IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, ex rel. CYNTHIA SANTORE SMITH,	:	
Plaintiffs	:	
V.	:	CIVIL ACTION NO 99 CV 6605 **(FILED UNDER SEAL)**
MARKET STREET MORTGAGE, et al.,	:	
Defendants	:	

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SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 30th day of June, 2004, between Plaintiff, the UNITED STATES OF AMERICA (hereafter referred to as the "United States"), Plaintiff/Relator, CYNTHIA SANTORE-SMITH (hereafter referred to as "Smith"), and defendant MARKET STREET MORTGAGE CORPORATION (hereafter referred to as the "Defendant"), to resolve certain civil claims of the United States against the Defendant arising from the conduct described below. The parties hereby agree as follows:

1. The United States includes the Department of Justice, the Department of Housing and Urban Development (hereafter referred to as "HUD") and the Department of Veterans Affairs (hereafter referred to as the "VA"), and their respective affiliates.

2. Defendant MARKET STREET MORTGAGE CORPORATION is a Michigan corporation registered to do business in the Eastern District of Pennsylvania, and operated an office at 3220 Tillman Drive, Suite 402, Bensalem,

Pennsylvania (hereafter referred to as the "Bensalem Office"). At all relevant times, MARKET STREET MORTGAGE CORPORATION was engaged in the business of providing a range of mortgage loan products, including conventional, construction, FHA/VA government insured or guaranteed, jumbo, and sub prime, as well as home equity products.

3. The United States, through HUD, offered mortgage insurance for certain qualifying residential loans originated by private lenders through the Federal Housing Administration (hereafter referred to as "FHA").

4. The United States, through the VA, offered guaranty services for certain qualifying residential loans to qualified Veterans or members of the Selected Reserves or National Guard, by private lenders through the VA.

5. The United States alleges that defendant MARKET STREET MORTGAGE CORPORATION, through certain of its now former employees, created and submitted false and fraudulent documents in connection with a significant percentage of its mortgage loans originating from the Bensalem Office, in order to obtain HUD, FHA and/or VA government insured or guaranteed loan approvals and mortgage insurance and/or guarantees, including but not limited to, the false and fraudulent creation and submission of verification of employment forms, "gift" letters, credit references, and Social Security income documents.

6. The United States alleges that the Bensalem Office knowingly submitted, or caused to be submitted, claims to HUD, FHA and VA which were false

and fraudulent, in that the claims contained false and fraudulent documents which were relied upon in issuing loan approvals and government backed mortgage insurance or guarantee by HUD, FHA and VA. As a result, the United States alleges that the Defendant is liable under the False Claims Act, 31 U.S.C. §§ 3729, et seq. and at common law under willful misrepresentation, unjust enrichment, breach of contract and fraud.

7. The United States and Smith claim that in the course of obtaining loan approvals and government backed mortgage insurance or guarantees for low income residential real estate settlements in the Eastern District of Pennsylvania, the Bensalem Office, through its then agents and employees, knowingly prepared and submitted, or knowingly caused the preparation and submission of, false documents in connection with obtaining loan approvals and government backed mortgage insurance or guarantees through HUD, FHA and VA loans. The loans in question were originated and approved during the period March 1, 1999 through September 29, 2000. This Settlement Agreement shall cover all of the approximately 1,382 HUD, FHA and VA loans originated in the Bensalem Office, and only these loans (hereafter referred to as "covered conduct").

8. By letter dated June 13, 2002, the United States, through HUD's Mortgagee Review Board, initiated an administrative action against MARKET STREET MORTGAGE CORPORATION concerning certain of the covered conduct, pursuant to 24 CFR § 25.1, et seq., and for civil money penalties pursuant to 24 CFR § 30.1, et seq. (hereafter referred to as the "Mortgagee Review Board Action").

9. Defendant denies any wrongdoing, liability or legal fault in connection with the claims and allegations asserted against them in the United States's and Relator's amended complaint No. 99 CV 6605 and in the Mortgagee Review Board Action.

10. The United States and Smith and Defendant desire to resolve any and all disputes, claims and demands the United States may have against the Defendant arising from the "covered conduct."

NOW, THEREFORE, in consideration of the foregoing, and the further mutual promises, covenants and obligations set forth in this Settlement Agreement, the Parties agree to the following terms and conditions:

TERMS AND CONDITIONS

1. Payment to the United States; Indemnification Provisions

1.1 Upon execution of this settlement agreement ("Agreement"), MARKET STREET MORTGAGE CORPORATION shall pay the United States the sum of SEVEN HUNDRED THOUSAND ($700,000.00) DOLLARS (the "Payment"). Full payment shall be made within thirty (30) days of the date of this agreement, and shall be made by FedWire Electronic Funds Transfer pursuant to instructions from the United States Attorney's Office for the Eastern District of Pennsylvania.

1.2 The Defendant hereby waives all insurance benefits which have, are, or may be claimed on all eight-three (83) mortgages listed on Attachment A (which attachment is incorporated herein), which are in default, or go into default,

from the mortgages' endorsement date, through and up to five years from the date HUD executes this Agreement. If HUD has paid, or does pay, a claim for the mortgages in Attachment A, the Defendant shall indemnify HUD pursuant to paragraph 1.3.

1.3 The Defendant shall indemnify HUD for the eighty-three (83) mortgages listed in Attachment A, which are in default, or go into default, from the mortgages' endorsement date, through and up to five years from the date HUD executes this Agreement. For purposes of this Agreement, a mortgage loan is in "default" if it is sixty (60) days or more delinquent at the expiration of the five-year period. The Defendant is not obligated to indemnify HUD for any of the eighty-three (83) loans which are not in default at the expiration of the five-year period. Any and all sums the Defendant is obligated to pay pursuant to this indemnification obligation, shall be payable in accordance with the instructions accompanying the invoice notifying the Defendant of an indemnification obligation. HUD will send the Defendant invoices at the Defendant's address of record as maintained with HUD pursuant to HUD Handbook 4060.1. The terms of the indemnification obligation are as follows:

a. **Defendant's indemnification obligations**

In the event of any claim for insurance of any mortgages referenced in this Agreement, and/or where HUD incurs any expenses or losses honoring its FHA insurance obligations on those mortgages, the amount of indemnification is HUD's Investment as defined below.

b. General Terms

1. HUD's Investment, for the purpose of indemnification, covers any loss or expense, as applicable, incurred in connection with an FHA insured mortgage, including, but not limited to: the full amount of the insurance claim actually paid, all taxes and assessments paid or payable by HUD, all maintenance and operating expenses paid or payable by HUD (including costs of rehabilitation and preservation), loss mitigation, prorated losses from and expenses associated with the sale of a note, a one time administrative fee of $75 per mortgage, reasonable penalties for failure to pay amounts owed within the timeframe established on HUD invoices, interest in the amount owed at 5% per annum calculated from the date of the first bill, all sales expenses and any other expenses HUD may incur in connection with its claim disposition programs regarding FHA insured mortgages. To the extent HUD recoups any losses (e.g., receipts for the sale of the property) or there is any discount on the property (e.g., an Officer Next Door discount), HUD will deduct the amount of the recoupment or discount from HUD's Investment.
2. Where the mortgage(s) is streamline refinanced, the Defendant's indemnification obligation will not be eliminated, but will extend to the new mortgage. The indemnification obligation will be HUD's Investment, as defined above.
3. If the sales price of the property securing a mortgage for which indemnification obligation exists exceeds the sum of HUD's Investment, as defined above, HUD will retain the excess.
4. HUD may, at its option, reconvey the property to the Defendant. In the event of a reconveyance, the Defendant will remain liable for HUD's Investment.

2. <u>Dismissal by the United States</u>

2.1 Upon timely receipt of the Payment described in paragraph 1.1 above, the United States and the Relator shall move to dismiss with prejudice the Relator's Complaint as against MARKET STREET MORTGAGE CORPORATION and REPUBLIC BANCORP, INC. at Civil Action No. 99 CV 6605 pending in the United States District Court for the Eastern District of Pennsylvania. This aggregate sum (along with the indemnification provisions) shall constitute

settlement for all damages and civil penalties under the False Claims Act based upon the "covered conduct."

2.2 Specifically excluded and reserved from those claims and causes of action released under Paragraph 2.1 above is any dispute, claim, or defense which may arise between the Relator and Market Street Mortgage Corporation regarding attorneys fees or claims of the Relator under 31 U.S.C. § 3730(d)(1), or any dispute, claim, or defense which may arise between the Relator and Market Street Mortgage Corporation regarding allegations of discrimination against the Relator under 31 U.S.C. § 3730(h) (said allegations contained in Count IV of the Complaint).

2.3 Upon timely receipt of the Payment described in paragraph 1.1 above, the United States shall also dismiss with prejudice the Mortgagee Review Board Action. This aggregate sum (along with the indemnification provisions) shall constitute settlement for all damages and civil penalties under 24 CFR § 30.1, et seq., based upon the "covered conduct."

2.4 The United States further agrees to release the Defendant from all civil monetary liability to the United States for all civil claims under the False Claims Act, 31 U.S.C. §§ 3729 - 3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 - 3812; the Federal Debt Collection Procedures Act, 28 U.S.C. § 3301 et seq., or the common law theories of payment by mistake, unjust

enrichment, willful misrepresentation, breach of contract and fraud or any other cause of action arising from the "covered conduct."

2.5 The United States further agrees to release the Defendant from all monetary liability to the United States for all claims under 24 CFR § 30.1, et seq. arising from the "covered conduct."

2.6 The Department of Housing and Urban Development further agrees to refrain from issuing, through the Mortgagee Review Board of HUD, or other office, branch or part of HUD, a reprimand, probation, suspension, withdrawal, debarment or any other administrative action against Defendant, including administrative actions pursuant to 12 U.S.C. § 1708 and/or 24 CFR § 25.1, et seq., arising from the "covered conduct."

2.7 The United States does not release the Defendant from: (a) any claims or defenses arising under Title 26, United States Code (Internal Revenue Code); (b) any claims arising from a breach of this Settlement Agreement; (c) any claims not specifically released in this Settlement Agreement.

3. Release by Defendant

3.1 Defendant fully and finally releases the United States, including its agencies, employees and agents from any claims (including claims for attorney's fees, costs, and expenses) that the Defendant could assert arising from the investigation under the False Claims Act or the Mortgagee Review Board Action of the "covered conduct."

3.2 MARKET STREET MORTGAGE CORPORATION agrees that the amounts paid under this Settlement Agreement are not punitive in nature or effect for purposes of a criminal or administrative action, and it hereby waives any defenses it may have to any criminal or administrative action, based in whole, or in part, upon the Double Jeopardy Clause of the United States Constitution, or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989) or any other subsequent statute or case. Nothing in this paragraph or any other provision of this Settlement Agreement is intended to affect any claims or defenses arising under the Internal Revenue Code, Title 26 of the United States Code.

3.3 It is agreed that all costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205 47) incurred by or on behalf of the Defendant in connection with (1) the matters covered by this Settlement Agreement, (2) the government's investigation of the matters covered by this Settlement Agreement, (3) the Defendant's investigation and defense of the matters covered by this Settlement Agreement, including corrective actions related thereto, (4) the negotiation of this Settlement Agreement, and (5) the Payment made to the United States pursuant to this Settlement Agreement shall be unallowable costs for government contract accounting purposes. These amounts shall be separately accounted for by the Defendant.

4. Insurance Claims Permitted

4.1 Except as otherwise provided in paragraphs 1.2 through 1.3, the United States further agrees that insurance claims may be submitted to HUD, FHA

and/or VA for all loans that are included in the "covered conduct," without regard to whether such loans were allegedly fraudulent, and without regard to whether there was a violation of any HUD, FHA and/or VA requirements such as are set forth in the Mortgagee Review Board Action. The United States agrees that submission of these claims will not cause Defendant to incur any liability under the False Claims Act, the United States Code of Federal Regulations, common law, and/or any other applicable statute, regulation or contract clause.

4.2 Except as otherwise provided in paragraphs 1.2 through 1.3, the United States further agrees that it will process and pay such claims for insurance reimbursement for loans arising out of the covered conduct without regard to whether such loans were allegedly fraudulent, and without regard to whether there was a violation of any HUD, FHA and/or VA requirements such as are set forth in the Mortgagee Review Board Action. The United States agrees that processing and payment of these claims by the United States will not cause Defendant to incur any liability under the False Claims Act, the United States Code of Federal Regulations, common law, and/or any other applicable statute, regulation or contract clause.

5. <u>Contingencies</u>

This Settlement Agreement as to MARKET STREET MORTGAGE CORPORATION is contingent upon MARKET STREET MORTGAGE CORPORATION's full and timely compliance with paragraphs 1.1 through 1.3 above. In addition, MARKET STREET MORTGAGE CORPORATION shall fully cooperate with the United States Attorney's Office, Eastern District of

Pennsylvania, in connection with any criminal or civil investigation and/or prosecution that may arise as to any former employee of MARKET STREET MORTGAGE CORPORATION who were responsible for or particpated in the fraudulent scheme relating to the submission of false documents and statements to obtain residential mortgage financing and loans.

6. Admissions

The Defendant denies any wrongdoing and any liability under the False Claims Act, the United States Code of Federal Regulations, common law, and any other applicable statute, regulation or contract clause. This Settlement Agreement is entered into for purposes of compromise, and neither the fact of this Settlement Agreement nor any of its provisions shall constitute an admission or be utilized as such by any party, except to prove and enforce the terms of this Settlement Agreement.

7. Requisite Authorities

The signatories to this Settlement Agreement warrant that they have authority to bind the parties they represent.

8. Release of Others

The terms of this Settlement Agreement are not intended to release or inure to the benefit, or in any way, to create a benefit in favor of any individual, corporation or business entity not a party to this Settlement Agreement, except as set forth in paragraphs 1.1 through 1.3, and 2.1 through 2.6 above.

9. **Modification**

The Parties also agree that this Settlement Agreement may not be altered, amended modified or otherwise changed except by a writing duly executed by the United States and the Defendant.

10. **Entire Agreement**

This Settlement Agreement represents and expresses the entire agreement between the Parties with respect to the subject matter of this Settlement Agreement, and there are no other agreements, understandings, representations, warranties, inducements, or consideration, except as expressly stated in this Settlement Agreement.

11. **Counterparts**

This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which together shall constitute one and the same instrument.

12. **Notices**

13.1 All notices, requests, demands, and any other communications to the United States arising under this Settlement Agreement shall be in writing and sent by first class United States mail, addressed as follows unless otherwise indicated by this Settlement Agreement:

Assistant United States Attorney Michael S. Blume
Assistant United States Attorney Seth Weber
United States Attorney's Office
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

Dane Narode, Esq.
U.S. Department of Housing and Urban Development
Portals Building, Suite 200
1250 Maryland Avenue, NW
Washington, DC 20024

13.2 All notices, requests, demands, and any other communications to the Defendant arising under this settlement agreement shall be in writing and sent by first class United States mail, addressed as follows unless otherwise indicated by this Settlement Agreement:

For Defendant Market Street Mortgage Corporation:

Jerry D. Bernstein, Esq.
Blank Rome LLP
The Chrylser Building
405 Lexington Avenue
New York, New York 10174

cc: Randall C. Johnson, CEO
Market Street Mortgage Corp.
2650 McCormick Drive, Suite 200
Clearwater, FL 33759

13. <u>Agreement Binding on Heirs, Successors and Assigns</u>

This Settlement Agreement shall be binding on all heirs, successors, transferees and assigns of all parties.

14. <u>Effective Date of Agreement</u>

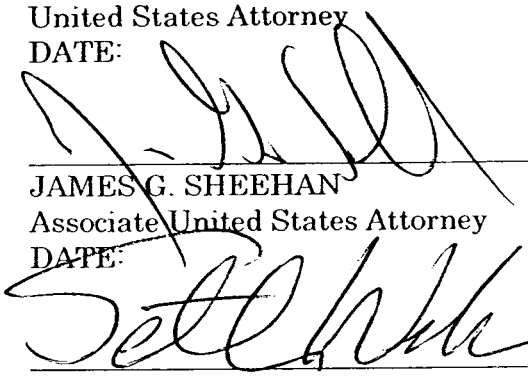
This Settlement Agreement shall become effective upon the later date of its execution by the Parties listed below.

IN WITNESS WHEREOF, the Parties affix their signatures.

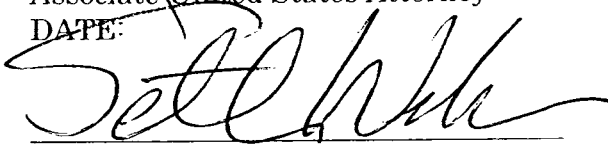
[SIGNATURES APPEAR ON FOLLOWING PAGE]

FOR PLAINTIFF UNITED STATES OF AMERICA:

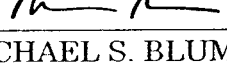
PATRICK L. MEEHAN
United States Attorney
DATE:



JAMES G. SHEEHAN
Associate United States Attorney
DATE:



SETH WEBER
Assistant United States Attorney
DATE: 7/13/04



MICHAEL S. BLUME
Assistant United States Attorney
DATE:

JOHN C. WEICHER
Assistant Secretary for Housing - Federal Housing Commissioner
Chairman, Mortgagee Review Board
DATE:

FOR THE PLAINTIFF/RELATOR:
HOWARD BRUCE KLEIN, ESQ.
Attorney for Cynthia Santore-Smith
DATE:

FOR DEFENDANT MARKET STREET MORTGAGE CORPORATION

JERRY D. BERNSTEIN, ESQ.
Blank Rome LLP
DATE:

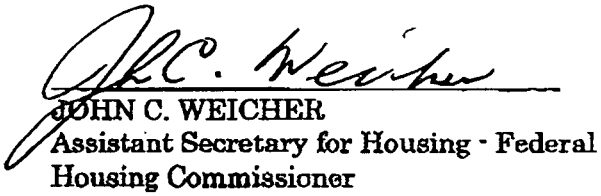
FOR PLAINTIFF UNITED STATES OF AMERICA:

PATRICK L. MEEHAN
United States Attorney
DATE:

JAMES G. SHEEHAN
Associate United States Attorney
DATE:

SETH WEBER
Assistant United States Attorney
DATE:

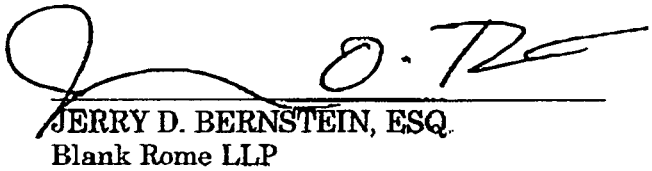
MICHAEL S. BLUME
Assistant United States Attorney
DATE:



JOHN C. WEICHER
Assistant Secretary for Housing - Federal Housing Commissioner
Chairman, Mortgagee Review Board
DATE:

FOR THE PLAINTIFF/RELATOR:
HOWARD BRUCE KLEIN, ESQ.
Attorney for Cynthia Santore-Smith
DATE:

FOR DEFENDANT MARKET STREET MORTGAGE CORPORATION



JERRY D. BERNSTEIN, ESQ.
Blank Rome LLP
DATE:

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FOR PLAINTIFF UNITED STATES OF AMERICA:

PATRICK L. MEEHAN
United States Attorney
DATE:

JAMES G. SHEEHAN
Associate United States Attorney
DATE:

SETH WEBER
Assistant United States Attorney
DATE:

MICHAEL S. BLUME
Assistant United States Attorney
DATE:

JOHN C. WEICHER
Assistant Secretary for Housing - Federal Housing Commissioner
Chairman, Mortgagee Review Board
DATE:

FOR THE PLAINTIFF/RELATOR:
HOWARD BRUCE KLEIN, ESQ.
Attorney for Cynthia Santore-Smith
DATE:

FOR DEFENDANT MARKET STREET MORTGAGE CORPORATION

JERRY D. BERNSTEIN, ESQ.
Blank Rome LLP
DATE:

Attachment A
Settlement Agreement for Civil Action No. 99-CV-6605

FHA CASE NO.	PROPERTY ADDRESS	ZIP CODE	FHA Number Before Refi
441-6006550	826 E WESTMORELAND ST	19134	
441-6033673	590 ANCHOR ST	19120	
441-6043517	6356 JACKSON ST	19135	
441-6062364	731 W LYCOMING ST	19140	
441-6074356	263 W GODFREY AVE	19120	
441-6101314	2657 ARAMINGO AVE	19134	
441-5974784	6257 MORTON ST	19144	
441-6047706	340 E MARSHALL ST	19401	
441-6050162	2821 KNORR ST	19149	
441-6139962	9562 A STATE RD	19114	
441-6153862	4219 PASSMORE ST	19135	
441-6198607	2332 CONCORD RD	19013	
441-6203640	3320 MORRELL AVE	19114	
441-6216151	1513 BENNER ST	19149	
441-6231533	1221 LAWRENCE AVE	19022	
441-6274370	607 HIGH AVE	19040	
441-6118303	5549 PULASKI AVE	19144	
441-5973845	4523 DEVEREAUX ST	19135	
441-6006595	4921 ROSEHILL ST	19120	
441-6014159	39 N 58TH ST	19139	
441-6131526	5950 BINGHAM ST	19120	
441-6267912	320 GILHAM ST	19111	
441-5982882	513 E GODFREY AVE	19120	
441-6153941	604 W ASHLAND AVE	19036	
441-6000960	3943 GLENDALE ST	19124	
441-6014323	12534 CALPINE RD	19154	
441-6016881	7237 DUNGAN RD	19111	
441-6033998	6606 HEGERMAN ST	19135	
441-6068157	301 W ANNSBURY ST	19140	
441-6105187	3884 GLENDALE ST	19124	
441-6126322	5913 NEWTOWN AVE	19120	
441-6132153	923 BRIDGE ST	19124	
441-6151123	1910 COTTMAN AVE	19111	
441-6151566	336 W 21ST ST	19013	
441-6171908	1710 KENDRICK ST	19152	
441-6176000	7001 LYNFORD ST	19149	
441-6179071	5811 N AMERICAN ST	19120	
441-6189503	1060 N 67TH ST	19151	
441-6196477	3130 DISSTON ST	19149	
441-6218668	3349 JASPER ST	19134	
441-6224736	3326 KAYFORD CIR	19114	
441-6232341	5351 CHARLES ST	19134	
441-6252930	825 W FISHER AVE	19120	
441-6272509	4936 N 4TH ST	19120	
441-6011861	4309 BENNINGTON ST	19124	
441-6057443	5 BARTON CIR	18231	
441-6068084	2028 S 27TH ST	19145	
441-6096590	4307 COTTMAN AVE	19135	
441-6101416	4627 EMERY ST	19137	

Attachment A
Settlement Agreement for Civil Action No. 99-CV-6605

441-6116150	4059 CRESTON ST	19135	
441-6120523	4744 MASCHER ST	19120	
441-6139151	1437 HOWELL ST	19149	
441-6148068	4259 N 6TH ST	19140	
441-6184695	2826 WILLITS RD	19136	
441-6218009	4928 ROSEHILL ST	19120	
441-6219555	3505 ENGLEWOOD ST	19149	
441-6264502	42 CEDAR AVE	17508	
441-6317657	412 FAIRVIEW AVE	17603	
441-6322266	6216 WALKER ST	19135	
441-5973296	3328 E ST	19134	
441-5973766	2059 E PACIFIC ST	19134	
441-5973789	744 E WESTMORELAND ST	19134	
441-6003967	106 KINGWOOD LN	19055	
441-6054844	1131 S 51ST ST	19143	
441-6074298	6261 CHARLES ST	19135	
441-6089373	842 DISSTON ST	19111	
441-6108811	3570 STOUTON ST	19134	
441-6111993	315 DELAWARE AVE	19446	
441-6117162	3150 ARAMINGO AVE	19134	
441-6184196	6532 MONTOUR ST	19111	
441-6218073	5946 LEITHGOW ST	19120	
441-6225255	4610 HIGBEE ST	19135	
441-6305150	4038 HIGBEE ST	19135	
441-6314145	6606 WALKER ST	19135	
441-6065167	12036 TEMPLETON DR	19154	
441-6285423	7030 LYNFORD ST	19149	
441-6106168	1828 S 21ST ST	19145	
441-6480428	2844 WILLITS RD	19136	441-6206358
441-6785089	304 EAST TOWNSHIP LINE RD	19083	441-6243974
441-6542876	251 HIGBEE ST	19111	441-6192186
441-6756841	3403 PRIMROSE RD	19114	441-6130520
441-6526486	8700 FRONTENAC ST	19152	441-5971809
441-6725004	1707 BROWN AVE	19020	441-6101996