

RE 'PWNED

JUN 14, 2001

**WHEN RECORDED, MAIL TO:**

Centerville City Recorder  
Centerville City Corporation  
250 North Main  
Centerville, Utah 84014-1824

E 1666409 B 2823 P 97  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
2001 JUN 7 8:57 AM FEE 20.00 DEP MT  
REC'D FOR CENTERVILLE CITY

**COVENANT TO MAINTAIN FACILITIES**

**THIS COVENANT TO MAINTAIN FACILITIES** is made and entered into on this  
1st day of June, 2001, by Mountain America Credit Union, a Utah Corporation,  
hereinafter referred to as the "Declarant."

**RECITALS:**

A. Declarant is the owner, in fee simple, of certain property in Centerville City, Davis County, State of Utah (the "Property"), as more particularly described as follows:

As part of the southwest quarter of Section 7, Township 2 North, Range 1 East, Salt Lake Base and Meridian, City of Centerville, County of Davis, State of Utah; all of Lot 5, Centerville Marketplace Subdivision, according to the official plat thereof filed in book 1867 of Plats, at Page 32 of Official records of Davis County.

02-161-0005

B. Declarant desires and intends to develop the Property and by the recording of this Covenant to Maintain Facilities (the "Covenant") intends and desires to impose upon the Property stipulations to affect the development, use and enjoyment of the Property, including, but not limited to, the development, maintenance and operation of a subdrain system in connection with the development of the Property.

C. Declarant hereby intends to subject the Property to the covenant, conditions and restrictions set forth herein.

**NOW, THEREFORE**, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following covenants, conditions, restrictions, reservations, and limitations, all of which shall constitute covenants which run with the land and shall be binding on and for the benefit of the Declarant, its successors and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

**Section 1. Subdrain Improvements.** Declarant shall design, construct and install subdrain improvements for the purpose of de-watering the Property for desired development (the "Subdrain Improvements") in accordance with the Subdrain Improvement Construction Drawings, as approved by Centerville City and dated May 11, 2001.

**Section 2. Responsibility for Subdrain Improvements.** Declarant shall be responsible and hereby covenants and agrees to permanently pay for and fund all costs of construction, installation, repair, maintenance, alteration, and operation of the Subdrain Improvements as more particularly described herein.

**Section 3. Maintenance of Subdrain Improvements.** Declarant shall maintain, repair, and replace the Subdrain Improvements in accordance with the terms and conditions and maintenance schedule as more particularly set forth in Exhibit "A," attached hereto and incorporated herein by this reference. Declarant shall ensure that the Subdrain Improvements are maintained in good order and condition in a safe and aesthetically pleasing manner.

**Section 4. Centerville City Authority.** The City of Centerville, Utah, ("Centerville") is hereby granted the authority, though not the responsibility, to clean, repair and/or maintain any portion of the Subdrain Improvements deemed to be in disrepair, after thirty (30) days written notice to Declarant, and to charge the expense of such clean up, repair and/or maintenance to Declarant. Centerville is further granted the authority, though not the responsibility, without notice, to clean, repair and/or maintain any portion of the Subdrain Improvements or take any other action regarding the Subdrain Improvements deemed necessary by Centerville in the event of an emergency.

**Section 5. Assessment Lien.** In the event Centerville repairs or maintains any portion of the Subdrain Improvements pursuant to the authority set forth herein, Declarant shall be liable to Centerville for all costs of repair and maintenance incurred by Centerville, including administrative fees. Declarant shall pay such amount due and owing to Centerville within thirty (30) days from written notice and invoicing of such costs. In the event Declarant fails to pay such amounts to Centerville within the required time frame, said unpaid amounts, together with collection costs, attorney's fees, and interest at the rate of eight percent (8%) per annum, shall be secured by a lien on the Property in favor of Centerville. Evidence of said lien on the Property may be provided by the recording of a notice of lien by Centerville. Said lien shall be prior to all other liens and encumbrances on the Property, recorded or unrecorded, as permitted by law. Said lien may be enforced by judicial foreclosure by Centerville in the same manner in which mortgages on real property may be foreclosed in Utah. In the event of foreclosure or any method of collection other than foreclosure, Declarant shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorney's fees regarding the same. The rights and remedies provided herein shall be cumulative and in addition to all other rights and remedies provided by law for enforcement of the terms and conditions set forth herein.

**Section 6. Right of Access.** Centerville is hereby granted the right of access over, across and through the Property, for the purpose of providing clean up, repair or maintenance for the Subdrain Improvements as provided herein.

**Section 7. Covenants Running with the Land.** All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Covenant are covenants running with the land, or equitable servitudes, as the case may be.

**Section 8. Binding.** The obligations, burdens and benefits created by this Covenant shall be binding upon and inure to the benefit of Declarant, all other parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

**Section 9. Notices.** All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been given on the date of personal service upon the Declarant, or upon mailing, if mailed by certified mail, return receipt requested, postage prepaid, and addressed to the Declarant at the following address:

Mountain America Credit Union  
Facilities Department  
660 South 200 East - Suite 300  
Salt Lake City, UT 84111

**Section 10. Compliance with City Ordinances.** All construction, improvements and facilities on the Property shall comply with the Ordinances, rules, regulations and development standards of the City of Centerville, Utah.

**Section 11. Compliance with Centerville Marketplace Subdivision Standards.** All construction, improvements and facilities on the Property shall comply with the Development Agreement, Operation and Easement Agreement, and Declaration of Restrictive Covenants, Conditions and Restrictions for the Centerville Marketplace Subdivision, as more particularly recorded against the Property in the office of the County Recorder of Davis County, Utah.

**Section 12. Severability.** Any determination by a court of competent jurisdiction that any provision of these Covenants, Conditions and Restrictions is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

**Section 13. Controlling Law.** This Covenant shall be construed and controlled by and under the laws of the State of Utah.

**IN WITNESS WHEREOF**, Declarant has executed this Covenant by and through its authorized representatives as of the day and year first hereinabove written.

**DECLARANT**

**MOUNTAIN AMERICA CREDIT UNION**

By: Mark A. Eggen  
Mark A. Eggen  
Its: Director of Facilities

**EXHIBIT "A"**

**MAINTENANCE PLAN**

**Mountain America Credit Union- Centerville Branch  
298 N. Marketplace Drive  
Centerville, Utah**

**Subsurface drain Maintenance and Financial Plans**

**Maintenance Schedule**

1. Subsurface drain will be inspected twice a year.
2. Manholes shall be opened and inspected of sediment.
3. If sediment is built-up more than 4" deep, sediment shall be removed.
4. Sediment in manhole to be removed by vacuum.
5. Drain pipe to be jet washed/pressure washed every two to three years to ensure proper drain operation.
6. T.V. camera to explore drain pipe at time of jet wash to ensure there are no obstructions in drain pipe.

**Financial Plan**

All costs associated with the maintenance of this subsurface drain system will be absorbed by Mountain America Credit Union's regular maintenance budget. A total of \$5,000 per year will be budgeted for completion of items on 'Maintenance Schedule'.

## ACKNOWLEDGMENT

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STATE OF UTAH )  
:ss.  
COUNTY OF DAVIS )

On the 1<sup>st</sup> day of June, 2001, personally appeared before me Mark A. Eggen, who being by me duly sworn did say that he is the Director of Facilities of Mountain America Credit Union, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and they acknowledged to me that said corporation executed the same.

*Marilyn J. Holje*  
Notary Public  
Residing at:  
*Centerville, UT*

