

# LUTHER COLLEGE

## POLICIES AND PROCEDURES

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Department: Office for Financial Services  
Subject: Joint Venture Policy  
Date Issued: April 22, 2010  
Date Revised:  
Approved By: Board of Regents

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### I. Policy

Luther College will evaluate its participation in Joint Ventures with taxable entities under applicable federal and state tax law and take steps to safeguard its exempt status with respect to such joint ventures.

### II. Purpose

The purpose of this Joint Venture Policy shall be to document Luther College's position and procedures in regards to entering joint ventures with taxable entities.

### III. Terms and Definitions

- **Joint Venture** – Any joint ownership or contractual arrangement through which there is an agreement for Luther College, either directly or indirectly, to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to 1) whether the College controls the venture or arrangement, 2) the legal structure of the venture or arrangement, or 3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for federal income tax purposes. For purposes of this policy, the term Joint Venture does not include a venture or arrangement where 1) 95% or more of the venture's or arrangement's income for its tax year ending with or within the College's tax year is described in section 512(b)(1)-(5) of the Internal Revenue Code (including unrelated debt financed income), and 2) the primary purpose of the College's contribution to, or investment or participation in, the venture or arrangement is the production of income or the appreciation of property.
- **Joint Venture Documents** – All documents proposed to be executed by or otherwise binding on the College, including but not limited to, the joint venture operating agreement or similar document.

### IV. Procedures and Guidelines

#### A. Joint Venture Review and Approval

- Prior to either entering into a Joint Venture or amending the terms of a Joint Venture, all documents proposed to be executed by or otherwise binding on the College (Joint Venture Documents), together with a brief written summary, shall be submitted to the College President, College Vice President for Finance and Administration, College Controller, College Counsel and the Board of Regents for review and approval.

#### B. Joint Venture Tax Exemption Requirements

- In the negotiation and review of proposed Joint Ventures and Joint Venture Documents, the College must evaluate its participation in such Joint Ventures under applicable federal tax law and take steps to safeguard the College’s exempt status with respect to such Joint Ventures. The College shall negotiate in its Joint Ventures such terms and safeguards adequate to ensure the College’s tax exempt status is protected. Such safeguards must be set forth in the Joint Venture Documents (unless an exception is obtained by the College President and or College Vice President for Finance and Administration and include statements that:
  - Assure the Joint Venture furthers the tax exempt purpose of the College;
  - Provide that the College has sufficient control over the Joint Venture to ensure that the Joint Venture at all times shall be operated and managed in a manner that furthers the tax exempt purpose of the College;
  - Require that any duty that the Joint Venture participants, the members of the Joint Venture’s governing bodies or the Joint Venture’s officers may have to maximize the Joint Venture’s profits or to take, or refrain from taking, any other action, is overridden by the duty to faithfully satisfy the exempt purposes of the College without regard to the consequences for maximizing profitability;
  - Assure that the Joint Venture will not cause the College to act other than exclusively in furtherance of its tax exempt purpose or adversely affect its tax exempt status;
  - Assure that the Joint Venture does not directly or indirectly engage in any activities that would jeopardize the College’s exemption (such as political intervention or substantial lobbying);
  - Provide that the College receives ownership interests in the Joint Venture that are proportional and equal in value to the ownership interests to be received by the other Joint Venture participants;
  - Require that the debt of the Joint Venture not be guaranteed by the College in a manner that could cause the College to be responsible for more than its proportional share; and
  - Require that sufficient operating controls be implemented at the Joint Venture to assure all contracts and transactions involving the College and the Joint Venture are on an arm’s-length basis (or more favorable to the College).

C. Amendments

- Any proposed amendments to the Joint Venture Documents or changes in the manner or method of the Joint Venture’s governance or operation must not cause the Joint Venture or its operation to fail to fully satisfy the requirements set forth in section B of this policy. All proposed amendments to the Joint Venture shall be subject to the same review and approval as the original Joint Venture documents.

**V. Responsibilities**

<u>Responsible Party</u>	<u>List of Responsibilities</u>
Joint Venture	<ol style="list-style-type: none"> <li>1. Each Joint Venture must submit the following items to the College Controller within 45 days after each quarter end:               <ol style="list-style-type: none"> <li>a) Minutes of all meetings of such Joint Venture held during the quarter end; and</li> <li>b) Financial statements and statistics of such Joint Venture for the quarter and fiscal year end.</li> </ol> </li>   <li>2. Each Joint Venture must submit the following items to the College Controller within three months after each year end (unless otherwise approved by the Controller):               <ol style="list-style-type: none"> <li>a) All form and reports submitted to the IRS.</li> </ol> </li> </ol>

Board of Regents	<ol style="list-style-type: none"> <li>1. Review and approve proposed Joint Ventures.</li> <li>2. Ensure that approved and implemented Joint Ventures and their operations adhere to the requirements set forth in Section B of this policy.</li> </ol>
President and Vice President for Finance and Administration	<ol style="list-style-type: none"> <li>1. Review and recommend for approval any proposed Joint Ventures to the Board of Regents.</li> <li>2. Ensure that approved and implemented Joint Ventures and their operations adhere to the requirements set forth in Section B of this policy.</li> </ol>
Controller	<ol style="list-style-type: none"> <li>1. Review any proposed Joint Ventures.</li> <li>2. Receive and review for completeness Joint Venture quarterly meetings and financial statements and yearly IRS forms and reports.</li> </ol>
College Counsel	<ol style="list-style-type: none"> <li>1. Review and counsel the college administration and Board of Regents regarding any proposed Joint Ventures.</li> <li>2. Issue a written ruling on proposed Joint Ventures.</li> </ol>

## **VI. Confidentiality and Record**

A fully executed original of each of the Joint Venture Documents and all other significant documents and agreements relating to the Joint Venture, including, without limitation (as applicable), Articles of Incorporation or Organization, Bylaws, Operating Agreement, Partnership Agreement, Management Agreement, Service Agreements and Leases, and a fully executed original of all amendments to any of the foregoing, and if available, electronic copies of each of the foregoing shall be maintained by the College Controller. "Executed originals" may include facsimile or electronic signatures if permitted by the document so executed.

## **VII. Policy Enforcement**

Suspected violations of this policy should be reported to the College Controller.

## **VIII. Investment Related Joint Ventures**

See the "Statement of Investment Policy for the Luther College Endowment Fund" for information regarding investment related joint ventures.