IN PART IV OF THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE AT NASHVILLE

MARY LU SMITH, individually, as Administratrix of the Estate of H. David Smith and as Managing Partner of the Smith Family Partnership, and the SMITH FAMILY PARTNERSHIP,	)	
Plaintiffs,	)	**Appearance No. 08-2769-IV**
v.	)	
CONDRA DEVELOPMENT COMPANY and CONDRA PROPERTIES, LLC.	)	
Defendants.	)	

2008 DEC 30 PM 1:02
DAVIDSON CO. CHANCERY CT.
DC&M

Davidson County ORDER
Recvd: 12/30/08 14:27 6 pgs
Fees:32.00 Taxes:0.00
20081230-0123568

ORDER

This cause came on to be heard on this the 30th day of December, 2008, before the Honorable Russell T. Perkins, Chancellor, upon the entire record, and particularly upon the Complaint to Clear Title to Real Estate, statement of counsel, the testimony of Mary Lu Smith, and the Affidavit of Douglas J. Brown, and, it appears to the Court that the Plaintiff's request for the entry of an Order declaring the rights, ownership and obligations of the parties with respect to real estate located at 403 Gallatin Road, Madison, Davidson County, Tennessee 37115 is unopposed, well taken, and should be sustained. The legal description of the property is attached hereto as Exhibit A. The Court makes the following findings of fact:

1. The Plaintiff, Smith Family Partnership, is a partnership which was formed on December 30, 1982 for the purpose of owning and investing in real property, including property located at 403 Gallatin Road, Madison, Davidson County, Tennessee 37115. The Smith Family Partnership is a viable partnership under Tennessee law. The Plaintiff herein, Mary Lu Smith, is the sole living managing partner of the Smith Family Partnership. Her deceased husband, H.

David Smith, was also a managing partner during his lifetime.

2. The Defendant, Condra Development Company, was a Tennessee corporation. On the same day as the formation of the Smith Family Partnership, on December 30, 1982, H. David Smith, was appointed Trustee pursuant to a Trust Agreement with Condra Development Company, pursuant to which H. David Smith, as Trustee, took title to the real estate located at 403 Gallatin Road, Madison, Davidson County, Tennessee 37115 for the benefit of the beneficiary, Condra Development Company.

3. On the same day, December 30, 1982, Condra Development Company conveyed the property to H. David Smith, Trustee, by quitclaim deed, and he signed the oath of consideration as Trustee. The deed is of record at Book 5985, Page 821, Office of the Register of Deeds for Davidson County. Condra Development's ownership interest in the property ceased as of December 30, 1982, as H. David Smith, Trustee, was granted "full power to sell, transfer, mortgage and convey without the joinder of any beneficiary, all right, title and interest it may have in and to the property. . . ." Condra Development Company retained a Deed of Trust to secure the total amount owed. The Deed of Trust is of record at Book 5985, Page 833, Office of the Register of Deeds for Davidson County. The Smith Family Partnership has made all of the payments on the Deed of Trust, and continues to do so.

4. The Trust Agreement expressly provides that in the event of the resignation of the Trustee, the beneficiary would appoint a successor trustee. In the event of the death of the Trustee prior to the termination of the trust, the beneficiary was to designate a successor trustee. If the beneficiary failed to appoint a successor trustee, the trust would terminate and the property would be deemed owned by the beneficiary. In no event was the trust to be in existence longer than ten (10) years from the date of the execution of the Trust Agreement. Therefore, by its express terms,

the Trust was dissolved as of December 30, 1992.

5. Condra Development Company was administratively dissolved on April 9, 1985, prior to the dissolution of the Trust Agreement. Therefore, Condra Development Company did not exist at the time of the dissolution of the trust.

6. Condra Properties, LLC is a Tennessee corporation which was formed on December 31,1997. Condra Properties, LLC is now the owner of the Deed of Trust on the property. Neither Condra Development Company, Condra Properties, LLC, or any affiliate or successor entity claims any ownership interest in the property located at 403 Gallatin Road, Madison, Davidson County, Tennessee. Condra Properties, LLC does not oppose the entry of this Order declaring the Smith Family Partnership the owner of the property in question.

7. In the years since the purchase of the subject property, for all purposes, the property has been treated as owned by the Smith Family Partnership, which has been entitled to the possession, use and enjoyment of the land, and of the rents, profits and fruits thereof. The Smith Family Partnership has been in de facto possession of the property, and has been responsible for all maintenance, repairs, renovations and taxes.

8. H. David Smith died on March 4, 2006. His estate was probated in Davidson County, Tennessee, bearing Docket No. 06P-736. Mary Lu Smith was the administratrix of the estate, which was closed on September 27, 2007.

9. At all times, the Plaintiff, Mary Lu Smith, believed that the real property located at 403 Gallatin Road, Madison, Tennessee 37115 was the property of the Smith Family Partnership. Since the death of her husband, H. David Smith, she has acted as the managing partner of the Smith Family Partnership, and has continued to make payments on the Deed of Trust, to maintain the improvements on the property, and to pay the taxes. To the knowledge of the Plaintiff, during

this period, neither the Defendants, nor anyone acting on behalf of the Defendants, has maintained the property in any manner, has visited the property or possessed it in any manner, or has paid any portion of the taxes on the property. The Defendants acknowledge these facts.

11. The Plaintiff, Mary Lu Smith, believed that by virtue of her being the managing partner of the Smith Family Partnership, she had full authority to enter into a contract for the sale of the property and to sell said property. She was unaware that the property was titled in the name of H. David Smith, Trustee.

12. On November 17, 2008, the Plaintiff, Mary Lu Smith, entered into a contract for the sale of the property located at 403 Gallatin Road, Madison, Tennessee 37115 to Seventh Day Adventists, Inc., Kentucky-Tennessee Conference.

13. During the ensuing title search, it was discovered that H. David Smith, Trustee, now deceased, had never signed a quitclaim deed conveying the property to the Smith Family Partnership, as had evidently been planned, creating a cloud on the title.

As a result of the foregoing, the Plaintiffs, Smith Family Partnership and Mary Lu Smith, are entitled to a declaratory judgment, and the Court expressly finds, that the Smith Family Partnership is the owner of the property located at 403 Gallatin Road, Madison, Davidson County, Tennessee 37115 under the common law doctrine of presumption of title after continuous adverse possession for more than twenty (20) years or under other legal doctrines.

ENTERED this 30th day of December, 2008.

RUSSELL T. PERKINS, CHANCELLOR

I HEREBY CERTIFY THIS IS A TRUE COPY OF ORIGINAL INSTRUMENT FILED IN MY OFFICE THIS 30 DAY OF Dec 2008 CRISTI SCOTT, CLERK & MASTER BY DEPUTY CLERK

APPROVED FOR ENTRY:

WILLIS & KNIGHT, PLC

By: Katherine A. Brown
Katherine A. Brown (No. 10391)
215 Second Avenue North
Nashville, TN 37201-1601
(615) 259-9600

Attorneys for Plaintiffs, Mary Lu Smith, individually, as Administratrix of the Estate of H. David Smith and as Managing Partner of the Smith Family Partnership, and the Smith Family Partnership.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by facsimile (440-5021) and mailed via United States mail, first class postage prepaid to Douglas J. Brown, Brown & Tatro, P.C., 1005 Eighth Avenue South, Nashville, Tennessee 37203 on the 30th day of December, 2008.

Katherine A. Brown
Katherine A. Brown

EXHIBIT A

A tract of land in the 11th, formerly the 19th, Civil District of Davidson County, Tennessee, being the southwest corner of Parcel No. 25 conveyed to Crescent Properties Company by deed from The Crescent Company, of record in Book 4288, page 508, Register's Office for said County, more specifically described as follows:

Beginning at a point on the easterly margin of Gallatin Pike, said point being the same beginning point in the description of Parcel No. 25, being one foot north of the northerly wall of the building demised to Service Merchandise Company of Madison, Inc. by lease from Graves Pate, et al of record in Book 4149, page 397, of said Register's Office; thence with the easterly margin of Gallatin Pike, north 10°east 117.3 feet to the northerly wall of the building presently demised to Henshaw's Homestead House Furniture Company by lease from Crescent Properties Company, not of record; thence running north of the northerly wall of said building, south 88° 8' east 250 feet to a point; thence south 10° west 117.3 feet to the southerly boundary line of Parcel No. 25 as described in deed in Book 4288, page 508; thence with the southerly boundary of said Parcel No. 25 westwardly to the point of beginning.

Being the same property conveyed to H. David Smith, Trustee, with full power to sell, transfer, mortgage and convey without the joinder of any beneficiary by Quitclaim Deed dated December 30, 1982 from Condra Development Company, a Tennessee corporation of record in Book 5985, page 821, Register's Office for Davidson County, Tennessee, the said H. David Smith having since died.