

# SULLIVAN & CROMWELL LLP

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June 18, 2014

Via FedEx

Federal Deposit Insurance Corporation,  
Receiver of Washington Mutual Bank, Henderson, Nevada,  
1601 Bryan St., Suite 1701,  
Dallas, Texas 75201.

Attention: Regional Counsel (Litigation Branch) &  
Deputy Director (DRR - Filed Operations Branch)

Re: Indemnification Obligations

Dear Sirs:

We refer to the Purchase and Assumption Agreement Whole Bank, dated as of September 25, 2008 (the “Agreement”) by and among the Federal Deposit Insurance Corporation in its corporate capacity (“FDIC Corporate”) and as receiver (“FDIC Receiver” and, together with FDIC Corporate, “FDIC”) and JPMorgan Chase Bank, N.A. (together with its subsidiaries and affiliates, “JPMC”) relating to the resolution of Washington Mutual Bank, Henderson, Nevada (“WMB”). This letter supplements our prior indemnification notices and provides you with written notice of an additional matter for which JPMC is entitled to indemnification under Section 12.1 of the Agreement.

The additional matter that gives rise to JPMC’s indemnity rights relates to a claim by the [REDACTED] that JPMC is liable for WMB’s obligations under a lease that JPMC and the FDIC previously agreed constitutes “Bank Premises” as that term is defined in Section 4.6 of the Agreement, which outlines the parties’ “Agreement with Respect to Bank Premises.” Section 4.6 provides that “the Assuming Bank shall give notice to The Receiver within the [90 day] option [REDACTED] of its election to accept or not to accept an assignment of any or all leases (or entered into subleases or new leases in lieu thereof).” JPMC provided timely notice to the Receiver of its election *not* to assume the lease in dispute here. It is our understanding that the Receiver subsequently provided notice to the pertinent leaseholders of its decision to disaffirm the lease in question. Nevertheless, the [REDACTED] is threatening to pursue a claim against JPMC in connection with the rejected lease. Enclosed for your convenience is a copy of the letter from the [REDACTED], dated April 21, 2014, threatening litigation against JPMC for damages arising from its rejection of the lease and requesting an agreement tolling any limitations periods (a request [REDACTED] later withdrew).

Federal Deposit Insurance Corporation

JPMC is advising you that the liability it may incur in connection with this dispute, including the costs and expenses it incurs in defending against any action that may arise in relation to this dispute, as well as the amount of any settlement or adverse judgment, are subject to indemnification by the FDIC pursuant to Section 12.1 of the Agreement. Because the type of claim at issue—*i.e.*, a claim seeking to hold JPMC liable for a WMB Bank Premises lease that JPMC timely elected not to assume—is clearly one retained by the FDIC under the Agreement, JPMC requests that the FDIC promptly inform [REDACTED] that it acknowledges that this was not a claim assumed by JPMC and take responsibility for defending or resolving this dispute. Should the FDIC fail to assume responsibility for defending or resolving this dispute, we understand the FDIC consents to our defending, and, if we deem it to be prudent, settling any action that may arise from this dispute. As you know, and as the FDIC has acknowledged in court, if the FDIC disclaims responsibility for any liabilities that may arise in connection with this dispute and instead asserts that Section 12 of the Agreement does not apply to any such liabilities, then the FDIC may not purport to exercise its rights to direct the defense of this action or determine whether to settle it.

As you are aware from previous correspondence notifying you of the FDIC's indemnification obligations in other matters, the matters identified in this letter are not intended to be exhaustive or to constitute a statement that no other facts have or may come to our attention that could result in claims for which indemnification is provided, and we reserve the right to supplement this notice as additional facts or circumstances may arise.

Sincerely,

[REDACTED]  
Robert A. Sacks

cc: Stacey R. Friedman  
Lawrence N. Chanen  
Alla Lerner  
Annette C. Rizzi  
Gregory Isbell  
Joanna Jagoda  
(JPMorgan Chase Bank, N.A.)  
(Via Email without enclosures)

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