I. PURPOSE.

As a trusted philanthropic partner, The Greater Cincinnati Foundation ("GCF") inspires current and future generations to invest in a more vibrant and prosperous Greater Cincinnati where everyone can thrive. The purpose of this policy is to govern the acceptance of gifts of closely-held stock to best serve the interests of GCF and the donor. This policy is to provide guidance to donors and their professional advisors in completing gifts of closely-held stock. The purpose of the gift must be charitable. GCF must ensure that the donor’s wishes will be fulfilled through the acceptance of the gift.

II. GENERAL GUIDELINES.

A. Gift Review. Proposed gifts of closely-held stock, whether current or deferred, will be evaluated on a case-by-case basis in accordance with GCF’s policies and procedures. The President or Vice President for Giving Strategies or the Vice President for Finance and Administration will have the overall authority to handle inquiries, negotiate with donors, assemble documentation, and execute agreements on behalf of GCF. Gifts of closely-held stock will be accepted only after the requirements of GCF’s policies and procedures have been satisfied and with the prior approval of the President/CEO (in consultation with the Vice President for Giving Strategies and the Vice President for Finance and Administration). GCF may refuse any offered gift that is judged not to be in the best interest of GCF or the donor. Assuming such activities follow approved policies and procedures, this authority to act will not require review or further approval by the Governing Board. The staff reserves the right to involve GCF’s legal counsel in reviewing agreements prior to accepting them. Such review is not mandatory.

B. Evaluation of Potential Gifts.

1. Type of Corporation. On a case-by-case basis, GCF may accept stock of:

   a. C-Corporations.

   b. S-Corporations. In general, due to the structure of S-corporations, any debt-financed income is likely to subject GCF to Unrelated Business Income Tax (UBIT). Additionally, the income generated by the S-corporation during the time GCF would hold it and any gain on the sale of the S-

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1 The donor may be advised that if stock of a C-Corporation is held by GCF and obtains S-Corporation status, GCF must give consent for such conversion on Internal Revenue Service (IRS) Form 2553
corporation stock may be subject to UBIT. There should be adequate assurances that the affected fund will have adequate cash to pay any UBIT that may be incurred by holding or through the sale of S-corporation stock, either from the investment itself or from further contributions from the donor. Prior to accepting the gift, the donor should agree in writing that there will be sufficient funds to pay such tax or other costs. Generally, GCF’s Operating Fund will not advance funds for such expenses. GCF will work with the donor to determine the best structure (trust or corporate form) into which the S-corporation stock should be contributed in order to minimize UBIT (note: income tax rates may differ between trusts and corporations).

2. **Documentation.** GCF will review any relevant documentation in consideration of the proposed gift which may include, but is not limited to: a qualified appraisal and/or appraisal summary, shareholder agreements, buy-sell agreements or other agreements, proposed transfer instruments, and any proposed agreements or arrangements between GCF and the donor that pertain to the property. Such documentation may be reviewed by GCF’s legal counsel.

3. **Sale or Liquidation.** As a general rule, all gifts of securities are sold as soon as possible, usually on the same day as the gift. The fund designated to receive the gift is then credited with the proceeds from the sale, after commissions and expenses, if any. In the case of gifts of stock of closely-held corporations that are not readily marketable at the time of the gift, it should appear reasonably certain that the stock proposed to be transferred to GCF will be sold or liquidated at fair value and proceeds received into a component fund of GCF within a specific time frame, which by law is not to exceed five years.

In the alternative, it should appear reasonably certain that the closely-held stock proposed to be transferred to GCF will generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received.² For purposes of this policy, the definition of “a reasonable rate of return” shall be determined by GCF, in its sole discretion. The President/CEO (in consultation with the Vice President for Giving Strategies and Vice President for Finance and Administration) shall have the authority to determine whether the requirements of this paragraph have been met.

In negotiating the sale of closely-held stocks, a fair market value (price per share) will be established at the time of sale. No warranty is given by GCF that the valuation will be acceptable to the IRS. In some cases, GCF may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.

In addition, the donor will be advised that if the stock is sold, liquidated, or otherwise disposed of within three years of receipt, per the IRS, **GCF is required to file**

² Treasury Regulations require that GCF assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. Section 1.170A-9(e)(11)(V)(F) and 1.170A-9(e)(13)(x). See Hoyt, *Legal Compendium for Community Foundations* 90.
IRS Form 8282 ("Donee Information Return"), unless the gift was valued below $500 or was distributed for charitable purposes. See Treas. Reg. 1.6050L-1.

**Note: Excess Business Holdings.** Gifts of business interests to a donor advised fund may raise the issue of excess business holdings under the Pension Protection Act and Internal Revenue Code section 4943. Excess business holdings exist when the holdings of a donor advised fund together with the holdings of disqualified persons exceed 20% of the voting stock of the incorporated business, 20% of the profit interest of a partnership or joint venture, or 20% of a beneficial interest of a trust or similar entity. In such a case, GCF must divest of the excess business holdings within a period not exceeding five years. Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

4. **Administrative Fees.** Funds holding closely-held stock will be charged the same administrative fees as all other funds at GCF. The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor. All paid dividends will be used to offset all or a portion of the fee charged to the fund in the same year ending with the anniversary date of the gift. Dividends will be available for grantmaking only to the extent that they exceed fees.

5. **Tax Deductibility.** The allowable tax deduction for gifts of closely-held stock will be subject to the IRS rules for closely-held stock gifts. GCF will provide the donor with any substantiation required for the donor to obtain a tax deduction.

III. **RESPONSIBILITIES OF THE DONOR.**

A. **Appraisal.** The donor will be responsible for obtaining a qualified appraisal and/or appraisal summary in compliance with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 ("Noncash Charitable Contributions"). See Treas. Reg. 1.170A-13(c).

B. **Transfer Instruments.** It is the donor’s responsibility to prepare the appropriate instruments which are necessary to transfer the stock to GCF.

C. **Documentation of Restricting or Limiting Agreements.** The donor must provide documentation of any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock.

D. **Acceptance Agreement.** Prior to or upon acceptance of the gift, the donor and GCF must agree in writing to all the terms of the gift which will include the following (See Attachment 1 for a Sample Agreement for the Terms of a Gift of Closely-Held Stock):

1. **No Material Restrictions.** Prior to or upon transfer of the stock to GCF, the donor and GCF will sign an agreement (which may be approved by GCF’s legal counsel) stating the terms of the gift, which must specify that there are no restrictions on GCF’s right to use or convey the closely-held stock.
2. **Expenses Associated with the Gift.** Prior to acceptance of the closely-held stock, GCF and the donor must agree in writing on arrangements for paying expenses associated with the stock, such as commissions or potential UBIT.

3. **Administrative Fees.** The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor.

**E. Expenses in Preparation of Gift.** The donor is responsible for all expenses incurred during the preparation of the transfer of the stock.

**F. Discuss Gift with Professional Advisors.** The donor is encouraged to and responsible for discussing all benefits, liabilities, and tax consequences derived from the gift of closely-held stock with their professional advisors before the gift is made.

**G. Discuss Gift with Family or Interested Parties.** Donors will be encouraged to discuss contemplated gifts of real property with their family or other interested parties before the gift is made.

**IV. WHAT GCF WILL NOT DO.**

**A. Donor Expenses.** In general, GCF’s Operating Fund will not pay for legal assistance, appraisals, or other services or expenses on behalf of the donor. In extraordinary circumstances, the expenses will be deducted from the proceeds of the sale or otherwise charged against the fund holding the gift.

**B. Corroboration of Value.** GCF will not establish or corroborate the value of any property for the purpose of substantiating the donor’s income tax charitable deduction.

**C. Stock Purchase Agreements.** In many cases, upon the subsequent sale of closely-held stock, there will be a stock purchase agreement setting forth the proposed terms and conditions of sale. GCF cannot join in or participate in the issuance of warranties and representations and in indemnification agreements.

**D. Pre-Arranged Re-Sale.** GCF will not participate in pre-arranging a re-sale or re-purchase of the proposed gifted stock back to the donor.

**E. Best Interest.** GCF will not accept any gift that would not be in the best interest of GCF or the donor.

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3 Discharge of such expenses by GCF may be treated as taxable income if the payment of the liability would not have given rise to a deduction. See 26 U.S.C. section 108. Discharge of such expenses may also create a material restriction on the gift. See Treas. Reg. 1.507-2(a)(8)(iv)(B). See also Hoyt *Legal Compendium for Community Foundations* 69-70 FN 356.
Sample Agreement for the Terms for a Gift Transfer of Closely-Held Stock

__________________________, 20__

The Greater Cincinnati Foundation  
200 West Fourth Street  
Cincinnati, Ohio  45202  
Attention: _____________________________

Re: Gift of Stock

Dear __________________:

In connection with my gift of ______ shares of __________________ Corporation to The Greater Cincinnati Foundation (GCF), please be advised:

(1) It is likely that the stock will be sold or liquidated at fair value and proceeds received into a component fund at GCF within a reasonable time frame of not to exceed five years.

(2) I agree that there will be adequate cash in the fund holding the stock to pay administrative fees, either from the investment itself or from further contributions which I will make. Further, I agree that I will make additional contributions to cover other expenses associated with the stock, such as commissions or Unrelated Business Income Tax.

(3) There are no material restrictions which would prevent GCF from freely and effectively using or conveying the stock in furtherance of its charitable purposes.

(4) I acknowledge that I am responsible for obtaining a qualified appraisal complying with IRS regulations for the purposes of establishing the value of the contribution, and that if the stock is sold, liquidated, or otherwise disposed of within three years of its receipt by GCF, GCF is required to file IRS Form 8282 (“Donee Information Return”).

Very truly yours,

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Agreed to and Accepted by:
The Greater Cincinnati Foundation

By____________________________