

EXHIBIT B

CONFIDENTIALITY AND NONDISCLOSURE OF PROTECTED HEALTH INFORMATION

BUSINESS ASSOCIATE ADDENDUM

This Confidentiality and Nondisclosure of Protected Health Information Business Associate Addendum (the "Addendum") is entered into this ____ day of _____, 200__, by and between City of Overland Park, Kansas (a hybrid entity with functions that are covered and functions that are not covered hereinafter referred to for purposes of this Addendum as the "Covered Entity"), and American Medibanc, Inc., dba Medibanc (hereinafter collectively referred to as the "Business Associate"), and amends and is made a part of the Agreement between the Covered Entity and the Business Associate.

WHEREAS, the Business Associate has been retained by the Covered Entity to perform certain services on its behalf; and

WHEREAS, in connection with the Business Associate's provision of services, the Covered Entity may disclose to the Business Associate, confidential and important Protected Health Information (PHI, as defined below);

NOW THEREFORE, the parties agree to enter into a confidential relationship with respect to the disclosure by the Covered Entity to the Business Associate of certain protected health information.

1. **Definitions.** For purposes of this Addendum:

- A. *Business Associate.* "Business Associate" shall mean American Medibanc, Inc., dba Medibanc.
- B. *Covered Entity.* "Covered Entity" shall mean City of Overland Park, Kansas.
- C. *Designated Record Set.* "Designated record set" shall have the same meaning as the term 'designated record set' in 45 CFR 164.501.
- D. *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- E. *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- F. *Protected Health Information (PHI).* "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- G. *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- H. *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. **Confidentiality.** At all times, both during and after the termination of its relationship with the Covered Entity for any reason, the Business Associate and its Representatives will not use, disclose, or give others any of the PHI in any manner whatsoever, except as provided in

paragraphs 3 and 4 of this Addendum, and will hold and maintain the PHI in strictest confidence. The Business Associate will ensure that all proper safeguards are in place to prevent the use or disclosure of the PHI.

3. **Permitted Disclosures.** The Business Associate may disclose the Covered Entity's PHI to the Business Associate's Representatives with a bona fide need to know such PHI, but only if such Representatives are advised of the confidential nature of such PHI and the terms of this Addendum and are bound by an agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such PHI. In no event will PHI be disclosed to any other person, including but not limited to any investor in, or beneficiary of Business Associate, without the prior written consent of the Covered Entity. The Business Associate will provide information to the Covered Entity concerning disclosures made by the Business Associate pursuant to this Section 3 and Section 4.

Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity in accordance with the above-referenced agreement between the parties, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, or the minimum necessary policies and procedures of the Covered Entity.

At the request of the Covered Entity, the Business Associate agrees to provide access to the PHI that it has in its possession to an Individual. The Business Associate further agrees to document any such disclosures of PHI and the information related to such disclosures for an accounting of disclosures of PHI if requested by the Covered Entity in accordance with 45 C.F.R. §164.528, and to provide such documentation to the Covered Entity as it may request from time to time. Furthermore, at the request of the Covered Entity, the Business Associate agrees to make amendments to PHI as directed by the Covered Entity. Notwithstanding the foregoing, the Covered Entity will not request that the Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule if such disclosure or use were done by the Covered Entity itself.

If the Business Associate maintains a designated record set, the Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner as mutually agreed upon by the parties, to PHI in a designated record set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

If a Business Associate maintains a designated record set (DRS), the Business Associate agrees to make any amendment(s) to PHI in the DRS that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner as mutually agreed upon by the parties.

4. **Required Disclosures and Use.** The Business Associate may disclose the Covered Entity's PHI if and to the extent that such disclosure is required by law or court order, provided that, to the extent reasonably possible, the Business Associate provides the Covered Entity a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure. Further, the Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Covered Entity available to the Covered Entity, or to the Secretary, as requested by the Covered Entity or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.
5. **Required Notice to the Business Associate.** In accordance with 45 C.F.R. §164.520, and to the extent that such a limitation may affect the Business Associate's use or disclosure of PHI, the Covered Entity will notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity, including, without limitation, any changes in, or revocation of, permission by an Individual to use or disclose PHI.

6. **Records.** Upon termination of his/her/its relationship with the Covered Entity, the Business Associate will deliver to the Covered Entity any property of the Covered Entity which may be in the Business Associate's possession including all Confidential Information, products, materials, memoranda, notes, records, reports, or other documents or photocopies of the same, including without limitation any of the foregoing recorded on any computer or any machine readable medium.
7. **Indemnification.** Business Associate ("Indemnitor") will indemnify and hold harmless the Covered Entity ("Indemnitee") and the Indemnitee's officers, employees, affiliates and agents from and against all expense, loss, penalties, liability, damages, settlement, attorney's fees, costs of litigation, fees and awards or other obligations resulting from or arising out of claims, fines, demands or cause of action of any kind or character, including those made by and to individuals, their dependents or any other party, which may be asserted against or imposed upon Indemnitee in connection with Indemnitor's improper, illegal or unauthorized receipt, use or disclosure of PHI.
8. **Term and Termination.**
 - A. *Term.* The Term of this Addendum shall be effective as of first date written above, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed, or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - B. *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Addendum, and the above-referenced Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - ii. Immediately terminate this Addendum, and the above-referenced Agreement, if Business Associate has breached a material term of this Addendum and cure is not possible; or
 - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
 - C. *Effect of Termination*
 - i. Except as provided in paragraph (2) of this section, upon termination of this Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity within 60 days of termination of the Addendum. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. If such return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
9. **Survival.** This Addendum will continue in full force and effect even after the termination of the Business Associate and the Covered Entity for any reason.

10. **Successors and Assigns.** This Addendum and each party's obligations hereunder will be binding on the representatives, assigns, and successors of such party and will inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of the Business Associate hereunder are not assignable.

11. **Notices.** All notices, requests, consents and other communications hereunder will be in writing, will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and will be either (i) delivered by hand, (ii) made facsimile transmission, (iii) sent by overnight courier, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid.

If to the Covered Entity: Kim Nemitz, Deputy Chief of Administrative Services
Overland Park Fire Department
9550 W. 95th Street
Overland Park, Kansas 66212

If to the Business Associate: Curtis J. Anderson, Chief Executive Officer
American Medibanc, Inc.
200 Fillmore St., Suite 302
Denver, Colorado 80206

12. **Entire Addendum.** This Addendum embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Addendum will affect, or be used to interpret, change or restrict, the express terms and provisions of this Addendum.

13. **Modifications and Amendments.** The terms and provisions of this Addendum may be modified or amended only by written agreement executed by the parties hereto and any such amendment will comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

14. **Severability.** The parties intend this Addendum to be enforced as written. However, (i) if any portion or provision of this Addendum will to any extent be declared illegal or unenforceable by a duly authorized court having jurisdiction, then the remainder of this Addendum, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Addendum will be valid and enforceable to the fullest extent permitted by law; and (ii) if any provision, or part thereof, is held to be unenforceable because of the duration of such provision, the Covered Entity and the Business Associate agrees that the court making such determination will have the power to reduce the duration of such provision, and/or to delete specific words and phrases, and in its reduced form such provision will then be enforceable and will be enforced.

15. **Headings and Captions.** The headings and captions of the various subdivisions of this Addendum are for convenience of reference only and will in no way modify, or affect the meaning or construction of any of the terms or provisions hereof.

16. **No Waiver of Rights, Powers and Remedies.** No failure or delay by a party hereto in exercising any right, power or remedy under this Addendum, and no course of dealing between the parties hereto, will operate as a waiver of any such right, power or remedy of the party. No single or partial exercise of any right, power or remedy under this Addendum by a party hereto, nor any abandonment or discontinuance of steps to enforce any such right, power or remedy, will preclude such party from any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The election of any remedy by a party hereto will not constitute a waiver of the right of such party to pursue other available remedies. No notice to or demand on a party not expressly required under this Addendum will entitle the party receiving such notice or demand to any other or further notice or demand in

similar or other circumstances or constitute a waiver of the rights of the party giving such notice or demand to any other or further action in any circumstances without such notice or demand. The terms and provisions of this Addendum may be waived, or consent for the departure therefore granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent will be deemed to be or will constitute a waiver or consent with respect to any other terms or provisions of this Addendum, whether or not similar. Each such waiver or consent will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver or consent.

17. **Governing Law.** This Addendum will be governed by and construed in accordance with the laws of the State of Kansas.

18. **Counterparts.** This Addendum may be signed in counterparts, which together will constitute one agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their duly authorized representatives or officers, effective as of the date first listed above in the preamble to this Addendum.

COVERED ENTITY:

Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Assistant City Attorney II

BUSINESS ASSOCIATE:

Print Name

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, That on this ____ day of _____,
before me, the undersigned, a Notary Public in and for the County and State
aforesaid, came _____, President of American
Medibanc, Inc., a corporation duly organized, incorporated and existing under
and by virtue of the laws of Colorado; and _____,
Secretary of said corporation, who are personally known to me to be such
officers and who are personally known to me to be the same persons who
executed as such officers within instrument on behalf of said Corporation, and
such persons duly acknowledged the execution of the same to be the act and
deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: