

*See Unit plan no 27*

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STATE OF NORTH CAROLINA

DECLARATION OF CONDOMINIUM  
UNDER NORTH CAROLINA UNIT  
OWNERSHIP ACT-81 Central  
Avenue Office Building

<sup>180</sup> THIS DECLARATION OF UNIT OWNERSHIP, made and executed this the JANUARY day of JANUARY, 1980, by DAVID G. GRAY, LARRY S. KIMEL, and JOE A. CONNOLLY, of Buncombe County, North Carolina, herein-after called "Developer", on behalf of themselves, their grantees, successors and assigns, WITNESSETH:

WHEREAS, "Developer" owns certain real property herein described; and

WHEREAS, "Developer" has improved said property by constructing thereon an office building known as 81 Central Avenue, which structure is built principally of stone, masonry and wood, and consists of two attached units, all of which are more particularly shown on drawings hereto attached as Exhibit A, which will be removed by the Register of Deeds upon recording of this Declaration and filed in the Unit Ownership File in his office; and

WHEREAS, "Developer" hereby establishes by this Declaration a plan under Chapter 47A of the General Statutes of North Carolina for the individual ownership of the real property estates consisting of the area or space contained in each of the office units in said office building, and the co-ownership by the individual and separate owners thereof, as tenants in common of all of the remaining real property which is herein-after defined and referred to herein as the "Common Areas and Facilities";

NOW, THEREFORE, being the fee simple owner of the real estate located in Buncombe County, North Carolina, and more particularly described as follows:

See Exhibit "A" attached hereto

ITEM 1: "Developer", in order to establish a plan of condominium ownership for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

(a) Two separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained within the exterior or party walls of each of the two office units in said two-story structure constructed on said property, said spaces being defined and referred to herein, as "office units". The term "office unit" as used in this Declaration means "condominium unit" as defined in Section 47A-3 of the General Statutes of North Carolina, specifically including in each such unit the ownership of all space within the interior finish of all exterior walls or party walls of said unit and the space from the top of the floor joists in each floor to the bottom of the roof joists in each ceiling, including the finish of any beams or interior roof areas, together with all attachments thereto in any way related to the operation of said unit. Ownership of either office unit shall include the stairway leading from the lower level to the upper level and the porch and entrance area adjacent to outside doors leading into each office unit.

(b) One (1) freehold estate consisting of the remaining portion of the real property as described and referred to herein as the "common areas and facilities", which definition includes the two-story office structure and the property upon which it is located as described herein, and specifically includes, but is not limited to, the land, roof, main

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walls, slabs, foundations, pipes, wires, conduits, telephone lines, lines for the transmission of electricity, sewerage or other utilities and public conveniences serving more than one office unit, and any exterior stairways, parking spaces, sidewalks and paved areas, shall mean the entire tract described herein upon which is located 81 Central Avenue Office Building as shown on the plans filed for record with this Declaration, except the two separately designated condominium units hereinabove referred to (said units being sometimes called "office units"). The "common areas and facilities" shall be for the use of all of the "office units" as herein designated and shown on survey attached hereto, subject to such restrictions as may be set out in the by-laws or in the rules and regulations adopted pursuant thereto.

ITEM 2: For the purposes of this Declaration, the ownership of each "office unit" shall include the respective, undivided interest in the common areas and facilities specified and established in Item 4 hereunder, and each said "office unit", together with said undivided interest, is defined and hereinafter referred to as an "office".

ITEM 3: The individual "office units" hereby established, and which shall be individually conveyed by Developer, are shown in detail on the survey and the plans prepared by Butler Associates, licensed professional engineers, attached hereto as Exhibit "A", and which are incorporated by reference as a part of this Paragraph. Said plans fully and accurately depict the location of the buildings on the land and also the layout, location, elevations, unit numbers, and dimensions of units as actually built, and the areas and location of the common areas and facilities affording access to each unit.

ITEM 4: The undivided interest in the "common areas and facilities" hereby declared and established, and which shall be conveyed with each respective "office unit" as follows:

<u>OFFICE UNIT</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST</u>
A	50 %
B	50 %

Developer, its successors and assigns, by this Declaration, and all future owners of said "office units" by their acceptance of their deeds, covenant and agree that the undivided interests in the "common areas and facilities" and the fee title to the respective "office units" conveyed therewith shall not be separated or separately conveyed, and each said undivided interest shall be conclusively deemed to be conveyed or encumbered with its respective "office unit" even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the "office unit". The foregoing percentages of undivided interest in the "common areas and facilities" have been arrived at pursuant to Section 47A-6 of the General Statutes of North Carolina and shall not be changed except with the written consent of all "office unit" owners expressed in a duly recorded amendment to this Declaration.

ITEM 5: The proportionate shares of the separate owners of the respective "office units" in the profits and common expenses in the "common areas and facilities" as well as their proportionate representation for voting purposes in the 81 Central Avenue Association, shall be the same percentage as the percentage of undivided interest shown in Item 4 above.

ITEM 6: Developer, its successors and assigns, by this Declaration, and all future owners of said "office units" by their acceptance of their deeds, covenant and agree as follows:

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(a) That the "common areas and facilities" shall remain undivided and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.

(b) That the "office spaces" shall be occupied and used by the respective owners only as an office space for the owner, or his tenants, and for no other purpose.

(c) That the owner of the respective "office unit" shall not be deemed to own pipes, wires, conduits, or other public utility lines and public convenience facilities running through said respective office units which are utilized for or serve more than one "office unit", except as tenants in common with the other "office unit" owners as heretofore provided in Item 4 and each "office unit" shall be subject to the easement for passage of same.

(d) That the owners of the respective "office units" agree that if any portion of the "common areas and facilities" encroaches upon their "office unit", a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the two-unit structure is partially or totally destroyed, and then rebuilt, the owners of "office unit" agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

(e) That an owner of an "office unit" shall automatically upon becoming the owner of the same, be a member of 81 Central Avenue Association and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.

(f) That the owners of "office units" covenant and agree that the administration and maintenance of the condominium, including the sale, lease or mortgaging of any "office unit" shall be in accordance with the provisions of this Declaration, the bylaws of the 81 Central Avenue Association and such rules and regulations as may hereinafter be enacted pursuant to said bylaws, which bylaws, rules and regulations are attached hereto as Exhibit "B" and that failure of an "office unit" owner, his tenants and other occupants of an "office unit" to comply with same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, in an action brought by said Association or any other "office unit" owner.

(g) That this Declaration shall not be revoked or any of the provisions herein amended unless all of the owners of all "office units" in the building and the holders of all mortgages or deeds of trust governing the same unanimously agree to such revocation or amendment by duly recorded instruments.

(h) That no owner of "office unit" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the "common areas and facilities", or by the abandonment of his "office unit"

(i) That the Developer retains the right to utilize portions of the "common areas and facilities" for affording utilities and public conveniences to adjacent properties owned by the developer and to said end may grant easements to other persons, firms and corporations over and across said "common areas and facilities" for such utilities and public conveniences.

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(j) The Owner of each "office unit" shall give the owners of the other "office unit" a first refusal right to purchase such "office unit" in the event of a sale.

ITEM 7: Section 47A-22 ("liens for unpaid common expenses; recordation; priorities; foreclosure), Section 47A-23 ("liability of grantor and grantee of unit for unpaid common expenses"), Section 47A-24 ("insurance on property; right to insure units"), Section 47A-25 ("damage to or destruction of property, repair or restoration; partition sale on resolution not to restore"), and Section 47A-26 ("Action as to common interest; service of process on designated agent; exhaustion of remedies against Association"), of the General Statutes of North Carolina are hereby incorporated by reference and made a part of this Declaration, provided that with reference to Section 47A-25, in the event of destruction of the building, insurance proceeds shall be divided on the following basis:

Unit A	60 percent
Unit B	40 percent

Additional costs of repair or replacement shall be assessed in a like manner.

ITEM 8: Larry S. Kimel, whose address is 81 Central Avenue, Asheville, North Carolina 28801, is hereby designated as initial agent for the service of process pursuant to Section 47A-13(7) of the General Statutes of North Carolina. His appointment may be revoked, and another agent appointed, in the manner provided by law.

ITEM 9: The following exhibits are attached hereto and made a part of this Declaration:

- Exhibit A Survey of property, description of units, and plans for the office building known as 81 Central Avenue.
- Exhibit B: Bylaws and initial Rules and Regulations of 81 Central Avenue, an office building condominium.
- Exhibit C: Certificate of liscensed professional engineer.

When this Declaration is recorded, Exhibits A and C will be recorded separately in the Unit Ownership file in the Office of the Register of Deeds of Buncombe County, North Carolina.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed this the day and year first above written. The wives of the individual Developer owners have executed the instrument for the purposes of disposing of their respective marital interests in the subject property insofar as this Declaration of Condominium and all attached exhibits are concerned.

*David G. Gray* (SEAL)  
DAVID G. GRAY

*Ann M. Gray* (SEAL)  
ANN M. GRAY

*Larry S. Kimel* (SEAL)  
LARRY S. KIMEL

*Jane Kimel* (SEAL)  
JANE KIMEL

*Joe A. Connolly* (SEAL)  
JOE A. CONNOLLY

*Kirby Connolly* (SEAL)  
KIRBY CONNOLLY

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STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Judy H. Jones, a Notary Public for said State and County, do hereby certify that DAVID G. GRAY and wife, ANN M. GRAY, personally appeared before this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this the 31st day of January, 1980

My Commission Expires: 3/28/83

Judy H. Jones  
NOTARY PUBLIC

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Judy H. Jones, a Notary Public for said State and County, do hereby certify that LARRY S. KIMEL and wife, JANE KIMEL, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this the 30th day of January, 1980

My Commission Expires: 3/28/83

Judy H. Jones  
NOTARY PUBLIC

COPY

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, Judy H. Jones, a Notary Public for said State and County, do hereby certify that JOE A. CONNELLY and wife, KIRBY CONNELLY, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this the 30th day of January, 1980

My Commission Expires: 3/28/83

Judy H. Jones  
NOTARY PUBLIC

State of North Carolina, County of Buncombe

Each of the foregoing certificates namely of Judy H. Jones

a notary or Notaries public of the State and County designated is certified to be correct.

This 1 day of February 1980

OTTO W. DEBRUHL  
Register of Deeds, Buncombe County  
By: Mason C. Taylor Deputy

Filed for registration on the 1 day of February 1980 at 4:44 P.M.

OTTO W. DEBRUHL  
Register of Deeds, Buncombe County  
By: Mason C. Taylor Deputy

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BYLAWS of 81 Central Avenue  
An Office Building Condominium

ARTICLE I

Plan of Unit Ownership

Section 1: The Office Building, located in the City of Asheville, Buncombe County, North Carolina, has been submitted to unit ownership as provided in Chapter 47A of the General Statutes of North Carolina as 81 Central Avenue.

Section 2: The provisions of these bylaws are applicable to the Office Building and the occupancy and use thereof. The term "office unit" as used herein shall include the land described above, the improvements constructed thereon, and all easements, rights, and appurtenances belonging thereunto.

Section 3: All present or future owners, tenants, future tenants, or their employees or any other person that might occupy and use the facilities of the project in any manner, are subject to the provisions of these bylaws and to rules and regulations adopted pursuant thereto.

Section 4: The mere acquisition of any of the condominium units (hereinafter referred to as "units") of the project or the mere act of occupancy of any of said units will signify that these bylaws and the provisions of rules and regulations adopted pursuant hereto and all amendments hereafter made to the same from time to time are accepted, ratified and will be complied with.

Section 5: The term "Developer" as used in these bylaws shall mean David G. Gray, Larry S. Kimel, and Joe A. Connelly, the developers of 81 Central Avenue and improvements incident thereto.

ARTICLE II

Administration

Section 1: The owners of the office units shall select one Board of Directors member each and the Board shall administer the office building. Any reference to an "Association" hereafter shall mean Board of Directors.

Section 2: Meetings of the Association shall be held at the office building or such other suitable place agreed to by the Board members.

Section 3: Meetings of the Board shall be called upon three (3) days written notice given to the other Board members. The topic of discussion shall be set forth in the notice.

Section 4: Meetings of the Board of Directors shall be the same as meetings of the owners.

ARTICLE III

Duties of Board of Directors

Section 1: The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these bylaws directed to be exercised and done by the owners.

Section 2: In addition to the duties elsewhere imposed by these bylaws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep, and protection of the project and the common areas and facilities, including but not limited to the servicing, maintenance, repair, and replacement of all common areas and facilities;
- (b) Designations and dismissal of personnel necessary for the maintenance and operation of the project and the common areas and facilities;
- (c) Fiscal management of the Association, including the determination of the necessity for the levy and collection of an annual assessment to meet recurring needs of the "common areas and facilities".

Section 3: The Board of Directors may, on behalf of the owners, employ such persons, firms, and corporations as may be necessary to carry out the decisions of the Board.

Section 4: Before or at any meeting of the Board of Directors, any director may in writing waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 5: No member of the Board of Directors shall receive any compensation for serving in said capacity.

Section 6: Any documents to be executed by the Association shall be binding when signed by both Board members.

Section 7: The owners of each office unit may replace any Board member previously selected by such owner. Such replacement shall be effective upon notification in writing to the other owner.

ARTICLE IV

Voting

Section 1: Each member of the Board of Directors shall have one vote.

Section 2: In the event of a tie vote which cannot be resolved, the Board of Directors by process of selective elimination, shall choose a person from the list supplied by the American Arbitration Association (AAA). The specialty designated shall be building contract arbitrators. The owners shall become bound by the decision of the arbitrator.

ARTICLE V

Fiscal Management of the Association

Section 1: The Board of Directors of the Association shall fulfill its duties of fiscal management of the Association according to the following provisions:

(a) All debts or expenses incurred by the Board of Directors shall be paid 60 percent by the owner of Unit "A" and 40 percent by the owner of Unit "B" and each unit shall supply its proportionate part of the sum incurred immediately upon assessment thereof.

(b) The Board may establish a checking account with either or both board members being authorized to sign on said account. The Board has authority to select the banking institution necessary for establishment of the account herein referred to.

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ARTICLE VI

Obligations of the Owners and Easements

Section 1: The obligations of the owners as to maintenance and repair are as follows:

(a) Every owner must perform promptly all maintenance and repair work within his own unit, which if omitted would effect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may cause.

(b) All the repairs of internal installations of the unit, such as lines for the transmission of electricity, telephone, sewerage, and other utilities serving only the owner's unit, air conditioners, sanitary installations, doors, windows, glass and all other accessories belonging to the unit area shall be at the owner's expense.

(c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault.

Section 2: All office units shall be subject to the following rights of entry:

(a) Any owner shall grant a right of entry to any other person authorized by the Board of Directors of the Association in case of an emergency originating in or threatening his or any other unit, whether the owner is present at the time or not.

(b) An owner shall permit other owners, or their representatives, when so required, to enter his unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right of entry shall be immediate. Each owner shall have a key to the other owners office unit.

Section 3: Unit "A" shall be entitled to exclusive use for parking purposes of the paved area located to the north of a presently existing rock wall which separates the upper area from the lower area. Similarly Unit "B" shall have exclusive use for parking purposes of the paved area located to the south of the rock wall. The owner of the respective units shall be responsible to separately maintaining the respective parking areas.

Section 4: Unit "A" shall have an easement over and across the "common area" extending from the exterior entrance located in the east wall of Unit "A" to the adjoining property which contains a two-story frame dwelling as shown on Exhibit "A" of the Declaration of Condominium. At their option and at their expense the owners of Unit "A" may construct additional office spaces connecting Unit "A" to the adjoining property.

ARTICLE VII

Conveyances

The sale, leasing, and mortgaging of office units in the project shall be subject to the following provisions:

Section 1: Each unit or any part thereof may be leased by the owner but only for office use.

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Section 2: No unit may be sold unless the owner of the other unit has been given the opportunity to exercise its right of refusal as referred to in the Declaration of Condominium.

ARTICLE VIII

Mortgages

Section 1: An owner who mortgages his unit, or places a deed of trust or any other encumbrance thereon, shall notify the Association through the management agent, if any, or the President of the Board of Directors in the event there is no management agent, of the name and address of such mortgage or lien holder; and the Association shall maintain such information as a portion of the official records of the Association.

Section 2: In the event the existing first mortgage on the entire premises becomes in default, the owners of Unit "B" may cure the default and upon so doing receive full credit and set-off therefor.

ARTICLE IX

Agent for Service of Process

The Association shall at all times maintain a duly appointed process agent within Buncombe County, North Carolina, as required by G. S. 47A-26. The Association may at any time revoke the appointment of any such agent, and appoint a successor, by an instrument duly recorded in the Office of the Register of Deeds for Buncombe County. The initial registered agent of the Association shall be Larry S. Kimel, whose address is 81 Central Avenue, Asheville, North Carolina 28801.

ARTICLE X

Administrative Rules

Section 1: Rules and regulations governing the details of the operation and use of the common areas and facilities not specifically provided for herein, shall be promulgated and enforced by the Board of Directors. Such rules and regulations, if any are adopted, shall be maintained in writing by the agent for service of process as herein designated or by his successor.

ARTICLE XI

Compliance

These bylaws are set forth to comply with the requirements of Chapter 47A of the General Statutes of North Carolina. In case any of these bylaws conflict with the provisions of said Chapter, it is hereby agreed and accepted that the provisions of said Chapter will apply.

ARTICLE XII

Amendments to Bylaws

Section 1: These bylaws may be amended by unanimous vote of the Board of Directors. Notice of the subject matter of a proposed amendment shall be included in the notice of meeting at which a proposed amendment is considered.

Section 2: Amendments to these bylaws shall become effective and operative only upon recording of an amended declaration. Upon such recording the unit owners shall be bound to abide by any such amendment.