ORDINANCE NO. _____

SERIES OF 2011

COUNCIL BILL NO. _____

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Sixth Amendment to Agreement between the City and County of Denver and Ciara Dawn, LLC, concerning a concession at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Sixth Amendment to Agreement between the City and County of Denver and Ciara Dawn, LLC in the words and figures contained and set forth in that form of the Agreement filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, on the 26th day of May, 2011, City Clerk's Filing No. 94-052-F is hereby approved.

COMMITTEE APPROVAL DATE: May 20, 2011

MAYOR-COUNCIL DATE: May 24, 2011

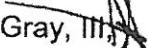PASSED BY THE COUNCIL _____ 2011

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2011

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2011 _____ 2011

PREPARED BY: George "Skip" Gray, III   DATE: May 26, 2011

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

David W. Broadwell, City Attorney

BY: _____, _____City Attorney

DATE: May 26, 2011

SIXTH AMENDMENT TO AGREEMENT

THIS SIXTH AMENDMENT TO AGREEMENT is made and entered into this _____ day of _____, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and **CIARA DAWN, LLC**, a Colorado limited liability company ("Concessionaire"), dba **Steak Escape**, Party of the Second Part.

WITNESSETH:

WHEREAS, the Parties hereto entered into an Agreement dated February 18, 1994 (AC38046), as amended (collectively the "Original Agreement") for the operation of a concession at Denver International Airport, which expired February 28, 2011; and

WHEREAS, because it is in the City's best interest to avoid interrupting services to the traveling public after the Original Agreement expires, Concessionaire agreed and the City authorized Concessionaire to continue to operate its concession under the holdover provision of the Original Agreement while the City completes the process of competitively soliciting proposals for this location; and

WHEREAS, as Concessionaire has agreed to continue its operation for the City's benefit, the City has offered to eliminate the 150% holdover fee due under the holdover provision and both Parties agree to give each other no less than thirty (30) days notice before terminating Concessionaire's tenancy and vacating the space.

NOW, THEREFORE, for the foregoing reasons and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Original Agreement as follows:

1.   Effective as of February 28, 2011, Section 4.03, Holding Over, of the Original Agreement hereby is amended by deleting it entirely and replacing it with the following:

4.03.   HOLDING OVER

Holding Over. If Concessionaire holds over after the Agreement expires or after any earlier termination of this Agreement as herein provided, and the City and Concessionaire have not otherwise agreed, in writing, to the terms and provisions of such holding over, thereafter Concessionaire's tenancy shall be deemed by the City to be month-to-month and Concessionaire shall remain bound by all terms, conditions, covenants, and agreements hereof and shall continue to pay the monthly compensation in effect as of the final month of the expiration of this Agreement.

Tenancy. Concessionaire and the City agree that the tenancy shall be month-to-month and may be terminated at any time by thirty (30) days prior written notice from either Party to the other. Concessionaire recognizes that this permission to holdover is not a lease; it is only

temporary and it shall not obligate the City subsequently to enter into a license, lease or any other such agreement with the Concessionaire.

No Right to Holdover. Nothing herein shall be construed to give Concessionaire the right to hold over at any time, and the City (after "Due Notice"), may exercise any and all remedies at law or in equity to recover possession of the Concession Space, as well as any damages incurred by City on account of such holding over. In such event, the City shall deem Concessionaire's tenancy to be at sufferance and thereafter may take immediate action to evict Concessionaire without further notice and may otherwise exercise any other rights and remedies available to the City at law or in equity.

2.   Except as modified or revised herein, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein and the Original Agreement hereby is revived, confirmed and ratified in all respects.

3.   This Sixth Amendment to Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by City Council, if required, and fully executed by all signatories of the City and County of Denver.

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[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties hereto have caused this Sixth Amendment to Agreement to be executed as of the date first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By _____

STEPHANIE Y. O'MALLEY, Clerk and
Recorder, ex-Officio Clerk of the
City and County of Denver

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

DAVID R. FINE, Attorney for the
City and County of Denver

By _____

By _____

By _____
Manager of Aviation

Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By

_____
Manager of Finance
Contract Control AC38046-6

By

_____
Auditor

Party of the First Part

ATTEST:

CIARA DAWN, LLC

By _Jose Guardado_

By _E Mitty Hale_

General Manager
Title

Business Manager
Title

Party of the Second Part