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MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan TPD
General Counsel

P. Christopher Hughey pch
Deputy General Counsel

Lawrence L. Calvert
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel
For Public Finance and Audit Advice

Danita C. Lee
Attorney

Allison T. Steinle ATS
Attorney

SUBJECT: John McCain 2008, Inc. – Presidential Primary Matching Payment Program (LRA 731)

I. INTRODUCTION

The purpose of this memorandum is to address the Commission's options for responding to a request by Senator John McCain ("Senator McCain") to be released from his obligations under the Presidential Primary Matching Payment Account Act ("Matching Payment Act" or "Matching Payment Program"), and to make a recommendation regarding which option this Office believes the Commission should adopt. As background, we first present information about the Commission's determination of Senator McCain's eligibility for public financing and the terms of the loan agreement that has led to questions in this matter; about the procedural history of Senator McCain's request to withdraw; and about the previous instances in which the

Commission has addressed requests by candidates to withdraw from the Matching Payment Program. To provide the Commission with a thorough understanding of the legal and policy considerations underlying our recommendation, we then present the strongest arguments for each of three possible outcomes. The possible outcomes are: (1) the Matching Payment Act prohibits withdrawal at any time; (2) the Matching Payment Act permits withdrawal up to the point of actual receipt of public funds; or (3) the Matching Payment Act permits withdrawal unless the candidate has actually received public funds or pledged them as security for private financing. After comparing the relative weight of these three arguments as a matter of both law and policy, we conclude that the Matching Payment Act permits withdrawal unless the candidate has actually received public funds or pledged them as security for private financing, and recommend that the Commission determine that Senator McCain may withdraw from the Matching Payment Program because he did not receive public funds nor pledge public funds as security for private financing.

II. BACKGROUND

A. DETERMINATION OF SENATOR MCCAIN'S ELIGIBILITY; TERMS OF THE LOAN AGREEMENT

The Matching Payment Act and the Commission's regulations establish the requirements for a candidate to become eligible for public funds. To be eligible to receive payments, among other things, candidates must agree in writing that they and their authorized committees will keep and furnish to the Commission any records, books, and other information it may request, and agree to an audit and examination by the Commission and agree to any repayments as determined by the Commission. 26 U.S.C. § 9033(a). Candidates must also certify that neither they nor their authorized committees will incur qualified campaign expenses in excess of the expenditure limitation, that they are seeking nomination by a political party to the Office of President in more than one state, that they have received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of at least 20 states, and that the aggregate of contributions certified with respect to any person does not exceed $250. 26 U.S.C. § 9033(b). If a candidate qualifies for participation in the program, the Commission will certify the candidate as "eligible" pursuant to 26 U.S.C. § 9036(a). Pursuant to the procedures of 11 C.F.R. Part 9036, eligible candidates may make additional submissions of contributions they assert to be matchable. The Commission examines these submissions, and certifies the additional amounts of matching funds to which the candidate is entitled.

In accordance with 26 U.S.C. § 9033, Senator McCain applied to participate in the Matching Payment Program, and the Commission determined that he was eligible to receive public funds for his campaign for the Republican Party nomination for President of the United States, and certified that he was entitled to $100,000 in Matching Payment Program funds, on August 28, 2007. The Commission certified an additional $5,812,197.35 in Matching Payment Program funds to the Candidate on December 19, 2007. Prior to that date, on November 14, 2007, the Committee entered into a business loan agreement, commercial security agreement, and promissory note with Fidelity and Trust Bank of Bethesda, Maryland for a $3,000,000 line of credit. On December 17, 2007, the parties executed a loan modification agreement providing for an additional $1,000,000 line of credit.

The terms of the loan, loan modification, and security agreements appear to have been drafted in an attempt to provide Senator McCain the maximum possible flexibility to either stay in or withdraw from the Matching Payment Program, at his decision, based on prior Commission precedent in which the Commission agreed to withdrawal by candidates who had not yet actually received public funds and had not "pledged public funds as security for private financing." *See* Advisory Opinion ("AO") 2003-35 (Gephardt). Several provisions in the loan documents reflect this appearance. The first is the description of collateral in the original commercial security agreement. The security agreement provides that, "Grantor and Lender agree that any certifications of matching fund eligibility, including related rights, currently possessed by Grantor or obtained before January 1, 2008, are not themselves being pledged as security for the indebtedness and are not themselves collateral for the indebtedness or subject to this Security Agreement." By its terms, this provision would apparently mean that the August 2007 certification of eligibility and any rights thereunder, including any certifications of entitlement to specific amounts that derived from that certification, would be excluded from the security agreement's definition of collateral – no matter when the certification of entitlement was made or the matching funds were actually paid.[1]

The provision was modified on December 17, 2007 to read, "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." In the context of the loan and modified loan agreements, it appears that the reason the modification referred to certifications "now held" instead of "now held or hereafter acquired" was to avoid an internal inconsistency with the second major provision indicating that the parties wanted to give Senator McCain the maximum flexibility to withdraw, which we refer to as the "in-out-in" provision.

The "in-out-in" provision in the original loan agreement provided that if Senator McCain "withdraws from the public matching fund program by the end of December 2007, but . . . 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 would cause [Senator] McCain to remain an active political candidate and . . . will, within thirty (30) days of the New Hampshire Primary (i) reapply for public matching funds, [and] (ii) grant to Lender, as additional collateral for the

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[1] The phrase "or obtained before January 1, 2008" introduces some element of ambiguity, in that Senator McCain was already eligible for matching funds and would obtain no additional eligibility prior to January 1. The potential significance of that date is that in a normal year, with no shortfall in the matching payment fund, payments would begin on the first business day of the election year, so that even assuming the applicability of the prior precedent a candidate wishing to withdraw from the program before receiving any funds would need to do so not later than the last business day before January 1. *See* 11 C.F.R. § 9037.1; AO 2003-35 (Commission would not consent to candidate's withdrawal from the Matching Payment Program after the payment of funds on or after January 1). Thus, one might wonder whether the inclusion of the January 1 date indicated that the parties were using the word "eligibility" when they meant "entitlement"; if that were the case, they may have meant to include in the collateral any funds certified after January 1 in the event Senator McCain decided not to withdraw from the program. However, because contracts generally should be construed to mean what they say, and particularly because experienced election law counsel (indeed, two former members of the Commission) represented the two sides to the loan transaction in the negotiation of the loan agreement, we believe it most likely that when the parties used the word "eligibility" they meant "eligibility," not "entitlement."

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 . . . ." The December 17 modification to that provision changed the trigger to a poor performance in the first primary or caucus after McCain withdrew from the Matching Payment Program, instead of the New Hampshire primary.

B. SENATOR MCCAIN'S REQUEST TO WITHDRAW

Ordinarily, the United States Treasury would have paid Matching Payment Program funds to eligible candidates on the first business day of the election year. 11 C.F.R. § 9037.1. The Treasury, however, was not able to do so because there was such a shortage in the Matching Payment Program account that no candidates received a payment until mid-February. No payments had been made as of February 8, 2008, when Senator McCain and his Committee submitted to the Commission a letter purporting to withdraw ("withdrawal letter") from the Matching Payment Program.[2] Attachment 1. The Committee supplemented the withdrawal letter by letter dated February 25, 2008 ("supplemental letter"), and expanded on its rationale regarding its eligibility to withdraw from the Matching Payment Program. Attachment 2.

The original withdrawal letter states that, "no funds have been pledged as security for private financing." The withdrawal letter also indicates that Senator McCain and his Committee "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 . . . [the] previous submissions." Attachment 1. The withdrawal letter adds that the Committee "has not submitted to the Department of Treasury any bank account information" and that the Committee will also "inform [Treasury] directly of [its] withdrawal from the matching funds system." *Id.*

Chairman Mason, on behalf of the Commission, responded to Senator McCain by letter dated February 19, 2008. Attachment 3. The letter advised Senator McCain that his letter would be treated as a request that the Commission withdraw its previous certifications. The letter stated that 2 U.S.C. § 437c(c) requires four affirmative votes to approve a withdrawal just as it does to certify eligibility and informed Senator McCain that the Commission would consider the request when it had a quorum. *Id.* The letter invited Senator McCain to expand on the rationale for his assertion that neither he nor his Committee pledged the certification of Matching Payment Program funds as security for private financing, including but not limited to addressing specific provisions of the loan agreement. *Id.*

In the supplemental letter of February 25, the Committee claims that Senator McCain's withdrawal from the Matching Payment Program "occurred automatically upon his February 6th notification" to the Commission. Attachment 2. The Committee also asserts that a Commission quorum is not required to vote on releasing Senator McCain from his obligations under the Matching Payment Program. *Id.* Somewhat in contradiction to these statements, it also states that the absence of a quorum "means that the Commission cannot determine at this time whether a vote is required to recognize and accept [Senator McCain's] withdrawal or whether his

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[2] The Committee sent copies of the withdrawal letter to the Secretary of the Treasury and the Commissioner of the Financial Management Service.

withdrawal occurred automatically[.]" In other words, it appears to assert that without a quorum the Commission could not determine whether a quorum was required. *Id.* Finally, the supplemental letter, which included a letter from counsel on behalf of Fidelity and Trust Bank, stated that the bank did not "receive from the Committee, a security interest in any certification for matching funds" consistent with "basic principles of banking, security and uniform commercial code law." Attachment 2.

To our knowledge, the Department of the Treasury has not made any attempt to pay Senator McCain, nor has it responded to the Candidate's letter, pending resolution of this matter.

C. PRIOR INSTANCES OF CANDIDATE WITHDRAWAL

On three previous occasions, the Commission has considered the possibility that eligible candidates may withdraw from the Matching Payment Program and has concluded that up to a particular point in the process, they could.

First, in LRA 561 (Elizabeth Dole for President), a 2000-cycle presidential candidate who had been certified eligible for public funds and who withdrew from the race prior to the beginning of the matching payment period sought to withdraw from the Matching Payment Program prior to the distribution of payments so as to avoid the otherwise mandatory audit of her committee pursuant to 26 U.S.C. § 9038. The Commission voted to allow the candidate to withdraw. This Office's memorandum recommending that the Commission grant the request stressed the voluntary nature of participation in the program and the fact that the candidate had not yet received any matching payments. It did not address whether the candidate had pledged her eligibility for matching payments as security for private financing, nor did it address any other possible uses of the candidate's eligibility for matching payments.

Second, in AO 2003-35 (Gephardt), the Commission balanced the voluntary nature of participating in the Matching Payment Program with what it described as 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 explained that a candidate enters into a binding contract with the Commission when he or she 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." AO 2003-35.[3]

Third, in LRA 622 (Howard Dean/Dean for America), the Commission considered a request from a 2004-cycle presidential candidate to withdraw from the Matching Payment Program. This Office's memorandum to the Commission applied AO 2003-35 and, in a footnote, noted that the Audit Division had no information indicating that the candidate had

[3] After receiving the Advisory Opinion, the Gephardt committee ultimately decided not to request withdrawal from the Matching Payment Program.

pledged certification of his eligibility as security for private financing. The Commission voted to grant the candidate's request.

III. ANALYSIS

We first address Senator McCain's procedural argument that his withdrawal was automatic upon notice, with no further Commission action required, if he met the two conditions set forth in AO 2003-35. First, as discussed below, there is an articulable argument that eligible candidates may not withdraw from the program; if the Commission adopts this position, then it necessarily follows that withdrawal upon notice is not effective. Second, even if the Commission continues to adhere to the analytical framework set forth in the Gephardt opinion and concludes that eligible candidates may withdraw from the program at some point, a withdrawal would require four votes under 2 U.S.C. § 437c(c). When a candidate has established his or her eligibility for matching funds pursuant to 26 U.S.C. § 9033, then "the Commission shall certify" eligibility and entitlement to the Secretary of the Treasury. 26 U.S.C. § 9036. The Commission has not delegated this responsibility, and given the statute's use of the phrase "the Commission shall certify," it is not clear that the responsibility could be delegated. Determination of eligibility is certainly not a function that occurs automatically by operation of law; even in the most ministerial cases, eligibility is voted by the Commission. As occurs with every other eligible candidate, the Commission specifically voted to certify Senator McCain as eligible. Thus, given the Commission's direct involvement, determination of eligibility would appear to be an "action in accordance with . . . chapter 95 or 96 of title 26," and as such would require "the affirmative vote of 4 members of the Commission." 2 U.S.C. § 437c(c). A candidate's withdrawal from the Matching Payment Program, if permitted, involves in effect rescission or reversal of the Commission's previous action certifying eligibility. Accordingly, just as 2 U.S.C. § 437c(c) requires an affirmative vote of four Commissioners to certify Senator McCain eligible to receive public funds, it requires an affirmative vote of four Commissioners to "decertify" Senator McCain and allow him to withdraw from the Matching Payment Program. This is in fact what happened on the two previous occasions in which committees sought to withdraw from the program.

Turning to the substantive analysis, before presenting arguments in favor of the three possible outcomes, we set forth some basic propositions that provide a starting point for the discussion that follows.

First, the First Amendment to the Constitution generally does not permit the government to limit the expenditures of candidates for public office. *Buckley v. Valeo,* 424 U.S. 1, 57 (1976).[4] Second, one exception to that rule is that candidates may voluntarily subject themselves to spending limits in exchange for a public benefit. *See id.* at 57 n.65 (stating that "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. Just as a candidate may voluntarily limit the size of contributions he chooses to accept, he may decide to

[4] While *Buckley* addressed the constitutionality of spending limits contained in the Federal Election Campaign Act of 1971 and the Presidential Election Campaign Fund Act, the basic First Amendment principles it sets forth are equally applicable to the spending limits contained in the Matching Payment Act.

forgo private fundraising and accept public funding."); *see also id.* at 88 n.120, 89 & n.123, 95, 99, 107-08, 108-09. Third, inherent in the nature of any such exchange is that there is some "point of no return" after which the candidate has received, or at least is assured of receiving, the public benefit, such that the candidate is in fact bound by the spending limits.

Fourth, money, specifically, is the public benefit given in the Matching Payment Act in exchange for adhering to the expenditure limitation. Several provisions within the Matching Payment Act support this conclusion. For example, a candidate has to make certain agreements in writing in order "to be eligible to receive *payments* under section 9037." 26 U.S.C. § 9033(a) (emphasis added). After a candidate has established eligibility, he or she "is *entitled to payments*" in particular amounts tied to the level of his or her private financing. 26 U.S.C. § 9034(a) (emphasis added). No later than ten days after a candidate establishes eligibility, "the Commission shall certify to the Secretary *for payment to such candidate under section 9037 in full of amounts* to which such candidate is entitled under section 9034," and the Commission shall then make additional certifications of entitlement to particular amounts "as may be necessary to permit candidates *to receive payments*" matching additional private contributions received. 26 U.S.C. § 9036(a) (emphasis added). The Treasury, upon receipt of a certification from the Commission but not prior to January 1 of the election year, "*shall promptly transfer the amount certified* from the matching payment account to the candidate." 26 U.S.C. § 9037(b) (emphasis added). While a Commission determination that a candidate is eligible for public funds may have collateral benefits to the candidate, such as ballot access in some states as a matter of state law or eligibility to participate in privately sponsored debates, *see* AO 1996-07 (Harry Browne for President) (involving a committee that sought, and was denied, eligibility without actual payment of funds solely for purposes of satisfying criteria established by other entities for participation in campaign events), it is the public funds that form the actual public benefit provided by Congress.

This matter turns on when the "point of no return" occurs beyond which a candidate is irrevocably bound by the spending limits. We turn now to the three possible answers to that question. We attempt to present the strongest possible arguments in favor of each answer, followed by our recommendation and the reasons for it.

A. OUTCOME #1: MATCHING PAYMENT ACT DOES NOT PERMIT WITHDRAWAL

The starting point for any question of statutory interpretation is the text of the statute. When reviewing the text of a statute, courts will first look to whether the statute can be read to have only one plain meaning. *Chevron, U.S.A., Inc., v. NRDC.*, 467 U.S. 837, 844 (1984). Under this "Step 1" of the *Chevron* analysis, "[i]f the intent of Congress is clear, that is the end of the matter; for the . . . agency must give effect to the unambiguously expressed intent of Congress." *Id.* Alternatively, where the intent of Congress is not clear because the statute is silent or ambiguous, courts will defer to an agency's interpretation of the statute so long as it is not "arbitrary, capricious, or manifestly contrary to the statute" in what is known as a "*Chevron* Step 2" analysis. *Id.* at 843. When "Congress has explicitly left a gap for the agency to fill, there [is] an express delegation of authority for the agency to elucidate a specific provision of the statute." *Id.*

The argument for prohibiting withdrawal would begin by asserting that the plain meaning of the applicable statutes is that eligible candidates, the Commission, and the Treasury are all bound from the moment of eligibility and remain bound. Although most of the public financing program is located in the Matching Payment Act in Title 26 of the United States Code, the spending limits for publicly financed candidates are located in the Federal Election Campaign Act ("FECA") in Title 2 of the United States Code. 2 U.S.C. § 441a(b) provides that "[n]o candidate for the office of President of the United States who is eligible . . . under section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of" specified limits. Senator McCain was eligible under section 9033 of Title 26 and thus prohibited from making expenditures in excess of the specified limits. The same provisions that establish that money is the public benefit provided in the Matching Payment Act also establish that the Commission and the Treasury are equally, and unequivocally, bound: eligible candidates are "*entitled to payments*" pursuant to 26 U.S.C. § 9034(a) (emphasis added); the Commission "*shall* certify" the amounts to which the candidate is entitled pursuant to 26 U.S.C. § 9036(a) (emphasis added); and the Treasury "*shall promptly transfer*" amounts certified pursuant to 26 U.S.C. § 9037(b) (emphasis added). Read together, the statutes make clear that a candidate who is truly eligible will receive the amounts to which he or she is entitled, and thus is in exchange bound to the spending limits from the moment of eligibility. They do not indicate that any discretion is given to either the government or the candidate, even by mutual consent, to depart from the obligations imposed by the statute.[5]

Thus, as this argument would have it, a reviewing court need not go further than *Chevron* Step 1 to conclude that withdrawal is prohibited. However, even if a court found the statutes silent or ambiguous – as it might, given the lack of any specific statutory reference to withdrawal – an interpretation prohibiting withdrawal would not be a reading that would be "arbitrary, capricious, or manifestly contrary to the statute," and the Commission would thus be entitled to deference at *Chevron* Step 2.

This decision would depart from the Commission's prior decisions, and "[a]n agency interpretation [of the statute it administers] that would otherwise be permissible is, nevertheless, prohibited when the agency fails to explain its departure from prior precedent." *Bush-Quayle '92 Primary Committee, Inc., v. FEC*, 104 F.3d 448 (D.C. Cir. 1997) [hereinafter *Bush-Quayle*] (determining that the Commission may depart from precedent so long as it "supplies a reasoned analysis" for the change). There are colorable arguments to be made for departing from precedent here.

In the Gephardt opinion, the Commission merely said:

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[5] If the Commission determines that a candidate receiving public funds was never truly eligible in the first place, it may rescind its determination of eligibility and seek repayment of funds already paid. LRA 644 (Sharpton). Moreover, the Commission may determine that an eligible candidate who knowingly and substantially fails to comply with the disclosure requirements of 2 U.S.C. § 434 and 11 C.F.R. Part 104, or who knowingly and substantially exceeds the expenditure limitations, has an entitlement of zero, either curably (in the instance of a failure to report) or permanently (in the case of exceeding the limits). 11 C.F.R. § 9033.9(a)-(d) (paragraphs (d)(1) and (2)) (making clear that a suspension affects a candidate's entitlement). *But see Explanation and Justification for Presidential Primary Matching Fund,* 45 Fed. Reg. 25,378, 25,378-79 (Apr. 15, 1980) (noting that "the Commission's power to suspend in implied from its express authority to determine initial eligibility").

> The Matching Payment Act does not address a candidate who the Commission has certified as eligible to receive payments under the Matching Payment Act who no longer wishes to participate in the Matching Payment program. Nor do the Commission's regulations address such a situation. The legislative history of the Matching Payment Act does not address certified candidates withdrawing from the public funding programs. It does recognize that a Presidential primary candidate's participation in the Matching Payment Act public funding program is voluntary. AO 2003-35 (citations omitted).

The analyses in the General Counsel's memoranda to the Commission in the Dole and Dean matters, which may be presumed to reflect the reasoning for the Commission's actions in those matters, *see FEC v. DSCC*, 454 U.S. 27, 37 (1981), are similar. The failure of the previous matters even to grapple with the text of 2 U.S.C. § 441a(b), much less the companion provisions of Title 26 that appear to bind the Commission and the Treasury, would justify reexamination of the issue here, and departure from the approach taken in the Dole and Dean matters.

Policy considerations also support this analysis. If the statute is not read according to its plain meaning, a candidate who has been declared eligible but who has not yet received public funds, and who is either undecided or even has no real intention of actually participating in the system, could manipulate the Matching Payment Program to leverage numerous ancillary benefits such as debate participation and ballot access without being held to any of the public commitments that made those benefits possible. In AO 1996-07 (Harry Browne for President), the Commission declined to certify that Mr. Browne was eligible precisely because he was explicit that, while he sought ancillary benefits of eligibility not provided by statute, he did not want the actual public funds and, especially, did not wish to be subject to spending limits or to be audited. If candidates can withdraw after eligibility, then candidates who want only the ancillary benefits of eligibility without public funds or the responsibilities that come with them may achieve exactly the result Mr. Browne sought to achieve simply by not being open about their intentions. Consequently, to avoid candidates manipulating the Matching Payment Program, the Commission could conclude that the Matching Payment Act provides no discretion to permit an eligible candidate to withdraw from the Matching Payment Program.

B. OUTCOMES #2 AND #3: MATCHING PAYMENT ACT DOES PERMIT WITHDRAWAL

As discussed above, nothing in the text of the Matching Payment Act or the FECA says in so many words whether eligible candidates may change their minds about participation in the program, much less when, if ever, they may do so. The statutes are silent on the specific issue of withdrawal. Therefore, the Commission also could interpret the statutes to permit withdrawal under a *Chevron* Step 2 analysis and would be entitled to deference so long as permitting withdrawal would not be "arbitrary, capricious, or manifestly contrary to the statute." This construction would be consistent with judicial interpretation of other silences in the Matching Payment Act. In *Kennedy for President Committee v. FEC,* 734 F.2d 1558 (D.C. Cir. 1984), the court compared the Matching Payment Act's utter silence regarding a formula for calculating

repayments in cases of nonqualified campaign expenses with its detailed provisions regarding the repayment of surplus funds, and determined that the silence on the former issue "manifests a discernable congressional intent to accord to the FEC discretion" as to that issue. *Id.* at 1563. Here, the congressional silence on withdrawal from the program, compared with the detailed statutory provisions regarding entry into the program, manifests a congressional intent to leave the issue of withdrawal to the Commission's discretion.

This construction would be consistent with the Commission's past interpretations of the statutes. 11 C.F.R. § 9035.1(d) specifically provides that the spending limits "shall not apply to a candidate who does not *receive* matching funds" (emphasis added). The plain language of this regulation suggests that the Commission interpreted the statutes as not binding candidates to spending limits until the moment of receipt, thus giving the Commission discretion to reverse its eligibility determination and decertify a candidate up to that point. The Commission also has permitted candidates to withdraw on three prior occasions. Given that the analysis is a *Chevron* Step 2 analysis, a statutory interpretation that is consistent with the Commission's past approach would be more easily defensible under *Chevron* and *Bush-Quayle*.

Thus, the Commission could, consistent with the law, continue to take the position that withdrawal is possible. Several policy considerations indicate that the Commission should take this position. First, the public benefit given in the Matching Payment Act in exchange for adhering to the expenditure limitation is money, not eligibility. Since the receipt of money is the true benefit of the Matching Payment Program, and candidates typically receive payments early in the election year, in some instances months after they have established eligibility, it would be consistent with the voluntary nature of the program (which is necessary to its constitutionality) to allow a greater degree of flexibility in the year or more prior to payment of the candidates by the Treasury. Second, where the Commission confronts equally permissible constructions of the public financing statutes, all things being equal it makes sense to choose the construction that would make the program more attractive to candidates, rather than less attractive. Already, an increasing proportion of major candidates for the major parties' presidential nominations choose not to participate in the program. An inflexible approach regarding withdrawal may make the program even less attractive in future elections. Third, Senator McCain relied on previous Commission decisions to conclude that he met the eligibility requirements to withdraw, and contends he structured his loan agreements consistent with the conditions set forth in the Gephardt opinion in order to retain his ability to withdraw from the Matching Payment Program. Fourth, a Commission determination that a candidate may withdraw would support the principles of voluntariness cited in *Buckley* and would avoid raising a First Amendment question. *See Buckley*, 424 U.S. at 57 n. 65.

Determining that eligible candidates may withdraw, however, does not answer the question of precisely where the "point of no return" occurs. We turn now to the possible answers to that question.

1. OUTCOME #2: GEHPARDT OPINION IS NON-BINDING; SENATOR MCCAIN MAY WITHDRAW FROM MATCHING PAYMENT PROGRAM PRIOR TO RECEIVING PAYMENTS

Rather than attempt to interpret what the Commission meant in the Gephardt opinion when it used the phrase "pledged public funds as security for private financing," the Commission could take note of the fact that the Gephardt opinion does not set forth a binding rule of law applicable to the matter at hand and conclude that "the point of no return" to withdraw is the date the candidate actually receives payments under the Matching Payment Act. In doing so, the Commission would still uphold the basic proposition set forth in the Gephardt, Dole, and Dean matters that a candidate may withdraw from the public funding program. The Commission could simply conclude that the Gephardt opinion's reference to pledging of funds as security did not establish a binding condition precedent, and that Senator McCain can withdraw from the public funding program even if he unequivocally pledged public funds as security for private financing.

Advisory opinions may be relied on by the persons involved in the specific transaction opined on, and by any other person who engages in a transaction with materially indistinguishable facts. *See* 2 U.S.C. § 437c(f)(1). The Gephardt Committee specifically noted in its request for an advisory opinion that its previous certification for an initial payment of $100,000 would "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." *See id.* Therefore, when the Commission stated that an eligible candidate may withdraw from the program before the payment of public funds "provided that the certification of funds has not been pledged as security for private financing," the Commission may simply have meant that a candidate who *had* pledged public funds as security for private financing would present facts materially distinguishable from those presented by the Gephardt Committee. Given that the Commission could not properly establish a binding rule of law in an advisory opinion, s*ee* 2 U.S.C. § 437f(b), the question of a candidate who had made such a pledge would be left for another day.

Permitting the candidate to withdraw from the public funding program at any point up until the date the candidate actually receives payments arguably would be the option most consistent with the basic First Amendment principles underlying the public funding program. In *Buckley*, the Supreme Court upheld the public funding program based on the premise that candidates voluntarily agree to subject themselves to specified expenditure limitations in exchange for a public benefit. *Buckley*, 424 U.S. at 57 n.65. As noted above, the actual payment and receipt of funds, rather than the certification of funds, is the specific public benefit offered under the Matching Payment Act and tied to a voluntary waiver of one's First Amendment rights. *See supra* p. 7. Following this line of reasoning, the Commission should not require candidates to give up their First Amendment rights to spend unlimited amounts of money until they actually receive a payment of funds.

Aside from the language in the Gephardt opinion, nothing in Matching Payment Act jurisprudence explicitly states a candidate reaches the "point of no return" if he or she takes advantage of the ancillary benefits of a certification of funds without having actually received a payment of funds. Even within the Gephardt opinion, there is no other mention in the Commission's reasoning that suggests a pledge of a certification of funds as security for private

financing is dispositive to whether or not a candidate may withdraw from the public funding program. *See* AO 2003-35. Instead, the Commission focused on whether permitting Congressman Gephardt to withdraw was consistent with its prior decision "permitting rescissions *prior to the payment* of any Matching Payment funds." *Id.* (emphasis added). Moreover, permitting the candidate to withdraw from the public funding program at any point up until the date the candidate actually receives payments is the outcome most consistent with 26 U.S.C. § 9038(a), which provides that the Commission shall audit candidates and their committees that have "*received* payments" under 26 U.S.C. § 9037, and 11 C.F.R. § 9035.1(d), which provides that the expenditure limits "shall not apply to a candidate who does not *receive* matching funds."

2. OUTCOME #3: GEHPARDT OPINION IS CORRECT; SENATOR MCCAIN MAY WITHDRAW FROM MATCHING PAYMENT PROGRAM PRIOR TO "PLEDGING PUBLIC FUNDS AS SECURITY FOR PRIVATE FINANCING"

Alternatively, the Commission could choose to treat the Gephardt opinion as persuasive authority and conclude that the "point of no return" for withdrawal is the earlier of when a candidate has pledged public funds as security for private financing or when a candidate has actually received public funds. *See* AO 2003-35. Such a conclusion would have the benefit of consistency with the prior opinion. It would also reflect that the receipt of private credit based on a pledge of public financing can be seen as more than a mere ancillary benefit; it is, in effect, the advancement in time of the actual financial benefit provided to participating candidates by statute, a type of "constructive receipt" of that financial benefit.

To apply the Gephardt opinion to the facts here, however, the Commission would first need to interpret what that opinion meant by the phrase "pledged public funds as security for private financing." The provisions of Commission regulations that deal with the use of entitlement to public funds as security for private loans contemplate an unambiguous pledge of the funds as collateral before the Commission will recognize that a candidate has pledged public funds as security for private financing. Thus, the Gephardt opinion likely referred to a similarly unambiguous pledge of the public funds. Because the loan agreement between Senator McCain and Fidelity and Trust Bank did not contain such an unambiguous pledge, the Commission in this interpretation would permit Senator McCain to withdraw from the Matching Payment Program.

The Commission has dealt with the concept of pledging public funds as security for private financing in two of its own regulations. The first is the shortfall bridge loan exemption. 11 C.F.R. § 9035.1(c)(3). This regulation provides that where a candidate uses the promise of unpaid public funds as "security" for a bridge loan obtained during a shortfall in the Matching Payment Program account, the interest accrued during the shortfall period does not count against the candidate's expenditure limit. *Id.* While not explicitly defined in the regulations, the very nature of a "bridge loan" is that the future public funds are directly pledged as security for a loan to tide the candidate over during a limited period before payment.

The second is the Commission's regulation on bank loans at 11 C.F.R. § 100.82(e)(2). A bank loan is a contribution to a candidate, and therefore prohibited by 2 U.S.C. § 441b(a)

assuming the bank is incorporated, unless the loan is made on a basis that assures repayment. 2 U.S.C. § 431(8)(b)(vii)(II). 11 C.F.R. § 100.82 sets forth circumstances under which bank loans will be deemed to be made on a basis that assures repayment; section 100.82(e)(2) sets forth circumstances under which a pledge of future receipts will be deemed to be collateral sufficient to "assure repayment." The regulation specifically mentions future payments of public funds as among the type of future payments that may be pledged. *Id.* It also mentions public funds in two parts of its five-part test, one of which applies *only* to public financing. First, the regulation inquires whether the loan agreement required the public financing payments or other future receipts "pledged as collateral" to be deposited into a separate depository account for the purposes of retiring the bank loan debt. 11 C.F.R. § 100.82(e)(2)(iv). Second, the regulations inquire whether, in the case of public financing payments, the borrower authorized 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)(v).

This examination of the bridge loan regulation and 11 C.F.R. § 100.82 indicates that both regulations contemplate an unambiguous pledge of the funds as collateral, and Section 100.82 explicitly contemplates that once paid from the Treasury, public funds will rapidly be made available to the lender for purposes of retiring the debt. Thus, it would make sense to conclude that the Commission had these or very similar arrangements in mind when it used the phrase "pledged public funds as security for private financing" in the Gephardt opinion. This interpretation has the benefit of ensuring a tight fit between the actual receipt of public funds, which is the benefit provided for by statute in exchange for the candidate's agreement to spending limits, and the loan agreement. In effect, a candidate in the bridge loan or bank loan scenarios is doing no more than advancing the date on which he will be paid the specific sums to which he or she is entitled.

The Uniform Commercial Code ("UCC") is another potential source of authority to which the Commission could conceivably turn as it seeks to expand on the meaning of "pledged public funds as security for private financing." However, reliance on the UCC has several potentially serious drawbacks. First, it is reasonable to assume that when the Commission used a phrase such as "pledged public funds as security for private financing," it intended concepts such as "pledged" and "security" to have meanings similar, if not identical, to the meanings of those concepts when they occur in its own regulations. The Commission obviously has a greater familiarity with its own regulations than it does with other outside sources of law applicable to security agreements, such as the UCC. Had the Commission had UCC concepts in mind at the time it wrote the Gephardt opinion, it likely would have explicitly stated so or cited to specific UCC provisions. Thus, an interpretation of the Gephardt opinion derived from the Commission's regulations is more persuasive than one derived from a source of law over which the Commission has no specialized expertise.

Second, relying on the UCC would pose several additional analytical problems for the Commission. The process of a secured transaction under the UCC has as many as three parts: (1) creation of a security interest when the parties enter into an agreement that creates an interest that

falls within the definition provided at UCC § 1-201(37)[5]; (2) "attachment," when the interest becomes enforceable, *see* UCC § 9-203; and (3) "perfection," when, if the secured party takes certain actions, it can assure itself a priority over other creditors in the property that forms the security, *see* UCC § 9-301. Nowhere in the Gephardt opinion does the Commission suggest which of the three parts would cause a candidate to reach the "point of no return" for withdrawal. Reliance on different parts could lead to different outcomes. For instance, whereas a security interest typically can be created in property that has not yet been acquired by the debtor, it "attaches" only when, among other things, the debtor has rights in the property pledged. And even within the parts of a secured transaction, differences in state law can lead to different outcomes. For instance, to determine whether a security interest has been created, most jurisdictions, including Maryland, apply a two-step test that focuses on both the contractual terms of the agreement and a contextual analysis of the parties' objective intent to reserve an interest in personal property that secures payment or performance of an obligation. *See, e.g., In re WorldCom, Inc.*, 339 B.R. 56, 64-65 (Bkrtcy. S.D.N.Y. 2006); *Tilghman Hardware, Inc. v. Larrimore,* 628 A. 2d 215, 218 (Md. 1993); *In re Eastern Equipment Co.*, 11 B.R. 732, 735-36 (Bkrtcy. W. Va. 1981). But at least one jurisdiction has held that a security agreement that provides for a security interest in after-acquired property "create[s] a security interest when [a] debtor acquire[s] rights in the collateral." *See In re Stevens*, 307 B.R. 124, 128 (Bkrtcy. E.D. Ark. 2004); *In re Toombs*, 2002 WL 32115829, at *3 (Bkrtcy. E.D. Ark. 2002). If the Commission were to look to the UCC to determine when a candidate had "pledged public funds as security for private financing" and thus when he could or could not withdraw from the Matching Payment Program, it could find itself forced to make factual and legal judgments that are typically reserved for state courts in a commercial law context.

To avoid these problems, the Commission should derive a meaning for "pledged public funds as security for private financing" that relies on the fact patterns that are reflected in its own regulations: an unambiguous pledge of public funds as security and a provision to rapidly make those funds available to the creditor.

In this case, the Commission could determine that there was no unambiguous pledge of public funds as security. The original loan provided that "any certifications of matching fund eligibility, including related rights, currently possessed by Grantor or obtained before January 1, 2008, are not themselves being pledged as security for the indebtedness and are not themselves collateral." As noted above, if the agreement is read literally, payments derivative of the August 2007 certification of Senator McCain's eligibility would be "related rights" to it and not part of the collateral.

Similarly, the loan agreement did not provide for public funds rapidly to be made available to the lender for purposes of retiring the debt. While the Committee granted to the bank as collateral "accounts" and "deposit accounts," and the loan agreement gave the bank "a right of setoff in all [of the Committee's] accounts with [the bank] (whether, checking, savings, or some other account)," there is nothing in the loan agreement specifically addressing the bank's access to the matching funds. Nor did the Committee give to the Treasury account

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[6] A security interest under the UCC is "an interest in personal property or fixtures which secures payment or performance of an obligation." UCC § 1-201(37).

information at Fidelity and Trust Bank or any other bank into which Matching Payment Program funds could be deposited. Consequently, there is no indication that the setoff provision would have reached Matching Payment Program funds.

There is even less connection between the "in-out-in" provision and any pledge of funds for which Senator McCain was eligible at the time of the agreement, much less provision to make such funds available to the bank. Procedurally, whatever the "in-out-in" provision offered the bank – and there seems to be no question that it in fact induced the bank to make the loan – it deals with a hypothetical second eligibility that might or might not occur (and in fact did not occur). The Commission cannot withdraw, or refuse to withdraw, a certification of eligibility that it has not yet made in the first place. Moreover, the "in-out-in" provision can be said unambiguously to pledge public funds as collateral, or to provide for those funds rapidly to be made available to the lender, only upon the occurrence of a series of contingencies of which the hypothetical second eligibility is *third.* It would be more accurate to say that the "in-out-in" provision pledged no public funds, at least at the time of the agreement, because at that time there was no such eligibility. Had the contingencies occurred, and had Senator McCain then attempted to withdraw from the program a second time, the outcome might be different.

From a practical standpoint, there remains the question of why a candidate cannot be said to have "pledged public funds as security for private financing" when that candidate uses his or her eligibility to induce a creditor to make an extension of credit. Here, for instance, the fact that Senator McCain had qualified for public funds may in fact have induced Fidelity and Trust Bank to make the loan, given that the bank likely contemplated that Senator McCain's ability to raise private funds would be seriously diminished if the candidate withdrew from the program and his campaign thereafter did not do well, and would look to his current eligibility in assessing his future ability to repay the loan. However, merely inducing a creditor to extend credit based on one's eligibility does not amount to any kind of unambiguous pledge of funds received as a result of that eligibility or create a security interest in those funds. That fact that a creditor is induced by a candidate's eligibility does not give a creditor any enforceable right against public funds. Moreover, using a standard that looks to whether a candidate uses eligibility to induce a creditor would force the Commission to make a factual determination as to whether such inducement has taken place, something that would be difficult and subjective given that in many cases there might be little to no evidence on which the Commission could base its determination. When inducement is not evidenced in writing between the parties, the Commission would be put in the role of discerning what the creditor was thinking at the time the parties entered into a transaction. Thus, mere inducement should not be a consideration in determining whether a candidate has "pledged public funds as security for private financing."

IV. CONCLUSION

We recommend that the Commission adopt the third outcome and determine that Senator McCain may withdraw from the Matching Payment Program because he did not pledge public funds as security for private financing.

First, we believe that the Matching Payment Act does permit candidates to withdraw after they have been declared eligible. Although no eligible candidate may exceed the expenditure

limits, the statutes simply do not say whether the Commission has discretion to reverse its eligibility determination and decertify a candidate. The fact that the statutes are completely silent on the issue of withdrawal strongly suggests that the Commission should read them to be silent, or at the most ambiguous, on the issue of withdrawal under *Chevron* Step 2. Even though the Commission might argue that the statutes' meaning are plain, that argument would be entitled to no deference; at *Chevron* Step 1, it is ultimately for a court to determine whether Congress spoke. *See Chevron*, 467 U.S. at 844. The Commission might also conclude that even in the face of statutory silence, a prohibition on withdrawal is the proper interpretation. Were the question of withdrawal a matter of first impression, that conclusion might well receive judicial deference under *Chevron* Step 2, for it is a more than plausible construction. But the question is not one of first impression, and under these circumstances, the Commission would be more likely to receive judicial deference if it interpreted the statute consistently with its approach in prior instances of candidate withdrawal. Courts will specifically look to past precedent when determining how much deference to give to an agency's decision. *Bush-Quayle*, 104 F.3d at 453.

Perhaps more importantly, there are few if any compelling policy reasons for prohibiting withdrawal by any eligible candidate at any time. Ultimately, little if any harm was done to the public financing system by permitting the withdrawal of Elizabeth Dole in 1999 or Howard Dean in 2003. Because the public benefit in the Matching Payment Act is money, it would be contrary to the purpose of the Matching Payment Act to adopt an inflexible approach that would irrevocably bind candidates to their initial decision to accept public funds, while at the same time draining the amount of funds available in the Matching Payment Program account for candidates who do actually want them. We also believe that such an inflexible approach would discourage candidates from opting into the Matching Payment Program at a time when participation in the program is declining. This danger outweighs the danger of candidates potentially abusing the Matching Payment Program by leveraging ancillary benefits without being held to any of the public commitments that made those benefits possible. Considering that the Commission has only been presented with three prior instances of candidate withdrawal, it seems unlikely that the Commission will face a rash of candidates abusing the Matching Payment Program via withdrawal. Moreover, we believe that the harm the less flexible approach would do to a candidate's interest in choosing to speak without limit would significantly outweigh any public benefit gained by binding candidates irrevocably to the program even if they have not yet received public funds.

Second, we believe that the "point of no return" for candidates to withdraw occurs at the earlier of when a candidate has actually received public funds or when a candidate has pledged public funds as security for private financing. The Commission's regulations, at 11 C.F.R. § 9035.1(d), make clear that the expenditure limitations do not apply until a candidate receives matching funds. When a candidate has made a legally binding pledge of public funds that the candidate is eligible to receive to a creditor, the candidate effectively has already received the funds, even if they have not yet been paid out by the Treasury. At this point, the constitutional bargain shifts. The candidate has in all but form received the very benefit provided by the statute. At that point, the candidate must be held to his end of the bargain. This conclusion also has the benefit of consistency with the Commission's approach in prior instances of candidate withdrawal. Again, the Commission would likely receive more judicial deference because this

"point of no return" was at least suggested in the Gephardt opinion and the Dean matter. *See Bush-Quayle*, 104 F.3d at 453.

Third, as discussed above, we believe that the phrase "pledged public funds as security for private financing" in the Gephardt opinion means scenarios similar to those reflected in the Commission's own regulations. Even if the Commission did not have its own regulations in mind at the time it wrote the Gephardt opinion, the various analytical problems posed by attempting to apply another outside source of law such as the UCC strongly counsel against looking outside the Commission's own regulations.

Under the above standard, Senator McCain did not pledge public funds for security for private financing and may withdraw from the Matching Payment Program. Both the bridge loan regulation at 11 C.F.R. § 9035.1(c)(3) and the bank loan regulation at 11 C.F.R. § 100.82 contemplate an unambiguous pledge of the funds as collateral and some provision in the loan agreement for the funds to be made available to the lender for purposes of retiring the debt. Here, neither the original agreement nor the "in-out-in" provision unquestionably pledges funds nor provides for any funds to be made available to Fidelity and Trust Bank. Consequently, Senator McCain never reached the "point of no return" for withdrawal from the Matching Payment Program.

In sum, we conclude that the Matching Payment Act permits withdrawal unless the candidate has actually received public funds or pledged them as security for private financing. We recommend that the Commission determine that Senator McCain may withdraw from the Matching Payment Program because he did not receive public funds nor pledge public funds as security for private financing.

V. RECOMMENDATION

The Office of the General Counsel recommends that the Commission:

1. Withdraw the certification to the Secretary of the Treasury that Senator McCain and John McCain 2008, Inc. are entitled to payment from the Matching Payment Act account; and

2. Approve the attached letters to counsel for Senator McCain and John McCain 2008, Inc. and the United States Treasury.

Attachments:

1. Letter from John McCain and John McCain 2008, Inc., dated February 6, 2008

2. Letter from John McCain 2008, Inc. and related attachment from Dickstein Shapiro, LLP, dated February 25, 2008

3. Letter from Chairman David M. Mason, dated February 19, 2008

4. Business Loan Agreement between John McCain 2008, Inc. and Fidelity and Trust Bank, dated November 14, 2007 and related documents

5. Proposed Letter to Counsel for Senator McCain and John McCain 2008, Inc.

6. Proposed Letter to the United States Treasury

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

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

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

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 E. Thomas, Of Counsel
(202) 420-2601
thomass@dicksteinshapiro.com

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

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
Chairman

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

SCHEDULE C-1

LOANS AND LINES OF CREDIT FROM LENDING INSTITUTIONS

RECEIVED FEC MAIL CENTER

2008 JAN 31 AM 11:28

Supplementary for Information found on Page 1 / 10062 of Schedule C

Federal Election Commission, Washington, D.C. 20463

Name of Committee (in Full)	FEC IDENTIFICATION NUMBER
JOHN MCCAIN 2008, INC.	C00430470

Back Ref ID: SC-01

LENDING INSTITUTION (LENDER) Full Name	Amount of Loan	Interest Rate (APR)
FIDELITY & TRUST BANK	4000000.00	8.5000 %

Mailing Address	Date Incurred or Established	Date Due
4831 CORDELL AVE.	11 14 2007	05/14/2008
City: BETHESDA — State: MD — Zip Code: 20814-9914		

A. Has loan been restructured? [X] No [ ] Yes — If yes, date originally incurred: [ ] [ ] [ ]

B. If line of credit,
Amount of this Draw: 2971697.20
Total Outstanding balance: 2971697.20

C. Are other parties secondarily liable for the debt incurred?
[X] No [ ] Yes (Endorsers and guarantors must be reported on Sch. C)

D. Are any of the following pledged as collateral for the loan: real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other similar traditional collateral?
[ ] No [X] Yes If yes, specify:
ALL ASSETS OF ANY KIND OR AMT EXCLUDING CERTIFICATIONS FOR FEDERAL MATCHING FUNDS: EST. +$5,000,000

What is the value of this collateral?
5000000.00

Does the lender have a perfected security interest in it? [ ] No [X] Yes

E. Are any future contributions or future receipts of interest income, pledged as collateral for the loan? [ ] No [X] Yes If yes, specify:
ALL FUTURE INCOME EXCEPT PUBLIC FINANCING; ESTIMATED IN EXCESS OF $5,000,000

What is the estimated value?
5000000.00

A depository account must be estabished pursuant to 11 CFR 100.82 and 100.142.

Date account established: 12 10 2007

Location of account
FIDELITY & TRUST BANK
Address:
4831 CORDELL AVE.
City, State, Zip: BETHESDA MD 20814-9914

F. If neither of the types of collateral described above was pledged for this loan, or if the amount pledged does not equal or exceed the loan amount, state the basis upon which this loan was made and the basis on which it assures repayment.

G. COMMITTEE TREASURER
Typed Name: MR SALVATORE PURPURA (ASSISTANT TREASURER)
Signature:
DATE: 01 29 2008

H. Attach a signed copy of the loan agreement.

I. TO BE SIGNED BY THE LENDING INSTITUTION:
I. To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of this loan are accurate as stated above.
II. The loan was made on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness.
III. This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and has complied with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan.

AUTHORIZED REPRESENTATIVE
Typed Name: MR JOHN RICHARDSON
Signature:
Title: SENIOR VP
DATE: 01 29 2008

FE1AN060.PDF

FEC Schedule C-1 (Form 3P)

28029612468

ATTACHMENT 4

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BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
[illegible]	11-14-2007	05-14-2008		466		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: John McCain 2008, Inc.
P O Box 16118
Arlington, VA 22216

Lender: Fidelity & Trust Bank
4831 Cordell Ave.
Bethesda, MD 20814-9930

THIS BUSINESS LOAN AGREEMENT dated November 14, 2007, is made and executed between John McCain 2008, Inc. ("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, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of 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 PRECEDENT 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: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) 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.

Borrower's Authorization. Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, may require.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

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 non-profit corporation which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of 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, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or 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 presently proposes to engage. Borrower maintains an office at P O Box 16118, 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, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Assumed Business Names. Borrower has filed or recorded 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: None.

Authorization. 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 (1) any provision of (a) Borrower's articles of incorporation or organization, or bylaws, or (b) any agreement or other instrument binding upon Borrower or (2) 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 legal, 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 and clear 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 been (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) 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 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 waste 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 ~~2008~~ 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 thirty (30) 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.

Financial Reports. Furnish 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.

Fundraising Efforts. Exercise best efforts to use the lists identified as collateral in the Commercial Security Agreement and the candidate John McCain's name to raise contributions in an amount sufficient to retire the outstanding principal balance of the Loan, together with all accrued and unpaid interest and all other fees, charges and expenses with respect thereto, for as long as Lender shall request.

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

Cash, Checks, Remittances, Etc. Deposit or cause to be deposited into one or more of the depository accounts maintained by Lender on Borrower's behalf, all checks, drafts, cash and other remittances received by Borrower, including, without limitation, contribution proceeds, within one (1) 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 them 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 federal, state or local income or franchise taxes imposed on Lender), reserve requirements, capital adequacy requirements or other obligations which would (A) increase the cost to Lender for extending or maintaining the credit facilities to which this Agreement relates, (B) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (C) 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.

LENDER'S EXPENDITURES. 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 then 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 (1) the term of any applicable insurance policy; or (2) the remaining term of the Note.

NEGATIVE 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, including, without limitation, any of Borrower's right, title or interest in and to the public matching fund program or any matching fund entitlement thereunder, whether now existing or hereafter arising, or (3) sell with recourse any of Borrower's accounts, except to Lender.

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 alter or amend Borrower's capital structure.

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.

Limitation on Advances. Cause, suffer or permit the outstanding principal balance of the Loan to exceed One Million Five Hundred Thousand and No/100 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".

CESSATION OF ADVANCES. 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 Grantor'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.

Insolvency. The dissolution or termination of Borrower's existence as a going business, or a trustee or receiver is appointed for Borrower or for all or a substantial portion of the assets of Borrower, or Borrower makes a general assignment for the benefit of Borrower's creditors, or Borrower files for bankruptcy, or an involuntary bankruptcy petition is filed against Borrower and such involuntary petition remains undismissed for sixty (60) days.

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.

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 Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower 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 of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

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. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all sums owing in connection with the Loans, including all principal, interest, and all other fees, costs and charges, if any, will become immediately due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies 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 Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

COMPLIANCE WITH THE FEDERAL ELECTION COMMISSIONS MATCHING FUNDS PROGRAM. 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, if applicable.

POST CLOSING DOCUMENTS. Within thirty (30) days from the date of this Agreement, Borrower hereby agrees to deliver to Lender, the Assignment of Life Insurance Policy (the "Assignment") and a copy of the Keyman Life Insurance Policy (the "Policy"), on the life of John McCain, in an amount not less than $3,000,000.00. Borrower understands and agrees that failure to deliver the Policy and the Assignment within the period specified will, at the option of the Lender, constitute an Event of Default.

STATUS OF CURRENTLY HELD CERTIFICATIONS OF MATCHING FUNDS. Borrower and Lender agree that any certifications of matching fund eligibility currently possessed by Borrower or obtained before January 1, 2008 and the right of John McCain 2008, Inc. and John McCain to receive payment under these certifications are not collateral under the Commercial Security Agreement for this Loan.

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. Borrower agrees that if Lender hires an attorney to help enforce this Agreement, Borrower will pay, subject to any limits under applicable law, Lender's attorneys' fees equaling 15.000% of the principal balance due on the Loan and all of Lender's other collection expenses, whether or not there is a lawsuit and including without limitation additional legal expenses for bankruptcy proceedings.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Consent to Jurisdiction. Borrower irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any suit, action, or proceeding arising out of or relating to this Agreement. Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon Borrower and may be enforced in any court in which Borrower is subject to jurisdiction by a suit upon such judgment provided that service of process is effected upon Borrower as provided in this Agreement or as otherwise permitted by applicable law.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Maryland without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Maryland.

Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Montgomery County, State of Maryland.

JURY WAIVER. LENDER AND BORROWER EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LENDER OR BORROWER MAY BE PARTIES, ARISING OUT OF, OR IN ANY WAY PERTAINING TO, THIS AGREEMENT. IT IS AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY LENDER AND BORROWER, AND LENDER AND BORROWER EACH HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS THAT BORROWER HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF BORROWER'S OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any

future transactions. 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, 2008.

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 $3,000,000.00 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

ATTACHMENT 4
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with respect to the net value 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 public matching fund program or any matching fund entitlement thereunder, whether now existing or hereafter arising, shall not constitute a "Permitted 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, charge, 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 lien interest whatsoever whether created by law, contract, or otherwise.

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, 2007.

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 MCCAIN 2008, INC.

By: _____ (Seal)
Richard Davis, President

LENDER:

FIDELITY & TRUST BANK

By: _____ (Seal)
Authorized Signer

28039612474

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ATTACHMENT 4
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COMMERCIAL SECURITY AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$3,000,000.00	11-14-2007	06-14-2008		466		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: John McCain 2008, Inc.
P O Box 16118
Arlington, VA 22216

Lender: Fidelity & Trust Bank
4831 Cordell Ave.
Bethesda, MD 20814-6838

THIS COMMERCIAL SECURITY AGREEMENT (this "Agreement" or "Security Agreement") dated November 14, 2007, is made and executed between John McCain 2008, Inc. ("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. 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 fund eligibility, including related rights, currently possessed by Grantor or obtained before January 1, 2008, 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 fund program or any certifications of matching fund eligibility, including related rights, issued with respect thereto without the prior written consent of Lender.

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) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.

(B) All products and produce of any of the property described in this Collateral section.

(C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.

(D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.

(E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

(F) All lists to which Grantor has legal rights, including without limitation, supporter lists, donor lists, e-mail lists or other lists used or usable to solicit contributions, and a covenant to utilize best efforts to raise contributions to repay the indebtedness.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor 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. Grantor 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.

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. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender. This is a continuing Security Agreement and will continue in effect even though all or any part of the Indebtedness is paid in full and even though for a period of time Grantor may not be indebted to Lender.

Notices to Lender. Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona fide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of

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 in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) 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 lien, security interest, encumbrance, or charge, 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 in connection with 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 in Lender's sole opinion. 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 (1) 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 (2) 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 Casualty Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage 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, 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 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 restoration. 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 which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. 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 the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) 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 unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS. 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 use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the Indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. 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. The 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 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. Lender'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 to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, 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

endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate 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 equal to 15.000% of the principal balance due on the Indebtedness 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 equal to 15.000% of the principal balance due on the Indebtedness and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees equal to 15.000% of the principal balance due on the Indebtedness 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. Lender may also recover from Grantor all court, alternative dispute resolution or other collection costs (including, without limitation, fees and charges of collection agencies) actually incurred by Lender.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. With respect to procedural matters related to the perfection and enforcement of Lender's rights against the Collateral, this Agreement will be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Delaware. In all other respects, this Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Maryland without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. The loan transaction that is evidenced by the Note and this Agreement has been applied for, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Maryland.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Montgomery County, State of Maryland.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. 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, 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, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

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.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

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

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

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:

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

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

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

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

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.

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 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 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 $3,000,000.00 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 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.

GRANTOR:

JOHN MCCAIN 2008, INC.

By: _____ (Seal)
Richard Davis, President

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
$3,000,000.00	11-14-2007	05-14-2008		488		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: John McCain 2008, Inc.
P O Box 16116
Arlington, VA 22215

Lender: Fidelity & Trust Bank
4831 Cordell Ave.
Bethesda, MD 20814-5830

Principal Amount: $3,000,000.00 **Initial Rate: 6.500%** **Date of Note: November 14, 2007**

PROMISE TO PAY. John McCain 2008, Inc. ("Borrower") promises to pay to Fidelity & Trust Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Three Million & 00/100 Dollars ($3,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on May 14, 2008. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning December 14, 2007, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any late charges; and then to any unpaid collection costs. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the "Prime Rate", defined as the rate from time to time reported by The Wall Street Journal, New York, New York, as the "U.S. Prime Rate", presently designated under the category of "Money Rates" and defined therein as the base rate on corporate loans posted by at least 75% of the 30 largest U.S. banks, as the same may fluctuate from time to time. The Prime Rate for any given day will be determined using The Wall Street Journal "U.S. Prime Rate" reported as of such day, notwithstanding the fact that such rate may actually be published on a later date and in the event more than one "U.S. Prime Rate" shall be reported, the Prime Rate for purposes hereof shall be the highest such published "U.S. Prime Rate" (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. The rate of interest accruing hereunder shall be adjusted as and when any adjustment in the Prime Rate occurs. It is understood and agreed by the Borrower that the utilization of the Prime Rate is intended merely as an index for setting interest rates of the Lender. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 7.500% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.000 percentage point over the Index, resulting in an initial rate of 8.500% per annum. NOTICE: *Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.*

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Fidelity & Trust Bank, 4831 Cordell Ave. Bethesda, MD 20814-5830.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note 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 property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note 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 Note 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.

Insolvency. The dissolution or termination of Borrower's existence as a going business, or a trustee or receiver is appointed for Borrower or for all or a substantial portion of the assets of Borrower, or Borrower makes a general assignment for the benefit of Borrower's creditors, or Borrower files for bankruptcy, or an involuntary bankruptcy petition is filed against Borrower and such involuntary petition remains undismissed for sixty (60) days.

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 Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower 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 evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

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 this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest, together with all other applicable fees, costs and charges, if any, immediately due and payable, and then Borrower will pay that amount.

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ATTACHMENT 4
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ATTORNEYS' FEES; EXPENSES. Subject to any limits under applicable law, upon default, Borrower agrees to pay Lender's attorneys' fees equal to 15.000% of the principal balance due on the loan and all of Lender's other collection expenses, whether or not there is a lawsuit, including without limitation legal expenses for bankruptcy proceedings.

JURY WAIVER. LENDER AND BORROWER EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LENDER OR BORROWER MAY BE PARTIES, ARISING OUT OF, OR IN ANY WAY PERTAINING TO, THIS NOTE. IT IS AGREED THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY LENDER AND BORROWER, AND LENDER AND BORROWER EACH HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS THAT BORROWER HAS BEEN REPRESENTED IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF BORROWER'S OWN FREE WILL, AND THAT BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Maryland without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Maryland.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Montgomery County, State of Maryland.

CONFESSED JUDGMENT. UPON THE OCCURRENCE OF A DEFAULT, BORROWER HEREBY AUTHORIZES ANY ATTORNEY DESIGNATED BY LENDER OR ANY CLERK OF ANY COURT OF RECORD TO APPEAR FOR BORROWER IN ANY COURT OF RECORD AND CONFESS JUDGMENT WITHOUT PRIOR HEARING AGAINST BORROWER IN FAVOR OF LENDER FOR, AND IN THE AMOUNT OF, THE UNPAID BALANCE OF THE PRINCIPAL AMOUNT OF THIS NOTE, ALL INTEREST ACCRUED AND UNPAID THEREON, ALL OTHER AMOUNTS PAYABLE BY BORROWER TO LENDER UNDER THE TERMS OF THIS NOTE OR ANY OTHER AGREEMENT, DOCUMENTS, INSTRUMENT EVIDENCING, SECURING OR GUARANTYING THE OBLIGATIONS EVIDENCED BY THIS NOTE, COSTS OF SUIT, AND ATTORNEYS' FEES OF FIFTEEN PERCENT (15%) OF THE UNPAID BALANCE OF THE PRINCIPAL AMOUNT OF THIS NOTE AND INTEREST THEN DUE HEREUNDER.

Borrower hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Borrower may otherwise be entitled under the laws of the United States or of any state or possession of the United States now in force and which may hereafter be enacted. The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as Lender shall deem necessary or desirable, for all of which this Note shall be a sufficient warrant.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of $25.00 if Borrower makes a payment on Borrower's loan and the check with which Borrower pays is later dishonored.

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.

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, 2007.

LINE OF CREDIT. This Note evidences a revolving line of credit. Advances under this Note may be requested orally by Borrower or by an authorized person. All oral requests shall be confirmed in writing on the day of the request. Notwithstanding anything set forth herein to the contrary, Lender shall have no obligation to make any advance requested under this Note at any time prior to the date on which Borrower shall have fully performed and satisfied its obligations set forth in the Loan Agreement under the heading "Post Closing Documents" (i.e., Borrower shall have executed and delivered to Lender the Assignment of Life Insurance Policy and a copy of the Keyman Life Insurance Policy, on the life of John McCain, in an amount not less than $3,000,000.00). If, after giving effect to such advance, the aggregate amount of all advances then remaining unpaid and outstanding under this Note shall exceed One Million Five Hundred Thousand and No/100 Dollars ($1,500,000.00). All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

CONSENT TO JURISDICTION. Borrower irrevocably submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any suit, action, or proceeding arising out of or relating to this Note. Borrower irrevocably waives, to the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. Final judgment in any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon Borrower and may be enforced in any court in which Borrower is subject to jurisdiction by a suit upon such judgment provided that service of process is effected upon Borrower as provided in this Note or as otherwise permitted by applicable law.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Fidelity & Trust Bank 4831 Cordell Ave. Bethesda, MD 20814-0930.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Borrower does not agree or intend to pay, and Lender does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee for this loan, which would in any way or event (including demand, prepayment, or acceleration) cause Lender to charge or collect more for this loan than the maximum Lender would be permitted to charge or collect by federal law or the law of the State of Maryland (as applicable). Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this loan, and when the principal has been paid in full, be refunded to Borrower. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made.

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.

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 MCCAIN 2008, INC.

By: ______________________________ (Seal)
Richard Davis, President

DSMDB-2354226v02

ATTACHMENT 4
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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.

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 redated 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 Kudy
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

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
7147983
My Commission Expires Dec 31, 2011

VIA FIRST CLASS MAIL

Trevor Potter
General Counsel, John McCain 2008, Inc.
Post Office Box 16118
Arlington, Virginia 22215

Re: Letter dated February 6, 2008, requesting withdrawal of candidate agreement (LRA 731)

Dear Mr. Potter:

This letter is in response to Senator John McCain's letter of February 6, 2008, in which he requested to withdraw from the public funding program under the Presidential Primary Matching Account Act, as amended, 26 U.S.C. § 9033 *et seq.*, and to withdraw the candidate agreement and certification he submitted to the Commission pursuant to 26 U.S.C. § 9033 and 11 C.F.R. §§ 9033.1 and 9033.2. On *** 2008, the Commission approved Senator McCain's request and has withdrawn its certification to the Secretary of the Treasury that John McCain and John McCain 2008, Inc., ("the Committee") are entitled to a payment from the Presidential Primary Matching Account. Please note that neither Senator McCain nor the Committee will be bound by the terms of the candidate agreement or subject to a mandatory audit under the public financing system. 26 U.S.C. § 9038(a).

Sincerely,

Chair

The Honorable Henry M. Paulson, Jr.
Secretary
Department of the Treasury
Washington, DC 20220

Dear Mr. Secretary:

On August 28, 2007, the Federal Election Commission determined that the following candidate and his authorized committee had satisfied the eligibility requirements of 26 U.S.C. § 9033 and 11 C.F.R. §§ 9033.1, 9033.2, and 9036.1 to receive presidential primary matching funds under 26 U.S.C. § 9037 and 11 C.F.R. § 9037.1 and were entitled to payment from the Presidential Primary Matching Account:

John McCain/John McCain 2008, Inc.

By letter dated February 6, 2008, the candidate submitted a request to withdraw the Candidate Agreements and Certifications he submitted pursuant to 26 U.S.C. § 9033 and 11 C.F.R. §§ 9033.1 and 9033.2. On *** 2008, the Commission approved Senator McCain's request and withdrew its certification that John McCain/John McCain, 2008, Inc., are entitled to a payment from the Presidential Primary Matching Account. Accordingly, no payment should be made to this candidate and/or committee.

Sincerely,

Chair

Attest:

Mary W. Dove
Secretary to the Commission

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