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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
CITYSCAPE FINANCIAL CORP., : Case Nos. 98-B22569  
and CITYSCAPE CORP., : (ASH) and 98-B22570  
: (ASH)  
Debtors. :  
: Jointly Administered  
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**APPLICATION OF KASOWITZ, BENSON,  
TORRES & FRIEDMAN LLP, COUNSEL TO UNOFFICIAL SENIOR  
NOTEHOLDERS COMMITTEE, FOR THE ALLOWANCE OF COMPENSATION  
FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES  
PURSUANT TO SECTION 503(b) OF THE BANKRUPTCY CODE**

TO: THE HONORABLE ADLAI S. HARDIN, JR.  
UNITED STATES BANKRUPTCY JUDGE

Kasowitz, Benson, Torres & Friedman LLP (“KBT&F”), counsel for the Unofficial Committee (the “Senior Committee”) of Holders of Cityscape Financial Corp.’s 12 3/4% Senior Notes (the “Senior Notes”), as and for its application pursuant to section 503(b) of title 11, United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for allowance of compensation for services rendered and the reimbursement of expenses incurred in connection therewith, respectfully represents as follows:

## **PRELIMINARY STATEMENT**

1. This Court recently concluded the chapter 11 reorganization of the Debtors.<sup>1</sup> The Debtors entered chapter 11 with crippling debts and have emerged with virtually none. This successful reorganization was implemented through an initial “pre-packaged” plan negotiated among the Debtors, the Senior Committee, the Junior Committee (defined below) and other significant parties in interest, and then modified to reflect various unforeseeable events during the chapter 11 period. At the core of this reorganization was the recommendation of the Senior Committee, and the agreement of the holders of Senior Notes, to convert \$300 million of senior debt into ownership of more than 90% of the Debtors. During these chapter 11 cases, KBT&F, on behalf of the Senior Committee, served as a driving force behind the Debtors’ rehabilitation. KBT&F played a key role in formulating and negotiating the Plan, defeating obstacles to its confirmation, and crafting the post-confirmation financial structure of the Debtors.

## **COMPENSATION REQUESTED**

2. Pursuant to this Application and section 503(b) to the Bankruptcy Code, KBT&F seeks allowance of compensation in the amount of \$87,661.50 and reimbursement of expenses incurred in connection therewith in the amount of \$2,003.45 for the period from October 6, 1998 through July 2, 1999 for its services rendered as counsel to the Senior Committee. Copies of KBT&F’s time records and Summary of Disbursements are annexed hereto as Exhibits “A” and “B”, respectively.

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<sup>1</sup> Any capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan.

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction over these cases and this application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings and this application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are section 503(b) of the Bankruptcy Code and Bankruptcy Rule 2016.

## **BACKGROUND**

4. In early 1998, after suffering from a significant liquidity crisis, Cityscape, one of the Debtors herein, negotiated a non-binding letter of intent (the "Letter of Intent") with the Senior Committee for a "pre-packaged" reorganization. Subsequently, Cityscape also contacted the holders of its 6% Subordinated Debentures (the "Subordinated Debentures")<sup>2</sup> regarding a proposed restructuring based upon the terms of a plan of reorganization outlined in the Letter of Intent.

5. As part of the ensuing negotiations, Cityscape allowed both the Senior Committee and the Junior Committee (together, the "Unofficial Committees") and their respective counsel to conduct appropriate due diligence. The Unofficial Committees and their counsel ultimately concluded that a consensual make all pre-packaged plan of reorganization for the Debtors was in the best interest of all creditors. Creditors overwhelmingly voted in favor of the pre-packaged plan.

6. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on or about October 6, 1998 and concurrently sought confirmation of their pre-packaged

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<sup>2</sup> Thereafter thirteen Holders of Subordinated Debentures formed the Unofficial Subordinated Debenture Holders Committee (the "Junior Committee").

plan. When changed market conditions rendered that plan unfeasible, the Debtors filed a First Amended Joint Plan of Reorganization dated as of April 27, 1999 (as modified, the “Plan”) and related disclosure statement. Following a hearing before the Court (the “Confirmation Hearing”), by order dated June 10, 1999 (the “Confirmation Order”), the Plan was confirmed in accordance with section 1129 of the Bankruptcy Code and became effective.

### **THE SENIOR COMMITTEE**

7. In early 1998, the Senior Committee, whose members included Cerberus Partners, L.P. and Mackay-Shields Financial Corp., and who held a majority of the Senior Notes, commenced negotiations with the Debtors with respect to the principal terms and provisions of a restructuring. In this regard, the Senior Committee retained KBT&F as its attorneys. Prior to the Petition Date, the fees and expenses of KBT&F were paid by Cityscape. As of the Petition Date, there was no remaining pre-petition obligation owed KBT&F, and KBT&F did not receive a retainer in connection with its representation of the Senior Committee during the chapter 11 case.

8. Prior to the Petition Date, the Senior Committee, with the assistance of KBT&F, engaged in months of negotiations with respect to a restructuring. These negotiations culminated in a proposed restructuring, which was embodied in an initial plan of reorganization filed in October, 1998 (the “Initial Plan”). In connection with the Initial Plan, the Senior Committee and the Debtors negotiated and entered into an agreement which provided the conditional support of the Senior Committee for the Initial Plan.

9. In the context of negotiating the Initial Plan and then the Plan, the Senior Committee obtained the agreement of the Debtors to pay the reasonable fees and expenses of KBT&F, subject to Court approval. Section IX.F. of the Plan provides as follows:

**F. Payment of Fees and Expenses of Unofficial Committees' Counsel.** Subject to the approval of the Bankruptcy Court, unpaid fees and expenses of counsel to each of the Unofficial Committees incurred through and including the Effective Date will be paid on or as soon as practicable after the Effective Date.

### **THE CHAPTER 11 CASE**

10. Since the Petition Date and continuing through the Effective Date, KBT&F, on behalf of the Senior Committee, has worked with the Debtors and the Junior Committee to implement the restructuring set forth in the Plan and to provide for the Debtors' rapid and successful emergence from chapter 11. The following is a summary description of certain of the services rendered by KBT&F, which are described in greater detail in the time records annexed hereto.

11. First Day Orders. On or about the Petition Date, the Court entered certain orders designed to minimize any disruption of the Debtors' business and to facilitate its reorganization. Each of these orders was reviewed and negotiated by KBT&F on behalf of the Senior Committee.

12. Committees. The Office of the United States Trustee (the "UST") did not appoint an official committee of unsecured creditors in this case due to the pre-negotiated restructuring in the Plan, the continued functioning of the Unofficial Committees, and the disparate interests of the Senior Committee and Junior Committee.

13. Examiner Issues. One of the early issues confronting the Debtors was the motion of Elliott Associates, L.P. and Westgate International, L.P. for appointment of an examiner. KBT&F researched, drafted, and filed an objection to the appointment of an examiner on behalf of the Senior Committee. Thereafter, KBT&F participated in lengthy discussions with the movants, the Debtors, and the U.S. Trustee, resulting in entry of a negotiated appointment order, and cooperated with the examiner in his investigation.

14. The Plan. KBT&F spend extensive time reviewing and revising the plan and reviewing and commenting upon related corporate documents. Such services involved numerous teleconferences with the Debtors, the Senior Committee members, counsel for the Junior Committee, and other parties in interest.

### **SUBSTANTIAL CONTRIBUTION STANDARDS**

15. Section 503(b)(3) of the Bankruptcy Code permits a court to allow as administrative expenses the actual and necessary expenses incurred by a creditor who makes a substantial contribution in a chapter 11 case. Section 503(b)(4) in turn authorizes the allowance of administrative expenses reimbursing the reasonable compensation for professional services rendered and actual, necessary expenses incurred by a professional for an entity whose expenses are allowable under section 503(b)(3). See, e.g., In re Buckhead Am. Corp., 161 B.R. 11 (Bankr. D. Del. 1993); In re McLean Industries, Inc., 88 B.R. 36, 38 (Bankr. S.D.N.Y. 1988); In re Baldwin-United Corp., 79 B.R. 321, 348 (Bankr. S.D. Ohio 1987); see also 3 Collier on Bankruptcy, 503.04[4] (15<sup>th</sup> ed. 1996). The policy aim of allowing compensation for a creditor's efforts in substantially contributing to a case is to promote meaningful creditor participation in a

case. See Lebron v. Mechen Fin. Inc., 27 F.3d 937, 944 (3d Cir. 1994) (citing In re Richton Int'l Corp., 15 B.R. 854, 855-56 (Bankr. S.D.N.Y. 1981); In re Consolidated Bancshares, Inc., 785 F.2d 1249, 1253 (5th Cir. 1986); In re American 3001 Telecommunications, Inc., 79 B.R. 271, 273 (Bankr. N.D. Tex. 1987).

16. The Bankruptcy Code does not define the term “substantial contribution,” leaving it to be determined by courts on a case by case basis. However, the almost universally accepted test of recovery for a “substantial contribution” to the estate is a demonstrable benefit to the estate and its creditors. Lebron, 27 F.3d at 944; Consolidated Bancshares, 785 F.2d at 1253; Richton Int'l, 15 B.R. at 856 (“the appropriate test of compensable services is whether they substantially contributed to the result”).

17. The fact that the self-interest of a creditor or its professional coincides with the interests of the estate does not preclude recovery under section 503(b). Whether motivated by self-interest or otherwise, a creditor makes a substantial contribution reimbursable under section 503(b) when its actions contribute to a result that benefits the estate:

[T]he correspondence of [the counsel's] self interest in serving its clients . . . and the interests of the debtors in a successful reorganization do not bar compensation to [counsel] from the debtors. Otherwise, creditor participation in reorganization might be discouraged. The appropriate test of compensable services is whether they substantially contributed to the successful result.

Richton, 15 B.R. at 856.

18. In this case, the “substantial contribution” of the Senior Committee and KBT&F is manifest. Here, there was no official creditors committee and the Senior Committee advised and ultimately obtained a consensual reorganization on behalf of more than two-thirds of the Debtors' unsecured creditors.

19. As a result of its substantial contribution to the Debtors' cases, counsel to the Senior Committee is entitled to payment of reasonable compensation for services and reimbursement of the actual, necessary expenses it accrued and incurred. 11 U.S.C. § 503(b)(4); In re Texaco, Inc., 90 B.R. 622, 627, 630-32 (Bankr. S.D.N.Y. 1988) (court first determines whether creditor made a substantial contribution, then scrutinizes requests for that creditor's attorneys' fees under section 503(b)(4) and the factors governing fee applications generally); In re 9085 E. Mineral Office Bldg., Ltd., 119 B.R. 246, 253 (Bankr. D. Colo. 1990) (once threshold test is made of creditor's contribution under section 503(b)(3)(D), court must then decide "the value to be placed on the administrative claim" under section 503(b)(4)). Under Bankruptcy Code section 503(b)(4) as well as Bankruptcy Code section 330 (governing professionals fees generally), the reasonableness of professional charges is measured based on the time, nature, extent and value of the services and whether related expenses are actual and necessary. See 11 U.S.C. § 503(b)(4). See also 11 U.S.C. § 330(a).

20. As described above, the services rendered by the Senior Committee and KBT&F in these cases directly and tangibly contributed to a successful reorganization of the Debtors and their prompt emergence from chapter 11. The cases consumed less than a year, despite the presence of parties with opposing interests and large claims. This was primarily due to the efforts of the Debtors and their professionals and the Unofficial Committees and their professionals. In recognition of this fact and the consensual nature of this case, the Debtors' reorganizations were concluded expeditiously and without the expense of statutory committees.

21. The services rendered by KBT&F were not duplicative of the services rendered by counsel to the Debtors or any committees (none having been appointed in these cases).



Moreover, the Plan, which has been confirmed and become effective, specifically provides for the payment of the fees and expenses of the Senior Committee's professionals (subject to Court approval).

### **DISBURSEMENTS**

22. As set forth in Exhibit "B" hereto, KBT&F has incurred expenses in the amount of \$2,003.45.

23. KBT&F only seeks reimbursement of the actual cost of disbursements incurred, whether in-house or from third party vendors. With respect to photocopying expenses, KBT&F has charged \$.05 per page. With respect to facsimile expenses, KBT&F excludes charges for incoming facsimile and includes charges for outgoing facsimiles at applicable toll charge rates. These charges are intended to cover KBT&F's direct operating costs for photocopying and facsimile facilities, which costs are not incorporated into the KBT&F hourly billing rates. Only clients who actually use photocopying, facsimile, and other office services of the types set forth in Exhibit "B" are separately charged for such service. The amount of the standard photocopying charge is intended to allow KBT&F to cover the actual expenses of its photocopying service. KBT&F submits that these expenses have been reasonable and rather minimal in the context of these cases.

24. Consistent with firm policy, attorneys and other employees of KBT&F who worked late into the evenings were reimbursed for their cost for transportation home and to and from court. KBT&F's regular practice is not to include components for those charges in overhead when establishing billing rates and to charge its clients for these and all other out-of-pocket

disbursements incurred during the regular course of the rendition of services. KBT&F has not sought reimbursement for any meal expenses.

25. In addition, due to the dispersion of parties in interest, including the members of the Senior Committee, long distance telephone calls and conference call charges were required. On a few occasions, timely delivery of documents required use of messenger or overnight services. The actual expenses incurred in providing professional services were absolutely necessary, reasonable and justified under the circumstances.

26. KBT&F certifies that it has fully reviewed this application and believes that it complies with all local orders and guidelines.

27. No agreement or understanding exists between KBT&F and any other person for a sharing of compensation received or to be received for services rendered in or in connection with these cases, nor shall KBT&F share or agree to share the compensation paid or allowed from the estates for such services with any other person. The foregoing constitutes the statement of KBT&F pursuant to section 504 of the Bankruptcy Code and Bankruptcy Rule 2016(a).

28. No agreement or understanding prohibited by 18 U.S.C. § 155 has been or will be made by KBT&F.

29. No prior application has been made to this or any other Court for the relief requested herein.

## **CONCLUSION**

WHEREFORE, KBT&F respectfully requests that this Court enter an order (i) awarding KBT&F \$87,661.50 in compensation and \$2,003.45 in reimbursement of expenses for the substantial contribution made by the Senior Committee and KBT&F during the chapter 11 case and allowing such amounts as an administration expense, (ii) authorizing and directing the Debtors to pay such amounts to KBT&F, and (iii) granting such other and further relief as is just and proper.

Respectfully submitted,

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Dated: August 20, 1999

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