

**FIRST AMENDMENT
TO LIMITED LIABILITY PARTNERSHIP AGREEMENT OF
CUMBERLAND CREEK COAL, L.L.P.**

THIS FIRST AMENDMENT to Limited Liability Partnership Agreement of Cumberland Creek Coal, L.L.P., an Alabama registered limited liability partnership (the "Partnership"), is made and entered into this 23rd day of January, 1998, by the unanimous action of the general partners of the Partnership.

W I T N E S S E T H:

WHEREAS, the Partnership presently exists under the terms and conditions of the Cumberland Creek Coal, L.L.P., Limited Liability Partnership Agreement (the "Partnership Agreement") executed on January 8, 1998;

WHEREAS, Mary J. Raines has assigned her 50% interest in the Partnership to Willneysa J. Gardner;

WHEREAS, Willneysa J. Gardner has been admitted as a limited partner of the Partnership in accordance with Paragraph 10 of the Partnership Agreement; and

WHEREAS, the parties are desirous of amending the Partnership Agreement to reflect this assignment.

NOW, THEREFORE, the Partnership Agreement is hereby amended as follows:

1. **AMENDMENT OF PARTNERSHIP AGREEMENT.**

(a) Paragraph 4 of the Partnership Agreement is hereby deleted in its entirety and substituted in lieu thereof the following:

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
Willneysa J. Gardner	777 Carl Raines Lake Road Birmingham, Alabama 35244

(b) Paragraph 7 of the Partnership Agreement is hereby deleted in its entirety and substituted in lieu thereof the following:


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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>Interest</u>
Jerry L. Gardner	50%
Willneysa J. Gardner	50%

2. EFFECT. Except as hereinabove amended, the Partnership Agreement is hereby ratified and is continued in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the date first above written.


JERRY L. GARDNER


WILLNEYSA J. GARDNER