

## CUMBERLAND CREEK COAL, L.L.P.

### LIMITED LIABILITY PARTNERSHIP AGREEMENT

This Agreement is entered into as of January 8, 1998, by JERRY L. GARDNER, an individual, and MARY J. RAINES, an individual (herein together referred to as the "Partners" and individually as a "Partner").

1. Formation of Partnership. The Partners hereby form a limited liability partnership under the laws of the State of Alabama (the "Partnership"), with the name and for the purposes hereinafter set forth.

2. Name and Purposes. The Partnership's business shall be carried on under the name of "Cumberland Creek Coal, L.L.P." The purposes of the Partnership are to acquire, purchase, lease, option, own, sell and mortgage coal lands, or coal lands or mineral estates; to buy and sell real estate; to prospect for coal, and mine coal and other minerals or mineral products, and generally to buy, sell, handle and deal in the market in coal of all kinds; to purchase, acquire, and contract all kinds of machinery, buildings, cars, and appliances for mining and moving coal; and to build and lease houses for the use of miners and others, including the purchase and sale of same.

3. Place of Business. The principal office of the Partnership shall be located at 777 Carl Raines Lake Road, Birmingham, Alabama 35244, or at such other places as may be agreed upon by the Partners from time to time.

4. Partners. The name and address of each of the Partners are as follows:

<u>Name</u>	<u>Address</u>
Jerry L. Gardner	777 Carl Raines Lake Road Birmingham, Alabama 35244
Mary J. Raines	777 Carl Raines Lake Road Birmingham, Alabama 35244

5. Term. The Partnership shall commence on January 8, 1998, and shall continue until terminated by operation of law or pursuant to the terms of this agreement.

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6. Capital Contributions. Each of the Partners shall contribute equally to the capital of the Partnership, at such times, in such amounts and in such manner as the Partners may from time to time agree. An individual capital account shall be established and maintained for each Partner, and each Partner's capital account shall be credited with the amount of all capital contributions made by the Partner to the Partnership. No Partner shall be entitled to interest on his capital contributions. Each Partner's capital account shall be increased by the amount of each capital contribution made by such Partner and by the amount of net profits and gains allocated to each Partner pursuant to Section 7 hereof, and shall be decreased by the amount of losses allocated, and amounts distributed, to each Partner pursuant to Section 7 hereof.

7. Partnership Allocation. All profits, losses and distributions of any kind from the Partnership shall be allocated between the Partners in the following manner:

<u>Name</u>	<u>Percentage</u>
Jerry L. Gardner	50%
Mary J. Raines	50%

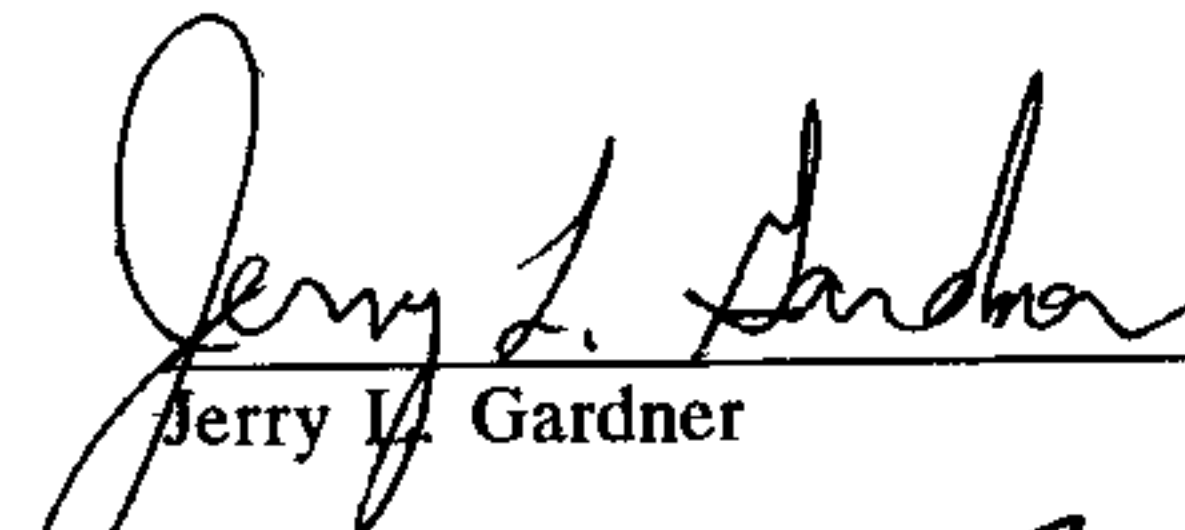
8. Authority of Partners. Each of the Partners, acting separately, shall be fully authorized to take any and all actions for and in the name of the Partnership that to such Partner shall seem necessary or advisable.

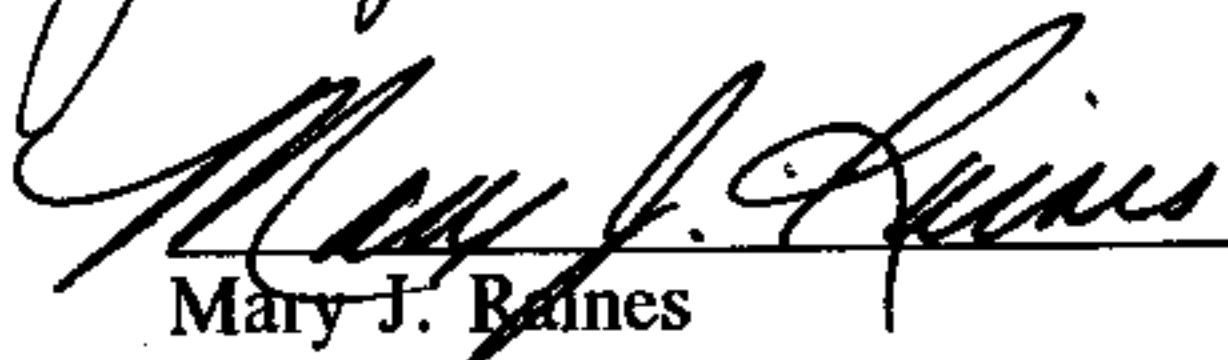
9. Compensation of Partners. The Partners may, from time to time, receive salary from the Partnership. In lieu of said salary, the Partners may receive distributions in accordance with Section 7 hereof.

10. Assignment of Partnership Interest. A third party shall become a new Partner in the Partnership upon the assignment of an existing Partner's interest to the third party only after first obtaining the written approval of all of the other Partners. Any assignment of a Partnership interest without such approval shall neither make the assignee a new Partner in the Partnership nor entitle the assignee to any voice in the management or control of the Partnership, and the assignee shall be entitled only to his assignor's distributive share of the Partnership's profits and losses, and Partnership distributions, as set forth in Section 7 hereof.

11. Termination. The Partnership may be terminated by operation of law, by unanimous consent of all Partners, or upon the death of any Partner.

IN WITNESS WHEREOF the undersigned Partners have executed this agreement as of  
January 8, 1998.

  
Jerry L. Gardner

  
Mary J. Raines

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SHELBY COUNTY JUDGE OF PROBATE  
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