

Agreement Between: **Owner and Contractor**  
Contract Type: **where the basis for Payment is a Stipulated Sum**

Document No. **OCSS101**

Page 1 of 7

AGREEMENT made as of the 12th day of July  
in the year of 2011  
(In words, indicate day, month and year)

BETWEEN the Owner:  
(Name, address and other information)

Vap Sunshine, LLC  
1190 Bay Drive  
Sanibel, FL 33957  
Attn: York Shulze

and the Contractor:  
(Name, address and other information)

CCI Builders & Developers, Inc  
301 Grant Street  
East Rochester, NY 14445

The Project is:  
(Name and location)

VAPIANO MIAMI  
Vapiano Restaurant  
1221 Brickel Ave  
Miami, Florida

The Architect is:  
(Name, address and other information)

Studio X Architects  
3250 NE 1st Ave  
Suite 305  
Miami, FL 33137

The Owner and Contractor agree as follows.

**TABLE OF ARTICLES**

- 1 THE CONTRACT DOCUMENTS
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**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; all of which form the the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contact Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date will be fixed in a Notice to Proceed

If, prior to the commencement of the Work, the Owner requires time to file mortgages, and other security interests, the Owner's time requirement shall be as follows:

Refer to Addendum A titled "Commencement and Completion" which is attached hereto and made part of this agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Ninety Eight ( 98) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

**Portion of the Work**

**Substantial Completion Date**

,subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for early completion of the Work.)

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Refer to Addendum B titled "Liquidated Damages" which is attached hereto and made part of this agreement

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **Six Hundred Two Thousand One Hundred Dollars (\$ 602,100.00 )**, subject to additions and deductions provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the number of other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the for each and the date when that amount expires.)

§ 4.3 Unit prices, if any, are as follows: (Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

<b>Item</b>	<b>Units and Limitations</b>	<b>Price Per Unit (\$0.00)</b>
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§ 4.4 Allowances included in the Contract Sum, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

<b>Item</b>	<b>Price</b>
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**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contactor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or as follows:

Refer to Addendum D titled "Application for Payment" which shall modify Section 5.1.3 and is attached hereto and made part of this agreement.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 15 day of a month, The Owner shall make payment to the certified amount to the Contractor not later than the 30th day of the Same month. If an Application for Payment is received by the Architect after the application date fixed above, payments shall be made by the Owner not later than Fifteen ( 15 ) days after the Architect receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Application for Payment.

§ 5.1.5 Application for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent( 10 %). Pending final determination of the cost to the Owner of changes in the work, amounts not in dispute shall be included as provided in Section 7.3.9 of Document GCC201.
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent ( 10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of Document GCC201.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Section 9.8.5 of Document GCC201 requires release of applicable retainage upon substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of Document GCC201.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 The Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of Document GCC201, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 A final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of document GCC201, unless the parties appoint below another individual, not party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

**§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of document GCC201, the method of binding dispute resolution shall be as follows: (Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- X Arbitration pursuant to Section 15.4 of document GCC201
- Litigation in a court of competent jurisdiction
- Other: (Specify)

**ARTICLE 7 TERMINATION OR SUSPENSION**

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of Document GCC201.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of GCC201.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of GCC201 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)

5% per annum, simple interest.

§ 8.3 The Owner's representative is:  
(Name, address and other information)

C. Chloe Keidaish, AIA  
Studio Architects

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§ 8.4 The Contractor's representative is:  
(Name, address and other information)

Michael P. Shane  
CCI Builders & Developers, Inc.

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

A) Refer to Addendum E titled "Other Provisions" which are attached and made part of this agreement. B) Refer to Addendum 1, Add/Alternates which is attached and part of this agreement

Vapiano Supplemental GC Instructions are made part of this Contract

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed Document 101, Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Refer to Addendum F		

Agreement Between: **Owner and Contractor**  
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§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Document E201, Digital Data Protocol Exhibit, if completed by the parties, or the following:

Addendum G Work Not Included is attached hereto and made part of this Contract

- .2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. GCC201 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Refer to Addendum I "Additional Enumeration of Contract Documents in A101 Section 9.1:

#### ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of document GCC201. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of document GCC201.)

**Type of Insurance or Bond**

**Limit of Liability or Bond Amount (\$0.00)**

This Agreement entered into as of the day and year first written above.

Owner (Signature)

Contractor (Signature)

Vapiano Miami York Schuler, President  
(Printed Name & Title)

Michael P. Shave - President  
(Printed Name & Title)

VAP Sunshine LLC

**ADDENDUM**  
**A101 - Standard Form of Agreement between**  
**Owner and Contractor**

**PROJECT**  
**VAPIANO MIAMI**  
Vapiano Restaurant  
1221 Brickel Ave  
Miami, Florida

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

Addendum A: Commencement and Completion

The work shall officially commence at the time the notice to proceed document is authored and distributed. The notice to proceed will be issued when the demolition permit has been obtained. Building Permit and Board Of Health Approval is required within 3 weeks of demolition permit. Construction completion and turnover to the Owner shall be Fourteen (14) weeks after the official commencement date. If the Building or Health approval is delayed beyond 3 weeks from Demo Permit, a day for day extension will be added to the completion date. The Demolition Permit will be secured no later than July 22, 2011. The anticipated Building Permit will be secured no later than August 5, 2011.

, subject to adjustments of this Contract Time as provided in the Contract Documents. (Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

Addendum B: Liquidated Damages

Contractor understands that if the work is not completed within the Contract Time, Owner will suffer substantial damages. Contractor acknowledges that any liquidated damages payable to Owner are reasonable and appropriate in light of the probable actual damages to Owner in the event of non-performance by Contractor. Contractor agrees to and hereby does waive any defenses to the validity or enforceability of any liquidated damages payable under the Contract Documents. Therefore, the following delay liquidated damages shall be payable by Contractor to Owner. Contractor agrees that if Substantial Completion, including without limitation the issuance of the Certificate of Occupancy, is not achieved within the Contract Time, Contractor shall pay liquidated damages in the amount of \$1,500.00 for each day by which Substantial Completion is delayed beyond the Contract Time.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Addendum 1: Add/Alternates: Below is a summary of the Add/Alternates which will be issued under change order number one.

Credit for the A/V Security Wiring (\$7,500.00)  
Add for Window Sills; \$5,200.00  
Add for electric to patio tables outside: \$4,200.00  
Builders Risk Policy: \$14,000.00

Total Add/Alternates: \$15,900.00.

4.3 Unit prices, if any, are as follows:

5.1.2 The period covered by each Contractors Application for Payment shall be one calendar month ending on the last day of the month or as follows:

Addendum D: Application for Payment

Based upon Applications for Payments, including the Schedule of Values breakdown with each payment application, the Contractor will submit the entire application including all supporting documentation, submitted to the Owner and the Architect by the Contractor and Certificates for payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

Provided that an Application for Payment, submitted via G702/G703, is received by the Architect not later than the 15th day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment. Upon signing of the Contract by Owner and Contractor, the Contractor shall receive an initial draw of 5% of the Contract Sum, Thereafter, Contractor shall receive payment only in accordance with the Contract Documents.

A 7 : 6 / 8.6 Other Provisions:



# **ADDENDUM**

## **A101 - Standard Form of Agreement between Owner and Contractor**

### **PROJECT**

#### **VAPIANO MIAMI**

Vapiano Restaurant  
1221 Brickell Ave  
Miami, Florida

#### Addendum E: Other Provisions

-Change Order Statement: No change orders other than changes due to city/county review, discovery of concealed conditions, landlord required changes, official building department or building authority requirements, or Owner requested changes shall be accepted. Change orders must be signed and approved before work is performed, otherwise expressly not authorized.

Prior to commencement of work under the Contract, and until completion and final acceptance of the work, or longer if applicable, Contractor shall maintain the following insurance.

1) Workers Compensation and Employer's Liability coverage with limits of at least \$1,000,000

2) Commercial General Liability (CGL) coverage in the amount of at least \$1,000,000 per occurrence and \$5,000,000 aggregate, provided the annual aggregate will apply separately to claims occurring with respect to this project. Vapiano International LLC, Vap Sunshine LLC Vap Brickell LLC, Todd Jarvis, FL-1221 Brickell L.L.C. (Landlord), shall be named as additional insureds on the CGL.

3) Commercial Umbrella coverage with limits of at least \$5,000,000 per occurrence and \$5,000,000 aggregate

(4) Business Auto Liability coverage with coverage for liability arising out of all owned, leased, hired and non-owned automobiles with limits of at least \$1,000,000; and

(5) Builder's Risk coverage with limits of at least \$2,500,000, including soft cost coverage (e.g., delayed opening expenses, loss of business income). The Builder's Risk policy shall cover wind damage with a deductible of no more than \$75,000.00 and shall cover loss of business income in the amount of at least \$500,000.

Contractor shall maintain CGL coverage for itself and all additional insureds for the duration of the Project and maintain completed operations coverage for itself and all additional insureds for at least four years after completion of the Work. Commercial Umbrella, Business Auto Liability and Builder's Risk coverage shall include as additional insureds all persons and entities that are additional insureds on the CGL. All coverage for additional insureds required herein shall apply as primary and non-contributing before any other insurance maintained by or provided to the additional insureds.

#### **A 8:1:5 / 9.1.5 The Drawings:**

##### Addendum F: Index of Drawings

The following drawings dated 5-4-2011: COV, A0.1, A0.2, A0.3, A1.0, A1.1, A1.2, A1.3, A1.4, A2.0, A2.1, A2.2, A2.3, A2.4, A3.0, A3.1, A3.2, A3.3, A3.4, A3.5 A4.0, A4.1, A5.0, A6.0, A6.1, A6.2, A7.0, A7.1, A7.2, A7.3, A7.4, A8.0, A8.1, A8.2, SPEC.1, SPEC.2

The following drawings dated 5-27-2011: FS-1.0, FS-1.1, FS-2.0, FS-2.1, FS-3.0, FS-3.1, FS-4.0, FS-4.1, FS-5.0, FS-6.0, FS-6.1

The following dated 5-4-2011: S1.0, S2.0, S3.0, S4.0

The following dated 5-31-2011: M1, M2, M3, M4, M5, M6, M7, M8, FP1, P1, P2, P3, P4, P5, E1, E2, E34, E4, E5, E6, E7, E8

#### **A 8:1:6 / 9.1.6 The Addenda if any, are as follows:**

# **ADDENDUM**

## **A101 - Standard Form of Agreement between Owner and Contractor**

**PROJECT**  
**VAPIANO MIAMI**  
Vapiano Restaurant  
1221 Brickel Ave  
Miami, Florida

Addendum H: Modifications to AIA A201-2007 General Conditions of the Contract for Construction

Owner and Contractor hereby modify AIA A201-2007 as follows:

Section 3.2.2: Insert "or that should have been discovered" after the word "discovered" in the second sentence of Section 3.2.2.

Section 3.2.3: Insert "or that should have been discovered" after the word "discovered" in the first sentence of 3.2.3.

Section 8.3.1: Delete "labor disputes", from Section 8.3.1.

Section 15.1.6: Delete Section 15.1.6 in its entirety.

Section 15.4.4: Insert a new Section 15.4.4 as follows: The prevailing party, as determined by the arbitrator(s), shall be entitled to an award of reasonable attorneys' fees, expenses and costs.

Section 16:

Insert new section 16 as follows:

16.1: Contractor shall be responsible for all labor relations matters relating to its performance of the Work and shall at all times maintain Project-wide labor peace and harmony among and between its personnel, its subcontractors, the Owner and the Owner's other contractors in connection with the project.

Contractor shall use, and shall cause its Subcontractors to use, best efforts and judgment as experienced contractors to adopt and implement policies and practices designed to avoid protests, picketing, work stoppages, slowdowns, disruptions, disputes and strikes in connection with any labor condition.

Contractor agrees and acknowledges that the Contract Sum includes amounts for the maintenance of labor peace and labor harmony and that, after considering potential labor conditions that could affect the performance of the work, contractor represents and warrants that it is able to perform the Work within the Contract Time and for the Contract Sum

&16.2: Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute which may materially affect the performance of the Work.

&16.3: Owner may, at its sole option, terminate Contractor for cause pursuant to section 14.2 for any of the following reasons:

(i) If any labor condition threatens the timely completion of any portion of the Work and Contractor fails to give assurances satisfactory to the Owner of Contractor's ability to complete the Work within the Contract Time;

(ii) Contractor fails to employ labor that is compatible and in peace and harmony with other labor employed in connection with the Project; or

(iii) Contractor fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, work stoppage, slowdown or disruption caused by a labor dispute, wheather involving Contractor's labor or otherwise.

&16.4: If any labor condition threatens the timely completion of the Work, Owner may, at its sole discretion, in addition to or in lieu of the remedies permitted by Section 16.3, employ contractor's other than Contractor to perform any work affected by the labor condition and backcharge Contractor the costs thereof.

&16.5: Contractor shall not be entitled to additional compensation or time due to its failure to perform its obligations regarding labor conditions as required by the Contract Documents and shall hereby waive all claims relating to Contractors obligations regarding labor peace and harmony for additional compensation including but not limited to extended overhead, delay, home office overhead, acceleration or loss of efficiency, and for additional time to complete the Work.

### **A 8.1.7 / 9.1.7.2 Other Document:**

Addendum I: Additional Enumeration of Contract Documents in A101 Section 9.1:

9.1.2: The General Conditions are AIA Document A201 – 2007, General Conditions of the Contract for Construction, as modified. All references in the Contract to "GCC201" shall refer to the General Conditions.

### **A 9.1.7 Additional documents, if any, forming part of the Contract Documents:**

# **ADDENDUM**

## **A101 - Standard Form of Agreement between Owner and Contractor**

### **PROJECT**

### **VAPIANO MIAMI**

Vapiano Restaurant  
1221 Brickel Ave  
Miami, Florida

#### **Addendum G: Work Not Included:**

Millwork (including installation and sneezeguard), Asbestos Removal, Eco-Grip Flooring, Signage, Kitchen Equipment (but Contractor is responsible for the plumbing and electrical hookup of all Kitchen Equipment), Cost of Building Permit All Utility Charges and Fees, Point of Sales.

Payment of Subcontractors and Suppliers; Disbursement of Funds: Owner May pay subcontractors or suppliers directly and amounts so paid shall be applied to Owner's payment obligations to Contractor.

Payment Applications: Owner may, at any time, take reasonable exception to all or part of any payment application submitted by Contractor and may thereafter withhold the excepted amounts from future payments due Contractor. Among other reasons, Owner may decide not to pay and may withhold payment of any part of payment application for following reasons: 1) defective work not remedied by Contractor 2) Third party claims filed pertaining to work performed by Contractor 3) Failure of Contractor to make prompt payments to subcontractors/suppliers

4) Damage to Owner, 5) Reasonable evidence that Contractor's work will not be completed within the required completion dates, 6) Persistent failure by Contractor to carry out the work in accordance with the provisions of the Contract Documents, 7) Request for payments that exceed the value of work, 8) Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.

Chargebacks: Owner shall have the right to charge back against the Contractor, and deduct from any payments due Contractor pursuant to the Contract, all amounts incurred by Owner as a result of any failure by Contractor to comply with the terms of this Contract or as a result of any negligence or unsatisfactory work by Contractor, including but not limited to all costs incurred by Owner to correct defective work and all amounts paid by Owner to any subcontractor or supplier as a result of Contractor's failure to make payment to such person or entity.

Partial Lien Waiver: As a condition precedent to the receipt of any progress payments, Contractor shall submit to Owner a fully completed and signed partial lien and claim waiver in the form of Exhibit One (1) as well as similar lien and claim waivers from all Subcontractors and suppliers whose work is included in the corresponding Application for Payment.

Acceptance of any payment by Contractor, Subcontractor or Material supplier shall constitute a waiver of claims against the Owner by that payee for work, labor, materials, services supplied to the project through the date of the application for payment, except those claims previously made in writing and identified by that payee on the lien waiver form as unsettled at the time of the Application for Payment.

Final Payment Application: As part of the requirements of the Contract Documents, Section 9.10.2 of A201-2007, as modified, in addition to the requirements listed therein, Contractor shall submit to Owner, as a condition precedent to final payment and any remaining retainage becoming due Contractor, a full and final lien and claim waiver in the form of Exhibit Two (2) as well as similar full and final lien and claim waivers from all Subcontractors and suppliers and, where appropriate, lower-tier subcontractors or suppliers.

Prorate development fees, power connections, sewer connections, meter tap and gas service fees are to be paid by Owner. The Owner shall pay for the Building and Board of Health permits.

Close-out Documentation: Landlord Requirements: The Project is located in leased premises under a lease (the "Lease") in which Owner or another entity established or to be established to own and/or operate the Project as owner or franchisee is or will be the tenant. In the Contract, the term "Tenant" refers to the tenant under the Lease and the term "Landlord" refers to the landlord under the Lease. As part of the Lease and/or a Tenant improvement agreement ("Tenant Improvement Agreement") between Tenant and Landlord, Tenant and Landlord have agreed to certain requirements and conditions applying to the Work. To that end, Tenant and Landlord may have architectural, engineering and other consultants or representatives observing the Work to ensure that the Work will and does comply with the Lease and/or the Tenant Improvement Agreement.

The Contractor shall comply, and shall perform the Work in accordance, with all the conditions and requirements in the Lease and/or the Tenant Improvement Agreement (in addition to all the requirements of the Contract Documents), including without limitation all required approvals, testing and documentation. Contractor shall coordinate its Work with the Tenant, Landlord and their respective consultants and representatives in order to ensure that the Work complies, and is performed in accordance, with the Lease and/or the Tenant Improvement Agreement.

Owner and Contractor acknowledge that the Lease and/or Tenant Improvement Agreement are available for Contractor's review and Contractor has been given an opportunity to review and copy all portions of the Lease and/or Tenant Improvement Agreement applicable to the Work.

Without limiting the foregoing, Contractor, promptly after Owner's request, shall complete, sign and notarize, as applicable, all documents requested by Owner and related to the close-out of the Project, including but not limited to documents pertaining to the Work that must be completed in connection with the Lease and/or Tenant Improvement Agreement and documents required by any financial institution with an interest in the Project.

Construction Schedule: Without limiting any of the requirements of General Conditions, Section 3.10 or any other provision of the Contract, the construction schedule that Contractor is required to prepare and submit in accordance with General Conditions, Section 3.10 shall be prepared in a format approved by Owner and shall indicate the dates for the starting and completion of the various stages, including the placing of material orders, delivery of materials and equipment, submission of shop drawings, processing of shop drawings, and all work activities by day and week.

## **ADDENDUM**

### **A101 - Standard Form of Agreement between Owner and Contractor**

#### **PROJECT**

#### **VAPIANO MIAMI**

Vapiano Restaurant  
1221 Brickel Ave  
Miami, Florida

Licensing Requirements: The Contractor shall obtain and maintain as applicable all state and local licenses, approvals, certifications, registrations and similar requirements for the Work in the location of the Project. The Contractor shall defend, indemnify and hold Owner harmless from and against any and all claims, damages, penalties, delays, violations, losses and expenses of whatever kind or nature, including but not limited to attorneys' fees, expert fees and related costs arising from or relating to Contractor's and/or its qualifying agent's failure to obtain, maintain or comply with all the requirements of all state and local licenses, approvals, certifications, registrations and similar requirements for the Work in the location of the Project, including without limitation all the requirements and obligations of Fla. Stat. §§ 489.101 – 489.146.

**PARTIAL WAIVER OF LIEN  
Exhibit One**

THE UNDERSIGNED, CCI Builders & Developers, Inc ("Contractor") has been paid and has received a progress payment in the sum totaling \$ \_\_\_\_\_ for labor, services, equipment, material furnished to Vap Sunshine LLC ("Owner") on the job of: Vapiano Restaurant ("Project") located at 1221 Brickell Avenue, Miami, Florida 33131 ("Property")

Contract: July 12, 2011 Agreement Between Owner and Contractor ("Contract")

Through the Period Ending:

Contractor through its undersigned authorized representative, and on behalf of itself and its employees and subcontractors, sub-subcontractors and suppliers, hereby waives and releases (1) all rights to and claims under any mechanic's lien and similar statutes under the laws of the state where the Project is located; (2) any stop notice or rights and claims under any payment, performance or other bond relating to the Project; and (3) any and all claims, causes of action, suits, damages, judgments and demands of any kind, whether known or unknown, against Owner, Owner's bonding company, the Property, Jones Lang LaSalle, FL-1221 (Landlord) and Owner's respective directors, officers, principals, employees, agents, insurers, subsidiaries, parents and related companies, including but not limited to Vapiano International, LLC, and successors and assigns of any of them, arising out of or in any way relating to the Project, the Contract or the performance of work or services at the Property up through and including the period covered by this partial Waiver of Lien, except for retention and those unresolved claims for which Contractor has complied with the notice requirements of the Contract and only to the extent specifically identified as follows:

Contractor, through its undersigned authorized representative hereby certifies that (1) it has paid all amounts due and owing to its subcontractors, sub-subcontractors and suppliers, including any and all applicable federal, state and local sales, use, excise or similar taxes or import duties, licenses and royalties for all periods covered by previous payments from Owner, and (2) there are no claims of any kind by such subcontractors, sub-subcontractors or suppliers arising out of or relating to work performed or materials furnished for the Property or the Project.

Acknowledged by and agreed to by Contractor, through its undersigned authorized representative.

[Company Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

County of \_\_\_\_\_  
State of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Notary Public

**FINAL WAIVER OF LIEN**  
**Exhibit Two**

The undersigned ("Contractor") has been paid in full for all labor, services, equipment,  
or material furnished to: Vap Sunshine, LLC ("Owner")  
on the job of: Vapiano Restaurant  
("Project")  
located at: 1221 Brickell Avenue  
Miami, Florida 33131 ("Property")

Contract: July 12, 2011 Agreement Between Owner and Contractor ("Contract")

Contractor, through its undersigned authorized representative, and on behalf of itself and its employees and its subcontractors, sub-subcontractors and suppliers, hereby waives and releases (1) all rights to and claims under any mechanic's lien and similar statutes of the state where the Project is located; (2) all rights and claims under any payment, performance or other bond relating to the Project; and (3) any and all claims, causes of action, suits, damages, judgments and demands of any kind, whether known or unknown, against Owner, Owner's bonding company, the Property, Jones Lang LaSalle, FL-1221 (Landlord) and Owner's respective directors, officers, principals, employees, agents, insurers, subsidiaries, parents and related companies, including but not limited to Vapiano International, LLC, and successors and assigns of any of them, arising out of or in any way relating to the Project, the Contract or the performance of work or services at the Property.

Contractor, through its undersigned authorized representative hereby certifies that (1) it has paid all amounts due and owing to its subcontractors, sub-subcontractors and suppliers, including any and all applicable federal, state and local sales, use, excise or similar taxes or import duties, licenses and royalties, and (2) there are no claims of any kind by such subcontractors, sub-subcontractors or suppliers arising out of or relating to work performed or materials furnished for the Property or the Project.

CCI Builders & Developers, Inc.  
[Company Name]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

County of \_\_\_\_\_  
State of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
Notary Public

# CHANGE ORDER FORM

CAP701

**Change Order Number:** 01  
**Change Order Date:** 7/24/2011

**To:**

Vap Sunshine, LLC  
1190 Bay Drive  
Sanibel, FL 33957  
Attn: York Shulze

Architect's Project Number:

**Contract for:** Vapiano, 1221 Brickell Ave, Miami FL  
**Contract Date:** 7/12/2011

**From:**

CCI Builders & Developers, Inc  
301 Grant Street  
East Rochester, NY 14445

Our Project Code: **VAPIANO MIAMI**

**Project:**

Vapiano  
1221 Brickell Avenue  
Miami, FL 33131

Original Contract Sum:	\$602,100.00
Previous Change Orders:	\$0.00
Contract Sum:	\$602,100.00
Value of this Change Order:	\$14,000.00
New Contract Sum:	\$616,100.00

**DISTRIBUTE TO:**

<input checked="" type="checkbox"/> Owner	<input checked="" type="checkbox"/> Contractor	<input type="checkbox"/> Other
<input checked="" type="checkbox"/> Architect	<input type="checkbox"/> Field	<input type="checkbox"/> Construction Manager

The Contract Completion date will change by:

The expected completion date will be: / /

**The Contract is Changed as Follows:**

Provide Builder's Risk Insurance with seventy five thousand dollars (\$75,000.00) deductible.

**Architect**

Studio X Architects  
3250 NE 1st Ave, Suite 305  
Miami, Florida 33137

Signature

Date

**Contractor**

CCI Builders & Developers, Inc  
301 Grant Street  
East Rochester, NY 14445

Signature

Date

**Owner**

Vap Sunshine, LLC  
1190 Bay Drive  
Sanibel, FL 33957

Signature

Date

# APPLICATION FOR PAYMENT

Application No.: Application Date: Period To: Contract Date:  
 1 JUL 18, 2011 JUL 18, 2011 JUL 12, 2011  
 Project Nos: \_\_\_\_\_  
 Distribution List:  Owner  Construction Mgr  
 Architect  Field  
 Contractor  Other

**PROJECT:**  
**VAPIANO MIAMI**  
 Vapiano  
 1221 Brickell Avenue  
 Miami, FL 33131  
**VIA ARCHITECT:**  
 Studio X Architects  
 3250 NE 1st Ave, Suite 305  
 Miami, FL 33137

**To:**  
 Vap Sunshine, LLC  
 1190 Bay Drive  
 Sanibel, FL 33957  
 Attn: York Shulze

**From Contractor:**  
 CCI Builders & Developers, Inc  
 301 Grant Street  
 East Rochester, NY 14445  
 Attn: Michael Shane

CONTRACT FOR: Vapiano, 1221 Brickell Ave, Miami FL

## Contractor's Application for Payment

Application is made for payment as shown below, with attached Continuation Sheet.

1. Original Contract Amount: \$ 602,100.00
2. Net of Change Orders: \$ 14,000.00
3. Net Amount of Contract: \$ 616,100.00
4. Total Completed & Stored to Date: \$ 44,105.00

5. Retainage Summary:
  - a. 10.00 % of Completed Work \$ 3,010.52
  - b. 10.00 % of Stored Material \$ 0.00
- Total Retainage: \$ 3,010.52
6. Total Completed Less Retainage: \$ 41,094.48
7. Less Previous Applications: \$ 0.00


8. Current Payment Due, This Application: \$ 41,094.48

9. Contract Balance (Including Retainage): \$ 575,005.52

CHANGE ORDER Activity	Additions	Subtractions
Total previously approved:	0.00	0.00
Total approved this Month:	14,000.00	0.00
Sub Totals:	14,000.00	0.00
<b>NET of Change Orders:</b>	<b>14,000.00</b>	

## CONTRACTOR'S CERTIFICATION:

The Contractor's signature here certifies that, to the best of their knowledge, this document accurately reflects the work completed in this Application for Payment. The Contractor also certifies that all payments have been made for work on previous Applications for Payment and also that the Current Payment is Due.

(Authorizing Signature)  Select: System, Setups, Company Setup

Date: JUL 18, 2011

State Authorized: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public: \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_

## ARCHITECT'S CERTIFICATION:

The Architect's signature here certifies that, based on their own observations, the Contract Documents and the information contained herein, this document accurately reflects the work completed in this Application for Payment. The Architect also certifies the Contractor is entitled to the amount certified for payment.

AMOUNT CERTIFIED: \_\_\_\_\_

(Architects Signature) \_\_\_\_\_ Date: \_\_\_\_\_



**APPLICATION FOR PAYMENT - CONTINUATION SHEET**

From:		To:		Project:		Application No: 1		
CCI Builders & Developers, Inc 301 Grant Street East Rochester, NY 14445 Attn: Michael Shane		Vap Sunshine, LLC 1190 Bay Drive Sanibel, FL 33957 Attn: York Shulze		VAPIANO MIAMI Vapiano 1221 Brickell Avenue Miami, FL 33131		Application Date: 7/18/2011 Period To: 7/18/2011 Contract Date: 7/12/2011 Architects Project#:		
A Item No	B Description of Work	C Contract Value	D Work Completed From Previous Application (D + E)	E Work Completed This Period	F Materials Presently Stored (Not In D or E)	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C - G)	I Retainage (If Variable Rate)
0100	General Requirements	85,350.00	0.00	4,267.50	0.00	4,267.50	81,082.50	426.75
0200	Existing Conditions	9,100.00	0.00	455.00	0.00	455.00	8,645.00	45.50
0300	Concrete	24,200.00	0.00	1,210.00	0.00	1,210.00	22,990.00	121.00
0500	Metals	39,152.00	0.00	1,957.60	0.00	1,957.60	37,194.40	195.76
0600	Wood & Plastic	25,880.00	0.00	1,294.00	0.00	1,294.00	24,586.00	129.40
0700	Thermal & Moisture Protection	9,800.00	0.00	490.00	0.00	490.00	9,310.00	49.00
0800	Openings	25,575.00	0.00	1,278.75	0.00	1,278.75	24,296.25	127.88
0900	Finishes	117,535.00	0.00	5,876.75	0.00	5,876.75	111,658.25	587.68
01000	Specialties	9,780.00	0.00	489.00	0.00	489.00	9,291.00	48.90
01200	Furnishings-Supplied by Owner	3,175.00	0.00	158.75	0.00	158.75	3,016.25	15.88
01400	Conveying	6,700.00	0.00	335.00	0.00	335.00	6,365.00	33.50
02100	Fire Suppression	22,853.00	0.00	1,142.65	0.00	1,142.65	21,710.35	114.27
02200	Plumbing	72,000.00	0.00	3,600.00	0.00	3,600.00	68,400.00	360.00
02300	HVAC	81,000.00	0.00	4,050.00	0.00	4,050.00	76,950.00	405.00
02600	Electrical	70,000.00	0.00	3,500.00	0.00	3,500.00	66,500.00	350.00
17	Builders Risk Insurance	14,000.00	0.00	14,000.00	0.00	14,000.00	0.00	0.00
		616,100.00	0.00	44,105.00	0.00	44,105.00	571,995.00	3,010.52