

## AGREEMENT AND RELEASE

### I PARTIES

This Agreement and Release (hereinafter referred to as "Agreement") is made by and between Western Resources, Inc. (hereinafter referred to as the "Company") and Steven L. Kitchen (hereinafter referred to as the "Employee").

### II PREAMBLE

WHEREAS, the Employee will retire from the Company; and

WHEREAS, the Company desires to provide the Employee with certain benefits to which the Employee is not otherwise entitled, and the Employee desires to retire and release the Company from any and all claims; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the Company and Employee do hereby agree to this Agreement and the terms set forth below.

### III TERMS

A. Retirement. Employee acknowledges and agrees that he will retire from the Company effective October 1, 1998. Employee hereby resigns as an officer of the Company (and all other positions in the Company, and its subsidiaries, affiliates and related companies, including as an officer and a director, with the exception of his position as a member of the board of directors of Protection One) effective October 1, 1998, the date of his retirement from the Company. Company shall continue to cover Employee under its Directors and Officers liability insurance policy for any claims made while Employee served as a covered officer and/or director of the Company (or its subsidiaries, affiliates and related companies), on the same basis as such other covered officers and/or directors, as the case may be, pursuant to the applicable policy then in effect for such other covered officers and/or directors. Employee agrees to assist, through October 1, 1998, in the orderly transition of his responsibilities as requested by the Company. After October 1, 1998, Employee agrees to cooperate fully with the Company (including its subsidiaries, affiliates and related companies) as necessary in any pending or future legal matters of which Employee has knowledge, including any Company internal investigations, administrative or judicial proceedings, as a witness or otherwise, as may be reasonably requested by the Company. The Company agrees to reimburse Employee for any reasonable expenses associated with such cooperation or participation. In the event the Company requests Employee and Employee agrees to provide advice and consultation to the company consistent with his experience, it shall pay reasonable fees and expenses therefor.

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**B. Company Payments to Employee.** Company agrees to provide Employee the following payments and benefits:

1. **Salary.** Company will continue to pay Employee his regular monthly salary, less appropriate payroll deductions, through September 30, 1998.

2. **Vacation Pay.** Company will pay Employee the gross sum of Thirty-Six Thousand Two Hundred Forty-Eight and no/100 Dollars (\$36,248.00), less appropriate payroll deductions, representing five (5) weeks of vacation pay, payable in a lump sum on or before October 1, 1998.

3. **Sick Leave Accumulation Payment.** Company will pay Employee the gross sum of Thirty-One Thousand Four Hundred Seventeen and no/100 Dollars (\$31,417.00), less appropriate payroll deductions, representing payment of sick leave accumulation equivalent to one month's pay, payable in a lump sum on or before October 1, 1998.

4. **Executive Salary Continuation Plan.** Company will pay Employee a gross sum equivalent to the enhanced amount of Two Hundred Eighty-Seven Thousand Three Hundred Fifty-Eight and no/100 Dollars (\$287,358.00) per year, less appropriate payroll deductions, beginning October 1, 1998 and continuing as provided and in such manner as set forth in the Company's Executive Salary Continuation Plan. In the event that Employee becomes deceased prior to October 1, 2013 (fifteen years following Employee's date of retirement from the Company), Company will continue to make such payments provided under this paragraph to Employee's designated beneficiary, or if none, to Employee's estate, for a period of up to fifteen years following Employee's date of retirement from the Company, but in no event on or after September 30, 2013. Following the death of Employee and after the expiration of fifteen years following Employee's date of retirement from the Company, Company shall pay Employee's eligible surviving spouse, if any, a gross sum equivalent to One Hundred One Thousand Six Hundred Thirty-Eight and 44/100 Dollars (\$101,638.44) per year, less appropriate payroll deductions, beginning not earlier than October 1, 2013, and continuing for the remainder of her natural life, in such manner as set forth in the Company's Retirement Plan for the Employees of Western Resources.

5. **Split Dollar Insurance Program.** Company agrees that Employee is a participant under the Split Dollar Insurance program adopted by the Company in effect as of the date of this Agreement, pursuant to the terms of the Split Dollar Insurance agreement with Employee.

6. **Options/Restricted Stock.** Company agrees that Employee is eligible for additional Stock Options in 1998 for 8000 shares for a total of 31,000 shares and Restricted Stock Awards for 14,000 shares pursuant to the Plan(s) approved by the Company's Board of

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Directors in 1998. Employee agrees that such stock options and restricted stock (including but not limited to Employee's vesting rights, any right of Employee to exercise such options, and all other rights and obligations) are governed by the terms of the Plan(s) and the contract(s) entered into or to be entered into pursuant to the Plan(s).

7. **Health Care Coverage.** Company agrees to continue to pay its portion of the monthly cost of Employee's group health care coverage, and that of his covered dependents, under the Company sponsored group health plan, through December 31, 1998, provided that Employee continues to timely pay, through payroll deduction or such other method agreed to by the Company, his applicable portion (presently \$27.43) of such monthly health care cost. Beginning January 1, 1999, Employee and his wife and covered dependents shall be eligible to enroll in the Company sponsored retiree health care plan, pursuant to the terms of the Plan, provided that Employee timely makes any required application and timely pays, through payroll deduction or such other method permitted by the Plan, his applicable portion of such monthly health care cost then in effect (which is presently \$52.00).

8. **Life Insurance.** Company agrees to continue Employee's coverage under the Company's group life insurance plan through December 31, 1998, provided such continued coverage is permitted by the Plan. Beginning January 1, 1999, or such earlier time as may be required by the Plan, Employee will be eligible for retiree life insurance pursuant to the terms of the Plan.

9. **Separate Severance Payments.** Company agrees to pay Employee (a) a severance payment in the gross sum of One Million One Hundred Twenty-Seven Thousand Two Hundred Twenty Seven and no/100 Dollars (\$1,127,227.00) (representing 2.99 times your current base pay of \$376,999.00), and (b) a severance payment of Four Hundred Seventy Three Thousand Seven Hundred Thirty Six and no/100 Dollars (\$473,736.00) (representing 2.99 times the average of incentives paid to you for the three completed bonus periods prior to the date of this agreement). Such payments shall be made in a lump sum on January 15, 1999, including a cost of funds of 10.63% from October 1, 1998, through January 15, 1999, and shall be subject to applicable withholding requirements.

10. **Club Membership.** Company will continue to list Employee on the company's membership with the Flint Oak Hunting Club through December 31, 1999, and agrees to pay expenses of Employee up to a maximum of Five Thousand and no/100 Dollars (\$5,000.00) through December 31, 1999.

11. **Tax/Legal Assistance.** Company agrees to pay to your accountants, attorneys and financial advisors, provided they are approved in advance (which approval will not be unreasonably withheld) by the Company ("collectively "Your Advisors") (a) reasonable fees and expenses of Your Advisors for tax and financial assistance rendered to you up to an aggregate amount of Ten Thousand and no/100 Dollars (\$10,000.00) per year for your life and one year thereafter, and (b) reasonable fees and expenses of Your Advisors for legal services rendered to

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you up to an aggregate of Ten Thousand and no/100 Dollars (\$10,000.00) per year for your life and one year thereafter.

12. **Tax Associated With Personal Use of Company Assets.** Company agrees to pay to Employee a gross-up payment in the event the Internal Revenue Service should assess the Employee additional income tax arising from a claim that the Employee has incurred taxable income by reason of the Employee's personal use of Company assets. The amount of any such gross-up payment shall be equal to (a) the additional Federal income tax, interest and penalties, assessed by the Internal Revenue Service pertaining to such matter plus (b) the additional State income tax, interest and penalties pertaining to such matter. For purposes of determining the amount of the gross-up payment, the fact that any additional State income tax or interest may be deducted on the Federal or State income tax returns by the Employee in the year of payment shall not be taken into account.

13. **Totality of Payments and Benefits.** Employee agrees that the payments and benefits, including any contingent payments, set forth in subparagraphs 1 through 12 of this paragraph B represents the full and complete compensation that is to be paid to Employee by the Company, and includes any and all other payments (including any vacation pay, severance pay and any and all other benefits) that Employee may otherwise be entitled to receive. This paragraph shall not be interpreted to prevent Employee from receiving all amounts accumulated in his 401(k) and deferred compensation accounts and all accumulated stock options, as of September 30, 1998, pursuant to the respective plans, which shall be payable as provided in such plans. Notwithstanding employee's retirement from the Company, employee shall be treated as an employee for purposes of vesting and exercise of the stock options and restricted stock granted to employee; provided, however, if Employee should die after the date of this Agreement and all or a portion of such Stock Options and Restricted Stock Awards have not been exercised, and his death occurs prior to the date such options or restricted stock lapse, then the unexercised or unvested options and restricted stock may be exercised by Employee's personal representative during the time provided in the Award agreements and subject to the other terms of Plans.

14. **Gross-Up Payment.** (i) If the payments provided in this Agreement (the "Agreement Payments") become subject to the tax (the "Excise Tax") imposed by Section 4999 of the Code as in effect on the date of this Agreement (or any similar tax), you will be responsible for the Excise Tax and the Company will not pay you an additional amount (the "Gross-up Payment"). If however, the "Agreement Payments" become subject to the Excise Tax (or any similar tax) by virtue of changes in the Code which occur after the date of this Agreement, the Company shall pay to you at the time specified in Subsection (ii) below a "Gross-up Payment" such that the net amount retained by you, after deduction of any Excise Tax on the Total Payments (as hereinafter defined), and any federal, state and local income tax and Excise Tax upon the Gross-up Payment provided for by this subsection (i) shall be equal to what the Total Payments would have been had such changes in the Code not occurred.

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For purposes of determining whether any of the Agreement Payments will be subject to the Excise Tax and the amount of such Excise Tax, (a) any other payments or benefits received or to be received by you in connection with a change in control or your termination of employment (under this Agreement or any other agreement with the Company or any person whose actions result in a change of control or any person affiliated with the Company) (which, together with the Agreement Payments, shall constitute the "Total Payments") shall be treated as "parachute payments" within the meaning of Section 280G(b)(2) of the Code, and all "excess parachute payments" within the meaning of Section 280G(b)(1) of the Code shall be treated as subject to the Excise Tax, unless in the opinion of tax counsel selected by the Company's independent auditors such other payments or benefits (in whole or in part) are not subject to the Excise Tax, (b) the amount of the Total Payments which shall be treated as subject to the Excise Tax shall be equal to the lesser of (1) the Total Payments or (2) the amount of excess parachute payments within the meaning of Section 280G(b)(1) of the Code (after applying clause (a), above), and (c) the value of any non-cash benefits or any deferred payment or benefit shall be determined by the Company's independent auditors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

For purposes of determining the Gross-up Payment, you shall be deemed to pay federal, state, and local income taxes at the highest applicable marginal rate for the calendar year in which the Gross-up Payment is to be made net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. If the Excise Tax is finally determined to be less than the amount taken into account at the time the Gross-up Payment is made, you shall repay the portion attributable to such reduction (plus the portion of the Gross-up Payment attributable to a reduction in Excise Tax and/or a federal and state and local income tax deduction), plus interest on the amount of such repayment at the rate provided in Section 1274(b)(2)(B) of the Code. If the Excise Tax is later determined to exceed the amount taken into account at the time the Gross-up Payment is made, the Company shall make an additional gross-up payment (plus any interest payable with respect to such excess at the rate provided in Section 1274(b)(2)(B) of the Code) when such excess is finally determined.

(ii) In the event it shall be determined by the Company's independent auditor that the Agreement Payments would subject you to the Excise Tax, it shall also be determined whether a certain reduction in the Agreement Payments would result in an after-tax amount with a greater net present value than would occur without such reduction. If so, the Agreement Payments shall be reduced by the minimum amount necessary to obtain such result.

If such reduced payments incorrectly result in an overpayment or underpayment to you, the underpayment shall be promptly paid to you and, if an overpayment shall have occurred, it shall be treated for all purposes as a loan to you by the Company which you shall repay on the fifth day after demand by the Company, in each case together with interest at the applicable rate provided for in Section 1274(b)(2)(B) of the Code.

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C. **Acknowledgment of Adequacy of Consideration.** Employee agrees that he has received good and valuable consideration under this Agreement, including with respect to paragraphs B, D and E, the adequacy of which he hereby acknowledges.

D. **Non-Disclosure of Confidential Information.** Employee acknowledges that through his years of employment as an executive and in other capacities with the Company (and its subsidiaries, affiliates and related companies) he has obtained in-depth confidential, personal and proprietary information and knowledge about the Company, its subsidiaries, affiliates and related companies, including but not limited to its business plans and strategies, its business operations, its executives, officers and directors and other personnel and other matters pertaining to the Company, which is not generally known to the public or to the industry in which the Company (or any of its subsidiaries, affiliates or related companies) is or may become engaged (hereinafter referred to as "Confidential Information").

1. **Employee Will Not Disclose or Use.** Employee agrees not to use or disclose to any person or entity any such Confidential Information, without prior written consent of the Company. Employee further agrees to protect and not to disclose or to use such Confidential Information to the disadvantage or detriment of the Company. The Company agrees, however, that Employee's use of general industry knowledge that is possessed by Employee by virtue of his employment with Company shall not constitute a breach of this provision.

2. **Covenant Not to Compete.** Employee acknowledges that his representation of, assistance to, or employment by, any party who competes with or whose interests are adverse to the interests of the Company (or any subsidiary, affiliate or related companies) would presumptively use or result in the inevitable disclosure of such Confidential Information, and thus Employee agrees that, for a period of two years after his retirement date of September 30, 1998, he will not, directly or indirectly through some other entity or individual: (a) own, manage, operate, control or participate in the ownership, management, operation or control of, or have any interest, financial or otherwise, in or act as an officer, director, principal, employee, agent, representative, consultant or independent contractor of, or in any way assist in, or assist any individual or entity in the conduct of any business for any party who competes with or whose interests are adverse to the interests of the Company (or any subsidiary, affiliate or related companies), unless the Company provides Employee with written consent after consultation; (b) divert or attempt to divert any customer or accounts of the Company (or any subsidiary, affiliate or related companies); or (c) entice or induce or in any manner influence any person who is or shall be in the employ or service of Company (or any subsidiary, affiliate or related companies) to leave such employ or service for the purpose of engaging in a business which competes with or whose interests are adverse to the interests of the Company (or any subsidiary, affiliate or related companies).

E. **Complete Release.** In consideration of the payments and benefits described in this Agreement, Employee, for himself and his heirs, descendants, agents and assigns, releases and forever discharges the Company and all of its predecessors, successors, assigns,

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directors, officers, fiduciaries, shareholders, owners, employees, agents, affiliates, subsidiaries, parents, related companies, attorneys, and representatives (hereinafter referred to as "Released Parties") from any and all claims, damages, lawsuits, injuries, liabilities and causes of action or demands, known or unknown, that he now has or might have in the future which arise out of Employee's employment with the Company and the Employee's retirement, or any other event which occurred prior to September 30, 1998.

1. **Includes Release of any ADEA Claims.** Employee understands and agrees that he is releasing the Company and all other Released Parties from all rights and claims of discrimination relating to age, including all rights and claims under the Age Discrimination in Employment Act of 1967, as amended, and the Older Workers Benefit Protection Act.

2. **Includes Release of All Employment Law Claims.** Employee understands and agrees that he is also releasing the Company and all other Released Parties from all rights and claims that may be asserted under any applicable local, state, federal, statutory or common law relating to discrimination in employment including, without limitation, discrimination relating to race, color, sex, religion, national origin, handicap, disability, equal pay, age and retaliation discrimination and including claims under Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, Fair Labor Standards Act, Equal Pay Act, the Americans with Disabilities Act, 42 U.S.C. §§ 1981, 1983 and 1985, the Employee Retirement Income Security Act, Worker's Compensation laws, the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Family and Medical Leave Act, the Kansas Act Against Discrimination, the Kansas Age Discrimination Act, libel, slander, defamation, invasion of privacy, outrageous conduct, intentional or negligent infliction of emotional distress, respondent superior, negligent hiring or retention, and all other laws and ordinances which are meant to protect workers in their employment relationships and under which Employee may have rights and claims.

F. **Return of Company Property.** Employee agrees to surrender to the Company, prior to September 30, 1998, all Company records and property in his possession, either on or off Company premises, including all documents, notes, records and computer files obtained by him, or created or obtained by him in his capacity as an officer or employee, and all copies thereof. Employee may retain copies of any such documents only with express written consent of the Company as provided on or after September 30, 1998. Company will provide Employee with the cellular telephone presently assigned to Employee, and relinquish all ownership rights in such cellular telephone equipment, upon the effective date of his retirement, provided that Employee shall thereafter be solely responsible for any charges, fees and expenses related to such cellular telephone or account on and after such date.

G. **Non-Admission of Liability.** Employee further understands and agrees that neither this Agreement nor any action taken hereunder is to be construed as an admission by the Company or any other Released Party that it has violated any applicable local, state, federal, statutory or common law.

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**H. 21 Days to Consider this Agreement and Release and Seven-Day Revocation Period.** Employee acknowledges that he has been given a period of at least 21 days in which to consider this Agreement. Employee understands that he has the right to revoke this Agreement by giving written notice of revocation to David C. Wirtig, President and Chief Executive Officer, during the seven-day period after he signs this Agreement. This Agreement shall not become effective or enforceable, and no such payments or benefits hereunder shall be payable to Employee, until the seven-day revocation period has expired.

**I. Confidentiality of Agreement.** Employee agrees to keep the terms and conditions of this Agreement confidential, except where such terms and conditions are required to be revealed by administrative regulation or any order of a court or administrative tribunal or to be utilized by any accountant, lawyer, tax consultant or other advisor necessary to render advice about Employee's taxes or for financial planning, estate planning or similar purposes.

**J. Breach of Agreement.** In the event that Employee breaches any provision of this Agreement in any material respect, including but not limited to paragraphs D, E, F or I, or any subparagraphs thereof, all payments and amounts in excess of those due under the plans for which Employee was eligible and vested prior to the date of this Agreement, including the enhanced Executive Salary Continuation payments referred to in paragraph B.4., shall be forfeited by Employee, and the Company shall be additionally entitled to any other remedies provided by law; provided that Company shall first give Employee thirty (30) days prior written notice so that Employee may cure any such breach, if curable. Neither party shall seek judicial or administrative resolution of any dispute or alleged breach arising hereunder, other than Employee's alleged breach of subparagraphs 1 or 2 of paragraph D, without first providing the other party at least ninety (90) days prior written notice thereof (which shall include the thirty (30) days notice described in the preceding sentence) and entering into good faith negotiations for the amicable resolution of such dispute. The failure of the Company to enforce any provision of this Agreement shall not constitute a waiver by the Company of any right it has under this Agreement.

**K. Use of Headings.** Employee understands and agrees that the headings in this Agreement have been inserted for convenience of reference only and do not in any way restrict or modify any of its terms or provisions. Employee further agrees that the terms of this Agreement were negotiated in good faith between the parties and any interpretation of the words, terms or conditions herein shall be made without reference to which party drafted this Agreement.

**L. Entire Agreement.** This Agreement constitutes the full, complete and entire Agreement of the parties. There are no representations, promises, or agreements, whether express or implied, that are not set forth in this Agreement with the exception of such benefit plans as are specifically referenced herein. The terms of this Agreement are contractual and not a mere recital. In making this Agreement, the parties rely wholly upon their own judgment, belief and knowledge and the advice of their respective legal counsel. All executed copies, whether signed in counterparts or otherwise, or duplicate originals, are equally admissible in evidence.

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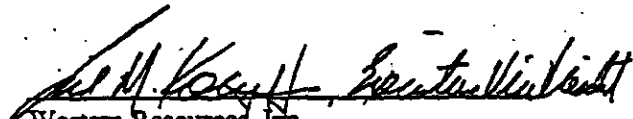
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M. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Kansas, to the extent not preempted by federal law.

N. **Read, Understand and Voluntarily Signed Agreement.** Employee states that he has been advised to consult with an attorney prior to signing this Agreement. Employee acknowledges that he has read this Agreement and understands it. Employee states that he has signed it voluntarily.

  
\_\_\_\_\_  
Steven L. Kitchen

Sept. 30, 1998  
Date

  
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Western Resources, Inc.

30 September 1998  
Date

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