

MTG RECORD 186

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FILED NO. **1700**

BOOK 186 PAGE 114

96 DEC 20 PM 2: 26

MICHELLE UTSLER
RECORDER
MADISON COUNTY, IOWA

REC \$ 30.00

AUD \$ _____

R.M.F. \$ 1.00

Prepared by: JEFF RODMAN

MORTGAGE

025 - 301 - 0143818

This Mortgage, made and entered into this 16TH day of DECEMBER, 1996
by and between

RANDY K WARD AND MELISSA A WARD HUSBAND AND WIFE
of MADISON County, Iowa, hereafter called "Mortgagors," and

TCF Consumer Financial Services, Inc.

a Minnesota corporation qualified to do business in Iowa, with principal offices at 801 Marquette Ave., Minneapolis, County of Hennepin, Minnesota 55402, and maintaining a place of business at 3508 MERLE HAY RD, DES MOINES, IA 50310

hereafter called "Mortgagee."

WITNESSETH:

That Mortgagors, for and in consideration of a loan made to them by Mortgagee and evidenced by a promissory note (Note), incorporated into this Mortgage by this reference, signed on the same date as this Mortgage and in the

Amount of Note of \$45,225.00

Actual Amount of Loan of _____, together with interest on unpaid balances of the Actual Amount of Loan from time to time outstanding at the Rate of Charge shown in the Note,

the Final Due Date being JANUARY 01, 2012, and in order to secure the repayment of such loan in accordance with the terms of the Note, duly executed and delivered by Mortgagors, do hereby grant, bargain, sell, assign, transfer and convey unto Mortgagee, forever, the real property situate in MADISON County, Iowa, hereafter referred to as the "Property" and described, as follows:

LOT ONE (1) AND THE NORTH 16½ FEET OF LOT TWO (2), IN BLOCK THREE (3) OF ATKINSON'S FIRST ADDITION TO THE TOWN OF TRURO, MADISON COUNTY, IOWA.

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together with the rents, issues, use and profits of that Property, with all buildings and other improvements now or at any time hereafter erected on that Property and the crops raised thereon from the date hereof until the indebtedness secured hereby ("Indebtedness") shall have been paid in full.

If this box is checked, this Mortgage is subject to a prior mortgage dated _____, executed by Mortgagors _____ as mortgagee, which prior mortgage secures payment of a promissory note in the principal amount of _____ That prior mortgage was recorded on _____ with the Recorder of _____ County, Iowa, in Book _____ of Mortgages and indexed in Mortgage Index _____, at page _____.

TO HAVE AND TO HOLD the same unto Mortgagee, its successors and assigns, forever.

Mortgagors hereby covenant and warrant for themselves, their successors and assigns, that (1) they are lawfully seized and possessed of the Property in fee simple and have good and lawful right and authority to sell, convey and mortgage the same; (2) the Property is free from all liens, claims, charges and encumbrances whatever, except as listed above; (3) they will WARRANT AND FOREVER DEFEND the title to the Property against the claims of all persons whomsoever; (4) there is, to the knowledge of Mortgagors, no litigation or governmental proceeding pending or threatened against Mortgagors which would materially or adversely affect Mortgagors in any way.

It is agreed that this instrument shall be void on the condition that Mortgagors shall keep and perform all covenants, conditions and terms of this Mortgage and pay or cause to be paid to Mortgagee the Indebtedness together with interest both before and after maturity according to the terms and conditions of the Note.

Mortgagors further covenant and agree as follows:

1. Mortgagors will promptly pay the Indebtedness at the times and in the manner provided in the Note.

2. Mortgagors will keep the buildings and improvements situated on the Property insured against fire and such other hazards, in such amount and with such carrier as Mortgagee shall approve, with loss payable to Mortgagee as its interest may appear.

3. Mortgagors will pay promptly, before any penalty attaches, all current rents, taxes, assessments, water rates and other governmental or municipal charges, fines or impositions which may be levied on the property and Mortgagors will promptly deliver the official receipts for payment to Mortgagee.

4. Mortgagors will neither commit nor suffer any strip, waste, impairment or deterioration of all or any part of the Property, and will maintain the Property in good and tenantable condition and repair.

5. Mortgagors will comply with all laws, ordinances, rules and regulations of any nation, state or municipality, and will neither use nor allow the Property to be used for any unlawful purpose. Mortgagee is given the right of entry on the Property at any reasonable time for the purpose of inspection.

6. Mortgagors shall keep the Property free from liens superior to the lien of this Mortgage, except as set forth hereafter, and Mortgagors agree to pay when due any indebtedness which may be secured by lien or charge on the Property superior to the lien of this Mortgage.

7. Mortgagors will promptly pay all costs, charges and expenses incurred by Mortgagee, including attorney's fees arising out of or in connection with any suit, proceeding or hearing, of whatever nature, in any way effecting or pertaining to this Mortgage, the Note or the Property.

8. If Mortgagors voluntarily shall sell or convey the Property, in whole or in part, or any interest in that Property or by some act or means divest themselves of title to the Property without obtaining the written consent of Mortgagee, then Mortgagee, at its option, may declare the entire balance of the loan plus interest on the balance immediately due and payable. This option shall not apply if (1) the sale of the Property is permitted because the purchaser's creditworthiness is satisfactory to Mortgagee and (2) that purchaser, prior to the sale, has executed a written assumption agreement containing terms presented by Mortgagee including, if required, an increase in the rate of interest payable under the Note.

9. If Mortgagors should fail to pay all taxes, charges or assessments before the same are in default, or fail promptly to effect and maintain all required insurance, or if Mortgagors should permit or commit waste, or permit the Property to be used for any unlawful purpose, or fail to make any payment or perform any act, covenant or agreement required of Mortgagors under the terms and conditions of this Mortgage or the Note, to such extent or in such form and manner that Mortgagee may deem appropriate and expedient, then Mortgagee, at its option, may (1) pay any such taxes, charges and assessments, (2) purchase insurance, (3) redeem from tax sale, (4) enjoin waste, the removal of improvements or the use of the Property for unlawful purposes, and (5) make needed or proper repairs or maintenance or make such other payments or perform such other acts with regard to the Property as are deemed necessary and appropriate by Mortgagee. All monies advanced by Mortgagee for any such payment or purpose, and all costs, charges and expenses of any kind paid or incurred in connection therewith, including attorney's fees and title expenses, shall bear interest at the Rate of Charge from the time of payment shall become a part of the Indebtedness secured by this Mortgage ratably and on a parity with all other Indebtedness secured by this Mortgage and shall attach a lien on the Property and be immediately due and payable without notice.

If Mortgagee purchases insurance on improvements to the Property as authorized herein, it shall have the right to select the agent. Mortgagee is not required to obtain the lowest cost insurance that might be available.

10. Mortgagors herein expressly covenant and agree to pay and keep current the monthly installments on any prior mortgage and to prevent any default thereunder. Mortgagors further agree that should any default be made in the payment of any instalment of principal or any interest on the prior mortgage, or should any suit be commenced or other action taken to foreclose the prior mortgage, then the amount secured by this Mortgage shall become and be due and payable in full at any time thereafter, at the option of Mortgagee and in accordance with the Note. Mortgagee, at its option, may pay the scheduled monthly installments on the prior mortgage and, to the extent of the amount so paid, become subrogated to the rights of the mortgagee identified on the prior mortgage. All payments made on the prior mortgage by Mortgagee shall bear interest at the Rate of Charge until paid in full.

11. That if default shall be made in the payment of any instalment of the Note, and, if the Note evidences a loan subject to the Iowa Consumer Credit Code, the default is not cured, or if there shall be a failure to comply with or perform any of the terms, conditions or covenants contained in this Mortgage, or in the Note, then the whole of the Indebtedness, including accrued interest, at the option of Mortgagee, shall become due and collectible at once by foreclosure or otherwise, without notice (notice hereby being expressly waived). In any such event, Mortgagors hereby authorize and fully empower Mortgagee to commence suit immediately for the collection of all or part of the Indebtedness for the foreclosure of this Mortgage, or to obtain any other proper remedy. Mortgagors agree to pay all costs, charges and expenses, including attorney's fees and title expenses, reasonably incurred by Mortgagee because of Mortgagors failure to perform their duties and obligations under this Mortgage and the Note, or either of them. At any time after default either before or after the commencement of an action in foreclosure or during the period of redemption, the court having jurisdiction of the case, at the request of Mortgagee, shall appoint a receiver to take immediate possession of the Property, and all rents, issues, profits and income accruing from that Property. The receiver shall rent the Property as the receiver may deem best for the interest of all parties concerned, and the receiver shall be liable to account to Mortgagee only for the net proceeds after application of the rents, issues, profits and income upon the cost and expenses of receivership and foreclosure (including the payment of taxes and insurance premiums with respect to such Property) and the Indebtedness, charges and expenses secured by this Mortgage.

12. If one of the Mortgagors dies, the Indebtedness shall become immediately due and payable.

13. If this Mortgage covers less than 10 acres of land, and proceedings to foreclose this Mortgage are initiated in a legal action and sale of the Property by sheriff's sale in such foreclosure proceedings occurs, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six months provided Mortgagee, in the legal action, files an election to waive any deficiency judgment against Mortgagors which may arise out of the foreclosure proceedings. All such action shall be consistent with the provisions of Chapter 628, Code of Iowa. The period of redemption after a foreclosure of this Mortgage shall be reduced to 60 days if all of the three contingencies develop, as follows: (1) the Property is less than 10 acres in size; (2) the Court finds affirmatively that the Property has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee files and election to waive any deficiency judgment against Mortgagors, or their successors in interest. If the redemption period is so reduced, Mortgagors, their successors in interest, or the owner shall have the exclusive right to redeem for the first 30 days after sale. Furthermore, the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be a presumption that the Property is not abandoned. Any such short redemptive period shall be consistent with all of the provisions of Chapter 628.

14. Time is of the essence of this Mortgage and of the Note. No waiver of any right or obligation under this Mortgage or of the obligation secured by this Mortgage shall at any time thereafter be held to be a waiver of the terms of this Mortgage or of the Note. The lien of this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of the Indebtedness.

All terms, conditions, covenants, warranties and promises herein shall be binding upon the heirs, legal representatives, successors and assigns of Mortgagors, and shall inure to the benefit of Mortgagee, its successors and assigns.

If there be only one mortgagor, all plural words herein referring to Mortgagors shall be read in the singular.

IN WITNESS WHEREOF, Mortgagors have signed and sealed this Mortgage on the day and year first above appearing.

Witness [Signature] _____ (L.S.)
 Randy K Ward
 Mortgagor

Witness [Signature] _____ (L.S.)
 Melissa A Ward
 Mortgagor

STATE OF IOWA)
)
 COUNTY OF POLK) ss.

On this 16TH day of DECEMBER, 1996 before me personally appeared RANDY K WARD AND MELISSA A WARD to me known to be the person(s) herein described and who executed the foregoing instrument, and acknowledged that they executed the same as their own voluntary act and deed.



Elizabeth A Gaio
 Notary Public in and For POLK County, Iowa

My Commission Expires March 19, 1999

No. _____

Mortgage

_____ to _____

TCF Consumer Financial Services, Inc.

STATE OF IOWA _____ COUNTY _____

Filing for recording on the _____ day of _____, 19____, at _____ o'clock, _____ M., recorded in Book _____ of Mortgages, on page _____ and indexed in Mortgage index, page _____.

Record and Return to: _____ Recorder

VARIABLE RATE RIDER

THIS VARIABLE RIDER is made this 16TH day of DECEMBER, 1996 and is incorporated into and shall be deemed to amend and supplement the Mortgage (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Variable Rate Note to TCF CONSUMER FINANCIAL SERVICES, INC. (the "Lender") of the same date (the "Note") and covering the property described in the Security Instrument and located at:

505 S ATKINSON, TRURO, IA 50257

(Property Address)

The Note contains provisions allowing for changes in the interest rate whenever the "index rate" changes, and for annual adjustments to Borrower's payment amount, adjustments in the loan term or adjustment to Borrower's final payment amount.

ADDITIONAL COVENANTS.

In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

CHANGES IN PAYMENT SCHEDULE DUE TO INTEREST RATE CHANGES.

The Note provides for an initial annual interest rate of 15.25 %, and also provides for changes in the interest rate and payment schedule as follows:

Borrower's rate will be a variable annual interest rate. This means that the interest rate in effect on any day will be based on, and change according to the index rate ("Index Rate") described below. The Index Rate is the U.S. prime rate published in The Wall Street Journal (currently under the label "Money Rates"). When the Index Rate changes, Lender will change Borrower's interest rate on the business day following the date a change in the Index Rate is published. Business Day means Monday through Friday, but excludes certain legal holidays established by the federal government.

If there is more than one U.S. prime rate published in The Wall Street Journal, the highest rate published will apply. If The Wall Street Journal index is discontinued, Lender will pick a new Index Rate that Lender believes is most comparable to The Wall Street Journal index and Lender will send Borrower notice of the new Index Rate. Lender will charge an annual interest rate that is 7.00 % more than the Index Rate published the previous Business Day. The Index Rate in effect on the date of this loan is 8.25 %. Therefore, the beginning annual interest rate will be 15.25 % (unless the Index Rate changes before the Interest Start Minimum Rate Borrower's annual interest rate will never be less than 9.00 %, no matter how much the Index Rate may decline.

Maximum Rate Borrower's annual interest rate will never be more than 21.00 %, or the highest rate allowed by law, whichever is less, no matter how much the Index Rate may increase.

The minimum and maximum rates do not include points or other prepaid finance charges.

Borrower's monthly payment will change annually on each anniversary date of Borrower's first payment due date. Lender will determine the amount of the monthly payment that would be large enough to repay the unpaid principal plus interest on that amount in full by the final payment due date. Lender will use the interest rate in effect on the date shown in the notice of payment change (referred to below) to make this calculation. If Borrower's loan has not been paid in full by 01-01-2012, Borrower will pay the remaining principal and interest Borrower owes in full on that date.

Borrower's monthly payment will change annually on each anniversary date of Borrower's first payment due date (each anniversary of Borrower's first payment due date is called a "payment change date"). Lender will determine the amount of the monthly payment that would be large enough to repay 20% of the original principal plus interest on the entire unpaid principal by (Borrower's final payment due date). The interest rate Lender uses to make this calculation will be based on the index rate in effect on the date shown in the notice of payment change Lender sends Borrower at least 25 days before the payment change date. Borrower's scheduled monthly payments will not repay this loan in full by Borrower's final payment due date. Therefore, 80% of the original principal plus accrued and unpaid interest will be due on Borrower's final payment due date. Borrower will pay the remaining principal and interest Borrower owes in full on Borrower's final payment due date in a single balloon payment.

Borrower will continue to make Borrower's regular monthly payment until the unpaid principal and interest have been paid in full. However, if this loan is not paid in full by , Borrower will pay all remaining principal and interest Borrower owes in full on that date.

NOTICE.

Lender will give Borrower at least 25 days (but no more than 120 days) notice of any change in Borrower's payment. The interest rate in effect 120 days before the date the final payment is due will be the rate Lender charges after that date.

LOAN CHARGES.

If the loan secured by the Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed permitted limits, then: (1) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (2) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

LEGISLATION.

If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Security Instrument or this Variable Rate Rider (other than this paragraph) unenforceable according to their terms, or all or any part of the sums secured hereby uncollectable, as otherwise provided in the Security Instrument and this Variable Rate Rider, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Security Instrument to be immediately due and payable.

IN WITNESS WHEREOF, Borrower has executed this Variable Rate Rider.

Elizabeth A Gaio
12-16-96



Randy K Ward
 _____ (Seal)
 RANDY K WARD - Borrower

Melissa A Ward
 _____ (Seal)
 MELISSA A WARD - Borrower

 _____ (Seal)
 - Borrower