March 28, 2008

SENSITIVE

Thomasenia P Duncan, Esq
General Counsel
Federal Election Commission
999 E Street, N W
Washington, DC 20463

Re: MUR 5976

Dear Ms Duncan

Please find enclosed a response to the February 25, 2008 complaint filed by the Democratic National Committee This Response is filed jointly on behalf of Senator John McCain and John McCain 2008, Inc (Joseph Schmuckler, Treasurer)

I am honored to be joined on this Response Brief by Charles Fried, Beneficial Professor of Law at Harvard Law School and a former Solicitor General of the United States, and Thomas Merrill, the Charles Keller Beekman Professor of Law at Columbia University and a former Deputy Solicitor General of the United States Both Professor Fried and Professor Merrill are participating in this representation in their individual capacities and not on behalf of their Law Schools or Universities Additionally, an Opinion of Counsel is appended hereto from Professor Jonathan Macey, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law at Yale University Professor Macey offers his expert Opinion on this Matter's banking and securities law issues in his personal capacity and not on behalf of Yale Law School

Should you have any questions concerning this Response, please feel free to contact either me or Todd Steggerda, Chief Counsel to John McCain 2008

Sincerely,

Trevor Potter
General Counsel
John McCain 2008

RESPONSE OF JOHN MCCAIN AND JOHN MCCAIN 2008, JOSEPH SCHMUCKLER AS TREASURER, TO COMPLAINT IN MATTER UNDER REVIEW 5976

INTRODUCTION

There can be no speech without the expenditure of resources The United States Supreme Court recognized this fundamental truth in Buckley v Valeo, ruling that just as the First Amendment does not allow limitations on the content or quantity of speech, it does not countenance limitations on expenditures by the speaker in aid of that speaker's speech Buckley v Valeo, 424 U S 1 (1976) This is a foundational First Amendment truth and it applies most urgently to political speech—the Amendment's core Through all the vagaries and varieties of pronouncements on campaign finance issues since Buckley, the Court—though often invited to do so—has never retreated from this position See, e g , Randall v Sorrell, 548 U S 230 (2006) The public financing regime does not contradict this established premise because it is entirely voluntary Now comes the Democratic National Committee (the "DNC") and seeks to entrap Senator John McCain and John McCain 2008, Inc (collectively, "Respondents" or "McCain Campaign") into spending limits through a series of baseless and vague arguments without any legitimate constitutional foundations Yet, even if such a misguided approach to constitutional rights were appropriate, it would fail on its own terms

The principal hook by which the DNC hopes to catch the Campaign is the perfectly reasonable provision in the campaign finance laws that require a candidate who receives public funds from the U S Department of the Treasury (the "Treasury Department") to stay within specified expenditure limits But in this case, neither the Campaign, nor any Campaign creditor, has ever accepted a single penny from the Treasury Department Nor has the Campaign ever pledged federal matching-funds certifications as security for private financing, which further undermines the DNC's baseless suggestion that the expenditure limits remain in force To the contrary, the Campaign entered into an agreement with a private lender that purposely avoided pledging matching-funds certifications as security Although that agreement included a conditional and unfulfilled covenant that the Campaign would, on the happening of certain events—events that never occurred—later seek public matching funds and pledge those funds as collateral if it were found to be eligible for them, a private contract that does not in fact cause or result in a pledge of matching-funds certifications as security has no statutory or regulatory implications and, more importantly, cannot force the Campaign to forsake its First Amendment rights

The DNC's other arguments are similarly without merit Though the Campaign, like every political actor, has a constitutional right to stay clear of the public financing system, the DNC wrongly claims that having once contemplated receiving funds and having sought to establish its eligibility for them, the Campaign is now trapped within that system and the associated spending limits—even though it has not accepted any funds from the Treasury Department The DNC's theories on the effect of the Federal Election Commission's lack of quorum are equally flawed Indeed, it is simply wrong as a matter of law to suggest, as the DNC argues here, that the Campaign must now languish in the public finance system and be subject to the expenditure limits thereof on the quantity of political speech because there is at present no Federal Election Commission quorum (and, because of a political impasse, may not soon have a

quorum) rendering the Commission unable to issue its ministerial recognition of the Campaign's decision not to accept public funds.

Any claim that there is a limit on a candidate's expenditures must be evaluated in light of the serious First Amendment concerns this would present In the brief that follows, the Respondents demonstrate how the DNC's arguments, even without consideration of the constitutional difficulties presented, fail on their own terms under principles of campaign-finance, administrative, banking, and contract law

STATEMENT OF FACTS

United States Senator John McCain is a candidate for the office of President of the United States His principal campaign committee is John McCain 2008, Inc (Joseph R Schmuckler, Treasurer) On August 13, 2007, Senator McCain filed with the Federal Election Commission (the "Commission") a Candidate and Committee Agreement and Certification Letter and a Threshold Submission[1] (collectively, "Matching-Funds Application") to establish eligibility for the Presidential Primary Matching Payments Account Act's ("Matching Fund Act" or "Act") public funding program (the "Program") Pub L No 93-443 (1974), 11 C F R § 9033 1 (2007) Senator McCain asked the Commission to determine his eligibility for the Program in order to preserve the option of accepting public funds As was widely reported at the time, the Campaign never committed to accept public funds for the primary election To the contrary, the Campaign publicly announced from the onset of establishing program eligibility that it was merely preserving the option to accept federal funding if it later decided to do so [2]

In subsequent months, the Campaign submitted additional matchable contributions for Commission review and certification By late December 2007, it became clear that the U S Senate would neither confirm the President's Commission nominees, nor allow him to make recess appointments over the year-end holidays As a result, the Commission knew it would be left without a quorum and unable to take official actions concerning Matching Fund Act payments Accordingly, the Commission on December 19, 2007, while still in possession of a quorum, issued to the Treasury Department a certification of the Campaign's eligibility to "receive payment from the Presidential Primary Matching Payment Account "[3] Notably, the

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[1] McCain Candidate and Committee Agreement and Certification Letter and Threshold Submission (Aug 13, 2007) (attached hereto as Exhibit 1)

[2] See, e g., The Day in Politics, Star-Ledger (New Jersey), Aug 29, 2007 (Communications Director Jill Hazelbaker stated that "[w]e have not made a final decision, but we are doing what's necessary should we decide to opt into the matching fund system "), Brian C Mooney, Obama Fund-Raising Blazes 3d-Quarter Trail GOP's Thompson Also Makes Strides, Boston Globe, Oct 2, 2007 ("spokeswoman Jill Hazelbaker said no decision has been made about formally opting into the public funding system"), FOX News Sunday (Fox News Chanel television broadcast Oct 21, 2007) (WALLACE "Are you going to accept federal matching funds?" MCCAIN "We haven't made that decision yet, and it's not a decision we need to make immediately We can continue to consider all options "), American Morning (CNN television broadcast Oct 23, 2007) ("KIRAN CHETRY "All right So that at this point, you are not going to be taking federal matching funds?" MCCAIN "We haven't made a decision We'll make a decision Stay tuned ")

[3] Federal Election Commission, Notice of Certification (Dec 19, 2007) (attached hereto as Exhibit 2)

Treasury Department had previously announced that the Matching Funds Account balance was not likely to be sufficient to make any payments to eligible candidates until March 2008 [4]

On February 6, 2008, after having won the New Hampshire, South Carolina, and Florida Republican primaries, and having substantially prevailed in the "Super Tuesday" primaries, Senator McCain notified the Commission that he was withdrawing his Matching-Funds Application from the primary public funding system and would not accept any public funds for the primary election period [5] In so doing, Senator McCain accurately represented that the Campaign had neither accepted any funds from the Treasury Department, nor pledged any matching-funds certifications as security for a bank loan By letter dated February 7, 2008, the Campaign informed the Treasury Department that it had withdrawn the Matching-Funds Application from the Program and would not accept public funds for the primary election [6]

On February 19, 2008, Commission Chairman David Mason sent a letter to Senator McCain indicating that the Commission would consider Senator McCain's February 6 withdrawal notice "at such time as it has a quorum" [7] Chairman Mason also asked for information concerning a line of credit that the Campaign had obtained months earlier, and had accurately disclosed through appropriate filings In his February 19 letter, Chairman Mason invited Senator McCain to "expand on [Senator McCain's] rationale" for concluding that neither he nor the Campaign had pledged matching-funds certifications as security for private financing [8] Chairman Mason's request was apparently prompted by press reports concerning the Campaign's line of credit from Fidelity Bank & Trust

The private financing at issue in Chairman Mason's letter was a $3 million line of credit negotiated in November 2007 with Fidelity & Trust Bank of Bethesda, Maryland (the "Bank") This line of credit was negotiated and executed in the normal course of the Bank's business [9] on November 14, 2007 pursuant to three principal documents a Business Loan Agreement (the "Loan Agreement"), a Commercial Security Agreement (the "Security Agreement"), and a Promissory Note (the "Note") (collectively, the "Loan Documents") [10] Under the Loan Documents, the Bank required certain collateral and other assurances that funds loaned to the Campaign would be repaid On December 17, 2007, the Campaign and the Bank executed a Loan Modification Agreement pursuant to which the line of credit was increased from $3 million to $4 million [11] On March 20, 2008, the Campaign repaid to the Bank all funds borrowed pursuant to the Loan

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[4] Press Release, Federal Election Commission, FEC Approves Matching Funds for 2008 Candidates (Dec 20, 2007), available at www fec gov/press/press2007/20071207cert shtml

[5] Letter from John McCain, U S Senator, to Federal Election Commission (Feb 6, 2008) (attached hereto as Exhibit 3)

[6] Letter from Trevor Potter, General Counsel, John McCain 2008, Inc , to U S Treasury (Feb 7, 2008) (attached hereto as Exhibit 4)

[7] Letter from David Mason, Chairman, Federal Election Commission, to John McCain, U S Senator (Feb 19, 2008) (Attached hereto as Exhibit 5)

[8] Id

[9] Barry Watkins Aff ¶ 3 (attached hereto as Exhibit 6)

[10] Loan Documents (Nov 14, 2007) (attached hereto as Exhibit 7)

[11] Loan Modification Agreement (Dec 17, 2007) (attached hereto as Exhibit 8) [hereinafter Loan Modification Agreement]

The Loan Documents and the Loan Modification Agreement embodied the Bank's and the Campaign's (collectively, the "Parties") express agreement and intent that the Campaign was not pledging matching-funds certifications as security for the line of credit The Security Agreement (in original and modified form)—the document through which security interests in the loan transaction were intended to be, and were in fact, created—expressly excluded from the description of "collateral" any and all certifications of matching funds Specifically, the original Security Agreement excluded "any certifications of matching fund eligibility, including related rights, currently possessed by [the Campaign] or obtained before January 1, 2008" as collateral for the line of credit [12] Likewise, the modified Security Agreement stated "any certifications of matching fund eligibility, including related rights, now held by [the Campaign] are not themselves being pledged as security for the Indebtedness and are not themselves collateral for the Indebtedness or subject to this Security Agreement"[13] The Parties' intent was likewise embodied in the Loan Agreement (in original and modified form), which also specifically excluded matching-funds certifications from the description of "collateral" According to the original Loan Agreement, "It is expressly understood and agreed that 'Collateral' specifically excluded any certifications of matching fund eligibility currently possessed by Borrower or obtained before January 1, 2008"[14] Similarly, the modified Loan Agreement stated as follows

> It is expressly understood and agreed that "Collateral" specifically excludes any certification of matching fund eligibility now held by Borrower and/or John McCain and any right, title and interest of Borrower and/or John McCain to receive payments thereunder [15]

The Loan Modification Agreement further clarified that these certifications were not pledged as collateral, plainly excluding as such "any right, title and interest of [the Campaign] and/or John McCain to receive payments" under the matching-funds certifications [16]

Three other provisions of the Loan Documents addressed the matching-funds certifications, but none of them created a security interest in them First, the Parties agreed that the Campaign could grant a security interest in the new matching-funds certifications for the line of credit in the future, but only if certain conditions first occurred and a separate agreement was executed Specifically, if Senator McCain had withdrawn from the Program before December 31, 2007 and failed to win or place within at least 10 percentage points of the winner in the New Hampshire primary (or the next primary or caucus, pursuant to the modified Loan Agreement), then the Loan Agreement required the Campaign to reenter the Program and then grant to the Bank a security interest in its new matching funds [17] However, these conditions precedent never occurred Second, the Campaign promised that it would not transfer, grant a security in, or otherwise encumber the public matching-funds certifications to or for the benefit of any other

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[12] Security Agreement, at 1 (Nov 14, 2007) [hereinafter Security Agreement]
[13] Security Agreement, at 1 (Nov 14, 2007) (as modified on Dec 17, 2007) (emphasis added) [hereinafter Security Agreement (as modified)]
[14] Loan Agreement, at 5 (Nov 14, 2007) [hereinafter Loan Agreement]
[15] Loan Agreement, at 5 (Nov 14, 2007) (as modified on Dec 17, 2007) (emphasis added) [hereinafter Loan Agreement (as modified)]
[16] Id. at 5
[17] Id. at 2

person or entity [18] Third, the Loan Agreement required that the Campaign not, without the Bank's prior consent, exceed the Program's spending limits, irrespective of whether the Campaign was subject to the Program as of any applicable date of determination [19] Neither the Bank nor the Campaign intended to create a security interest in any matching-funds certifications pursuant to these provisions [20]

On February 25, 2008, the Campaign's General Counsel responded to Chairman Mason's February 19 letter, with, among other things, a letter from the Bank's counsel, confirming that the certifications had not been pledged as collateral for the Campaign's line of credit The Bank's counsel stated

> [T]he bank does not now have, nor did it ever receive from the Committee, a security interest in any certification for matching funds Any finding or determination to the contrary would be wholly inconsistent with the language of the loan documents, the intent and understanding of the parties and basic principles of banking, security, and uniform commercial code law [21]

The DNC filed the present complaint with the Commission on February 28, 2008

ARGUMENT

I. THE MATCHING-FUNDS PROGRAM'S SPENDING LIMITS DO NOT APPLY TO THE MCCAIN CAMPAIGN

A. Senator McCain has a Constitutional Right to Withdraw From the Primary Matching-Funds Program

The U S Supreme Court in Buckley v Valeo recognized a candidate's constitutional right to spend unlimited funds on election activities, holding that the "First Amendment requires the invalidation of ceilings on overall campaign expenditures " Buckley v Valeo, 424 U S 1, 58 (1976) The Buckley Court was faced with two sets of spending limits One set was automatically imposed on all presidential candidates and the other was accepted voluntarily by candidates in conjunction with public funding Federal Election Campaign Act Amendments of 1974, Pub L 93-443 § 404(a) (Oct 15, 1974) The Court overturned the generally applicable spending limits because they restricted candidates' First Amendment rights The Program's spending limits were upheld, but only because they were voluntary [22] It is for this reason that the Matching Fund Act and its implementing regulations do not impose any restrictions on a

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[18] Id at 3
[19] Id at 4
[20] Richard Davis Aff ¶ 6 (attached hereto as Exhibit 9), Watkins Aff ¶ 8
[21] Letter from Trevor Potter, General Counsel, John McCain 2008, Inc , to David Mason, FEC Chairman (Feb 25, 2008) quoting Letter from Matthew S Bergman and Scott E Thomas, Attorneys, Dickstein Shapiro LLP, to Trevor Potter, General Counsel, John McCain 2008, Inc (Feb 25, 2008) (emphasis added) (attached hereto as Exhibit 10)
[22] Buckley directly compared a candidate's decision to participate in the public funding system to a candidate's choice to "voluntarily limit the size of contributions he chooses to accept"—a determination made solely by the candidate Id at 57 n 65

candidate's ability to voluntarily withdraw from the Program The Commission itself has expressly recognized that the Program must remain voluntary to be constitutional As the Commission emphasized in its Gephardt Advisory Opinion ("Gephardt" or "Gephardt Opinion"), it is the voluntary nature of the Program that is so fundamental

> The Supreme Court held that the voluntary nature of all of the public funding programs permits the related expenditure limits, while simultaneously striking down expenditure limits that were not voluntarily accepted as part of a public funding program Fed Election Comm'n Adv Op 2003-35 at 3 (Gephardt), available at http //saos nictusa com/aodocs/2003-35 pdf (emphasis added) [hereinafter Gephardt]

Unless the Program affords presidential candidates a voluntary decision to participate—and, more fundamentally, not to participate—its spending limits are indistinguishable from those invalidated by Buckley and its structure is unconstitutional Common Cause v Schmitt, 512 F Supp 489, 495 (D C 1980) ("Candidates, the constitutional rationale goes, are permitted to forgo their own right to private contributions and unlimited expenditures in exchange for (exclusive) financing from the public coffers This is a voluntary decision made by the candidate, presumably, because the candidate believes that his or her political communication is enhanced by public funding, even given the restrictions ") Accordingly, Senator McCain has a constitutional right not to participate in the Program, and may therefore decide to accept or reject public funds after individually weighing each action's consequences Republican Nat'l Comm v Fed Election Comm'n, 487 F Supp 280, 286 (1980) (in upholding the Presidential Election Campaign Fund portion of the presidential public funding program the Court said, "the candidate has a legitimate choice whether to accept public funding and forego private contributions") (summarily aff'd 445 U S 955 (1980)) See generally, Rosenstiel v Rodriguez, 101 F 3d 1544, 1549 (8th Cir 1996), Vote Choice v DiStefano, 4 F 3d 26 (1st Cir 1993)

B. The McCain Campaign Never Accepted Matching Funds, Which is the Constitutional and Regulatory Trigger for Application of Program Spending Limits

The McCain Campaign never received or accepted matching funds Nor does the DNC allege that it did Under the statutory and regulatory confines of the Program's legal framework and the principles of Buckley v Valeo embodied therein, this undisputed fact means that the Campaign is not bound by the Program's spending limits It is a necessary corollary of Buckley that a candidate voluntarily binds himself to spending limits only through the receipt of associated matching funds "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations " Buckley, 424 U S at 57 (emphasis added) Thus, the import of Buckley is that (a) a candidate's decision to participate in the Program must be voluntary, and (b) a candidate surrenders his constitutional right to unlimited spending only if he receives public

funds See Buckley, 424 U S at 95 ("[A]cceptance of public financing entails voluntary acceptance of an expenditure ceiling ")[23]

Consistent with Buckley, the Commission's regulations make clear that spending limits do not apply to a candidate unless that candidate has actually received public funds under the Program

> The expenditure limitations of 11 CFR 9035 1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period 11 CFR § 9035 1(d) (2007) (emphasis added)

Accordingly, under section 9035 1(d) of the regulations and in step with the principles underlying Buckley, spending limits are not applicable to the Campaign because it never accepted public funds under the Program

C. Commission Practice Has Been to Recognize that Candidates May Withdraw Prior to the Receipt of Federal Funds

In the past, the Commission has faithfully administered the Program in compliance with Buckley by recognizing the Program's voluntary nature Neither its action nor inaction has ever impeded the withdrawal of any candidate's matching-funds application In fact, it has limited its involvement to simply recognizing candidates' withdrawals and notifying the Treasury Department of candidates' consequent ineligibility In the only available interpretation by the Commission of its role in the withdrawal process, the Commission in its Gephardt Opinion said it would simply "withdraw a certification of a candidate's eligibility to receive Matching Payment Act funds prior to the payment date upon receipt of a written request by the candidate" under normal circumstances Gephardt at 4 (emphasis added) Gephardt's "holding", then, prescribes at most a purely ministerial role for the Commission in recognizing an eligible candidate's ultimate refusal to participate in the Program Indeed, Congressman Gephardt was told the Commission would process his withdrawal in one business day—just long enough to "deliver a certification withdrawal to the Secretary of Treasury prior to his issuance of payments " Id Consistent with Buckley, past Program participants have established matching-funds eligibility and elected subsequently to refuse public funds Gephardt at 3 ("The Commission's previous resolution of similar issues is consistent with permitting rescissions prior to the payment of any Matching Payment funds ") Then-presidential candidate Howard Dean was declared eligible to participate in the Program in June 2003, but declined public funds on

[23] Statutory provisions and legislative history also speak of the receipt of public funds as the moment when a candidate's voluntary commitment to the Program's spending limits becomes binding See Republican Nat'l Comm., 487 F Supp at 285 ("Here the conditions imposed by Congress upon receipt of public campaign financing do not infringe upon the First Amendment rights of candidates ") (emphasis added) (summarily aff'd, 445 U S 955 (1980)) See also H R Rep No 94-1057, at 54 (1976) (Conf Rep), reprinted in 1976 U S C C A N 946, 969 ("The remaining provisions of this section transfer into the Act those provisions of 18 U S C 608 which imposed expenditure limitations on presidential candidates, conditioning their application, in accordance with the Supreme Court's decision in Buckley v Valeo, upon the acceptance of public financing ")

November 12, 2003.[24] Similarly, Republican Elizabeth Dole withdrew her matching-funds application on December 17, 1999 after qualifying earlier that year.[25] Commission precedent has thus established a ministerial role for the Commission that carefully preserves candidates' autonomy as outlined in Buckley.

Nothing should fundamentally alter the Commission's normal practice here. Moreover, its current lack of quorum is not cause to depart from Commission precedent or from Buckley's mandate of a voluntary program. Senator McCain's right to not participate in the Program is equal to that of past candidates. He contemplated participating in the Program, and qualified through the eligibility process in order to be able to do so, but eventually exercised his right to voluntarily withdraw his Matching-Funds Application. His February 6, 2008 withdrawal letter was therefore effective, at the latest, "upon receipt" by the Commission unless Senator McCain had actually received public funds under the Program any time prior to his withdrawal, which he had not. Had a Commission quorum existed on February 6, 2008, doubtless the Commission's exercise of its ministerial role would have closely mirrored the Commission's two-day processing of Elizabeth Dole's withdrawal: the Treasury Department would have been informed forthwith that Senator McCain was no longer entitled to receive federal matching funds due to his withdrawal from the Program.[26]

D The McCain Campaign Did Not Grant a Security Interest in Matching-Funds Certifications

The DNC argues, without basis, that Senator McCain "pledged matching funds as collateral for a loan to his campaign," and has therefore surrendered his constitutional right to voluntarily withdraw from the Program. In so arguing, the DNC incorrectly relies on language in the Gephardt Opinion that discusses pledging matching-funds certifications as "security for private financing."

The DNC Complaint attempts to make much of the fact that the Gephardt Opinion states, as a factual condition precedent, that Congressman Gephardt had not pledged the certifications his campaign had received from the Commission as collateral for a private loan. Complainant DNC completely misconstrues the reasons this was relevant to the Commission, and suggests that the Commission created a new standard that would restrict withdrawal of an eligibility application for the matching funds system. Even apart from its constitutional shortcomings,[27] the

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[24] Letter from Howard Dean, presidential candidate, to Ellen Weintraub, FEC Chair (Nov. 12, 2003) (hereinafter Dean Letter) (attached hereto as Exhibit 11).

[25] Letter from Elizabeth Dole, U.S. Senator to Scott Thomas, FEC Chairman (Dec. 17, 1999) (hereinafter Dole Letter) (attached hereto as Exhibit 12).

[26] Elizabeth Dole's letter was received by the Commission on December 20, 1999. The Commission notified Treasury of her withdrawal on December 22, 1999. See Dole Letter; Fed. Election Comm'n, The Record 6 (Feb. 2000), available at http://www.fec.gov/pdf/record/2000/feb00.pdf.

[27] The statement in Gephardt regarding the pledge of certifications as collateral in no way represents a constitutionally permissible barrier to voluntary withdrawal from the program. The quid pro quo theory embodied in the Act and the Buckley and the Republican Nat'l Comm. decisions forbids such limitation. Provided public monies have not been released, the government has provided no "quid" that can be used to extract a regulatory "quo." The only relevant event for purposes of triggering the restrictions on expenditures and other legal limitations is the acceptance of public funds. Private agreements that take place in anticipation of such a release have no

DNC's interpretation is contrary to both the language and likely purpose of this phrase in the Gephardt Opinion (and ignoring the fact that the Commission can only lawfully establish a new regulatory standard through a notice and a comment rulemaking, not through an Advisory Opinion)[28]

The more likely reason the Commission noted a bank's lack of security interest in Congressman Gephardt's certifications was that its regulations prescribe certain procedures to pledge matching-funds certifications as security Under 11 C F R § 100 82, a loan secured by primary matching-funds certifications satisfies the Commission's loan security requirements when

> (iv) The Loan agreement requires the deposit of the public financing payments, contributions, and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement, and
>
> (v) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt 11 C F R § 100 82(e)(2)(iv)-(v) (2007)

These procedures appear to protect the Secretary of the Treasury when public financing payments have been pledged as a security interest By requiring that public financing payments be placed in a separate depository account when such payments collateralize a loan, the regulations assure that the Treasury Department does not face uncertainty about who is entitled to receive the payments It is logical, then, that the Commission recognized these practical implications when it authored the Gephardt Opinion[29] Nevertheless, the language has no applicability to the current Complaint in any event because (as explained in detail below) both the Bank and the McCain Campaign agree there was no such security interest

The Loan Documents, reflecting the Parties' clear intent, did not create any security interest in any matching-funds certifications Under Maryland law, which the Parties agreed would govern the loan transaction and which is based on the Uniform Commercial Code, a security interest is "an interest in personal property or fixtures that secures the payment or performance of an obligation " U C C § 1-201(b)(35) (2008) Moreover, "[the creditor] cannot

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bearing on the relationship between the government and the candidate, which is the sole basis for identifying a quid pro quo

[28] See 2 U S C § 437f(b) (2008) ("Any rule of law which is not stated in this Act or in chapter 95 or 96 of Title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title ")

[29] Alternatively, the statement could merely be a recapitulation of the facts, in dicta, that had been presented to the Commission for purposes of rendering the advisory opinion The Gephardt committee had stated that "the Commission's certification will not be pledged as security for any loan during the Committee's reconsideration of its participation in the Matching Payment Act's public funding program " Gephardt at 2 Advisory opinions are generally couched in terms of the facts presented by the party seeking the opinion But the recitation of those facts does not mean that they become legal requirements binding on subsequent parties

have an enforceable security interest where there is no security agreement signed by the debtor" Tilghman Hardware v Larrimore, 628 A 2d 215, 219 (Md 1993) A security agreement must not only evidence the Parties' intent to create a security interest in an item of property that is clearly defined, the agreement must also include the debtor's specific grant of a security interest to the secured party Id at 399-401 Indeed, the "granting words" are the sine qua non of the security agreement—"necessary to indicate the intention of the parties to create a security interest, and in the absence of such words, it seems rather clear that the parties did not intend to create a security interest" Id

The Loan Documents included a Security Agreement, and its operable provision expressly excluded from the grant any and all interest in public matching funds, as follows

> GRANT OF SECURITY INTEREST For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that the Lender shall have the rights stated in this agreement with respect to the Collateral in addition to all other rights that Lender may have by law
>
> COLLATERAL DESCRIPTION The word "Collateral" as used in this Agreement means inventory, equipment, accounts [and other property] Grantor and Lender agree that any certifications of matching funds eligibility, including related rights, now held by [the Campaign] are not themselves being pledged as security for the Indebtedness and are not themselves collateral for the Indebtedness or subject to this Security Agreement [30]

The Parties' intent was also plainly embodied in the Loan Agreement, which likewise excluded matching-funds certifications from the description of "Collateral" "It is expressly understood and agreed that 'Collateral' specifically excludes any certifications of matching fund eligibility now held by Borrower and/or John McCain and any right, title and interest of Borrower and/or John McCain to receive payments thereunder"[31] Here, the Parties unambiguously expressed their intent to exclude matching-funds certifications from the Security Agreement's operative grant, so the Loan Documents are properly not subject to any alternative interpretation See Canaras v Lift Truck Services, Inc , 322 A 2d 866, 873 (Md 1974) ("Where a contract is plain and unambiguous there is no room for construction and it must be presumed that the parties meant what they expressed") The fact that the Parties did not, and did not intend to create any security interest in any matching-funds certifications is confirmed by Jonathan Macey, Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law at the Yale Law School and an independent expert in banking law who, upon examining the

[30] Security Agreement (as modified), at 1 (emphasis added) Even prior to modification, the definition of "Collateral" in the Security Agreement specifically excluded, in substantially similar form, matching fund certifications Security Agreement, at 1

[31] Loan Agreement (as modified), at 5 (emphasis added) Even prior to modification, the definition of "Collateral" in the Loan Agreement specifically excluded, in substantially similar form, matching fund certifications Loan Agreement, at 5

loan transaction and all of its underlying documents, concluded that the Loan was "at no time secured by matching funds certificates"[32]

The DNC's suggestion that the Campaign "made a current pledge and encumbrance of future rights to receive funds" through the Loan Document language that describes the excluded certificates as those "now held"[33] is misguided in law and in fact Among other fundamental shortcomings, it is simply not possible, as a matter of commercial law, to create a valid security interest by implication See Haft v Haft, 671 A 2d 413, 417 (Del Ch 1995) ("[I]t is elementary that the intention necessary to form a contract is not found in the private subjective mental state of either of the parties") As explained more fully in the attached expert opinion letter of Professor Macey, the DNC's argument that the Loan Documents' silence as to future entitlements somehow implies that future certifications are included as collateral is "logically flawed and at odds with the Uniform Commercial Code"[34]

Moreover, the Bank's attorneys at Dickstein Shapiro LLP stated unequivocally that the Bank never received a security interest in matching-funds certifications, before or after the date of the Loan Documents

> [T]he bank does not now have, nor did it ever receive from the Committee, a security interest in any certification for matching funds Any finding or determination to the contrary would be wholly inconsistent with the language of the loan documents, the intent and understanding of the parties and basic principles of banking, security, and uniform commercial code law[35]

Instead, the Bank and the Campaign understood that "[a]ny certifications of matching funds eligibility, including related rights, now held" included any certification the Campaign held or was to receive based on all submissions for funds during the Campaign's period of eligibility in the Program (Hence the inclusion of the words "related rights") As the President of the Bank states in his attached affidavit,

> At the time when each of the Loan Documents was executed and delivered by the Campaign, the Bank intended to expressly exclude any present and future right of the Campaign to Matching Funds as collateral for the Loan, notwithstanding any date reference pertaining to when certifications for Matching Funds might come into being The reason why the Loan Documents stated that the exclusion (from collateral for the Loan) applied to Matching Funds entitlements 'now held' (as opposed to 'now held or hereafter acquired') was because the Bank's attorneys advised the Bank to

[32] Expert Opinion, Professor Jonathan Macey 1 (March 14, 2008) (hereinafter Macey Opinion) (attached hereto as Exhibit 13)
[33] FEC Complaint, Democratic National Committee 5 (Feb 25, 2008) (hereinafter DNC Complaint)
[34] Macey Opinion 5
[35] Letter from Matthew S Bergman and Scott E Thomas, Attorneys, Dickstein Shapiro LLP, to Trevor Potter, General Counsel, John McCain 2008, Inc (Feb 25, 2008) (emphasis added) (attached hereto as Exhibit 10)

> do so, in order to avoid any inconsistency within the Loan Documents that could arguably arise pursuant to the 'Additional Requirement' section of the Loan Documents [36]

Thus, the Parties intended to exclude from collateral any present and future right of the Campaign to matching-funds certifications, regardless of when those certifications came into existence [37]

Similarly, the DNC misconstrues language in the "Additional Requirements" section of the Loan Agreement as allegedly creating a "present encumbrance, however conditional, of the Campaign's future interest in any entitlement to matching funds "[38] The Campaign did agree to reapply to the Program and separately grant to the Bank a security interest in any future matching-funds certifications it might obtain but only in the event that the Campaign withdrew from the Program in 2007 and then lost the New Hampshire primary election by more than ten points (and made a similar promise in the December 17 Loan Modification Agreement), but that conditional promise did not create a security interest At most, the language contractually bound the Campaign to do something in the future, should the conditions precedent occur (which they did not) While failure to perform this obligation could possibly create an action against the Campaign for breach of contract, this does not transform the promise into a security interest Professor Macey confirms this conclusion, stating that

> [The DNC's] interpretation of the text confuses an agreement to potentially grant a security interest in the future with the actual granting of a security interest On the contrary, by discussing the agreement to possibly grant [the Bank] a security interest in the future, the text instead reaffirms that the Campaign had not already granted [the Bank] a security interest in this part or any other part of the agreement [39]

This same analysis applies to the contractual provisions that prevent the Campaign from exceeding the Program's spending limits or prevent it from granting a security interest in the matching funds certifications to anyone else These are contractual obligations which give additional protection to the Bank, but cannot give rise to a security interest, as they do not contain the requisite granting language Moreover, they do not, as the DNC Complaint erroneously asserts, lead to the conclusion that an implied security interest has arisen

The Loan Documents' language is clear and explicit on this score Even if it were not, the law is clear that "if the language under consideration is ambiguous or uncertain the court must then determine the intention of the parties " Canarsa, 322 A 2d. at 874 Notably, as the affidavits of officers from both the Campaign and the Bank make plain, the Parties' intent was to secure the subject loan with every asset of the Campaign except matching-funds certifications [40] This is hardly surprising, given that both the Campaign and the Bank relied upon experienced

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[36] Watkins Aff ¶7
[37] Id., Davis Aff ¶6
[38] DNC Complaint 5
[39] Macey Opinion 3
[40] Davis Aff ¶4, Watkins Aff ¶5

election law counsel advising as to the prudence—under the most conservative interpretation of existing guidance, including the Gephardt Opinion—of excluding the matching-funds certifications from the loan collateral in order to preclude even a potential argument that the Campaign had somehow foreclosed its right to voluntarily withdraw from the Program [41]

E. The McCain Campaign Is Not Bound, Under a Contract Law Theory, To Accept Matching Funds (and Comply with Associated Spending Limits) Merely By Establishing Program Eligibility or By Submitting the Candidate Agreement Letter

The McCain Campaign did not commit itself to accept public funds and comply with the Program's spending limits simply by establishing eligibility for the Program Yet, the DNC wrongly equates the Matching-Funds Application and the establishment of Program eligibility with the actual acceptance of public funds, as if those events were constitutionally equivalent under Buckley [42] Its argument, then, is that establishing eligibility itself is sufficient to forever bind a candidate to the Program and to its spending limits Buckley forbids this result As discussed, the Program must be voluntary And the Program is not voluntary if a candidate must irrevocably tie himself to spending limits merely to ask the Commission if he is qualified to receive public funds By submitting the Matching-Funds Application, the Campaign agreed only to abide by spending limits and other Program conditions if it accepted public funds during the 2008 primary election 11 C F R § 9035 1(d) (2007) ("The expenditure limitations of 11 CFR 9035 1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period ") (emphasis added), see also 26 U S C § 9033(b) (2008) (providing no statutory barrier to withdrawal of eligibility) The Campaign cannot be deemed to have effectively accepted public funds, and therefore be subject to spending limits by only taking steps to establish eligibility to participate in the Program

Seeking credibility for its supposition that the McCain Campaign is bound by virtue of its initial submissions and candidate letter, the DNC relies exclusively—and erroneously—on Gephardt's "binding contract" language, which Gephardt used to discuss the Program's eligibility process Gephardt was quite obviously invoking contractual terms only by way of analogy [43] For example, when Congressman Gephardt asked whether he could defer payment of Program funds, the Commission replied by saying that the Commission and the Treasury

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[41] Because the McCain Campaign made no pledge of a security interest in the matching-funds certifications, the DNC's allegation that the McCain Campaign violated FEC reporting requirements by inaccurately stating on the Schedule C-1 that the collateral for the loan does not include "certification for federal matching funds" or "public financing" is without merit

[42] This is also an argument at odds with the fact that its own Chair, Howard Dean, established eligibility and then withdrew from the Program and its spending limits in the 2004 cycle

[43] Immediately after suggesting that the law of contracts provides the proper lens for viewing the issue, the Commission proceeded to analyze the question whether withdrawal is permitted in light of the voluntary nature of the program and the quid pro quo analysis emphasized in Buckley and Republican Nat'l Comm This analysis yielded the correct conclusion that withdrawal is permitted any time before the funds are released Indeed, given that withdrawal is permitted any time before funds are released, it is mystifying what the Commission meant by referring to the application for funds as creating a "binding contract " As stated, though, the Gephardt Commission viewed the contract-based analysis as nothing more than a useful analogy Gephardt at 3 ("The Committee wishes to reconsider its decision to participate in the Matching Payment Act public funding program and inquires, in effect, whether the Commission would consent to a rescission of this contract ") (emphasis added)

Department "lack[ed] discretion to delay certification of eligible payments or payments of certified amounts" because of statutory requirements Gephardt at 6 ("Thus, the Commission and the Secretary of the Treasury lack discretion to delay certification of eligible payments or payments of certified amounts Consequently, requests for such delays cannot be granted") It correctly made no mention of contractual obligations to Congressman Gephardt or to other presidential candidates The Commission only referenced statutes and regulations because it is bound by statutes and regulations—not contracts—in administering the Program Simply put, if the Commission is not actually bound by a contract in administering the Program, candidates cannot be forced to participate in the Program on the theory that the Commission has not yet "rescinded" a metaphorical contractual obligation

The Commission in Gephardt could not have intended the contractual analogy to be taken literally because under applicable administrative law concepts, an award of matching funds is not performance of a binding contract In administrative law terms, an award of matching funds is a "license", and the process of determining whether a candidate qualifies for such an award is "licensing" See 5 U S C §§ 551(8), (9) (2008) (Administrative Procedure Act definitions of "license" and "licensing") Licensing, in turn, is a type of adjudication See 5 U S C § 551(7) (2008) The license here is a conditional one—it comes with regulatory restrictions attached Candidates know this, and hence they know that when they accept public matching funds they become subject to restrictions on expenditures and other limitations But none of this transforms the mere submission of an application, and the Commission's processing of the application, into a binding contract If this were properly viewed as a binding contract, such that a rescission must be requested and approved by the other party to the contract, then presumably other fundamental contractual rights and remedies would be available, including the right to bring a breach of contract suit against a party unilaterally rescinding a contract Surely the Commission could not, in this case, seek an order of specific performance requiring a candidate to accept matching funds, nor could it sue for damages to recover its administrative costs if Senator McCain had pulled out of a race before receiving public funds Establishing matching-funds eligibility is a public administrative process, not a contractual one

The same would be true with typical licensing at other federal agencies, such as the Federal Communications Commission's (the "FCC") licensing of broadcast rights In that instance, a company applies for a broadcast license with the FCC, and the FCC checks over the application to ensure it is in proper form If the company later decides to withdraw its application, administrative law principles would not dictate that there had been a binding contract created between the company and the FCC To the contrary, if the applicant decided to withdraw the application before it is ruled upon, that would be the end of the matter Government agencies process applications for licenses all the time, and applicants change their mind about whether they want licenses all the time But neither agencies nor courts analyze this process in terms of the law of contracts, and the Commission should not conduct the regulatory analysis through such prism here [44]

[44] Even if this process is analyzed as a contract, where a party has rendered itself (or is otherwise) unable to fulfill a condition of the contract, it thereby releases the other party of the requirement that the condition be met See, e g, Parsons v Bristol Dev Co , 402 P 2d 839, 868 (Cal 1965) ("Each party to a contract has a duty to do what the contract presupposes he will do to accomplish its purpose Thus, '[a] party who prevents fulfillment of a condition of his own obligation cannot rely on such a condition to defeat his own liability'") As such, because

F. The McCain Campaign Is Not Bound to Accept Matching Funds (and Comply with Associated Spending Limits) on Account of Using Program Eligibility for Access to State Primary Ballot or for Other Purposes

The DNC argues that the McCain Campaign received "a material, financial benefit from the certification of eligibility for matching funds through the ability to avail itself of the automatic right of access to the ballot, in some states,"[45] and implies that this "benefit" somehow requires the McCain Campaign to accept matching funds and adhere to spending limitations This argument is simply unfounded Buckley specifically establishes that a candidate is subject to spending limitations only when he has accepted public matching funds Neither Buckley nor any other existing authority supports the DNC's theory that the McCain Campaign is bound to participate in the Program because it obtained what the DNC incorrectly and vaguely designates as some form of "material financial benefit," through the McCain Campaign's use of Program eligibility to obtain access to the primary ballots in select states To be clear, measures used in some states that allow Program-eligible candidates to qualify for presidential-primary ballots are meant to provide states with a convenient method to measure a candidate's electoral strength See, e g , 15 Del Code Ann § 3183 (2008) (directing each political party's chairperson to submit a list of candidates "who have become eligible by the close of business on the preceding day to receive payments from the Presidential Primary Matching Payment Account of the Internal Revenue Code") In essence, states view the matching-funds eligibility application at the federal level (which includes a demonstrated level of financial support across a broad range of states) as a sufficient proxy for electoral strength to qualify such candidates for the primary ballot in that state Notably, in no state utilizing this process does a candidate encumber—or even submit—the actual certifications authorizing him to receive matching funds Rather, the showing is merely one of eligibility, which for the reasons we explained above, do not bind a candidate to the Program, nor subject him to its associated spending limits

II. OFFICIAL COMMISSION ACTION IS NEITHER REQUIRED NOR APPROPRIATE TO EFFECTUATE THE MCCAIN CAMPAIGN'S PROPER WITHDRAWAL FROM THE PROGRAM

As articulated above, the McCain Campaign has a right—and properly exercised that right—to voluntarily withdraw its Matching-Funds Application because it had never received any public funds from the Treasury Department To the extent the Gephardt Opinion is read to suggest that advance FEC approval is required before a candidate can voluntarily withdraw from participation in the Program, as the DNC suggests, such reading is flawed for several reasons Most fundamentally, such a requirement would represent an unconstitutional prior restraint on the exercise of protected free speech rights, given a candidate's First Amendment right to conduct a campaign without spending limits See generally, Buckley, 424 U S 1 No proposition of First Amendment law is more clearly established than that the exercise of protected speech rights cannot be made conditional either on the discretionary approval of an administrative agency, or on an approval process that has no effective time limit See FW/PBS,

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the FEC is unable to fulfill a condition (release the Campaign from the Program) of the contract, it must release the Campaign

[45] DNC Complaint 6

Inc v City of Dallas, 493 U S 215 (1990) (holding that "a prior restraint that fails to place time limits on the time within which the decisionmaker must issue the license is impermissible")

Moreover, even if the Gephardt Opinion is construed as requiring the Commission's approval of withdrawal, and insofar as the Commission is unable to perform what in any event must be no more than the ministerial (bookkeeping) function of ruling on such requests promptly (because it lacks a quorum or otherwise), this violates the candidate's procedural due process rights The ability to conduct one's campaign without spending limits is a significant liberty interest See Bd of Regents v Roth, 408 U S 564, 572 (1972) (protected liberty includes not just freedom from bodily restraint but other rights grounded in the Constitution) A candidate cannot be deprived of such an interest without a timely hearing and decision See Logan v Zimmerman Brush Co , 455 U S 422 (1982) (procedural scheme that allows protected entitlement to be extinguished through administrative delay violates due process) If the administrative scheme, as structured or as administered, fails to provide a timely decision, it effectively extinguishes the liberty interest in question, and does so in a manner that violates both procedural and—because of the core First Amendment interests implicated—substantive due process

Interpreting the Gephardt Opinion as establishing a Commission approval requirement in this regard also defies basic tenets of administrative law The Act clearly distinguishes between rules and regulations, on the one hand, and advisory opinions on the other, and in fact prohibits the establishment of a regulation through an advisory opinion See 2 U S C §§ 437f, 438 (2008) The Gephardt Opinion therefore cannot be invoked as the basis for any requirement not set forth in the Act or in any regulation The statute provides "Any rule of law which is not stated in this Act or in chapter 95 or 96 of Title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 438(d) of this title " Id at § 437f(b) Consequently, insofar as the Gephardt Opinion is construed as either requiring advance Commission approval to withdraw (or, for that matter, as precluding withdrawal when matching funds have been pledged as collateral, or as treating applications for matching funds as binding contracts), the requirements are invalid because they were not adopted through an official rulemaking procedure

For all of these reasons, an affirmative vote of the Commission (at such time as it has a quorum) is not required to effectuate the McCain Campaign's withdrawal from the Program Any interpretation of the Gephardt Opinion that might support such a requirement should be disclaimed to avoid the serious constitutional and statutory issues that such a reading of the Act would present Indeed, there is ample evidence that the Gephardt Opinion did not envision any requirement of an affirmative vote of the Commission before permitting future withdrawals The final sentence of the Commission's analysis states that "the Commission cautions that it must receive any such written request no later than December 30, 2003, to provide the Commission with one business day to deliver a certification withdrawal to the Secretary of Treasury prior to his issuance of payments on the first business day of the Presidential election year " Gephardt at 4 The clear implication is that the action of processing a request to withdraw is purely ministerial, and the Commission has no discretion to deny a written request to withdraw before funds are disbursed This, of course, is entirely consistent with the voluntary nature of the Program and the quid pro quo structure it represents A candidate cannot be forced to apply for

matching funds, and certainly does not need to obtain the Commission's approval before applying for funds Similarly, a candidate cannot be forced to abide by spending limits before public matching funds are received—nor can he be forced to obtain the Commission's approval before withdrawing an application for matching funds

CONCLUSION

Senator McCain properly exercised his right to not participate in the Program He fully retained this right because he never accepted public funds, and is therefore not subject to the Program's spending limits in light of his recent withdrawal Buckley, the Primary Matching Payment Account Act's terms and legislative history, Commission regulations, and past Program withdrawals all establish that to the extent the Commission takes any action on Senator McCain's withdrawal notice, such action must be ministerial in nature only, and given the discussion on the merits described herein, would merely validate the proper withdrawal notice filed with the Commission on February 6, 2008

Respectfully Submitted,

Professor Charles Fried

Professor Thomas Merrill

Trevor Potter
Todd Steggerda
Counsel
John McCain 2008, Inc

28044212838

August 13, 2007

The Honorable Robert D Lenhard, Chairman
Federal Election Commission
999 E Street, NW
Washington, D C 20463

Dear Chairman Lenhard

As a candidate seeking to become eligible to receive Presidential primary matching funds, I certify and agree to the following provisions as prescribed in 11 CFR §9033 1 and 11 CFR §9033 2

I In accordance with 11 CFR §9033 2(b)(1) and 11 CFR §9033 2(b)(3), I certify that I am seeking the nomination of the Republican Party for election to the Office of President in more than one State I and/or my authorized committee(s) have received matchable contributions, which in the aggregate exceed $5,000 from residents of each of at least twenty States, which with respect to any one person do not exceed $250 00

II Pursuant to 11 CFR §9033 2(b)(2), I and/or my authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the expenditure limitations prescribed by 26 U S C §9035 and 11 CFR §9035

III In accordance with 11 CFR §9033 1(b)(1), I acknowledge that I have the burden of proving that disbursements made by me, and any of my authorized committee(s) or agents are qualified campaign expenses as defined at 11 CFR §9032 9

IV Pursuant to 11 CFR §9033 1(b)(2), I and my authorized committee(s) will comply with the documentation requirements set forth in 11 CFR §9033 11

V Upon the request of the Commission, I and my authorized committee(s) will supply an explanation of the connection between any disbursement made by me or my authorized committee(s) and the campaign as prescribed by 11 CFR §9033 1(b)(3)

VI In accordance with 11 CFR §9033 1(b)(4), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and

supporting documentation and other information that the Commission may request

VII As provided at 11 CFR §9033 1(b)(5), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR §9033 11), and other information that the Commission may request If I or my authorized committee(s) maintains or uses computerized information containing any of the categories of data listed in 11 CFR §9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR §9038 1(b)(1) that meet the requirements of 11 CFR §9033.12(b) Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall be made available

VIII As prescribed at 11 CFR §9033 1(b)(6), I and my authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on my behalf by other political committees and organizations associated with me

IX In accordance with 26 U S C §9038 and 11 CFR §9033 1(b)(7), I and my authorized committee(s) shall permit an audit and an examination pursuant to 11 CFR §9038 of all receipts and disbursements, including those made by me, all authorized committee(s) and any agent or person authorized to make expenditures on my behalf or on behalf of my authorized committee(s) I and my authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR §9039 I and my authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR §9038 and 11 CFR §9039

X Pursuant to 11 CFR §9033 1(b)(8), the person listed below is entitled to receive matching fund payments on my behalf, which will be deposited into the listed depository, which I have designated as the campaign depository Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by me or the Treasurer of my authorized principal campaign committee

Name of Person Joseph Schmuckler, Treasurer, John McCain 2008

Mailing Address P O Box 16118, Arlington, Virginia 22215

Designated Depository: BB&T

Address: 1909 K Street, NW
Washington, DC 20006

XI Pursuant to 11 CFR §9033.1(b)(9), 11 CFR §9033.1(b)(10), and 11 CFR §9033 1(b)(11), I and my authorized committee(s) will: (A) prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order, including the provision of any magnetic media pertaining to the matching fund submissions and which conforms to the requirements specified at 11 CFR §9033 12, (B) comply with the applicable requirements of 2 U S C §431 et seq 26 U S C §9031 et seq and the Commission's regulations at 11 CFR Parts 100-300, and 9031-9039, (C) pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U S C §437g against myself, any of my authorized committee(s) or any agent thereof

XII Pursuant to 11 CFR §9033 1(b)(12), any television commercial prepared or distributed by me or my authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval

Signed _____
Candidate Signature*

* 11 CFR §9033 2(a)(1) requires the Candidate and Committee Agreements and Certifications to be signed by the Candidate

cc The Honorable David M Mason
Vice Chairman
Federal Election Commission

28044212841

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
John McCain/John McCain 2008, Inc)

CERTIFICATION

I, Mary W Dove, Secretary of the Federal Election Commission, do hereby certify that on December 19, 2007, the Commission decided by a vote of 5-0 to notify the Secretary of the Treasury that John McCain/John McCain 2008, Inc are entitled to receive payment from the Presidential Primary Matching Payment Account in the amount of $5,812,197 35

Commissioners Lenhard, Mason, von Spakovsky, Walther, and Weintraub voted affirmatively for the decision

Attest

December 19, 2007
Date

Darlene Harris
for Mary W Dove
Secretary of the Commission

28044212842

(2)

February 6, 2008

VIA HAND DELIVERY

The Honorable David Mason, Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

The Honorable Ellen Weintraub, Vice Chair
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE John McCain 2008, Inc

Dear Commissioners

This letter is to advise you that I, on behalf of myself and John McCain 2008, Inc , my principal campaign committee, am withdrawing from participation in the federal primary-election funding program established by the Presidential Primary Matching Payment Account Act No funds have been paid to date by the Department of the Treasury, and the certification of funds has not been pledged as security for private financing

I will make no further requests for matching-fund payment certifications and will not accept any matching-fund payments, including the initial amount and other amounts certified by the Commission in connection with my campaign's previous submissions My campaign has not submitted to the Department of Treasury any bank account information and will also inform them directly of our withdrawal from the matching funds system

Should you have any questions or desire any additional information, please contact my counsel, Trevor Potter, at 703-418-2008

Sincerely,

John McCain
US Senator-AZ

cc The Honorable Henry Paulson, Secretary, Dept of the Treasury
The Honorable Judith Tillman, Commissioner, Dept of the Treasury Financial Management Service

(3)

February 7, 2008

VIA HAND DELIVERY

Commissioner Judith R Tillman
Financial Management Service
United States Treasury Department
401 14th Street, SW
Washington, DC 20227

RE John McCain 2008, Inc

Dear Commissioner Tillman

This letter is to advise you that Senator John McCain and John McCain 2008, Inc have withdrawn from participation in the federal primary-election funding program established by the Presidential Primary Matching Payment Account Act A copy of Senator McCain's letter of withdrawal to the Federal Election Commission is enclosed

Senator McCain and John McCain 2008, Inc will make no requests for matching payments and will not accept matching-fund payments, including the initial amount and other amounts certified by the Federal Election Commission in connection with previous submissions John McCain 2008, Inc has not submitted any bank account information to the Department of Treasury

Should you have any questions or desire any additional information, please contact me at 703-418-2008

Sincerely,

Trevor Potter
General Counsel
John McCain 2008, Inc

cc The Honorable Henry Paulson, Secretary, Department of the Treasury
The Honorable David Mason, Chairman, Federal Election Commission
The Honorable Ellen Weintraub, Vice Chair, Federal Election Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

February 19, 2008

BY FACSIMILE AND FIRST CLASS MAIL

Senator John McCain
John McCain 2008, Inc
Post Office Box 16118
Arlington, Virginia 22215

Re John McCain 2008, Inc (LRA 731)

Dear Senator McCain

This is in response to your letter dated February 6, 2008, received by the Commission late February 8, advising that you are withdrawing from the Presidential Primary Matching Payment Program

As you may be aware, in Advisory Opinion 2003-35 (Gephardt), the Commission balanced the voluntary nature of participating in the Matching Payment Program with the contractual obligations a candidate commits to once he seeks and receives Commission certification of eligibility to receive payments under the Matching Payment Program The Commission made clear that a candidate enters into a binding contract with the Commission when he executes the Candidate Agreements and Certifications AO 2003-35 The Commission stated that it would withdraw a candidate's certification upon written request, thus agreeing to rescind the contract, so long as the candidate 1) had not received Matching Payment Program funds, and 2) had not pledged the certification of Matching Payment Program funds "as security for private financing " *Id*

Accordingly, we consider your letter as a request that the Commission withdraw its previous certifications Just as 2 U S C § 437c(c) required an affirmative vote of four Commissioners to make these certifications, it requires an affirmative vote of four Commissioners to withdraw them Therefore, the Commission will consider your request at such time as it has a quorum

We note that in your letter, you state that neither you nor your committee has pledged the certification of Matching Payment funds as security for private financing In preparation for Commission consideration of your request upon establishment of a quorum, we invite you to expand on the rationale for that conclusion, including but not limited to addressing the following

(5)

provisions of the loan agreement executed between John McCain 2008, Inc , and Fidelity and Trust Bank of Bethesda, Maryland on November 14, 2007, as modified on December 17, 2007

The paragraph entitled "Additional Requirements" set forth in the Affirmative Covenants section of the November 14 agreement (page 2), as well as the December 17 modification to that paragraph (page 2 of the modification)

The references to matching funds in the paragraph entitled "Collateral Description" set forth in the November 14 "Commercial Security Agreement" (page 1 of that agreement) (The paragraph contains no reference to certifications of matching fund eligibility or related rights obtained after January 1, 2008, thus apparently bringing any such certifications that might occur within the paragraph's more general description of the collateral for the line of credit)

The December 17 modification to the paragraph just mentioned (page 3 of the modification), which removed the reference to certifications and related rights "currently possessed by grantor or obtained before January 1, 2008" and replaced it with a reference to certifications or rights "now held by Grantor[ ]"

We would appreciate receiving any response you choose to make by not later than March 7, 2008 If you have any questions, please contact Lawrence L Calvert, Associate General Counsel, or Lorenzo Holloway, Assistant General Counsel, at (202) 694-1650

Sincerely,

David M. Mason

David M Mason
Chairman

cc The Honorable Judith Tillman, Commissioner,
Financial Management Service, Department of the Treasury

DISTRICT OF COLUMBIA)
) ss
CITY OF WASHINGTON)

Personally appeared before me the undersigned, Barry C Watkins (the "Affiant"), who being duly sworn according to law, deposes and says on oath, as follows

1 I am the President and CEO of Fidelity & Trust Bank (the "Bank")

2 I have personal knowledge of the facts and circumstances relating to the loan (the "Loan") provided by the Bank to John McCain 2008, Inc. (the "Campaign") pursuant to a certain Business Loan Agreement dated November 14, 2007 (as amended on December 17, 2007 pursuant to a certain Loan Modification Agreement, the "Loan Agreement"), a certain Commercial Security Agreement dated November 14, 2007 (as amended on December 17, 2007 pursuant to the hereinbefore referenced Loan Modification Agreement, the "Security Agreement") and certain other documents, instruments and agreements relating thereto (together with the Loan Agreement and the Security Agreement, collectively, the "Loan Documents"), in each case by and between the Bank and Campaign

3 The Loan was consummated in the normal course of the Bank's business.

4 At the outset of negotiations for the Loan, the Campaign informed the Bank that it was unwilling to grant to the Bank a security interest in federal matching funds (the "Matching Funds") as collateral for the Loan because the Campaign wanted to remain free to withdraw from the Matching Funds program (the "Program") at all times prior to the Campaign's receipt (if any) of Matching Funds from the Department of the Treasury of the United States of America, and any pledge of Matching Funds to secure repayment of the Loan might affect the Campaign's ability to withdraw from the Program.

5 The Bank determined that it had adequate security for the Loan without a pledge of Matching Funds from the Campaign The Loan was collateralized with specific tangible and intangible personal property, including, without limitation, contributor lists, key-man life insurance and future contributions from donors, but

not Matching Funds or any of the Campaign's right, title or interest with respect thereto The Loan Documents expressly excluded Matching Funds from "Collateral" for the Loan pursuant to the operative grant clauses contained therein and did not create a security interest in any Matching Funds, past, present or future.

6 Although the Loan Documents contained provisions contemplating the possibility that the Bank might, in the future, be granted a security interest in future certifications of Matching Funds, these provisions were operative if, and only if, several circumstances described in the Loan Documents were to occur (which never did) [1]

7 At the time when each of the Loan Documents was executed and delivered by the Campaign, the Bank intended to expressly exclude any present and future right of the Campaign to Matching Funds as collateral for the Loan, notwithstanding any date reference pertaining to when certifications for Matching Funds might come into being The reason why the Loan Documents stated that the exclusion (from collateral for the Loan) applied to Matching Funds entitlements "now held" (as opposed to "now held or hereafter acquired") was because the Bank's attorneys advised the Bank to do so, in order to avoid any inconsistency within the Loan Documents that could arguably arise pursuant to the "Additional Requirement" section of the Loan Documents (as described in paragraph 6 above) Such an inconsistency could arise if the Campaign later granted to the Bank a security interest in certifications for Matching Funds that came into effect as a result of a withdrawal of John McCain from the Program, the consequent nullification of the August 2007 qualification and its related certifications, a subsequent re-entry of John McCain into the Program, and the issuance of new certifications arising from that later qualified status However, the "now held" language was not

[1] If Senator McCain withdrew from the Program and thereafter failed to win or place within at least 10 percentage points of the winner of the New Hampshire primary (or the next primary or caucus), the Loan Documents required the Campaign to seek to reenter the Program and, if the Federal Election Commission voted to find the Campaign qualified and then certified contributions to the Campaign for Matching Funds, to grant to the Bank a security interest in the new Matching Funds certifications.

intended to create a security interest in any Matching Funds certificates received at any point during the period of eligibility resulting from the August 2007 qualification and prior to withdrawal from the Program

8 In order to permit the Bank to obtain a pledge of Matching Funds as collateral for the Loan in the future if circumstances warranted it (as described in paragraph 6 above), and in order to preserve the Campaign's right to Matching Funds entitlements, certain provisions were included within the Loan Documents that (i) required the Campaign to remain within the spending limits imposed by the Program (irrespective of whether the Campaign opted to remain in the Program or withdraw from the Program and opt in at a later date)[2], and (ii) prohibited the Campaign from assigning, pledging, leasing, granting a security interest in, or encumbering any of the Campaign's right, title or interest in and to Matching Funds The Bank determined that the foregoing provisions, among others, were necessary and appropriate in the absence of having a security interest in and to Matching Funds

9 Further, affiant sayeth not

Affiant

Sworn to and subscribed before me this 28 day of March, 2008

JENIFFER A MEJIA
NOTARY PUBLIC
PRINCE GEORGE'S COUNTY
MARYLAND
MY COMMISSION EXPIRES SEPT 9, 2009

(NOTARY SEAL)

Notary Public

My Commission Expires Sept 9, 2009

[2] If the Campaign were to withdraw from the Program, a consequent nullification of all of its related rights would occur. However, it was the bank's understanding that, by way of an application for re-entry into the Program, the Campaign would have the right to new Matching Funds certifications, but only if the Campaign stayed within the spending limits of the Program at all times.

BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
[redacted]	11-14-2007	05-14-2008	1001020	405		JR	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "***" has been omitted due to text length limitations.

Borrower:	[redacted]	Lender:	Fidelity & Trust Bank 4201 Duvall Ave. Bethesda, MD 20814-4020

THIS BUSINESS LOAN AGREEMENT dated November 14, 2007, is made and executed between [redacted] ("Borrower") and Fidelity & Trust Bank ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in granting, arranging, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, arranging, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all terms and conditions of any Loan shall be subject to and limited by this Agreement.

TERM. This Agreement shall be effective as of November 14, 2007, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

CONDITIONS TO EACH ADVANCE. Lender's obligation to make the Initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (A) the Note; (B) Security Agreements granting to Lender security interests in Collateral; (C) financing statements and all other documents perfecting Lender's security interests; (D) evidence of insurance as required; (E) together with all such Related Documents as Lender may require for the Loan, all in form and substance satisfactory to Lender and Lender's counsel.

Fees and Expenses. Borrower shall have provided to Lender payment in full of loan fees, service fees, expenses, and other costs and charges relating to the Loan.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of Loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a corporation validly existing, in good standing, and authorized to do business in the State of Delaware. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is also duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on Borrower's financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or proposes to engage. Borrower maintains an office at P O Box 1018, Arlington, VA 22216. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business.

Assumed Business Names. Borrower has filed or registered all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: n/a.

Authority. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (A) any provision of (1) Borrower's articles of incorporation, or bylaws, or (2) any agreement or other instrument binding upon Borrower or (B) any law, governmental regulation, court decree or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for Hazardous Wastes and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or

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as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with such financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

Additional Requirement. Borrower and Lender agree that if Borrower withdraws from the public matching fund program by the end of December 2007 but John McCain then does not win the New Hampshire primary or place at least within 10 percentage points of the winner of the New Hampshire Primary, Borrower will cause John McCain to remain an active political candidate and Borrower will, within sixty (60) days of the New Hampshire Primary (i) reapply for public matching funds, (ii) grant to Lender, as additional collateral for the Loan, a first priority perfected security interest in and to all of Borrower's right, title and interest in and to the public matching fund program, and (iii) execute and deliver to Lender such documents, instruments and agreements as Lender may require with respect to the foregoing.

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Financial Reports. Provide Lender with the following:

Quarterly Federal Election Commission reports of Receipts and Disbursements to be provided no later than fifteen (15) days after the Federal Election Commission filing date.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applicable Federal Election law and regulations applied on a consistent basis and certified by Borrower as being true and correct.

Prohibition Effects. Borrower shall refrain by any law prohibited as defined in the Environmental Security Agreement and the candidate John [illegible] refers to legal consideration in an amount sufficient to repay the outstanding principal balance of the Loan, together with all accrued and unpaid interest and all other fees, charges and expenses then owed by Borrower to Lender with respect

Maintenance of Personal Accounts with Lender. Maintain, at all times, its primary operating account(s) including all primary depository accounts (new and existing) disbursement accounts and collection accounts, with Lender

Stock, Checks, Remittances, Etc. Deposit or cause to be deposited into one or more of the depository accounts established by Lender on Borrower's behalf, all checks, drafts, cash and other proceeds received by Borrower, including, without limitation, contribution proceeds, sales and [illegible] Business Day of Borrower's receipt thereof. Pending such deposit, Borrower will not commingle any such items of payment with any of its other funds or property, but will hold such separate and apart.

RECOVERY OF ADDITIONAL COSTS. If the imposition of or any change in any law, rule, regulation or guideline, or the interpretation or application of any thereof by any court or administrative or governmental authority (including any request or policy not having the force of law) shall impose, modify or make applicable any taxes (except income taxes), reserve or fund assets or similar liabilities (including, but not limited to, Lender's reserve requirements, capital adequacy requirements or other requirements which now exist or may hereafter become applicable to Lender) and the result shall be to increase the cost to Lender of making or maintaining the credit facilities to which this Agreement relates, (i) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (ii) reduce the rate of return on Lender's capital as a consequence of Lender's obligations with respect to the credit facilities to which this Agreement relates, then Borrower agrees to pay Lender such additional amounts as will compensate Lender therefor, within five (5) days after Lender's written demand for such payment, which demand shall be accompanied by an explanation of such imposition or change and a calculation in reasonable detail of the additional amounts payable by Borrower which explanation and calculations shall be conclusive in the absence of manifest error.

LITIGATION MAINTENANCE. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand, or (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (i) the term of any applicable insurance policy, or (ii) the remaining term of the Note.

ADDITIONAL COVENANTS. Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

Indebtedness and Liens. (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) except with respect to Permitted Liens, sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets, (3) permit any Subsidiary to do any of the foregoing, or (4) enter into any arrangement with any person providing that Borrower or any Subsidiary leases or rents property sold or transferred.

Continuity of Operations. (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or other or similar Borrower's capital shares.

Loans, Acquisitions and Guaranties. (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

Agreements. Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection herewith.

Limitations on Advances. Cause and/or permit the outstanding principal balance of the Loan to exceed One Million Five Hundred Thousand and [illegible] Dollars ($1,500,000.00) at any time prior to the date on which Borrower shall have fully performed and satisfied its obligations set forth herein below under the heading "Post Closing Documents"

OBLIGATION TO ADVANCE. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Guarantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

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Insolvency. [illegible]

Defective Collateralization. [illegible]

Creditor or Forfeiture Proceedings. [illegible]

Events Affecting Guarantor. [illegible]

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Insecurity. Lender in good faith believes itself insecure.

EFFECT OF AN EVENT OF DEFAULT. [illegible]

COMPLIANCE WITH THE FEDERAL [illegible] PROGRAM. [illegible]

POST CLOSING DOCUMENTS. [illegible]

STATUS OF [illegible] [illegible]

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. [illegible]

Attorneys' Fees; Expenses. [illegible]

Caption Headings. [illegible]

Consent to Jurisdiction. [illegible]

Consent to Loan Participation. [illegible]

Governing Law. [illegible]

Choice of Venue. [illegible]

JURY WAIVER. [illegible]

No Waiver by Lender. [illegible]

[illegible]

Consent to Loan Participation/Multiple Consents. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, if hand delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Subsidiaries and Affiliates of Borrower. To the extent the context of any provisions of this Agreement makes it appropriate, including without limitation any representation, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing however, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and redated by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement.

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means John McCain 2008, Inc. and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise. It is expressly understood and agreed that "Collateral" specifically excludes any certifications of matching fund eligibility currently possessed by Borrower or obtained before January 1, [illegible]

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, and their personal representatives, successors and assigns.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Fidelity & Trust Bank, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the Note executed by John McCain 2008, Inc. in the principal amount of $[illegible] dated November 14, 2007 together with all modifications of and renewals, replacements, and substitutions for the note or credit agreement.

Permitted Liens. The words "Permitted Liens" mean (1) liens and security interests securing Indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount

[illegible]

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with respect to the real estate of Borrower's assets. It is expressly understood and agreed that any lien, claim or encumbrance on all or any portion of Borrower's right, title or interest in and to the property shall be deemed a Prohibited Transfer, whether now existing or hereafter arising, and shall constitute a "Prohibited Lien".

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, claim, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or title interest whatsoever whether created by law, contract, or otherwise.

IN WITNESS WHEREOF, THIS AGREEMENT IS DATED [illegible]. BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED NOVEMBER 14, 2017.

THIS AGREEMENT IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER:

JOHN HOWARD BOYD, SR.

By: _____ (Seal)
JOHN HOWARD BOYD, SR., President

LENDER:

FIRST CITY & TRUST BANK

By: _____ (Seal)
Authorized Officer

[illegible]

COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
[illegible]	11-14-2007	[illegible]	[illegible]	[illegible]		JR	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "***" has been omitted due to text length limitations.

Grantor: [illegible] Inc.
P O Box [illegible]
Arlington, VA [illegible]

Lender: Fidelity & Trust Bank
[illegible]
Bethesda, MD [illegible]

THIS COMMERCIAL SECURITY AGREEMENT dated November 14, [illegible], is made and executed between [illegible] ("Grantor") and Fidelity & Trust Bank ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. [illegible]

[illegible]

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

(A) [illegible]

(B) [illegible]

(C) [illegible]

(D) [illegible]

(E) [illegible]

(F) [illegible]

RIGHT OF SETOFF. [illegible]

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. [illegible]

Notices to Lender. [illegible]

[illegible]

Enforceability of Collateral. [illegible]

[illegible]

the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (A) all real property Grantor owns or is purchasing; (B) all real property Grantor is leasing or hiring; (C) all storage facilities Grantor owns, rents, leases or hires; and (D) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Delaware, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any security interest, lien, or encumbrance, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished to maintain the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located.

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the Indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, reasonable attorneys' fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby: (A) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws; and (B) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indebtedness and the satisfaction of this Agreement.

Maintenance of Ownership Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverages together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor agrees, at Lender's option, to deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or replacement. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the Indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the Indebtedness.

Insurance Reserves. Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest bearing account unless Lender may agree in writing to the payment of the interest earned on the reserve funds. Lender shall not be obligated to apply the reserve funds to the payment of insurance premiums required to be paid by Grantor as long as Grantor is not in default under this Agreement. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

Insurance Reports. Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including: (A) the name of the insurer; (B) the risks insured; (C) the amount of the policy; (D) the property insured; (E) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (F) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law

or refuse Lender's request for any such liens or assignments. Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute any such liens or assignments and to attach them to the Agreement. Grantor will promptly notify the Lender of such change.

GRANTOR'S RIGHT TO POSSESSION AND TO USE THE COLLATERAL. Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may collect, use, and dispose of the Collateral in the ordinary course of Grantor's business, provided that Grantor's right to possession and right to collect, use, and dispose of the Collateral shall not exist or continue after an Event of Default occurs. Whenever any Collateral is in the possession of Grantor after an Event of Default occurs, Lender shall be entitled to have any or all of the Collateral duly assembled by Grantor and delivered to Lender or its designee, and to enter without breach of the peace any premises where the Collateral is located or assembled. Lender's requirement that Grantor hold the Collateral for Lender's possession and delivery shall not constitute a bailment. If Lender or any other person takes possession of any Collateral, Lender may, at any time after an Event of Default occurs, keep, store, process, prepare for disposition, and dispose of all or any portion of the Collateral. Lender may charge Grantor for any reasonable costs incurred by Lender in connection with Lender's actions under this paragraph, and Grantor agrees to pay such costs promptly on demand. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the Indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand, or (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy or (2) the remaining term of the Note, or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's or any Grantor's ability to repay the Indebtedness or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Delaware Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the Rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Grantor's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it in payment of the Indebtedness in such order of preference as Lender may determine. Lender or the Collateral custodian of records may exercise Grantor's powers with respect to endorsements, assignments, or other instruments of payment, insurance, and such other rights and remedies (including, without limitation, those past due and unpaid) during any business day until (A) Grantor has satisfied the Indebtedness in full, or (B) Lender, in its sole discretion, chooses to terminate the Collateral custodian's authority. Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and

enforcing action, transfer deeds, assignments, documents of title, instruments and forms necessary to prepare, obtain, or arrange all or any Collateral for collection. Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court. Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court. Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including

Act of 1986, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means John McCain 2008, Inc.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or wastes as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the Indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Fidelity & Trust Bank, its successors and assigns.

Note. The word "Note" means the Note executed by John McCain 2008, Inc. in the principal amount of $1,000,000.00 dated November 14, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED NOVEMBER 14, 2007.

THIS AGREEMENT IS SIGNED UNDER SEAL AND IT IS INTENDED THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

GRANTOR:

JOHN MCCAIN 2008, INC.

By: _____ (Seal)
Robert Bond, President

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
[illegible]	11-14-2007	[illegible]	[illegible]	[illegible]		JR	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "***" has been omitted due to text length limitations.

Borrower: [illegible]

Lender: [illegible]

Principal Amount: [illegible] **Initial Rate:** [illegible] **Date of Note:** November 14, 2007

PROMISE TO PAY [illegible]

PAYMENT [illegible]

VARIABLE INTEREST RATE [illegible]

PREPAYMENT [illegible]

LATE CHARGE [illegible]

INTEREST AFTER DEFAULT [illegible]

DEFAULT [illegible]

Payment Default. [illegible]

Other Defaults. [illegible]

Default in Favor of Third Parties. [illegible]

False Statements. [illegible]

Insolvency. [illegible]

Creditor or Forfeiture Proceedings. [illegible]

Events Affecting Guarantor. [illegible]

Change In Ownership. [illegible]

Adverse Change. [illegible]

Insecurity. [illegible]

LENDER'S RIGHTS [illegible]

[illegible]

ATTORNEYS' FEES; EXPENSES. [illegible]

JURY WAIVER. [illegible]

GOVERNING LAW. [illegible]

CHOICE OF VENUE. [illegible]

CONFESSED JUDGMENT. [illegible]

[illegible]

DISHONORED ITEM FEE. [illegible]

RIGHT OF SETOFF. [illegible]

COLLATERAL. Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a key man life insurance policy described in an Assignment of Life Insurance Policy referenced in the Loan Agreement;

(B) inventory chattel paper accounts equipment and general intangibles described in a Commercial Security Agreement dated November 14, [illegible]

LINE OF CREDIT. This Note evidences a revolving line of credit. [illegible]

CONSENT TO JURISDICTION. [illegible]

SUCCESSOR INTERESTS. [illegible]

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. [illegible]

GENERAL PROVISIONS. [illegible]

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

[illegible]

28044212862

28044212853

THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER:

JOHN MORGAN [illegible], INC.

By: ______________________ (Seal)
[illegible], President

[illegible]

[illegible]

))

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (this "Modification") is made this 17th day of December, 2007, by and between (i) FIDELITY & TRUST BANK, a Maryland banking corporation having an office at 4831 Cordell Avenue, Bethesda, Maryland 20814 ("Lender"); and (ii) JOHN MCCAIN 2008, INC., a Delaware corporation having an address of P.O. Box 16118, Arlington, Virginia 22215 ("Borrower"). All capitalized terms used but not defined herein shall have the meaning attributed to such terms in the hereinafter referenced Loan Agreement

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of a certain Business Loan Agreement dated November 14, 2007 (as the same may be modified or amended from time to time, the "Loan Agreement"), by and between Borrower and Lender, Borrower obtained a loan and certain other financial accommodations (collectively, the "Loan") from Lender in the original principal amount of Three Million and No/100 Dollars ($3,000,000 00), and

WHEREAS, the Loan is (i) evidenced by a certain Promissory Note dated November 14, 2007 (together with any and all extensions, renewals, modifications, amendments, replacements and substitutions thereof or therefor, the "Note"), made by Borrower and payable to the order of Lender in the original principal amount of Three Million and No/100 Dollars ($3,000,000 00), and (ii) secured by, among other things, a certain Commercial Security Agreement dated November 14, 2007 (as the same may be modified or amended from time to time, the "Security Agreement"), encumbering substantially all of the assets of Borrower, and

WHEREAS, Borrower has requested that the principal amount of the Loan be increased from Three Million and No/100 Dollars ($3,000,000.00) to Four Million and No/100 Dollars ($4,000,000.00), and Lender has agreed to increase the principal amount of the Loan pursuant to Borrower's request, subject to the terms and provisions of this Modification which shall itself evidence the increase to the principal amount of the Loan and Note, and certain other modifications to the Note, the Loan Agreement, the Security Agreement and the other Loan Documents, as hereinafter provided

NOW THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are hereby incorporated herein by this reference and made a part hereof, with the same force and effect as if fully set forth herein

2 Subject to the terms of this Modification, the principal amount of the Loan is hereby increased from Three Million and No/100 Dollars ($3,000,000.00) to Four Million and No/100 Dollars ($4,000,000 00), and all references to a loan amount of "$3,000,000.00" or "Three Million and 00/100 Dollars" set forth in the Note, the Loan Agreement, the Security Agreement or any other Loan Document are hereby substituted and replaced with "$4,000,000.00" and "Four Million and 00/100 Dollars", as applicable.

3. The additional One Million and No/100 Dollars ($1,000,000.00) of Loan proceeds being made available to Borrower pursuant to this Modification shall be (i) disbursed in accordance with the provisions of the Loan Agreement applicable to advances and disbursements of Loan proceeds generally, and (ii) except as otherwise expressly provided in this Modification below, secured by comparable liens and security interests on all collateral heretofore securing the Loan.

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4. Without limiting anything set forth in this Modification to the contrary, certain provisions of the Loan Agreement are hereby modified as follows:

(a) The paragraph entitled "Additional Requirement" set forth in the Affirmative Covenants section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof

> "Additional Requirement. Borrower and Lender agree that if Borrower withdraws from the public matching funds program, but John McCain then does not win the next primary or caucus in which he is active (which can be any primary or caucus held the same day) or does not place at least within 10 percentage points of the winner of that primary or caucus, Borrower will cause John McCain to remain an active political candidate and Borrower will, within thirty (30) days of said primary or caucus (i) reapply for public matching funds, (ii) grant to Lender, as additional collateral for the Loan, a first priority perfected security interest in and to all of Borrower's right, title and interest in and to the public matching funds program, and (iii) execute and deliver to Lender such documents, instruments and agreements as Lender may require with respect to the foregoing Borrower and Lender agree that Borrower will provide oral or written notice to Lender at least 24 hours before notice of withdrawal from the public matching funds program is provided by Borrower or John McCain to the Federal Election Commission."

(b) The paragraph entitled "COMPLIANCE WITH THE FEDERAL ELECTION COMMISSION'S MATCHING FUNDS PROGRAM" set forth in the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

> "COMPLIANCE WITH THE FEDERAL ELECTION COMMISSION'S MATCHING FUNDS PROGRAM. Borrower agrees and covenants with Lender that while this Agreement is in effect, Borrower shall not, without Lender's prior written consent, exceed overall or state spending limits imposed under the Federal Matching Funds Program, irrespective of whether Borrower is subject to such program as of any applicable date of determination."

(c) The paragraph entitled "STATUS OF CURRENTLY HELD CERTIFICATIONS OF MATCHING FUNDS" set forth in the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

> "STATUS OF CURRENTLY HELD CERTIFICATIONS OF MATCHING FUNDS. Borrower and Lender agree that any certifications of matching funds eligibility now held by Borrower, and the right of Borrower and/or John McCain to receive payment under such certifications, are not (and shall not be) collateral for the Loan."

(d) The definition of "Collateral" set forth in the "Definitions" section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

> "Collateral. The word "Collateral" means all property and assets granted as collateral security for the Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of

trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise. It is expressly understood and agreed that, "Collateral" specifically excludes any certification of matching funds eligibility now held by Borrower and/or John McCain, and any right, title and interest of Borrower and/or John McCain to receive payments thereunder."

(e) The definition of "Note" set forth in the "Definitions" section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"Note. The word "Note" means the Promissory Note dated the date hereof, executed by Borrower and payable to the order of Lender in the original principal amount of $3,000,000, as increased to a face amount of $4,000,000.00 pursuant to that certain Modification Agreement dated December 17, 2007, by and between Borrower and Lender, together with all other amendments, modifications, extensions, renewals, replacements, restatements and substitutions thereof or therefor."

(f) The paragraph entitled "Collateral Description" set forth in the Security Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement.

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral, all fixtures; all timber to be cut, all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media, and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property. Grantor and Lender agree that any certifications of matching funds eligibility, including related rights, now held by Grantor are not themselves being pledged as security for the Indebtedness and

are not themselves collateral for the Indebtedness or subject to this Security Agreement. Grantor agrees not to sell, transfer, convey, pledge, hypothecate or otherwise transfer to any person or entity any of its present or future right, title and interest in and to the public matching funds program or any certifications of matching funds eligibility, including related rights, issued with respect thereto without the prior written consent of Lender."

5 As a condition precedent to the effectiveness of this Modification, (i) the face amount of the Policy on the life of John McCain shall be increased from $3,000,000 00 to $4,000,000.00, (ii) evidence of such increase shall be provided by Borrower to Lender in form and substance acceptable to Lender in all respects, and (iii) the Assignment shall be deemed modified accordingly

6 Borrower hereby represents and warrants that (a) as of December 17, 2007, the outstanding principal balance of the Loan was $2,257,697.20, and all accrued and unpaid interest thereon has been paid when due, (b) there are no set-offs or defenses against, and no defaults or Events of Default under, the Note, the Loan Agreement, the Security Agreement or any other Loan Document, (c) there exists no act, event or condition which, with notice or the passage of time, or both, would constitute a default or Event of Default under the Note, the Loan Agreement, the Security Agreement or any other Loan Document, (d) the representations and warranties of Borrower set forth in the Note, the Loan Agreement, the Security Agreement and all of the other Loan Documents are hereby remade and restated as of the date of this Modification and are true, correct and complete in all respects as of such date, and (e) the execution, delivery and performance by Borrower of this Modification (i) is within its corporate powers, (ii) has been duly authorized by all necessary corporate action, and (iii) does not require the consent or approval of any person or entity which has not already been obtained

7. As a condition precedent to the effectiveness of this Modification, Borrower shall pay all of Lender's costs and expenses associated with this Modification and the transactions contemplated hereby, including, without limitation, Lender's legal fees and expenses

8 The execution and delivery of this Modification and any act, proceeding or payment (past, present or future) related to the Note, the other Loan Documents or this Modification and all past or present acts or omissions taken or foregone or payments made or to be made by any party hereto or thereto in relation to such documents, shall not, did not and will not in any way constitute a release of any claims that Lender may have against Borrower or any other obligor with respect to any default or event of default under the Note and/or the other Loan Documents, and Lender specifically reserves all claims of any kind that Lender may now or hereafter have against Borrower and/or any other obligor, including without limitation, Lender's claims for payment in full of the amounts due under the Note, the Loan Agreement, the Security Agreement, and the other Loan Documents, and indemnity, contribution and set-off, and any and all such rights, interests, defenses, offsets and causes of action are hereby expressly reserved and preserved

9. Borrower and its representatives, successors and assigns, hereby jointly and severally, knowingly and voluntarily RELEASE, DISCHARGE, and FOREVER WAIVE and RELINQUISH any and all claims, demands, obligations, liabilities, defenses, affirmative defenses, setoffs, counterclaims, actions, and causes of action of whatsoever kind or nature, whether known or unknown, which each of them has, may have, or might have or may assert now or in the future against Lender directly or indirectly, arising out of, based upon, or in any manner connected with any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, in each case related to, arising from or in connection with the Loan, whether known or unknown, and which occurred, existed, was taken, permitted, or begun prior to the date of this Modification. Borrower hereby acknowledges and agrees that the execution of this Modification by Lender shall not constitute an acknowledgment of or an

admission by Lender of the existence of any such claims or of liability for any matter or precedent upon which any liability may be asserted.

10 In the event of a conflict between the provisions of this Modification and the provisions of the Note, the Loan Agreement, the Security Agreement and/or the other Loan Documents, the provisions of this Modification shall govern and control to the extent of such conflict

11 This Modification shall evidence the modifications to the Note, the Loan Agreement, the Security Agreement and the other Loan Documents described herein above.

12. Except as hereby expressly modified, the Note, the Loan Agreement, the Security Agreement and the other Loan Documents shall be and remain unchanged and in full force and effect, and the same is hereby expressly approved, ratified and confirmed.

13. This Modification shall be governed by the laws of the State of Maryland and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns

14 This Modification may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument Each party agrees to be bound by its facsimile signature

[remainder of page intentionally left blank – signature page follows]

IN WITNESS WHEREOF, the undersigned have executed this Modification on the day and year first above written

WITNESS

Carla L Leedy
Name

Borrower:
JOHN MCCAIN 2008, INC.

By:
Name RICHARD DAVIS
Title: PRESIDENT

Lender:

FIDELITY & TRUST BANK, a Maryland banking corporation

By:
Name JOHN RICHARDSON
Title: SENIOR VP

20044212869

State of Virginia)
) ss
County of Arlington)

This Modification was executed before me on this 18 day of December, 2007, by Richard Davis, as the President of John McCain 2008, Inc., a Delaware corporation, and being reasonably well known to me (or satisfactorily proven) to be the person who executed the foregoing document, being authorized to do so, acknowledged the same to be the act and deed of said corporation.

(Signature of notarial officer)

[SEAL]
My commission expires. DECEMBER 31, 2011

ERICA L. CARSON
Notary Public
Commonwealth of Virginia
7147958
My Commission Expires Dec 31, 2011

AFFIDAVIT OF RICHARD DAVIS IN SUPPORT OF REPLY TO THE COMPLAINT OF JOHN MCCAIN 2008, INC. AND JOHN MCCAIN

Richard Davis, being first duly sworn upon oath, deposes and states the following

1 I am President of John McCain 2008, Inc , (the "Campaign"), and function as the Manager of the McCain Campaign

2 I have personal knowledge of the facts and circumstances relating to the line of credit (the "Loan") between John McCain 2008, Inc and Fidelity & Trust Bank of Bethesda, Maryland (the "Bank") The Loan was negotiated at arm's length, and the Bank informed us it was in the ordinary course of the Bank's business

3 In August 2007, Senator McCain filed an application with the Commission to determine his eligibility for the federal matching-funds program for the primary election ("Program") Senator McCain and the McCain Campaign stated at the time that the purpose of qualifying for the Program was for the Campaign to preserve the option of participating in the primary matching funds system, but that no decision had been made whether the Campaign would actually accept public funds from the U S Treasury

4 From the onset of negotiations with the Bank to obtain a line of credit, the Campaign expressly stated that it was seeking a loan that would not be secured by any federal matching-funds certifications, whether past or future All negotiations with the Bank concerning the Loan were based on this express statement The Bank concluded that the Loan would be adequately securitized, and the Bank would have adequate assurance of repayment, without their obtaining a security interest in matching-funds certifications

5 On November 14, 2007, the Bank and the Campaign executed three principal documents to memorialize the Loan a Business Loan Agreement (the "Loan Agreement"), a

(9)

-

Commercial Security Agreement (the "Security Agreement"), and a Promissory Note (the "Note") (collectively the "Loan Documents") Under the Loan Documents, the Bank extended a $3 million line of credit to the Campaign On December 17, 2007, the Bank and the Campaign executed a Loan Modification Agreement that increased this line of credit to $4 million At the time the November 14, 2007 documents were signed, it was our expectation that we would make a decision on withdrawal from the Program on or before December 31, 2007 (and thus prior to the expected January 2 payments by the U S Treasury to Program participants, since receipt and acceptance of such funds from the Treasury would have obligated the Campaign to remain in the Program and subject itself to spending limitations) When the December 17 Loan Modification Agreement was signed, it had become clear that the U S Treasury would not be making payments in January, and likely not until March, which meant as a practical matter that the Campaign would not have to make a decision prior to December 31, 2007 on whether to withdraw from the system The documents were accordingly modified to reflect this change

6 When the Campaign negotiated and executed the Loan Documents and Loan Modification Agreement, it expressly intended throughout the process (and understood the Bank's intent to be identical) that no security interest of any sort in the Campaign's matching funds entitlement would be provided to the Bank Therefore, the Campaign intended to expressly exclude from definition of "collateral" any and all the matching-funds certifications obtained from the FEC at any time as a result of Senator McCain's August 2007 qualification for eligibility to participate in the matching funds program For this reason, the Loan Documents and the Loan Modification Agreement were drafted to create no security interest in any matching-fund certifications, past, present or future The Campaign explicitly understood from legal counsel and the Bank that the Campaign's December 1, 2007 and January 1, 2008

matching-funds submissions and any other submissions and certifications stemming from the August 2007 qualification were all excluded from the definition of "collateral" as "certifications now held, and related rights" (and through other provisions contained in the Loan Documents reflecting the parties' intent)

7 The only circumstances under which the Bank, in the future, could have been granted by the Campaign a security interest in any matching funds never occurred If Senator McCain withdrew from the Program and subsequently failed to win, or place within at least 10 percentage points of the winner in the New Hampshire primary (or the next primary or caucus, under the Modified Loan Agreement), and the Senator thereafter re-applied to the Program, was declared eligible by a fully-constituted Commission, and made new matching funds submissions which resulted in new certifications from the FEC Since these circumstances did not occur, the Campaign at no time took any of the further steps that would have been required to provide to the Bank in the future a security interest in the matching fund certifications

8 In March 2008, the Campaign repaid the Loan in its entirety

I declare under penalty of perjury that the foregoing is true and correct

Richard Davis
President
John McCain 2008, Inc

County of Arlington
Commonwealth of Virginia
The foregoing instrument was subscribed and sworn
before me this 28 day of MARCH, 2008 by

Notary Public

Notary registration number 7147953
My Commission Expires 31 DECEMBER 2011

ERICA L CARSON
Notary Public
Commonwealth of Virginia
7147953
My Commission Expires Dec 31, 2011

McCAIN

February 25, 2008

VIA HAND DELIVERY

Chairman David Mason
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE John McCain 2008, Inc

Chairman Mason

This responds to your February 19, 2008 letter concerning Senator John McCain's February 6, 2008 withdrawal from the federal primary-election matching funds program established by the Presidential Primary Matching Payment Account Act ("the Program")

The Federal Election Commission recognized in Advisory Opinion 2003-35 (Gephardt for President) that the Supreme Court's *Buckley* opinion found the Program to be constitutional because the Program is voluntary As a result, candidates have a constitutional right to withdraw from the Program The Commission in *Gephardt* expressed its view that this constitutional right to withdraw was conditioned on the candidate not receiving Program funds from the U S Treasury and not pledging Program certifications received from the FEC as security for private financing The campaign has received no funds from the U S Treasury, and has notified the Treasury that it will not accept any such funds Consistent with the reports to the FEC noted in your letter, the campaign did not use its federal matching fund certifications as security for the campaign's bank loan, as discussed further below

Two previous presidential candidates were certified by the FEC as qualified to participate in the Program and withdrew prior to receiving federal funds. Democratic National Committee Chair Howard Dean (a presidential candidate during the 2003-2004 election cycle) qualified for the Program in June of 2003, but withdrew on November 12, 2003 Similarly, Republican candidate Elizabeth Dole withdrew from the Program on December 17, 1999 after qualifying earlier that year

In your letter, you stated your belief that "Just as 2 USC Section 437c(c) required an affirmative vote of four Commissioners to make these certifications, it requires an affirmative vote of four Commissioners to withdraw them " We respectfully disagree with this conclusion for the following reasons First, 2 USC 437c(c) contains no such requirement as a condition for withdrawal This was recognized by an FEC spokesperson who accurately told the Associated Press that although "[t]he statute says a vote of four commissioners is required to certify someone as eligible, [t]here is nothing in the statute that talks about withdrawing from the

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program " Second, the FEC's regulations are similarly silent on the subject Third, your letter cites Advisory Opinion 2003-35, issued to former Congressman Gephardt, which outlined procedures the Commission chose to follow in that instance The procedure included an affirmative vote by the Commission accepting Congressman Gephardt's withdrawal from the Program (a similar procedure was followed in the Dole and Dean withdrawals) However, this Advisory Opinion does not establish a legal *requirement* that the Commission must approve all withdrawals from the Program As you are aware, the statute *prohibits* the Commission from establishing regulatory requirements through an Advisory Opinion 2 USC 437f(b) The Commission has not taken the numerous additional steps through a formal rulemaking procedure with notice and comment that would be necessary to incorporate the *Gephardt* Advisory Opinion procedures into its regulations and make them binding on the Commission and on candidates participating in the Program

This is particularly important in light of the extraordinary circumstances in which we and the Commission find ourselves at this time Senator McCain submitted his withdrawal letter on February 6th of this year, and as your February 19th letter notes, the FEC does not currently have *the minimum number of Commissioners necessary to constitute a quorum and conduct business* We believe this necessarily means that the Commission cannot determine at this time whether a vote is required to recognize and accept Senator McCain's withdrawal (as you conclude) or whether his withdrawal occurred automatically upon his February 6th notification (as we believe is the case) Accordingly, we understand the current status to be that once a quorum exists, the Senator's withdrawal letter will be presented to the Commission for its decision on whether any further action is required Even if the Commission concludes that a vote is necessary, we are confident that the Commission will find that its role is "ministerial" in function, and that the Program's voluntary nature requires it to recognize that Senator McCain's withdrawal from the Program was effective as of February 6th

The legal effect of Senator McCain's withdrawal—whether it is found to occur automatically via his letter of February 6th or is later ratified by vote of the new Commissioners—will be the same Senator McCain will not be subject to the Program's spending limitations after February 6, 2008 We understand that you believe this is a matter that can only be decided by the full Commission when a quorum is present, and we are confident that the full Commission will concur with us it considers the question Both as a candidate and as a Member of Congress, Senator McCain is hopeful that the Senate will move expeditiously to confirm new Commissioners so that the FEC may conduct all of its important business, including a review of these issues.

Your letter also requests that we provide additional information to the FEC concerning the rationale for concluding that the campaign's bank line of credit was not secured with federal matching fund certifications John McCain 2008 has already placed the loan documents on the public record at the FEC, as required by law Today, the bank, through its attorneys, unequivocally stated that the matching fund certifications held by the campaign were never collateral for the line of credit I am attaching a copy of the letter I received It concludes

> Accordingly, the bank does not now have, nor did it ever receive from the Committee, a security interest in any certification for matching funds Any finding or determination to

the contrary would be wholly inconsistent with the language of the loan documents, the intent and understanding of the parties and basic principles of banking, security and uniform commercial code law

News services report today that the Democratic National Committee ("DNC") has filed a complaint with the Commission concerning this loan, citing these very documents Accordingly, we expect to respond as provided in 2 USC 437g to the DNC's complaint with whatever additional information may be necessary to explain any further grounds for the conclusion that no Program certifications received by Senator McCain and John McCain 2008 constituted security for private financing

I trust this information, and any that we may provide in response to the DNC complaint, will answer any questions which you, or the Commission when a quorum exists, may have concerning these issues

Sincerely Yours,

Trevor Potter
Counsel
John McCain 2008

cc The Honorable Judith Tillman, Commissioner, Dept of the Treasury Financial Management Service

Encl Letter from Counsel for Fidelity & Trust Bank, dated February 25, 2008

DICKSTEINSHAPIRO LLP

1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420 2201 | dicksteinshapiro com

28044212876

February 25, 2008

Mr. Trevor Potter
John McCain 2008, Inc
PO Box 16118
Arlington, VA 22215

Re Fidelity & Trust Bank Loan

Dear Trevor,

We understand that a number of questions have been raised regarding the loan made by Fidelity & Trust Bank to John McCain 2008, Inc (the "Committee") In that regard, we offer the following perspective at the bank's request

As outside counsel for the bank, we worked closely with the bank and the Committee since the inception of the lending relationship At the outset, and with guidance provided by FEC Advisory Opinion 2003-35, we were mindful of two potentially competing concerns (i) the bank having adequate assurance of loan repayment, and (ii) the Committee retaining flexibility to withdraw from the matching funds program (which we understand might not be possible if certifications for matching funds were pledged as collateral)

After the bank determined that adequate assurances of loan repayment existed without obtaining a pledge of any certification for matching funds, the loan terms were carefully drafted to exclude from the bank's collateral any matching funds certification (so as to assure that the Committee retained the flexibility to withdraw from the program in accordance with the principles of Advisory Opinion 2003-35) The fact that there was no pledge of any certification for matching funds is further evidenced by the fact that covenants were included within the loan documents that expressly required the Committee to pledge, in the future, and if (and only if) certain specified events occurred after the Committee were to withdraw from the program (such as the Committee's re-entry into the program), future certifications of matching funds as collateral for the loan It is our understanding that, to date, none of those events have occurred. Accordingly, the bank does not now have, nor did it ever receive from the Committee, a security interest in any certification for matching funds Any finding or determination to the contrary would be wholly inconsistent with the language of the loan documents, the intent and understanding of the parties and basic principles of banking, security and uniform commercial code law

Sincerely,

Matthew S Bergman, Partner
(202) 420-4722
bergmanm@dicksteinshapiro com

Scott B Thomas, Of Counsel
(202) 420-2601
thomass@dicksteinshapiro com

Howard DEAN for America

PO Box 1228
Burlington, VT 05402
802-651-3200
www.deanforamerica.com

November 12, 2003

The Honorable Ellen Weintraub
Chair
Federal Election Commission
999 E Street, NW
Washington, DC 20463

2003 NOV 17 P 2:29
RECEIVED
FEC MAIL
OPERATIONS CENTER

Dear Chair Weintraub

This letter is to advise you that, as determined in accordance with my public statements, I no longer wish to participate in the Matching Payment system administered by the Commission. By this letter, I hereby withdraw the candidate agreement filed with the Commission pursuant to 11 C.F.R. §9033.1 and 2.

I will be making no requests for matching payments and will not accept the receipt of any such payments, including the initial amount certified by the Commission in connection with my campaign's threshold submission. My campaign has not submitted to the Department of Treasury any bank account information.

Should you have any questions or desire any additional information, please contact my counsel, Eric Kleinfeld, at 202-293-1177.

Sincerely,

Howard Dean, M.D.

Paid for by Dean for America. Contributions to Dean for America are not deductible for federal income tax purposes.

TOTAL P.05

(11)

26044212877

ELIZABETH DOLE FOR PRESIDENT
EXPLORATORY COMMITTEE
1925 N. Lynn Street, Suite 400
Arlington, VA 22209

December 17, 1999

VIA HAND DELIVERY

The Honorable Scott Thomas
Chairman
Federal Election Commission
999 E Street, N W.
Washington, D C 20463

Re Elizabeth Dole for President Exploratory Committee

Dear Chairman Thomas.

I am withdrawing my request for public matching funds on behalf of the Elizabeth Dole for President Exploratory Committee ("Committee"). This withdrawal is conditioned on the understanding that the Committee will not be subject to an audit under the Presidential Primary Matching Payment Account Act contained in Title 26 of the U S Code. This will allow the Committee to wind down its activities in an expeditious fashion.

Sincerely,

Elizabeth Dole

12

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111
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December 17 1999

VIA FACSIMILE & FEDERAL EXPRESS

The Honorable Scott Thomas
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Elizabeth Dole for President Exploratory Committee

Dear Chairman Thomas,

As counsel for the Elizabeth Dole for President Exploratory Committee ("Committee"), we are withdrawing the Committee's request for public matching funds. This withdrawal is conditioned on the understanding that the Committee will not be subject to an audit under Title 26 of the Presidential Primary Matching Payment Account. This will allow the Committee to wind down its activities in an expeditious fashion.

Sincerely,

Kenneth A. Gross

cc Ray Lett

Yale Law School

March 14, 2008

Thomasenia P Duncan, Esq
General Counsel
Federal Election Commission
999 E Street, N W
Washington, DC 20463

Re MUR 5976

Dear Ms Duncan

In this letter I present my views regarding the Complaint filed with the Federal Election Commission by the Democratic National Committee ("DNC") alleging that Presidential candidate Senator John McCain (R-Ariz) and his Presidential campaign committee, John McCain 2008, Inc (the "campaign") pledged certifications of matching funds he received or was entitled to receive from the Federal Election Commission as security for private financing The DNC argues that such a pledge of security interests in the FEC certifications was made by the campaign, and that this pledge prevents Senator McCain and the campaign from withdrawing from the Presidential Primary Funding system and obligates the Senator and the campaign to abide by the aggregate spending limits for participants in that system

I have examined certain loans that the campaign obtained in November and December 2007, and in January 2008, from Fidelity & Trust Bank ("Fidelity" or "the Bank") in order to determine whether, from a banking and commercial law perspective, these loans were secured by matching funds certificates [1] I have determined that the loans at issue were at no time secured by matching funds certificates As a professor and scholar in the field of banking law,[2] I believe that I am competent to render an expert opinion in this matter

In the United States the law of security interests is governed by Article 9 of the Uniform Commercial Code (UCC) A security interest grants the holder thereof a right to

[1] I have been asked to provide my independent, objective view of this issue as an expert in banking law I am not involved in the McCain '08 campaign in any way I am a registered Democrat resident in the state of Connecticut

[2] Please see attached resume listing my publications and qualifications

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(13)

take remedial action with respect to the property that is subject to the security interest upon the occurrence of certain events -- the classic example being the non-payment of a loan A security interest generally is created with a security agreement, which is a contract governed by UCC Article 9 and state law governing contracts [3] Under the UCC, a security interest is a right in property of the debtor that has been used to secure payment of an obligation such as a loan A security interest is created by a security agreement, under which the debtor grants a security interest in certain of the debtor's property is granted for the purpose of serving as collateral for a loan or other obligation A security interest is a contractual right A security interest comes into being if, and only if, a borrower enters into a contract that allows the lender, or secured party, to take collateral the borrower owns in the event that the borrower cannot pay back the loan It is elemental that a security interest cannot be created unless there is an agreement that such a security agreement be created [4] This, in turn, requires an understanding (that is, a *meeting of the minds*) between the lender and the borrower that a security interest be created

Thus, the issue of whether a security interest in property (such as the certifications of matching funds at issue here) exists depends on whether there was an understanding between the bank and the campaign There are, in turn, two key factors that are relevant to a determination of whether there was an understanding that matching fund certificates were pledged as security for the McCain 2008 loans in November and December 2007 These factors are (1) whether John McCain 2008, Inc intended to use matching fund certificates as collateral for a loan, and (2) whether the Bank reasonably believed that matching fund certificates were actually being pledged as collateral My analysis reveals that the McCain campaign clearly did not intend to use matching fund certificates as collateral for a loan It also is very plain that the Bank did not believe -- and could not reasonably have believed -- that any matching fund certificates were being pledged as collateral Thus, this is a clear and unambiguous case

The text of the applicable loan agreements clearly states that John McCain 2008, Inc did not grant a security interest in the matching funds to Fidelity *See* Business Loan Agreement between John McCain 2008, Inc and Fidelity & Trust Bank (Nov 14, 2007) and Modification Agreement between John McCain 2008, Inc and Fidelity & Trust Bank (Dec 17, 2007) Specifically, the "Affirmative Covenants," "Additional Requirements" provision of the Loan Agreement states that " *if* the Borrower [the Campaign] withdraws from the public matching fund program by the end of December 2007, but

[3] The UCC has been adopted, with some modifications, by every state, as well as the District of Columbia, Guam and the U S Virgin Islands

[4] All of the rules regarding the creation of a security interest depend on an agreement (called a "security agreement") being reached between the lender and the borrower Specifically, UCC Article 9 sets forth three requirements that must be satisfied in order for a security interest to be enforceable against the debtor and third parties Each of these requirements clearly envisions that the borrower and lender have reached an agreement that a security agreement be created These requirements are (1) that value be provided in exchange for the collateral, (2) that the debtor must have rights in the collateral, and (3) that either the debtor must have "authenticated" a security agreement with a description of the collateral or the creditor must be in possession of the collateral When each of these three formalities are met, the security interest "attaches" to the collateral and becomes enforceable

John McCain then does not win the New Hampshire primary or place at least within 10 percentage points of the winner of the New Hampshire primary, Borrower will cause John McCain to remain an active political candidate and Borrower *will*, within thirty (30) day of the New Hampshire Primary (i) reapply for public funds, (ii) grant to Lender, as additional collateral for the Loan, a first priority perfected security interest in and to all of Borrower's right, title and interest in and to the public matching fund program " Loan Agreement at 2 (emphasis added) This text indicates that while the Campaign did contemplate a potential *future* grant of a security interest in the certifications of matching funds, no such grant ever was made, either in the documents or elsewhere

The conclusion that no matching funds were pledged as security for private financing is inevitable if one looks fairly at the documents and the business and economic context in which the loans were made Fidelity, a bank with experience in the business of making loans to candidates for public office, was aware that if Senator McCain performed well in the New Hampshire primary, additional capital would flow into the Campaign which, in turn would reduce the risk of default on the loan On the other hand, if Senator McCain did poorly in the New Hampshire primary, Fidelity understood that the McCain Campaign might not be able to raise funds as easily and that the risk of default on the loan would be higher In order to protect itself in case of a poor McCain showing Fidelity might want to further secure the loan by having Senator McCain reapply for matching funds and grant Fidelity a security interest in such funds But there was no security interest here because the future applications that would have to be granted in separate agreements in the future

Under the Loan Agreement, no security interest was created because no security interest could have been created in non-existent, future certifications of matching funds More precisely, it was clear at all times that no security interest would be created unless the McCain Campaign (1) withdrew from the federal matching funds program, (2) started losing primaries by large margins, (3) applied for federal matching funds certifications, and (4) received such certifications Not one of these four conditions precedent was fulfilled, and therefore no security interest ever was created

The Democratic National Committee, in its Complaint Against Senator John McCain and John McCain 2008, Inc (Feb 25, 2008), tries to falsely paint this provision as creating "a *present* encumbrance of the Campaign's *future* interest in and entitlement to matching funds, as part of the security for the line of credit," however, this interpretation of the text confuses an agreement to potentially grant a security interest in the future with the actual granting of a security interest On the contrary, by discussing the agreement to possibly grant Fidelity a security interest in the future, the text instead reaffirms that the Campaign had not already granted Fidelity a security interest in this part or any other part of the agreement

Moreover, in conformity with the "Affirmative Covenants," "Additional Requirements" portion of the Loan Agreement, other provisions of the loan agreements require the Campaign to maintain eligibility for the matching funds program so that in the future the Campaign would be able to apply for and assign rights to certificates of

matching funds if need be Under the "Negative Covenants" section in the loan Agreement, the Campaign agreed with Fidelity that "while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender grant a security interest in, or encumber any of Borrower's assets, including, without limitation, any of Borrower's right, title or interest in and to the public matching fund programs of any matching fund settlement " Loan Agreement at 3 If the Campaign had granted a security interest in the matching funds to Fidelity, as the DNC erroneously asserts, there would obviously be no purpose for this clause restricting the Campaign from assigning the rights to the matching funds in the future The DNC's complaint erroneously cites this negative covenant to not pledge rights in future matching fund entitlements in support of their interpretation that the bank assumed it had a perfected security interest in the matching funds entitlement In fact, the clear interpretation of the language is instead that Fidelity understood that no parties had been assigned rights to the future matching funds entitlement and Fidelity wanted to ensure that rights to those entitlements would be available for assignment to themselves as security in the future, should they require it The Campaign was not encumbering the funds, but agreed not to encumber the funds in the event they may need to pledge them to Fidelity as a security interest in the future They did not *See* Modification Agreement and subsequent discussion infra

Additionally, as with the "Negative Covenants" section discussed above, the "Compliance with the Federal Election Commission's Matching Funds Program" section in the Loan Agreement states that "Borrower agrees and covenants with Lender that while this Agreement is in effect, Borrower shall not exceed overall or state spending limits set forth in the Federal Matching Funds Program ," so to ensure the Campaign remains eligible for the program to protect the Campaign's ability to reapply for funds and assign rights in the future if need be Loan Agreement at page 4 Although the DNC complaint asserts the only reason for inclusion of this provision on compliance with the FEC program is so the bank can treat rights in future certificates of matching funds as collateral, in fact, the language used in the agreement simply describes the Bank's effort to protect its ability to obtain a security interest in the matching funds in the future In particular, the Modification Agreement added to this section that the Campaign must abide by the spending limits of the Matching Funds Program "irrespective of whether Borrower is subject to such program as of any applicable date of determination " Modification Agreement at page 2 Thus, the Bank clearly contemplated that the Campaign might not be subject to the Program at some future date, i e that the Campaign may have withdrawn from the program, so the Bank certainly cannot have believed it was obtaining a security interest in the entitlements that were contingent upon the Campaign's continuation in the Matching Funds Program

The "Collateral Description" in the Security Agreement provides further evidence that the Bank never possessed a security interest in the Matching Funds Simply put, this section does not identify any rights or interests to matching funds as collateral In fact, the section explicitly states that all current entitlements arising from the program are not collateral The section remains silent as to whether potential future entitlements to the matching program's funds count as collateral Commercial Security Agreement between John McCain 2008, Inc and Fidelity & Trust Bank at 1 The DNC argues that this silence

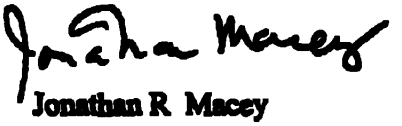
as to future entitlements implies that rights to these entitlements are included as collateral However, this argument is both logically flawed and at odds with the Uniform Commercial Code (UCC) The DNC is relying on the Expressio Unius canon of textual interpretation for the idea that the acceptance of one thing is the exclusion of another Specifically, the DNC argues that the explicit exclusion of current rights to matching funds implies the inclusion of future rights to matching funds Unfortunately, the Expressio Unius canon is not helpful in this situation as it can just as easily be used in support of the opposite argument the fact that the "Collateral Description" section includes such a long, detailed list of collateral would suggest that any type of collateral not expressly listed in the section (i e future rights to matching funds) is excluded from the section While the Expressio Unius does not contribute to the analysis, the UCC provides definitive guidance Section 9-203(3)(a) of the UCC states that in order for a security interest to attach to collateral the security agreement must "provide[] a description of the collateral" Further, the description of collateral must "reasonably identify" the collateral and must not be "supergeneric" UCC § 9-108 Thus, given the UCC description requirement, the "Collateral Description" section's failure to list future rights to matching funds as collateral indicates that these rights were not intended to be collateral

As still further evidence that no security interest had been created, the negative covenant at the end of the "Collateral Description" section of the Security Agreement forbids the Campaign from assigning rights to their entitlements to matching funds without the bank's consent Under UCC § 9-322, the first party with a secured interest in the collateral to file a financing statement gets first-priority If Fidelity already had a security interest in the future rights to matching funds then there would be no need for Fidelity to create a negative covenant of this sort Rather, Fidelity could simply perfect and thus guarantee its spot as a first-priority secured creditor Any subsequent assignments made by the McCain Campaign would be subservient to Fidelity's interest Thus, the fact that such a negative covenant exists suggests that Fidelity did not perceive itself to have a security interest in the Campaign's rights to future entitlements under the matching program Rather, they wanted to make sure no other creditors had an opportunity to gain a security interest in these funds before Fidelity did

Finally, the DNC Complaint claims that the Modification Agreement altered the language of the exemption in the "Collateral Description" Section to indicate that the Collateral will include future amounts of matching funds paid DNC Complaint at page 5 However, there is nothing in the "Collateral Description" in the Modification Agreement to suggest that the Collateral will necessarily include future amounts of matching funds Instead, the modification clearly states, "Grantor and Lender agree that any certifications of matching funds eligibility, including related rights, now held by Grantor are not themselves being pledged as security for the Indebtedness and are not themselves collateral" Modification Agreement at 3-4 While the Campaign was holding open the possibility to pledge a security interest in the funds to Fidelity in the future, it is clear that it was not presently granting such an interest

My research into the applicable documentation concludes that at no time did the John McCain 2008 Campaign secure its loans from Fidelity with matching fund certificates

Sincerely,



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Resume

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Other Ph d (Law) honoris causa Stockholm School of Economics, 1996,

D P Jacobs prize for the most significant paper in volume 6 of the Journal of Financial Intermediation for "The Law & Economics of Best Execution" (co-authored with Maureen O'Hara) (1997),

Paul M Bator Award for Excellence in Teaching, Scholarship and Public Service awarded by the University of Chicago Law School Chapter of the Federalist Society, 1995;

Member, Legal Advisory Committee to the Board of Directors, New York Stock Exchange,

Member, Economic Advisory Board, Financial Industry Regulatory Association ("FINRA") (formerly the National Association of Securities Dealers ("NASD")

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"Svensk Aktiebolags Ratt I Omvandling En Rattsekonomisk Analys" (Swedish Corporate Law in Transition A Law and Economics Analysis (published in Swedish and English by SNS Forlag 1993),

"Banking Law and Regulation Cases and Materials" (Aspen Law &Business, second edition, 1997) with Geoffrey P Miller, (first addition, Little Brown and Co , 1992),

"Third Party Legal Opinions Evaluations and Analysis" (Prentice Hall Law and Business, 1992),

"Insider Trading Economics, Politics, and Policy" (The AEI Press, 1991),

"An Introduction to Modern Financial Theory" (The American College of Trust and Estate Council Foundation (1991)

Miscellaneous Publications

"Regulatory McCarthyism" The Wall Street Journal, Tuesday, October 24, 2006

"From Orders to Markets Who Should Decide What is 'Best Execution'" Regulation, Vol 28, No 2, Summer 2005

"A Misguided Proposal to Regulate Risk-Taking" (letter) The Wall Street Journal, Tuesday, April 5, 2005

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"How Does the SEC Arrive at its Fines Against Corporate Wrongdoers" June 21, 2004, Forbes,

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"The Lowdown on Lending Discrimination" The Wall Street Journal, Wednesday, August 9, 1995,

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"A Poison Pill to Destroy Banking Reform" The Wall Street Journal, Wednesday, June 7, 1995,

"Banking by Quota" The Wall Street Journal, Wednesday, September 7, 1994,

"Mutual Banks Take Your Money and Run" The Wall Street Journal, Wednesday, December 29, 1993,

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"Don't Blame Salomon, Blame the Regulators" The Wall Street Journal, Monday, August 19, 1991,

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"The Politics of Denying an S&L Crisis" The Los Angeles Times, Sunday, December 10, 1990,

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Remarks at Symposium on the First Amendment and Federal Securities Regulation, 20 Connecticut Law Review (assorted pages) 1988,

Remarks at Colloquium on the ALI Corporate Governance Project, 71 Cornell Law Review (assorted pages) (1986),

"A Conduct Oriented Approach to the Glass-Steagall Act" 91 Yale Law Journal 102 (1981) (published as a student)

Current Activities

Chair, Association of American Law Schools Section on Legal Scholarship

Executive Committee, Association of American Law Schools Section on Corporate Law,

Member, American Law Institute,

Academic Advisory Board Committee, the Banking Law Anthology,

Academic Advisory Board, The Social Philosophy and Policy Center,

Board of Editors, Journal of Banking and Finance

Board of Editors, Journal of Banking Law

Board of Editors, Journal of Financial Crime,

Board of Editors, Corporate Practice Commentator,

Employment History

Sam Harris Professor of Corporate Law, Securities Law and Corporate Finance, Yale University, 2004 – present

J DuPratt White Professor of Law, Cornell Law School, 1991-2004,

Visiting Professor of Law, Yale University, 2003-2004,

Member, Board of Directors, Telxon Corporation, 1998- 1999 (appointed as dissident director in settlement of proxy contest dispute), Director nominee Rexene Corporation, 1999, Circon Corporation, 1998, Arvin Mentor, Inc 2004)

Visiting Professor, Faculty of Law, Stockholm School of Economics, fall, 1993,

Research Fellow, International Centre for Economic Research, Turin Italy, winter, 1993, spring, 1994,

Professor of Law (with tenure), University of Chicago, 1990-1991,

Professor of Law, (with tenure), Cornell University, 1987-1990,

Visiting Professor of Law, The University of Chicago, fall quarter, 1989-1990,

Visiting Professor, University of Tokyo Faculty of Law, summer, 1989,

Visiting Associate Professor of Law, University of Virginia, 1986-1987,

Assistant to Associate Professor of Law, Emory University, 1983-1986,

Law Clerk to the Honorable Henry J Friendly, United States Court of Appeals, Second Circuit, 1982-1983 term of court,

Consultant, Municipal Finance Department, Lloyd Bush & Associates, New York, NY (consultant representing municipalities and investment banks before credit rating agencies (1978-1979)),

Municipal Bond Trader, Bankers Trust Company, New York, NY (1977-1978)