Appendix A:

Memorandum of Agreement

MEMORANDUM OF AGREEMENT

AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE DELAWARE STATE HISTORIC PRESERVATION OFFICER, THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL AND THE DELAWARE DEPARTMENT OF TRANSPORTATION

REGARDING THE BLUE BALL PROPERTIES AREA TRANSPORTATION IMPROVEMENT PROJECT

BRANDYWINE HUNDRED, NEW CASTLE COUNTY, DELAWARE

WHEREAS, the Federal Highway Administration (FHWA) proposes to construct the Blue Ball Properties Area Transportation Improvement Project (Project), in Brandywine Hundred, New Castle County, Delaware, and has selected the Modified Master Plan Alternative as the preferred alternative; and

WHEREAS, in consultation with the Delaware State Historic Preservation Office (DE SHPO) and other consulting parties, the FHWA has determined the Project's Area of Potential Effects (APE), as defined in the Documentation of Adverse Effects for the Project, dated October 2001; and

WHEREAS, this Memorandum of Agreement (MOA) supercedes stipulations I(I) through I(K), I(L), I(N), I(P) and I(R) of the "Route 141 Project between Montchanin Road and Concord Pike, Wilmington, Delaware" MOA executed on July 23, 1992 among the FHWA, Advisory Council on Historic Preservation (Council), DE SHPO and the Delaware Department of Transportation (DelDOT); and

WHEREAS, the FHWA has determined that the Project will adversely affect the Concord Pike Milestone, 1 Rock Manor Avenue, Porter Reservoir, the Nemours Historic District (including the Blue Ball Barn Complex, Bird-Husbands House, and William Murphy House), the Ronald McDonald House Archaeological Site, and the J. R. Weldin Archaeological Site, which are properties listed in or eligible for listing in the National Register of Historic Places (National Register), and are located within the APE; and

WHEREAS, the FHWA has determined that the Project will not adversely affect the "Wartime" Deerhurst development and the Jewish Community Cemetery, properties which are eligible for listing in the National Register, and are located in the APE; and

WHEREAS, the FHWA has consulted with the National Park Service, the Council, and other

consulting parties to assess the effects of the Project on Lombardy Hall, a National Historic Landmark, and determined that the Project will not adversely effect this historic property; and

WHEREAS, the State of Delaware, through the Blue Ball Properties Project Interagency Memorandum of Agreement dated November 7, 2001 among the Delaware Department of Natural Resources and Environmental Control (DNREC), DelDOT, and the Delaware Economic Development Office, will take steps to ensure the stabilization, restoration, and adaptive reuse of the Blue Ball Barn Complex, the Birds-Husbands House, and the William Murphy House, properties also subject to this MOA; and

WHEREAS, DNREC will, either directly or through its designee, develop and implement a cultural resources management plan for the J.R. Weldin Archeological Site, a property which is also subject to this MOA; and

WHEREAS, the FHWA has consulted with the DE SHPO and the Council pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the DelDOT and DNREC have participated in the consultation and have been invited to be signatories to this MOA; and

WHEREAS, Preservation Delaware, Inc. (PDI) and New Castle County (the County) have participated in the consultation have been invited to concur in this MOA as consulting parties; and

WHEREAS, the FHWA has afforded the public an opportunity to comment on the effects of the Project on historic properties through DelDOT's Public Involvement Procedures.

NOW, THEREFORE, the FHWA, Council, DelDOT, DNREC and DE SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

STIPULATIONS

FHWA shall ensure that the following stipulations are implemented:

I. Nemours Historic District

A. Landscape Plan: DelDOT, DE SHPO and DNREC will develop and implement a landscape plan in order to mitigate for the visual effects of the project on the District, and specifically the Blue Ball Barn Complex, the Bird-Husbands House and the Murphy House. The landscape plan will take into account the effects of the temporary road and the subsequent

establishment of the West Park Drive, and provide for phased implementation of the landscape elements.

B. William Murphy House (House):

1. DelDOT, DE SHPO, and DNREC will develop a permanent preservation covenant for the House and property, and DelDOT will record the covenant within 30 days of the execution of this MOA. The covenant will require that any repairs, restoration, stabilization, rehabilitation or adaptive reuse of the property be in accordance with the recommended approaches in the *Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings* (1992) (the Standards).

2. Within 90 days after the preservation covenant for the House and property is recorded against the deed, DelDOT shall initiate proceedings to transfer ownership of the House and property to DNREC in accordance with state law, unless otherwise notified in writing by DNREC. If DNREC decides not to take the property within the 90-day period, DelDOT may transfer ownership of or sell the House and property to a third party.

3. If DelDOT decides to transfer ownership of or sell the House and property to a third party, DelDOT shall, in consultation with DE SHPO and DNREC, develop and implement a marketing plan, which shall include the following elements:
   a. An advertising plan, describing how and to whom the property will be marketed;
   b. A schedule for receiving and reviewing offers;
   c. An information package to provide all prospective recipients of the property, to include the following:
      (1) Exterior and interior photographs of the property
      (2) Tax parcel map
      (3) Information on the historic significance of the property and its National Register eligibility
      (4) Information on the tax benefits for rehabilitation of historic properties
      (5) Copies of any engineering or architectural studies of the property
      (6) History and description of any stabilization work conducted or authorized by DelDOT
      (7) Copy of the preservation covenant for the House and property

4. Within six months of the execution of this MOA, if the House is still in DelDOT ownership or control, DelDOT will consult with the DE SHPO and DNREC to assess the condition of the House, and determine if additional measures need to be undertaken to secure and stabilize the House. If so, DelDOT shall, in consultation with DE SHPO and DNREC, implement such measures, in accordance with the recommended approaches described in the National Park Service's *Mothballing Historic Properties* (Preservation Brief 31, 1993);

5. If DelDOT's efforts to market the property for transfer or sale are unsuccessful after a one-year marketing period, DelDOT shall transfer ownership of the House and property to DNREC.

6. DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

C. Blue Ball Barn Complex: DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

D. Bird-Husbands House: DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

II. Concord Pike Milestone (Milestone)

A. Prior to the commencement of construction in the vicinity of the Milestone, DelDOT will carefully remove the Milestone, and shall maintain the Milestone in a secured location;

B. After construction, DelDOT, in consultation with the DE SHPO, will install the Milestone in a location approximating its original location, if possible.

C. If such an installation is not in the best interests of the preservation or interpretation of the Milestone, DelDOT, in consultation with the DE SHPO, shall identify an appropriate alternate disposition.

III. One Rock Manor

A. DelDOT, in consultation with DE SHPO, shall document the landscape features in order to provide baseline information for the development of the landscape mitigation plan. The documentation shall, at a minimum, include the following:
   1. Black and white archival quality photographs.
   2. Plan, elevation and contour maps, to scale.
   3. Inventory of tree and shrub species and placement of that information on the plan view map.

B. DelDOT shall, in consultation with DE SHPO and the property owner, develop and implement a landscape treatment to mitigate for the visual effect and to minimize the encroachment of the project on the property. The plan may include, but is not necessarily limited to, the following:
   1. Fence

2. Stone wall/retaining wall
3. Evergreen and deciduous trees, shrubs, and/or ground cover vegetation.

C. DelDOT shall maintain all landscape features installed within its right of way at One Rock Manor. For a period of two years, DelDOT shall monitor the health of all installed plant material (both in DelDOT right of way and on the property of the owner), and replace in a timely manner any tree or shrub that may not survive the initial installation.

D. DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

IV. Porter Reservoir

A. DelDOT shall document the stone pillars flanking the northernmost entrance to Porter Reservoir. The documentation shall include the following:
1. Archival quality black & white photography
2. Color 35 MM slides
3. Measured drawings on all dimensions
4. Plan view to scale showing their location

B. DelDOT shall, in consultation with DE SHPO and the property owner, relocate or rebuild the pillars with existing stone material. The pillars will be placed on either side of the existing entrance road in the general vicinity of their current position.

C. DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

V. Ronald McDonald House Archaeological Site

A. DelDOT shall, in consultation with DE SHPO, develop and implement a data recovery plan for the site.

B. DelDOT shall insure that the data recovery plan includes a public outreach component and is carried out in accordance with Stipulation IX.

VI. J. R. Weldin Archaeological Site

DelDOT, in consultation with DE SHPO and DNREC, shall develop and implement a treatment plan for the site, that will include, but is not necessarily limited to:

A. Data recovery excavations of that portion(s) of the site that may be physically affected by the

construction;

B. A public outreach effort that is carried out in accordance with the Stipulation IX, and takes into account the cultural resource management plan to be developed by DNREC or its designee;

C. Monitoring, conducted by a qualified archaeologist, of the removal of Weldin Road within the site and determine appropriate treatment of any features identified.

D. A structural analysis, conducted by a professional engineer that is knowledgeable of historic masonry construction, of the stone ruins, and based on this information, develop and implement a stabilization plan.

E. DelDOT shall consider this property in the development of the vibration monitoring plan referenced in Stipulation VIII.

VII. General Requirements for Archaeology

A. DelDOT shall ensure that all data recovery plans meet the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and the DE SHPO's Guidelines for Architectural and Archaeological Surveys in Delaware, and will take into account the Council's guidance *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites, May 18, 1999.* The DE SHPO will have 30 days to review proposed data recovery plans. DelDOT will complete all necessary data recovery work prior to commencing construction in the site areas.

B. DelDOT shall notify the SHPO and the Council within 24 hours of the discovery of any human remains encountered during the archaeological investigations or the project construction. DelDOT shall cease all activities which may disturb or damage the remains, and comply with the Delaware Unmarked Human Remains Act (7 DE Code Chapter 54; subchapter II). If the human remains are of Native American affiliation, then FHWA will consult with the appropriate affiliated Indian tribes, if any, in accordance with 36 CFR Part 800, and the DE SHPO will comply with the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601) with regard to disposition of the remains and/or associated funerary objects.

C. DelDOT shall provide all draft and final archaeological reports and public information materials to the DE SHPO for review and comment. All final reports shall meet the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37), and the DE SHPO's Guidelines for Architectural and Archaeological Surveys in Delaware.

D. DelDOT shall ensure that all records and materials resulting from the archaeological investigations will be curated in accordance with 36 CFR Part 79 and the curation guidelines developed by the Delaware State Museum. These records and materials shall be curated at the Delaware State Museum, or their designee, following the policies of the institution.

E. In the event that previously unidentified archaeological resources are discovered during construction, DelDOT shall instruct the contractor to cease construction in the immediate area, and shall proceed with consultation under 36 CFR § 800.13 (b)(3).

F. DelDOT shall ensure that all archaeological work carried out pursuant to this MOA is carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-9).

VIII. Vibration Monitoring, Stabilization & Repair

A. DelDOT, in consultation with the DE SHPO and DNREC, shall develop and implement a vibration-monitoring plan to monitor the effects of project construction on historic properties. DelDOT shall acquire the services of a professional engineer or other qualified expert, as appropriate, that is knowledgeable about the effects of construction vibration on historic buildings, to develop this plan. The plan will include a schedule for documenting the baseline conditions of the historic properties that will be monitored.

B. During construction, if the monitoring indicates that damage is occurring to historic properties subject to the monitoring plan, DelDOT shall instruct its contractor to cease construction in the immediate area. DelDOT shall then, in consultation with the DE SHPO, and DNREC or property owners where applicable, acquire the services of a professional engineer and/or architect that is knowledgeable about the effects of construction vibration on historic buildings, to:

1. determine the nature and extent of the damage; and
2. alter any construction methods that may have caused the damage; and
3. develop and implement methods to stabilize and/or repair the damage, in accordance with the recommended approaches in the Standards.

IX. Public Involvement Program

Within one year of the execution of this MOA, DelDOT, in consultation with the DE SHPO and DNREC, will develop a plan for informing the public of the history of the Project area, using

information derived from studies conducted for the Project.

A. Topics covered by the plan should include, but are not necessarily limited to:
   1. history of the Nemours Historic District and its contributing elements;
   2. history of the J.R. Weldin Plantation, and information gained through archaeological investigations at its site;
   3. information on the Concord Pike Milestone; and,
   4. general history of Native Americans in the area during the Woodland I period, and information gained through the archaeological investigations of the Ronald McDonald House Site.

B. Materials and methods used to distribute this information may include, but are not necessarily limited to: public "open house" during archaeological field investigations; booklets; pamphlets; videos; school curricula; historical markers; and displays for libraries and/or professional conferences.

C. DelDOT shall distribute the materials developed to implement this plan to consulting parties, and to local schools, historical societies, libraries, and/or museums.

X. Disposal of Project Related Materials

DelDOT shall consult with the DE SHPO concerning the location for disposal of materials produced by demolition, construction, excavation, and/or dredging. The DE SHPO will review all such locations to ensure the disposal will not adversely effect historic properties. DelDOT shall not use any such location if the DE SHPO objects.

XI. Review of Project Plans

DelDOT shall provide copies of preliminary, semi-final, and final project plans to consulting parties for review and comment. Consulting parties will have 30 days from the receipt of all materials to provide comments on the plans.

XII. Subsequent Changes to the Project

If, subsequent to the implementation of Stipulation XI, DelDOT proposes any changes to the Project affecting location, design, methods of construction, materials, or footprint of the Project, DelDOT shall provide the consulting parties with information concerning the proposed changes. The consulting parties will have 30 days from the receipt of this information to comment on the proposed changes. DelDOT shall take into account any consulting party comments, prior to implementing such changes.

XIII. Weldin-Husbands House

If DelDOT decides to relocate the Weldin-Husbands House, a property determined not to be eligible for listing in the National Register, DelDOT shall consult with the DE SHPO, DNREC and the Council, in accordance with 36 CFR Part 800.4 through 800.6.

XIV. Administrative Conditions

A. Any party to this MOA may propose to FHWA that the MOA be amended, whereupon FHWA shall consult with the other parties to this MOA to consider such an amendment in accordance with 36 CFR § 800.6(c)(7).

B. Should any party to this MOA object in writing to FHWA regarding any action carried out or proposed with respect to the Project or implementation of this MOA, FHWA shall consult with the objecting party to resolve the objection. If FHWA determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to the Council including FHWA's proposed response to the objection. The Council will respond within 30 days of receipt of all relevant material. Any Council comment provided in response to such a request will be taken into account by FHWA in accordance with 36 CFR § 800.6(c)(2) with reference only to the subject of the dispute; FWHA's responsibility to carry out all actions under the MOA that are not the subjects of the dispute will remain unchanged.

D. At any time during implementation of the measures stipulated in this MOA, should an objection to any such measure or its manner of implementation be raised by a member of the public, FHWA shall take the objection into account and consult as needed with the objecting party, the DE SHPO, and/or the Council to resolve the objection.

E. This MOA shall remain in effect for a period of six (6) years from the date of its execution. Within six months of the end of this period, the FHWA may request in writing that the signatories review this MOA and consider an extension or modification of this MOA. No extension or modification will be effective unless all signatories to the MOA have agreed to it in writing.

F. Any signatory to this MOA may terminate the MOA by providing 30 days written notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. If the signatories cannot reach agreement on the amendment, the FHWA will either consult with the signatories to execute a new MOA under 36 CFR 800.6(c)(1) or request the comments of the Council under 36 CFR 800.7(a).

Execution of this MOA by DelDOT, DNREC, DE SHPO, FHWA, and the Council, and implementation of its terms, is evidence that the FHWA has afforded the Council an opportunity to comment on this Project and that the FHWA has taken into account the effects of the Project on historic properties.

DELAWARE DEPARTMENT OF TRANSPORTATION

By: Carolann Wicks Date: 11/15/01

Carolann Wicks, Assistant Chief Engineer

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

By: Charles A. Salkin Date: 11/20/01

Charles Salkin, State Parks and Recreation

DELAWARE STATE HISTORIC PRESERVATION OFFICER

By: Daniel R. Griffith Date: 1/9/02

Daniel R. Griffith, State Historic Preservation Officer

FEDERAL HIGHWAY ADMINISTRATION

By: Robert Clemmensen Date: 1/18/02

for Tom Myers, Division Director

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 1/30/02

John M. Fowler, Executive Director

CONCUR:

NEW CASTLE COUNTY

By: _____ Date: _____

Name and Title

PRESERVATION DELAWARE, INC.

By: _____ Date: _____

Name and Title