,500.00

PERMIT FEE:  
2% Surcharge :

TOTAL FEES:

REQUIRED SIGNATURES

Building Official/Permit Tech

Applicant

County Of Mathews

Miscellaneous

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012  
APPLICATION DATE: 9/27/2016  
ISSUANCE DATE: 7/19/2018  
RENEWAL DATE:  
DATE: 5/02/2022

|   |   |   |
|---|---|---|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>GEORGE LANGFORD<br>646 ESKIMO HILL ROAD<br>STAFFORD, VA 22554<br>PHONE: 757 291 9719 |
|---|---|---|

|  |  |   |
|--|--|---|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6                   | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.: |   |
| SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRITGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY:          | DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

|  |   |          |
|--|---|----------|
| USE GROUP: B Business<br>CNST. TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior; elevation of existing structure (elevati<br>on only, updated to include renovations) | SQ FEET: |
|--|---|----------|

|                             |                                 |   |                     |
|-----------------------------|---------------------------------|---|---------------------|
| Gas Line<br>Antenna<br>Tent | Pool<br>Data Pole<br>Amus. Ride | Miscellaneous<br>Solar Sys<br>Fire Alarm<br>FSP | Tower<br>Sprinklers |
|-----------------------------|---------------------------------|---|---------------------|

JOB VALUE: 2,000.00

PERMIT FEE:  
2% Surcharge :

TOTAL FEES:

REQUIRED SIGNATURES

Building Official/Permit Tech

Applicant

County Of Mathews

Mechanical Permit 2

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012

APPLICATION DATE: 9/27/2016

ISSUANCE DATE: 10/05/2017

RENEWAL DATE: 5/02/2022

|   |   |  |
|---|---|--|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>WESTERN SHORE INC<br>PO BOX 690<br>MATHEWS, VA 23109<br>TODD & CATHY<br>PHONE: 804 725 8984 |
|---|---|--|

|  |  |
|--|--|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6                   | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.:   |
| SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIDGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY:<br>DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

|   |   |          |
|---|---|----------|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior; elevation of existing structure (elevati<br>on only, updated to include renovations) | SQ FEET: |
|---|---|----------|

|       |       |                     |
|-------|-------|---------------------|
| Desc. | Notes | Mechanical Permit 2 |
|-------|-------|---------------------|

JOB VALUE:

PERMIT FEE:

TOTAL FEES:

REQUIRED SIGNATURES

County Of Mathews

Electrical Permit 2

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012

APPLICATION DATE: 9/27/2016

ISSUANCE DATE: 5/25/2018

RENEWAL DATE: 5/02/2022

OWNER NAME/ADDRESS  
COUNTY OF MATHEWS  
P.O. BOX 839  
MATHEWS VA 23109

SITE ADDRESS  
384 OLD FERRY ROAD  
GWYNN 00000

CONTRACTOR NAME/ADDRESS  
CRC ELCTICAL SERVICES  
201 PAYTON LANE  
HUDGINS, VA 23076

PHONE:

PHONE: 804 432 1920

RE ACCOUNT#: 2842  
TAX MAP NO.: 11A5 A 6

DESCRIPTION OF CONSTRUCTION LOCATION  
LOT: BLOCK: SECTION: BLDG NO.:

SET-BACKS:  
FRONT: BACK:  
RIGHT: LEFT:  
CNTR : FRIGE:

HEALTH PERMIT NO.:  
FLOODPLAIN: Y  
AREA:  
RIGHT-OF-WAY:

DISTRICT: Piankatank  
SUB-DIVISION:  
ZONE:  
S/E CUP NO.:

SITE PLAN:

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

USE GROUP: B Business

USE CODE:

SQ FEET:

CNST.TYPE: Combustible not protected NATURE/WRK: Demolition of interior; elevation of existing structure (elevati  
MODEL: AE7 on only, updated to include renovations)

Desc.

Notes

Electrical Permit 2

OUTLETS

JOB VALUE: 2,500.00

PERMIT FEE:

TOTAL FEES:

REQUIRED SIGNATURES

County Of Mathews

Electrical Permit

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012  
APPLICATION DATE: 9/27/2016  
ISSUANCE DATE: 6/19/2017  
RENEWAL DATE: 5/02/2022

|   |   |  |
|---|---|--|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>Asbury Electric, LLC<br>8157 Sheffield Drive<br>Gloucester, VA 23061<br>PHONE: 757 768 7147 |
|---|---|--|

|  |  |   |   |   |
|--|--|---|---|---|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6 | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.: | SET-BACKS: .<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY: | DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |
|--|--|---|---|---|

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-Z-16

|   |   |          |
|---|---|----------|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior; elevation of existing structure (elevati<br>on only, updated to include renovations) | SQ FEET: |
|---|---|----------|

|                   |            |                   |
|-------------------|------------|-------------------|
| Electrical Permit |            |                   |
| Generator         | New Servic | Temp.Servi        |
| Wiring X          |            | Pool              |
| 60-125 amp        | 600 amp    | Outlets X         |
| SolarPanel        | Relocate   | 200 amp X         |
| Fixtures X        |            | 400 amp Reconnect |

JOB VALUE: 2,000.00

PERMIT FEE:  
2% Surcharage :

TOTAL FEES:

REQUIRED SIGNATURES

Building Official/Permit Tech

Applicant

County Of Mathews

Building Permit 3

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012  
APPLICATION DATE: 9/27/2016  
ISSUANCE DATE: 9/27/2016  
RENEWAL DATE: 5/02/2022

|   |   |   |
|---|---|---|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>OWNER<br>PHONE: 000 000 0000 |
|---|---|---|

|  |  |   |   |  |            |
|--|--|---|---|--|------------|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6 | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.: | SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY: | DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: | SITE PLAN: |
|--|--|---|---|--|------------|

DIRECTIONS TO SITE:

Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RPA-2-16

|   |  |  |
|---|--|--|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior;<br>on only, updated to include renovations) | SQ FEET:<br>elevation of existing structure (elevati |
|---|--|--|

| Desc.       | Notes    | Building Permit 3 |
|-------------|----------|-------------------|
| JOB VALUE:  | 1,000.00 |                   |
| PERMIT FEE: |          |                   |
| TOTAL FEES: |          |                   |

REQUIRED SIGNATURES

County Of Mathews

Building Permit

PERMIT NUMBER: 0001221 - 2016

LIEN AGENT:

USBC: 2012

APPLICATION DATE: 9/27/2016

ISSUANCE DATE: 3/27/2017

RENEWAL DATE:

DATE: 5/02/2022

|   |   |  |
|---|---|--|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN 00000 | CONTRACTOR NAME/ADDRESS<br>C W HUDGINS LANDSCAPING<br>PO BOX 307<br>MATHEWS, VA 23109<br>PHONE: 000 000 0000 |
|---|---|--|

|  |  |   |   |   |
|--|--|---|---|---|
| RE ACCOUNT#: 2842<br>TAX MAP NO.: 11A5 A 6 | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.: | SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNIR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY: | DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: SITE PLAN: |
|--|--|---|---|---|

DIRECTIONS TO SITE:  
Old "SEA BREEZE"; Hole in the Wall  
Coastal A ZONE  
ZONING PERMIT: RFA-Z-16

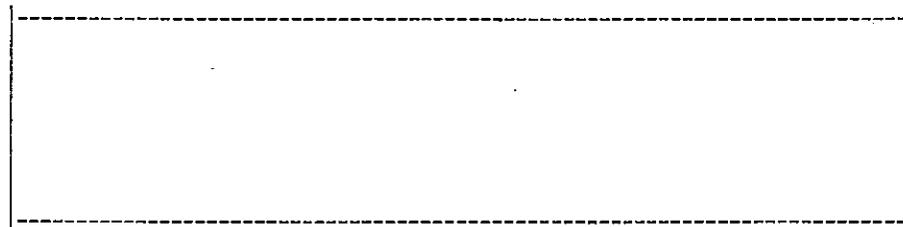
|   |  |  |
|---|--|--|
| USE GROUP: B Business<br>CNST.TYPE: Combustible not protected<br>MODEL: AE7 | USE CODE:<br>NATURE/WRK: Demolition of interior;<br>on only, updated to include renovations) | SQ FEET:<br>elevation of existing structure (elevati |
|---|--|--|

|  |           |  |   |   |
|--|-----------|--|---|---|
| Sq Footage<br>Foundation<br>Deck<br>Renovation<br>Shed | ELEVATION | # Bedrooms<br>Garage<br>Porch<br>Demolition<br>Patio | Building Permit<br># Baths<br>Pier/Dock<br>Addition<br>Manuf Home | # Stories<br>Bulkhead<br>Sunroom<br>Modular |
|--|-----------|--|---|---|

JOB VALUE: 98,000.00

PERMIT FEE:  
2% Surcharge :

TOTAL FEES:



REQUIRED SIGNATURES

Building Official/Permit Tech.

Applicant

County Of Mathews

Electrical Permit

PERMIT NUMBER: 0002101 - 2018

LIEN AGENT:

USBC: 2015  
APPLICATION DATE: 9/27/2018  
ISSUANCE DATE: 9/27/2018  
RENEWAL DATE: 5/02/2022

|   |  |   |
|---|--|---|
| OWNER NAME/ADDRESS<br>COUNTY OF MATHEWS<br>P.O. BOX 839<br>MATHEWS VA 23109<br>PHONE: | SITE ADDRESS<br>384 OLD FERRY ROAD<br>GWYNN'S ISLAND 00000 | CONTRACTOR NAME/ADDRESS<br>CRC ELCTICAL SERVICES<br>201 PAYTON LANE<br>HUDGINS, VA 23076<br>PHONE: 804 432 1920 |
|---|--|---|

|  |  |   |   |  |            |
|--|--|---|---|--|------------|
| RE ACCOUNT#: 2961<br>TAX MAP NO.: 11A6 A 11A | DESCRIPTION OF CONSTRUCTION LOCATION<br>LOT: BLOCK: SECTION: BLDG NO.: | SET-BACKS:<br>FRONT: BACK:<br>RIGHT: LEFT:<br>CNTR : FRIGE: | HEALTH PERMIT NO.:<br>FLOODPLAIN: Y<br>AREA:<br>RIGHT-OF-WAY: | DISTRICT: Piankatank<br>SUB-DIVISION:<br>ZONE:<br>S/E CUP NO.: | SITE PLAN: |
|--|--|---|---|--|------------|

DIRECTIONS TO SITE:

NO FEE COUNTY PROPERTY  
ZONING EXEMPT

|                          |   |          |
|--------------------------|---|----------|
| USE GROUP:<br>CNST.TYPE: | USE CODE:<br>NATURE/WRK: ELECTRICAL, SERVICE UPGRADE 200 AMPS PANEL | SQ FEET: |
|--------------------------|---|----------|

|            |              |                   |           |
|------------|--------------|-------------------|-----------|
| Generator  | New Servic X | Electrical Permit | 400 amp   |
| Wiring     |              | Temp.Servi        | Reconnect |
| 60-125 amp | 600 amp      | Pool              |           |
| SolarPanel | Relocate     | Outlets           |           |
| Fixtures   |              | 200 amp X         |           |

JOB VALUE: 1,200.00

PERMIT FEE:  
2% Surcharage :

TOTAL FEES:

REQUIRED SIGNATURES

Building Official/Permit Tech

Applicant



# The Structures Group, Inc.

Consulting Engineers

May 24, 2022

Kevin Zoll  
Building Official  
County of Mathews Building Inspections Department  
50 Brickbat Road  
Mathews, VA 23109

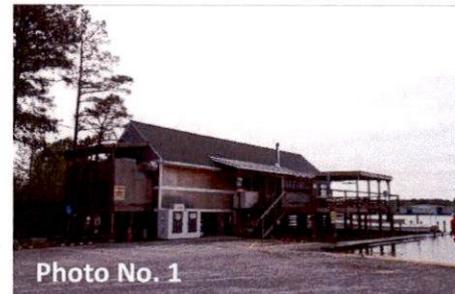
Re: Mathews County/384 Old Ferry Road  
TSG No. VA22105.FOR

Dear Mr. Zoll:

With your authorization, we performed a limited forensic structural review of the one (1) story, approximately 1,260 square foot, commercial building located at 384 Old Ferry Road within Mathews County, Virginia. The purpose of our review was to determine if the as-built construction of the raised foundation met the construction documents and specifications submitted to Mathews County.

Our site visit was conducted on Wednesday morning, May 11, 2022, in your company. During our site visit, we reviewed the as-built construction of the raised foundation of the structure, cataloging areas of distress noted. For the purpose of clarity, we have included photographs of the representative observations noted during our site visit in the Observations section below.

The commercial structure is a one (1) story timber framed restaurant structure with attached elevated decks utilized for outdoor dining, kitchen equipment, storage, and HVAC equipment. The roof of the restaurant structure consists of a gable A-framed roof surfaced with composite asphalt shingles. The roof over the outdoor dining area and kitchen equipment is a low sloped roof, also surfaced with composite asphalt shingles. A front elevation view of the structure is shown in **Photo No. 1**.



## BACKGROUND

It is our understating that the commercial restaurant structure located along Whare Creek within Mathews County was to be elevated from a concrete slab on grade finish floor level of 3.65' to a finish floor elevation of 9.3'. Construction drawings and material specifications to elevate this structure were prepared by Bay Design Group of Glenss, Virginia. These documents, which included Sheets S1-S3, were signed and sealed by William B. Burton, P.E. on March 20, 2017. We note that these construction documents denoted the proposed foundations and first floor framing needed to lift the existing 63' x 20' restaurant from a concrete slab on grade and constructing a new elevated timber frame deck addition approximately 42' x 18' with a single set of entrance stairs along the front elevation.

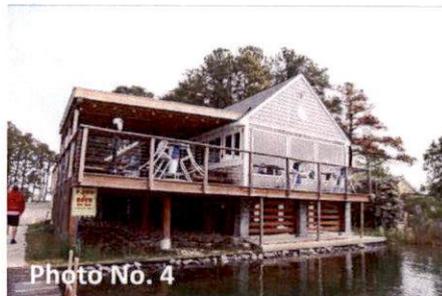
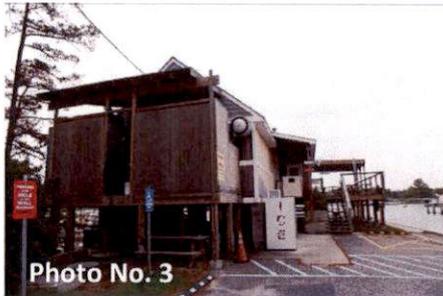
## RESEARCH

At the time the construction documents were prepared in March of 2017, the 2012 Edition of the Virginia Uniform Statewide Building Code (VUSBC) was in effect. The 2012 VUSBC adopted and amended the 2012 International Building Code (IBC).

Based on our review on the 2012 VUSBC. The restaurant use of this facility requires the design floor live load to be 100 psf. The design wind speed for this area was denoted as 115 mph and the ground snow load is denoted as 15 psf. According to our research, the structure is located within the AE (LMWA) zone with a flood plain elevation of 7'. The County of Mathews zoning ordinances does not require a free board, in excess of building code flood plain design requirements.

## OBSERVATIONS

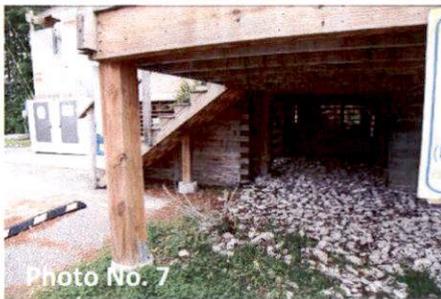
Our site visit observations revealed that additions had been constructed onto the existing restaurant and exterior deck, which were not shown on the construction documents provided by Bay Design. We noted that an open air and partially enclosed timber framed HVAC equipment/storage platform had been constructed along the rear elevation of the restaurant. Additionally, we noted that an enclosed and covered kitchen equipment/freezer timber framed addition had been added to the left elevation of the restaurant. Further, we noted that a single sloped timber framed roof had been installed over the front elevation exterior deck area. (See Photos No. 2, 3, and 4.)



A review of the first floor framing below the restaurant structure revealed the floor joists to be 2 x 10 at 16" on center which spanned front to rear approximately 10'-6" between three (3) parallel multi-ply 2 x 12 girder lines. This framing layout matched the construction drawings provided by Bay Design. Further, these girders were supported by 16" x 16" grouted masonry piers spaced at approximately 7'-9" on center. The location of these CMU piers also matched the construction drawings provide by Bay Design. However, we noted that 5/8" on center lag bolts had been used in the hold-downs. (See Photo No. 5.)

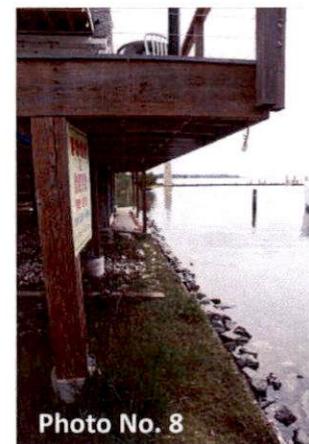


We also noted the specified Simpson HL53 hold-down angles had been installed to each side of the girders below the restaurant. However, we noted the installation of a single 2 x 8 treated plate rather than the specified double 2 x 8 plate on top of the CMU below these girders. Our review also revealed these 2 x 8 plates and Simpson angles were attached with two (2) 5/8" diameter anchor bolts. However, closer review revealed the outermost bolt to be a 5/8" diameter lag bolt that could be removed by hand. (See Photo No. 6.)



Our review of the timber framing of the exterior deck revealed it was not framed as per the construction documents. Rather, than installing three (3) ply 2 x 8 girders running left to right with 2 x 8 joists at 16" on center, front to rear, as shown on the construction documents, we noted that the framing consisted of two (2) ply 2 x 12's spanning, front to rear at each exterior 8" x 8" post line. Closer review revealed the two (2) ply 2 x 12's spanned 12'-0" from the exterior two (2) ply 2 x 12 band board to the masonry piers below the front elevation wall of the main entrance. We noted the exterior deck floor joists were 2 x 12's at 16" on center spanning approximately 7'-9" left to right. Closer review revealed the absence of an intermediate pier and girder line, as shown on the construction documents provided by Bay Design. (See Photo No. 7)

Additionally, we noted that a 4'-0" cantilevered extension had been constructed along the right elevation rather than the 2'-8" extension shown on the construction documents provided by Bay Design. Closer review revealed the 4'-0" extension along the restaurant was supported by 4" x 4" posts bearing directly onto the existing slab on grade without anchorage, see Photo No. 8





Excavation of the exterior footings below the deck revealed the bottom of the footings were located approximately 1'-0" below the exterior finish grade rather than the specified 2'-0" depth. We also noted that these footings were approximately 1'-6" in diameter rather than 1' x 6" x 1' x 6" square. However, we also noted a 12" diameter sonotube had been placed on top of this footing where the 8 x 8 timber post was anchored. (See Photo No. 9.)

Our review of the entrance stairs revealed the stairs were constructed with four (4) 2 x 12 stringers and open risers. (See Photo No. 10.) We noted the stringers were split at each of the tread fasteners. The height of the risers varied from the first riser height of 7 1/4" at the bottom with the remaining riser heights ranging from 6 5/8" to 6 7/8". (See Photo No. 11.) We noted the stairway was approximately 36" in width with a single guardrail assembly and handrail on the right side. Closer review revealed the handrail did not extend beyond the bottom or top riser. (See Photo No. 12.)



Further review revealed the top rail of the deck and stair were constructed with flat 2 x 6 with the intermediate railing consisting of horizontal stainless steel cables. While the cables were spaced at 4" on center, with a span of 6'-1" the cables could easily be pushed by hand to create a space greater than 4". (See Photo No. 13)



## **BEARING SOIL ANALYSIS**

Following our site visit, we requested the geotechnical engineering firm, ECS LTD, to provide an evaluation of the soil and groundwater conditions at the site. ECS provide provided hand augers and dynamic cone penetrometer (DCP) testing to determine in situ, the soil bearing capacity, ground water, and subsurface soil conditions. Two (2) hand augers and two (2) DCP tests were completed near the existing footing excavations.

The results of ECS hand augers revealed the soils adjacent to the existing footings consisted of approximately 2'-0" of fill material consisting of silty sand (SM-Fill) with trace organics. Ground water was encountered at 24" below the existing grade.

The DCP testing indicated the minimum bearing capacity of the natural soils below the fill material was 1,500 psf. If new footings are proposed ES recommended removal of the fill material and replacing with #57 stone, flowable fill, or with additional concrete of the footing. ECS further recommended that the ground water be pumped from the new footing excavations prior to placing the footings.

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on our research, site visit observations and structural analysis, we have provided the following conclusions. For clarity, we have separated our conclusions by Additions, Restaurant, and Exterior Decking.

### **ADDITIONS**

- With the exception of the single sloped roof above the exterior deck, the kitchen equipment addition on the left elevation and the HVAC equipment platform and shed on the rear elevation were constructed without plans, specifications, and building permits.

### **RESTAURANT AND MAIN ENTRANCE**

- The as-built timber framing below the restaurant and main entrance matches the construction documents prepared by Bay Design.
- The three (3) ply 2 x 12 center girder below the restaurant is not structurally adequate to support the required 100 psf floor live load and actual dead loads of the restaurant for the 7'-9" spans.
- The as-built hold-down anchors of the three (3) ply 2 x 12 girders supporting the restaurant structure are inadequate as constructed and can be removed with little effort by hand.
- The use of a single guardrail and along the entrance stairway handrail is not permitted for this commercial space.
- The handrail terminations do not have the minimum required 12" extension at top and bottom.
- The height of the first riser of the entrance stairway violates the minimum building code requirements for commercial stairs.

#### EXTERIOR DECK

- The as-built timber framing of the exterior elevated deck does not match the construction documents prepared by Bay Design.
- The two (2) ply 2 x 12 flush girders spanning 12'-0" are not structurally adequate to support the required 100 psf live load. The stringers steel cable horizontal railing will not maintain the required maximum 4" spacing when pushed upon.
- The 1,500 psf actual bearing pressure of the soil below the footings is below the minimum allowable soil bearing pressure that the footings were designed for.

In summary it is our opinion that the size and depth of the existing foundations of the restaurant as well as the exterior deck on the front elevation, the HVAC platform on the rear elevation, and kitchen equipment on the left elevations are inadequate for the actual soil bearing capacity and the required design loads on the commercial structure. Further, it is our opinion that the hold-down anchorage is also inadequately constructed at this location.

Therefore, we recommend that the first floor framing of the restaurant, front elevation exterior deck, rear elevation HVAC platform, and left elevation kitchen addition should be supported in place while the CMU piers, posts, and footing are removed and replaced with approximately designed footings, CMU piers, and hold-down anchorage. This would also allow the inadequate temporary posts, CMU piers, and footing below these additions to be properly designed and constructed.

Once these foundation issues are designed and corrected, we recommend that a redesign of the entrance stairway be provided. At that time, an approximately designed and constructed guardrail assembly can also be constructed.

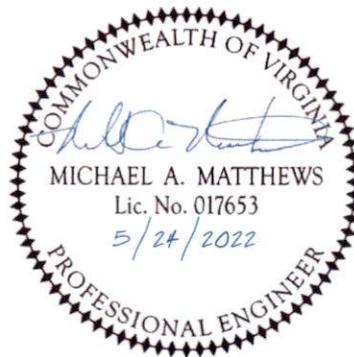
We appreciate the opportunity to be of service in this matter. If you have any questions, please feel free to contact our office.

Sincerely,  
The Structures Group, Inc.



Michael A. Matthews, P.E.  
President/CEO

MAM/dlm





Mathews County  
Building Inspections Department  
50 Brickbat Road, Mathews, VA 23109

Phone: (804) 725-7171

Email: [kzoll@mathewscountyva.gov](mailto:kzoll@mathewscountyva.gov)

**RE: NOTICE OF UNSAFE STRUCTURE**

May 25, 2022

County of Mathews - "Hole in The Wall" Restaurant  
384 Old Ferry Rd  
Grimstead, VA 23064

On May 24, 2022 a third party Engineers report was submitted to the County Building Officials office detailing multiple structural deficiencies at the above referenced address. Due to this report the building official has issued the following Notice:

**Violation: Virginia Construction Code, Section 118 "Unsafe Buildings or Structures"**

1. The building (or Structure) is Unsafe, and its Occupancy (or Use) is Prohibited by the Building Official.

**Abatement of Violation: Violation shall be corrected by one of the following:**

1. Boarding up of structure as per Virginia Maintenance code, Appendix A
2. Demolition of unsafe portion of structure.
3. Any abatement plan proposed by the owner and approved by the Mathews County Building Official

Owner shall notify the Building Official that the structure has been secured, demolished or that an alternate plan is being requested by June 24, 2022 or further legal action from the county will be pursued.

**119.5 Right of appeal; filing of appeal application.**

*Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.*

If you have any questions regarding this Notice, please contact me at (804) 725-7171

  
W. Kevin Zoll  
Mathews County Building Official

**PAYMENT AGREEMENT**

**COUNTY OF MATHEWS, VIRGINIA  
AGREEMENT FOR PAYMENT OF DESIGN and CONSTRUCTION SERVICES for  
TEMPORARY STRUCTURAL REPAIRS TO HOLE IN THE WALL**

This Agreement is entered into by and between:

OWNER: The County of Mathews, Virginia, 50 Brickbat Rd, Mathews Virginia, 23109,

and

The Hole in the Wall, Waterfront Grill, LLC (Tenant)

This Agreement shall be effective as of the 26 day of May, 2022.

**PROJECT IDENTIFICATION INFORMATION:**

Project Title: Temporary Repairs to re-open Hole in the Wall, Waterfront Grill

**ADDRESSES and AUTHORIZED REPRESENTATIVES:** The addresses and authorized representatives of the Owner and the Tenant with this Agreement are as follows:

OWNER: Mathews County

Representative: Ramona Wilson

Mailing Address: 50 Bickbat Road, Mathews VA 23109

Telephone: 804-25-7172

E-mail: [rwilson@mathewscountyva.gov](mailto:rwilson@mathewscountyva.gov)

TENANT: Hole in the Wall, Waterfront Grill LLC

Representative: Constantine Tsamouras

Mailing Address: 307 Daniels Drive, Yorktown, VA 23690

Telephone: (757) 784-1933

Tenant hereby agrees to reimburse the County for all costs related to temporary construction in order to make the structure located at 384 Old Ferry Road, Gwynn Virginia, 23066, a County owed facility safe for temporary occupancy.

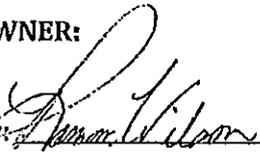
Tenant also agrees to pay for securing of guardrails and building of a handrail in order to make the building acceptable for temporary use with the Building Official of Mathews County.

Tenant also agrees to pay 75% of the cost for pump and haul of the sanitary sewer until such time as the temporary construction is removed and replaced by a permanent fix.

County agrees to make every effort possible to have the Hole in the Wall restaurant opened for business, even at a reduced capacity by start of business May 28, 2022.

The Tenant's agreement to reimburse the County for the temporary construction is in no way an omission of fault or guilt.

OWNER:

By: 

Print Name: Ramona Wilson

Title: County Administrator

Date: 05/26/22

TENANT: - HOLE IN THE WALL,  
WATERFRONT GRILL LLC.

By: 

Print Name: Constantine Tsamoukas

Title: Vice President

Date: 5/26/22

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

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

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

Date: \_\_\_\_\_

## County Administration



June 8, 2022

Kevin Zoll  
Mathews County Building Official  
50 Brickbat Road  
Mathews, VA  
23109

Dear Mr. Zoll

On May 25, 2022 you issued a Notice of Unsafe Structure to Mathews County for the County owned building located at 384 Old Ferry Rd, Grimstead VA. In the Notice, the County was given three options to abate the violation. The County has opted to provide an abatement plan to correct the structural deficiencies.

The County has installed temporary shoring to allow the building to be open to the public until a permanent solution is designed and installed. The stamped temporary shoring plan is attached and has been approved and inspected by you on May 25, 2022. The County has issued requests for quotations from three structural engineering firms for the design of a permanent solution. Any quotes are due to the County by Friday June 17, 2022. Based on the quotes, the County will award the design services, including preparation of plans and specifications necessary to send out for bids to install the permanent solution. The firm that is selected to perform the design services will also be contracted for Special Inspections.

It is my understanding that this letter will serve as notice to you that the County is pursuing a permanent solution and no further legal action from the County will be pursued.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ramona G. Wilson".

Ramona G. Wilson, PE., MPA  
County Administrator  
[rwilson@mathewscountyva.gov](mailto:rwilson@mathewscountyva.gov)  
(804) 725-7172

Cc. Mac Casale, Tenant  
Encl. May 25, 2022 Notice of Unsafe Structure  
Temporary Shoring Plan

804.725.7172 office  
804.725.7805 fax  
[mathewscountyva.gov](http://mathewscountyva.gov)

50 Brickbat Road | P.O. Box 839 | Mathews, VA 23109

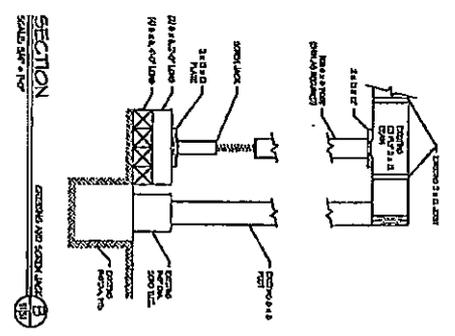
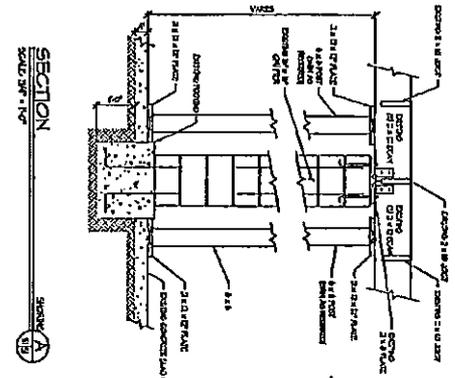
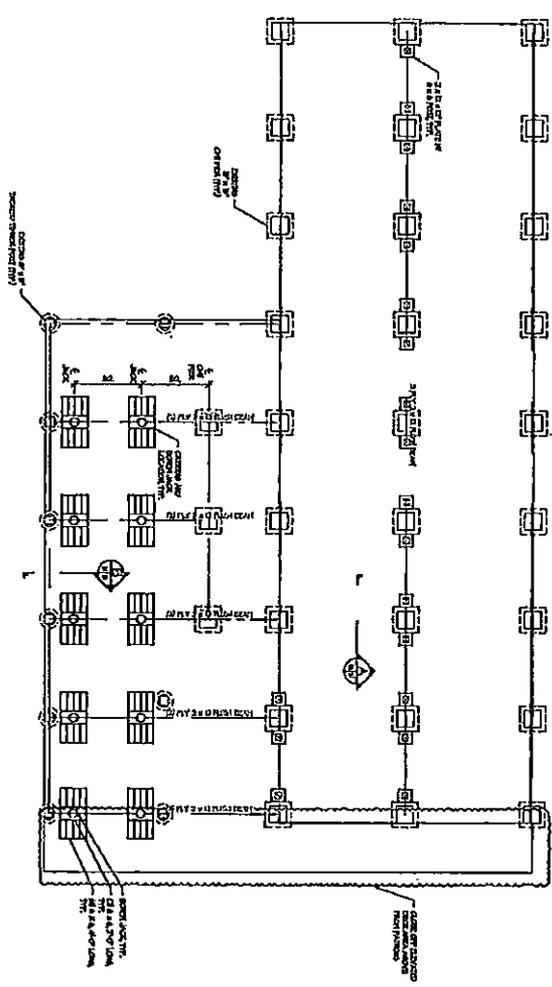
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 **MATHEWS**

**GENERAL NOTES**

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
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**TEMPORARY SHORING PLAN**



|                              |   |               |                      |               |                 |
|------------------------------|---|---------------|----------------------|---------------|-----------------|
| Sheet<br><b>S1</b><br>1 of 1 | GENERAL NOTES, TEMPORARY SHORING PLAN, & SECTIONS                           | Date: 5/21/23 | Project #: VA2209708 | Drawn by: JEA | Reviewed by: WH |
|                              | <b>TEMPORARY SHORING FOR HOLE IN THE WALL RESTAURANT 384 OLD FERRY ROAD</b> |               |                      |               |                 |
| MAYHEW COUNTY                | VIRGINIA  | No. _____     | Revisions _____      | Date _____    |                 |

