#### AGREEMENT

THIS AGREEMENT made and entered into this 14th day of Becember, 1926, by and between Southern Mineral Land Company, a corporation, (hereinafter sometimes referred to as "lessor") as party of the first part, and Peerless Cahaba Coal Company, (hereinafter sometimes referred to as "lessee") as party of the second part;

WITNESSETH THAT,

Whereas, the Southern Mineral Land Company and the Tennessee Coal Iron & Railroad Company and F. E. Dunlap, on the 17th day of November, 1920, entered into an agreement whereby the Southern Mineral Land Company, and the Tennessee Coal, Iron, & Railroad Company granted unto F. E. Dunlap the right to mine and remove coal in what is known as the Helena Seam of coal from said lands in said agreement more fully described; and

Whereas, the said F. E. Dunlap, with the consent of the Southern Mineral Land  $C_{\mathrm{ompany}}$  and the Tennessee Coal, Iron & Railroad Company transferred and assigned unto the Helena Straven Coal Company all of his rights and obligations under said agreement dated November 17, 1920; and

Whereas, the Southern Mineral Land Company has acquired all of the right, title and interest of, in and to the aforesaid lease and all the lands therein described; and

Whereas, the said Southern Mineral Land Company and the Montevallo Cahaba Coal Company did on the 21st. day of July 1921, grant unto said Helena Straven Coal Company certain right of way more fully described therein, subject to aforesaid lease agreement dated the 17th day of November, 1920; and

Whereas, the Southern Mineral Land Company and Montevallo Cahaba Coal Company did on the 19th day of September, 1922, convey unto the said Helena Straven Coal Company, the right to erect houses on certain lands more fully described therein, said grant being subject to said lease agreement dated the 17th day of November, 1920, and

Whereas, the Southern Mineral Land Company did on the 29th day of December 1924, grant unto the Helena Straven Coal Company, a lease on certain land for the erection of a school house as more particularly described therein, said grant being subject to aforesaid agreement of the 17th day of November, 1920; and

Whereas, the name of the Helena Straven Coal Company was on or about the first day of April, 1925, changed to the Peerless Cahaba Coal Company, and

Whereas, the said Peerless Cahaba Caal Company has now reached the stage of development in its operations which necessitates greater expenditure in order to produce egreater tonnage and in order to make the operation more profitable both to the lessor and the lessee; and

Whereas in order to justify such additional expenditures the Peerless Cahaba Coal Company wishes additional territory and additional time in which to complete the mining of all of the said coal on said lands, and the Southern Mineral Land Company is willing to grant unto the Peerless Cahaba Coal Company the right to remove certain coal on the Helena seam only intends now covered in the agreement dated November 17, 1920, hereinabove refered to and certain adjoining lands; and

Whereas, it is the judgment of the parties hereto that it is to their mutual advantage to execute this lease in lieu of the leases hereinabove described;

Now, therefore, in consideration of the premises and the mutual covenants

herein contained, and the sum of One Dollar paid by the lessee to the lessor, and of other good and valuable consideration, the lessor does hereby grant unto the lessee the rights hereinafter provided in and to the property hereinafter described, to be possessed and enjoyed by the lessee upon the terms hereinafter stated, from noon of the date hereof to midmight on the first day of January 1967 unless this agreement is terminated sooner as hereinafter provided.

### SECTION I

The lessor grants and gives to the lessee the right to mine and remove all coal contained in what is known as the Helena seam of coal on the following described land situated in Shelby County, Alabama.

E½ of SE½ and SW¼ of SE½ of Section 13, Township 21 south, range 4 west. Also SW½, S½ of NW¼, SW¼ of NE½, NW½ of SE½ and Sɼ of SE¼ of Section 17. And SW½, S½ of NW¼, SE½, S½ of NE¼ of Section 18,  $\sqrt{2}$  And SE½, E½ of SW½, S½ of NE¼ of Section 19,  $\sqrt{2}$  And V½, V½ of E½, SE¼ of NE½ of Section 29. And N½ of N½ of Section 29. And N½ of NE½ of Section 30,

All in  $T_0$ wnship 21 south, range 3 west of the Huntsville Principal Meridian.

#### SECTION II

The lessor grants and gives to the lessee the right to use for the purpose of mining and removing said coal, and not otherwise, the timber and water on the lands described in section 1 hereof, except on the following lands:

NW of the NE ,
Sof the NE ,
Eb of the NW b
SW of the NW b
NW of the SE b, and
No of the SW b in
Section 20, Township 21, Range 3

# SECTION III

The lessor grants and gives unto the lessee also the right to erect and maintain on the following described lands such houses and other structures as may be desirable or required by the lessee in the mining or removal of said coal and/or as places of residence for employees working for the lessee in connection with the mining and removal of said coal and the right to use in any other way that may be necessary or desirable in the mining and removal of said coal from the said lands described in Section 1 hereof;  $S_2^1$  of  $NV_2^1$ ,  $S_2^1$  of  $NE_2^1$  of Section 18, Township 21 south, range 3 west And a tract described as follows:

Commencing at a point on the north line of said Section 18, 270 feet east of the northwest corner of the northwest quarter of the northeast quarter, thence west along said north line 270 feet to said corner, thence south with the center line of said section 18 to the southwest corner of the northwest quarter of the northeast quarter, thence with the land line east 365 feet, thence in a northerly direction 1320 feet to the point of beginning; also, the following tract of land in said section 18;

Commencing at the southeast corner of said last above described tract, thence with the land line east to the creek, thence with the creek in a northerly direction to a point 100 feet south of the outcrop of the Gholson seam, thence parallel to and 100 feet south of the outcrop of said Gholson seam to the eastern line of said tract last above described, thence in a southerly direction along said eastern line to the point of beginning. And  $S_2^1$  of  $NW_2^1$ ,  $NE_4^1$  of  $NW_2^1$  of Section 17, Township 21 south, range

3 west of the Huntsville Principal Meridian, Shelby County,

The lessor gives, grants and conveys to the lessee the right of ingress and egress to and from said houses on said lands described above in this Section III, and the right to build railroads, tramroads and other roads on said lands for the purpose of transporting coal and other materials to, through or from the lands described in Section I hereof, or for other purposes connected with the operations of the mines on the lands described in said Section 1, and the right to use the timber and water on the lands described in this Section III, for the purpose of mining and removing the coal from the lands described in Section I hereof.

### SECTION IV

gas and other minerals and products on the lands hereinabove described not specifically leased hereby, and the right to prospect for mine and remove said coal, oil, gas and other minerals and products so excepted and reserved, together that so much of said land as may be necessary or desirable except that the lessor shall have no right during the continuance of this lease to erect or place houses or other structures on the lands described in Section III hereof; and, said lessor also reserves all rights of way for railroads, tramroads and other roads over and across any lands herein described which may be necessary or desirable for the mining and removal of said coal, oil, gas and other minerals and products so excepted and reserved, and all the water in and on any of said lands not required by the lessee for the purpose of mining and removing said coal, gas and other minerals, and all rights of ingress and egress thereto over and from said lands.

# SECTION W

It is understood and agreed by and betweem the parties hereto as follows:

- (1) That the rights herein granted are and shall be limited to such rights only as the lessor as owner of said lands hereinabove described shall possess and has lawful right to grant.
- or any part thereof, for railroad tracks, telephone or electric transmission lines, other than those now installed, except with the written consent of the lessor,

  The lessor agrees, however, that it will consent to a reasonable location of additional railroad tracks, telephone and electric transmission lines where the same are desirable or required for efficient operation of lessee's mining and removing the said coal on the lands described in Section I hereof.
- (3) The lessee agrees that he will not sell or wilfully suffer or permit to be sold or exposed for sale on the lands hereinabove described by any person, any malt, winous, spirituous, intoxicating or prohibited liquors or beverages.
- (4) The lessee agrees that he will, as far as is reasonably possible, protect, said lands hereinabove described from all trespassers, and will not, so far as the same reasonably can be prevented, suffer or permit any building of any kind to be erected thereon by trespassers or squatters, or permit any person not acting under the authority of the lessor to cut or take from the land any timber, coal and minerals of any kind.
- (5) The lessee agrees to pay to the lessor royalties for all coal mined or taken from said Helena seam on the lands described in Section 1 hereof as follows:

A royalty of five per cent of the average price per ton at which the lessee has during the preceding calendar month sold said coal so mined or taken from said land, provided, however, that the lessee shall pay the lessor a minimum royalty of twelve and one half tents (12½%) per ton on all of said coal so mined or taken from said land. The price per ton at which the lessee has sold said coal, for the purpose of this royalty shall be the gross selling price thereof at the mine without any expense of selling, or for any expense incurred after said coal is shipped or for allowance, rebates, claims, demurrage, short weights or cost of storage. If, in making sale of any of said coal, the agreed selling price shall include delivery thereof at any point other than at the mine, then the selling price thereof for the purpose of ascertaining the samount of said royalty due thereon shall be the said agreed selling price thereon, less only the net freight due to or charged by the railroad or other transportation agent which carries said coal to such other point of delivery. Said price per ton at which the lessee shall sell said coal shall include all allowances, rebates, drawbacks or any other form of payment made to it by an individual. corporation, financial agent, sales company, or any other party to whom or in whose interest the said coal may be sold or consigned. No sale made to any party or parties controlled by the lessee, or in which the lessee shall have any interest direct or indirect, shall be admitted or used in determining the selling price, except with the consent of the lessor, and any suc h sale or sales may, at the option of the lessor, be entirely omitted in making the calculation to determine the said average price per ton at which said coal was sold for the purpose of determining the royalty on the coal mined during such month. The word "ton" when used herein shall mean a ton of two thousand pounds (2,000 lbs.)

The lessee shall pay a royalty of fifteen cents per ton for such of coal mined from the Helena seam on said lands described in Section I hereof, as may be used by the lessee under its boilers or in its mining operations, or as may be used by the mine employees of the lessee for domestic purposes.

During the term of this lease the lessee shall pay the lessor not less than (6) the sum of Four Hundred Fifty Dollars (\$450.00) on the 20th day of each month thereof, beginninggon the 20th day of January, 1927 as monthly minimum royalty for the preceding month, irrespective of the quantity of coal mined or taken from said lands; and, when the royalties for any month, as provided in paragraph 5 above, amount to more than said monthly minimum royalty for such month, the royalty for said month shall be paid as provided in said paragraph 5; but, should the amount of royalties for the first or second six months period of any calendar year, paid as provided in said paragraph 5, exceed the said monthly minimum royalties for said six months period, and should the lessee, during the six months period of any calendar year next following the said six months period in which royalties paid as provided in said paragraph 5, exceed said monthly minimum royalties, fail to mine sufficient coal to amount to the said monthly minimum royalty of \$450.00 as provided in this paragraph, then such excess royalty paid, as provided in paragraph 5, for said preceding six months period shall be applied to the payment or satisfaction of said monthly minimum royalties due for said subsequent six months period next following the said six months period in which royalties paid as provided in paragraph 5 hereof exceeded said monthly minimum royalties; it being understood that the right of the lessee to said credits on account of said excess royalties, paid as provided in said paragraph 5, for any

six months period shall cease at the end of the six months period next succeeding. Should the lessee, during any period or periods of time, be prevented from mining said coal by reason of strikes, accidents, fires or other causes beyond his control, then the payment of said monthly minimum royalty reserved in this paragraph shall be suspended—during said period or periods of time, provided, however, that the total duration of said suspensions shall in no event exceed three (3) months of any one calendar year. The lessee agrees to notify the lessors in writing if and when he is so prevented from mining said coal, specifying the cause thereof, and shall promptly notify the lessors in writing when his said mining operations are resumed.

(7) As to coal mined hereunder the royalties there on shall be payable on the 20th day of each month for allcoal sold or used during the preceding calendar month, it being intended that the royalties payable on coal under the provisions hereof shall be payable on said coal from and after the sale thereof.

The lessee further agrees to pay the lessor when due all rents and royalties due or to become due the lessor under the terms of said lease agreement dated the 17th day of November, 1920. The amount or quantity of all coal shipped by railroad shall be determined by the railroad weights for the purpose of determining the royalty thereon, and the amount or quantity of all said coal not shipped by said railroad shall be determined by the mine weights thereof for the purpose of determining the royalty thereon.

- (8) The lessee shall not haul through any land hereby leased any coal mined from other lands provided, however, that the lessee may without charge haul through the land hereby leased coal mined by it from said Helena seam on lands belonging to others provided the owners of such other lands enter into a contract in form satisfactory to the lessor permitting the lessee during the term of this lease to haul without charge any coal mined he reunder through said lands belonging to others.
- (9) The lessee agrees to furnish to the lessor such reasonable information as the lessor may require to the end that the lessor may know (a) the amount of coal mined hereunder, the weights to be the weights hereinabove provided for royalty purposes; (b) the average sale price of such coal; (c) the amount of all coal, if any, mined from lands owned by others than the lessee and brought upon or carried under, through, or over the lands described herein. To the end that the lessor may verify such information, the lessee agrees that the lessor or its agent may examine such of the redords of the lessee as may be necessary to verify the statements made to the lessor by the lessee in such monthly statements. The lessor or its agents shall have access to the mines for the purpose of making such examinations as it may see fit, or such surveys as it may determine upon for the purpose of checking or determining the amount of coal taken therefrom, or for any other purpose.
- (10) The lessee agrees to mine said coal on the lands leased hereby with reasonable diligence and in accordance with the best mining practice, so that there will be not needless loss or waste. The lessee shall conduct its operations with reasonable care and so as not to obstruct or hunder, or impair the availability of any other seam or seams of coal on the lands described herein.

# SECTION VI

The lessee agrees that it will in the exercise of the rights herein granted, comply in all respects with the laws now existing or hereafter enacted by the State

of Alabama and the United States of America relating to the mining of coal or the safety of persons working in or about coal mines.

It is agreed that any and all coal which has the thickness of twenty six inches, or more, and which can be marketed hereunder with reasonable profit, shall be regarded as recoverable and shall be mined by the lessee when in the regular course of its mining operations the time shall arrive for the mining and removing of same, and if not so mined at such time, the lessor may send the lessee written notices calling attention thereto and if the work of mining the same is not begun by the lessee within thirty (30) days thereafter, the quantity of said coal so left unmined may be estimated by the engineers of the lessor, who in making said estimate shall consider a ton of said coal as containing twenty five (25) cubic feet, and the lessee shall pay the lessor a royalty on all of said unmined recoverable coal as shown by the said estimate at the rate of twelve and one half cents (12½) per ton, said payments to be made to the lessor for all said unmined recoverable coal as shown by said estimates within thirty (30) days after rendition of bill therefor.

The lessee shall keep open, unobstructed and free from water, all entries air course and other workings in the mines on said lands for a reasonable period upon written request of the lessor, in order that the lessor may make such surveys or inspections as it may deem necessary or proper for the purpose of determining the quantity of said unmined recoverable coal in said lands.

The lessee agrees to keep accurate records in substantial form, showing true and correct statements and accounts of all coal mined or taken from the lands described in Section 1 hereof, and each sale of any of said coal and the amount so sold and the date thereof and the price or prices at which the same was sold, and the amount of all coal, if any, from any other lands brought upon or carried under, through, or over the lands leased hereby, which records shall be open to inspection and examination of the officers and designated agents of the lessor at all reasonable times. The lessee shall at all times have available for the inspection and examination of the lessor, its servants, agents and employees, maps indicating precise locations of haulage ways, air courses, rooms and other workings in each and every mine opened or operated by the lessee on the lands, as well as the precise locations of boundaries of lands in proximity to said mines. Said maps shall be based upon frequent and accurate surveys of engineers employed by the lessee and shall be in allrespects satisfactory to the lessor. The lessee shall at its own expense furnish the lessor on the 20th day of January and of July of each year during the continuance of this lease a map drawn to a scale of not less than 200 feet to the inch, showing accurately and completely the boundaries of the lands and location of the plants thereon, and all mine workings in said Helena seam as they exist at the end of the half year immediately preceding. and all mine work done during said half year and such additional information as the lessor may require. The correctness of each of said maps shall be duly certified to by the mine superintendent and the engineer in charge of the mine surveys.

The lessor, through its engineers and representatives shall at all reasonable times, have access to the mine or mines on said lands and to all other parts of the lands, for the purpose of making inspections and surveys for such other purposes as it may see fit.

In order to secure to the lessor all royalties and rents and the performance of all the terms, conditions and covenants of this lease herein contained, as herein

provided, a lien is hereby given by the lessee unto the lessor upon all machinery, improvements and equipment placed on the lands herein described, or placed in any mine opened on said lands, and the lessee shall not remove any of said machinery, improvements or equipment therefrom until all royalties and rentals due and to become due and payable to the lessor shall have been paid and the lessee has fully complied with all the terms, conditions and covenants of this lease. On the terminations thereof, except by forfeiture, the lessee shall have the right to remove from the lands herein described all property placed thereon by the lessee within six months after such termination of this lease.

The lessee agrees that it will take all reasonable precautions to prevent any damage to the slope or slopes or any extensions thereof, with a view to keeping the same in condition that it or they can be used as haulage ways and that it will not intentionally destroy the same or damage the same without the consent and approval of the lessor.

The lessor shall not be liable for any claim for damages which may arise from the exercise by the lessee of any of the rights herein granted, and the lessee shall indemnify, protect and hold harmless the lessor against any and all claims, demands, damages, actions, causes of action, judgments and decrees accruing to any party and arising from or growing out of or any act or thing done or omitted to be done by the lessee.

As Additional rental during the term of this lease, the lessee shall refund to the Southern Mineral Land Company the lessor, annually all ad valorem taxes assessed to and paid during said term by it on said lands herein described, payment thereof to be made annually by the lessee within fifteen (15) days after rendition of bill therefor by the lessor. If any of said lands are not assessed separately, but are contained in an assessment by the lessor along with other land of said lessor, then, in that event, the amount of taxes to be paid heleunder by the lessee to the lessor shall be calculated on the basis of the assessed value per acre of the lessor's coal lands of similar character contained in such assessments, in which the lessor owns all interest, both mineral and surface. The lessee further agrees to pay during the term of this agreement, as and when due, all taxes levied on all houses, structures, machinery of other property erected or placed on said lands, or in any mine or mines on said lends. The lessee further agrees to pay when due any and all so called tonnage, license and privilege taxes, heretofore or hereafter levied, and any tax which may hereafter be levied against this lease.

The lessee further covenants and agrees and the lessor enterss into this contract upon the condition that the lessor, its successors and assigns and all parties who may be directed, authorized or empowered by the lessor, its successors and assigns, to mine any coal from any of the lands described herein, or to drill, prospect or shaft for minerals thereon, shall have the right at any and all times to pass through said Helena seam for coal, oil, gas and other minerals, and the mining and removal thereof, and the lessor agrees that any such drilling or shafting shall be done in such a manner as to constitute the least possible interference with the mining of coal by the lessee from said Helena seam.

In the event the lessee shall neglect or fail to pay any rent or royalty, or any other sum or sums which may be due under this lease, as and when the same may become due, or to perform or observe any of the covenants or agreements on its

part herein contained, and herein agreed to be performed or observed by it. and such default shall continue for a period of thirty (30) days, then, in such event, this lease at the election of the lessor shall forthwith cease and determine on sixty (60) days written notice being given by the lessor to the lessee and the lessor may thereupon lawfully and immediately or at any time thereafter, enter into and upon said lands described herein and repossess itself of the same as of their former estate. The remedies contained in this paragraph shall be deemed to be cumulative and not exclusive, and shall not deprive the lessor of any other remedy it may have at law or in equity or otherwise.

In the event of disagreement between the lessor and the lessee as to any question of fact whatsoever arising hereunder, or as to the amount of damage sustained by the lessor, by reason of any breach of covenant hereunder, by the lessee, such questions or amount shall be determined by two disinterested arbitrators, one to be selected by the lessor and one to be selected by the lessee, and if the two arbitrators so selected shall not be able to agree they shall appoint a third person as arbitrator, and the decision of the majority of said arbitrators, so appointed, shall be final and binding upon the parties.

The rights herein granted shallbecome effective at noon on the date hereof, and shall terminate, except as herein otherwise provided, at noon on the first day of January, 1967.

This agreement shall inure to and be binding upon the respective successors and assigns of the parties hereto as well as the parties themselves; Provided, however, that if the lessee should assign, transfer, mortgage or pledge this agreement or any of the rights herein granted without first procuring the written consent of the lessor thereto, or if the interest of the lessee hereunder should be sold under execution or other legal process without the written consent of the lessor, or if the lessee should become insolvent at any time during said term, or if the rights herein granted should by operation of law, devolve or pass to others than the lessee, then, and in either of said events, the lessor shall have the right to terminate this agreement at any time by giving to the lessee thirty (30) days written notice of his intention so to do, and up on the expiration of said thirty days the rights herein granted shall cease and determine.

All notices herein authorized or required to be given to the Southern Mineral Land Company shall be given by letter addressed to it in care of A. H. Plumb, Vice President, at Emporia, Kansas, or such other address as said company may from time to time in writing designate, and all notices herein authorized or required to be given to the lessee shall be given to it by letter addressed to it at Straven, Alabama.

In witness whereof, the parties heretochave hereunto set their hands and seals in triplicate on the day and year first above written, the lessor by its respective officers named below, who are thereunto duly authorized.

Attest:

Mabel H. Edwards-Secy.

Attest:

Mrs. Marie E. Dunlap, Secty.

STATE OF ALABAMA

JEFFERSON COUNTY

SOUTHERN MINERAL LAND COMPANY
By John R. Pill-President

PEERLESS CAHABA COAL COMPANY By A. Sicard--President

esident

I, Louise Thomas a Wotary Public in and for said County in said State, hereby

certify that John R. Pill whose name as Vice President of the Southern Mineral Land Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation,

Given under my hand this the 14th day of December, 1926.

Louise Thomas--Notary Public.

STATE OF ALABAMA
JEFFERSON COUNTY

I, Louise Thomas a Notary Public in and for said County in said State, hereby certify that A. Sicard whose name as President of the Peerless Cahaka Coal Company a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 14th day of December, 1926.

Louise Thomas -- Notary Public

THE STATE OF ALABAMA
SHELBY COUNTY

I, L. B Riddle Judge of Probate hereby certify that the within agreement was filed in this office for record June 28th 1927 at 8 oclock A.M.and recorded in Deed record 82 page 171 and examined.

L. B.Riddle--Judge of Probate