



However, the Amendment to Note dated September 17, 2021, contains the following language clearly incorporating by reference the Confession of Judgment provisions of the original, underlying Note:<sup>4</sup>

**14. Confession of Judgment. Borrower specifically acknowledges, agrees to and does hereby reaffirm the warrant of attorney to confess judgment against the Borrower contained in the Loan Documents.**

**THE BORROWER EXPRESSLY ACKNOWLEDGES THAT: (i) THE BORROWER HAS BEEN REPRESENTED BY LEGAL COUNSEL IN CONNECTION WITH THIS TRANSACTION; AND (ii) IN THE EVENT LENDER EXERCISES THE WARRANT OF ATTORNEY GRANTED HEREIN, SUCH ACTION MAY BE ADVERSE TO BORROWER'S INTERESTS. BORROWER HEREBY EXPRESSLY WAIVES THE DUTIES THAT MAY BE IMPOSED UPON LENDER PURSUANT TO 20 P.A.C.S. § 5601.3(b) IN EXERCISING ITS RIGHTS HEREUNDER.**

15. Acknowledgment of Waiver of Rights. The Borrower hereby acknowledges and agrees that by agreeing that the Lender may confess judgment hereunder, Borrower waives any rights Borrower may have, including without limitation, the right to notice of any constitutional or other right Borrower may have to a prior judicial proceeding to determine Borrower's rights and liabilities hereunder, and the Borrower further acknowledges and agrees that the Lender, upon a default hereunder, may obtain a judgment against the Borrower without Borrower's prior knowledge or consent and without the Borrower's opportunity to raise any defense, setoff, counterclaim or other claim the Borrower may have, and the Borrower hereby expressly waives such rights as an explicit and material part of Borrower's consideration for the Loan as amended by this Amendment. No single exercise of the foregoing warrant and power to confess judgment is deemed to exhaust the power, whether or not any such exercise is held by any court to be invalid, voidable or void, but the power shall continue undiminished and may be exercised from time to time as often as the Lender elects until all indebtedness has been paid in full. The Lender may, in its sole discretion, exercise the authority contained herein against the Borrower at any time or times or at different times.<sup>5</sup>

The Superior Court has condoned similar reaffirmations and republications of Confession of Judgment provisions in amendatory documents by holding that:

---

<sup>4</sup> Willington does not dispute that the original Note contains valid provisions permitting WSFS to confess judgment against it in the event of default.

<sup>5</sup> Confession of Judgment filed August 30, 2022, Ex. C, p.4 (emphasis in original).

While the amendment herein does not restate the cognovit clause in its entirety, it does much more than generally incorporate the terms of the original [agreement between the parties.] . . . [Defendant] signed the amendment, which not only incorporated the terms of the original [agreement between the parties] generally, but specifically republished the terms of the confession of judgment and clearly stated the parties' intent that it continue in effect. . . . [Defendant's] specific acknowledgement that it would continue to be bound by the confession of judgment clauses contained in the original [agreement that was signed by defendant] was the clear manifestation of consent that is required to sustain the validity of a cognovit clause[.] . . . This is not a case where the warrant was foisted upon [defendant] by implication or by general and nonspecific reference.<sup>6</sup>

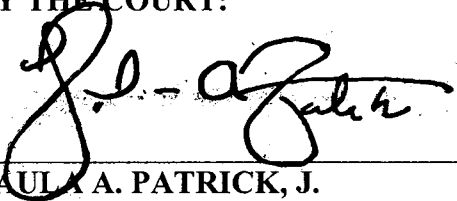
Likewise, in this case, Willington clearly agreed in the Amendment to the Note to be bound by the Confession of Judgment provisions of the Amendment and the original Note.

### CONCLUSION

For all the foregoing reasons, as well as the reasons set forth in the footnote to the court's February 21<sup>st</sup> Order, the court respectfully requests that said Order be affirmed on appeal.

**Dated: June 28, 2023**

**BY THE COURT:**



PAULA A. PATRICK, J.

---

<sup>6</sup> *Ferrick v. Bianchini*, 69 A.3d 642, 652 (Pa. Super. 2013) (discussing an amendment to a lease.)

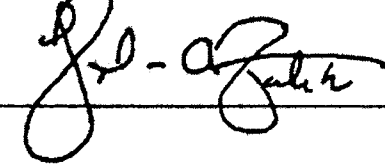
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

WILMINGTON SAVINGS FUND	:	AUGUST TERM, 2022
SOCIETY, FSB,	:	
	:	NO. 03234
Plaintiff,	:	COMMERCE PROGRAM
	:	
v.	:	Control No. 22095239
	:	
WILLINGTON EQUITIES LLC,	:	
	:	
Defendant.	:	

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of February, 2023, upon consideration of defendant's Petition to Strike and/or Open Confessed Judgment, the responses thereto, and all other matters of record, it is hereby **ORDERED** and **DECREED** that said Petition is **DENIED**<sup>1</sup> and the stay of execution is **LIFTED**.

**BY THE COURT:**

  
\_\_\_\_\_ J.

220803234-Wilmington Savings Fund Society Fsb Vs Willington



22080323400023

---

<sup>1</sup> While the initial attempt at service was made to an incorrect address, proper service was subsequently made. The Confession of Judgment provisions were sufficiently incorporated into the Amendment to the Note. Defendant offered no evidence that the calculation of capital and interest due is incorrect. The attorneys' fees equal to approximately .6% of the principal are not unreasonable, and the small late fee also appears to be well within the bounds set forth in the Note.