IS THERE A BETTER WAY TO HOLD TITLE TO REAL ESTATE FOR ASSET PROTECTION PURPOSES?

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This outline is designed to provide information in regard to the subject matter covered. It was prepared with the understanding that the author is not engaged in rendering legal advice and the author is not offering such advice in this outline.

Discussion topic: Titling real estate in the names of a married couple as **tenants in common with a right of survivorship** may afford the owners a level of protection from their creditors similar to that applicable to **tenancy by the entirety** in states like North Carolina and Florida.

1. The only thing I have seen written on the issue is the following: "One final thought on the survivorship issue in South Carolina: do we now have or will we soon have a form of ownership that is protected from creditors? The form of ownership in *Smith v. Cutler*, a tenancy in common with an indestructible right of survivorship, was held by the Supreme Court not to be subject to partition. Would this estate, like tenancy by the entirety, also not be subject to the power of a creditor to reach the interest of one of the tenants in common? Perhaps the next case on this topic will decide this issue." *To Fee Or Not To Fee, Two Deed Drafting Traps Created by Recent Changes in S.C. Law*, by Paul W. Dillingham and Claire T. Manning (South Carolina Lawyer, March 2007) pages 37-48.

2. *Smith v. Cutler*, 366 S.C. 546, 623 S.E.2d 644 (2005) and *Davis v. Davis*, 75 S.E.2d 46, 223 S.C. 182 (1959) may provide a planning opportunity for married clients interested in obtaining some creditor protection for their *personal residence*. (Although this outline focuses on a married couple's residence to be conservative, this protection, if it exists, might extend to other real estate and apply to unmarried

individuals.) For purposes of this discussion, assume that either the husband client or the wife client is engaged in a business or profession which carries a high risk of being sued personally.

3. **Various ways to hold title**.

- **tenants by the entirety**

  a. Tenants by the entirety was abolished in South Carolina in 1895. See *Davis v. Davis*, 75 S.E.2d 46, 223 SC 182 (1959). Presently, almost half the states and Washington D.C. have some type of tenancy by the entirety property interest. States that have it include North Carolina and Florida.

  b. A tenancy by the entirety is similar to a joint tenancy with right of survivorship although it is more restrictive. It is limited to a co-ownership of property held by a husband and wife. **The primary difference between a tenancy by the entirety and jointly held property with right of survivorship is that neither spouse may unilaterally terminate the tenancy by conveying his or her interest to a third party during lifetime**. In contrast to joint tenancy with right of survivorship, a tenancy by the entirety cannot be severed by selling either party's undivided interest without the consent of the other tenant. Husband and wife must join in a sale or other conveyance to third parties.

  c. In most states recognizing tenancy by the entirety, the **creditors** of one spouse cannot reach the entireties' property—this was true in South Carolina prior to 1895.

- **tenants in common**

  a. Prior to 2000, this was the way most of our clients, in conjunction with other individuals, owned real estate.

- **joint tenants with rights of survivorship**

  a. The common law estate of joint tenancy with rights of survivorship ("JTWROS") was rarely used in South Carolina. An amendment to S.C. Code Section 62-2-804 in 1996 helped in some respects. Titling real estate in two or more names as joint tenants with rights of survivorship did

not come into common use, however, until after the year 2000.

b. In 2000, the legislature created, **by statute**, the estate of joint tenants with a right of survivorship. See S.C. Code Section 27-7-40. Joint tenancy with a right of survivorship has since become a popular way for married couples to own real property.

- **tenants in common with a right of survivorship (TICWROS)**

a. There are at least two situations when a couple should consider utilizing tenancy in common with a right of survivorship ("TICWROS"). **First**, if the couple wants their property held jointly with right of survivorship, why shouldn't they use TICWROS rather than JTWROS? **Second**, where one spouse is reluctant to deed the property into the sole name of the other spouse, consider using TICWROS.

4. Real estate owned by a husband and wife as tenancy by the entirety enjoys some protection from creditors in most states. See, for example, the following quotes:

- "We specifically noted that in Maryland, as is true in most states recognizing the entireties tenancy, creditors of only one spouse may not reach entireties property for the satisfaction of their claims." *Schlossberg v. Barney*, 380 F.3d 174, 178 (4th Cir. 2004).

- "For the benefit of the parties, the court notes its current understanding that '[m]ost jurisdictions that recognize tenancies by the entirety hold that a creditor of one spouse cannot reach the debtor spouse's share in the property,' although some states allow creditors to attach a debtor's survivorship interest. *1 The Law of Debtors and Creditors* § 6:84 (2006)." *Cendant Corp. v. Shelton*, 473 F.Supp.2d 307, 317 n.5 (D.Conn. 2007).

5. South Carolina no longer recognizes tenancy by the entirety. The South Carolina Supreme Court in *Smith v. Cutler* made an analogy between tenancy by the entirety and tenancy in common with a right of survivorship:

The Court created the estate of tenancy in common with a right of

> survivorship because South Carolina did not permit husband and wife to hold property as tenants by the entirety.

33 S.C. at 549, 623 S.E.2d at 646. Since "tenants in common with a right of survivorship" (TICWROS) in South Carolina was meant to replace tenancy by the entirety, shouldn't these two estates enjoy the same protection from creditors?

6. The Court relied on *Davis v. Davis*, 223 S.C. 182, 75 S.E.2d 46 (1953) in reaching its decision in *Smith v. Cutler*.

7. Associate Justice G. Dewey Oxner wrote the majority opinion in *Davis v. Davis*. Chief Justice D. Gordon Baker wrote the dissenting opinion in *Davis*. The majority opinion begins as follows:

> The facts are fully stated in the opinion of Mr. Chief Justice Baker. For the reasons so cogently stated by him, I am in accord with the conclusion that the estate of tenancy by the entirety no longer exists in South Carolina …

75 S.E.2d at 47.

8. According to Judge Baker's dissent in *Davis*, South Carolina recognized tenancy by the entirety prior to the Constitution of 1895. With a pre-1895 South Carolina tenancy by the entirety, "neither can alien so as to bind the other, and the survivor takes the whole." *Davis*, 75 S.E.2d at 52. Also, "neither the husband nor the wife can dispose of any part without the assent of the other, but the whole must remain to the survivor." 75 S.E.2d at 53. Prior to the Constitution of 1895 then, it appears that a South Carolina tenancy by the entirety enjoyed the same protection from creditors enjoyed by a tenancy by the entirety in North Carolina or Florida today.

9. In *Smith v. Cutler*, the Court ruled that (a) TICWROS is an estate that is not subject to partition; (b) TICWROS creates a tenancy in common with an indestructible right of survivorship; and (c) a TICWROS is not capable of being defeated by the unilateral act of one joint tenant. "**[A] tenancy in common with a right of**

survivorship cannot be defeated by the act of one tenant absent the agreement of the other tenant." 366 S.C. at 551, 623 S.E.2d at 647.

10. The estate of tenancy in common with a right of survivorship (TICWROS) was created to replace tenants by the entirety. The S.C. Supreme Court in *Smith v. Cutler* refused to allow partition. A TICWROS arguably enjoys the same protection from creditors as the estate of tenancy by the entirety.

11. The S.C. Supreme Court in *Smith v. Cutler* tells us exactly what language to include in the granting clause and habendum clause of a deed to create a TICWROS:

> We hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor."

366 S.C. at 551, 623 S.E.2d at 647. This was the language used by Joanne Rucker Smith in the deed to herself and Ernest J. Smith, Sr. which was the subject of the *Smith v. Cutler* case. It is not the exclusive way to create a TICWROS.

Case Study

7. Your married clients are Becky (age 46) and Bill Kirkconnell (age 47). Becky is an OB-GYN physician ("high risk spouse") and Bill is a college professor ("low risk spouse"). While working with your clients, you find out that they have an interest in asset protection planning. Their home is worth $2,500,000 and has a small mortgage outstanding. Assume the fraudulent transfer law in South Carolina (S.C. Code Ann. §27-23-10) has no application in this case. (For example, there is no pending, threatened or expected legal action against either client. There are no known existing or "subsequent" creditors.) A very common planning tool would be to have Becky deed to Bill any and all interest she owns in their $2.5 million residence. In this case, however, Becky does not want to deed her entire interest over to Bill. **What options can you suggest to Becky and Bill**?

8. **TICWROS may provide more protection than titling it solely in Bill's name**. Even if Becky were comfortable deeding her entire interest to Bill, it may be better to title the property in both names as tenants in common with a right of survivorship (TICWROS). Although it is true that Becky's occupation is the more risky of the two, Bill might run into difficulties of his own (financial or otherwise). Bill could unilaterally decide to act in a manner that Becky could not stop absent a court order. Bill's actions (whether voluntary or accidental) could prove detrimental to Becky's interest in the home. Bill could be the cause of a terrible car accident in his commute to and from the University every day. Bill might not always remain loyal to Becky—for example, he might have an affair with one of his students. Bill might deed the house to a religious cult he gets involved in. Bill might develop a substance abuse or gambling addiction. Everything is fine right now, but does Becky really want to give Bill that much control over her beautiful home that she worked so hard to buy and furnish?

9. **Becky and Bill want to keep things as simple as possible**. Assume that Becky and Bill want the greatest protection for the least amount of money and hassle. They are not interested in techniques that are costly or complex or just plain scary. For example, you can forget about trying to convince them of the efficacy of deeding their home to a Trustee of an irrevocable trust (including a domestic asset protection trust; an offshore trust; or even a QPRT). [Caveat: Avoid putting a personal residence in an LLC. Although it is not a subject of discussion for this outline, there are practical problems associated with placing a residence (a personal asset) in an LLC (a business legal entity).] Although Becky and Bill would like to engage in some asset protection planning, they are not "worried to death" about being sued. They have the maximum amount of automobile liability insurance their carrier sells and a $3 million umbrella policy. Becky has a lot of medical malpractice insurance, and the South Carolina Noneconomic Damage Awards Act of 2005 (effective July 1, 2005) has made her feel less anxious about a lawsuit. They understand, however, that insurance is not the answer to all of their problems—even if the amount of insurance appears sufficient, there is always the issue of whether a particular claim is covered. **Your clients' fear of lawsuits and creditors can be characterized as being in the level of "medium."**

10. **Recommendation to Clients**. Suggest to Becky and Bill that they might want to title their home in both names as tenants in common with a right of survivorship. In accordance with *Smith v. Cutler*, 366 S.C. 546, 623 S.E.2d 644 (2005), the deed would be to Becky and Bill "for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever in fee simple…" See **Exhibit "A"** below for the first page of a sample deed with the requisite language.

11. **Disadvantages**. The disadvantage of using tenancy in common with a right of survivorship (TICWROS) is the loss of flexibility. A co-owner of property titled either as tenants in common (TIC) or as joint tenants with right of survivorship (JTWROS) can deed his/her interest to anyone he/she wants during his/her lifetime. In the case of JTWROS, an owner can sever the joint tenancy at any time during his lifetime. In the case of TICWROS, a co-owner cannot act unilaterally – each owner must obtain the other co-owner's consent and signature to deal with the property.

12. **Disproportionate Percentages**. One alternative to TICWROS would be to hold the property as tenants in common in disproportionate percentages. For example, Bill could own a 98% interest in the residence and Becky could own 2%. Becky's ownership percentage would make it difficult (but perhaps not impossible) for Bill to act unilaterally with regard to the property. For example, as a practical matter, to sell, lease, subdivide, or mortgage the property, Bill would have to get Becky's consent. If Becky found herself in trouble with her creditors, then Bill could simply purchase Becky's 2% interest for full and adequate consideration. Assume the purchase price for the 2% interest would be paid to Becky's creditors. Becky and Bill would only lose 2% of the value instead of 50%. (See the "right of first refusal" procedure in partition actions set forth in S.C. Code Ann. § 15-61-25.) This 98%/2% TIC form of ownership would protect most of the property from Becky's creditors (not Bill's creditors) and still allow Becky a legal say in what happens to the property. Disproportionate percentages should also work in conjunction with TICWROS.

13. For a more extensive look at asset protection planning, see Barry S. Engel, *Asset Protection Planning Guide 2nd Edition* (CCH 2005).

The remainder of this outline includes additional research into the "tenants in common with right of survivorship" form of ownership. Note that about seven (7) other states recognize it.

Corpus Juris Secundum
Volume 41
Tenancy In Common
II. Nature and Essentials of Relationship
§ 5 Survivorship

12. Ordinarily there is no right of survivorship as between tenants in common, although a right of survivorship may be attached to a tenancy in common where the parties so agree. Where a right of survivorship is attached to a tenancy in common, it is indestructible except by the voluntary action of all the tenants in common. C.J.S., Tenancy In Common § 5.

13. South Carolina is not the only state with law similar to *Smith v. Cutler*. Other states which have recognized the estate of tenancy in common with an indestructible right of survivorship (or something similar) include:

(1) **Alabama**. *Durant v. Hamrick*, 409 So.2d 731 (AL 1982).

(2) **Georgia**. *Williams v. Studstill*, 251 Ga. 466, 306 S.E.2d 633 (1983).

(3) **Minnesota**. *Papke v. Pearson***,** 203 Minn. 130, 135-136, 280 N.W. 183, 185 (1938). This case cites with favor 1 Tiffany, *Real Property*, 2d Ed., 635.

Similar language from the 3rd Edition of the Tiffany treatise was cited favorably by the S.C. Supreme Court in the *Davis* (S.C. 1959) 75 S.E.2d at 50. See more on *Davis* below.

(4) **Nebraska**. *Anson v. Murphy*, 149 Neb. 716, 32 N.W.2d 271 (1948). (Includes unfavorable sounding dicta: "It will be noted, also, that survivorship as it related to a tenancy in common is subject to certain restrictions, such as liability of the surviving estate for the debts of the deceased tenant in common ...")

(5) **New Hampshire**. *Burns v. Nolette*, 83 N.H. 489, 496, 144 A. 848, 852 (1929). *Mulvanity v. Nute*, 95 N.H. 526, 68 A.2d 536 (1949).

(6) **Oregon**. *Halleck v. Halleck*, 216 Or. 23, 337 P.2d 330 (1959); *Brownley v. Lincoln County*, 218 Or. 7, 343 P.2d 529 (1959).

(7) **Wisconsin**. *Hass v. Hass*, 248 Wis. 212, 22 N.W.2d 151 (1946).

(8) **Michigan is not a TICWROS state, but there are some similarities** — See *Albro v. Allen*, 454 N.W.2d 85, 88, 434 Mich. 271, 275 (1990). Michigan appears to be too unique to be grouped with the other TICWROS cases cited above. The Powell treatise sets forth general points of law, but specifically identifies when a rule is the law only in Michigan.

Tiffany on Real Property

5. "In the case of a conveyance or devise to A and B and to the survivor of them, the tendency has been to regard the language used as showing an intention to create a cotenancy in A and B for their lives, with a contingent remainder in favor of the survivor, unless words of inheritance, used as applying to both A and B, or other circumstances, indicate an intention to create a fee simple in each. In either case, at common law, A and B would take as joint tenants, but the statutes creating a presumption in favor of tenancy in common would tend to prevent this result, and any rights accruing by reason of survivorship would be based on the **express limitation** in favor of the survivor. [emphasis added] By reason, moreover, of the modern statutes creating a presumption in favor of the passing of a fee simple rather than a life estate, language which at common law made A and B joint tenants for life with remainder to the survivor, might occasionally be regarded as making them tenants in common in fee simple, subject to **cross executory limitations** between them, that is, with a limitation over, as to the moiety of A, in favor of B, in case of A's death before B, and a like limitation over in favor of A, as to B's moiety, in case of B's death before A." [emphasis added] 2 Tiffany Real Prop. § 421. Joint tenancy–Creation.

6. "It has been stated that, in order to engraft a right of survivorship on a cotenancy which might otherwise be a tenancy in common, the intent to do so must be expressed with sufficient clarity to overcome a statutory presumption that survivorship is not intended, although no particular form of words is required to manifest such an intention. But whether the mere fact that the donor indicates an intention that the survivor or survivors shall take should be given such an effect appears to be open to question. The right of survivorship is merely one incident of a joint tenancy. Another incident of such tenancy is that any one of the tenants can destroy it, with the incidental right of survivorship, by a conveyance to a third person, and **when one makes a gift to**

two or more with the right of survivorship, it appears to be a reasonable conclusion that he has in mind an indestructible right of survivorship. [emphasis added] The view that there is in such a case a tenancy in common for life with a contingent remainder in favor of the survivor, or even that there is a tenancy in common in fee simple with an executory limitation in favor of the survivor, might seem more in accord with the intention of the grantor or testator." 2 Tiffany Real Prop. § 424. Joint tenancy–Statutory regulations.

Powell on Real Property
(Matthew Bender)

14. Some courts have held that parties may add a right of survivorship to a tenancy in common, which is sometimes characterized as a tenancy in common for the lives of the cotenants, with a contingent remainder in the survivor. Where clear intent to create a joint tenancy is frustrated by statute or a missing "unity", a court may declare the survivorship right **indestructible** and attach it to a tenancy in common as the next closest form of concurrent ownership. Footnote citation to *Davis v. Davis*, 223 S.C. 182, 75 S.E.2d 46 (1953). [emphasis added] 7-50 Powell on Real Property § 50.02[8] Certain Tenancies in Common Feature Rights for Survivors

15. In Michigan … words of survivorship create a special estate known as a joint tenancy with full rights of survivorship and treated as a joint life estate with dual contingent remainders. The survivorship rights of this special type of joint tenancy are indestructible. 7-51 Powell on Real Property § 51.02[1] Only Express and Legally Sufficient Language in Instrument Overcomes Legal Presumption for Tenancy in Common

16. Some courts seeking to give effect to the grantor's intent, have treated the unrecognized joint tenancy as a tenancy in common for the lives of all the co-grantees except the survivor, with a contingent remainder in fee in favor of the survivor. The right of survivorship in such a situation **cannot be destroyed by unilateral acts of the tenants; creditors of individual cotenants may reach only the life interests; and such an estate is not subject to partition**. One state, Michigan, recognizes a special joint tenancy with full rights of survivorship, which is a type of joint tenancy created by

express survivorship language and treated as a joint life estate with dual, indestructible contingent remainders. Ironically, these judicial mutations, by barring severance and partition through an indestructible right of survivorship, embody features of concurrent ownership often sought to be defeated in legislation restricting the joint tenancy. [emphasis added] 7-51 Powell on Real Property § 51.02[2] Some Jurisdictions that Do Not Recognize Joint Tenancies May Give Effect to Survivorship Rights

American Jurisprudence Second Edition
Volume 41 — Husband and Wife
III. Property Rights and Interests
B. Estates By Entireties

17. Under Florida law, if a married couple holds property as tenants by the entireties, that property cannot be reached to satisfy debts of one spouse, but can only satisfy joint debts. *In re Matthews*, 360 B.R. 732 (Bankr. M.D. Fla. 2007). Judgment against one spouse individually is not enforceable against property owned by both spouses as tenants by the entirety. *In re Buonopane*, 359 B.R. 346 (Bankr. M.D. Fla. 2007). 2008 Cumulative Supplement to 41 Am. Jur. 2d Husband and Wife § 36 (2005).

18. Courts have characterized tenancy by the entireties as tenancy in common or joint tenancy with an indestructible right of survivorship. 41 Am. Jur. 2d Husband and Wife § 20 (2005). Am Jur cites two cases as authority, *Pletz v. United States of America*, 221 F.3d 1114 (9th Cir. 2000). *Pletz* is a "good news" and "bad news" case. Good news: "Under Oregon law, a tenancy by the entirety is treated as a tenancy in common with an indestructible right of survivorship." *Id*. at 1117. Bad news: "Oregon's stated policy goal is to prevent 'a debtor from avoiding payments of his just debts by holding his land by the entirety.' *Ganoe v. Ohmart*, 121 Or. 116, 254 P. 203, 207 (1927)." *Id*. at 1118. Unlike most states that recognize tenancy by the entireties, Oregon law permits the creditor of one spouse to execute on that spouse's interest in property held as a tenancy by the entirety with a nondebtor spouse. *Id*. at 1117. Notwithstanding this minority view regarding creditor rights, the one estate (tenancy by the entirety) is equated with the other (tenants in common with a right of survivorship).

19. Each tenant in a tenancy by the entireties has a joint right to the use, control, income, rent, profit, usufruct, and possession of property so held, and neither

may unilaterally convey, encumber, alienate, or dispose of any portion thereof except his or her right of survivorship. Neither spouse may independently appropriate the property to his or her own use to the exclusion of the other, and, in general, both spouses must agree to any contract concerning the property, unless the contracting spouse is authorized to act on behalf of the other spouse, or the other spouse ratifies the act. 41 Am. Jur. 2d Husband and Wife § 30 (2005).

20. In general, during the lifetime of the parties, so long as the spouses remain married, the tenancy may be terminated or severed only by joint and mutual action. There can be no severance of an estate by the entireties by the unilateral act of either spouse. Moreover, unless such partition is authorized by statute, an estate by the entireties cannot, during the existence of the marital relation, be severed or partitioned by a judicial decree in a proceeding for partition. 41 Am. Jur. 2d Husband and Wife § 32 (2005).

21. Entireties property is always subject to the claims of joint creditors of the spouses, but is in some jurisdictions immune to the claims of the creditors of individual spouses. Where the entireties property is immune from claims of individual creditors, the spouses can convey a title to the estate free from the effect of a previous judgment against one of the spouses. 41 Am. Jur. 2d Husband and Wife § 36 (2005).

Tenancy by the Entirety in North Carolina

22. North Carolina recognizes tenancy by the entirety between a husband and wife. N.C. Gen. Stat. § 39-13.6(a) provides as follows:

> A husband and wife shall have an equal right to the control, use, possession, rents, income, and profits of real property held by them in tenancy by the entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or in any manner encumber any property so held without the written joinder of the other spouse.

Property which a debtor (husband) held as tenants by the entirety under North Carolina law with a nondebtor spouse (wife), was not available to a bankruptcy trustee to

satisfy general unsecured debt which was held and owed solely in the name of the husband. *In re Knapp*, 285 B.R. 176, 178-179 (Bkrtcy. M.D.N.C. 2002). "[R]eal property owned as tenants by the entirety in North Carolina is not subject to a claim by a creditor against only one spouse." *Id*. at 179. "Judicial lien creditors with a claim against only one spouse have no rights under North Carolina state law as to entireties property." *Id*. at 182-183.

23. The following is not meant to be an exclusive list—for similar law in other jurisdictions, see *Schlossberg v. Barney*, 380 F.3d 174, 178 (4th Cir. 2004) (regarding Maryland law); *In re Kelly*, 289 B.R. 38 (Bankr.D.Del.2003) (regarding Delaware law); *In re Ryan*, 282 B.R. 742 (Bankr.D.R.I.2002) (regarding Rhode Island law); *Talbot v. U.S.*, 850 F.Supp. 969, 973 (D.Wyo.1994) (regarding Wyoming law); *In re Sinnreich*, 391 F.3d 1295, 1297 (11th Cir. 2004) (regarding Florida law), *United States v. Craft*, 535 U.S. 274, 288, 122 S.Ct. 1414, 152 L.Ed.2d 437 (2002) (regarding Michigan law).

24. Caveat: As discussed in the *Schlossberg* and *Knapp* cases, the Supreme Court in *United States v. Craft*, 535 U.S. 274, 122 S.Ct. 1414, 152 L.Ed.2d 437 (2002) held that a federal tax lien involving Don Craft (the husband) attached to Michigan property owned by Don Craft and his wife as tenants by the entirety. The Supreme Court held that where federal taxes are owed by one spouse, and the spouse has property owned as tenants by the entireties with a spouse who had no delinquent tax liabilities, the IRS may attach the entireties property to collect the tax debt under 26 U.S.C. § 6321.

End of Outline

EXHIBIT "A"

RETURN TO: **Shawn M. Flanagan, Esquire**
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5 Exchange Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED
(Title Not Examined)

WHEREAS, it is the intent of the Grantors to create a shared interest in the below described property referred to as a tenancy in common with a right of survivorship as more fully described in *Smith v. Cutler*, 366 S.C. 546, 623 S.E.2d 644 (2005).

KNOW ALL MEN BY THESE PRESENTS that **William B. Kirkconnell and Rebecca M. Kirkconnell** ("Grantors"), in the State aforesaid, for and in consideration of the sum Five and No/100 ($5.00) Dollars, to the Grantors in hand paid at and before the sealing of these presents by **William B. Kirkconnell and Rebecca M. Kirkconnell** ("Grantees"), in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **William B. Kirkconnell and Rebecca M. Kirkconnell, for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever in fee simple**, the following described property, to wit:

SEE EXHIBIT "A" FOR PROPERTY DESCRIPTION

For reference see TMS No. 555-00-00-000

Grantee's Address: 23 Skidoo White Dog Road
Charleston, SC 29400

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Grantees for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever in fee simple.

AND Grantors hereby covenant with the Grantees that Grantors will warrant and defend the title to said premises, against the lawful claims of all persons claiming by, under or through Grantors and no others.