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Please Return to

Amy Cole
 Preservation North Carolina
 PO Box 27644
 Raleigh, NC 27611

NORTH CAROLINA

POLK COUNTY

HISTORIC PRESERVATION AGREEMENT

THIS AGREEMENT, made this the 30th day of December, 1997, by and between Thomas M. Connell and wife, Janet C. Connell, of Polk County, North Carolina (hereinafter referred to as the "Grantors"), and **THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC.**, a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in Raleigh, North Carolina (hereinafter referred to as the "Foundation");

WITNESSETH:

WHEREAS, the Grantors own certain real property (hereinafter referred to as the "Subject Property") a description of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the Subject Property currently has certain permanent improvements consisting of a circa 1924 Tudor Revival main residence and stone well house, a garage with second floor residence, a cottage (currently unfinished), a log cabin and a fish pond, hereinafter collectively referred to as **Friendly Hills**; and

WHEREAS, **Friendly Hills**, located on 140 Country Club Road, Tryon, Polk County, North Carolina, is a property of recognized historical and architectural significance; and

WHEREAS, the Foundation and Grantors both desire that **Friendly Hills** be adapted and altered, where necessary, to provide for contemporary uses, while at the same time retaining its historically and architecturally significant features; and

WHEREAS, The Foundation and Grantor both desire that the **Friendly Hills** property be preserved in an undeveloped state which will preserve its integrity; and

WHEREAS, the Foundation is a charitable organization which accepts preservation easements on buildings having historical or architectural importance, said easement subjecting such buildings to restrictions that will insure that they are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, conditions, or otherwise, appropriate to the preservation of a structure or site significant for its architecture, archaeology or historical associations.

NOW, THEREFORE, for and in consideration of the Grantors' interest in historic preservation and their support for the Foundation and its purposes, and for and in consideration of the sum of **ONE DOLLAR (\$1.00)**, the Grantors, for themselves, their successors and assigns, hereby covenant and agree to abide by the following restrictions (hereinafter referred to as "covenants"), said covenants to be restrictions of record to attach to the land described in Exhibit A:

1. These covenants shall be administered solely by the Historic Preservation Foundation of North Carolina, Inc., its successors in interest or assigns; and in all subsequent conveyances of Subject Property, the Foundation, its successors in interest or assigns shall be the sole party entitled to administer these covenants. In the event that the Foundation, or its successors in interest by corporate merger cease to exist, then in such event the Foundation shall assign all of its rights and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby to a non-profit corporation of responsibility which exists for substantially the same reasons as the Foundation itself (as described hereinabove); if no such corporation be available for such assignment, then under such circumstances such assignment shall be made to the State of North Carolina which shall be the sole party entitled to administer these covenants.

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2. The Grantors covenant and agree to continuously maintain, repair, and administer the subject property herein described in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (in effect as of 1992) so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the subject property. Maintenance shall be continuously provided using the same materials and workmanship. Said standards are attached as Exhibit B hereto and incorporated in these covenants by reference.

3. No physical or structural change and no changes in the color, material or surfacing shall be made to the exterior of **Friendly Hills** without the prior written approval of the President or Executive Director of the Foundation.

4. No addition to an existing building nor any additional structure shall be built upon the subject property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the President or Executive Director of the Foundation. The Foundation in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: Exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship or any additions to the main structure; general form and proportion of structure; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on landscape and archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, color, material and character of the property and its environment.

5. Neither **Friendly Hills** nor any part thereof may be removed or demolished without the prior written approval of the President or Executive Director of the Foundation.

6. The Grantors and the Foundation hereby agree that the interior architectural features listed below are elements which contribute to the architectural significance of **Friendly Hills**

a) Within the 1924 Tudor Revival primary residence:

- Stairwell and two wooden radiator enclosures in entrance vestibule.
- Stone fireplace and carved wood mantel in Dining Room.
- Stone fireplace and carved wood mantel, oak beam and recessed panel ceiling and wall paneling in Living Room.
- Any and all door surrounds
- Any and all window surrounds
- All wooden floors
- French doors in Living Room leading to Summer Room

b) Within the log cabin:

- Exposed logs and chinking in the front room
- Wooden floor in the front room

No removal or alteration of the abovementioned architectural features shall be made without the prior written approval of the President or Executive Director of the Foundation.

7. No portion of the acreage under covenant with the subject property may be subdivided.

8. The Grantors shall abide by all federal, state and local laws and ordinances regulating the rehabilitation, maintenance and use of the subject property.

9. The removal, destruction, or cutting of mature woodlands (defined as groupings of trees greater than 12 inches in diameter at a point 4 feet above the ground in an area of more than one acre) except as required by good forestry practices is prohibited unless immediate removal is necessary for the protection of any persons coming onto the Subject Property or the General Public; for the prevention or treatment of disease; or for the protection and safety of the 1924 Tudor Revival primary residence or any other permanent improvements on the Subject Property.

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10. In case of any contemplated sale of the subject property or any portion thereof by the Grantors or any successor in title thereto, first refusal as to any bona fide offer of purchase must be given to the Foundation, its successors or assigns. If the Foundation so decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of the Foundation to notify the then owner of its intention to exercise this right of first refusal within such thirty (30) day period shall free the owner to sell pursuant to the bona fide offer. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

11. In the event of a violation of covenants contained in Paragraphs 2, 3, 4, 5, and 6 hereof, the Foundation shall have an option to purchase the subject property, provided that it shall give the Grantors written notice of the nature of the violation and the Grantors shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the subject property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the subject property, subject to restrictive covenants, as determined by agreement of the Grantors and the Foundation, or in the absence of such agreement, by a committee of three appraisers, one to be selected by the Foundation, one to be selected by the Grantors, and the other to be designated by the two appraisers selected by the Foundation and the Grantors respectively. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

12. Representatives of the Foundation shall have the right to enter the subject property at reasonable times, after giving reasonable notice, for the purpose of inspecting the building and grounds to determine if there is compliance by the Grantors with the terms of these covenants.

13. Researchers, scholars and groups especially interested in historic preservation shall have access to view the interior of the property by special appointment at various times and intervals during each year. The general public shall have access to the Subject Property to view the exterior and interior features herein protected at the Grantors' discretion at various times and intervals during each year at times both desirable to the public and convenient with the Grantors.

14. Grantors shall insure the subject property against damage by fire or other catastrophe. If the original structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the subject property in accordance with the standards in Exhibit B. The Grantors shall keep the subject property insured under a comprehensive general liability policy that names the Foundation as an additional insured and that protects the Grantors and the Foundation against claims for personal injury, death and property damage.

15. All mortgages and rights in the property of all mortgagees are subject and subordinate at all times to the rights of the Foundation to enforce the purposes of this Historic Preservation Agreement. Grantors will provide a copy of this Agreement to all mortgagees of the subject property and have caused all mortgagees as of the date of this Agreement to subordinate the priority of their liens to this Agreement. The subordination provisions as described above relates only to the purposes of the Agreement, namely the preservation of the historic architecture and landscape of the Subject Property.

16. The Grantors and the Foundation recognize that an unexpected change in the conditions surrounding the Subject Property may make impossible or impractical the continued use of the Subject Property for conservation purposes and necessitate the extinguishment of this Historic Preservation Agreement. Such an extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding.

(b) The Foundation shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U.S. Department of the Treasury.

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(c) The Foundation agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other property or buildings having historical or architectural significance to the people of the State of North Carolina.

(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantors of any portion of the Subject Property after the extinguishment.

17. The Grantors do hereby covenant to carry out the duties specified herein, and these restrictions shall be covenants and restrictions run in perpetuity

18. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Foundation. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in event of a subsequent breach or default.

19. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity and shall terminate and be of no further force or effect only in the event that Friendly Hills is damaged beyond restoration as a result of fire or other catastrophe. Damage beyond restoration is defined as damage to an extent exceeding fifty percent (50%) of the insurable value of the building.

IN WITNESS WHEREOF, the Historic Preservation Foundation of North Carolina, Inc., has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by the authority of its Board of Directors, and the Grantors have hereunto set their hands and seals, the day and year first above written.

**THE HISTORIC PRESERVATION FOUNDATION
OF NORTH CAROLINA, INC.**

BY E. Newsom Williams
E. Newsom Williams, President

ATTEST:
BY Myrick Howard
Myrick Howard, Assistant Secretary

Thomas M. Connell (Seal)

BY Janet C. Connell (Seal)

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NORTH CAROLINA
WAKE COUNTY

I, Barbara V. Wishy, a Notary Public of the County and State aforesaid, certify that J. Myrick Howard personally came before me this day and acknowledged that he is Assistant Secretary of THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Assistant Secretary.

Witness my hand and official stamp or seal, this 13th day of February, 1998.

My Commission Expires: 9-6-98 Barbara V. Wishy
Notary Public

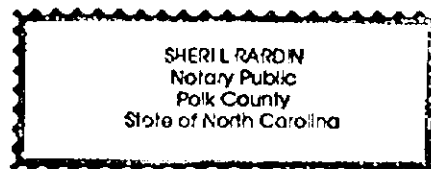
NORTH CAROLINA
POLK COUNTY

I, Sheri L. Rardin, a Notary Public of the County and State aforesaid, certify that Thomas M. Connell personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 30th day of December, 1997.

My Commission Expires: 4/9/2000

Sheri L. Rardin
Notary Public

NORTH CAROLINA
POLK COUNTY

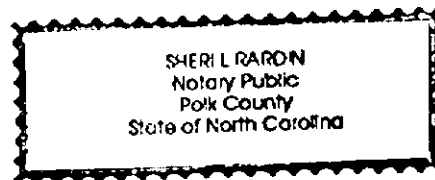
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I, Sheri L. Rardin, a Notary Public of the County and State aforesaid, certify that Janet C. Connell personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 30th day of December, 1997.

My Commission Expires: 4/9/2000

Sheri L. Rardin
Notary Public



NORTH CAROLINA, POLK COUNTY

The foregoing certificate of Balona V. Wishy & Sheri L. Rardin
Notary Public/Notaries Public is/are certified to be correct.
This instrument was filed for registration on the 23rd day
of February, 1998, at 11:55 o'clock
A. M., and recorded in this office in Book 245,
Page 1907. Amela D. Miller
Register of Deeds

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EXHIBIT A

Legal Property Description

Beginning at an iron pin in the northern margin of the road leading from the Town of Tryon to the Tryon Country Club, at the corner of a certain property acquired by Nelson Jackson from Scruggs, and runs thence with Nelson Jackson's line North 15 degrees 15 minutes East 70.1 feet to a stake in the margin of said highway, five (5) calls as follows: North 32 degrees West 132 feet, North 37 degrees 22 minutes West 570 feet, North 56 degrees 47 minutes West 218.5 feet, North 76 degrees 47 minutes West 470 feet, North 59 degrees 47 minutes West 143.5 feet to a stake on point at the northeastern corner of property formerly owned by the Rev. A.S. Caldwell Estate; thence with the Caldwell or Taylor line six (6) calls as follows: South 31 degrees 13 minutes West 220 feet, South 7 degrees 16 minutes West 153 feet, South 2 degrees 47 minutes East 157 feet, South 17 degrees 12 minutes East 117 feet, South 6 degrees 23 minutes West 166 feet, South 63 degrees 37 minutes East 147 feet to an iron pin in the northern margin of the Country Club Road; thence with the said northern margin of the Country Club Road, five (5) calls as follows: South 84 degrees 12 minutes East 292 feet, South 69 degrees 47 minutes East 123 feet, North 86 degrees 3 minutes East 250 feet, South 88 degrees 47 minutes East 293 feet, South 78 degrees 35 minutes East 182.4 feet to the BEGINNING, Containing 17.54 acres, more or less,

The above described property is a portion of the property described in that certain deed from Josephine Underwood Bowes and Frederick P. Bowes, her husband, to Margaret Culkin Banning, dated July 10, 1936, recorded in Book 68 at Page 225, Polk County Registry.

The said Margaret Culkin Banning being the same person as Margaret Culkin Banning Selsich, who died a resident of Polk County, North Carolina, on January 4, 1982, and under whose will recorded in File 82E-1 in the Office of the Clerk of Superior Court for Polk County, North Carolina, the above described property was devised to Archibald Tanner Banning, III and Mary Banning Friedlander.

The above described property is conveyed nevertheless, subject to those certain rights of way granted to Ruth K. Wick by instruments recorded in Book 89 at Page 16 and Book 90 at Page 305, Polk County Registry.

The above described property is the identical property conveyed to Margaret Culkin Banning by deed from Lewis L. McArthur, Jr., unmarried, dated July 13, 1936, recorded in Book 68, Page 229, Polk County Registry.

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EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES (1992)

TREATMENTS

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties -- Preservation, Rehabilitation, Restoration, and Reconstruction. **Preservation** focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.) **Rehabilitation** acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character. **Restoration** is undertaken to depict a property at a particular period of time in its history, while removing evidence of other periods. **Reconstruction** re-creates vanished or non-surviving portions of a property for interpretive purposes.

In summary, the simplification and sharpened focus of these revised sets of treatment standards is intended to assist users in making sound historic preservation decisions. Choosing appropriate treatment for a historic property, whether preservation, rehabilitation, restoration, or reconstruction, is critical. This choice always depends on a variety of factors, including the property's historical significance, physical condition, proposed use, and intended interpretation.

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

STANDARDS FOR PRESERVATION

1. A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of the property shall be retained and preserved. The replacement of intact or repairable historical materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

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PRESERVATION AS A TREATMENT

When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment. Prior to undertaking work, a documentation plan should be developed.

REHABILITATION is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

STANDARDS FOR REHABILITATION

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historical materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

REHABILITATION AS A TREATMENT

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment. Prior to undertaking work, a documentation plan for Rehabilitation should be developed.

RESTORATION is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical,

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electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

STANDARDS FOR RESTORATION

1. A property shall be used as it was historically or be given a new use which reflects the property's restoration period.
2. Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.
3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve materials and features from the restoration period shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.
6. Deteriorated features from the restoration period shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials.
7. Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
9. Archeological resources affected by a project shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
10. Designs that were never executed historically shall not be constructed.

RESTORATION AS A TREATMENT

When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

RECONSTRUCTION is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

STANDARDS FOR RECONSTRUCTION

1. Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

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2. Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.
3. Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of a non-surviving historic property in materials, design, color, and texture.
5. A reconstruction shall be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically shall not be constructed.

RECONSTRUCTION AS A TREATMENT

When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, Reconstruction may be considered as a treatment. Prior to undertaking work, a documentation plan for Reconstruction should be developed.