MEMO OF UNDERSTANDING (MOU) WITH THE GRADUATE STUDENT ASSOCIATION TO PROVIDE FOOD & BEVERAGE SERVICES AT HOUSING AND DINING SERVICES NEW GRADUATE STUDENT HOUSING FACILITY KNOWN AS “1 MIRAMAR STREET”,

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INTRODUCTION

Department of Housing and Dining Services (DH&DS) provides on campus housing and dining options for members of UC San Diego who choose to take part in these programs. As a member of the campus community, the DH&DS is constantly looking for opportunities to broaden its array of services available to our customers as well as supporting our students as a whole.
DH&DS was approached by The UCSD Graduate Student Association (GSA) to allow GSA to operate the planned retail operation to be included in our new 800 bed housing facility known as “1 Miramar Street”.

The following document will serve as the “Memo of Understanding” (MOU) to designate each party’s responsibilities.

Whereas the residents of 1 Miramar Street are expected to be graduate students and the UCSD Chancellor has authorized the GSA to serve as the governmental body for graduate students, therefore the GSA will not be charged rent on the retail space, utilities, or regular maintenance of the building or other costs already included in the DH&DS Project plan budget.

The GSA will identify a specific group to consult with DH&DS regarding the design, construction and furnishing of the retail space. DH&DS agrees to partner with GSA in the initial and continued development of a business plan, in purchasing and equipment, and in other matters regarding the operation of the retail space as requested by the GSA.

The GSA VP of Financial Affairs or other GSA designee the designated representative of DH&DS shall meet regularly to facilitate communication and address issues of mutual concern.

All Revenue generated by the retail space will be credited to the GSA account established with the UCSD Accounting Department for the purpose of administration of such revenues.

**Terms and Conditions:**

I. **GENERAL PROVISIONS**

   A. **Parties.** This MOU is between DH&DS and the GSA, currently a UCSD entity within Student Affairs, to provide food and beverage and sundries services at 1 Miramar Street according to the terms of this MOU and applicable UCSD policies such as PPM 510-1 relating to the use of University properties for commercial purposes by official units of the University of California.

   B. **Time Period/Options.** The term of this MOU shall be five (5) years from the date of signature; however, this MOU may be extended for succeeding five (5) year periods by the GSA. GSA shall exercise such an option by so notifying DH&DS in writing ninety (90) days prior to the expiration of the then existing term of this MOU. All provisions of this MOU shall continue to apply during each option period. The facility is currently scheduled to open July of 2007 with exact dates to be determined at a later date as the construction progresses. Conditions for termination are outlined later within this document.

   C. **Location/Assigned Area.** The DH&DS hereby grants to GSA the exclusive right to operate in their designated area (1 Miramar Street Café or alternative name to
be mutually agreed upon later by GSA and DH&DS) to provide food and beverage services within the scope of this MOU and applicable UCSD policies.

. **Approval to Operate.** The GSA will be responsible for gaining approval to conduct the retail activity under this MOU from the Vice Chancellor of Student Affairs (VCSA) and the Vice Chancellor of Business Affairs (VCBA). The DH&DS will partner with the GSA in initiating the request for these and any other approvals that may be required to provide food and beverage services at 1 Miramar Street.

II. **INSURANCE, LIABILITY AND LICENSES.**

. **Insurance.** The GSA, at its sole expense, shall acquire and maintain any and all insurance deemed necessary in such forms and limits with such carriers as required by the UCSD Risk Management Director. All written notices stated herein should be sent Registered U.S. Mail or hand carried to the Director of Housing and Dinning Services Office, or the GSA office, as applicable. In the event that GSA fails to acquire or maintain in force any insurance policies required under the terms of this MOU, DH&DS may terminate this MOU upon providing the GSA a written thirty (30) day notice, unless the GSA cures such default within the thirty (30) day notice period.

. **Reimbursement for costs of claims.** The GSA shall reimburse UCSD for any and all costs, expenses, or judgments arising from any and all liability, loss, expense (including reasonable attorney’s fees), arising from any law suits or claims related to the GSA’s activities at 1 Miramar Road. However, such reimbursement shall be only in proportion to and to the extent such liability, loss, expense, or attorney’s fees result from the negligent or intentional acts or omissions of the GSA, its officers, paid or unpaid personnel, or agents. UCSD shall defend, the GSA, its officers, paid or unpaid personnel, contractors, or agents from and against any and all liability. UCSD shall also reimburse the GSA for any loss, expense (including reasonable attorney’s fees), for claims for injury or damages caused by or resulting from the negligent or intentional acts or omissions of UCSD officials, employees or agents.

. **GSA Loss.** The GSA shall be solely liable for GSA purchased and furnished food and beverages, sundries and equipment specific to this MOU. Any damage or loss of property or product or loss of money resulting from vandalism or theft or any other cause is the sole responsibility of the GSA, unless such damage or loss arises or results from the negligent or willful misconduct of the DH&DS personnel, in which case responsibility for such damage or loss shall attach to DH&DS.

. **Licenses.** The GSA shall comply with all laws and UCSD policies applicable to commercial activities conducted at 1 Miramar Street as described in this MOU. At its sole expense, the GSA shall obtain any permit, license, or bond required to conduct the activities
permitted by this MOU. The GSA shall also be solely responsible for the payment of all taxes lawfully assessed in connection with its activities under this MOU.

- **Damages.** Reasonable wear and tear excepted, the GSA shall be responsible for the cost of repair or replacement from the loss or damage to any items furnished by the DH&DS and caused by the GSA’s negligence or willful misconduct.

- **Sales/Use Tax Assessment.** The GSA shall be responsible for the payment of any sales or use tax, including the California Use Tax, which is assessed on the sale of beverages and/or food and/or other items that may be sold under the terms of this MOU. GSA shall also reimburse DH&DS, the VCBA or VCSA for any such assessments and for all costs and expenses related thereto.

### III. PERFORMANCE STANDARDS

- **Overall Quality** As requested by the GSA, DH&DS and its appropriate committees as necessary will work with the GSA to provide any assistance possible to support the GSA’s efforts to maximum quality and quantity of beverages, food, sundries, and service products using existing DH&DS purchasing agreements.

- **Service Problems.** Service problems shall be anticipated and resolved within a reasonable time by GSA. The GSA management shall review problems on a daily basis and discuss and implement solutions to prevent recurrence and enable supervisory staff to react immediately. Problem indicators include but are not limited to: excessively long lines for sustained periods of time; bottlenecks causing gaps in the line; delays in production; products which are difficult to serve; running out of beverages or condiments; shortages of napkins, cups, etc. The DH&DS representative will also report service problems that come to its attention to the GSA for corrections within a reasonable time.

- **Sole Use.** GSA is the sole entity authorized to use the designated space for Retail services as described in this MOU. Sub-contracting the program to another entity without prior written consent of the DH&DS is not permitted.

- **Inspection.** DH&DS has the right to enter GSA’s area for the purpose of inspecting and evaluating the condition of the food and beverage services and facilities with respect to the quantity, quality, and production of all food items with respect to the safety, sanitation and maintenance of the facilities and equipment, all of which shall be maintained at levels satisfactory to DH&DS. DH&DS will provide the GSA 24 hours notice in advance of an inspection. All requested changes shall be directed in writing to the GSA.

- **Health and Safety.** The GSA’s area is subject to regular inspections by the UCSD Department of Environmental Health and Safety and must comply with all regulations with respect to health and safety/food sanitation. The GSA shall comply with all State and local regulations relating to food service and handling. The GSA shall conform with all the provisions
of the California Uniform Food Facilities Law (CURFFL) and to any requirements of the University's Office of Environmental Health and Safety. The GSA shall provide training to food service employees prior to commencement of work regarding proper food sanitation and food handling methods and requirements. The University's Office of Environmental Health and Safety shall approve these training materials and methods. The GSA may request to participate in any planned DH&DS food handling training programs at no charge to the GSA. The GSA is responsible for paying any and all charges related to EH&S inspections. The DH&DS and various campus agencies have the right to enter at any time in the case of an emergency.

F. Pest Control. The GSA will be responsible to provide extermination and pest control services on an as needed basis for the retail space by either a subcontractor approved in advance by the University's Office of Environmental Health and Safety or directly from that Office. Should the problem be not related to the operation of the facility, GSA will meet with their designated DH&DS representative to discuss and resolve the situation.

IV. PRICES AND MENU

. Food and Beverages. The GSA will select and furnish all food, beverages and condiments for the operation of its food and beverage service as well as any sundries that support the operation's economic success.

. Menu and Prices. The GSA will determine the menu and pricing structure. The DH&DS will have no involvement in setting pricing of the goods or services. Any concerns about pricing will be addressed by GSA.

. Logo and other Items. GSA may NOT sell UCSD logo’d retail items such as travel mugs and T-shirts from their site without permission from VCBA.

. Intoxicating Beverages and Cigarettes. The GSA will NOT sell or furnish intoxicating beverages or cigarettes upon the University's premises without prior written approval from VCSA and VCBA.

. Promotion. On-going advertising/promotion will be the sole responsibility of the GSA and must be done within any University guidelines.

. Outside Catering. This GSA retail operation shall not supply catering services other than within the 1 Miramar Street Residential Apartment property. Any violation of this clause will result in termination of this agreement, if not cured by GSA within 5 days of its receipt of written notice to cease such operations.

V. OPERATIONAL SCHEDULE.

. Hours and Days. Days and hours of GSA’s operations shall be at their discretion.
EQUIPMENT AND SUPPLIES.

• Equipment. The GSA shall provide all product, production, processing, holding, carts and display equipment necessary to provide coffee, food and beverage services and retail services except those provided by DH&DS as part of the outfitting of the facility.

• Utensils. The GSA shall provide all eating utensils necessary for the consumption and enjoyment of its food and beverages.

• Miscellaneous Supplies. The GSA shall be responsible for all costs for required paper, janitorial, and chemical supplies for the operation of its specific assigned area (food preparation and serving area). DH&DS will be responsible for all areas not specifically assigned to the GSA.

• Approval of Equipment, Supplies, and Café Design. The design of the café must be submitted to DH&DS by the GSA in writing and in a format required by UCSD EH&S prior to any tenant improvement of the facility. DH&DS will work with the GSA and the Builder to facilitate the review of these plans by EH&S.

MAINTENANCE, UTILITIES, SECURITY.

• Area Maintenance. The GSA shall provide all maintenance to GSA owned and operated equipment. The DH&DS will provide maintenance to DH&S equipment and facilities. The GSA shall provide regular cleaning in food preparation and serving areas and maintain these areas to the standards set by UCSD EH&S.

• Area Trash Removal. The GSA shall remove trash, recycling and garbage to a DH&DS provided dumpster, the location to be identified at the time the facility opens.

• Utilities. All utilities costs will be funded by DH&DS as part of this agreement.

• Interrupted Utilities. The University shall not guarantee an uninterrupted supply of electricity. However, it shall be diligent in restoring service following interruption. The University shall not be liable for any product loss or additional costs that result from the interruption or failure of any such utility services unless directly related to an action or omission by the University.

• Theft. The GSA shall be responsible for the security of their equipment. The GSA shall be responsible for immediately reporting all the facts relating to losses incurred as a result of theft to UCSD Police.

PERSONNEL
. **Remuneration.** The GSA is responsible for the funding of all salaries, wages, and employee benefits payable to or on behalf of employees hired in connection with this MOU, and payment of such salaries, wages and benefits shall be processed by and through the UCSD payroll system. All employees (including student help) shall be UCSD employees, but hired by the GSA.

. **Employee Behavior.** All GSA personnel shall be subject to the University's regulations regarding personal behavior and use of University's facilities and responsible for their personnel’s actions.

. **Equal Employment Opportunity.** GSA shall comply with all applicable laws and UCSD policies and procedures relating to equal employment opportunities and non-discrimination.

. The UCSD shall have the right to terminate this Contract for noncompliance with Executive Orders 11246 and 1135 and the State Fair Employment Practice Act.

. None of the provisions of this Contract shall be used to preclude UCSD or DH&DS from pursuing other remedies available under law for noncompliance with these provisions.

. **Employment of UCSD Students.** The GSA is encouraged to employ and give priority whenever possible to UCSD enrolled students for employment.

. **Employee Roster.** Upon request, the GSA shall supply DH&DS with a list of employees, supervisors, and management personnel by assigned work area.

. **Employee Training.** It is the GSA’s responsibility to provide adequate training for employees at all levels of the organization to maintain consistent and satisfactory service to the customers who choose to make use of it. When requested by the GSA and feasible, the DH&DS will provide assistance in the training and the use of equipment assuming DH&DS has the staff trained to provide this service. DH&DS will provide initial training on equipment at no cost for purposes of this MOU. If the contractor requests additional training beyond the initial training, such training may be provided by DH&DS to the Contractor at an agreed upon cost.

## IX. Termination of MOU

. Termination for Cause. This MOU may be terminated for cause as follows:

1. DH&DS may cancel this MOU on 5 business days written notice to GSA, for egregious breaches such as fraud, theft, insolvency, or violations of any health or safety related requirements such as the lack of sanitation.
2. The GSA shall be given notice to cure a failure of not more than five (5) days for food related problems and no more than twenty (20) days for all other problems. If the GSA cannot cure the problem within the specified time frame GSA must produce documentation sufficient to establish a good faith effort of intent to cure within a reasonable time, as determined by the University, if the GSA provides such documentation and diligently pursues such cure to completion, the GSA shall not be in breach of this MOU. Any failure by GSA to cure or provide adequate documentation to justify an extension of time to cure the default will be grounds for termination.

3. Termination for cause is failure to comply with any material terms and conditions of this MOU after GSA’s receipt of notice and the expiration of the applicable cure period, which includes, but is not limited to, failure to enforce required standards of sanitation; failure to maintain required food standards; failure to address service problems.

4. Notwithstanding anything in this MOU to the contrary, if DH&DS cancels or terminates this MOU for any reason, GSA shall have the right to appeal such decision to the Chancellor of UCSD. The Chancellor shall have the authority to either affirm or reverse DH&DS’s actions.

Voluntary Termination. The GSA may terminate this MOU at any time by giving thirty (30) days written notice of termination to DH&DS. Upon termination of this MOU, GSA shall return to DH&DS the facility and any DH&DS equipment specific to this program and any other property from the DH&DS less normal wear and tear.

All notices herein provided to be given, in which may be given by either party to the other, shall be deemed to have been fully given when reduced to writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

To the Department of Housing and Dining Services:
University of California, San Diego
9400 Gilman Drive, Mail Stop 0090
La Jolla, CA 92093-0090
ATTN: Mark P. Cunningham

To the Graduate Student Association:
Student Center A, Suite 132
9500 Gilman Drive
La Jolla, CA 92093-0353

SPECIFIC ITEMS PROVIDED BY DH&DS
The following items will be provided by the DH&DS as part of the build-out of the project and the specific retail service space at no cost to the GSA:

* One (1) Phone and One (1) Data hardwired lines to space
* Access to Wireless Internet
* Appropriate power and wiring for commercial freeze/refrigerator
* Floor Drains as needed
* Carpet/Sheet Vinyl (to be selected jointly and as appropriate for facility use)
* Customer Furnishings (to be selected jointly and as appropriate for facility use)
* Exterior patio furniture (to be selected jointly and as appropriate for facility use)
* All Utilities including trash/recycling pick-up
* Required sinks and related equipment to meet all Health and Safety requirements
* Entry door locks and Two (2) sets of keys for each lock

ENTIRE AGREEMENT

This MOU states the entire agreement between the parties in respect to the subject matter and supersedes any previous or contemporaneous oral or written proposals, statements, discussions, negotiations, or other agreements. The parties acknowledge that they have not been induced to enter into this MOU by any oral or written representations or statements not expressly contained in this MOU. This MOU may be modified, or any provision waived, at any time but only by writing signed by the parties.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE CAUSED THIS MEMO OF UNDERSTANDING to be executed by their respective proper officers, thereunto duly authorized the day and year first above written.

By: Mark P. Cunningham

Title: Director, Housing and Dining Services

Date: May 30, 2005

By: ____________________________________________

Vice President, Financial Affairs - GSA

Title: ____________________________________________

Date: ____________________________________________

By: ____________________________________________

President, GSA

Title: ____________________________________________