ORDINANCE NO. 1312
SERIES 2022

AN ORDINANCE AUTHORIZING AND APPROVING AN AMENDMENT TO A GROUND LEASE WITH CLASSIC AIR MEDICAL FOR CONSTRUCTION OF AN AIRCRAFT HANGAR AT THE CORTEZ MUNICIPAL AIRPORT

WHEREAS, the City Council of the City of Cortez Colorado and Classic Air Medical entered into that certain Airport Land Lease and Hangar Development Agreement dated June 14, 2022 (the "Lease"), as authorize pursuant to Ordinance No. 1301, Series 2022; and

WHEREAS, the City Council and Classic Air Medical desire to amend the Lease; and

WHEREAS, the City of Cortez Charter and State Statutes require that a lease or an amendment to a lease be approved by ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CORTEZ CITY COUNCIL THAT the Amendment to Airport Land Lease and Hangar Development Agreement attached hereto and incorporated herein as Exhibit 1 is approved and the Mayor is authorized to sign the same.

REPEALER. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

SEVERABILITY. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

RECORDING AND AUTHENTICATION. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the City Clerk.

EFFECTIVE DATE. This ordinance shall be effective upon publication after final passage.

FIRST READING: This ordinance shall be considered on first reading on September 27, 2022, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, Cortez, Colorado, at which time the City Council shall consider authorizing the ordinance to be considered for a public hearing on second and final reading at a later date.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 11th. day of October, 2022, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, Cortez, Colorado, at which time and place all persons may appear and be heard concerning the same.

PASSED, ADOPTED AND APPROVED ON FIRST READING THIS 27th DAY OF SEPTEMBER, 2022.

CITY OF CORTEZ

ATTEST:

RACHEL B. MEDINA, MAYOR

LINDA L. SMITH, CITY CLERK

PASSED, ADOPTED AND APPROVED ON SECOND AND FINAL READING THIS 11TH DAY OF OCTOBER, 2022.

CITY OF CORTEZ

ATTEST:

RACHEL B. MEDINA, MAYOR

LINDA L. SMITH, CITY CLERK

APPROVED AS TO FORM:

J. PATRICK COLEMAN, CITY ATTORNEY

AIRPORT LAND LEASE AND
HANGAR DEVELOPMENT AGREEMENT

This Agreement made and entered into this 14th day of June, 2022, by and between the City of Cortez, Colorado, hereafter referred to as "City", and Classic Air Medical hereafter referred to as "Classic." The purpose of this agreement is a land lease for aircraft hangar construction and aeronautical use by Classic.

For and in consideration of the rent to be paid to the City by Classic at the times, in the amounts, and under the conditions expressed below, and in further consideration of the mutual covenants contained herein, City hereby leases, lets and rents to Classic the following described tract of land, located at the Cortez Municipal Airport (the "Airport") in Montezuma County, Colorado, more particularly described below:

A tract of land in the East half of Section 8, T.35 N., R. 16 W., of New Mexico Principal Meridian, Montezuma County, Colorado, being more particularly described as follows:

South Hangar Lot #9
Measuring 125 feet wide by 120 feet deep with 40 feet by 20 feet of parking area adjacent to the Northwest of the structure;
Totaling 15,800 square feet of land leased.
Together with access on, over, and across City's property for access to the leased land (collectively known as the "Premises")

Classic is authorized by the City of Cortez to construct a structure, the hangar, measuring 100 feet wide by 100 feet deep, on the premises. This agreement does not convey any ownership of the real property described above to Classic but is a ground lease only.

TERM

A. The term of this lease (initial term) shall be for a period of forty (40) years, beginning on July 1, 2022 and ending June 30, 2062 unless terminated as provided in elsewhere in this agreement. At the expiration or termination, of this lease all improvements will be removed by Classic, unless the lease is extended by mutual agreement to the parties, or City and Classic mutually agree that any improvement constructed by Classic remain on the premises with ownership of any and all improvements on the premises transferring to City at the final termination of this lease.

Exh. 1

for an additional ten (10) year term at the end of the Initial Term by notifying the City in writing of its intent to renew this lease at lease sixty (60) days in advance of the expiration date of the Initial Term. At the termination or expiration of the first renewal term, Classic may again renew this lease for an additional ten (10) years by notifying the City in writing of Classic's intent to renew this lease at least sixty (60) days in advance of the expiration of the first renewal term. Additional renewals may be exercised at ten (10) year intervals if and after Classic gives written notice of its intent to renew as described above.

RENT

A. The land rent shall be based on $0.39 per square foot ($6,162 per year) in year one, to be paid to City, by Classic.

B. Subsequent years' lease rate shall be adjusted annually by City according to the published Consumer Price Index (CPI), or its equivalent, should the CPI no longer be published by the Federal government in its present form, in future years. Should the CPI be negative in any year or years, the rate will remain unchanged for the next annual period.

C. If Classic fails to pay when due any amount required to be paid to the City by Classic, such unpaid amount will accrue interest at the rate of ten percent (10%) per annum commencing from the due date until fully paid. In addition, City may charge a late fee of fifty dollars ($50) per late payment.

D. In the event City is required to initiate collection of unpaid rent or other charges, then Classic agrees to pay all costs of collection, including attorney's fees.

USE OF LEASED PREMISES

The premises may be used only for storage of Aircraft (Aircraft) owned or leased by Classic, items related to the stored Aircraft, and personal or business vehicles parked by Classic employees while flying or performing maintenance on the Aircraft. The Premises shall not be used for warehousing of Classic's or anyone else's personal property. No residential use shall be permitted of the hangar. Classic shall not perform any aircraft repairs or maintenance on the Premises to other than the stored Aircraft. Classic shall not use the Premises for other commercial purposes except as directly related to the Aircraft which are used in its business. In addition, the storage and accumulation of flammable or hazardous materials in or near the hangar is prohibited except for storage of such types of materials and in such amounts as are required for the normal operation and maintenance of the Aircraft. Classic shall not enter into other uses not specifically authorized by this agreement.

COMPLIANCE WITH LAWS AND REGULATIONS

Classic agrees to comply strictly with all Federal, State, and Local laws, rules, regulations etc. related to the Premises, use of the Premises or the Aircraft. Classic shall pay all Federal, State, and local taxes assessed on the hangar and Aircraft stored within.

CONSTRUCTION

Prior to the construction of any structure, modifications, or additions to existing structure, all plans shall be submitted to, reviewed and approved by the City of Cortez Building Department. All buildings shall be constructed according to the State, County and City of Cortez building codes in force or effect at the time of construction. Classic shall obtain any necessary building permits or other required permits (electrical, plumbing etc.) required by Federal, State or Local Law prior to construction. The City of Cortez Building Inspector shall conduct inspections of the facility during construction. Notwithstanding the foregoing City agrees to cooperate with Classic in order for Classic to obtain any and all necessary permits, consents from agencies with jurisdiction over the Premises and/or the construction of the hangar or operation of Classic's business so long as City incurs no liability or cost. In the event that Classic is unable to obtain any approval herein within a reasonable time, except when due solely to Classic's own fault. Classic shall be released from its obligation to construct the hangar and shall be entitled to terminate this agreement upon sixty (60) das written notice to City.

Classic agrees to, and is responsible for, the following:

1. All hangar design construction utilities, maintenance and billing.
2. To construct and pave connecting apron according to the specifications of the City.
3. To design the hangar in such a manner to blend in with architectural and general appearance of the adjoining airport facilities.
4. If a propane tank is installed, it shall conform to Federal, State and Local codes for its location and method of installation.
5. Parking area shall be an all-weather surface, i.e. gravel, concrete, asphalt, and approved by the City Building Inspector.
6. Classic or its contractor shall meet security requirements of the Airport during construction, as defined by the Airport manager.
7. Any septic systems requested by Classic shall be addressed by the City allowing for a variety of possible solutions. A separate document, as a modification to this lease agreement will be entered into, details of which will be outlined as determined by the applicable State, Federal or Local regulations for a particular installation.

8. Any material interior additions or modifications to the hangar must be approved in advance by City, to ensure compliance with State, Federal or Local regulations for a particular installation.

Classic agrees that at its own expense, it shall move, re-locate or change any structure built upon the Premises which may, in any way, violate any of the rules, codes, and regulations of Federal, State, or Local governments. If there are any structures existing on the Premises at the time of execution of the agreement City will cause said structures to be demolished, moved, relocated, or remodeled at City's expense, if any are not in compliance with existing Federal, State or Local laws.

TITLE OF DESIGNATED IMPROVEMENTS TO REVERT

At termination or expiration of lease, all improvements constructed by Classic shall be titled to the City. Any improvements deemed unusable or undesirable shall be removed at City's direction and Classic's expense within ninety (90) days after lease expiration, however, if Classic wishes to abandon said improvements and City deems them acceptable, upon written agreement the improvements may remain and ownership shall vest with City at the final termination or expiration of this lease.

INSURANCE

Classic agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Classic shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Agreement Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

Classic shall procure and maintain, and shall cause each Subcontractor of Classic to procure and maintain or insure the activity of Classic's Subcontractors in contractor's own policy, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to City. All coverages shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease – policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease – each employee.

Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence, and THREE MILLION DOLLARS ($3,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000), aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

The Policies required above, except for the Worker's Compensation insurance, Employers' Liability insurance, and Professional Liability insurance, shall be endorsed to include City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by City, its officers, or its employees, shall be excess and not contributory insurance to that provided by Classic. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. Classic shall be solely responsible for any deductible losses under each of the policies required above.

Certificates of insurance shall be properly endorsed and completed by the Classic's insurance agent as evident that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by City. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

Failure on the part of Classic to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of Agreement upon which City may immediately terminate the contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by City shall be paid by Classic to City upon demand, or City may offset the cost of the premiums against any monies due to Classic from the Owner.

The parties hereto understand and agree that City is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act. §24-10-101 et seq, 10 C.R.S., as may be amended from time to time, or otherwise available to City its officers, or its employees.

RIGHT OF ACCESS

City shall have the right to enter the Premises at reasonable times after twenty-four (24) hours advance written notice (except in the event of an emergency in which event only such notice as may be reasonable under the circumstances will be required), for the purposes of inspection to determine if the conditions and requirements of the lease are being complied with by Classic. Classic agrees to provide access for any inspections required by any Federal, State or Local law. Should the buildings or grounds prove to be deficient in maintenance or in need of repair, Classic agrees to take whatever action is necessary to bring the facility back into compliance with the maintenance and repair standards as set forth herein within thirty (30) days of written notice by the City. If necessary repairs require more than thirty (30) days to complete the work, additional time may be granted by City in writing, such addition grant of time shall not be unreasonably withheld. Classic shall proceed in good faith to complete such work as soon as possible. Failure to make necessary repairs or maintenance so shall be considered a breach of this contract. Should Classic fail to bring the facility back into compliance within thirty (30) days of written notice or as otherwise set out in this agreement, City may make the necessary repairs or maintenance and bill Classic for the actual cost to the City of same. If it necessary for City to institute legal action to collect unpaid maintenance or repair charges, Classic agrees to pay all cost of collection including, but not limited to, reasonable attorney's fees, court costs and other related costs of collection.

ASSIGNABILITY

This lease agreement shall not be conveyed or assigned to a third party except with the express written consent of City which consent shall not be unreasonably withheld. City reserves the right to renegotiate any and all portions of this agreement with said third party who shall not rely upon this agreement as a reason or basis for sub-leasing or assignments. No partial or total sublease of the hangar or other shared use agreement of the hangar shall occur without prior written request made by Classic to the City and prior written consent by City which consent shall not be unreasonably withheld. Notwithstanding anything in this to the contrary, City's consent shall not be required for any Classic transfer to: (i) any affiliate which controls, is controlled by or is under common control with Classic, (ii) any business entity in which or with which Class, an affiliate of Class, or their respective corporate successors or assigned, is merged or consolidated, or (iii) any business entity that acquires all or substantially all of Classic's assets

or Classic's ownership interest necessary to control Classic.

ABANDONMENT

Should Tenant abandon Premises, cease paying rent, and fail to use the same for a period of ninety (90) consecutive days, then, this Lease Agreement may be terminated by the City, and title to all improvements on Premises shall then pass to and vest in City.

TERMINATION OF LEASE

Should Classic fail to comply with the provisions of this lease in any respect, City retains the right to terminate this lease in accordance with the provisions of this agreement. Both parties retain the right to voluntarily terminate this lease upon mutual written consent. Upon termination for noncompliance of any portion of this agreement by Classic or City in accordance with this section, Classic shall have thirty (30) days to remove all personal property including structures from the Premises unless an extension is agreed to in writing by Classic and City. All improvements and other property of Classic not removed after thirty (30) days shall then become property of City.

MAINTENANCE

Classic agrees to keep the Premises and improvements thereon in a clean, neat and orderly condition at all times. Vegetation shall be kept trimmed to a height not exceeding 6 inches. If repeated violations are noted by Airport staff and after a thirty (30) day written notice to Classic, City shall take measures to correct the violation and Classic agrees to pay all actual costs of the City to correct the violation. Classic agrees to make repairs within thirty (30) days of notice written notice of violations by City to Classic or, if the necessary repairs require more than thirty (30) to complete such work, Classic shall proceed in good faith to complete such work as soon as possible. Damaged panels, broken windows, peeling paint and heaved or broken pavement, are examples of conditions that will not be tolerated.

AIRPORT RESPONSIBILITIES

Classic shall have use of the Cortez Municipal Airport facilities including runways and taxiways, excepting commercial aprons and other leased areas. City will provide snow removal to Classic's adjoining ramp within a reasonable time following snowfall, noting that commercial operations take precedence and that Classic's operations are considered commercial operations.

ENFORCEMENT

A delay by either party in enforcing provisions of this lease does not constitute a waiver of enforcement. If either party is dead or prevented from the performance of any required act by reason of a strike, labor trouble, pandemic, act of terror, acts of nature and the elements, or any other cause beyond the reasonable control of the delayed party (financial inability excepted), i.e. '"force majeure," and the delayed party is otherwise without fault, then performance of the applicable act is excused for the period of the delay, provided the delayed party will take all commercially reasonable efforts to mitigate the force majeure.

INDEMNIFICATION OF CITY

Classic agrees to indemnify, hold harmless, and defend City and its officers, agents, and employees from and against losses of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) any use, occupancy, or operations at the Premises or the Airport or the City of Cortez by Classic or Classic's Associates; or (ii) any wrongful, reckless, or negligent act or omission of Classic or Classic's associates provided, however, Classic will not be liable for any loss of any kind or character whatsoever that results from the negligence or willful misconduct of City or City's associates. Classic shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. The obligation stated in this section shall survive the expiration or other termination.

MODIFICATION

This agreement may be modified at any time by mutual written consent of the Parties.

Termination by Tenant. In the event of a breach by Landlord of any of its obligations, covenants, or agreements under this Agreement which continues for a period of _____ days after receiving written notice of the breach from Tenant, Tenant has the right to terminate this Agreement, upon written notice to Landlord, without penalty. Landlord shall return to Tenant any prepaid or prorated rent if Tenant terminates this Agreement pursuant to this section.

Surrender of the Site. Tenant shall return the Site to Landlord upon termination of this Agreement in good condition and repair, ordinary wear and tear excepted. Within _____ days following the termination of this Agreement, Tenant will remove all equipment, materials, fixtures and other personal property belonging to Tenant from the Site. Any property left on the Site after _____ days following the termination of this Agreement will be deemed to have been abandoned by Tenant and may be retained by Landlord.

Registration of the Lease. The parties shall, to the extent required by law and practice, properly register this Lease Agreement with the relevant Land Registry Office, and any other relevant government office that may serve as a place for registering or recording leases, within 45 days from the date that this Lease Agreement is executed.

Subordination. This Agreement and Tenant's right hereunder shall be subject and subordinate in all respects to any mortgage, deed of trust, or other lien now or hereinafter incurred by Landlord. Upon request of Landlord, Tenant will enter into a subordination agreement or other customary form as required by the lien holder.

No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or any other fiduciary relationship between the Parties other than that of Landlord and Tenant. Neither Party is authorized to act as an agent or on behalf of the other Party.

Condemnation. In the event that all or a material portion of the Site necessary for Tenant's Permitted Use of the Site is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by the right of eminent domain, this Agreement shall terminate on the date of such taking, and all rent under this Agreement shall be prorated and paid to such date. In the event such taking is less than a material portion of the Site, this Agreement shall remain in full force and effect; provided however, the rent due under this Agreement shall be reduced to such extent as may be fair and reasonable under the circumstances. Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.

Limitation of Liability. Landlord is not responsible or liable for any loss, claim, damage or expense as a result of any accident, injury or damage to any person or property occurring anywhere on the Premises, unless resulting from the negligence or willful misconduct of Landlord.

Assignment and Subletting. Tenant will not assign this Agreement as to all of or any portion or the Site or make or permit any total or partial sublease or other transfer of all of or any portion of the Site without the Landlord's consent.

Quiet Enjoyment. If Tenant pays the rent and performs all other obligations under this Agreement, Tenant may peaceably and quietly hold and enjoy the Site during the Term.

Force Majeure. In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other

charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other Party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

Notices. All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be delivered in person, sent by overnight courier service or sent via certified or registered mail, addressed to Landlord or Tenant at the address stated above, or to another address that either Party may designate upon reasonable notice to the other Party.

Further Assurances. Each Party hereto agrees to execute and deliver any additional documents and to do all such other acts as may be necessary to carry out this Agreement and each Party's rights and interests in this Agreement.

No Waiver. No Party shall be deemed to have waiver any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly inwriting.

Severability. If any provision of the Agreement is held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal, and enforceable as though the invalid or unenforceable parts had not been included in this Agreement.

Successors and Assignees. This Agreement will inure to the benefit of and be binding upon the Parties and their respective permitted successor and assigns.

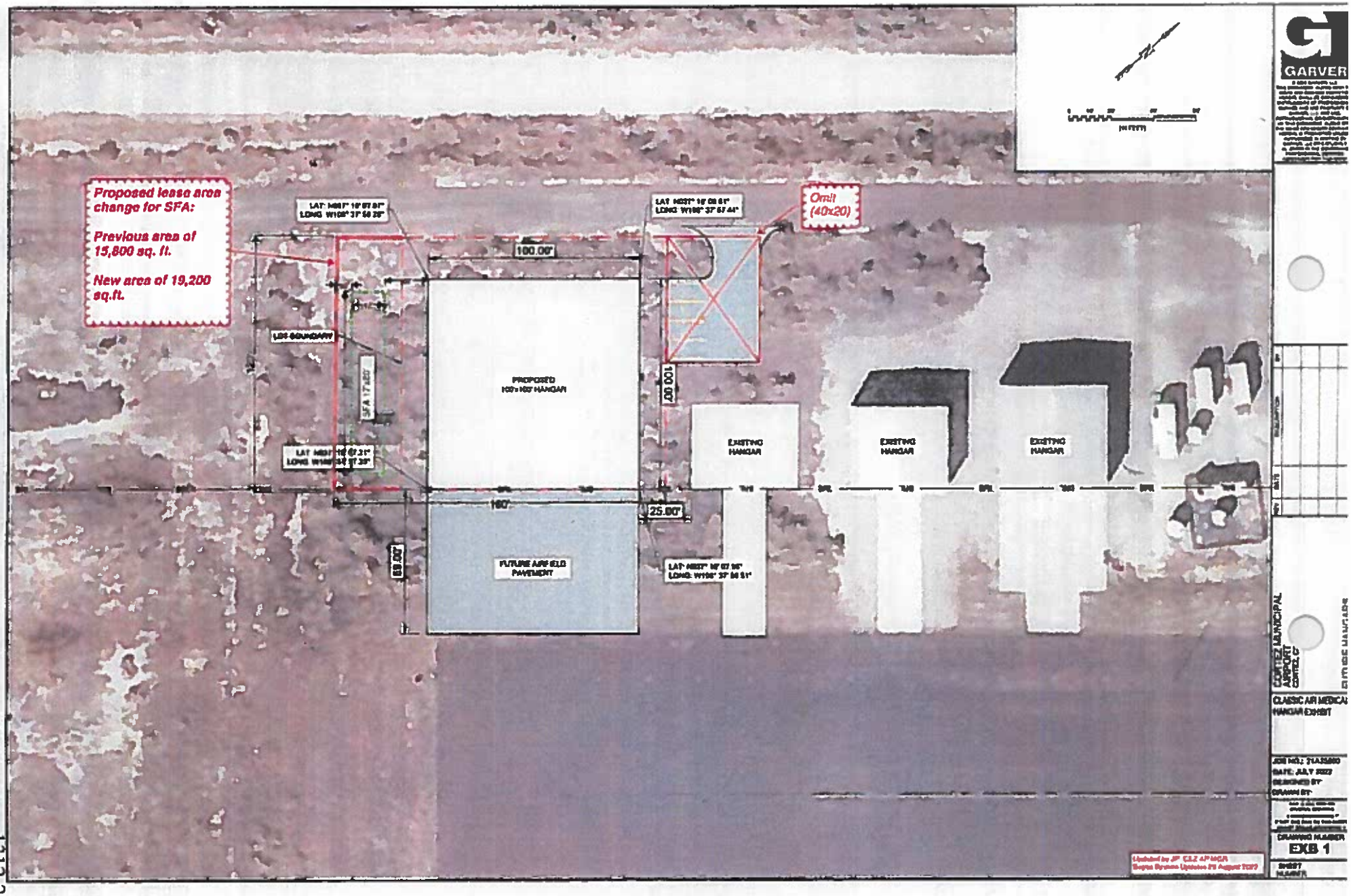
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY: _____
Mayor Rachel B. Medina
123 Roger Smith Avenue
Cortez, CO 81321

CLASSIC: _____
Address: _____

ATTEST: _____
City Clerk

ATTEST:



1312-2022

Exhibit 1