

RESOLUTION NO. 30-1990

CONSENTING TO THE ASSUMPTION BY METROFLIGHT, INC. OF THE RIGHTS, DUTIES AND OBLIGATIONS OF CHAPARRAL AIRLINES, INC. UNDER THAT CERTAIN SPECIAL FACILITIES LEASE AGREEMENT, DATED AS OF OCTOBER 1, 1982, BETWEEN THE CITY OF ABILENE AND CHAPARRAL AIRLINES, INC.; APPROVING THE FORM OF ASSUMPTION AGREEMENT; AND RESOLVING OTHER MATTERS RELATED THERETO

WHEREAS, on October 28, 1982, the City Council of the City of Abilene, Texas (the "City") adopted an "Ordinance Authorizing the Issuance of City of Abilene, Texas Airport Special Facilities Revenue Bonds, Series 1982 (Chaparral Airlines)" (the "1982 Ordinance"); and

WHEREAS, pursuant to the 1982 Ordinance, the City issued its Airport Special Facilities Revenue Bonds, Series 1982, in the aggregate principal amount of \$1,100,000 (the "Series 1982 Bonds") for the purpose of constructing a hanger and related facilities (the "Facilities") for use by Chaparral Airlines, Inc. ("Chaparral"); and

WHEREAS, Chaparral is a wholly owned subsidiary of Metro Airlines, Inc. ("Metro"); and

WHEREAS, in consideration for the issuance of the Series 1982 Bonds, Chaparral agreed to lease the Facilities from the City pursuant to the terms of a "Special Facilities Lease Agreement" between the City and Chaparral, dated as of October 1, 1982 (the "Lease"); and

WHEREAS, the Lease restricts the ability of Chaparral to dissolve or otherwise dispose of substantially all of its assets, except to the extent permitted by Section 2 of Article VI of the Lease; and

WHEREAS, the City has received notice from Chaparral that it intends to merge with and into Metroflight, Inc., a Delaware corporation ("Metroflight") and a wholly owned subsidiary of Metro, with Metroflight as the surviving corporation; and

WHEREAS, pursuant to the Lease, an assumption agreement has been presented to the City, in substantially the form attached hereto as Exhibit "A" and made a part hereof for all purposes (the "Assumption Agreement"), evidencing Metroflight's assumption of the terms, conditions, covenants, duties, obligations, liabilities, responsibilities and agreements of whatsoever kind and character required to be kept, performed and fulfilled by Chaparral under the Lease; and

WHEREAS, the City finds it necessary and advisable to adopt this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE:

Section 1. That the City does hereby consent to the merger of Chaparral into Metroflight, with Metroflight as the surviving corporation.

Section 2. That the Assumption Agreement, as executed by Metroflight, is hereby accepted, and further that the City acknowledges and approves the assumption by Metroflight of the terms, conditions, covenants, duties, obligations, liabilities, responsibilities and agreements of whatsoever kind and character required to be kept, performed and fulfilled by Chaparral under the Lease, including, but not by way of limitation, the duty to make all "Rent Payments" (as defined in the Lease) and the covenant to indemnify, inter alia, the City, as set forth in Section 7 of Article VI of the Lease.

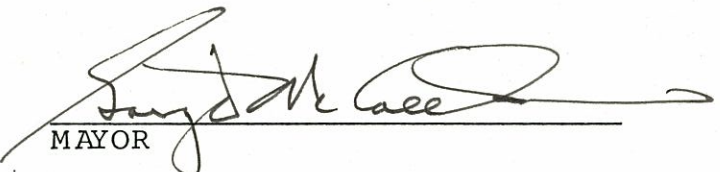
Section 3. That except for the aforesaid assumption by Metroflight, the Lease shall not otherwise be deemed to have been altered or amended, and the Lease remains in full force and effect.

Section 4. That this Resolution shall become effective upon its adoption.

ADOPTED this 9 day of August, 1990.

ATTEST:

  
\_\_\_\_\_  
CITY SECRETARY

  
\_\_\_\_\_  
MAYOR

APPROVED:


  
\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT "A"

ASSUMPTION AGREEMENT

This Assumption Agreement is made this 1st day of September, 1990 by Metroflight, Inc., a Delaware corporation and a wholly owned subsidiary of Metro Airlines, Inc. ("Metroflight").

WHEREAS, Metroflight and Chaparral Airlines, Inc. ("Chaparral") have executed an Agreement and Plan of Merger pursuant to which Chaparral will merge with and into Metroflight and will thereafter cease to exist as a corporate entity (the "Merger"); and

WHEREAS, the Special Facilities Lease Agreement between the City of Abilene and Chaparral dated as of October 1, 1982 (the "Agreement") states that the surviving corporation in a merger in which the Lessee is a party shall assume in writing all of the obligations of the Lessee under the Agreement; and

WHEREAS, in accordance with the Agreement, Metroflight desires to assume all of the duties, obligations and liabilities of Chaparral under the Agreement;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained in the Agreement and Plan of Merger between Chaparral and Metroflight, Metroflight hereby assumes and agrees to keep, perform and fulfill each and all of the terms, conditions, covenants, duties, obligations, liabilities, responsibilities and agreements of whatsoever kind and character required to be kept, performed and fulfilled by Chaparral under the Agreement arising from and after the effective date of the Merger.

RESOLVED FURTHER, that Metroflight represents that after the Merger, Metroflight will have net assets and capital (both paid in and surplus) at least equal to the net assets and capital of Chaparral as of October 1, 1982 and that Metroflight is qualified to do business in Texas.

Executed as of the date first written above.

METROFLIGHT, INC.

By: 

J. Jeffrey Spear,  
President and  
Chief Executive Officer

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