KANSAS STATE UNIVERSITY
FOUNDATION

POLICY NAME: **JOINT VENTURE POLICY**

DATE APPROVED: **11/10/2011** DATE DISTRIBUTED: **11/21/2011**

SUPERSEDES: JOINT VENTURE POLICY (dated 05/01/2009)

RESPONSIBLE AUTHORITY: **Governance Committee**

(See final page for review and revision dates)

The Internal Revenue Service has noted that increasingly, charities are investing in joint ventures, for-profit entities, and complicated and sophisticated financial products or investments that require financial and investment expertise and, in some cases, the advice of outside investment advisors. Therefore it is encouraging the governing boards of tax-exempt entities to adopt guidelines that require approval and management of any joint venture.

This policy is intended to cover those situations whereby The Kansas State University Foundation (hereinafter the "Foundation") invests in, contributes assets to, or otherwise participates in a Joint Venture or Similar Arrangement (or a "Venture" or "Arrangement"). For purposes of this policy a Venture or Arrangement means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to (1) whether the Foundation controls the Venture or Arrangement, (2) the legal structure of the Venture or Arrangement, or (3) whether the Venture or Arrangement is treated as a partnership for federal income tax purposes, or as an association, or corporation for federal income tax purposes. Joint ventures or similar arrangements **do not** include arrangements that meet both of the following conditions:

1. 95% or more of the Venture's or Arrangement's income for its tax year ending with or within the Foundation's tax year is described in Internal Revenue Code sections 512(b)(1)-(5) (including unrelated debt-financed income). IRC 512(b) income is

    a. Dividends and interest

    b. Royalties

    c. Rents

    d. Certain debt-financed income

    e. Gains or losses from sale or disposition of property; and

2. The primary purpose of the Foundation's contribution to, or investment or participation in, the Venture or Arrangement is the production of income or appreciation of property.

This policy requires that the Foundation negotiate, in its transactions and arrangements with other members of the Venture or Arrangement, such terms and safeguards as are adequate to ensure that the Foundation's exempt status is protected. Such terms shall be in writing in the operating agreement of the Venture or Arrangement and shall include the following minimum requirements:

- With respect to any whole Venture (that is, a Venture in which the Foundation contributes substantially all of its assets to the enterprise), the Foundation's control over the Venture through fifty-one percent (51%) or more of the voting rights and/or veto power;

- With respect to any ancillary Venture (that is a Venture to which a portion of the Foundation's resources are contributed), the Foundation would, at a minimum, maintain sole control over the tax-exempt aspects of the Venture and would have voting and ownership interest in the Venture that are consistent with the Foundation's capital contributions;

- A requirement that any subsequent contract with the Foundation's partner in the Venture be negotiated at arm's length and for fair market value;

- A requirement that the Venture give priority to the Foundation's tax-exempt purposes over maximization of profit for the participants of the Venture; and

- A prohibition on activities that would jeopardize the Foundation's tax-exempt status.

Where there is any question as to whether a particular Venture may pose a risk to the Foundation's tax-exempt status, a decision to enter into such Venture will be made only in consultation with legal and/or tax counsel.

Policy reviewed without change and adopted on 11/10/2011
Originating Policy adopted on 05/01/2009