No. _____

In The Supreme Court of the United States

UMB BANK, N.A. AND COLORADO BONDSHARES – A TAX-EXEMPT FUND,
Applicants,

v .

LANDMARK TOWERS ASSOCIATION, INC., a Colorado nonprofit corporation, by Miller Frishman Group, LLC as Receiver for 7677 East Berry Avenue Associates, L.P., its Declarant,
Respondent.

APPLICATION TO THE HONORABLE SONIA SOTOMAYOR FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

Pursuant to Rule 13(5) of the Rules of this Court, UMB Bank, N.A., as trustee under a Trust Indenture, and Colorado Bondshares – a Tax Exempt Fund (together "Applicants") respectfully request a sixty-day extension of time to file their Petition for Writ of Certiorari. This request, if granted, would make the Petition due on August 23, 2019. Applicants will be asking this Court to review a decision by the Colorado Court of Appeals, the highest court in Colorado in which a decision could be had under 28 U.S.C. § 1257(a). The Colorado Supreme Court denied Applicants' Petition for Certiorari on March 25, 2019, meaning that the date for filing the Petition for Certiorari is currently due on June 24, 2019. This application is being filed more than ten days before the current due date for filing the Petition.

A copy of the Colorado Court of Appeals' Opinion, captioned *Landmark Towers Association, Inc., a Colorado non-profit corporation, by EWG-GV LLC, as receiver for*

7677 East Berry Avenue Associations, LP v. UMB Bank, N.A.; Colorado Bondshares, a tax exempt fund; and Marin Metropolitan District, a Colorado special district (2018 COA 100), is attached hereto as Exhibit 1. This Court has jurisdiction under 28 U.S.C. § 1257(a). Furthermore, the Colorado Court of Appeals' "judgment is plainly final on the federal issue" under the Due Process Clause, which is "not subject to further review in the state courts." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975).

This request is made for the following reasons:

1. This case presents significant and important questions of federal law, namely the application of the Due Process Clause. By way of background, after the Colorado Supreme Court reversed an earlier decision in this litigation in an opinion captioned *UMB Bank, N.A. v. Landmark Towers Association*, 408 P.3d 836 (Colo. 2017), the Colorado Supreme Court directed the Colorado Court of Appeals to decide issues that were not previously addressed on appeal, including arguments by Respondent Landmark Towers Association, Inc.'s ("Respondent") that the Marin Metropolitan District, a Colorado special district violated the federal due process rights of individual members ("Landmark Property Owners") of Respondent. The Respondent is a luxury homeowners' association with members who were required to pay *ad valorem* property taxes necessary to pay down certain Bonds purchased by Colorado Bondshares and administered by UMB, in its capacity as trustee for the Bonds. On remand in the decision subject to this Petition for Writ of Certiorari, the Colorado Court of Appeals held that the District violated the Landmark Property Owners' due process rights in two ways. First, the court held that District organizers violated the Landmark Property Owners due process rights' by including them in the District where they received no "special benefit" from the taxes imposed under this Court's decision in *Myles Salt Co. v Board of Commissioners of the*

Iberia & St. Mary Drainage Dist., 239 U.S. 478 (1916) (Opinion, ¶¶ 24-28). Second, the court held that the due process rights of the Landmark Property Owners were violated when they paid a tax from which they received no special benefit, with the tax being construed as a "special assessment." As such, the Colorado Court of Appeals upheld the trial court's injunction prohibiting the District from levying *ad valorem* property taxes necessary to pay down the Bonds. To date, the District owes Colorado Bondshares $17 million in unpaid Bonds, plus continually accruing interest, with no chance of repayment according to the Courts below.

2. This case raises the important question of whether the Due Process Clause requires an *ad valorem* property tax to confer a "special benefit," as some courts have mistakenly applied this Court's century-old decision in *Myles Salt*. By way of contrast, numerous cases have cited to *Myles Salt* as an example of a special assessment case, not a tax case. *See, e.g., Morton Salt Co. v. City of S. Hutchinson*, 177 F.2d 889, 892 (10th Cir. 1949). This Court itself has held that taxes need not confer any benefit under the Due Process Clause. *See St. Louis & S.W. Ry. Co. v. Nattin*, 277 U.S. 157, 159 (1928). Moreover, there is no "taking" of private property under the Due Process Clause unless plaintiff is a property owner at the time of inclusion in the District. Here, the Landmark Property Owners did not become property owners within the District for approximately two years after formation of the District. As such, lower courts are in need of clarification about how *Myles Salt* applies to *ad valorem* property taxes and how the Due Process Clause applies differently to taxes and special assessments. A state taxing district imposing an *ad valorem* property tax for "local improvements" should not convert the underlying tax into a special assessment for federal constitutional purposes, as held by the Colorado Court of Appeals below. *See Memphis v. Charleston Ry. Co. v. Pace.*, 282

U.S. 241, 245-46 (1931). This is especially so where the legislative body that approved the District – the City of Greenwood Village – approved the imposition of an *ad valorem* property tax, not a special assessment, to finance public improvements within the District. *See Carpenter v. Shaw*, 280 U.S. 363, 367 (1930).

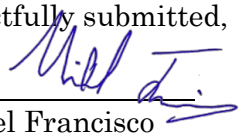
3. The Applicants and the Respondent are currently engaged in settlement negotiations, which would make the filing of any Petition moot. The District has limited funds available to satisfy a monetary judgment and the Applicants and Respondent are currently negotiating over a potential settlement. In that regard, on May 14, 2019, Respondent sent a demand letter to Applicants' counsel, and Applicants' counsel is in the process of preparing a formal response. If the Parties are to reach a settlement that is satisfactory to Applicants, this could render the need to file a Petition with this Court moot.

4. In addition, Applicants' counsel of record, Michael Francisco, was retained on June 12, 2019 and needs additional time to work with the Applicants and their counsel before the Colorado courts, Neil L. Arney, Esq., who was only recently admitted to the U.S. Supreme Court.

5. Furthermore, this litigation has been ongoing since June 1, 2011. Given the length of time that this matter has been litigated, the complex legal and factual issues involved, the fact that there were two trials, three decisions by the Colorado Court of Appeals, and one decision by the Colorado Supreme Court, the record of the underlying proceedings is voluminous and still in the process of being compiled. This litigation has been long pending and no party will be prejudiced by the potential delay associated with the extension of time sought within with to file a Petition of Certiorari.

For these reasons, Applicants UMB Bank and Colorado Bondshares respectfully request an extension of time to and including August 23, 2019 to file a Petition for Writ of Certiorari.

Respectfully submitted,



Michael Francisco
Counsel of Record
Statecraft PLLC
620 N. Tejon St., Suite 101
Colorado Springs, CO 80903
(719) 822-2809
Counsel for UMB Bank and Colorado Bondshares

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