



**AMENDED AND RESTATED  
BYLAWS**

**OF**

**SECOND HARVEST FOOD BANK OF  
SANTA CLARA AND SAN MATEO COUNTIES**

**(a Nonprofit Public Benefit Corporation)**

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ARTICLE I

CORPORATE PURPOSES AND OBJECTIVES

1.1 General Purposes. The purpose of this corporation shall be for charitable and public purposes and all activities of the corporation shall be exclusively charitable and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986.

1.2 Specific Purposes. The specific purposes of this corporation are charitable and educational, including (a) providing food for people in need in our community; and (b) leading our community to eliminate hunger. The secondary purpose of the corporation shall be to educate and promote interest in and concern for those who are hungry and malnourished.

1.3 Nonpartisan Activities. This corporation has been formed under the California Nonprofit Corporation Law for the charitable, educational and public purposes described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of the corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote. The corporation shall not, except in an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described above.

1.4 Dedication of Assets. The properties and assets of this nonprofit corporation are irrevocably dedicated to charitable, educational and public purposes. No part of the net earnings, properties, or assets of this corporation shall ever inure to the benefit of any private person or individual, or any member, officer or Director of this corporation. Upon the dissolution or winding up of the corporation (within the meaning of Chapters 15 and 16 of Part 2 of the California Nonprofit Corporation Law, or their successors), but not upon a merger, its assets remaining after payment, or provisions for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

## ARTICLE II

### OFFICES

2.1 Principal Office. The principal office for the transaction of the business of the corporation shall be located at 750 Curtner Avenue, San Jose, CA 95125. The Board of Directors is hereby granted full power and authority to change said principal office to another location.

2.2 Other Offices. One or more branches or other subordinate offices may at any time be fixed and located by the Board of Directors at such place or places within or without the State of California as it deems appropriate.

## ARTICLE III

### MEMBERSHIP

3.1 Members. This corporation shall have no members.

3.2 Effect of Prohibition. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board of Directors. All rights which would otherwise vest under the Nonprofit Public Benefit Law in the members shall vest in the Directors.

3.3 Designation of Persons Associated With Corporation. Nothing in this Article shall be construed as limiting the right of the corporation to refer to persons associated with it as “members” even though such persons are not members, and no such reference shall constitute anyone as a member within the meaning of Section 5056 of the California Non-Profit Corporation Law.

## ARTICLE IV

### DIRECTORS

4.1 Exercise of Corporate Powers. Except as otherwise provided by the Articles of Incorporation of the corporation or by the laws of the State of California now or hereafter in force, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board of Directors (the “Board”). Without limitation of the foregoing, the Board shall have sole authority to determine the particular programs and activities in which the corporation shall engage to achieve its general purposes and specific purposes as set forth in the Articles of Incorporation and these Bylaws. The Board may delegate the management of the day-to-day operation of the business of the corporation as permitted by law and as set forth in these Bylaws; provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board.

Without limitation of the foregoing, the Board shall have the following specific responsibilities:

(a) General. Members of the Board (“Directors”) are policy makers and stewards of the corporation and shall support the stated purposes of the corporation.

(b) Fiduciary. Directors shall provide oversight as to the prudent fiscal management of the corporation; shall take responsibility that the corporation has adequate resources to accomplish its mission; and shall participate in fundraising efforts.

(c) Attendance. Directors are expected to attend the Annual Meeting (as defined in Section 4.12(b)), regular meetings, and special meetings (if any).

4.2 Number. The number of the corporation’s Directors shall be not less than thirteen (13) and not more than twenty-five (25), with the exact number of Directors to be fixed within the limits specified by a resolution adopted by a majority of the Board. As of November 13, 2012, the then-serving Directors shall be assigned by the Board to two equal (or as nearly equal as possible) groups which shall be designated “Group 1” and “Group 2.” No more than forty-nine percent (49%) of the persons serving on the Board may be “interested persons” as that term is defined in Section 5227(b) of the California Nonprofit Corporation Law; provided that any violation thereof shall not affect the validity or enforceability of any transaction entered into by the corporation.

4.3 Qualifications. The Directors of the corporation shall have a particular interest in furthering the goals and objectives of the corporation, and should possess some knowledge or expertise conducive to the furtherance of those goals and objectives. The Board shall make reasonable efforts to include Directors who represent the diversity of San Mateo and Santa Clara Counties, including, but not limited to, factors such as race, age, ethnicity, gender, and professional and community affiliations.

4.4 Compensation. Directors of the corporation shall serve without compensation.

4.5 Term of Office. The current term (as of November 13, 2012) of the initial Group 1 Directors shall expire June 30, 2013. The current term (as of November 13, 2012) of the initial Group 2 Directors shall expire June 30, 2014. Upon the expiration of the terms of office of the initial Group 1 and Group 2 Directors, their respective successors and all subsequent Directors shall be elected for a term of two years, which shall commence the July 1st following their respective elections. If a Director commences a term on a date other than July 1st, such term shall expire on the first June 30th which occurs at least 18 months after the commencement of the term. For example, if a Director commences a term on October 1, 2012, such initial term shall last 21 months, expiring on June 30, 2014, and if a Director commences a term on April 1, 2013, such initial term shall last 27 months, expiring on June 30, 2015. A Director shall hold office until the expiration of a term (as set forth above) and until a successor Director has been elected and qualified. A Director may succeed him or herself in office upon the mutual agreement of the Board Governance Committee and such Director; however, he/she may not serve more than three consecutive terms. For purposes of the foregoing, any full two-year term served by a Director which concluded prior to November 13, 2012 shall count as a full term in office.

Notwithstanding the above, the then-serving Board Chair may serve a fourth consecutive term as a Director if: (a) the then-serving Board Chair has completed three consecutive terms on the Board; (b) the then-serving Board Chair has served no more than two years as Board Chair; and (c) prior to the expiration of his/her third consecutive term, the Board votes to elect such Board Chair to an additional fourth consecutive term as a Director.

4.6 Election. Directors shall be elected at each Annual Meeting of the Board as prescribed by Section 4.12 of these Bylaws. The candidates receiving the highest number of votes up to the number of Directors to be elected are elected. Subject to the term limits set forth in Section 4.5 of these Bylaws, Directors shall be eligible for re-election, provided they continue to meet the qualifications required by Section 4.3 of these Bylaws.

4.7 Chief Executive Officer As Director. One of the authorized Director positions shall be filled *ex officio* at all times by the then-serving Chief Executive Officer. The Chief Executive Officer shall be entitled to vote on all matters before the Board, other than (i) related to his/her employment status and compensation and (ii) such other matters as the majority of the Board shall reasonably determine present a conflict of interest (whether the Chief Executive Officer has affirmatively raised the possibility of a conflict of interest or not). The Chief Executive Officer may attend meetings of the standing or special committees of the Board, but may not serve as a voting member on any standing or special committee, other than the Board Governance Committee. There shall be no limitation on the time period that a Chief Executive Officer may serve on the Board in such *ex officio* capacity.

4.8 Conflict of Interest. Directors shall disclose in writing to the Board any person to whom they are closely related or organization with which they are affiliated who or which presently transacts business with the corporation or might reasonably be expected to do so in the near future. Each disclosure shall be updated and resubmitted on a yearly basis. An affiliation with an organization will be considered to exist when a director or member of their immediate family or close relative is an officer, director, trustee, partner, employee or agent of an organization, or has any other substantial interest or dealings with the organization. The Board, by a majority vote, shall determine whether a conflict of interest exists. Any Director having a conflict of interest shall abstain from voting on any matter coming before the Board in which the conflict of interest would apply.

4.9 Leave of Absence. Directors may not take a leave of absence from the Board and must relinquish their position if they cannot regularly attend Board meetings.

4.10 Vacancies. A vacancy or vacancies in the Board shall exist when any authorized position of Director is not then filled by a fully elected Director, whether caused by death, resignation, removal, change in the authorized number of Directors or otherwise. The Board may declare vacant the office of a Director who has been declared of unsound mind by an order of court, or convicted of a felony, or found by a final order or judgment of any court to have breached any duty set forth in the California Nonprofit Corporation Law, Article 3. Vacancies on the Board may be filled by the affirmative vote of a majority of the Directors then in office, whether or not less than a quorum, or by a sole remaining Director. Any Director may resign effective upon giving written notice to the Board Chair, the Chief Executive Officer and the Secretary of the corporation, unless the notice specifies a later time for the effectiveness of such

resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective. No Director may resign when the corporation would then be left without any duly elected Director in charge of its affairs.

#### 4.11 Removal.

(a) Any and all of the Directors may be removed without cause if such removal is approved by the affirmative vote of a majority of the remaining Directors.

(b) Any reduction of the authorized number of Directors shall not have the effect of removing any Director prior to the expiration of such Director's term of office.

#### 4.12 Meetings of Directors.

(a) Place of Meetings. Unless otherwise specified in the notice thereof, meetings (whether regular, special or adjourned) of the Board shall be held at the principal office of the corporation for the transaction of business, as specified in accordance with Section 2.1 of these Bylaws, which is hereby designated as an office for such purpose in accordance with the laws of the State of California, or at any other place which has been designated from time to time by resolution of the Board or by written consent of all members of the Board.

(b) Annual Meeting. The Board shall hold a final regular Board meeting within six weeks prior to the end of each fiscal year ("Annual Meeting") for the purpose of electing Directors and appointing officers of the corporation and for the transaction of other business.

(c) Other Regular Meetings. Other regular meetings of the Board shall be held at the discretion of the Board of Directors. Such regular meetings shall be held at such time and place as set forth in the notice given in accordance with Section 4.12(e) of these Bylaws. The Board shall have the option at any time to convene executive sessions of the Board without the Chief Executive Officer present.

(d) Special Meetings. Special meetings of the Board may be called at any time by: the Board Chair or the Chief Executive Officer, or by the Secretary upon the request of any two members of the Board. Such special meetings shall be held at such time and place as set forth in the notice given in accordance with Section 4.12(e) of these Bylaws.

(e) Notice of Meetings. All meetings of the Board shall be held upon not less than four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone (including to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director), facsimile, email or other electronic or wireless means. If the address of a Director is not shown on the records and is not readily ascertainable, notice shall be addressed to him or her at the city or place in which the meetings of the Directors are regularly held. Except as set forth in Section 4.12(g) of these Bylaws, notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place be fixed at the meeting adjourned.

(f) Quorum. A simple majority of the Directors then in office constitutes a quorum of the Board for the transaction of business. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board except as otherwise provided by law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for such meeting. Notwithstanding the foregoing, if the number of the corporation's Directors as set pursuant to Section 4.2 is one (1), then one (1) Director shall constitute a quorum of the Board for the transaction of business; and, if the number of the corporation's Directors as set pursuant to Section 4.2 is two (2), then two (2) Directors shall constitute a quorum of the Board for the transaction of business, and, in either case every act or decision done or made by such quorum shall be by unanimous consent.

(g) Adjourned Meetings. A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

(h) Waiver of Notice and Consent.

(i) Notice of a meeting need not be given to any Director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, despite the lack of notice to such Director.

(ii) The transactions of any meeting of the Board, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(i) Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action, which may be executed in counterpart. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors.

(j) Participation in Meetings by Electronic Means. Directors may participate in any meeting, annual, regular or special, through the use of conference telephone, electronic video screen communication or other similar communications equipment, so long as all members participating in such meeting can hear one another and each member is provided the means of participating in all matters before the Board, including the capacity to propose or to interpose an objection to a specific action to be taken by the Board. Participation in a Board meeting by such means constitutes presence in person at such meeting.

4.13 Committees of the Board.

(a) Committees Comprised Only of Directors As Voting Members. The Board may, by resolution adopted by a majority of the Directors present at a meeting at which a quorum is present, create one or more committees, and except as provided otherwise below, each of whose only voting members are two or more Directors appointed by the Board Chair, and serving at the pleasure of the Board. Subject to such limitations of purpose or authority as the Board shall impose with respect to any committee formed hereunder, a committee of the Board whose only voting members are Directors shall have all the authority of the Board, except as provided by the California Nonprofit Corporation Law and in Section 4.13(c) of these Bylaws. The Board Chair shall be invited to attend all meetings of any such committees.

(b) Committees that Include Non-Directors As Voting Members. The Board may, by resolution adopted by a majority of the Directors present at a meeting at which a quorum is present, create one or more committees, whose voting members need not be composed entirely of Directors, provided that any such committee must include two or more Directors as voting members. The Board Chair shall appoint the members of such committees. The Board Chair shall be invited to attend all meetings of any such committees. Such committees shall not have the full authority of the Board, but shall serve in an advisory capacity only. Such advisory committees may implement decisions of the Board under the ultimate supervision of the Board.

(c) Limitations on Committee Powers. No committee may:

- (i) Fill vacancies on the Board or on any committee that has the authority of the Board;
- (ii) Fix compensation of the Directors serving on the Board or any committee;
- (iii) Amend or repeal these Bylaws or adopt new Bylaws;
- (iv) Amend or repeal any resolution of the Board that by its express terms is not so amendable or repealable;
- (v) Appoint other committees of the Board or the members thereof;
- (vi) Expend corporate funds to support a nominee for Director; or
- (vii) Approve any self-dealing transaction within the meaning of Section 5233(a) of the California Nonprofit Corporation Law, except as provided in Section 5233(d)(3) thereof.

(d) Termination or Modification of Committees. The Board may, by resolution adopted by a majority of the Directors present at a meeting at which a quorum is present, terminate the existence of any of its committees, withdraw any authority previously given to a committee, or otherwise modify their terms under which the committee operates, if such modification are in accordance with the California Nonprofit Corporation Law and these Bylaws.



(e) Term of Office. Each member of a committee continues as such until his/her successor is appointed, unless the committee is sooner terminated, or until his/her earlier death, resignation or removal.

(f) Committee Chair. The Board Chair shall appoint one member of each committee as chair of the committee.

(g) Meetings. Meetings of each committee may be called at any time by the Board Chair or by the chair of that committee and the chair of each committee (or his/her designee) shall preside over meetings of that committee.

(h) Quorum and Voting. Unless otherwise provided in the resolution of the Board designating such committee, at least 20% of the voting members of the entire committee (but in any event no fewer than two (2) voting members) shall constitute a quorum. The act of a majority of the voting members present at a meeting at which a quorum is present is the act of the committee.

(i) Rules. Each committee may adopt rules for its own governance, provided such rules are consistent with these Bylaws.

4.14 Standing Committees. The following committees shall be considered as standing and the voting members of such committees shall be comprised exclusively of Directors. Each such committee shall draft a charter for itself that it shall send to the Board Governance Committee for consideration and recommendation for approval by the Board.

(a) Board Governance. The Board Governance Committee shall be composed of the Board Chair, the Board Vice Chair(s), the Chief Executive Officer, the Secretary, the Chair of the Finance Committee, and the immediate past Board Chair, if he or she still is a Director. It shall be the duty of this committee to review the qualifications for Board membership as set forth in these Bylaws and recommend to the Board new members, in order to meet the needs of the Board for specific skills or expertise, community leadership and geographic representation. The Board Governance Committee shall, in addition, evaluate for re-election current members whose terms have expired, review attendance of current members, and recommend changes in membership criteria and/or process to the Board for its approval, subject to the terms and provisions of these Bylaws. Also, the Board Governance Committee shall review and approve the corporation's aggregate compensation budget as well as the compensation of the Chief Executive Officer and the Chief Financial Officer, as provided in Section 5.3 of these Bylaws. The Board Governance Committee may act in place of the Board in between regular Board meetings, in circumstances where immediate action is required, and shall report on any action taken at the next Board meeting, in each case subject to the limitations set forth in Section 4.13(c) of these Bylaws.

(b) Finance. The Finance Committee shall be composed of at least two Directors as voting members, each appointed by the Board. It shall be the duty of this committee to oversee the preparation of the budget for each fiscal year, to approve the budget and to submit the budget to the full Board for its approval at its Annual Meeting, and to oversee the investment of the corporation's funds, including its endowment funds.

(c) Audit. To the extent required by California law, the Board shall appoint an Audit Committee composed of at least two Directors as voting members. The Chairman of the Audit Committee may not be a member of the Finance Committee and members of the Finance Committee must be a minority of the members of the Audit Committee. The Audit Committee may not include the Board Chair or any members of the staff of the Corporation, including the Chief Executive Officer and the Chief Financial Officer. Members of the Audit Committee shall not receive any compensation from the corporation, and may not have any material financial interest in any entity doing business with the corporation. To the extent required by California law, the Audit Committee shall ensure that annually CPA-audited financial statements are prepared using generally accepted accounting principles. The Audit Committee is responsible for retaining and terminating an independent auditor, setting the auditor's compensation, conferring with the auditor to satisfy themselves that the financial affairs of the corporation are in order, reviewing and approving the audit and submitting the audit to the full Board for its approval.

## ARTICLE V

### OFFICERS

5.1 Offices and Qualifications. The officers of the corporation shall be the Chairperson of the Board (the "Board Chair"), the Board Vice Chair(s), the Chief Executive Officer, the Secretary, the Chief Financial Officer and the Chair of the Finance Committee. The corporation may also have, at the discretion of the Chief Executive Officer, such other officers as the Chief Executive Officer may deem appropriate. Any two or more of such offices may be held by the same person, subject to applicable California law.

5.2 Appointment. The Board Chair, Board Vice Chair(s), the Chief Executive Officer, the Secretary and the Chair of the Finance Committee (the "Board Appointed Officers") shall be chosen annually by the Board, and each shall hold his or her office until his or her term expires or sooner, if he or she shall die, resign, be removed or otherwise be disqualified to serve; provided that the Board Chair shall be chosen for a term of two years or sooner, if he or she shall die, resign, be removed or otherwise be disqualified to serve. The Chief Financial Officer shall be appointed by the Chief Executive Officer.

5.3 Term of Office and Compensation. The term of office of each of the Board Appointed Officers shall be fixed and determined by the Board and may be altered by the Board from time to time at its pleasure, subject to the rights, if any, of said officers under any contract of employment. The term of office of the Chief Financial Officer shall be fixed and determined by the Chief Executive Officer. The salary of any officer of this corporation, if any, shall be fixed by the Board. To the extent required by law, the compensation, including benefits, of the Chief Executive Officer and the Chief Financial Officer must be reviewed by the Board or the Board Governance Committee to assure that such compensation, including benefits, is just and reasonable.

5.4 Removal and Vacancies. Any Board Appointed Officer of the corporation may be removed at the pleasure of the Board of Directors at any meeting or at the pleasure of any Board Appointed Officer who may be granted such power by a resolution of the Board of

Directors. The Chief Financial Officer may be removed at the pleasure of the Board of Directors or the Chief Executive Officer. Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. If any vacancy occurs among Board Appointed Officers, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor is duly chosen and qualified.

5.5 Powers and Duties of Board Chair. The Board Chair shall be a Director and shall preside over all meetings of the Board and shall perform such other powers and duties as may be from time to time assigned by the Board or prescribed by these Bylaws.

5.6 Powers and Duties of Chief Executive Officer. The Chief Executive Officer shall be the general manager and chief executive officer of the corporation and shall, subject to the control of the Board, have the general and active management responsibility for the day-to-day business of the corporation and shall see that all the orders and resolutions of the Board are carried into effect. The Chief Executive Officer shall be entitled to attend all committee meetings, other than meetings of the Audit Committee.

5.7 Powers and Duties of Board Vice Chair. The Board Vice Chair shall be a Director. In case of the absence, disability or death of the Board Chair, the Board Vice Chair, if there shall be such an officer, or one of the Vice Presidents, shall exercise all the powers and perform all the duties of the Board Chair. If there is more than one Board Vice Chair, the order in which the Board Vice Chairs shall succeed to the powers and duties of the Board Chair shall be as fixed by the Board of Directors. The Board Vice Chair or Board Vice Chairs shall have such other powers and perform such other duties as may be granted or prescribed by the Board of Directors.

5.8 Powers and Duties of Secretary. The Secretary shall be a Director. The powers and duties of the Secretary are:

(a) To keep a book of minutes at the principal office of the corporation, or such other place as the Board may order, of all meetings of its Directors and committees with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present and the proceedings thereof.

(b) To keep the seal of the corporation and to affix the same to all instruments which may require it.

(c) To make service and publication of all notices that may be necessary or proper, and without command or direction from anyone. In case of the absence, disability, refusal or neglect of the Secretary to make service or publication of any notices, then such notices may be served and/or published by the Board Chair, or a Board Vice Chair, or by any person thereunto authorized by either of them or by the Board.

(d) Generally to do and perform all such duties as pertain to the office of Secretary and as may be required by the Board.

5.9 Powers and Duties of Chief Financial Officer. The powers and duties of the Chief Financial Officer are:

(a) To supervise and control the keeping and maintaining of adequate and correct accounts of the corporation's properties and dealings, including accounts of its assets, liabilities, receipts, and disbursements. The books of account shall at all reasonable times be open to inspection by any Director.

(b) To oversee the management of all funds, securities, evidences of indebtedness and other valuable documents of the corporation, and, at the Chief Financial Officer's discretion, to cause any or all thereof to be deposited for the account of the corporation with such depository as may be designated from time to time by the Board.

(c) To receive or cause to be received, and to give or cause to be given, receipts and acquittances for moneys paid in for the account of the corporation.

(d) To disburse, or cause to be disbursed, all funds of the corporation as may be directed by the Board, taking proper vouchers for such disbursements.

(e) To render to the Chief Executive Officer and the Board, whenever they may require, accounts of all transactions and of the financial condition of the corporation.

(f) Generally to do and perform all such duties as pertain to the office of Chief Financial Officer and as may be required by the Chief Executive Officer or the Board.

5.10 Powers and Duties of Chair of Finance Committee. The Chair of the Finance Committee shall preside over all meetings of the Finance Committee, shall serve in an advisory capacity to the Chief Financial Officer regarding the Chief Financial Officer's conduct of his or her duties and shall perform such other fiscal duties as may be from time to time assigned by the Board.

## ARTICLE VI

### CORPORATE RECORDS; REPORTS

6.1 Books of Account. The corporation shall keep and maintain adequate and correct accounts of its properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

6.2 Inspection of Records by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the corporation. Such inspection by a Director may be made in person, or by agent, or attorney.

6.3 Annual Report. The Board shall cause an annual report to be published not later than one hundred twenty (120) days after the close of the fiscal year. The report shall contain all the information required by Section 6321(a) of the Corporations Code of the State of California, and shall be accompanied by any report thereon of independent accountants, or if there is no such report, the certificate of an authorized officer of the corporation that such statements were

prepared without audit from the books and records of the corporation. The annual report shall be furnished to all Directors.

6.4 Audited Financial Statements. The Board shall, to the extent required by law, cause the audited financial statements of the corporation to be made available for inspection by the Attorney General and by members of the public no later than nine (9) months after the close of the fiscal year to which the statements relate.

6.5 Annual Statement of Certain Transactions and Indemnifications. The corporation shall furnish annually to its Directors, a statement of any transaction or indemnification described in Section 6322(d) and (e) of the Corporations Code of the State of California, if such transaction or indemnification took place. Such annual statement shall be fixed to and sent with the annual report described in Section 6.3 of these Bylaws.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

7.1 Definitions. For the purposes of this Article VII, the following definitions shall apply.

(a) The term “agent” means any person who is or was a Director, officer, trustee, employee, or other agent of the corporation, or is or was serving at the request of the corporation as a Director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation, or of another enterprise at the request of such predecessor corporation.

(b) The term “proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

(c) The term “expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under Section 7.4 or 7.5(b) of these Bylaws.

7.2 The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) by reason of the fact that such person is or was an agent of the corporation, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person’s conduct was unlawful.

7.3 The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was an agent of the corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this Section 7.3 of these Bylaws:

(a) In respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation, unless and only to the extent that the court in which such action was brought shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine;

(b) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(c) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval.

7.4 To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in Section 7.2 or 7.3 of these Bylaws or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

7.5 Except as provided in Section 7.4 of these Bylaws, any indemnification under this Article VII shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in Section 7.2 or 7.3 of these Bylaws, by:

(a) A majority vote of Directors at a meeting at which a quorum is present, excluding Directors who are parties to such proceeding; or

(b) The court in which such proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney or other person is opposed by the corporation.

7.6 Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the agent to repay such amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this Article VII.

7.7 No provision made by the corporation to indemnify its agents for the defense of any proceeding, whether contained in a resolution of Directors, an agreement or otherwise, shall be valid unless consistent with this Article VII. Nothing contained in this Article VII shall affect

any right to indemnification to which persons other than such agents may be entitled by contract or otherwise.

7.8 No indemnification or advance shall be made under this Article VII, except as provided in Sections 7.4 or 7.5(b) of these Bylaws, in any circumstance where it appears:

(a) That it would be inconsistent with a provision of the Articles of Incorporation, these Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

7.9 The corporation shall have the power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against such liability under the provisions of this Article VII; provided that the corporation shall have no power to purchase and maintain such insurance to indemnify any such person for violation of Section 5233 of the California Nonprofit Corporation Law.

7.10 Nothing in this Article VII shall restrict the power of the corporation to indemnify its agents under any provision of law from time to time applicable to the corporation, nor shall anything in this Article VII authorize the corporation to indemnify its agents in situations prohibited by law.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

8.1 Certification and Inspection of Bylaws. The corporation shall keep at its principal executive office in this State, or if its principal executive office is not in this State at its principal business office in this State, the original or a copy of these Bylaws as amended to date.

8.2 Notices. Any reference in these Bylaws to the time a notice is given or sent means, unless otherwise expressly provided, the time a written notice by mail is deposited in the United States mails, postage prepaid; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

## ARTICLE IX

### CONSTRUCTION OF BYLAWS WITH REFERENCE TO PROVISIONS OF LAW

9.1 Definitions. Unless defined otherwise in these Bylaws or unless the context otherwise requires, terms used herein shall have the same meaning, if any, ascribed thereto in the California Nonprofit Corporation Law, as amended from time to time.

9.2 Bylaw Provisions Additional and Supplemental to Provisions of Law. All restrictions, limitations, requirements, and other provisions of these Bylaws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to said provisions of law unless such compliance shall be illegal.

9.3 Bylaw Provisions Contrary to or Inconsistent with Provisions of Law. Any article, section, subsection, paragraph, sentence, clause, or phrase of these Bylaws which upon being construed in the manner provided in Article IX hereof shall be contrary to or inconsistent with any applicable provision of law shall not apply so long as said provision of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these Bylaws, it being hereby declared that these Bylaws would have been adopted and each article, section, subsection, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses, or phrases is or are illegal.

9.4 Parliamentary Authority. Roberts Rules of Order, Newly Revised, shall be the parliamentary authority for all matters of procedure not specifically provided herein.

## ARTICLE X

### ADOPTION, AMENDMENT, OR REPEAL OF BYLAWS

10.1 Amendment. New bylaws may be adopted or these Bylaws may be amended or repealed by a two-thirds (2/3) vote of the Board, provided such bylaw amendment has been submitted in writing at the previous regular meeting and that such bylaws as adopted and amended are not in conflict with the Articles of Incorporation or law. No amendment may extend the term of a Director beyond that for which such Director was elected.



**CERTIFICATE OF SECRETARY**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned does hereby certify that the undersigned is the Secretary of SECOND HARVEST FOOD BANK OF SANTA CLARA AND SAN MATEO COUNTIES, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California; that the above and foregoing Amended and Restated Bylaws of said corporation were duly and regularly adopted as such by the Board of Directors of said corporation; and that the above and foregoing Amended and Restated Bylaws are now in full force and effect.

Dated as of November 13, 2012.

  
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Richard Svec, Secretary

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