

PCi SERVICES, INC. - DE FLOOD ZONE DETERMINATION SERVICES AGREEMENT

This Flood Zone Determination Service Agreement ("Agreement") dated [REDACTED], 2008 is by and between **XXXBANKXXX** ("Client") as outlined in Section 4.5) and PCi Corporation ("PCi").

RECITALS

PCi is in the business of determining whether residential and commercial real property lies within a special flood hazard area (a "SFHA") as defined by the Federal Emergency Management Agency ("FEMA") under regulations promulgated pursuant to the Flood Disaster Protection Act of 1973, as amended (the "Act").

1. Client or affiliate of client is a real estate mortgage lending and/or servicing institution that desires to have said services performed by PCi

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration given and received, the parties hereby agree as follows:

AGREEMENT

I. SERVICES AND FEES

- 1.1 **Services Provided.** Upon request by Client, PCi shall make a determination (a "Determination") of whether a property is within a Special Flood Hazard Area. Client shall make a request for a Determination by delivery to PCi of a complete address for the property with respect to which the Determination is to be made. PCi shall notify Client of the results of PCi' Determination within 24 hours of PCi' receipt of Client's request, Saturdays, Sundays and national

banking holidays are excluded from the turnaround time calculation.

- 1.2 **Fees.** Client shall pay the sum of **\$x.00** for each Basic Determination and an additional **\$x.00** for Life of Loan servicing. The above pricing includes a maximum fall out rate allowance of 15% of total Determinations rendered to client. Prior to the 15th day of each calendar month, PCi shall submit to Client a statement itemizing by Client loan number, PCi order number or other recognizable information, the orders placed the previous calendar month and stating the amount due for each. All fees shall be payable within thirty (30) days of the date of the statement. Clients shall be responsible for identifying to PCi particular Determinations associated with loans that did not close, therefore qualifying for fall out allowance credit.

- 1.3 **Credit Limit and Late Payments.** At no time shall PCi be obligated to make Determinations for Client if Client's unpaid fees exceed Client's Credit Limit or are past due by more than twenty (20) days. Client's Credit Limit initially shall be \$1000.00 but shall be subject to change at any time by PCi upon notice to client.

II. EXCLUSIVITY

2.1 Exclusivity. In consideration of PCi agreeing to make Determinations for Client at the level of fees set forth in this Agreement, Client agrees that Client and its affiliates shall determine whether properties are located within SFHAs solely and exclusively through PCi.

2.2 Liquidated Damages. If Client violates Section 2.1 hereof, Client shall pay to PCi, as liquidated damages and in addition to other amounts due under this Agreement, an amount equal to (i) the average monthly fees that were payable to PCi under Section 1.2 hereof between the date of this Agreement and the date of the violation multiplied by (ii) the number of months (including the month in which the violation occurred) remaining in the term of this Agreement after the date of the violation.

III. WARRANTIES AND INDEMNIFICATION

3.1 Standard of Conduct. PCi's obligations under this Agreement shall be to make a reasonably prudent Determination by diligent and good faith review of the most current flood maps available from FEMA ("flood maps").

3.2 Remedies and Indemnification. If PCi provides an errant Determination hereof, Client shall have the following remedies:

- a. To the extent Client suffers any penalty or direct fee, expense, liability or damage that is the result of PCi's negligence in the performance of its obligations under this Agreement, PCi shall indemnify and hold Client harmless against any such penalty, fee, expense, or damage.
- b. If PCi has incorrectly issued a certification on a property stating that the insurable structure is not located within a Special Flood Hazard Area, but was in fact discovered to be located within a SFHA per the Flood Map

effective as of the date of the certification, PCi shall compensate client for the cost of any uninsured flood loss suffered by Client or Client's borrower that would have been paid by an NFIP policy, less any premiums that would have been paid if an NFIP policy had been in effect.

- c. If PCi has incorrectly issued a certification on a property stating that the insurable structure is located within a Special Flood Hazard Area, but was, in fact, discovered to be not within a SFHA per the Flood Map effective as of the date of the certification, PCi shall reimburse Client or Client's borrower for any excessive flood insurance premiums theretofore paid during the life of the loan.
- d. Life of Loan Customers receive the following additional guarantee: If the zone status of a property submitted to PCi for Life-of-Loan Determination changes as a result of the issuance of an amended Flood Map, and PCi fails to notify Client of the change, PCi shall (i) reimburse the Client for costs of any uninsured flood loss suffered by Client or Client's borrowers that would have been paid by an NFIP policy, less any premiums that would have been paid if an NFIP policy had been in effect, or (ii) reimburse Client's borrower for excessive flood insurance premiums theretofore paid as a result of the removal of the property from the Special Flood Hazard Area.
- e. PCi shall have no continuing liability for any determination associated with an unpaid fee.

3.3 Limitation on Remedies. THE REMEDIES SET FORTH IN SECTION 3.2 HEREOF SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF CLIENT FOR ANY BREACH BY PCi OF ITS OBLIGATIONS UNDER THIS AGREEMENT. IN ANY EVENT, PCi SHALL HAVE LIABILITY ONLY FOR DETERMINATIONS MADE WITH RESPECT TO PROPERTIES FOR WHICH CLIENT OR ITS AFFILIATES MAKE, ON OR SUBSEQUENT TO THE DATE PCi NOTIFIES CLIENT OF THE RESULTS OF PCi's DETERMINATION, A MORTGAGE LOAN. FURTHERMORE, FLOOD DETERMINATIONS ARE PROVIDED SOLELY FOR THE USE AND BENEFIT OF CLIENT IN ORDER

TO COMPLY WITH THE 1994 REFORM ACT AND MAY NOT BE USED OR RELIED UPON BY ANY THIRD PARTY FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, DECIDING WHETHER TO PURCHASE A PROPERTY OR FLOOD INSURANCE ON A PROPERTY, OR IN DETERMINING THE VALUE OF A PROPERTY.

3.4 **Survival.** PCi' obligations under this Article 3 shall survive the termination of this Agreement.

IV. MISCELLANEOUS

4.1 **Professional Liability Coverage.** PCi shall carry a minimum of \$5 million of professional liability coverage, said coverage shall be maintained for the duration of this Agreement.

4.2 **GOVERNING LAW.** THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN EXECUTED IN THE STATE OF MASSACHUSETTS, WHOSE INTERNAL SUBSTANTIVE LAWS SHALL CONTROL IN THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT.

4.3 **Notices.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by either (i) overnight "door-to-door" delivery, (ii) facsimile transmission, (iii) depositing the same in United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, or (iv) delivering the same in person. Such notice shall be deemed received on the date on which it is hand delivered or on the next business day if sent by overnight courier or facsimile or on the third business day following the date on which it was mailed.

4.4 **Term of Agreement.** This agreement shall initially be effective for a term of 12 months from the date hereof and shall automatically renew for successive one year terms thereafter unless either party shall have given notice to the other at least 30 days

prior to the expiration of the term of its intent not to renew the Agreement. PCi may terminate this Agreement upon written notice in the event (i) Client breaches any material term of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of the breach from PCi, or (ii) Client is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for benefit of creditors or becomes unable to meet its obligations in the normal course of business as they fall due. Client may terminate this Agreement upon written notice to PCi in the event PCi breaches any material term of this Agreement and fails to cure that breach within sixty (60) days after receiving written notice of the breach from Client.

4.5 **Additional Definitions.** As used in this Agreement, the following terms shall have the following meanings:

- a. "Client" shall mean each entity listed on the attached Client Schedule.
- b. "Client's Credit Limit" shall mean the amount determined pursuant to Section 1.3 hereof.
- c. "Life-of-Loan Determination" shall mean a service provided by PCi and requested by Client with respect to a particular property at the time the original Determination is requested with respect to such property whereby PCi shall notify Client if, during the life of the loan made by Client or its affiliates (and any and all renewals, extensions, or modifications thereof), a Flood Map showing (i) if the property was within a Special Flood Hazard Area on the date of the Determination, that such property is no longer located therein, (ii) if the property was not within a Special Flood Hazard Area on the date of the Determination, that such property is within a Special Flood Hazard Area or (iii) a Special Flood Hazard Area zone rating change. Client must inform PCi in writing, or in a mutually acceptable electronic format, when a loan transaction with a PCi determination does not close, for whatever reason. The Client shall further inform PCi in writing, or in a

mutually acceptable format, when a loan subject to Life of Loan Determination Service is paid in full or otherwise satisfied.

- d. "Census Tract Determination" shall mean an indication of the subject property's location with respect to MSA and census tract boundaries as defined by United States of America Bureau of the Census data.
- e. "NFIP policy" shall mean a flood insurance policy underwritten and administered by the National Flood Insurance Program, administered by the Federal Insurance Administration.

4.6 Amendments. This Agreement may be amended only in writing and signed by both parties. This Agreement contains the entire understanding of the parties with respect to the matters covered herein.

4.7 Third Parties. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity other than PCi and Client any rights or remedies under or by reason of this agreement.

4.8 Headings. The headings in this Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.

4.9 Invalidity. If any term or provision of this Agreement shall be invalid or unenforceable to any extent or application, the remainder of this Agreement shall be valid and enforceable to the fullest extent and broadest application permitted by law.

4.10 Confidentiality. PCi and the Client expressly agree that any information gathered as a result of communication with the Client regarding flood zone determinations shall remain confidential. Information relating to this Agreement shall not be communicated in any way to any person or organization external to the Client or PCi without written permission of PCi and the Client. This paragraph does not apply to external audits of, or outside due diligence performed on, the Client. Nor does this paragraph apply where any person is compelled to disclose information as a result of a subpoena or court order. Either party shall promptly notify the other party of any such required disclosure of information.

IN WITNESS WHEREOF, the parties have set their hands on the date first above written.

PCi:

| PCi Services, Inc. - DE

By: _____

CLIENT:

xxxxClientNamexxxx

By: _____