

# HILO ORCHID SOCIETY, INC.

## Bylaws

### ARTICLE I ORGANIZATION

Section 1. **The Name of the Organization:** The name of the organization is the HILO ORCHID SOCIETY, INC. (the “Society”).

Section 2. **Incorporation.** The Society is organized under the laws of the State of Hawaii as a nonprofit corporation organized exclusively for charitable and educational purposes. The Society is qualified as a Section 501(c)(3) organization under the Internal Revenue Code of 1986, as amended.

Section 3. **Fiscal Year.** The fiscal year of the Society is from January 1 to December 31 of each year.

### ARTICLE II MEMBERSHIP

Section 1. **Classes.** The membership of the Society consists of three (3) classes of members: (a) regular, (b) life, and (c) honorary.

(a) **Regular Members.** Regular members consist of those persons who have paid their membership dues, and have complied with such rules and regulations as established by the Board.

(b) **Life Members.** Life membership may be obtained by any regular member or any person who has met the requirements of a regular member by payment of a one time Life Membership Fee as determined by the Board of Trustees. That person will be exempt from the payment of all dues thereafter, and has all the privileges of a regular member for life.

(c) **Honorary Members.** Any person who has rendered outstanding contributions and service toward either the advancement of orchidology or the promotion of the purposes and goals of the Society may be elected to honorary membership by a two-thirds vote of the membership at a regular meeting, upon nomination by a vote of two-thirds of the members of the Board of Trustees present if a quorum is present. Honorary members are exempt from payment of all dues and assessments and have all privileges of regular members for life.

Section 2. **Forfeiture.** Upon the termination of membership of any member for whatever cause, that member shall forfeit all rights and privileges as a member of the Society.

### ARTICLE III DUES

Section 1. **Annual Dues.** The annual dues for regular members are such amounts as determined by the Board of Trustees and approved by the membership as provided by Section 2 below. The annual dues are payable on the first day of January of each year. Any regular

member who fails to pay any duly authorized financial obligation within three months after they become due, shall forthwith cease to be a member until such time as the obligation is paid.

Section 2. **Changes in Dues.** A proposal by the Board of Trustees to make a change in the amount of the annual dues shall be published in the monthly newsletter and approved by the membership at the following general meeting. The affirmative vote of at least two-thirds of the members present at a general meeting is required for approval.

#### **ARTICLE IV BOARD OF TRUSTEES**

##### **Section 1. Number, Composition, Term, Qualifications and Election.**

A. Commencing at the close of the annual meeting of members to be held in November 2011 (or at any adjournment thereof), the number of Trustees which shall constitute the Board of Trustees (the "Board") shall be no less than nine and no more than eleven, irrespective of the number of Trustees serving prior to the close of such meeting. Each of the individuals from time to time holding the following offices of the Society shall then and thereafter automatically be a Trustee: (i) the past President of the Society who just completed serving a full term as President (ignoring any partial term served to fill a vacancy in the office of President by reason of having been the President-Elect when that vacancy occurred) ("Immediate Past President"); (ii) the President; (iii) the President-Elect; (iv) the Vice-President; (v) the Treasurer; (vi) the Recording Secretary; and (vii) the Corresponding Secretary (collectively, "Specific Office Trustees"). The four Trustees who are not Specific Office Trustees shall be the "At-Large Trustees" and shall be divided into two groups of two each, called "Group 1" and "Group 2" (in each case, a "Group").

B. The term of each Specific Office Trustee other than the Trustee who is the Immediate Past President shall be concurrent with the holder's term as the officer identified in any of clauses (b) through (g) of paragraph A above. The term of the Specific Office Trustee who is the Immediate Past President shall be concurrent with term of office as President of his immediate successor in the office of the President. The initial term of the Group 1 At-Large Trustees shall be one year, from the close of the 2011 December meeting of the members until the close of the 2012 December meeting or their respective successors shall be duly elected and qualified. The initial term of the Group 2 At-Large Trustees shall be two years, from the close of the 2011 December meeting of the members until the close of the 2013 December meeting or their respective successors shall be duly elected and qualified. Thereafter, each Group of At-Large Trustees shall be elected for a term of two years each, with Group 1's term expiring at the close of the December meeting of members held in even-numbered calendar years and Group 2's term expiring at the close of the December meeting of members held in odd-numbered calendar years. Notwithstanding the foregoing, a Trustee's term of office shall terminate earlier upon his ineligibility to serve, resignation, removal (whether from the Board or, if applicable, from the position held or formerly held as an officer), disability or death.

C. Any member of the Society in good standing is eligible to serve as a Trustee, whether as a Specific Office Trustee or an At-Large Trustee.

D. Commencing in 2011, prior to or at the September meeting of the Board, the Board shall appoint a Nominating Committee consisting of three members, at least one of which shall be selected from the Board. In 2011, the Nominating Committee shall nominate candidates for Group 1 At-Large Trustees, Group 2 At-Large Trustees and the offices of President, President-Elect, Vice-President, Treasurer, Recording Secretary and Corresponding Secretary. In each subsequent year, the Nominating Committee shall nominate (i) At-Large Trustees for the Group whose term expires at the December meeting of members to be held that year and (ii) subject to Section 1 of Article V hereof with respect to the nomination of candidates for President, the officers whose term expires at the December meeting of members to be held that year. The Nominating Committee shall submit the complete roster of nominees to the Corresponding Secretary not later than the October meeting of the Board. The slate of nominees shall be announced in the November Newsletter. Additional nominations for At-Large Trustees of the Group (or, in 2011, either Group) or for any office to be elected at that annual meeting may be made from the floor at the November annual meeting of members. Such nominees must be present at the meeting, or if absent, their written consents to be nominated must be obtained prior to their nominations.

E. Commencing in 2011, the election of the Group of At-Large Trustees and the officers to be elected at any particular annual meeting of members shall be by the majority vote of the members present at that annual meeting, provided that a quorum shall be present at the time that the vote is taken. Elections will be held under the direction and supervision of the Nominating Committee.

Section 2. **Powers and duties.** Except as otherwise expressly provided for in these Bylaws, the business and property of the Society shall be managed and controlled by the Board, who have full and complete authority to exercise all the powers granted to the Society by its Charter of Incorporation, and by the laws of the State of Hawaii, including, the authority to request donations and grants from individuals and other organizations, businesses and government entities. Any outlay or expense in an amount in excess of \$250, including, but not limited to, donations, contributions, scholarships or purchases, must be approved by the affirmative vote of two-thirds of the Trustees present if a quorum is present when the vote is taken. The Board shall have the authority to engage from time to time a certified public accountant or firm of certified public accountants to review and make recommendations to the Board regarding the Society's accounting processes and practices and financial controls.

Section 3. **Resignation.** Any Trustee may resign at any time by delivering written notice of resignation to the President or the Recording Secretary. A resignation shall be effective upon the later of delivery of such notice or the later effective date, if any, specified in the notice. A Specific Office Trustee other than Immediate Past President shall be deemed automatically to have resigned from the Board upon his resignation or removal as an officer of the Society.

Section 4. **Removal.** Any Trustee shall be subject to removal, with or without cause, at any regular or special meeting of the members of the Society by the affirmative vote of a majority of members present in person if a quorum is present when the vote is taken.

Section 5. **Vacancies.** A vacancy arising in the Board by reason of a vacancy in an At-Large Trustee position on the Board shall be filled at any regular or special meeting of the

Board by the affirmative vote of a majority of Trustees present if a quorum is present when the vote is taken. A vacancy arising in the Board by reason of a vacancy in the position of Immediate Past President shall not be filled. A vacancy in the Board arising by reason of a vacancy in any other Specific Office Trustee position on the Board shall be filled or not filled as a result of action required to be taken or not taken as provided in Section 10 of Article V below.

Section 6. **Meetings.** The Board shall meet monthly (except for the months of the Society's holiday party and the month in which the Society's annual orchid show is conducted) immediately preceding the monthly membership meeting. Special meetings of the Board may be held upon five days' notice by or at the call of the President or any four Trustees.

Section 7. **Action Without Meeting.** Any action required or permitted by the Hawaii Nonprofit Corporations Act to be taken at a meeting of the Board may be taken without a meeting if the action is taken by all members of the Board, evidenced by one or more written consents describing the action taken, signed by each Trustee, and included in the minutes filed with the corporate records of the Society reflecting the action taken.

Section 8. **Participation in Meetings by Means of Electronic Communication.** Any or all Trustees may participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Trustees participating may simultaneously hear each other during the meeting. A Trustee participating in a meeting by this means is deemed to be present in person at the meeting.

Section 9. **Quorum and Vote.** A majority of Trustees in office immediately before a meeting begins shall constitute a quorum for the transaction of business by the Board. Unless otherwise required by law or the charter of incorporation or these bylaws, the affirmative vote of a majority of Trustees present if a quorum is present when a vote is taken shall be the act of the Board.

Section 10. **Remuneration.** No salary or other remuneration shall be paid to any Trustee for services rendered in connection with the exercise of their duties, either as a trustee or as an officer.

## **ARTICLE V OFFICERS**

Section 1. **Officers.** Commencing effective the date of the annual meeting of members to be held in 2011, the officers of the Society are: a President, a President-Elect, a Vice-President, a Recording Secretary, a Corresponding Secretary, and a Treasurer. The officers shall be elected by the members of the Society. Any member of the Society in good standing is eligible to serve as an officer. Commencing with the election of officers in 2011, the following officers shall be elected for the term expiring at the close of the 2012 December meeting of the members: the Vice-President, Recording Secretary and Corresponding Secretary; the following officers shall be elected for the term expiring at the close of the 2013 December meeting of members: President, President-Elect and Treasurer; and except as hereinafter provided, their respective successors shall be elected for terms of two years each thereafter. Officers shall

otherwise be nominated and elected in the manner provided in paragraphs D and E of Section 1 of Article IV above; provided, however, that notwithstanding the foregoing:

- (a) Starting with the 2012 annual meeting, no candidate shall be nominated for or elected to the office of President if, at the time, there is a President-Elect in office, so that such President-Elect (including one who has succeeded to the office of President for the unexpired portion of his predecessor's term as President) shall without contest or election automatically succeed to the office of President;
- (b) A President-Elect who succeeds to the office of President for the unexpired portion of his predecessor's term shall be treated as if he were still President-Elect for purposes of the next election of the President; and
- (c) In the event of a vacancy in the office of President-Elect by reason of the President-Elect succeeding to the office of President for the unexpired portion of his predecessor's term, one or more candidates shall be nominated for President-Elect and an election of the President-Elect shall be held at the next annual meeting of members, and if such meeting is held in an even-numbered calendar year, the candidate elected to the office of President-Elect at that meeting shall hold office for the term of one year.

**Section 2. Powers and duties of the President.** The President presides at all meetings of the members of the Society and of the Board. The President has general supervision over all the affairs of the Society, and shall make an annual report thereof not later than the April meeting of the membership in each year. The President coordinates and supervises all communications on behalf of the Society to either members of the Society or to other persons. The President may delegate any of such communication responsibilities to another officer of the Society. The President sends notices of all meetings, regular and special, together with an agenda. Notices of regular meetings of the membership and regular meetings of the Board will be published in the monthly newsletter of the Society. Notices of special meetings of the Board will be transmitted by the President to each of the Trustees by electronic transmission. The President shall sign all authorized written contracts, or other obligations, in the name of the Society, unless otherwise directed by the Board. No contract or other obligation shall be valid and binding upon the Society unless this provision has been complied with. The President performs such other duties from time to time as may be assigned to the President by the Board.

**Section 3. Powers and Duties of the President-Elect.** The President-Elect shall succeed to the office of the President upon the expiration of the term of the President or upon any vacancy occurring in the office of the President. In the absence or disability of the President, the President's powers and duties shall be assumed and performed by the President-Elect.

**Section 4. Powers and Duties of the Vice-President.** In the absence or disability of the President and the President-Elect, the powers and duties of the President shall be assumed and performed by the Vice-President. The Vice-President serves as the Chair of the Program Committee. The Vice-President performs such other duties from time to time as may be assigned to the Vice-President by the Board.

Section 5. **Powers and Duties of the Corresponding Secretary.** The Corresponding Secretary conducts, and keeps copies of, the correspondence of the Society. The Corresponding Secretary corresponds with members and other persons on behalf of the Society, as from time to time requested by the Board and may appoint assistants to carry out these duties.

Section 6. **Powers and Duties of the Recording Secretary.** The Recording Secretary takes and keeps the minutes of all meetings of the Society and of the Board. The Recording Secretary has general charge of the records, documents and committee reports of the Society. The Recording Secretary notifies each person of such person's election to office or membership in the Society, and such person's appointment to committees. The Recording Secretary authenticates records of the Society. The Recording Secretary files with the Department of Commerce and Consumer Affairs of the State of Hawaii an annual report in the form prescribed by the Department. The Recording Secretary may appoint assistants to assist in carrying out these duties.

The Recording Secretary, in accordance with the laws of the State of Hawaii shall cause to be kept in the principal office of the Society, the original or a copy of the Bylaws as amended or otherwise altered to date, certified by the President or other proper officers, which shall be open to inspection by the members at all reasonable times.

Section 7. **Powers and Duties of the Treasurer.** The Treasurer receives all moneys belonging to the Society, and disburses them, based on vendor receipts, under the direction of the Board or any committee empowered by the Board, to pay the obligations of the Society. All checks drawn by the Society must bear the signature of the Treasurer and must be countersigned by another officer designated by the Board. The Treasurer deposits the funds of the Society, in the name of the Society, in such depositories as may be designated from time to time by the Board. The Treasurer keeps full and accurate financial accounts in books and records belonging to the Society in such manner as directed or approved by the Board. The books and records shall be open to inspection at all reasonable times by any Trustee and by any auditor appointed by the Board. The Treasurer shall submit a detailed monthly financial report to the Board at each meeting of the Board setting forth all income and expense items and shall submit an annual financial report to the Board on or before the March Board meeting each year. The Treasurer will also submit a financial statement summary for publication in the April Society newsletter each year. The Treasurer submits such other reports relating to the finances of the Society whenever so directed by the Board. The Treasurer shall be bonded in such amounts and at such times as the Board deems desirable. The Treasurer may appoint assistants as necessary in carrying out these duties. No person may serve more than two successive terms as Treasurer (calculated without regard to any period of service as Treasurer for any unexpired portion of the term of such person's predecessor).

Section 8. **Resignation.** An officer may resign at any time by delivering notice to the Society. A resignation shall be effective upon the later of delivery of such notice or the later effective date, if any, specified in the notice.

Section 9. **Removal.** Any officer shall be subject to removal, with or without cause, at any regular or special meeting of the members of the Society by the affirmative vote of a majority of members present in person if a quorum is present when the vote is taken.

Section 10. **Vacancies.** A vacancy in the office of President shall be filled automatically by the President-Elect, if any is in office when the vacancy arises. A vacancy in the office of President-Elect shall not be filled except by election held at the next annual meeting of members of the Society or any adjournment thereof. A vacancy in the office of Vice President, Treasurer, Recording Secretary or Corresponding Secretary may be filled by the Board at any regular or special meeting of the Board by the affirmative vote of a majority of Trustees present if a quorum is present when the vote is taken.

## **ARTICLE VI COMMITTEES**

Section 1. **In General.** This section applies to all committees, except as otherwise specified. All chairpersons, assistant chairpersons as required and members of committees shall be appointed or designated for such term as shall be designated by the Board. Other persons who would chair major long range events, such as the Annual Orchid Show, international conferences, conservation projects, and AOS Trustee Meetings, etc., must be appointed sufficiently far enough in advance of the event so as to accommodate the required planning. The President, with the approval of the Board, shall appoint a chairperson for each committee. In case any chairperson or member vacates such person's membership in the committee for any cause, a successor shall be appointed in the same manner as such person's predecessor for the unexpired portion of the term of such person's predecessor.

A majority of the membership of each committee shall constitute a quorum for the transaction of business.

Any chairman or member of any committee shall be subject to removal, with or without cause, at any time by the Board by the affirmative vote of a majority of Trustees present if a quorum is present.

Each committee will submit timely requests for funds together with proposed budgets, plans and projects and recommendations to the Board for approval. It will be the policy of each committee to confer and collaborate with other committees whenever it is in the best interest of the Society. In addition to the powers and duties specified, each committee is vested with such other powers and will perform such other duties as may be assigned to it by the Board.

Section 2. **Assistant Chairpersons.** Assistant chairpersons may be appointed by the chairperson of each committee as deemed necessary.

Section 3. **Standing Committees.** There will be a Show Committee, a Public Relations and Hospitality Committee, a Program Committee, a Membership Committee and a Scholarship Committee.

Section 4. **Powers and Duties of the Show Committee.** The Show Committee makes plans for all shows, including the dates, place, time and publicity. Responsibility for all shows sponsored by the Society, or in which it participates, rests in the Show Committee. The Show Committee shall prepare and submit to the Board for approval a budget for the Society's sufficiently far enough in advance of the annual show so as to accommodate the required planning.

Section 5. **Powers and Duties of the Public Relations and Hospitality Committee.** The Public Relations and Hospitality Committee is responsible for preparing and/or providing suitable materials for release to the public through the press, radio or other agencies, fosters good will and relationship between the Society and the general community, functions as an Aloha reception body to visiting orchidists and new members, and acts as receptionists at the Society's meetings. Its objectives include recruiting new members and integrating new members into the Society and the Society's activities. It is also the central body for carrying on the publicity work for other committees when so requested. It also functions as the clearinghouse for social events.

Section 6. **Powers and Duties of the Program Committee.** The Program Committee, chaired by the Vice President, arranges for the programs presented at all meetings of the Society.

Section 7. **Powers and Duties of Membership Committee.** The Membership Committee maintains a current membership listing in coordination with the Publications Committee. The Membership Committee notifies the members when dues are payable, collects membership dues and maintains a record of all payments of dues. The Membership Committee shall provide to the Board, at the April meeting, a list of all members who were in good standing during the immediately preceding year that have not paid their current year's dues.

Section 8. **Powers and Duties of Scholarship Committee.** The Scholarship Committee develops proposed selection criteria for candidates for scholarships awarded by the Society and makes recommendations to the Board regarding such criteria.

Section 9. **Special Committees.** The President may establish with the approval of the Board, special committees which shall not have or exercise any powers of the Board, but, which shall be vested with such other powers and duties as the President may assign to such committee, and as the Board may approve.

## **ARTICLE VII MEMBERSHIP MEETINGS**

Section 1. **Regular Meetings.** There shall be eleven scheduled meetings of the members of the Society held monthly during the year, of which the November meeting shall be the annual meeting. The newly elected officers and Trustees shall be installed, and the holdover officers and Trustees shall be introduced during the December meeting. No meeting will be held during the month in which the Society's annual orchid show is held.

Section 2. **Special Meetings.** Special meetings of the members may be called upon no less than ten and no more than sixty days notice by (a) the President, the Board, or a majority of the Trustees then in office or (b) upon the written request of at least ten members, which request shall be signed, dated and delivered to any officer and describe the purpose or purposes for which the meeting is to be held. The notice of any special meeting shall include a description of the matter or matters for which the meeting is called. Only those matters which are within such purpose or purposes may be conducted at the special meeting.

Section 3. **Waiver of Notice.** A member may waive any notice before or after the date and time stated in the notice by a writing signed by the member entitled to the notice and



delivered to the Society for inclusion in the minutes or filing with the corporate records of the Society. A member's attendance at a meeting waives objection (a) to lack of notice or defective notice of the meeting unless, at the beginning of the meeting, the member objects to holding the meeting or transacting business at the meeting and (b) to consideration of a particular matter not within the scope of the purpose or purposes described in the notice of the meeting unless the member objects to consideration of the matter when it is presented.

Section 4. **Quorum.** Unless the Charter of Incorporation, these Bylaws or applicable law provides for a higher or lower quorum, twenty-five members present in person shall constitute a quorum for the transaction of business.

Section 5. **Proxies.** Voting by proxy shall not be permitted.

### **ARTICLE VIII PRIZES AND AWARDS**

The Board shall have the right, from time to time subject to Section 2 of Article IV, to appropriate an amount of money determined by the Board for such medals, certificates, or other gestures or prizes as they deem in the best interest of the Society and for the fulfillment of its objectives and purposes as set forth in its Charter of Incorporation.

### **ARTICLE IX AMENDMENT OF BYLAWS AND POLICIES**

From time to time these Bylaws as well as the Policies of the Society may need to be revised. A Bylaws Revision Committee may, in the discretion of the Board, be appointed by the Board at any time in response to either perceived needs by the Board or a signed, written request by any member. The appointment of a Bylaws Revision Committee will be announced to the membership in the monthly Newsletter and the next meeting with explanation of the topics to be considered. The membership may submit proposed revisions to the Revision Committee for consideration. Revisions to the Bylaws must not be contrary to or inconsistent with any provision of the Charter of Incorporation or the Laws of the State. Revisions to the Bylaws proposed by the Bylaws Revision Committee must be approved by the Board by an affirmative vote of seven members of the Board at a meeting at which a quorum is present. The revised Bylaws will then be printed and submitted to the membership at the next general meeting. Approval by the membership will be voted upon at the next subsequent general meeting. The affirmative vote of at least two-thirds of the members present if a quorum is present is required for approval. After approval by the membership the President must sign and date the Revised Bylaws as certification of their legitimacy. Policies will be established by the Board and made available to the membership. Policies must not be contrary to or inconsistent with any provision of the Bylaws.

### **ARTICLE X SEAL**

This Corporation shall have a corporate seal which shall be a circular impression of the name of the corporation and the year of its incorporation, 1983.

**ARTICLE XI  
LIABILITIES OF OFFICERS AND TRUSTEES**

Section 1. **Indemnification of Officers and Trustees.** Every officer or Trustee of the Society shall be indemnified by the Society against personal loss, cost, or expenses incurred in consequence of any authorized act done or authorized contract entered into in good faith on behalf of the Society or in the performance of any authorized act as such officer in the manner and to the extent set forth in Appendix I to these Bylaws (which Appendix is hereby incorporated herein by this reference) and as provided in the Hawaii Nonprofit Corporation Act.

Section 2. **Directors' and Officers' Liability Insurance.** The Board shall cause the Society to maintain directors' and officers' liability insurance with an insurance company and with coverage limits as from time to time determined by the Board, unless such insurance is not readily available.

**ARTICLE XII  
RULES OF ORDER**

Robert's Rules of Order Revised shall govern the proceedings of all meetings of the Society and its constituent parts except as provided by these Bylaws.

Revised 9-13-96, Susan McNair, Attorney.

Recorded 2/15/98 - Eileen McKyton c:\my documents\hos bylaws 1998.doc

Revised 25 Oct 1998 - Stan Dinsmore and Richard Smith.

Recorded 1/22/99 - Stan Dinsmore d:\winword\hilo\_os\bylawfl.doc

Revised 24 Feb 2000 - Bylaws Committee: Richard Smith, Eileen McKyton, Derrick AhSing

First draft recorded by Stan Dinsmore I:\Hilo\_OS\By-laws\BYLAWS02.doc

Revised 27 February 2000 by Board of Directors

Recorded 2/28/2000 - Stan Dinsmore i:\Hilo\_OS\ByLawsC.2.doc

Final Revision Recorded 3/14/2000 - Stan Dinsmore i:\Hilo\_OS\ByLawsC.doc

Minor extra spacing removed and signature added 1/27/01. Recorded (Tiger) c:\My Documents\Hilo Orchid Society\ByLaws\ByLawsC1.doc

Revised \_\_/\_\_/2011 by Board of Directors

Certified by: \_\_\_\_\_, President Dated \_\_\_\_\_

## APPENDIX I

### TERMS OF INDEMNIFICATION

#### I. INDEMNITY IN GENERAL

- (A) Except as provided in subsection (D) of this Article I, the Society shall indemnify a former or current Trustee made a party to a proceeding by reason of the fact that the individual was or is a Trustee, against liability incurred in the proceeding if:
- (1) The individual conducted the individual's self in good faith; and
  - (2) The individual reasonably believed:
    - (a) In the case of conduct in an official capacity, that the individual's conduct was in the Society's best interests; and
    - (b) In all other cases, the individual's conduct, at a minimum, did not oppose the Society's best interests; and
  - (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.
- (B) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, is not by itself determinative of a Trustee's failure to meet the standard of conduct described in this section.
- (C) The Society shall not indemnify a Trustee's liability under this section where the Trustee's liability has been determined:
- (1) In connection with a proceeding by or in the right of the Society, or
  - (2) In connection with any other proceeding whether or not involving action in an official capacity, in which the Trustee was found liable on the basis of the Trustee's improper receipt of a personal benefit.
- (D) Indemnification provided for under this section in connection with a proceeding by or in the right of the Society is limited to reasonable expenses incurred in connection with the proceeding.

#### II. MANDATORY INDEMNIFICATION

Unless limited by its Charter of Incorporation, the Society shall indemnify a Trustee who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the Trustee was a party because the Trustee is or was a Trustee of the Society, against reasonable expenses actually incurred by the Trustee in connection with the proceeding.

### III. ADVANCE FOR EXPENSES

- (A) The Society, before final disposition of a proceeding, may advance funds to pay for or reimburse the reasonable expenses incurred by a Trustee who is a party to a proceeding, provided:
  - (1) The Trustee furnishes the Society with a written affirmation of the Society's good faith belief that the Trustee has met the standard of conduct described in Article I of this Appendix;
  - (2) The Trustee furnishes the Society with a written undertaking, executed personally or on the Trustee's behalf, to repay the advance if it is ultimately determined that the Trustee did not meet the standard of conduct; and
  - (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Appendix or applicable law.
- (B) The undertaking required by subsection (A)(2) of this Article III must be an unlimited general obligation of the Trustee but need not be secured and may be accepted without reference to financial ability to make repayment
- (C) Determinations and authorizations of payments under this section shall be made in the manner specified in Article V.

### IV. COURT-ORDERED INDEMNIFICATION

- (A) Unless limited by the Society's Charter of Incorporation, a Trustee of the Society who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:
  - (1) The Trustee is entitled to mandatory indemnification under Article II hereof or section 414D-161 of the Hawaii Nonprofit Corporation Act, in which case the court, pursuant to said section 414D-161, shall also order the Society to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
  - (2) The Trustee is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Trustee met the standard of conduct set forth in Article I or was found liable as described in Article I, but if the Trustee was found liable indemnification is limited to reasonable expenses incurred.

## V. DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION

- (A) The Society may not indemnify a Trustee under Article I unless authorized in the specific case after a determination has been made that the Trustee has met the standard of conduct set forth in Article I.
- (B) The determination shall be made by the Board of Trustees by majority vote of a quorum consisting of Trustees who are not at the time parties to the proceeding.
- (C) The determination shall be made by majority vote of a committee duly designated by the Board of Trustees in which designation Trustees who are parties may participate) consisting solely of two or more Trustees not at the time parties to the proceeding if a quorum cannot be obtained under subsection (B).
- (D) The determination shall be made by special legal counsel selected by:
  - (1) The Board of Trustees or its committee in the manner prescribed in subsection (B) or (C), or
  - (2) Majority vote of the full Board (in which selection Trustees who are parties may participate) if a quorum of the Board cannot be obtained under subsection (B) and a committee cannot be designated under subsection (C).
- (E) The determination shall be made by the members but Trustees who are at the time parties to the proceeding may not vote on the determination.
- (F) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (D) to select counsel.

## VI. INDEMNIFICATION OF OFFICERS, EMPLOYEES AND AGENTS

- (A) An officer, if any, of the Society who is not a Trustee, unless limited by the Society's Charter of Incorporation, is entitled to mandatory indemnification under Article II above and to apply for court-ordered indemnification under Article IV above, in each case to the same extent as a Trustee.
- (B) The Society, unless limited by the Society's Charter of Incorporation, may indemnify and advance expenses to an officer, employee or agent of the Society who is not a Trustee to the same extent as to a Trustee.
- (C) The Society, unless limited by the Society's Charter of Incorporation, may also indemnify and advance expenses to an officer, employee or agent of the Society who is not a Trustee to the extent, consistent with public policy, that may be provided by the Charter of Incorporation, the bylaws, general or specific action of the Board or contract.