

# UNOFFICIAL COPY

Doc#: 2134149219 Fee: \$98.00  
Karen A. Yarbrough  
Cook County Clerk  
Date: 12/07/2021 11:57 AM Pg: 1 of 11

This instrument was prepared by  
and upon recordation should be  
returned to:

Higgins & Brancheau LLC  
200 West Adams Street, Suite 2220  
Chicago, Illinois 60606  
Attention: Michael R. Brancheau

## SUBORDINATION, NON-DISTURBANCE & ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE & ATTORNMENT AGREEMENT** (this "**Agreement**") is made and entered into this 30th day of November 2021, by and among **1415 S. WABASH LLC**, a Delaware corporation ("**Owner**"), whose mailing address is 225 W. Ohio Street, 6<sup>th</sup> Floor, Chicago, Illinois 60654, **1419 S. WABASH DEVELOPMENT CORPORATION** a Delaware corporation ("**Landlord**"), whose mailing address is 225 W. Ohio Street, 6<sup>th</sup> Floor, Chicago, Illinois 60654, **SONDER USA INC.**, a Delaware corporation ("**Tenant**"), whose mailing address is 1415 N. Dayton Street, Suite 117, Chicago, Illinois 60642, and **LAKESIDE BANK**, an Illinois banking corporation ("**Lender**"), whose mailing address is 3855 S. Halsted Street, Chicago, Illinois 60609.

### RECITALS

A. Landlord and Tenant have heretofore entered into a certain Lease Agreement dated September 30, 2019, as amended by that certain First Amendment to Lease dated April 15, 2020 (collectively, the "**Lease**") with respect to and governing the terms of Tenant's use and occupancy of all or a portion of certain real estate and improvements legally described on Exhibit A attached hereto and made a part hereof (the "**Secured Property**"); and

B. Lender, as a condition to making a loan to Owner and Landlord in the principal amount of Nineteen Million and No/100 Dollars (\$19,000,000.00) (the "**Loan**"), which is to be secured by (i) a Mortgage and Security Agreement executed by Owner constituting a first lien upon and encumbering the Secured Property (the "**Mortgage**"), and further secured by Assignment of Leases and Rents executed by Landlord to and in favor of Lender (the "**Assignment of Leases and Rents**") assigning to Lender all leases of and all rents derived from the Secured Property, and (ii) a Leasehold Mortgage and Security Agreement executed by Landlord to and in favor of Lender (the "**Leasehold Mortgage**") constituting a first lien upon and encumbering the Landlord's leasehold interest (the "**Leasehold Interest**") under that certain Ground Lease Agreement dated January 1, 2018 by and between Owner and Landlord (the "**Ground Lease**"), and further secured by a Leasehold Assignment of Leases and Rents executed by Landlord to and in favor of Lender (the "**Leasehold Assignment of Leases and Rents**") assigning to Lender all leases of and all rents derived from the Leasehold Interest, has required the execution of this Agreement.

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## AGREEMENTS

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and in consideration of the sum of One Dollar (\$1.00) by each of the parties hereto paid to the other, receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. The Lease, and any and all modifications thereof and amendments thereto, Tenant's leasehold interest and estate in the Secured Property, shall be and are, subject to the terms of this Agreement, junior, inferior, subordinate and subject in all respects to the lien and encumbrance of the Mortgage and the Leasehold Mortgage on the Secured Property and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage and the Leasehold Mortgage, to the full extent of the principal sum secured thereby, all interest thereon and all other sums payable or hereafter becoming payable thereunder.

2. Tenant agrees that it shall promptly deliver or mail to Lender a copy of each written notice given by Tenant to Landlord of a default by Landlord under the Lease. Tenant further agrees that if, within the time provided in the Lease to cure defaults thereunder (or if no time period is specified in the Lease, within thirty (30) days after Lender's receipt of Tenant's written notice of default), Lender, at its option, shall cause to be performed the obligations with respect to which Landlord is in default under the Lease, as specified in such written notice, any right of Tenant to terminate the Lease by reason or on account of such default of Landlord shall cease and be null and void. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Tenant under the Lease in the event of any default by Landlord (beyond any applicable notice and cure period allotted to Landlord under the Lease or to Lender hereunder) in the performance of any of the terms, covenants or conditions of the Lease on Landlord's part to be performed.

3. Tenant is advised and hereby acknowledges that the Mortgage, the Leasehold Mortgage, the Assignment of Leases and Rents, and the Leasehold Assignment of Leases and Rents and other documents which evidence and secure the Loan (collectively the "**Loan Documents**") grant and provide to Lender the right to collect rents and other sums payable under the Lease (collectively, the "**Rents**") directly from Tenant upon the occurrence of an "Event of Default" (as defined in the Mortgage or the Leasehold Mortgage) by Landlord under the Loan Documents. Landlord and Tenant hereby agree that upon Tenant's receipt from Lender of written notice of the occurrence of any Event of Default by Landlord under the Loan Documents, Tenant shall thereafter pay all Rents directly to Lender (or as Lender shall direct), to the extent any such Rents have not previously been received by Lender. Without limiting the foregoing, Tenant shall not be required to make any inquiry or conduct any investigation into the validity of appropriateness of Lender's written demand for payment of Rent pursuant hereto. In the event Tenant receives conflicting instructions from either Lender or Landlord, Lender's instructions shall control.

4. In the event Lender shall become the owner of the Secured Property by reason of the foreclosure of the Mortgage, or the acceptance of a deed in lieu of foreclosure, or in the event Lender shall become the owner of the Leasehold Interest by reason of the foreclosure of the Leasehold Mortgage, provided that Tenant is not in default of its obligations under the Lease

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beyond any applicable grace or cure periods, Lender agrees that Tenant shall be entitled to continue in possession of the Secured Property undisturbed and the Lease shall not be terminated or affected thereby, but shall continue in full force and effect as a direct lease between Lender and Tenant upon all of the terms, covenants and conditions set forth therein. In such event, Tenant shall attorn to Lender and Lender shall be deemed to have accepted such attornment, whereupon, subject to the observance and performance by Tenant of all of the material terms, covenants and conditions of the Lease to be observed or performed by Tenant, Lender shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions set forth in the Lease for the remaining balance of the term thereof; provided, however, Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord) or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except offsets, defenses or claims specifically provide for in the Lease; provided however, the foregoing limitation on liability shall not limit Lender's obligations under the Lease to correct any physical conditions that (i) exist as of the date Lender shall become the owner of the Secured Property; and (ii) violate Lender's obligations as landlord under the Lease; provided further however, that Lender shall have received a written notice of such acts, omissions, conditions or violations prior to becoming owner of the Secured Property and had an opportunity to cure the same in accordance with paragraph 2 hereof. In no event, however, shall Lender have any liability for consequential damages arising from any default occurring prior to the date Lender acquires title to the Secured Property;

(b) bound by any rent or additional rent which Tenant might have paid in advance for more than one month to the extent not actually received by Lender;

(c) bound by any amendment or modification of the Lease made after the date of this Agreement without Lender's prior written consent, which consent shall not be unreasonably withheld, except for any amendment or modification to the extent (i) reflecting the exercise of Tenant's unilateral rights under the Lease, (ii) reflecting the lease commencement date, the rent commencement date, the term of the Lease or Landlord's approval of any alterations, or (iii) that any such amendment or modification does not materially and adversely affect the rights of Landlord or Lender under the Lease;

(d) liable for any security deposit, unless actually received by Lender from any prior landlord or party (including Landlord); and

(e) liable for obligations under the Lease with respect to any property or facilities for the use of Tenant (such as off-site leased space or parking) other than the Secured Property and Tenant shall look solely to Landlord for the performance and observance of any and all such obligations.

5. Lender agrees that unless required by law and provided that Tenant is not in default under the terms of the Lease beyond any applicable grace or cure periods set forth therein, Lender will not join Tenant as a defendant in any foreclosure proceedings or other suit, action or proceeding to enforce any rights under the Mortgage or the Leasehold Mortgage, and if

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such joinder is required by law, Lender will not seek to terminate the Lease or Tenant's possession of the Secured Property.

6. Tenant agrees that notwithstanding anything to the contrary contained in this Agreement, in the Lease or in any other instrument, any interest of Tenant in or under any option or right of first refusal to purchase all or any part of the Secured Property is hereby specifically subordinated to the rights of Lender under the Mortgage and the Leasehold Mortgage and other Loan Documents and such option or right of the first refusal to purchase shall not be binding upon Lender, its successors and assigns.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the title to the land comprising the Secured Property.

8. All notices given under this Agreement shall be in writing and shall be given by personal delivery or certified United States mail, postage prepaid return receipt requested, sent to the party at its address appearing below. Notices shall be effective upon receipt or when proper delivery is refused or when unclaimed. Addresses for notices may be changed by any party by notice to all other parties in accordance with this section. Service of any notice on any one Borrower shall be effective service on all Borrowers for all purposes:

If to Lender: Lakeside Bank  
3855 S. Halsted Street  
Chicago, Illinois 60606  
Attn: Nick Wycklendt

And copy to: Michael R. Brancheau  
Higgins & Brancheau LLC  
200 West Adams Street, Suite 2220  
Chicago, Illinois 60606

If to Landlord : 1415 S. Wabash LLC and  
1419 S. Wabash Development Corporation  
225 W. Ohio Street, 6<sup>th</sup> Floor  
Chicago, Illinois 60654  
Attention: Colin M. Kihnke  
Email: [cmk@cmkdev.com](mailto:cmk@cmkdev.com)

And copies to: David J. O'Keefe  
Schain Banks  
70 West Madison Street  
Suite 2300  
Chicago, Illinois 60602  
Email: [dokeefe@schainbanks.com](mailto:dokeefe@schainbanks.com)

To Tenant: Sonder USA Inc.

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1415 N. Dayton Street  
Suite 117  
Chicago, Illinois 60542  
Attn: General Manager

With a copy to: Sonder USA Inc.  
500 E. 84th Avenue, Suite A-10  
Thornton, Colorado 80229  
Attn: Office of the General Counsel

With a copy to: Email: [relegalnotices@sonder.com](mailto:relegalnotices@sonder.com)

9. Any claim by Tenant against Lender as a successor landlord under the Lease or this Agreement shall be satisfied solely out of Lender's interest in the Secured Property and Tenant shall not seek recovery against or out of any other assets of Lender.

10. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had executed the same document. All counterparts shall be construed together and shall constitute one instrument.

11. **LENDER, LANDLORD AND TENANT HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY ANY PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT OR ANY ACTS OR OMISSIONS OF LANDLORD AND TENANT IN CONNECTION THEREWITH OR CONTEMPLATED THEREBY.**

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

OWNER:

1415 S. Wabash LLC  
a Delaware limited liability company

By: 1415 Manager, LLC  
a Delaware limited liability company  
its Manager

By: CMK Holdings (Delaware) LLC  
a Delaware limited liability company  
its Manager

By: CMK Investment Corporation  
a Delaware corporation  
its Manager

By: \_\_\_\_\_  
Name: Colin M. Kihnke  
Its: President

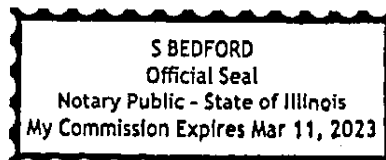
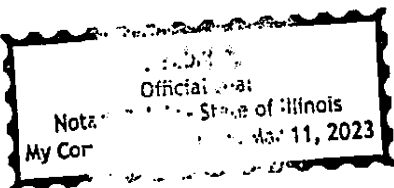
STATE OF ILLINOIS     )  
COUNTY OF Cook     )

Before me, Sarah Bedford the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Colin M. Kihnke, the President of CMK Investment Corporation, which is the Manager of CMK Holdings (Delaware) LLC, which is the Manager of 1415 Manager, LLC, which is the Manager of 1415 S. Wabash LLC, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself self to be President of of CMK Investment Corporation, which is the Manager of CMK Holdings (Delaware) LLC, which is the Manager of 1415 Manager, LLC, which is the Manager of 1415 S. Wabash LLC, the within named bargainer, a corporation, and that as such he being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal, at office in November, 2021, this the 22 day of November 2021.

S Bedford  
NOTARY PUBLIC  
My Commission Expires: Mar 11 2023

[signatures continued on following pages]



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LANDLORD:

1419 S. Wabash Development Corporation  
a Delaware corporation

By: \_\_\_\_\_  
Name: Colin M. Kihnke  
Its: President

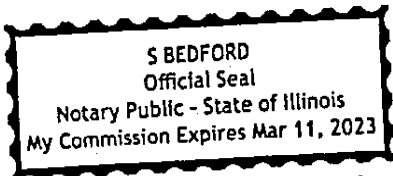
STATE OF ILLINOIS     )  
COUNTY OF Cook     )

Before me, Sarah Bedford the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Colin M. Kihnke, the President of 1419 S. Wabash Development Corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself self to be President of 1419 S. Wabash Development Corporation, the within named bargainor, a corporation, and that as such he being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal, at office in November, 2021, this the 22 day of November 2021.

Sarah Bedford  
NOTARY PUBLIC  
My Commission Expires: Mar 11 2023

[signatures continued on following pages]



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**TENANT:**

**Sonder USA Inc.**  
a Delaware corporation

By: *Philip Rothenberg*  
Name: Philip Rothenberg  
Its: General Counsel

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_ the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be \_\_\_\_\_ of Sonder USA Inc., the within named bargainor, a corporation, and that as such he/she being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as \_\_\_\_\_.

Witness my hand and seal, at office in \_\_\_\_\_, \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

*See Attached  
CA Acknowledgments*

[signatures continued on the following page]



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Clear/Reset



## All-purpose Acknowledgment California

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SANTA CLARA

On 12/01/2021 before me, MIGUEL A. HERRERA, NOTARY PUBLIC (here insert name and title of the officer),

personally appeared PHIL ROSENBERG

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Notary Seal

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

### For Bank Purposes Only

Description of Attached Document

Type or Title of Document SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Document Date 12/01/2021 Number of Pages 10

Signer(s) Other Than Named Above \_\_\_\_\_

Account Number (if applicable) \_\_\_\_\_



F001-000DSG5350CA-01

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**LENDER:**

**Lakeside Bank**  
an Illinois banking corporation

By: [Signature]  
Name: Nick Wycklendt  
Its: Vice President

STATE OF ILLINOIS     )  
COUNTY OF COOK        )

Before me, Danielle Graziani the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Nick Wycklendt, the Vice President of Lakeside Bank, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself self to be Vice President of Lakeside Bank, the within named bargainor, a corporation, and that as such he being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as Vice President.

Witness my hand and seal, at office in Chicago, Ill, this the 23<sup>rd</sup> day of November 2021.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 5 | 3 | 2024



Properly Filed  
Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

THE SOUTH 20 FEET OF LOT 11 AND ALL OF LOT 12 IN BLOCK 16 IN HERRINGTON'S ADDITION TO CHICAGO IN THE NORTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 17-22-107-101-0000

Commonly Known As: 1419 S. Wabash, Chicago, Illinois 60605

Property of Cook County Clerk's Office