INDEX NO. 656028/2021 RECEIVED NYSCEF: 02/03/2022

SUPREME COURT OF THE STATE OF NEW YORK **COUNTY OF NEW YORK**

In the matter of the application of U.S. BANK NATIONAL ASSOCIATION (as Index No. 656028/2021 Trustee, Securities Administrator, Paying Agent, and/or Calculation Agent under various Pooling and Servicing Agreements), : Hon. Andrew S. Borrok Petitioner. for judicial instructions pursuant to CPLR Article 77. AMENDED ANSWER OF THE **RELIANCE PARTIES TO THE AMENDED PETITION**

Pursuant to this Court's order to show cause dated November 16, 2021, Respondents Reliance Standard Life Insurance Company, Safety National Casualty Corporation, Stephen Finkelstein, and NAV LLC (collectively, the "Reliance Parties" or the "Respondents"), by and through their undersigned counsel, respectfully submit this Amended Answer to the First Amended Petition (the "Petition") of U.S. Bank National Association (the "Trustee"), filed December 28, 2021. Respondents hold certificates issued by 11 of the Subject Trusts at issue in this proceeding, see Exhibit 1A, and they intend to appear with respect to those trusts.²

The Petition seeks judicial instruction with respect to two issues: (1) "the manner in which distributions are calculated and applied under the waterfalls after the aggregate outstanding principal balances of the Class A, Class M, and/or Class B classes of certificates (the

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¹ The Trustee's original Petition was filed on October 18, 2021, but was subsequently amended.

² Capitalized terms not defined herein have the meanings given to such terms in the Petition.

FILED: NEW YORK COUNTY CLERK 02/03/2022 03:19 PM

NYSCEF DOC. NO. 95

INDEX NO. 656028/2021

RECEIVED NYSCEF: 02/03/2022

'Primary Classes') are reduced to zero," (the "Zero-Balance Issue"), and (2) "the treatment of borrower payments of deferred or forborne principal, interest, and/or other amounts on mortgages that have been subject to servicer modifications," (the "Deferred Principal Issue").

(Petition ¶ 2.)

With respect to the Deferred Principal Issue, the Trustee acknowledges that the amounts of loan principal that were deferred at the time of loan modifications (the "Deferred Principal Amounts") were treated as losses "even though most of the Governing Agreements do not expressly call for treating Deferred Principal Amounts as losses." (Petition ¶ 13.) However, the Trustee further states that Deferred Principal Amounts that are later collected by the Subject Trusts ("Deferred Principal Collections") do not qualify as Subsequent Recoveries under most of the trusts' Governing Agreements; thus, the Trustee claims that it is not appropriate to write up the certificate balances of the Primary Classes upon receipt of Deferred Principal Collections.

(Id. ¶ 17.) Respondents take the position that the Trustee's historical practices with respect to the Deferred Principal Issue are incorrect and that the write-downs that have previously been applied to the Primary Classes' certificate balances on account of Deferred Principal Amounts must be reversed, irrespective of whether Deferred Principal Collections qualify as Subsequent Recoveries.

With respect to the Zero-Balance Issue, the Respondents incorporate by reference the arguments made in the Answer of the Olifant Funds and Taconic Funds to the Amended Petition.

The Trustee acknowledges that its historical practices with respect to the Zero-Balance Issue and the Deferred Principal Issue have generally been inconsistent with the positions taken by Respondents herein. Because its historical practices are incorrect, the Trustee is not entitled to relief in the form of a court order approving of its historical practices with respect to these

FILED: NEW YORK COUNTY CLERK 02/03/2022 03:19 PM

NYSCEF DOC. NO. 95

INDEX NO. 656028/2021

RECEIVED NYSCEF: 02/03/2022

issues. (*See id.* ¶¶ 112–14, 124–25, 152.) Rather, the Court should direct the Trustee to administer the Subject Trusts in accordance with Respondents' positions, as set forth above, and to correct any prior misapplications of the trusts' Governing Agreements. Respondents wish to be heard on these issues and reserve the right to participate in the briefing, discovery, and/or the Final Hearing concerning these issues.

Date: February 3, 2022

PATTERSON BELKNAP WEBB & TYLER LLP

/s/ Peter W. Tomlinson

Peter W. Tomlinson Diana M. Conner Alvin Li 1133 Avenue of the Americas New York, NY 10036-6710

Tel: (212) 336-2000 Fax: (212) 336-2222 pwtomlinson@pbwt.com dconner@pbwt.com ali@pbwt.com

Attorneys for the Reliance Parties