

**CERTIFIED COPY OF
AMENDED AND RESTATED
GOVERNING INSTRUMENT, AS AMENDED,
OF THE
HERMAN KNAPP TESTIMONIAL FUND**

The undersigned Secretary-Treasurer of the Herman Knapp Testimonial Fund, an unincorporated association, hereby certifies that the following is a true and correct copy of the Amended and Restated Governing Instrument of the Herman Knapp Testimonial Fund, as adopted effective June 1, 1997, as thereafter duly amended by the Board of Trustees of the Herman Knapp Fund Testimonial Fund effective October 4, 1997:

**AMENDED AND RESTATED
GOVERNING INSTRUMENT
OF THE
HERMAN KNAPP TESTIMONIAL FUND**

**ARTICLE I.
PURPOSES AND POWERS**

The Fund is organized and shall be operated exclusively to support, benefit, perform, and assist in carrying out, the charitable, educational, and scientific purposes and functions of The American Ophthalmological Society (the "Society"), all as contemplated and permitted by Sections 170(c)(2), 501(c)(3), and 509(a)(3) of the Internal Revenue Code, as now enacted and as hereafter amended (the "Code").

Within the framework and limitations of the foregoing, the Fund is organized and shall be operated exclusively to engage in, advance, support, and administer charitable, educational, and scientific activities, causes, and projects of the Society of every kind and nature whatsoever, and, but only if and to the extent consistent with the foregoing purposes and with guidelines established from time to time for the Fund by the Council of the Society: to raise the standards of medical care of the ocular sick by promoting and advancing the art and science of ophthalmology, by advancing the art and practice of ophthalmic teaching, by promoting and supporting advanced study and research in the fields of ocular and related diseases, and by providing for prizes and medals to persons excelling in one or more of such endeavors.

For such purposes and not otherwise, the Fund shall have and exercise only such powers as are required by and are consistent with the foregoing purposes, including the power to acquire and receive funds and property of

every kind and nature whatsoever, whether by purchase, conveyance, lease, gift, grant, bequest, legacy, devise, or otherwise and whether in trust or otherwise; to own, hold, expend, make gifts, grants, and contributions of, and to convey, transfer, and dispose of any funds and property and the income therefrom in furtherance of the charitable, educational, and scientific purposes and functions of the Society as hereinabove set forth; to lease, mortgage, encumber, and use the same; to engage the services of accountants, attorneys, and investment and other advisers relating to the business and affairs of the Fund; to open and maintain accounts with banks, depositories, and brokerages; and such other powers that are consistent with the foregoing purposes that are afforded generally to nonprofit corporations. Provided, however, that all such powers of the Fund shall be exercised only so that the activities of the Fund shall be exclusively within the contemplation of Sections 170(c)(2), 501(c)(3), and 509(a)(3) of the Code; and provided further, however, that the Fund shall not carry on any activity not permitted to be carried on by an organization that is described in Sections 501(c)(3) and 509(a)(3) of the Code and is exempt from federal income taxes under Section 501(a) of the Code, or by an organization that is described in, and contributions to which are deductible for federal income tax purposes under, Section 170(c)(2) of the Code.

ARTICLE II. PROSCRIBED ACTIVITIES

The Fund shall not, incidentally or otherwise, afford or pay any pecuniary gain, dividends, or other pecuniary remuneration to any member or Trustee of the Fund, or to any member of the Society as such, and no part of the net income or net earnings of the Fund shall, directly or indirectly, be distributable to or inure to the benefit of any member or Trustee of the Fund or any member of the Society as such or any other private individual; provided, however, that the Fund may pay reasonable compensation for services and supplies provided to the Fund. No part of the activities of the Fund shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Fund shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of, or in opposition to, any candidate for public office.

ARTICLE III. BOARD OF TRUSTEES

The business and affairs of the Fund shall be managed and directed by a Board of Trustees who are the currently elected or appointed members of the Council of the Society. A Trustee of the Fund shall serve so long as he/she remains an elected or appointed member of the Council. If a Trustee of the Fund

wishes to resign from the Board of Trustees of the Fund, he or she may resign by written notice to both the Board of Trustees of the Fund and to the Council of the Society, effective as of the date or time, if any, specified in such written notice, or, if no date or time is specified in such notice, the resignation shall be effective when a successor Trustee of the Fund is elected or appointed to the Council of the Society.

ARTICLE IV. MEMBERS

The only members of the Fund shall be the persons who are from time to time the members of the Board of Trustees of the Fund. Members of the Fund shall have no voting rights in their capacities as members and shall have voting rights only in their capacities as Trustees.

ARTICLE V. OFFICERS

The officers of the Fund shall be a Chair of the Board of Trustees and a Secretary-Treasurer.

The Chair of the Board of Trustees shall be the current Chair of the Council; shall serve as the Chief Executive Officer of the Fund; shall have and exercise the powers and duties usually incident to the office of Chief Executive Officer of a nonprofit corporation; shall preside at all meetings of the Board of Trustees of the Fund; shall have the authority to enter into and sign on behalf of the Fund agreements, contracts, and all other forms, instruments, and documents pertaining to the business and affairs of the Fund approved by the Board of Trustees; and shall have such other duties and responsibilities as may from time to time be prescribed by the Board of Trustees of the Fund.

The Secretary-Treasurer shall be the current Executive Vice President of the Society; shall serve as the Chief Operating Officer of the Fund, manage the day-to-day business and affairs of the Fund, and maintain proper books of accounts and records for the Fund; shall have and exercise the powers and duties usually incident to the offices of Chief Operating Officer, Secretary, and Treasurer of a nonprofit corporation; shall submit to the Board of Trustees of the Fund at least quarterly financial statements of the Fund accompanied by quarterly reports of transactions of the Fund; shall submit to the Council of the Society at least annual financial statements of the Fund accompanied by annual reports of transactions of the Fund; and shall have such other duties and responsibilities as may from time to time be prescribed by the Board of Trustees of the Fund.

**ARTICLE VI.
FUND OFFICES**

The Fund may have one or more offices at such place or places as the Board of Trustees of the Fund may from time to time determine. The Secretary-Treasurer shall maintain at an office, originals or copies of all financial and other books of accounts and records of and pertaining to the Fund.

**ARTICLE VII.
DISSOLUTION OR TERMINATION**

The Fund may be dissolved or terminated by the Board of Trustees of the Fund. Upon dissolution or other termination of the Fund, all assets and properties of the Fund remaining after the payment of all liabilities of the Fund shall be distributed to the Society if the Society at such time is in existence, is an organization described in Sections 170(c)(2), 501(c)(3), and 509(a)(2) of the Code, and is willing to accept such assets and properties; provided, that if the Society at such time is not in existence, or is not so described in such provisions of the Code, or is unwilling to accept such assets and properties, such assets and properties shall instead be distributed to The American Ophthalmological Society Charitable, Educational, and Scientific Fund (the "Fund"), a Minnesota nonprofit corporation, if the Fund at such time is in existence and is an organization described in Sections 170(c)(2), 501(c)(3), and 509(a)(3) of the Code; provided, that if the Fund at such time is not in existence or is not so described in such provisions of the Code, such remaining assets shall instead be distributed to and among such one or more organizations as are then in existence and are described in Sections 170(c)(2) and 501(c)(3) of the Code, all in such amounts or proportions as shall be determined by the Board of Trustees of the Fund. Notwithstanding anything apparently or expressly to the contrary contained in the foregoing sentence, if any assets or properties are then held by the Fund in trust or upon condition or subject to any executory or special limitation and if the condition of limitation occurs by reason of the dissolution or other termination of the Fund, such assets or properties shall revert or be returned, transferred, or conveyed in accordance with the terms and provisions of such trust, condition, or limitation.

**ARTICLE VIII.
AMENDMENTS**

The Governing Instrument of the Fund, as herein amended and restated, may hereafter be further amended or restated at any time and from time to time by the Board of Trustees of the Fund, with the approval of the Council of the Society.

**ARTICLE IX.
ACTIONS**

All actions of the Board of Trustees shall require the affirmative vote of at least a majority of the members of the Board of Trustees. A quorum of the Board of Trustees for purposes of taking any action of the Board of Trustees shall be a majority of the Trustees, except as herein provided. The Board of Trustees may take action by a written action signed by all of the Trustees or by email affirmation. A conference among the Trustees by any means of communications through which the Trustees may simultaneously hear each other during the conference constitutes a meeting of the Board of Trustees if the number of Trustees participating in the conference is sufficient to constitute a quorum at a meeting, and participation in a conference by that means constitutes presence in person at the meeting.

IN WITNESS WHEREOF, the undersigned has signed this certification on October _____, 1997.

Froncie A. Gutman, M.D.,
Secretary-Treasurer

Revised 10.17.2009
Added to web 3.30.2010