

### **THIRD AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

This Third Amendment to Real Estate Purchase Agreement (“Third Amendment”) is entered on January 9, 2020 (the “Effective Date”) by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Seller”) and 410 W. Wayne Street, LLC (“Buyer” and collectively with the Seller, the “Parties”). Each of the Parties may be referred to in this Amendment as a “Party.”

#### **Recitals**

- A. The Parties entered into a Real Estate Purchase Agreement, dated August 25, 2016, as the same was amended by a First Amendment to Real Estate Purchase Agreement, dated October 27, 2016, and a Second Amendment to Real Estate Purchase Agreement, dated December 15, 2016 (collectively, the “REPA”), in which the Seller agreed to sell and the Buyer agreed to purchase certain real property located at 331 W. Wayne St., South Bend, Indiana (the “Property”).
- B. The sale of the Property closed for the purchase price of One Dollar (\$1.00), and a Special Warranty Deed was recorded on March 2, 2017 in the St. Joseph County Recorder’s Office as Document No. 170897 (the “Deed”).
- C. The Parties desire to modify certain portions of the REPA.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained in this Amendment and the REPA and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

- 1. Section 11.C. of the REPA shall be deleted in its entirety.
- 2. Section 12.A. of the REPA shall be deleted in its entirety and replaced with the following:
  - A. Development of Property.
    - i. *Buyer’s Expenditure*. Buyer shall expend no less than Four Hundred Fifty-Five Thousand Eight Hundred Twenty-Eight Dollars (\$455,828.00), or such other reasonable amount that the Parties may agree to in writing, on improvements to the Property, including the interior and exterior improvements of the existing structure on the Property and permanent fixtures affixed thereto, with no more than Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) of such amount to be expended on plans for development of the Property, including but not limited

to architectural and engineering plans ("Buyer's Expenditure"). Buyer's Expenditure shall not include brewing equipment or chattel.

- ii. *Project Plan.* Buyer shall develop the Property, to the extent reasonably practicable, in accordance with the materials attached as Exhibit C (the "Project Plan"), which the Parties acknowledge is subject to standard acceptances as required for the Buyer to obtain a building permit and other licenses and permits for the operation of a brewpub. Further authorizations may be required by other departments within the City of South Bend (the "City") in order for the Buyer to obtain other permits or allowances, such as connection to the City's water and sewer systems and occupancy. Notwithstanding the foregoing, the Seller has accepted the brewhouse and brewpub concept, with a full-service restaurant, as set forth by the Project Plan and shall also review and accept the final site plan and building façade treatments prior to construction.
  - iii. *City Regulations for Central Business District.* In its development of the Property, Buyer shall comply with all applicable federal, state, and local laws, including, but not limited to, the applicable requirements of the City of South Bend Zoning Ordinance, including variances as necessary.
  - iv. *Access to Property.* During its development of the Property, Buyer shall allow the City, as often as is reasonably required, to perform inspections of the Property.
  - v. *Commencement of Development.* Buyer shall use its good faith effort to commence construction at the Property within six months of the date this Amendment is executed by the last signatory hereto (the "Project Commencement Date").
  - vi. *Completion of Development.* Buyer shall complete the improvements to the Property, which are referred to in Section 12.A.i., of the REPA, by the last day of the 18<sup>th</sup> month from the date this Amendment is executed (the "Project Completion Date").
3. Section 12.B. of the REPA shall be deleted in its entirety and replaced with the following:
- B. Certificate of Completion.
- i. *Issuance.* Within 30 days after Buyer completes Buyer's Expenditure, Buyer can request from the Seller a certificate acknowledging completion of Buyer's Expenditure and releasing the Seller's reversionary interest in the Property, which is described in Section 12.C. of the REPA.

- ii. *Recordation.* The Parties shall promptly record the Certificate of Completion upon issuance. Buyer shall pay the cost of recordation.
4. Section 12.C. of the REPA shall be deleted in its entirety and replaced with the following:
- iii. Reversion. The Parties acknowledge that the sale price of the Property does not reflect the fair market value thereof as of the date of the Property's transfer to the Buyer. In consideration for the reduced purchase price, the Buyer agreed to develop the Property, which agreement was secured by a reversionary clause in the deed. Therefore, if Buyer breaches its obligations stated in Sections 12.A.i., 12.A.v. or 12.A.vi. of the REPA, Buyer shall convey all its rights and interests in the Property to the Seller, free of all liens and encumbrances, subject to the Seller's payment to the Buyer of the actual cost of the Buyer's improvements to the Property documented by sufficient invoices or receipts for such repairs, less the value of any existing liens and encumbrances, including unpaid taxes, outstanding on the Property. In no event shall Seller's payment to the Buyer exceed Buyer's Expenditure. If the Seller does not pay Buyer the documented value of the improvements, Buyer shall not be obligated to convey its rights and interests in the Property to the Seller.
6. A new Section 21 shall be added to the Agreement as follows:

**WAIVER**

Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

7. A new Section 22 shall be added to the Agreement as follows:

**SEVERABILITY**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

4. Unless expressly modified by this Third Amendment, the terms and provisions of the REPA remain in full force and effect.

5. Capitalized terms used in this Third Amendment will have the meanings set forth in the REPA unless otherwise stated herein.

*Signature Page Follows*


IN WITNESS WHEREOF, the undersigned have executed this Third Amendment as of the Effective Date.

**SOUTH BEND REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST: \_\_\_\_\_  
Quentin Phillips, Secretary

**410 W. WAYNE STREET, LLC**

S i g n e d : \_\_\_\_\_  


P r i n t e d : \_\_\_\_\_  
Christopher Gerard

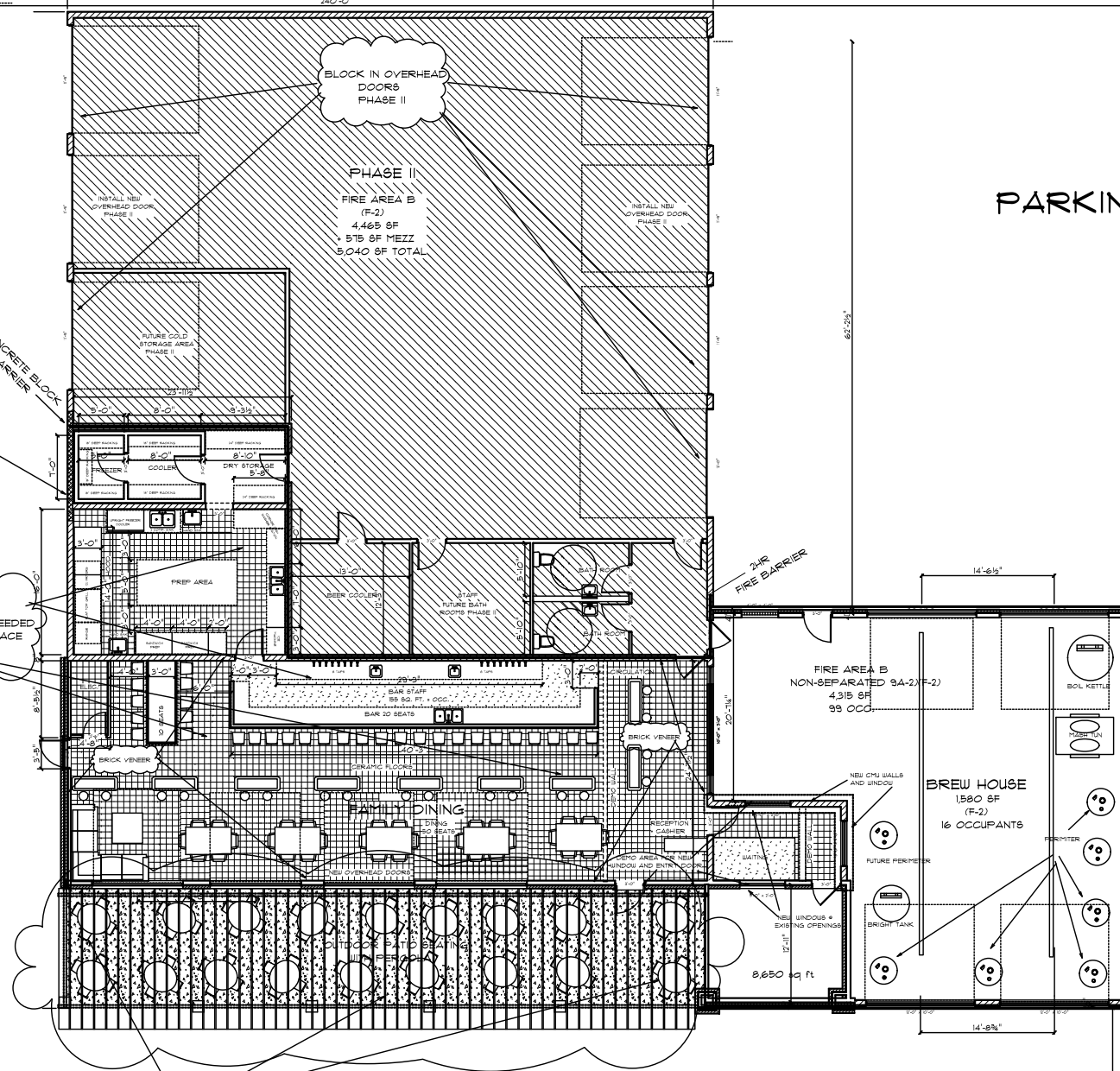
Its: OWNER

Date: 1/8/20

**EXHIBIT C**  
**Project Plan**  
(Attached)

WAYNE STREET

WILLIAM STREET



DEMO AREA  
REMOVE DAMAGED  
PAVING AND REPLACE AS NEEDED

REMOVE EXISTING OVERHEAD  
DOOR AND REPLACE WITH  
CONCRETE BLOCK FOR NEW KITCHEN AREA

PARKING

\* NOTE  
AFTER REPAIRS ON EXISTING  
PAVEMENT A SEAL COAT WILL BE  
APPLIED TO ALL PAVED AREAS

DEMO CONCRETE FLOOR AS NEEDED  
FOR NEW PLUMBING AND REPLACE

DEMO AREA  
REMOVE DAMAGED  
PAVING AND REPLACE AS NEEDED

PARKING

DEMO AREA - REMOVE PAVEMENT  
AND REPLACE WITH CONCRETE

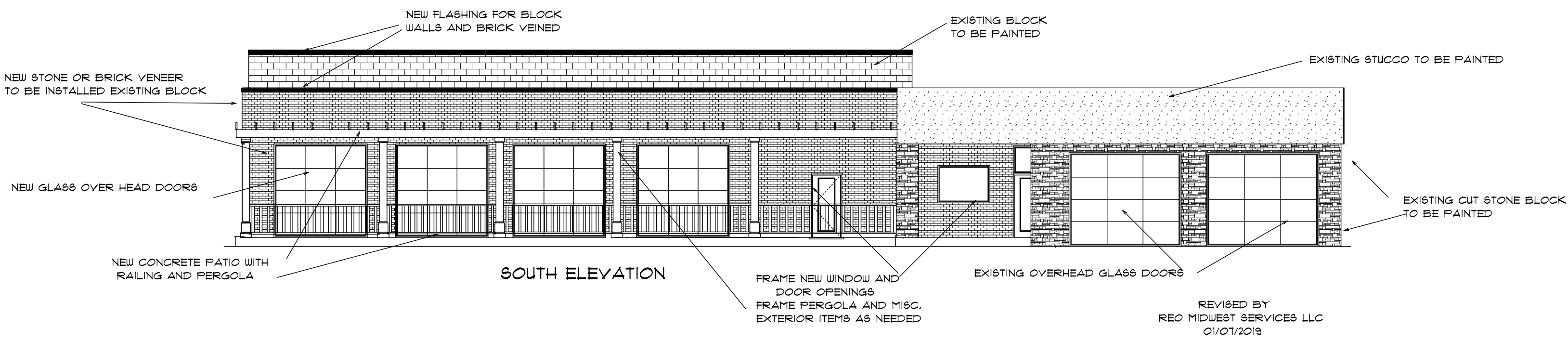
PARKING

45 parking spaces

PARKING

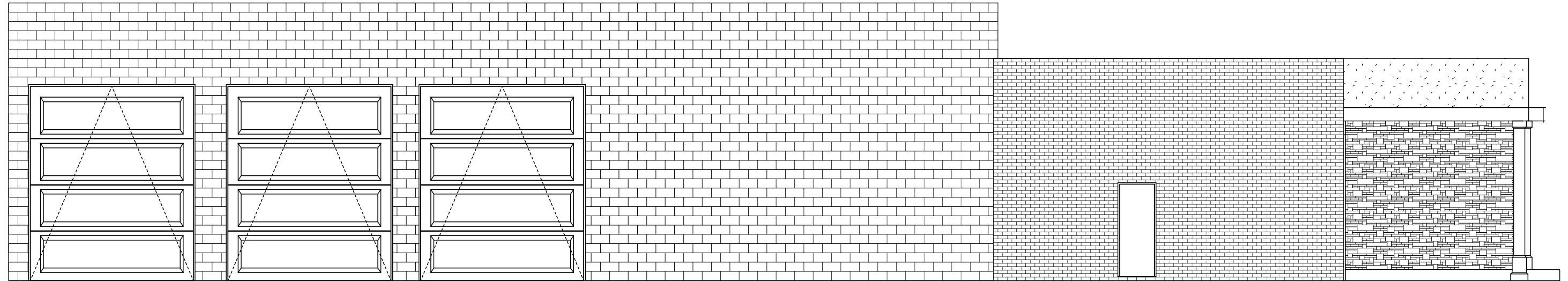
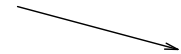
REMOVE OR REPAIR  
DAMAGED SIDEWALKS  
AS NEEDED

DEMO AREA - REMOVE EXISTING  
LANDSCAPING AND DEBRIS  
PREP FOR FUTURE LANDSCAPING  
AND IRRIGATION





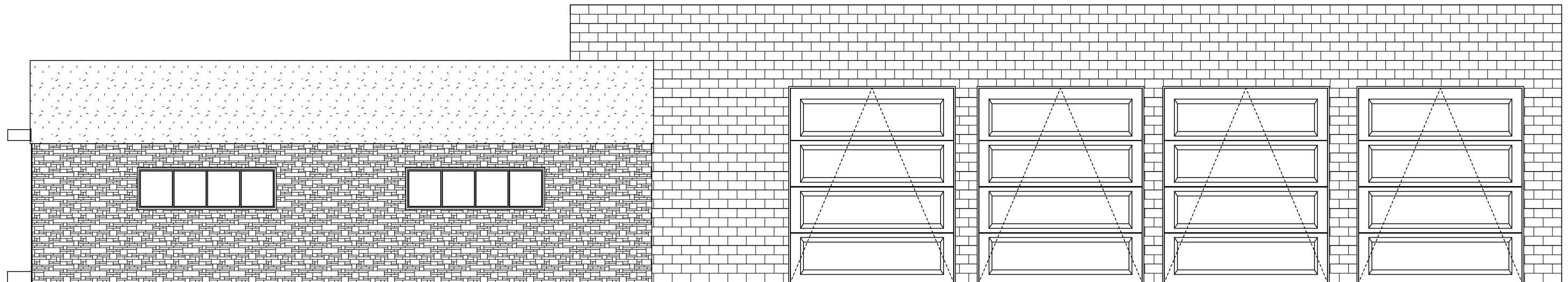
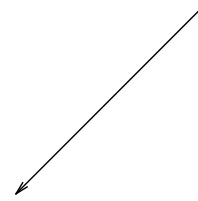
PHASE II  
RE PAINT ALL  
EXTERIOR BLOCK



WEST ELEVATION

PAINT EXISTING  
SURFACE EXTERIOR  
PHASE I

RE PAINT BLOCK ON WAREHOUSE  
PHASE II



EAST ELEVATION

