EXECUTIVE ORDER NUMBER 10

WHEREAS, the State recognizes that economic development is intrinsically linked to a strong scientific community; and

WHEREAS, a hallmark of a strong scientific community is a nationally recognized research program; and

WHEREAS, it is the policy of the State of Alabama to assure that the State support and encourage high standards of scientific research; and

WHEREAS, there is a need to achieve this objective.

NOW, THEREFORE, I, Don Siegelman, as Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, do hereby rescind all previous Executive Orders relating to Act 81-1185.

BE IT ORDERED, that the Alabama Research Institute (hereinafter referred to as "ARI") is established for the purpose of research, investigation and experimentation and to carry out the intent of Act 81-1185 of the 1981 Third Special Session of the Alabama Legislature. This act was intended to support the highest levels of educational, agricultural, maricultural, and industrial activities.

BE IT FURTHER ORDERED, that ARI shall be administered by the Alabama Department of Economic and Community Affairs (ADECA), and is hereby designated as a State agency to accept federal funds appropriated or allocated by Congress to the State for scientific research and development, to receive contributions, to receive state appropriations, and to receive monies from other sources for the purpose of carrying out research and development activities as provided by Act 81-1185.

BE IT FURTHER ORDERED, that the following words and phrases, as used in this Executive Order, shall have the following respective meanings:

"Amortized Premium," when used with reference to any eligible investment acquired for the purchase price (exclusive of accrued interest) reflecting a premium above the face or par amount thereof, means an amount determined by first dividing the total dollar amount of the premium at which such investment was purchased by the number of days between the date of purchase and the maturity of such investment (or other date when the principal thereof is contractually required to be paid to the holder thereof) and by then multiplying the quotient so obtained by the number of days between the date of purchase and the date as of which such amount is to be determined.

"Board" means the Board of Directors of ARI.

"Director" means a member of the Board of Directors of ARI.

"Eligible Investments" mean any of the following:

(1) Demand deposits (whether or not interest bearing) in federally insured banks, interest bearing time deposits (whether or not evidenced by certificates of deposits) in federally insured banks, provided that non-interest bearing deposits shall constitute an eligible investment for moneys in the endowment fund for only so long as sound business practice shall require such moneys to be held in such deposits, pending the investment thereof in other eligible investments of the disbursement thereof accordance with the provision of this Executive Order;

(2) Money market funds that are rated A1/P1 by Moody's and/or Standard and Poors or money market funds that have a higher quality rating, such as a Treasury Bill or money market fund;

(3) Bonds, notes, or other evidences of indebtedness that are direct obligations of the United States of America or that are unconditionally guaranteed as to both principal and interest by the United State of America;

(4) Bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following agencies or corporations: the Federal Farm Credit Bank, the Federal Intermediate Credit Banks, the Export-Import Bank of the United States, the Federal Land Banks, the Federal National Mortgage Association, the Tennessee Valley Authority, the Governmental National Mortgage Association, the Federal Financing Bank, the Farmers Home Administration, the Federal Home Loan Mortgage Corporation, or any agency or instrumentality of the United States of America which shall be established for the purpose of acquiring the obligations of any of the foregoing or otherwise providing financing therefor;

(5) Repurchase agreements with federally insured banks or with government bond dealers reporting to and trading with the Federal Reserve Bank of New York, provided that such repurchase agreements are secured by obligations described in subdivisions (3) and (4) of this definition;

(6) Corporate bonds, provided, however, that no more than a maximum of 25 percent of the trust capital may be invested in such bonds by the Board at any time and provided further that no more than a maximum 10 percent of the 25 percent may be

invested in any one corporation. All corporate bonds shall, at the time of purchase by the Board, carry a rating of "A" or better by Moody's and/or Standard and Poors; provided, however, that if neither Moody's nor Standard and Poors is in existence or ceases to issue bond ratings, then, otherwise eligible corporate bonds must carry one of the three highest grade or quality ratings issued by the securities rating firm that, in the opinion of the Board, is recognized as the most reputable.

(7) Common stocks which have a Standard & Poor's rating of B- or better or Value Line Financial Strength rating of B or better; and have a market capitalization of at least $1 billion. At no time should the portfolio be invested in any one stock which represents more than 5 percent of the equity portion of the portfolio.

"Endowment Capital" means all assets of the endowment fund other than endowment income.

"Endowment Fund" means "The Alabama Research Institute Endowment" created by this Executive Order.

"Endowment Income", when used with reference to any period, means the new income received during such period from the investment and reinvestment of all assets of the endowment fund, determined in accordance with the provisions of Section 7(b) of this Executive Order.

"Federally Insured Bank" means any bank, whether organized under the laws of the United States of America or the laws of any state thereof, which is a member of the Federal Deposit Insurance Corporation or which obtains deposit insurance to the maximum extent possible from any agency of the United States of America that may succeed to the functions of the Federal Deposit Insurance Corporation.

"Fiscal Year" means the fiscal year of the State of Alabama.

BE IT FURTHER ORDERED, that there shall be a Board of Directors composed of four individuals. By virtue of their office, the following individuals shall be members of the board: the Governor, who shall serve as Chairman, the State Finance Director, the Director of the Alabama Department of Economic and Community Affairs and the Chief of the Science, Technology and Energy Division of ADECA, who shall serve as Secretary and a non-voting member of the Board.

BE IT FURTHER ORDERED, that a majority of the directors shall constitute a quorum for the transaction of business by the board, and decisions shall be made on the basis of a majority of the quorum then present and voting, with each director casting a single vote. No vacancy in the membership of the board or the voluntary disqualification or abstention of any director shall impair the right of a quorum to exercise all of the powers and duties of the board.

BE IT FURTHER ORDERED, that any meeting held by the board for any purpose shall be open to the public, except that closed sessions may be held by the board when the character or good name of a person is involved, as provided for by the laws of the State of Alabama. All proceedings of the board shall be reduced to writing on behalf of the board, submitted to the principal office of the board (ADECA) and there shall be available for public inspection during regular business hours.

BE IT FURTHER ORDERED, that if any director has a conflict of interest in any matter brought before the board, the director shall make a full disclosure of the conflict to the board and withdraw from participation in any deliberation or decision of the board with respect to such matter.

BE IT FURTHER ORDERED, that ARI shall be subject to the management and control of the Board of Directors. The Chief of the Science, Technology and Energy Division of ADECA shall be the Administrative Officer and shall be responsible to the board for any assistance necessary to implement the provisions of this Executive Order.

The board shall have all of the powers necessary to carry out the purposes and provisions of this Executive Order, including the following:

(a) To adopt, alter, and repeal by-laws and regulations for the conduct of its affairs and business; to make comprehensive rules and regulations for the awarding and administration of a research grant-in-aid program;

(b) To make, enter into, and execute contracts, agreements and other instruments and to take such other actions as may be necessary to accomplish any purpose for which the endowment fund was created;

(c) To enter into contracts with, to accept aid and grants from, to cooperate with, and to do whatever may be necessary in order to avail itself of the aid and cooperation of the United States of America, the State of Alabama or any agency or political subdivision of either for the purposes of this Executive Order; and

(d) To appoint and contract with consultants, such as engineers, scientists, attorneys, and such other advisors or other consultants as may be necessary, to properly evaluate applications for projects and activities. No lien or charge against the assets of the endowment fund, for any purpose whatsoever, shall be created by or result from any unconstitutional action taken by the board or any other department or agency of the State.

BE IT FURTHER ORDERED, that there shall be an Advisory Board composed of eight individuals. By virtue of their office, the following individuals shall be members of the board: the Chief of the Science, Technology, and Energy Division of ADECA, who shall serve as the Chairperson; one member of the Advisory Board shall be designated by the State Council of College and University Presidents; and the Governor shall appoint six members from the business and industrial communities. The Advisory Board members will serve at the discretion of the Governor.

BE IT FURTHER ORDERED, that the Advisory Board shall advise the Board of Directors of ARI on its duties as set out herein. The Advisory Board shall act at the request of the Board of Directors.

BE IT FURTHER ORDERED, that the endowment capital shall consist of $11,500,000. Of this, $10,000,000 was authorized by Act 81-1185 and $1,500,000 was appropriated by the Legislature. The endowment shall not be diminished, but may be increased by unrestricted appropriations, gifts, donations, or grants from any source. No disbursement may be made from the endowment capital to support research and development activities or for administrative support. It is intended that only the income from the endowment shall be used to support research and development activities.

BE IT FURTHER ORDERED, that management of the endowment be under the control of the Board of Directors and all powers necessary or appropriate for the management and control of the endowment be vested solely in a professional fund manager selected by the board, except as otherwise provided by this Executive Order. All investments shall be made in accordance with the laws of Alabama and with the policies and procedures as established by the Treasurer's Office of Alabama. The endowment fund shall be handled as a separately invested fund.

BE IT FURTHER ORDERED, that:

(a) Except to the extent otherwise provided in this section of this Executive Order, the endowment capital shall be held in perpetual trust and shall not be disbursed for any purpose other than to acquire eligible investments, in accordance with the

provisions of this Executive Order. All eligible investments acquired, in whole or in part, with monies constituting part of the endowment capital shall, to the extent of such monies constitute part of the endowment capitol, but any endowment income derived from this shall be subject to disbursement by the board, to the extent provided in this Executive Order.

(b) The endowment income for any period shall be the net income (determined as explained below) actually received in cash or cash equivalents during such period from the investment and reinvestment of all moneys held in the endowment fund (including both monies representing endowment capital and monies representing previously received endowment income that has not become part of the endowment capital). No accrual or other accounting calculation or classification shall constitute the basis for recognizing income unless the monies are actually received and paid into the endowment fund. The endowment income for any period shall consist of the aggregate interest received from investments during such period plus any profit realized during such period from any payment, sale, liquidation or other disposition of investments resulting in the receipt of any amount greater than the purchase price, less (i) any negative audit adjustments to income and any losses with respect to investments which are required to be charged against the income of the endowment fund for such period pursuant to the provisions of subsection (c) of this section; (ii) any accrued interest paid as part of the purchase price of investments acquired during such period; and (iii) all expenses of selling and disposing of investments during such period such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes, and other customary transaction expenses. For purposes of determining the amount of the endowment capital at any time held in the endowment fund, any investment acquired for a purchase price reflecting a discount below its face or par amount shall, at all times prior to its disposition, be valued at its original purchase price. If any investment is acquired for a purchase price reflecting a premium above its face or par amount it shall, prior to its disposition, be valued at its original purchase price less its then applicable amortized premium.

(c) The endowment income shall be adjusted in accordance with the succeeding provisions of this subsection if the application of generally accepted accounting principles in connection with the annual audit of the endowment fund requires any negative adjustment of income. This includes the recognition of any reduction in value or write-off of investments for reasons relating to the probability of their payment or collectibility. This also includes any loss realized upon any payment, sale, liquidation, or other disposition of any investment resulting in the receipt of any amount less than the value thereof determined in accordance with the provisions of this Executive Order. However, no reduction in value of any investment shall be made because the rate of interest or other yield thereon has fallen below the market rates then applicable to comparable investments. Any audit adjustment resulting in a charge against income or

any loss realized from the payment, sale, liquidation, or other disposition of investment shall be charged first against any endowment income which has accumulated in the endowment fund and is then available for withdrawal. If the amount charged is greater than the amount of accumulated endowment income subject to withdrawal, such amount shall be charged against endowment income thereafter received in the current and succeeding fiscal years until the full amount of such audit adjustment or loss has been recovered of the investment income of the endowment fund. From the time an audit adjustment is made or a loss is realized, no income of the endowment fund shall be used to fund research projects until the full amount of this adjustment or loss is recovered. In the event that, as a result of any audit adjustment or any realized loss, the aggregate amount of income appropriated and withdrawn from the endowment fund as of any time during or at the end of any fiscal year exceeds the aggregate endowment income which, taking into account such adjustment or loss, should have been available for withdrawal at or before such time, then, and in such event, the excess amount so withdrawn need not be returned to the endowment fund from the General Fund of the State or from any other source of funds available to the State, but the amount of such excess withdrawal shall be recovered through charges against future income of the endowment fund as above provided.

(d) The expenses of making and disposing of investments such as brokerage commissions, legal expenses referable to a particular transaction, transfer taxes, and other customary transactional expenses, as provided in section (b) of this Executive Order, shall be payable from the investment income of the endowment fund. No administrative or other expenses not specifically required to make or dispose of a particular investment shall be payable out of any assets of the endowment fund except those expenses of ADECA necessary to administrate the activities of ARI including honoraria, the convening of review panels, site visits, technical conferences, reports, publications, Board meetings, or other necessary functions such as ADECA's negotiated indirect cost rate.

BE IT FURTHER ORDERED, that at the request of the board, an independent accounting firm may perform an audit of the endowment fund for each fiscal year. The firm will also prepare a report of this audit which will be made public. The board will authorize the preparation and publication of financial or other information as law requires or as the board deems appropriate.

BE IT FURTHER ORDERED, that with funds available from the endowment income, the board shall award grants to eligible applicants for the support and encouragement of educational, agricultural, maricultural, and industrial activities involving basic and applied scientific research and development. Each such disbursement shall be conditioned upon the designated beneficiary thereof agreeing to furnish to the board one or more reports indicating the purpose or purposes for which the money subject to such disbursement has been spent.

BE IT FURTHER ORDERED that this Executive Order replaces and rescinds Executive Order Number 22 dated July 23, 1996 and its amendment dated December 21, 1996.

BE IT FURTHER ORDERED that this Executive Order shall become effective immediately upon the Governor's signature and shall remain in effect until amended, rescinded, or otherwise modified by the Governor.

DONE AND ORDERED this 2nd day of June, 1999.

Don Siegelman
Governor

ATTEST:

Jim Bennett
Secretary of State