

REFINITIV

DELTA REPORT

10-Q

CARDIO DIAGNOSTICS HOLDIN

10-Q - SEPTEMBER 30, 2023 COMPARED TO 10-Q - JUNE 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 1679

 **CHANGES** 206

 **DELETIONS** 1179

 **ADDITIONS** 294

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended **June** **September** 30, 2023

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ____ to ____

Commission File Number: 001-41097

Cardio Diagnostics Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware	87-0925574
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
311 W Superior St, Ste 444 Chicago, Illinois	60645
(Address of principal executive offices)	(Zip Code)

(855) 226-9991

(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

**400 North Aberdeen Street, Suite 900
Chicago, Illinois**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.00001 per share	CDIO	The NASDAQ Stock Market LLC
Redeemable Warrants, each whole warrant exercisable for one share of Common Stock	CDIOW	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large, accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of August 11, 2023 November 13, 2023, there were 11,776,213 20,516,940 shares of the registrant's Common Stock, \$0.00001 par value, issued and outstanding.

CARDIO DIAGNOSTICS HOLDINGS, INC.

FORM 10-Q

For the Quarter Ended **June 30, 2023** **September 30, 2023**

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INTRODUCTORY NOTE

As used in this Quarterly Report on Form 10-Q, unless the context requires otherwise, references to the "Company," "Cardio," "we," "us," "our," and similar terms refer to Cardio Diagnostics Holdings, Inc., a Delaware corporation, formerly known as Mana Capital Acquisition Corp. ("Mana"), and its consolidated subsidiary. References to "Legacy Cardio" refer to Cardio Diagnostics, Inc., a privately-held Delaware corporation that is now our wholly-owned subsidiary.

On October 25, 2022, we consummated the previously announced Business Combination (pursuant to the Agreement and Plan of Merger, dated as of May 27, 2022, as amended on September 15, 2022, by and among Mana, Mana Merger Sub, Inc. ("Merger Sub"), Legacy Cardio and Meeshanthini Dogan, Ph.D., as representative of the shareholders of Legacy Cardio, the "Business Combination Agreement"). Pursuant to the terms of the Business Combination Agreement, a business combination (herein referred to as the "Business Combination" or "Reverse Recapitalization" for accounting purposes) between Mana and Legacy Cardio was effected through the merger of Merger Sub with and into Legacy Cardio with Legacy Cardio surviving as Mana's wholly-owned subsidiary. In connection with the Business Combination, Mana changed its name from Mana Capital Acquisition Corp. to Cardio Diagnostics Holdings, Inc.

SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including, but not limited to, changes in laws or regulations, any statements about our business (including the impact of the COVID-19 pandemic on our business), financial condition, operating results, plans, objectives, expectations and intentions, any guidance on, or projections of, earnings, revenue or other financial items, or otherwise, and our future liquidity, including cash flows; any statements of any plans, strategies, and objectives of management for future operations, such as the material opportunities that we believe exist for our Company; any statements concerning proposed products and services, developments, mergers or acquisitions; or strategic transactions; any statements regarding management's view of future expectations and prospects for us; any statements about prospective adoption of new accounting standards or effects of changes in accounting standards; any statements regarding future economic conditions or performance; any statements of belief; any statements of assumptions underlying any of the foregoing; and other statements that are not historical facts. Forward-looking statements may be identified by the use of forward-looking terms such as "anticipate," "could," "can," "may," "might," "potential," "predict," "should," "estimate," "expect," "project," "believe," "think," "plan," "envision," "intend," "continue," "target," "seek," "contemplate," "budgeted," "will," "would," and the negative of such terms, other variations on such terms or other similar or comparable words, phrases, or terminology. These forward-looking statements present our estimates and assumptions only as of the date of this Quarterly Report on Form 10-Q and are subject to change.

Forward-looking statements involve risks and uncertainties and are based on the current beliefs, expectations, and certain assumptions of management. Some or all of such beliefs, expectations, and assumptions may not materialize or may vary significantly from actual results. Such statements are qualified by important economic, competitive, governmental, and technological factors that could cause our business, strategy, or actual results or events to differ materially from those in our forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, the risk factors discussed under the heading "Risk Factors" in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the Securities and Exchange Commission ("SEC") on March 31, 2023 (the "2022 Form 10-K"), and in Part II, Item 1A of our Form 10-Q for the three months ended March 31, 2023, filed with the SEC on May 15, 2023, and in Part II, Item 1A of this Form 10-Q. Although we believe that the expectations reflected in our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change, and significant risks and uncertainties that could cause actual conditions, outcomes, and results to differ materially from those indicated by such statements. Consequently, all of the forward-looking statements made in this Form 10-Q are qualified by these cautionary statements and there can be no assurance that the actual results or developments anticipated by the Company will be realized or, even if substantially realized, that they will have the expected consequence to or effects on the Company or its business or operations. The Company assumes no obligations to update any such forward-looking statements.

PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

CARDO DIAGNOSTICS HOLDINGS, INC. CONDENSED CONSOLIDATED BALANCE SHEETS (unaudited)

	JUNE 30, 2023	DECEMBER 31, 2022	September 30, 2023	December 31, 2022
<u>ASSETS</u>				
Current assets				
Cash	\$ 5,044,328	\$ 4,117,521	\$ 3,629,648	\$ 4,117,521
Accounts receivable	1,050	—	350	—
Prepaid expenses and other current assets	1,209,340	1,768,366	892,300	1,768,366
Total current assets	6,254,718	5,885,887	4,522,298	5,885,887
Long-term assets				
Property and equipment	26,019	—	37,233	—
Right of use asset, net			879,284	
Intangible assets, net	29,333	37,333	25,333	37,333
Deposits	12,850	4,950	12,850	4,950
Patent costs, net	433,984	321,308	486,309	321,308
Total assets	\$ 6,756,904	\$ 6,249,478	\$ 5,963,307	\$ 6,249,478
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>				
Current liabilities				
Accounts payable and accrued expenses	\$ 651,415	\$ 1,098,738	\$ 623,075	\$ 1,098,738
Lease liability - current			178,066	—
Convertible notes payable, net	915,202	—	967,184	—
Derivative liability	1,998,752	—	1,186,783	—
Finance agreement payable	283,011	849,032	—	849,032
Total current liabilities			2,955,108	1,947,770
Long-term liabilities				

Lease liability – long term		720,468	—
Total liabilities	3,848,380	1,947,770	3,675,576
Stockholders' equity			1,947,770
Preferred stock, \$.00001 par value; authorized - 100,000,000 shares; 0 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively		—	—
Common stock, \$.00001 par value; authorized - 300,000,000 shares; 1,455 and 9,514,743 shares issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	112	95	
Preferred stock, \$.00001 par value; authorized - 100,000,000 shares; 0 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively		—	—
Common stock, \$.00001 par value; authorized - 300,000,000 shares; 13,117,325 and 9,514,743 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively		131	95
Additional paid-in capital	13,955,481	10,293,159	15,267,051
Accumulated deficit	(11,047,069)	(5,991,546)	(12,979,451)
Total stockholders' equity	2,908,524	4,301,708	2,287,731
Total liabilities and stockholders' equity	\$ 6,756,904	\$ 6,249,478	\$ 5,963,307
			\$ 6,249,478

The accompanying notes are an integral part of these unaudited financial statements.

**CARDIO DIAGNOSTICS HOLDINGS, INC.
CONDENSED CONSOLIDATED
STATEMENTS OF OPERATIONS**
(unaudited)

	THREE MONTHS		SIX MONTHS		Three Months Ended		Nine Months Ended	
	ENDED		ENDED		September 30,		September 30,	
	JUNE 30,	2023	JUNE 30,	2022	2023	2022	2023	2022
Revenue	\$ 1,725	\$ —	\$ 1,725	\$ —	\$ 10,030	\$ —	\$ 11,755	\$ —
Operating expenses								
Sales and marketing	31,608	26,806	81,159	49,204	34,067	16,369	115,226	65,573
Research and development	12,317	5,041	98,982	6,171	38,708	3,190	137,690	9,361
General and administrative expenses	2,506,148	751,117	4,068,276	956,144	1,376,644	1,127,316	5,444,920	2,083,460
Amortization	4,793	4,000	9,578	8,000	4,802	4,000	14,380	12,000
Total operating expenses	2,554,866	786,964	4,257,995	1,019,519	1,454,221	1,150,875	5,712,216	2,170,394
Loss from operations	(2,553,141)	(786,964)	(4,256,270)	(1,019,519)	(1,444,191)	(1,150,875)	(5,700,461)	(2,170,394)
Other income (expenses)								
Change in fair value of derivative liability	(53,816)	—	5,633,085	—	(31,033)	—	5,602,052	—
Interest income	263	—	484	—	283	—	767	—
Interest expense	(1,051,916)	—	(6,068,527)	—	(570,385)	—	(6,638,912)	—
Loss on extinguishment of debt	(364,295)	—	(364,295)	—				
Gain (loss) on extinguishment of debt					112,944	—	(251,351)	—
Acquisition related expense	—	(55,034)	—	(112,534)	—	—	—	(112,534)
Total other income (expenses)	(1,469,764)	(55,034)	(799,253)	(112,534)	(488,191)	—	(1,287,444)	(112,534)

Loss before provision for income taxes	(4,022,905)	(841,998)	(5,055,523)	(1,132,053)	(1,932,382)	(1,150,875)	(6,987,905)	(2,282,928)
Provision for income taxes	—	—	—	—	—	—	—	—
Net loss	<u>\$ (4,022,905)</u>	<u>\$ (841,998)</u>	<u>\$ (5,055,523)</u>	<u>\$ (1,132,053)</u>	<u>\$ (1,932,382)</u>	<u>\$ (1,150,875)</u>	<u>\$ (6,987,905)</u>	<u>\$ (2,282,928)</u>
Basic and fully diluted income (loss) per common share:								
Net loss per common share	\$ (0.39)	\$ (0.16)	\$ (0.51)	\$ (.23)	\$ (.16)	\$ (.17)	\$ (.66)	\$ (.42)
Weighted average common shares outstanding - basic and fully diluted	10,242,430	5,427,349	9,896,724	4,828,747	11,903,708	6,614,029	10,573,070	5,396,988

The accompanying notes are an integral part of these unaudited financial statements.

CARDIO DIAGNOSTICS HOLDINGS, INC.
CONDENSED CONSOLIDATED
STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
Six Nine Months Ended June 30, 2023 September 30, 2023 and 2022
(b unaudited)

	Common Stock		Paid-in Capital	Subscriptions Receivable	Stock Accumulated Deficit	Totals
	Shares	Amount				
Balances, December 31, 2022	9,514,743	\$ 95	\$ 10,293,159	\$ —	\$ (5,991,546)	\$ 4,301,708
Warrants converted to common stock	100,000	1	389,999	—	—	390,000
Restricted stock awards vested	1,092	—	4,000	—	—	4,000
Placement agent fee	—	—	(315,000)	—	—	(315,000)
Adjustment to liabilities assumed in merger with Mana	—	—	74,025	—	—	74,025
Net loss	—	—	—	—	(1,032,618)	(1,032,618)
Balances, March 31, 2023	<u>9,615,835</u>	<u>\$ 96</u>	<u>\$ 10,446,183</u>	<u>\$ —</u>	<u>\$ (7,024,164)</u>	<u>\$ 3,422,115</u>
Restricted stock awards vested	87,917	1	105,999	—	—	106,000
Notes payable converted to common stock	1,474,703	15	2,368,026	—	—	2,368,041
Compensation for vested stock options	—	—	1,035,273	—	—	1,035,273
Net loss	—	—	—	—	(4,022,905)	(4,022,905)
Balances, June 30, 2023	<u>11,178,455</u>	<u>\$ 112</u>	<u>\$ 13,955,481</u>	<u>\$ —</u>	<u>\$ (11,047,069)</u>	<u>\$ 2,908,524</u>
Balances, December 31, 2021	4,223,494	\$ 42	\$ 2,398,628	\$ —	(1,330,561)	\$ 1,068,109
Net loss	—	—	—	—	(290,055)	(290,055)
Balances, March 31, 2022	<u>4,223,494</u>	<u>\$ 42</u>	<u>\$ 2,398,628</u>	<u>\$ —</u>	<u>\$ (1,620,616)</u>	<u>\$ 778,054</u>

	2,291,445	23	10,963,014	(100,001)	—	10,863,036
Placement agent fee	—	—	(1,096,309)	—	—	(1,096,309)
Net loss	—	—	—	—	(841,998)	(841,998)
Balances, June 30, 2022	<u>6,514,939</u>	\$ <u>65</u>	<u>\$ 12,265,333</u>	<u>\$ (100,001)</u>	<u>\$ (2,462,614)</u>	<u>\$ 9,702,783</u>
	Shares	Common stock Amount	Additional Paid-in Capital	Stock Subscriptions Receivable	Accumulated Deficit	Totals
Balances, December 31, 2022	9,514,743	\$ 95	\$ 10,293,159	\$ —	\$ (5,991,546)	\$ 4,301,708
Warrants converted to common stock	100,000	1	389,999	—	—	390,000
Restricted stock awards vested	1,092	—	4,000	—	—	4,000
Placement agent fee	—	—	(315,000)	—	—	(315,000)
Adjustment to liabilities assumed in merger with Mana	—	—	74,025	—	—	74,025
Net loss	—	—	—	—	(1,032,618)	(1,032,618)
Balances, March 31, 2023	<u>9,615,835</u>	<u>\$ 96</u>	<u>\$ 10,446,183</u>	<u>\$ —</u>	<u>\$ (7,024,164)</u>	<u>\$ 3,422,115</u>
Restricted stock awards vested	87,917	1	105,999	—	—	106,000
Notes payable converted to common stock	1,474,703	15	2,368,026	—	—	2,368,041
Compensation for vested stock options	—	—	1,035,273	—	—	1,035,273
Net loss	—	—	—	—	(4,022,905)	(4,022,905)
Balances, June 30, 2023	<u>11,178,455</u>	<u>\$ 112</u>	<u>\$ 13,955,481</u>	<u>\$ —</u>	<u>\$ (11,047,069)</u>	<u>\$ 2,908,524</u>
Restricted stock awards vested	177,807	2	71,998	—	—	72,000

Notes payable converted to common stock	1,761,063	17	1,239,572	—	—	1,239,589
Net loss	—	—	—	—	(1,932,382)	(1,932,382)
Balances, September 30, 2023	<u>13,117,325</u>	\$ 131	<u>\$ 15,267,051</u>	\$ —	<u>\$ (12,979,451)</u>	<u>\$ 2,287,731</u>
Balances, December 31, 2021	4,223,494	\$ 42	\$ 2,398,628	\$ —	(1,330,561)	\$ 1,068,109
Net loss	—	—	—	—	(290,055)	(290,055)
Balances, March 31, 2022	<u>4,223,494</u>	\$ 42	<u>\$ 2,398,628</u>	\$ —	<u>\$ (1,620,616)</u>	<u>\$ 778,054</u>
Common stock and warrants issued for cash	2,291,445	23	10,963,014	(100,001)	—	10,863,036
Placement agent fee	—	—	(1,096,309)	—	—	(1,096,309)
Net loss	—	—	—	—	(841,998)	(841,998)
Balances, June 30, 2022	<u>6,514,939</u>	\$ 65	<u>\$ 12,265,333</u>	\$ (100,001)	<u>\$ (2,462,614)</u>	<u>\$ 9,702,783</u>
Common stock issued for cash	193,427	2	1,022,998	100,001	—	1,123,001
Placement agent fee	—	—	(102,295)	—	—	(102,295)
Warrants converted to common stock	66,465	1	(1)	—	—	—
Net loss	—	—	—	—	(1,150,875)	(1,150,875)
Balances, September 30, 2022	<u>6,774,831</u>	\$ 68	<u>\$ 13,186,035</u>	\$ —	<u>\$ (3,613,489)</u>	<u>\$ 9,572,614</u>

The accompanying notes are an integral part of these unaudited financial statements.

CARDIO DIAGNOSTICS HOLDINGS, INC.
 CONDENSED CONSOLIDATED
 STATEMENTS OF CASH FLOWS
 (unaudited)

	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (5,055,523)	\$ (1,132,053)

Adjustments to reconcile net loss to net cash used in operating activities		
Amortization	9,578	8,000
Acquisition related expense	—	112,534
Stock-based compensation expense	1,145,273	—
Non-cash interest expense	6,050,785	—
Change in fair value of derivative liability	(5,633,085)	—
Loss on extinguishment of debt	364,295	—
Changes in operating assets and liabilities:		
Accounts receivable	(1,050)	901
Prepaid expenses and other current assets	559,026	(69,089)
Deposits	(7,900)	(4,950)
Accounts payable and accrued expenses	(373,298)	503,795
NET CASH USED IN OPERATING ACTIVITIES	<u>(2,941,899)</u>	<u>(580,862)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(26,019)	—
Patent costs incurred	(114,254)	(38,606)
NET CASH USED IN INVESTING ACTIVITIES	<u>(140,273)</u>	<u>(38,606)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from convertible notes payable, net of original issue discount of \$500,000	4,500,000	—
Proceeds from exercise of warrants	390,000	—
Payments of placement agent fee	(315,000)	(1,096,309)
Proceeds from sale of common stock and warrants	—	10,863,036
Payments of finance agreement	(566,021)	—
NET CASH PROVIDED BY FINANCING ACTIVITIES	<u>4,008,979</u>	<u>9,766,727</u>
NET INCREASE (DECREASE) IN CASH	<u>926,807</u>	<u>9,147,259</u>
CASH - BEGINNING OF PERIOD	<u>4,117,521</u>	<u>512,767</u>
CASH - END OF PERIOD	<u>\$ 5,044,328</u>	<u>\$ 9,660,026</u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest	\$ 17,742	\$ —
Non-cash investing and financing activities:		

Common stock issued for subscriptions receivable	\$ —	\$ 100,001
Debt discount related to derivative liability	5,000,000	—
Notes payable converted to common stock	2,150,000	—
Adjustment to liabilities assumed in acquisition	74,025	
		Nine Months Ended September 30,
	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	\$ (6,987,905)	\$ (2,282,928)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation	1,377	—
Amortization	48,426	12,000
Acquisition related expense	—	112,534
Stock-based compensation expense	1,217,273	—
Non-cash interest expense	6,612,298	—
Change in fair value of derivative liability	(5,602,052)	—
Loss on extinguishment of debt	251,351	—
Changes in operating assets and liabilities:		
Accounts receivable	(350)	901
Prepaid expenses and other current assets	876,066	(39,569)
Deposits	(7,900)	(4,950)
Accounts payable and accrued expenses	(401,638)	231,309
Lease liability	6,556	—
NET CASH USED IN OPERATING ACTIVITIES	(3,986,498)	(1,970,703)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchases of property and equipment	(38,610)	—
Repayment of deposit for acquisition		137,466
Payments for notes receivable		(433,334)
Payments for right of use asset	(21,352)	
Patent costs incurred	(167,381)	(69,621)
NET CASH USED IN INVESTING ACTIVITIES	(227,343)	(365,489)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from convertible notes payable, net of original issue discount of \$500,000	4,500,000	—
Proceeds from exercise of warrants	390,000	—
Payments of placement agent fee	(315,000)	(1,198,604)
Proceeds from sale of common stock and warrants	—	11,986,037
Payments of finance agreement	(849,032)	—

NET CASH PROVIDED BY FINANCING ACTIVITIES	3,725,968	10,787,433
NET INCREASE (DECREASE) IN CASH	(487,873)	8,451,241
CASH - BEGINNING OF PERIOD	4,117,521	512,767
CASH - END OF PERIOD	<u>\$ 3,629,648</u>	<u>\$ 8,964,008</u>

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for:			
Interest	\$ 26,613	\$ —	—
Non-cash investing and financing activities:			
Common stock issued for subscriptions receivable	\$ —	\$ —	—
Debt discount related to derivative liability	5,000,000	—	—
Notes payable converted to common stock	3,300,000	—	—
Adjustment to liabilities assumed in acquisition	74,025	—	—
Right of use asset added for operating lease	891,978	—	—

The accompanying notes are an integral part of these unaudited financial statements.

CARDIO DIAGNOSTICS HOLDINGS, INC.
NOTES TO CONDENSED CONSOLIDATED
FINANCIAL STATEMENTS
(UNAUDITED)

Note 1 - Organization and Basis of Presentation

The unaudited condensed consolidated financial statements presented are those of Cardio Diagnostics Holdings, Inc. (the "Company") and its wholly-owned subsidiary, Cardio Diagnostics, Inc. ("Legacy Cardio"). The Company was incorporated as Mana Capital Acquisition Corp. ("Mana") under the laws of the state of Delaware on May 19, 2021, and Legacy Cardio was formed on January 16, 2017 as an Iowa limited liability company (Cardio Diagnostics, LLC) and was subsequently incorporated as a Delaware C-Corp on September 6, 2019 (Legacy Cardio). The Company was formed to develop and commercialize a patent-pending Artificial Intelligence ("AI")-driven DNA biomarker testing technology ("Core Technology") for cardiovascular disease invented at the University of Iowa by the Company's Founders, with the goal of becoming one of the leading medical technology companies for enabling precision prevention, early detection and treatment of cardiovascular disease. The Company is transforming the approach to cardiovascular disease from reactive to proactive. The Core Technology is being incorporated into a series of products for major types of cardiovascular disease and associated co-morbidities including coronary heart disease ("CHD"), stroke, heart failure and diabetes.

Interim Financial Statements

The unaudited condensed consolidated interim financial statements of the Company have been prepared in accordance with the instructions to Form 10-Q and Rule 8-03 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by US Generally Accepted Accounting Principles ("GAAP") for complete financial statements. In the opinion

of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three months and **six** nine months ended **June 30, 2023** **September 30, 2023** are not necessarily indicative of results that may be expected for the year ending December 31, 2023. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2022 included in the Company's Annual Report on Form 10-K, filed with the Securities and Exchange Commission ("SEC") on March 31, 2023.

Business Combination

On May 27, 2022, Mana, Mana Merger Sub, Inc. ("Merger Sub"), Meeshanthini Dogan, the Shareholders' Representative and Legacy Cardio entered into the Business Combination Agreement (the "Merger Agreement"). On October 25, 2022, pursuant to the Merger Agreement, Legacy Cardio merged with and into Merger Sub, with Legacy Cardio surviving as the wholly-owned subsidiary of Mana. Subsequent to the merger, Mana changed its name to Cardio Diagnostics Holdings, Inc.

Note 2 – Merger Agreement and Reverse Recapitalization

As discussed in Note 1, on October 25, 2022, the Company (formerly known as Mana) and Legacy Cardio entered into the Merger Agreement, which has been accounted for as a reverse recapitalization in accordance with **US Generally Accepted Accounting Principles ("GAAP")**. Pursuant to the Merger Agreement, the Company acquired cash of \$4,021 and assumed liabilities of \$928,500 from Mana. The liabilities of \$854,775, net of an early payment discount of \$74,025 issued by a vendor on March 22, 2023, are payable to two investment bankers and due on October 25, 2023. On March 27, 2023, the Company accepted the early pay discount and paid Ladenburg the net balance due and payable of \$419,475. As of **June 30, 2023** **September 30, 2023**, the remaining post-merger liabilities balance was \$435,000. As of the date of this filing of this report, the remaining assumed liabilities balance of \$435,000 was paid.

Mana's common stock had a redemption right in connection with the business combination. Mana's stockholders exercised their right to redeem 6,465,452 shares of common stock, which constituted approximately 99.5% of the shares with redemption rights, for cash at a redemption price of approximately \$10.10 per share, for an aggregate redemption amount of \$65,310,892. In accounting for the reverse recapitalization, the Company's legacy issued and outstanding 1,976,749 shares of common stock were reversed, and the Mana shares of common stock totaling 9,514,743 were recorded, as described in Note 8. Transactions costs incurred in connection with the recapitalization totaled \$1,535,035 and were recorded as a reduction to additional paid in capital.

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Note 3 –Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary, Cardio Diagnostics, Inc. All intercompany accounts and transactions have been eliminated.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Actual results could differ from those estimates.

Fair Value Measurements

The Company adopted the provisions of ASC Topic 820, *Fair Value Measurements and Disclosures*, which defines fair value as used in numerous accounting pronouncements, establishes a framework for measuring fair value and expands disclosure of fair value measurements.

The estimated fair value of certain financial instruments, including cash and cash equivalents, accounts payable and accrued expenses are carried at historical cost basis, which approximates their fair values because of the short-term nature of these instruments. The carrying amounts of our short- and long-term credit obligations approximate fair value because the effective yields on these obligations, which include contractual interest rates taken together with other features such as concurrent issuances of warrants and/or embedded conversion options, are comparable to rates of returns for instruments of similar credit risk.

ASC 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 describes three levels of inputs that may be used to measure fair value:

Level 1 – quoted prices in active markets for identical assets or liabilities

Level 2 – quoted prices for similar assets and liabilities in active markets or inputs that are observable

Level 3 – inputs that are unobservable (for example cash flow modeling inputs based on assumptions)

The estimated fair value of the derivative liability was calculated using the Black-Scholes option pricing model. The Company uses Level 3 inputs to value its derivative liabilities. The following table provides a reconciliation of the beginning and ending balances for the major classes of assets and liabilities measured at fair value using significant unobservable inputs (Level 3) and reflects gains and losses for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022.

	2023	2022	2023	2022
Liabilities:				
Balance of derivative liabilities - beginning of period	\$ —	\$ —	\$ —	\$ —

Issued	9,192,672	—	9,192,672	—
Converted	(1,560,835)	—	(2,403,837)	—
Change in fair value recognized in operations	(5,633,085)	—	(5,602,052)	—
Balance of derivative liabilities - end of period	\$ 1,998,752	\$ —	\$ 1,186,783	\$ —

The following table represents the Company's derivative instruments that are measured at fair value on a recurring basis as of **June 30, 2023** **September 30, 2023**, for each fair value hierarchy level:

September 30, 2023	Derivative Liabilities		Total
	Level I	Level II	
Level I	\$ —	\$ —	\$ —
Level II	\$ —	\$ —	\$ —
Level III	\$ 1,186,783	\$ —	\$ 1,186,783

June 30, 2023	Derivative Liabilities		Total
	Level I	Level II	
Level I	\$ —	\$ —	\$ —
Level II	\$ —	\$ —	\$ —
Level III	\$ 1,998,752	\$ —	\$ 1,998,752

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Convertible Instruments

The Company evaluates and accounts for conversion options embedded in convertible instruments in accordance with ASC Accounting Standards Codification ("ASC") 815, *Derivatives and Hedging Activities*.

Applicable GAAP requires companies to bifurcate conversion options from their host instruments and account for them as free-standing derivative financial instruments according to certain criteria. The criteria include circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under other GAAP with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument.

The Company accounts for convertible instruments (when it has been determined that the embedded conversion options should not be bifurcated from their host instruments) as follows: The Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. Debt discounts under these arrangements are amortized over the term of the related debt to their stated date of redemption.

The Company accounts for the conversion of convertible debt when a conversion option has been bifurcated using the general extinguishment standards. The debt and equity linked derivatives are removed at their carrying amounts and the shares issued are measured at their then-current fair value, with any difference recorded as a gain or loss on extinguishment of the two separate accounting liabilities.

Revenue Recognition

The Company hosts its products, Epi+Gen CHD™ and PrecisionCHD™ on InTeleLab's Elicity a telemedicine provider platform (the "Provider"). The Provider collects payments from patients upon completion of eligibility screening. Upon receiving a sample collection kit from the Company, patients send their samples to MOgene an experienced laboratory with appropriate Clinical Laboratory Improvement Amendments of 1988 ("CLIA") certification and state licensure (the "Lab"), a high complexity CLIA lab, which performs the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the Provider via their platform. Revenue The Provider is recognized upon receipt of payments from the Provider for each completed test invoiced at the end of each month. month for each completed test. Revenue is recognized upon issuance of the invoice to the Provider.

For provider organizations such as concierge medicine and executive health practices, the Company's products are shared during a sales outreach to the organization (emails, calls, events, etc.). The provider organization places a request for a number of sample collection kits for each test. When the provider orders either test for a patient, it sends the test requisition form to the Company and the patient's blood sample to the Lab, which performs the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the ordering provider. An invoice is sent to a provider organization at the end of every month for the tests performed that month, generally with a net 30 term. Revenue is recognized upon issuance of the invoice to the provider organization.

For a Group Purchasing Organization ("GPO"), the pricing and payments terms are negotiated in the contracting phase. A GPO member organization (a "Provider Organization") places a request for a number of sample collection kits for each test. When the Provider Organization orders either test for a patient, it sends the test requisition form to the Company and the patient's blood sample to the Lab, which perform the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the ordering provider. An invoice is sent to the Provider Organization at the end of every month for the tests performed that month or at the time of order, with the terms agreed upon with the GPO. Revenue is recognized upon issuance of invoice to the Provider Organization.

The Company accounts for revenue under Accounting Standards Update ("ASU") 2014-09, "Revenue from Contracts with Customers (Topic 606)", using the modified retrospective method. The modified retrospective adoption used by the Company did not result in a material cumulative effect adjustment to the opening balance of accumulated deficit.

The Company determines the measurement of revenue and the timing of revenue recognition utilizing the following core principles:

1. Identifying the contract with a customer;
2. Identifying the performance obligations in the contract;
3. Determining the transaction price;
4. Allocating the transaction price to the performance obligations in the contract; and
5. Recognizing revenue when (or as) the Company satisfies its performance obligations.

Research and Development

Research and development costs are expensed as incurred. Research and development costs charged to operations for the ~~six~~ nine months ended ~~June 30, 2023~~ September 30, 2023 and 2022 were \$98,982 ~~137,690~~ and \$6,171 ~~9,361~~, respectively.

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Advertising Costs

The Company expenses advertising costs as incurred. Advertising costs of \$81,159 115,226 and \$49,204 65,573 were charged to operations for the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively.

Cash and Cash Equivalents

Cash and cash equivalents are comprised of cash and highly liquid investments with original maturities of 90 days or less at the date of purchase. The Company does not have any cash equivalents as of June 30, 2023 September 30, 2023 and December 31, 2022. Cash is maintained at a major financial institution. Accounts held at U.S. financial institutions are insured by the FDIC up to \$250,000. The Company is exposed to credit risk in the event of default by the financial institutions or the issuers of these investments to the extent the amounts on deposit or invested are in excess of amounts that are insured.

Property and Equipment and Depreciation

Property and equipment are stated at cost. Maintenance and repairs are charged to expense when incurred. When property and equipment are retired or otherwise disposed of, the related cost and accumulated depreciation are removed from the respective accounts and any gain or loss is credited or charged to income. Depreciation for both financial reporting and income tax purposes is computed using combinations of the straight line and accelerated methods over the estimated lives of the respective assets as follows:

Office and computer equipment	5 years
Furniture and fixtures	7 years

Patent Costs

The Company accounts for patents in accordance with ASC 350-30, *General Intangibles Other than Goodwill*. The Company capitalizes patent costs representing legal fees associated with filing patent applications and amortize them on a straight-line basis. The Company is in the process of evaluating each of its patents' patent's estimated useful life and will begin amortizing the patents when they are brought to the market or otherwise commercialized.

Long-Lived Assets

The Company assesses the valuation of components of long-lived assets whenever events or circumstances dictate that the carrying value might not be recoverable. The Company bases its evaluation on indicators such as the nature of the assets, the future economic benefit of the assets, any historical or future profitability measurements and other external market conditions or factors that may be present. If such factors indicate that the carrying amount of an asset or asset group may not be recoverable, the Company determines whether an impairment has occurred by analyzing an estimate of undiscounted future cash flows at the lowest level for which identifiable cash flows exist. If the estimate of undiscounted cash flows during the estimated useful life of the asset is less than the carrying value of the asset, the Company recognizes a loss for the difference between the carrying value of the asset and its estimated fair value, generally measured by the present value of the estimated cash flows.

Stock-Based Compensation

The Company accounts for its stock-based awards granted under its employee compensation plan in accordance with ASC Topic No. 718-20, *Awards Classified as Equity*, which requires the measurement of compensation expense for all share-based compensation granted to employees and non-employee directors at fair value on the date of grant and recognition of compensation expense over the related service period for awards expected to vest. The Company uses the Black-Scholes option pricing model to estimate the fair value of its stock options and warrants. The Black-Scholes option pricing model requires the input of highly subjective assumptions including the expected stock price volatility of the Company's common stock, the risk-free interest rate at the date of grant, the expected vesting term of the grant, expected dividends, and an assumption related to forfeitures of such grants. Changes in these subjective input assumptions can materially affect the fair value estimate of the Company's stock options and warrants.

Income Taxes

The Company accounts for income taxes using the asset and liability method in accordance with ASC Topic No. 740, *Income Taxes*. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that are expected to be in effect when the differences are expected to reverse.

The Company applies the provisions of ASC Topic No. 740 for the financial statement recognition, measurement and disclosure of uncertain tax positions recognized in the Company's financial statements. In accordance with this provision, tax positions must meet a more-likely-than-not recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position.

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Recent Accounting Pronouncements

We have reviewed other recent accounting pronouncements and concluded they are either not applicable to the business, or no material effect is expected on the condensed consolidated financial statements as a result of future adoption.

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Note 4 – Property and Equipment

Property and equipment are carried at cost and consist of the following at **June 30, 2023** **September 30, 2023** and December 31, 2022:

	2023	2022
Office and computer equipment	\$ 11,683	\$ —
Furniture and fixtures	26,927	—
Less: Accumulated depreciation	(1,377)	—
Total	\$ 37,233	\$ —
	2023	2022
Office and computer equipment	\$ 11,683	\$ —
Furniture and fixtures	14,336	—
Less: Accumulated depreciation	—	—
Total	\$ 26,019	\$ —

Depreciation expense of \$1,377 and \$0 was charged to operations for the nine months ended **September 30, 2023** and 2022, respectively.

Note 5 – Intangible Assets

The following tables provide detail associated with the Company's acquired identifiable intangible assets:

	As of June 30, 2023				As of September 30, 2023			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful life (in years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted Average Useful Life (in years)
Amortized intangible assets:								
Know-how license	\$ 80,000	\$ (50,667)	\$ 29,333	5	\$ 80,000	\$ (54,667)	\$ 25,333	5
Total	\$ 80,000	\$ (50,667)	\$ 29,333		\$ 80,000	\$ (54,667)	\$ 25,333	

Amortization expense charged to operations was \$8,000 **12,000** for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022, respectively.

Note 6 – Patent Costs

As of **June 30, 2023** **September 30, 2023**, the Company has three pending patent applications. The initial patent applications consist of a US patent and international patents filed in six countries. The US patent was granted on August 16, 2022. The EU patent was granted on March 31, 2021. The validation of the EU patent in each of the six countries is pending. Legal fees associated with the patents totaled \$433,984 **486,309** and \$321,308, net of accumulated amortization of \$1,578 **2,380** and \$0 as of **June 30, 2023** **September 30, 2023** and December 31, 2022, respectively, and are presented in the balance sheet as patent

costs. Amortization expense charged to operations was \$1,578,2380 for the six nine months ended June 30, 2023 September 30, 2023.

Note 7 – Operating Leases

The Company determines if a contract is, or contains, a lease at contract inception. Operating leases are included in operating lease right-of-use ("ROU") assets, current portion of operating lease liabilities and operating lease liabilities, net of current portion in the Company's consolidated balance sheets. Finance leases are included in property and equipment, current portion of finance lease obligations and finance lease obligations, net of current portion in the Company's audited consolidated balance sheets.

ROU assets represent the right to use an underlying asset for the lease term and lease liabilities represent the obligation to make lease payments arising from the lease. ROU assets and lease liabilities are recognized at the commencement date based on the present value of lease payments over the lease term. In addition, ROU assets include initial direct costs incurred by the lessee as well as any lease payments made at or before the commencement date and exclude lease incentives. The Company used the implicit rate in the lease in determining the present value of lease payments. Lease terms include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. Leases with a term of one year or less are generally not included in ROU assets and liabilities.

Operating lease ROU assets and operating lease liabilities are recorded on the consolidated balance sheet as follows:

	<u>September 30, 2023</u>	
Operating Lease:		
Operating lease right-of-use assets, net	\$	879,284
Current portion of operating lease liabilities		178,066
Operating lease liabilities, net of current portion		720,468

As of September 30, 2023, the weighted-average remaining lease terms of the two operating leases were 3.2 years and 5.2 years, respectively. The weighted-average discount rates for the operating leases were 4.57% and 4.24%, respectively.

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As of September 30, 2023, the weighted-average remaining lease terms of the two operating leases were 3.2 years and 5.2 years, respectively. The weighted-average discount rates for the operating leases were 4.57% and 4.24%, respectively.

The following table summarizes maturities of operating lease liabilities based on lease terms as of December 31:

2023	\$ 21,352
2024	257,508
2025	260,611
2026	250,152
2027	102,060
2028	93,555
Total lease payments	985,238
Less: Imputed interest	86,704
Present value of lease liabilities	\$ 898,534

At September 30, 2023, the Company had the following future minimum payments due under the non-cancelable lease:

2023	\$ 21,352
2024	257,508
2025	260,611
2026	250,152
2027	102,060
2028	93,555
Total minimum lease payments	\$ 985,238

Consolidated rental expense for all operating leases was \$97,815 and \$33,994 for the nine months ended September 30, 2023 and 2022, respectively.

The following table summarizes the cash paid and related right-of-use operating lease recognized for the nine months ended September 30, 2023:

	Nine Months Ended
	September 30, 2023
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows from operating leases	\$ 21,352
Right-of-use lease assets obtained in the exchange for lease liabilities:	
Operating leases	6,556

Note 8 – Finance Agreement Payable

On October 31, 2022, the Company entered into an agreement with a premium financing company to finance its directors and officers insurance premiums for 12-month policies effective October 25, 2022. The amount financed of \$1,037,706 is payable in 11 monthly installments plus interest at a rate of 6.216% through September 28, 2023.

Finance agreement payable was \$283,011 at June 30, 2023 September 30, 2023 and December 31, 2022, respectively. \$363,822 has been recorded in prepaid expenses and is being amortized over the life of the policy.

Note 89 - Earnings (Loss) Per Common Share

The Company calculates net income (loss) per common share in accordance with ASC 260 "Earnings Per Share" ("ASC 260"). Basic and diluted net earnings (loss) per common share was determined by dividing net earnings (loss) applicable to common stockholders by the weighted average number of common shares outstanding during the period. The Company's potentially dilutive shares, which include outstanding common stock options, common stock warrants, and convertible debt have not been included in the computation of diluted net loss per share for the six nine months ended June 30, 2023 September 30, 2023 and 2022 as the result would be anti-dilutive.

	Six Months Ended June 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Stock warrants	7,854,620	1,809,003	7,854,620	7,954,620
Stock options	2,584,599	1,759,599	2,584,599	1,759,599
Total shares excluded from calculation	10,439,219	3,568,602	10,439,219	9,714,219

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Note 910 – Stockholders' Equity

Stock Transactions

Pursuant to the Business Combination Agreement, on October 25, 2022, the Company issued the following securities:

Holders of conversion rights issued as a component of units in Mana's initial public offering (the "Public Rights") were issued an aggregate of 928,571 shares of the Company's common stock.

Holders of existing shares of common stock of Legacy Cardio and the holder of equity rights of Legacy Cardio (together, the "Legacy Cardio Stockholders") received an aggregate of 6,883,306 shares of the Company's Common Stock, calculated based on the exchange ratio of 3.427259 pursuant to the Merger Agreement (the "Exchange Ratio") for each share of Legacy Cardio Common Stock held or, in the case of the equity rights holder, that number of shares of the Company's Common Stock equal to 1% of the Aggregate Closing Merger Consideration, as defined in the Merger Agreement.

The Legacy Cardio Stockholders received, in addition, an aggregate of 43,334 shares of the Company's Common Stock ("Conversion Shares") upon conversion of an aggregate of \$433,334 in principal amount of promissory notes issued by Mana to Legacy Cardio in connection with its loan of such amount in order to extend Mana's duration through October 26, 2022 (the "Extension Notes"), which Conversion Shares were distributed to the Legacy Cardio Stockholders in proportion to their respective interest in Legacy Cardio.

Mana public stockholders (excluding Mana Capital, LLC, the SPAC sponsor (the "Sponsor"), and Mana's former officers and directors) own 34,548 shares of the Company's Common Stock and the Sponsor, Mana's former officers and directors and certain permitted transferees own 1,625,000 shares of the Company's Common Stock.

Immediately after giving effect to the Business Combination, there were 9,514,743 issued and outstanding shares of the Company's Common Stock.

On October 25, 2022, in connection with the approval of the Business Combination, the Company's stockholders approved the Cardio Diagnostics Holdings, Inc. 2022 Equity Incentive Plan (the "2022 Plan"). The purpose of the 2022 Plan is to promote the interests of the Company and its stockholders by providing eligible employees, officers, directors and consultants with additional incentives to remain with the Company and its subsidiaries, to increase their efforts to make the Company more successful, to reward such persons by providing an opportunity to acquire shares of Common Stock on favorable terms and to attract and retain the best available personnel to participate in the ongoing business operations of the Company. The 2022 Plan permits the grant of Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock, Restricted Stock Units, Stock Appreciation Rights, Performance Units and Performance Shares.

The 2022 Plan, as approved, permits the issuance of up to 3,256,383 shares of Common Stock (the "Share Reserve") upon exercise or conversion of grants and awards made from time to time to officers, directors, employees and consultants. However, that the Share Reserve will increase on January 1st of each calendar year through and including January 1, 2027 (each, an "Evergreen Date"), in an amount equal to the lesser of (i) 7% of the total number of shares of Common Stock outstanding on the December 31st immediately preceding the applicable Evergreen Date and (ii) such lesser number of shares of Common Stock as determined to be appropriate by the Compensation Committee, which administers the 2022 Plan, in its sole discretion. There was no increase in the Share Reserve on January 1, 2023.

Common Stock Issued

On March 2, 2023, a stockholder exercised warrants in exchange for 100,000 common shares for proceeds of \$390,000.

During the six nine months ended **June 30, 2023** **September 30, 2023**, the Company issued **4,977** **35,724** common shares to a consultant for services pursuant to vesting of Restricted Stock Units granted, valued at **\$10,000** **32,000**.

During the six nine months ended **June 30, 2023** **September 30, 2023**, the Company issued **84,032** **231,092** common shares to the independent directors of the board of directors for services pursuant to vesting of Restricted Stock Units granted, valued at **\$100,000** **150,000**.

In connection with the convertible notes payable (see Note **10** **11** below), the noteholders noteholder converted **\$2,150,000** **3,300,000** of the principal balance to into **1,474,703** **3,235,766** shares of common stock during the six nine months ended **June 30, 2023** **September 30, 2023**. The number of shares of common stock issued was determined based on the terms of the convertible notes.

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Warrants

On October 1, 2019, Legacy Cardio issued warrants to a seed funding firm equivalent to 2% of the fully-diluted equity of Legacy Cardio, or 22,500 common shares at the time of issuance. The warrant is exercisable on the earlier of the closing date of the next Qualified Equity Financing occurring after the issuance of the warrant, and immediately before a Change of Control. The exercise price is the price per share of the shares sold to investors in the next Qualified Equity Financing, or if the warrant becomes exercisable in connection with a Change in Control before the next Qualified Equity Financing, the greater of the quotient obtained by dividing \$150,000 by the Pre-financing Capitalization, and the price per share paid by investors in the then-most recent Qualified Equity Financing, if any. The warrant will expire upon the earlier of the consummation of any Change of Control, or 15 years after the issuance of the warrant.

In April 2022, Legacy Cardio issued fully vested warrants to investors as part of private placement subscription agreements pursuant to which Legacy Cardio issued common stock. Each stockholder received warrants to purchase 50% of the common stock issued at an exercise price of \$3.90 per share with an expiration date of June 30, 2027.

As of May 23, 2022, Legacy Cardio issued fully vested warrants to investors as part of an additional private placement subscription agreements pursuant to which Legacy Cardio issued common stock. Each stockholder received warrants to purchase 50% of the common stock issued at an exercise price of \$6.21 per share with an expiration date of five years from the date of issue.

All of the warrants issued by Legacy Cardio were exchanged in the Business Combination for warrants of the Company based on the merger exchange ratio.

Warrant activity during the **six** nine months ended **June 30, 2023** **September 30, 2023** and 2022 follows:

	Weighted			Average Remaining Contractual Life (Years)	Weighted			Average Remaining Contractual Life (Years)
	Warrants Outstanding	Average Exercise Price			Warrants Outstanding	Average Exercise Price		
Warrants outstanding at December 31, 2021	215,654	\$ 13.35		5.90	215,654	\$ 13.35		5.90
Warrants granted	1,593,349		—		7,738,966		—	
Warrants outstanding at June 30, 2022	1,809,003	\$ 15.85		5.07				
Warrants outstanding at September 30, 2022					7,954,620	\$ 15.85		4.75
Warrants outstanding at December 31, 2022	7,954,620		9.63	4.46	7,954,620		9.63	4.46
Warrants exercised	(100,000)		13.35		(100,000)		13.35	
Warrants outstanding at June 30, 2023	7,854,620	\$ 9.70		3.97				

Warrants outstanding at September 30, 2023	7,854,620	\$ 9.70	3.72
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Options

In May 2022, Legacy Cardio granted 513,413 stock options to the board of directors pursuant to the Cardio Diagnostics, Inc. 2022 Equity Incentive Plan. All of the options granted under this legacy plan were exchanged for options under the Company's 2022 Plan adopted by the Company's stockholders on October 25, 2022, and based on the exchange ratio for the merger, resulted in a total of 1,759,599 options issued upon closing. Each exchanged option has an exercise price of \$3.90 per share with an expiration date of **May 6, 2032** **May 6, 2032**. The exchanged options fully vested upon closing of the merger.

Option activity during the **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022 follows:

	Weighted			Average Remaining Contractual Life (Years)	Weighted			Average Remaining Contractual Life (Years)
	Options Outstanding	Average Exercise Price			Options Outstanding	Average Exercise Price		
Options outstanding at December 31, 2021	—	\$ —			—	\$ —		
Options granted	1,759,599	3.90			1,759,599	3.90		
Options outstanding at June 30, 2022	1,759,599	\$ 15.85	9.86					
Options outstanding at September 30, 2022					1,759,599	\$ 15.85	9.61	
Options outstanding at December 31, 2022	1,759,599	3.90	9.35		1,759,599	3.90	9.35	
Options granted	825,000	1.26			825,000	1.26		
Options outstanding at June 30, 2023	2,584,599	\$ 3.06	9.38					
Options outstanding at September 30, 2023					2,584,599	\$ 3.06	9.13	

Note **10** **11** – Convertible Notes Payable

On March 8, 2023, the Company entered into a securities purchase agreement ("Securities Purchase Agreement") with YA II PN, Ltd., an investment fund managed by Yorkville Advisors Global, LP ("Yorkville") under which the Company agreed to sell and issue to Yorkville convertible debentures ("Convertible Debentures") in a gross aggregate principal amount of up to **\$11.2 million** **\$11.2 million** ("Subscription Amount"). The Convertible Debentures are convertible into shares of common stock of the Company and are subject to various contingencies being satisfied as set forth in the Securities Purchase Agreement. The notes are convertible at any time through the maturity date, which, in each case, is one year from the date of issuance. The conversion price shall be determined on the basis of **92%** **92%** of the two lowest VWAP (Volume Weighted Average Prices) of the Common Stock during the prior seven (7) trading day period, initially with a floor conversion price of \$0.55, but subsequently lowered by mutual agreement of the parties to \$0.20.

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On March 8, 2023, the Company issued and sold to Yorkville a Convertible Debenture in the principal amount of \$5.0 million, \$5.0 million, for which it received \$4.5 million \$4.5 million, with a \$500,000 \$500,000 original issue discount ("OID"). Interest on the outstanding principal balance accrues at a rate of 0% 0% and will increase to 15% 15% upon an Event of Default for so long as it remains uncured.

The Company recorded a debt discount related to identified embedded derivatives relating to the conversion features (see Note 11) based on fair values as of the inception date of the note. The calculated debt discount, including the OID, equaled the face of the note and is being amortized over the term of the note.

Convertible notes payable of \$915,202,967,184 at June 30, 2023 September 30, 2023 is presented net of debt discount of \$1,934,798,732,816.

At a special meeting of stockholders held on May 26, 2023, the Company obtained stockholder approval to issue and sell the second Convertible Debenture to Yorkville. On June 2, 2023, the Company entered into a Letter of Agreement with Yorkville pursuant to which Yorkville and the Company agreed that the date of the Second Closing shall be September 15, 2023 (or such other date that is mutually agreed by the Company and Yorkville). On September 13, 2023, the parties entered into a new Letter of Agreement pursuant to which they agreed that the date of the Second Closing will be December 29, 2023 (or such other date as the Company and Yorkville may mutually agree). Due to the decline in the stock price since the issuance of the initial Convertible Debenture, additional stockholder approval may be required in order to have a sufficient number of shares available for issuance of shares of common stock upon conversion of the second Convertible Debenture. A proposal that would give the Company that needed flexibility is being presented to the stockholders at its annual meeting to be held on December 4, 2023. If the proposal is not approved, depending on the then-current stock prices, the Company may not have a sufficient number of shares available to fully convert a \$6.2 million Convertible Debenture, if issued in full.

Note 11.12 – Derivative Liability

The Company has determined that the conversion features embedded in the convertible notes described in Note 10.11 contain a potential variable conversion amount which constitutes a derivative which has been bifurcated from the note and recorded as a derivative liability at fair value, with a corresponding discount recorded to the associated debt. The excess of the derivative value over the face amount of the note is recorded immediately to interest expense at inception which aggregated \$4,692,672. \$4,692,672. The Company used the Binomial Black-Scholes Option Pricing model to value the conversion features.

The Company used Level 3 inputs for its valuation methodology for the conversion option liability in determining the fair value using a Black-Scholes option-pricing model with the following assumption inputs:

	Six months ended June 30, Nine Months Ended September 30, 2023
Annual dividend yield	—
Expected life (years)	1.0
Risk-free interest rate	4.89% - 5.45 5.56 %
Expected volatility	164% - 176 185 %

Exercise price	\$ 1.10	0.35
	\$ --	3.53
Stock price	\$ 1.19	0.37
	\$ --	5.32

Based upon ASC 840-15-25 (EITF Issue 00-19, paragraph 11), the Company has adopted a sequencing approach regarding the application of ASC 815-40 to its outstanding convertible notes. Pursuant to the sequencing approach, the Company evaluates its contracts based upon earliest issuance date.

Note 1213 – Commitments and Contingencies

Prior Relationship of Cardio with Boustead Securities, LLC

At the commencement of efforts to pursue what ultimately ended in the terminated business acquisition, Legacy Cardio entered into a Placement Agent and Advisory Services Agreement (the "Placement Agent Agreement"), dated April 12, 2021, with Boustead Securities, LLC ("Boustead Securities"). This agreement was terminated in April 2022, when Legacy Cardio terminated the underlying agreement and plan of merger and the accompanying escrow agreement relating to that proposed business acquisition after efforts to complete the transaction failed, despite several extensions of the closing deadline.

Under the terminated Placement Agent Agreement, Legacy Cardio agreed to certain future rights in favor of Boustead Securities, including (i) a two-year tail period during which Boustead Securities would be entitled to compensation if Cardio were to close on a transaction (as defined in the Placement Agent Agreement) with any party that was introduced to Legacy Cardio by Boustead Securities; and (ii) a right of first refusal to act as the Company's exclusive placement agent for 24-months from the end of the term of the Placement Agent Agreement (the "right of first refusal"). Cardio has taken the position that due to Boustead Securities' failure to perform as contemplated by the Placement Agent Agreement, these provisions purporting to provide future rights are null and void.

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Boustead Securities responded to the termination of the Placement Agent Agreement by disputing Legacy Cardio's contention that it had not performed under the Placement Agent Agreement because, among other things, Boustead Securities had never sought out prospective investors. In its response, Boustead Securities included a list of funds that they had supposedly contacted on Legacy Cardio's behalf. While Boustead Securities' contention appears to contradict earlier communications from Boustead Securities in which they indicated that they had not made any such contacts or introductions, Boustead Securities is currently contending that they are due success fees for two years following the termination of the Placement Agent Agreement on any transaction with any person on the list of supposed contacts or introductions. Legacy Cardio strongly disputes this position. Notwithstanding the foregoing, the Company has not consummated any transaction, as defined, with any potential party that purportedly was a contact of Boustead Securities in connection with the Placement Agent Agreement and has no plans to do so at any time during the tail period. No legal proceedings have been instigated by either party, and Cardio believes that the final outcome will not have a material adverse impact on its financial condition.

The Benchmark Company, LLC Right of First Refusal

As noted in Note 1, the Company completed the business combination on October 25, 2022. In connection with the proposed business combination, by agreement dated May 13, 2022, Mana engaged The Benchmark Company, LLC ("Benchmark") as its M&A advisor. Upon closing of the business combination, Legacy Cardio assumed the contractual engagement entered into by Mana. On November 14, 2022, the Company and Benchmark entered into Amendment No. 1 Engagement Letter (the "Amendment Engagement"). Pursuant to the Amendment Engagement, the parties agreed that the Company would pay Benchmark \$230,000 at the closing of the business combination and an additional \$435,000 on October 25, 2023. Both of those payments have been made in full. In addition, the Amendment Engagement provided that Benchmark has been granted a right of first refusal to act as lead or joint-lead investment banker, lead or joint-lead book-runner and/or lead or joint-lead placement agent for all future public and private equity and debt offerings through October 25, 2023. In this regard, Based on the Company and right of first refusal, Benchmark are in discussions regarding whether Benchmark might be entitled to compensation arising from alleges that it is owed damages because the Company having entered into the convertible debenture financing in March 2023 Yorkville Convertible Debenture Transaction (see Note 11) without first consulting Benchmark, offering Benchmark the right to serve as the lead or joint-lead placement agent for the transaction. The Company is evaluating the claim. No legal proceedings have been instigated, and the parties are continuing to discuss a resolution to this matter. instigated.

Demand Letter and Potential Mootness Fee Claim

On June 25, 2022 September 25, 2022, a plaintiffs' securities law firm sent a demand letter to the Company alleging that the Company's Registration Statement on Form S-4 filed (the "S-4 Registration Statement") with the Securities and Exchange Commission ("SEC") on May 31, 2022 omitted material information with respect to the Business Combination and demanding that the Company and its Board of Directors immediately provide corrective disclosures in an amendment or supplement to the Registration Statement. Subsequent thereto, the Company filed amendments to the S-4 Registration Statement on July 27, 2022, August 23, 2022, September 15, 2022, October 4, 2022 and October 5, 2022 in which it responded to various comments of the SEC staff and otherwise updated its disclosure. In October 2023, the SEC completed its review and declared the S-4 registration statement on October 6, 2022. On February 23, 2023 and February 27, 2023, plaintiffs' securities law firm contacted the Company's counsel asking who will be negotiating a mootness fee relating to the purported claims set forth in the June 25, 2022 September 25, 2022 demand letter. The Company vigorously denies that the S-4 Registration Statement, as amended and declared effective, is deficient in any respect and that no additional supplemental disclosures are material or required. The Company believes that the claims asserted in the Demand Letter are without merit and that no further disclosure is required to supplement the S-4 Registration Statement under applicable laws. As of the date of filing of this Quarterly Report on Form 10-Q, no lawsuit has been filed against the Company by that firm. The firm has indicated its willingness to litigate the matter if a mutually satisfactory resolution cannot be agreed upon; however, the Company believes that the final outcome will not have a material adverse impact on its financial condition. The Company cannot preclude the possibility that claims or lawsuits brought relating to any alleged securities law violations or breaches of fiduciary duty could potentially require significant time and resources to defend and/or settle and distract its management and board of directors from focusing on its business.

Note 13 14 – Subsequent Events

The Company evaluated its June 30, 2023, September 30, 2023 consolidated financial statements for subsequent events through the date the consolidated financial statements were issued.

Common Stock Issued

Subsequent to the end of the period through the date of the filing of this report, Yorkville converted an additional the remaining \$600,000 1,700,000 principal balance of principal amount of its first tranche convertible debentures into

586,049 7,386,353 shares of the Company's common stock. As of the date of this report, the initial \$5,000,000 Convertible Debenture has been converted in full.

Subsequent to the end of the period through the date of the filing of this report, \$14,000 4,000 in consulting Restricted Stock Units (RSUs) issued to Company advisors vested into 11,709 13,262 shares of the Company's common stock.

Operating Leases Post Merger Liabilities Balance Paid

On July 20, 2023, the Company entered into an operating lease agreement (the "Iowa Lease") for the lease of approximately 5,060 rentable square feet of medical laboratory and office space (the "Iowa Premises") located in Iowa City, Iowa. The Iowa Premises is in addition Subsequent to the new Chicago premises described below. The term end of the Iowa Lease is for five years and four months commencing on August 1, 2023 and terminating on November 30, 2028. The Company will initially pay \$8,505 per month (\$102,060 on an annualized basis and approximately \$20.17 per square foot) in rent commencing on December 1, 2023, which includes its pro rata share of property taxes, insurance and common area maintenance, common area utilities and water. Of period through the approximate \$20.17 per square foot initial rent, \$5.17 per square foot yearly rent shall be subject to an annual adjustment after the first 12 months date of the Iowa Lease. The first month's rent filing of this report, the remaining assumed post-merger liabilities balance of \$435,000 was paid at the time of execution of the Iowa Lease paid.

The Company entered into an operating lease effective August 1, 2023 to move its operations and executive offices to a new office space in Chicago, Illinois. The initial monthly base rent is \$12,847 with annual 2% increases until expiration of the lease on November 20, 2026. The first 4 months of rent was abated by the landlord.

Right-of-use ("ROU") assets and operating lease liabilities will be recorded upon commencement of the operating leases.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

As a result of the closing of the Business Combination, which was accounted for as a reverse recapitalization in accordance with U.S. GAAP as discussed in Note 2 – Merger Agreement and Reverse Recapitalization, the consolidated financial statements of Cardio Diagnostics, Inc., a Delaware corporation and our wholly owned subsidiary, are now the financial statements of the Company.

The following discussion and analysis provide information that Cardio's management believes is relevant to an assessment and understanding of Cardio's results of operations and financial condition. You should read the following discussion and analysis of Cardio's results of operations and financial condition together with its unaudited consolidated financial statements and related notes to those statements included elsewhere in this Quarterly Report on Form 10-Q, and its audited consolidated financial statements and related notes to those statements included in the Company's 2022 Form 10-K that was filed on March 31, 2023. In addition to historical financial information, this discussion contains forward-looking statements based upon Cardio's current expectations that involve risks and uncertainties, including those described in the section titled, "Special Note Regarding Forward-Looking Statements." Cardio's actual results could differ materially from such forward-looking statements as a result of various factors, including those set forth under "Risk Factors" in the Quarterly Report on Form 10-Q for the three months ended March 31, 2023 and in the Annual Report on Form 10-K for the year ended December 31, 2022, as well as in Part II, Item 1A of this Quarterly Report on Form 10-Q. Our historical results are not necessarily indicative of the results that may be expected for any period in the future.

Unless the context requires otherwise, references to "Cardio," the "Company," "we," "us" and "our" refer to Cardio Diagnostics Holdings, Inc., a Delaware corporation, together with its consolidated subsidiary.

Overview

Cardio was formed to further develop and commercialize a series of products for major types of cardiovascular disease and associated co-morbidities, including coronary heart disease ("CHD"), stroke, heart failure and diabetes, by leveraging our Artificial Intelligence ("AI")-driven Integrated Genetic-Epigenetic Engine™. As a company, we aspire to give every American adult

insight into their unique risk for various cardiovascular diseases. Cardio aims to become one of the leading medical technology companies for enabling improved prevention, early detection and treatment of cardiovascular disease. Cardio is transforming the approach to cardiovascular disease from reactive to proactive and hope to accelerate the adoption of Precision Medicine for all. We believe that incorporating Cardio's solutions into routine practice in primary care and prevention efforts can help alter the trajectory that nearly one in two Americans is expected to develop some form of cardiovascular disease by 2035.

Cardio believes it is the first company to develop and commercialize epigenetics-based clinical tests for cardiovascular disease that have clear value propositions for multiple stakeholders including (1) patients, (2) clinicians, (3) hospitals/health systems, (4) employers and (5) payors. According to the CDC, epigenetics is the study of how a person's behaviors and environment can cause changes that affect the way a person's genes work. Unlike genetic changes, epigenetic changes are reversible and do not change one's DNA sequence, but they can change how a person's body reads a DNA sequence.

Cardio's ongoing strategy for expanding its business operations includes the following:

- Develop blood-based products for stroke, congestive heart failure and diabetes;
- Build out clinical and health economics evidence in order to obtain payer reimbursement for Cardio's tests;
- Expand its testing process outside of a single high complexity CLIA laboratory to multiple laboratories, including hospital laboratories;
- Introduce the test across several additional key channels, including health systems and self-insured employers; and
- Pursue the potential acquisition of one or more synergistic companies in the telemedicine, AI or remote patient monitoring space.

Recent Developments

The Business Combination

On October 25, 2022, we consummated the Business Combination. Pursuant to the Business Combination Agreement, Merger Sub merged with and into Legacy Cardio, with Legacy Cardio surviving the merger and becoming a wholly-owned direct subsidiary of Mana. Thereafter, Merger Sub ceased to exist, and Mana was renamed Cardio Diagnostics Holdings, Inc.

The Business Combination was accounted for as a reverse recapitalization, in accordance with GAAP. Under the guidance in ASC 805, Mana was treated as the "acquired" company for financial reporting purposes. Legacy Cardio was deemed the accounting predecessor of the combined business, and Cardio Diagnostics Holdings, Inc., as the parent company of the combined business, was the successor SEC registrant, meaning that our financial statements for previous periods will be disclosed in the registrant's periodic reports filed with the SEC.

The Business Combination had a significant impact on the Company's reported financial position and results as a consequence of the reverse recapitalization. As noted in Note 1 to the Company's consolidated financial statements, the Company's financial position reflects current liabilities that include existing, deferred liabilities originally incurred by Mana that are payable by the Company to Ladenburg Thalmann & Co., Inc. ("Ladenburg") and I-Bankers Securities, Inc. ("I-Bankers"), the underwriters of Mana's initial public offering, and The Benchmark Company, LLC ("Benchmark"), the M&A advisor Mana retained in connection with the Business Combination. The aggregate amount of the liabilities owed to these investment bankers, as assumed by the Company in connection with the Business Combination, totals \$928,500. This sum reflects a decrease in the amount of the original liabilities incurred by Mana, including a 30% decrease in the liability owed to Ladenburg and I-Bankers and a 46% decrease in the original liability incurred by Mana to Benchmark. The \$928,500 is due and payable to the investment bankers on October 25, 2023. On March 25, 2023, Ladenburg offered the Company a 15% early pay discount on the balance due. On March 27, 2023, the Company accepted the early pay discount and paid Ladenburg the net balance due and payable of \$419,475. As of June 30, 2023, the date of this filing of this report, the remaining assumed liabilities balance of \$435,000 was \$435,000 paid.

In addition, the Company received only \$4,021 in cash from the SPAC trust account after the payment of transaction costs and outstanding accounts payable, primarily as a result of a redemption rate of over 99% by the holders of Mana's publicly-traded Common Stock, which shares had a redemption right in connection with the Business Combination. Specifically, Mana's public stockholders exercised their right to redeem 6,465,452 shares of Common Stock, which constituted approximately 99.5% of the shares with redemption rights, for cash at a redemption price of approximately \$10.10 per share, for an aggregate redemption amount of \$65,310,892. In accounting for the reverse recapitalization, Legacy Cardio's 1,976,749 issued and outstanding shares of common stock were reversed, and the Mana shares of common stock, totaling 9,514,743, were recorded, as described in Note 2.

As a result of the Business Combination, Cardio became an SEC-registered and Nasdaq-listed company, which will require the Company to hire additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices. The Company expects to incur additional annual expenses as a public company for, among other things, directors' and officers' liability insurance, director fees, and additional internal and external accounting, legal and administrative resources.

COVID-19 Impact 9 NASDAQ Letter

On September 21, 2023, the Company received a letter (the "Nasdaq Staff Deficiency Letter") from The Nasdaq Stock Market LLC ("Nasdaq") indicating that, for the prior 30 consecutive business days, the bid price for the Company's common stock had closed below the minimum \$1.00 per share requirement for continued listing on The Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement").

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company has been provided an initial period of 180 calendar days, or until March 19, 2024, to regain compliance. The letter states that the Nasdaq staff will provide written notification that the Company has achieved compliance with Rule 5550(a)(2) if at any time before March 19, 2024 (the "Compliance Period"), the bid price of the Company's common stock closes at \$1.00 per share or more for a minimum of 10 consecutive business days. The Nasdaq Staff Deficiency Letter has no immediate effect on the listing or trading of the Company's common stock.

The global COVID-19 pandemic continues. Company intends to evolve. The extent, continue actively monitoring the bid price for its shares of common stock between now and the expiration of the impact Compliance Period and will consider all available options to resolve the deficiency with every intention to regain compliance with the Minimum Bid Price Requirement.

If the Company does not regain compliance with Rule 5550(a)(2) by March 19, 2024, the Company may be eligible for an additional 180 calendar day compliance period. To qualify, the Company would be required to meet the continued listing requirement for market value of publicly held shares and all other initial listing standards for The Nasdaq Capital Market, with the exception of the COVID-19 pandemic bid price requirement, and would need to provide written notice of its intention to cure the deficiency during the second compliance period, for example, by effecting a reverse stock split, if necessary. However, if it appears to the Nasdaq staff that the Company will not be able to cure the deficiency, or if the Company is otherwise not eligible, Nasdaq would notify the Company that its securities would be subject to delisting. In the event of such a notification, the Company may appeal the Nasdaq staff's determination to delist its securities. There can be no assurance that the Company will be eligible for the additional 180 calendar day compliance period, if applicable, or that the Nasdaq staff would grant the Company's request for continued listing subsequent to any delisting notification.

Food and Drug Administration Proposed Regulation

The Food and Drug Administration (FDA) issued on September 29 a proposed regulation to regulate laboratory developed tests as medical devices under the Federal Food, Drug and Cosmetic Act. The FDA has proposed that the requirements, including the submission of Medical Device Reports, company registration with the FDA, complying with the Quality System Regulation, and recurrence submission of marketing applications, be phased in over a four-year period. If enacted as proposed, the impact would have a profound impact on Cardio's development activities, third-party manufacturers, clinical labs that offer LDTs, and other third parties with whom Cardio does business, as well as its impact would impose significant additional costs on regulatory authorities and Cardio's key scientific and management personnel.

The ultimate impact of the COVID-19 pandemic is highly uncertain and subject to change. To the extent possible, Cardio is conducting business as usual, with necessary or advisable modifications to employee travel and with certain of its employees working remotely all or part of the time. Cardio will continue to actively monitor the evolving situation related to COVID-19 and may take further actions that alter our operations, including those that federal, state or local authorities may require, or that we determine in the best interests of our employees and other third parties with whom we do business. At this point, the extent to which the COVID-19 pandemic may affect our future business, operations and development timelines and plans, including the resulting impact on Cardio's expenditures and capital needs, remains uncertain.

Results of Operations

The results of operations presented below should be reviewed in conjunction with the consolidated financial statements and notes included elsewhere in this Quarterly Report on Form 10-Q. The following table sets forth Cardio's results of operations data for the periods presented:

Comparisons for the three months ended June 30, 2023 September 30, 2023 and 2022:

The following table presents summary consolidated operating results for the three-month periods indicated:

	Three Months Ended June 30,		Three Months Ended September 30,	
	2023	2022	2023	2022
Revenue				
Revenue	\$ 1,725	\$ —	\$ 10,030	\$ —
Operating Expenses				
Sales and marketing	31,608	26,806	34,067	16,369
Research and development	12,317	5,041	38,708	3,190
General and administrative expenses	2,506,148	751,117	1,376,644	1,127,316
Amortization	4,793	4,000	4,802	4,000
Total operating expenses	(2,554,866)	(786,964)	(1,454,221)	(1,150,875)
Other (expense) income	(1,469,764)	(55,034)	(488,191)	—
Net (loss)	\$ (4,022,902)	\$ (841,998)	\$ (1,932,382)	\$ (1,150,875)

Comparisons for the six/nine months ended June 30, 2023 September 30, 2023 and 2022:

The following table presents summary consolidated operating results for the six-month/nine-month periods indicated:

	Six Months Ended June 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue				
Revenue	\$ 1,725	\$ —	\$ 11,755	\$ —
Operating Expenses				
Sales and marketing	81,159	49,204	115,226	65,573
Research and development	98,982	6,171	137,690	9,361
General and administrative expenses	4,068,276	956,144	5,444,920	2,083,460
Amortization	9,578	8,000	14,380	12,000
Total operating expenses	(4,257,995)	(1,019,519)	(5,712,216)	(2,170,394)
Other (expense) income	(799,253)	(112,534)	(1,287,444)	(112,534)
Net (loss)	\$ (5,055,523)	\$ (1,132,053)	\$ (6,987,905)	\$ (2,282,928)

Net Loss

Cardio's net loss for the three months ended June 30, 2023, September 30, 2023 was \$4,022,905 \$1,932,382 as compared to \$841,998 \$1,150,875 for the three months ended June 30, 2022, September 30, 2022, an increase of \$3,180,907. \$781,507. The increase in net loss was primarily the result of an increase in General and Administrative expenses and interest expenses related to the sale and issuance of convertible debentures in March 2023, associated with being a public company.

Cardio's net loss for the six nine months ended June 30, 2023 September 30, 2023, was \$5,055,523 \$6,987,905 as compared to \$1,132,053 \$2,282,928 for the six nine months ended June 30, 2022 September 30, 2022, an increase of \$3,923,470. \$4,704,977. The increase in net loss was primarily the result of an increase in General and Administrative expenses and interest expenses related to the sale and issuance of convertible debentures in March 2023.

Revenue

Cardio had \$1,725 \$10,030 and \$0 in revenue for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively.

Cardio had \$1,725 \$11,755 and \$0 in revenue for the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively.

Sales and Marketing

Expenses related to sales and marketing for the three months ended June 30, 2023 September 30, 2023 were \$31,608 \$34,067 as compared to \$26,806 \$16,369 for the three months ended June 30, 2022 September 30, 2022, an increase of \$4,802 \$17,698. The overall increase was due to an increase in sales and marketing efforts after the Business Combination.

Expenses related to sales and marketing for the six nine months ended June 30, 2023 September 30, 2023 were \$81,159 \$115,226 as compared to \$49,204 \$65,573 for the six nine months ended June 30, 2022 September 30, 2022, an increase of \$31,955 \$49,653. The overall increase was due to an increase in sales and marketing efforts after the Business Combination.

Research and Development

Research and development expense for the three months ended June 30, 2023 September 30, 2023 was \$12,317 \$38,708 as compared to \$5,041 \$3,190 for three months ended June 30, 2022 September 30, 2022, an increase of \$7,276 \$35,518. The increase was attributable to laboratory runs performed in the 2023 period on new product offerings in the pipeline.

Research and development expense for the six nine months ended June 30, 2023 September 30, 2023 was \$98,982 \$137,690 as compared to \$6,171 \$9,361 for six nine months ended June 30, 2022 September 30, 2022, an increase of \$92,811 \$128,329. The increase was attributable to laboratory runs performed in the 2023 period on recently launched product, PrecisionCHD, and new product offerings in the pipeline.

General and Administrative Expenses

General and administrative expenses for the three months ended June 30, 2023 September 30, 2023 were \$2,506,148 \$1,376,644 as compared to \$751,117 \$1,127,316 for the three months ended June 30, 2022 September 30, 2022, an increase of \$1,755,031 \$249,328. The overall increase is primarily due to an increase in personnel, legal and accounting expenses related to financing and merger transactional activity, and increased expenses associated with being a publicly-traded company.

General and administrative expenses for the six nine months ended June 30, 2023 September 30, 2023 were \$4,068,276 \$5,444,920 as compared to \$956,144 \$2,083,460 for the six nine months ended June 30, 2022 September 30, 2022, an increase of \$3,112,132 \$3,361,460. The overall increase is primarily due to, an increase in personnel, legal and accounting expenses related to financing and merger transactional activity, and increased expenses associated with being a publicly-traded company. company and stock based compensation.

Amortization

Amortization expense for the three months ended June 30, 2023 September 30, 2023 was \$4,793 \$4,802 as compared to \$4,000 for the three months ended June 30, 2022 September 30, 2022. The total amortization expense includes the amortization of intangible assets.

Amortization expense for the six nine months ended June 30, 2023 September 30, 2023 was \$9,578 \$14,380 as compared to \$8,000 \$12,000 for the six nine months ended June 30, 2022 September 30, 2022. The total amortization expense includes the amortization of intangible assets.

Other income (expenses):

Total other income (expenses) for the three months ended June 30, 2023 September 30, 2023, was \$(1,469,764) \$(488,191) as compared to \$(55,034) \$(0) for the three months ended June 30, 2022 September 30, 2022. The total other income (expenses) for the three months ended June 30, 2023 September 30, 2023 consists of interest expense of \$1,051,916 \$570,385 and loss gain on extinguishment of debt of \$364,295 \$112,944, offset by change in fair value of derivative liability of \$53,816 \$31,033 and

interest income of **\$263.** **\$283.** Interest expense includes amortization of original issuance discount of **\$124,658.** **\$126,028,** amortization of debt discount related to the derivative liability of **\$918,387.** **\$435,486,** and interest on finance agreement of **\$8,871.**

Total other income (expenses) for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** was **\$(799,253)** **\$(1,287,444)** as compared to **\$(112,534)** for the **six** **nine** months ended **June 30, 2022** **September 30, 2022**. The total other income (expenses) for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** consists of interest expense of **\$6,068,527** **\$6,638,912** and loss on extinguishment of debt of **\$364,295** **\$251,351** offset by change in fair value of derivative liability of **\$5,633,085** **\$5,602,052** and interest income of **\$484.** **\$767.** Interest expense includes amortization of original issuance discount of **\$156,164.** **\$282,192,** amortization of debt discount related to the derivative liability of **\$1,201,949.** **\$1,637,435,** and **\$4,692,672** related to the excess fair value of the derivative liability in excess of the book value of the convertible note at inception, and interest on finance agreement of **\$17,742.** **\$26,613.**

Liquidity and Capital Resources

Liquidity describes the ability of a company to generate sufficient cash flows in the short- and long-term to meet the cash requirements of its business operations, including working capital needs, debt service, acquisitions and investments, and other commitments and contractual obligations. We consider liquidity in terms of cash flows from operations and other sources, and their sufficiency to fund our operating and investing activities.

Historically, our principal sources of liquidity have been proceeds from the issuance of equity and warrant exercises. More recently, upon signing the YA Securities Purchase Agreement on March 8, 2023, we issued and sold to YA II PN, Ltd. ("Yorkville") a Convertible Debenture in the principal amount of \$5.0 million for a purchase price of \$4.5 million (the "First Convertible Debenture") to provide additional liquidity. Pursuant to the YA Securities Purchase Agreement, the parties further agreed that we will issue and sell to Yorkville, and Yorkville will purchase from us, a second Convertible Debenture in the principal amount of \$6.2 million for a purchase price of \$5.58 million (the "Second Convertible Debenture"), subject to the satisfaction or waiver of the conditions set forth in the YA Securities Purchase Agreement. The conditions include, but are not limited to: (i) the SEC shall have declared effective a resale registration statement covering shares of Common Stock issuable upon conversion of the First Convertible Debenture; and (ii) we shall have obtained stockholder approval for the issuance of the shares of Common Stock issuable upon conversion of the Debentures that would be in excess of the "Exchange Cap" (as defined in the YA Securities Purchase Agreement). The SEC declared effective the resale registration statement on April 11, 2023. Yorkville began converting the First Convertible Debenture shortly thereafter, and, as of October 26, 2023, the First Convertible Debenture has been converted in full.

By letter agreement dated June 2, 2023 (the "Amendment"), we agreed with Yorkville that the date of the Second Closing will be September 15, 2023 (or such other date that is mutually agreed upon by the parties), provided that as of such date, the conditions to the Second Closing as set forth in Sections 6 and 7 of the Securities Purchase Agreement have been satisfied or waived. On September 13, 2023, we entered into a second letter agreement with Yorkville, changing the date of the Second Closing to December 29, 2023 (or such other date that is mutually agreed upon by the parties), and reducing the conversion price floor to \$0.20, subject to adjustment for stock splits, reverse stock splits and other similar events of recapitalization. Based on recent stock prices, which have been highly volatile, we might not have a sufficient number of registered shares available for conversion if we complete the Second Closing by issuing a \$6.2 million Convertible Debenture, depending on the then-current stock prices. In addition, again, depending on then-current stock prices, we might require additional stockholder approval to issue all of the shares upon conversion of a second Convertible Debenture. At the annual meeting of stockholders to be held on December 4, 2023, we are asking the stockholders to approve the issuance of up to 50,000,000 shares of common stock that could be issued in one or more private transactions, subject to specified limitations set forth in the proxy statement for the annual meeting. If approved, shares allocated to that proposal could be used for conversion of the second Convertible Debenture, if needed.

We continue to explore other financing options, such as equity private placement transactions. However, given recent stock prices and the extreme volatility of our stock, it continues to be challenging to balance cash that could be raised and the dilution that might be required to close a particular transaction.

Our primary cash needs are for day-to-day operations, to fund working capital requirements, to fund our growth strategy, including investments and acquisitions, and to pay \$928,500 of deferred contractual obligations originally incurred by Mana to its investment bankers, which is payable on October 25, 2023, as well as other accounts payable. On March 25, 2023, Ladenburg offered the Company a 15% early pay discount on the balance due. On March 27, 2023, the Company accepted Ladenburg's early pay discount offer and paid Ladenburg the net balance due and payable of \$419,475. As of June 30, 2023, date of this report, the remaining assumed liabilities balance was \$435,000. of \$435,000 has been paid. Accordingly, as of the date of this report, the Company has paid in full all of the liabilities it assumed in the Business Combination.

Our principal uses of cash in recent periods have been funding operations and paying expenses associated with the Business Combination. Our long-term future capital requirements will depend on many factors, including revenue growth rate, the

timing and the amount of cash received from customers, the expansion of sales and marketing activities, the timing and extent of spending to support investments, including research and development efforts, and the continuing market adoption of our products.

In each fiscal year since our inception, we have incurred losses from operations and generated negative cash flows from operating activities. Our total current liabilities as of **June 30, 2023** **September 30, 2023** are **\$3,848,380**, **\$2,955,108**. As noted above, on March 8, 2023, we issued and sold the First Convertible Debenture, thereby increasing our current liabilities by \$5.0 million, with the expectation that we will issue and sell the Second Convertible Debenture in the principal amount of \$6.2 million in the third quarter of 2023. Through **June 30, 2023** **September 30, 2023**, the debenture holder has converted an aggregate of **\$2,150,000** **\$3,300,000** in principal and has been issued a total of **1,474,703** **3,235,766** shares of common stock at an average per share price of **\$1.4579**, **\$1.02**. As of the date of this report, the debenture holder has converted the entire \$5,000,000 in principal and has been issued a total of 10,622,119 shares of common stock at an average per share price of \$0.47. The parties have extended the date of the closing for issuance and sale of the Second Convertible Debenture until December 29, 2023 (or such other date as the parties mutually agree). The Company is expecting to generate substantive income from various contracts in 2024, starting in the first quarter of 2024, although the Company still expects to need additional financing either through the Yorkville second tranche or other sources.

We received less proceeds from the Business Combination than we initially expected. The projections that we prepared in **June** **September** 2022 in connection with the Business Combination assumed that we would receive at least an aggregate of \$15 million in capital from the Business Combination and the Legacy Cardio private placements conducted in 2022 prior to the Business Combination. This base amount anticipated at least \$5.0 million in proceeds remaining in the Trust Account following payment of the requested redemptions and other transaction costs. At Closing, we received only \$4,021 in cash from the Trust Account due to higher than expected redemptions by Mana public stockholders and higher than expected expenses in connection with the Business Combination and residual Mana expenses. Accordingly, we have had less cash available to pursue our anticipated growth strategies and new initiatives than we projected. This has caused, and may continue to cause, significant delays in, or limit the scope of, our planned acquisition strategy and our planned product expansion timeline. Our failure to achieve our projected results has harmed, and could continue to harm, the trading price of our securities and our financial position, and adversely affect our future profitability and cash flows.

Because of the extremely high rate of redemptions by Mana public stockholders in connection with the Business Combination and higher than anticipated transaction costs, we received almost no Trust Account proceeds to pursue our anticipated growth strategies and new initiatives, including our acquisition strategy. This has had a material impact on our projected estimates and assumptions and actual results of operations and financial condition. We recorded nominal revenue in 2022 of \$950 and through the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, we have recorded only **\$1,725** **\$11,755** in revenue in 2023. **We expect that As a result**, revenue in 2023 will also fall far short of the 2022 projections. Nevertheless, we believe that the fundamental elements of our business strategy remain unchanged, although the scale and timing of specific initiatives have been temporarily negatively impacted as a result of having significantly less than anticipated capital on hand following the Business Combination.

We have had, and expect that we will continue to have, an ongoing need to raise additional cash from outside sources to fund our operations and expand our business. If we are unable to raise additional capital when desired, our business, financial condition and results of operations would be harmed. Successful transition to attaining profitable operations depends upon achieving a level of revenue adequate to support the post-merger company.

We expect that working capital requirements will continue to be funded through a combination of existing funds and further issuances of securities. Working capital requirements are expected to increase in line with the growth of the business. Existing working capital, further advances and debt instruments, and anticipated cash flow are expected to be adequate to fund operations over the next 12 months. We have no lines of credit or other bank financing arrangements. In connection with our business plan, management anticipates additional increases in operating expenses and capital expenditures relating to: (i) developmental expenses associated with a start-up business and (ii) marketing expenses. Cardio intends to finance these expenses with further issuances of securities and debt issuances. Thereafter, we expect we will need to raise additional capital and generate revenues to meet long-term operating requirements. If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our equity holders could be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of existing equity holders. If we raise additional funds by obtaining loans from third parties, the terms of those financing arrangements may include negative covenants or other restrictions on our business that could impair our operating flexibility and also require us to incur interest expense.

The exercise prices of our currently outstanding warrants range from a high of \$11.50 to a low of \$3.90 per share of Common Stock. We believe the likelihood that warrant holders will exercise their Warrants and therefore the amount of cash proceeds that we might receive, is dependent upon the trading price of our Common Stock, the last reported sales price for which was \$1.00 \$1.02 on August 11, 2023 November 10, 2023. If the trading price of our Common Stock is less than the respective exercise prices of our outstanding Warrants, we believe holders of our Public Warrants, Sponsor Warrants and Private Placement Warrants will be unlikely to exercise their Warrants. There is no guarantee that the Warrants will be in the money prior to their respective expiration dates, and as such, the Warrants may expire worthless, and we may receive no proceeds from the exercise of Warrants. Given the current differential between the trading price of our Common Stock and the Warrant exercise prices and the volatility of our stock price, we are not making strategic business decisions based on an expectation that we will receive any cash from the exercise of Warrants. However, we will use any cash proceeds received from the exercise of Warrants for general corporate and working capital purposes, which would increase our liquidity. We will continue to evaluate the probability of Warrant exercises and the merit of including potential cash proceeds from the exercise of the Warrants in our future liquidity projections.

Cash at June 30, 2023 September 30, 2023 totaled \$5,044,328 \$3,629,648 as compared to \$4,117,521 at December 31, 2022, an increase a decrease of \$926,807. \$487,873. The following table shows Cardio's cash flows from operating activities, investing activities and financing activities for the stated periods:

	Six Months Ended June 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net cash used in operating activities	\$ 2,941,900	\$ 580,862	\$ 3,986,498	\$ 1,970,703
Net cash used in investing activities	140,273	38,606	227,343	365,489
Net cash provided by financing activities	4,008,979	9,766,727	3,725,968	10,787,433

Cash Used in Operating Activities

Cash used in operating activities for the six nine months ended June 30, 2023 September 30, 2023 was \$2,941,900 \$3,986,498 as compared to \$580,862 \$1,970,703 for the six nine months ended June 30, 2022 September 30, 2022. The cash used in operations during the six nine months ended June 30, 2023 September 30, 2023 is a function of net loss of \$5,055,523 \$6,987,905 adjusted for the following non-cash operating items: depreciation of \$1,377, amortization of \$9,578, \$1,145,273 \$48,426, \$1,217,273 in stock-based compensation, \$6,050,78 \$6,612,298 in non-cash interest expense, offset by \$5,633,085 \$5,602,052 in change in fair value of derivative liability, \$364,295 \$251,351 loss on extinguishment of debt, an increase of \$1,050 \$350 in accounts receivable, an increase a decrease of \$559,026 \$876,066 in prepaid expenses and other current assets, an increase in deposits of \$7,900, and a decrease of \$373,298 \$401,638 in accounts payable and accrued expenses, expenses and an increase in lease liability of \$6,556.

Cash Used in Investing Activities

Cash used in investing activities for the six nine months ended June 30, 2023 September 30, 2023 was \$140,273 \$227,343 compared to \$38,606 \$365,489 for the six nine months ended June 30, 2022 September 30, 2022. The cash used in investing activities for the six nine months ended June 30, 2023 September 30, 2023 was due to purchases of property and equipment, right of use asset associated with new office lease and patent costs incurred incurred.

Cash Provided by Financing Activities

Cash provided by financing activities for the six nine months ended June 30, 2023 September 30, 2023 was \$4,508,979 \$3,725,968 as compared to \$9,766,727 \$10,787,433 for the six nine months ended June 30, 2022 September 30, 2022. This change was due to \$4,500,000 in proceeds from convertible notes payable, net of original issue discount ("OID") of \$500,000, \$390,000 in proceeds from exercise of warrants, offset by \$566,021 \$315,000 in payments of placement agent fees and \$849,032 in payments pursuant to a finance agreement, all of which occurred during the six nine months ended June 30, 2023 September 30, 2023.

Off-Balance Sheet Financing Arrangements

We did not have any off-balance sheet arrangements as of **June 30, 2023** **September 30, 2023**.

Contractual Obligations

The following summarizes Cardio's contractual obligations as of **June 30, 2023** **September 30, 2023** and the effects that such obligations are expected to have on its liquidity and cash flows in future periods:

Prior Mana Obligations to its Investment Bankers

See "Recent Developments – Business Combination" above for a discussion of the contractual obligations due and payable on October 25, 2023 to Ladenburg/I-Bankers and Benchmark in the aggregate amount of \$928,500 for deferred investment banking fees originally entered into by Mana prior to the Business Combination, as reduced at and after the closing of the Business Combination.

On March 25, 2023, Ladenburg offered the Company a 15% early pay discount on the balance due. On March 27, 2023, the Company accepted the early pay discount and paid Ladenburg the net balance due and payable of \$419,475. As of **June 30, 2023**, **the filing of this report**, the remaining assumed liabilities balance of \$435,000 was **\$435,000** **paid in full**.

Prior Relationships of Cardio with Boustead Securities, LLC

At the commencement of efforts to pursue what ultimately ended in the terminated business acquisition referred to above under "Deposit for Acquisition," Legacy Cardio entered into a Placement Agent and Advisory Services Agreement (the "Placement Agent Agreement"), dated April 12, 2021, with Boustead Securities, LLC ("Boustead Securities"). This agreement was terminated in April 2022, when Legacy Cardio terminated the underlying agreement and plan of merger and the accompanying escrow agreement relating to that proposed business acquisition after efforts to complete the transaction failed, despite several extensions of the closing deadline.

Under the terminated Placement Agent Agreement, Legacy Cardio agreed to certain future rights in favor of Boustead Securities, including (i) a two-year tail period during which Boustead Securities would be entitled to compensation if Cardio were to close on a transaction (as defined in the Placement Agent Agreement) with any party that was introduced to Legacy Cardio by Boustead Securities; and (ii) a right of first refusal to act as the Company's exclusive placement agent for 24-months from the end of the term of the Placement Agent Agreement (the "right of first refusal"). Cardio has taken the position that due to Boustead Securities' failure to perform as contemplated by the Placement Agent Agreement, these provisions purporting to provide future rights are null and void.

Boustead Securities responded to the termination of the Placement Agent Agreement by disputing Legacy Cardio's contention that it had not performed under the Placement Agent Agreement because, among other things, Boustead Securities had never sought out prospective investors. In its response, Boustead Securities included a list of funds that they had supposedly contacted on Legacy Cardio's behalf. While Boustead Securities' contention appears to contradict earlier communications from Boustead Securities in which they indicated that they had not made any such contacts or introductions, Boustead Securities is currently contending that they are due success fees for two years following the termination of the Placement Agent Agreement on any transaction with any person on the list of supposed contacts or introductions. Legacy Cardio strongly disputes this position. Notwithstanding the foregoing, the Company has not consummated any transaction, as defined, with any potential party that purportedly was a contact of Boustead Securities in connection with the Placement Agent Agreement and has no plans to do so at any time during the tail period. No legal proceedings have been instigated by either party, and Cardio believes that the final outcome will not have a material adverse impact on its financial condition.

The Benchmark Company, LLC Right of First Refusal

As noted in Note 1, the Company completed a business combination with Mana on October 25, 2022. In connection with the proposed business combination, by agreement dated May 13, 2022, Mana engaged The Benchmark Company, LLC ("Benchmark") as its M&A advisor. Upon closing of the business combination, Cardio assumed the contractual engagement entered into by Mana. On November 14, 2022, Cardio and Benchmark entered into Amendment No. 1 Engagement Letter (the

"Amendment Engagement"). Pursuant to the Amendment Engagement, the parties agreed that the Company would pay Benchmark has \$230,000 at the closing of the business combination and an additional \$435,000 on October 25, 2023. Both of those payments have been made in full. In addition, the Amendment Engagement provided that Benchmark be granted a right of first refusal to act as lead or joint-lead investment banker, lead or joint-lead book-runner and/or lead or joint-lead placement agent for all future public and private equity and debt offerings through October 25, 2023. In this regard, Based on the Company and right of first refusal, Benchmark are in discussions regarding whether Benchmark might be entitled to compensation arising from alleges that it is owed damages because the Company having entered into the convertible debenture financing in March 2023 Yorkville Convertible Debenture Transaction (see Note 11 to Notes to Condensed Consolidated Financial Statements) without first consulting Benchmark, offering Benchmark the right to serve as the lead or joint-lead placement agent for the transaction. The Company is evaluating the claim. No legal proceedings have been instigated, and the parties are continuing to discuss a resolution to this matter. instigated.

Demand Letter and Potential Mootness Fee Claim

On June 25, 2022 September 25, 2022, a plaintiffs' securities law firm sent a demand letter to the Company alleging that the Company's Registration Statement on Form S-4 filed (the "S-4 Registration Statement") with the Securities and Exchange Commission ("SEC") on May 31, 2022 omitted material information with respect to the Business Combination and demanding that the Company and its Board of Directors immediately provide corrective disclosures in an amendment or supplement to the Registration Statement. Subsequent thereto, the Company filed amendments to the S-4 Registration Statement on July 27, 2022, August 23, 2022, September 15, 2022, October 4, 2022 and October 5, 2022 in which it responded to various comments of the SEC staff and otherwise updated its disclosure. In October 2023, the SEC completed its review and declared the S-4 registration statement effective on October 6, 2022. On February 23, 2023 and February 27, 2023, plaintiffs' securities law firm contacted the Company's counsel asking who will be negotiating a mootness fee relating to the purported claims set forth in the June 25, 2022 September 25, 2022 demand letter. The Company vigorously denies that the S-4 Registration Statement, as amended and declared effective, is deficient in any respect and that no additional supplemental disclosures are material or required. The Company believes that the claims asserted in the Demand Letter are without merit and that no further disclosure is required to supplement the S-4 Registration Statement under applicable laws. As of the date of filing of this Quarterly Report on Form 10-Q, no lawsuit has been filed against the Company by that firm. The firm has indicated its willingness to litigate the matter if a mutually satisfactory resolution cannot be agreed upon; however, Cardio believes that the final outcome will not have a material adverse impact on its financial condition.

The Company cannot preclude the possibility that claims or lawsuits brought relating to any alleged securities law violations or breaches of fiduciary duty could potentially require significant time and resources to defend and/or settle and distract its management and board of directors from focusing on its business.

Critical Accounting Policies and Significant Judgments and Estimates

Cardio's consolidated financial statements are prepared in accordance with GAAP in the United States. The preparation of its consolidated financial statements and related disclosures requires it to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and the disclosure of contingent assets and liabilities in Cardio's financial statements. Cardio bases its estimates on historical experience, known trends and events and various other factors that it believes are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Cardio evaluates its estimates and assumptions on an ongoing basis. Cardio's actual results may differ from these estimates under different assumptions or conditions.

While Cardio's significant accounting policies are described in more detail in Note 2 to its consolidated financial statements, Cardio believes that the following accounting policies are those most critical to the judgments and estimates used in the preparation of its consolidated financial statements.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, Cardio Diagnostics, LLC. Inc. All intercompany accounts and transactions have been eliminated.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Actual results could differ from those estimates.

Fair Value Measurements

The Company adopted the provisions of ASC Topic 820, *Fair Value Measurements and Disclosures*, which defines fair value as used in numerous accounting pronouncements, establishes a framework for measuring fair value and expands disclosure of fair value measurements.

The estimated fair value of certain financial instruments, including cash and cash equivalents, accounts payable and accrued expenses are carried at historical cost basis, which approximates their fair values because of the short-term nature of these instruments. The carrying amounts of our short- and long-term credit obligations approximate fair value because the effective yields on these obligations, which include contractual interest rates taken together with other features such as concurrent issuances of warrants and/or embedded conversion options, are comparable to rates of returns for instruments of similar credit risk.

ASC 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 describes three levels of inputs that may be used to measure fair value:

Level 1 – quoted prices in active markets for identical assets or liabilities

Level 2 – quoted prices for similar assets and liabilities in active markets or inputs that are observable

Level 3 – inputs that are unobservable (for example cash flow modeling inputs based on assumptions)

Revenue Recognition

The Company hosts its products, Epi+Gen CHD™ and PrecisionCHD™ on InTeleLab's Elicity a telemedicine provider platform (the "Provider"). The Provider collects payments from patients upon completion of eligibility screening. Upon receiving a sample collection kit from the Company, patients send their samples to MOgene an experienced laboratory with appropriate Clinical Laboratory Improvement Amendments of 1988 ("CLIA") certification and state licensure (the "Lab"), a high complexity CLIA lab, which performs the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the Provider via their platform. Revenue The Provider is recognized upon receipt of payments from the Provider for each completed test invoiced at the end of each month. month for each completed test. Revenue is recognized upon issuance of the invoice to the Provider. For provider organizations such as concierge medicine and executive health practices, the Company's products are shared during a sales outreach to the organization (emails, calls, events, etc.). The provider organization places a request for a number of sample collection kits for each test. When the provider orders either test for a patient, it sends the test requisition form to the Company and the patient's blood sample to the Lab, which performs the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the ordering provider. An invoice is sent to a provider organization at the end of every month for the tests performed that month, generally with a net 30 term. Revenue is recognized upon issuance of the invoice to the provider organization.

For a Group Purchasing Organization ("GPO"), the pricing and payments terms are negotiated in the contracting phase. A GPO member organization (a "Provider Organization") places a request for a number of sample collection kits for each test. When the Provider Organization orders either test for a patient, it sends the test requisition form to the Company and the patient's blood sample to the Lab, which perform the biomarker assessments. Upon receipt of the raw biomarker data from the Lab, the Company performs all quality control, analytical assessments and report generation and shares test reports with the ordering Provider Organization. An invoice is sent to the Provider Organization at the end of every month for the tests performed that month or at the time of order, with the terms agreed upon with the GPO. Revenue is recognized upon issuance of invoice to the Provider Organization.

The Company accounts for revenue under ("ASU") 2014-09, "Revenue from Contracts with Customers (Topic 606)", using the modified retrospective method. The modified retrospective adoption used by the Company did not result in a material cumulative effect adjustment to the opening balance of accumulated deficit.

The Company determines the measurement of revenue and the timing of revenue recognition utilizing the following core principles:

1. Identifying the contract with a customer;
2. Identifying the performance obligations in the contract;
3. Determining the transaction price;
4. Allocating the transaction price to the performance obligations in the contract; and
5. Recognizing revenue when (or as) the Company satisfies its performance obligations.

Patent Costs

Cardio accounts for patents in accordance with ASC 350-30, *General Intangibles Other than Goodwill*. The Company capitalizes patent costs representing legal fees associated with filing patent applications and amortize them on a straight-line basis. The Company are is in the process of evaluating each of its patents' patent's estimated useful life and will begin amortizing the patents when they are brought to the market or otherwise commercialized.

Stock-Based Compensation

Cardio accounts for its stock-based awards granted under its employee compensation plan in accordance with ASC Topic No. 718-20, *Awards Classified as Equity*, which requires the measurement of compensation expense for all share-based compensation granted to employees and non-employee directors at fair value on the date of grant and recognition of compensation expense over the related service period for awards expected to vest. The Company uses the Black-Scholes option pricing model to estimate the fair value of its stock options and warrants. The Black-Scholes option pricing model requires the input of highly subjective assumptions including the expected stock price volatility of the Company's common stock, the risk-free interest rate at the date of grant, the expected vesting term of the grant, expected dividends, and an assumption related to forfeitures of such grants. Changes in these subjective input assumptions can materially affect the fair value estimate of the Company's stock options and warrants.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Pursuant to Item 305(e) of Regulation S-K, the Company is not required to provide the information required by this Item as it is a "smaller reporting company."

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial and accounting officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of the end of the period covered by this Quarterly Report. Based on this evaluation, our principal executive officer and principal financial and accounting officer have concluded that during the period covered by this Report, our disclosure controls and procedures are not effective. As a result, we performed additional analysis as deemed necessary to ensure that our financial statements were prepared in accordance with U.S. generally accepted accounting principles. Accordingly, management believes that the financial statements included in this Form 10-Q present fairly in all material respects our financial position, results of operations and cash flows for the period presented.

Disclosure controls and procedures are designed to ensure that information required to be disclosed by us in our Exchange Act reports is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

We do not expect that our disclosure controls and procedures will prevent all errors and all instances of fraud. Disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Further, the design of disclosure controls and procedures must reflect the fact that there are resource constraints, and the benefits must be considered relative to their costs. Because of the inherent limitations in all disclosure controls and procedures, no evaluation of disclosure controls and procedures can provide absolute assurance that we have detected all our control deficiencies and instances of fraud, if any. The design of disclosure controls and procedures also is based partly on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Changes in Internal Control over Financial Reporting

There has not been any change in our internal control over financial reporting that occurred during the ~~six~~three months and ~~nine~~ months ended ~~June 30, 2023~~September 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time-to-time, the Company ~~is~~may be involved in various civil actions as part of its normal course of business. The Company is not a party to any litigation that is material to ongoing operations as defined in Item 103 of Regulation S-K as of the period ended ~~June 30, 2023~~September 30, 2023.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors previously described in Item 1A of Part I of our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, as supplemented in our Quarterly Report on Form 10-Q for the three months ended March 31, 2023, ~~except as set forth below~~. These risk factors, collectively, describe some of the assumptions, risks, uncertainties and other factors that could adversely affect our business or that could otherwise result in changes that differ materially from our expectations. We may disclose changes to such risk factors or disclose additional risk factors from time to time in our future filings with the SEC, including as set forth below. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

We may not be able to maintain compliance with the continued listing requirements of The Nasdaq Stock Market.

Our common stock is listed on The Nasdaq Capital Market ("Nasdaq"). In order to maintain that listing, we must satisfy minimum financial and other requirements including, without limitation, a requirement that our closing bid price be at least \$1.00 per share. On September 21, 2023, the Company received a letter from Nasdaq indicating that, for the last 30 consecutive business days, the bid price for the Company's common stock had closed below the minimum \$1.00 per share requirement for continued listing on Nasdaq under Nasdaq Listing Rule 5550(a)(2). As reported on the Company's Current Report on Form 8-K dated September 25, 2023, the Company has an initial period of 180 calendar days, or until March 19, 2024 to regain compliance. If we fail to regain compliance or fail to continue to meet all applicable continued listing requirements for

Nasdaq in the future and Nasdaq determines to delist our common stock, the delisting could adversely affect the market liquidity of our common stock, our ability to obtain financing to repay debt and fund our operations.

Our stock price is highly volatile.

While many companies in our stage of development experience significant volatility in the trading prices of their publicly-traded stock, our common stock has experienced extreme volatility. For example, on February 27, 2023, the closing price of the common stock was \$1.335 and on March 2, 2023, the stock price closed at \$7.90. More broadly, in 2023, the closing stock price has fluctuated between a high of \$7.90 and a low of \$0.20. These fluctuations have often been unrelated or disproportionate to the operating performance of our company, in which we principally are still working to introduce our tests to various sales channel participants, with little revenue to date. Numerous broad market and industry factors may materially reduce the market price of our common stock and warrants. In addition, price volatility may be greater if the public float and trading volume of our common stock is low. If we effect a reverse stock split in order to regain compliance with Nasdaq's minimum bid requirement, the public float could be significantly reduced, which could adversely impact stockholders' ability to sell their shares at times and at prices that fit their individual investment profiles. As a result, stockholders may suffer a loss of their investment.

We may not have a sufficient number of shares of our common stock available to fully convert the \$6.2 million convertible debenture, if issued in full, depending on our stock price.

At a special meeting of stockholders held on May 26, 2023, our stockholders approved the issuance of up to 20,363,637 shares of our common stock upon conversion of \$11.2 million in principal amount of convertible debentures issued or issuable to Yorkville. The First Convertible Debenture in the principal amount of \$5.0 million, issued in March 2023, has been fully converted into an aggregate of 10,622,119 shares, leaving 9,741,518 shares available for issuance upon conversion of a second Convertible Debenture. The Securities Purchase Agreement, as amended, contemplates the issuance of a second Convertible Debenture in the principal amount of \$6.2 million. While it is impossible to predict the prices at which Yorkville would convert all or a portion of a second Convertible Debenture, given current stock prices, it is possible that we would not have the ability to issue all of the shares issuable upon conversion without receipt of additional stockholder approval to issue those shares in excess of 9,741,518. A proposal to be put before the stockholders at our annual meeting on December 4, 2023, if approved, would provide the flexibility to use a portion of the shares so approved to satisfy the conversion obligation. However, there is no assurance that the proposal to issue additional shares will be approved by our stockholders. If we are unable to honor the conversion requests, we may be required to repay the outstanding principal balance, accrued interest and any other amounts owed to Yorkville under the second Convertible Debenture, requiring us to use cash resources we otherwise would use to fund operations and grow our business. If a "Trigger Event" were to occur (as defined in the Convertible Debentures), we could be required to make monthly payments to Yorkville prior to the Maturity Date, which is one year from the issuance date. We currently do not have any known source of funds for either the Maturity Date payment or monthly Trigger Event payments. Moreover, to the extent we are required to use cash to fulfill our obligations to Yorkville in lieu of issuing stock, that capital, to the extent we are able to secure it, which we cannot guarantee, is unavailable for working capital and general corporate purposes, which could impede our growth strategy and harm our business.

A proposed new FDA regulation of LDTs could negatively impact our business in the future.

In September 2023, the Food & Drug Administration (the "FDA") announced a proposed rule regarding laboratory developed tests or LDTs, aimed at helping to ensure the safety and effectiveness of LDTs. The FDA generally considers an LDT to be a test that is developed, validated, used and performed within a single laboratory, such as our tests. The FDA has historically taken the position that it has the authority to regulate LDTs as in vitro diagnostic, or IVD medical devices under the Federal Food, Drug and Cosmetic Act, but it has generally exercised enforcement discretion with regard to LDTs. This means that even though the FDA believes it can impose regulatory requirements on LDTs, it has generally chosen not to enforce those requirements to date. The proposed regulation would alter this historical position by classifying LDTs as medical devices, which would likely require us to adhere to a more stringent regulatory framework, including pre-market clearance or approval requirements, quality system regulations, and post-market surveillance obligations. Compliance with these additional regulatory requirements would be time-consuming and expensive, potentially diverting resources from other aspects of our business. The proposed regulation, if adopted, could hinder our ability to introduce new tests to the market in a timely manner, which in turn, could impact our competitive position and market share. Moreover, failure to comply with these and other FDA regulations could result in legal actions, including fines and penalties. If adopted in its proposed form or otherwise, the regulation of LDTs as medical devices could have a significant negative impact on our operations and financial

performance. There can be no assurance that we will be able to fully mitigate the risks associated with the FDA's proposed or final regulation.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

The Iowa Lease

On July 20, 2023, the Company entered into a lease agreement (the "Iowa Lease") with 246 Group, LC, dba North Point Crossing, for the lease of approximately 5,060 rentable square feet of medical laboratory and office space (the "Iowa Premises") known as Suite D, 2545 North Dodge Street, Iowa City, Iowa. The Iowa Premises is in addition to the new Chicago premises described below.

The term **None** of the Iowa Lease is for five years and four months commencing on August 1, 2023 and terminating on November 30, 2028. The Company will initially pay \$8,505 per month (\$102,060 on an annualized basis and approximately \$20.17 per square foot) in rent commencing on December 1, 2023. Company's directors or officers adopted, modified or terminated a Rule 10b-5 trading arrangement or a non-Rule 10b-5 trading arrangement during the fiscal quarter ended September 30, 2023, which includes its pro rata share as such terms are defined under Item 408(a) of property taxes, insurance and common area maintenance, common area utilities and water. Of the approximate \$20.17 per square foot initial rent, \$5.17 per square foot yearly rent shall be subject to an annual adjustment after the first 12 months of the Iowa Lease. The first month's rent was paid at the time of execution of the Iowa Lease. **Regulation S-K.**

The Company is permitted to occupy the Iowa Premises as of August 1, 2023 for purposes of constructing certain tenant improvements in the Iowa Premises.

The Iowa Lease contains customary representations, warranties, covenants, indemnification provisions, default provisions, and termination provisions for a lease of this nature.

The foregoing description of the Iowa Lease does not purport to be complete and is qualified in its entirety by reference to the full and complete terms of the Iowa Lease, which is attached hereto as Exhibit 10.1 and incorporated herein by this reference.

The Chicago Lease

On June 15, 2023, the Company entered into an office building lease agreement (the "W. Superior Lease Agreement") with 311 W. Superior, L.L.C., an Illinois limited liability company, for the lease of approximately 4,973 rentable square feet of general office space (the "W. Superior Premises") known as Suite 444, 311 W. Superior, Chicago, Illinois. The W. Superior Premises is in addition to the new Iowa Premises described above.

The term of the W. Superior Lease is for 40 months commencing on August 1, 2023 and terminating on November 30, 2026. The Company will initially pay \$12,846.92 per month (\$154,163 on an annualized basis and approximately \$31.00 per square foot) in rent commencing on December 1, 2023, which includes its pro rata share of property taxes, insurance and common area maintenance, common area utilities and water. The base rent will increase annually on August 1 of 2024, 2025 and 2026 to a monthly rate of \$13,103.85 (\$31.62 per square foot), \$13,364.93 (\$32.25 per square foot) and \$13,634.31 (\$32.90 per square foot), respectively. The Company will also be responsible for its 5.4% proportionate share of "Project Operating Costs," as defined in the W. Superior Lease, to the extent such costs exceed the Project Operating Costs for 2024, which is designated in the W. Superior Lease as the "Base Year." The Company paid a security deposit of \$12,849.50 and first month's rent for December 2023 upon execution of the W. Superior Lease.

The W. Superior Lease provides a one-time option to extend the lease term for an additional three-year period. The base rent on the extension period will be calculated as a 3% increase over the prior year's base rent for the first extension year and thereafter, will increase 3% annually for each additional year.

The lease commencement date is the later of August 1, 2023 or upon substantial completion of the "Landlord's work," as specified in the W. Superior Lease. However, the Company was granted a pre-term possession right as of July 10, 2023 in order to permit its vendors to install personal IT, signage and additional furniture.

The W. Superior Lease Agreement contains customary representations, warranties, covenants, indemnification provisions, default provisions, and termination provisions for a lease of this nature.

The foregoing description of the W. Superior Lease does not purport to be complete and is qualified in its entirety by reference to the full and complete terms of the W. Superior Lease Agreement, which is attached hereto as Exhibit 10.2 and incorporated herein by this reference.

ITEM 6. EXHIBITS

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

Exhibit Number	Description	Incorporation by Reference		
		Form	Exhibit	Filing Date
2.1	Agreement and Plan of Merger dated as of May 27, 2022 by and among Mana Capital Acquisition Corp., Mana Merger Sub, Inc., Cardio Diagnostics, Inc., and Meeshanthini (Meesha) Dogan, as representatives of the shareholders (included as Annex A to the Proxy Statement/Prospectus)	S-4/A	2.1	10/4/22
2.2	Amendment dated September 15, 2022 to Agreement and Plan of Merger dated as of May 27, 2022 by and among Mana Capital Acquisition Corp., Mana Merger Sub, Inc., Cardio Diagnostics, Inc., and Meeshanthini (Meesha) Dogan, as representatives of the shareholders	S-4/A	2.2	10/4/22
2.3	Waiver Agreement dated as of October 25, 2022 with respect to Agreement and Plan of Merger dated as of May 27, 2022, as amended on September 15, 2022	8-K	2.3	10/31/22
3.1	Third Amended and Restated Certificate of Incorporation of Cardio Diagnostics Holdings, Inc., dated May 30, 2023	8-K	3.1	5/30/23
3.2	By-laws	S-1	3.3	10/19/21
4.1	Specimen Stock Certificate	S-1/A	4.2	11/10/21
4.2	Specimen Warrant Certificate (contained in Exhibit 4.3)	8-K	4.1	11/26/21
4.3	Warrant Agreement, dated November 22, 2021, by and between the Company and Continental Stock Transfer & Trust Company, as warrant agent	8-K	4.1	11/26/21
4.4	Convertible Debenture, dated March 8, 2023	8-K	4.1	3/13/23
4.5	Description of Securities	10-K	4.5	3/31/23
10.1*§	Lease Agreement, dated July 20, 2023, by and between the Company and 246 Group LC dba North Point Crossing (the "Iowa Lease")			
10.2*	Office Building Lease, dated June 15, 2023, by and between the Company and 311 W. Superior, L.L.C. (the "Chicago Lease")			
10.3	Letter Agreement dated June 2, 2023 amending the Securities Purchase Agreement dated March 8, 2023 (which agreement was previously filed as Exhibit 10.1 to the Original 8-K on March 13, 2023)	8-K	10.1	6/5/23
10.4#	Form of Board of Directors Agreement	8-K	10.1	6/22/23

31.1*	Certification of Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1+	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2+	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document
104*	Cover Page Interactive Data File (embedded with the Inline XBRL document)

Exhibit Number	Description	Incorporation by Reference		
		Form	Exhibit	Filing Date
2.1	Agreement and Plan of Merger dated as of May 27, 2022 by and among Mana Capital Acquisition Corp., Mana Merger Sub, Inc., Cardio Diagnostics, Inc., and Meeshanthini (Meesha) Dogan, as representatives of the shareholders (included as Annex A to the Proxy Statement/Prospectus)	S-4/A	2.1	10/4/22
2.2	Amendment dated September 15, 2022 to Agreement and Plan of Merger dated as of May 27, 2022 by and among Mana Capital Acquisition Corp., Mana Merger Sub, Inc., Cardio Diagnostics, Inc., and Meeshanthini (Meesha) Dogan, as representatives of the shareholders	S-4/A	2.2	10/4/22
2.3	Waiver Agreement dated as of October 25, 2022 with respect to Agreement and Plan of Merger dated as of May 27, 2022, as amended on September 15, 2022	8-K	2.3	10/31/22
3.1	Third Amended and Restated Certificate of Incorporation of Cardio Diagnostics Holdings, Inc., dated May 30, 2023	8-K	3.1	5/30/23
3.2	By-laws	S-1	3.3	10/19/21
4.1	Specimen Stock Certificate	S-1/A	4.2	11/10/21
4.2	Specimen Warrant Certificate (contained in Exhibit 4.3)	8-K	4.1	11/26/21
4.3	Warrant Agreement, dated November 22, 2021, by and between the Company and Continental Stock Transfer & Trust Company, as warrant agent	8-K	4.1	11/26/21
4.4	Convertible Debenture, dated March 8, 2023	8-K	4.1	3/13/23

4.5	<u>Description of Securities</u>	10-K	4.5	3/31/23
10.1	<u>Letter Agreement, dated September 13, 2023, amending the Securities Purchase Agreement dated March 8, 2023 (previously filed as Exhibit 10.1 to the Form 8-K filed on March 13, 2023) and the Letter Agreement, dated June 2, 2023</u> (previously filed as Exhibit 10.1 to the Amended Form 8-K filed on June 5, 2023)	8-K	10.1	9/14/23
31.1*	<u>Certification of Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>			
31.2*	<u>Certification of Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>			
32.1+	<u>Certification of Principal Executive Officer pursuant to 18 U.S. C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>			
32.2+	<u>Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>			
101.INS*	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)			
101.SCH*	XBRL Taxonomy Extension Schema Document.			
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document			
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document			
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document			
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document			
104*	Cover Page Interactive Data File (embedded with the Inline XBRL document)			

* Filed herewith.

§ Certain of the exhibits or schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request; provided, however, that the Registrant may request confidential treatment pursuant to Rule 24b-2 of the Exchange Act, as amended, for any schedule or exhibit so furnished.

+ Furnished herewith. The certifications attached as Exhibit 32.1 and Exhibit 32.2 that accompany this Quarterly Report on Form 10-Q are deemed furnished and not filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Cardio Diagnostics Holdings, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Quarterly Report on Form 10-Q, irrespective of any general incorporation language contained in such filing.

Indicates a management contract or compensatory contract, plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Cardio Diagnostics Holdings, Inc.

EXHIBIT 31.1

CERTIFICATION

I, Meeshanthini V. Dogan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cardio Diagnostics Holdings, Inc. for the quarter ended **June 30, 2023** **September 30, 2023**;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially

affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 14, 2023 November 13, 2023

/s/ Meeshanthini V. Dogan

Meeshanthini V. Dogan
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Elisa Luqman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Cardio Diagnostics Holdings, Inc. for the quarter ended June 30, 2023 September 30, 2023;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: August 14, 2023 November 13, 2023

/s/ Elisa Luqman

Elisa Luqman Chief Financial Officer

Chief Financial Officer

(Principal Financial and Accounting Officer)

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EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with this Quarterly Report on Form 10-Q, (the "Report") of Cardio Diagnostics Holdings, Inc. (the "Company") for the quarter ended June 30, 2023 September 30, 2023, the undersigned, Meeshanthini V. Dogan, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of the undersigned's knowledge and belief:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 14, November 13, 2023

/s/ Meeshanthini V. Dogan

Meeshanthini V. Dogan

Chief Executive Officer
(Officer)
Principal Executive Officer)

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with this Quarterly Report on Form 10-Q, (the "Report") of Cardio Diagnostics Holdings, Inc. (the "Company") for the quarter ended **June 30, 2023** **September 30, 2023**, the undersigned, Elisa Luqman, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of the undersigned's knowledge and belief:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 14,

November 13, 2023

/s/ Elisa Luqman

Elisa Luqman

Chief Financial Officer

(Principal Financial and Accounting Officer)

Exhibit 10.1

246 GROUP, LC DBA NORTH POINT CROSSING

CARDIO DIAGNOSTICS HOLDINGS, INC.

COMMERCIAL LEASE-BUSINESS PROPERTY

This Lease Agreement, executed in duplicate, made, and entered into this JULY 20TH, 2023 by and between 246 GROUP, LC., hereinafter referred to as LANDLORD, whose address for the purpose of this Lease is 52 STURGIS CORNER DRIVE, IOWA CITY, IA 52246, CARDIO DIAGNOSTICS HOLDINGS, INC., whose address is 311 W. Superior St., Suite 444, Chicago, IL 60654, hereinafter referred to as TENANT.

1. PREMISES AND TERM. The LANDLORD, in consideration of the rents herein reserved and of the agreements and conditions herein contained, on the part of the TENANT to be kept and performed, leases unto the TENANT and TENANT hereby rents and leases from LANDLORD, according to the terms and provisions herein, the following portions of the business building located at 2545 NORTH DODGE ST, SUITE D, IOWA CITY, IA in Johnson County, Iowa, to-wit:

Approximately 5060 (M/L) SQ. FT. described as SUITE D, 2545 NORTH DODGE STREET, IOWA CITY, IA, with the improvements thereon and all rights, easements and appurtenances thereto belonging, which, more particularly, includes the space and premises as may be shown on "Exhibit A", if and as may be attached hereto, for a term of FIVE (5) Years and FOUR (4) Months, commencing at midnight of the day previous to the first day of the lease term, which shall be on

AUGUST 1ST, 2023 and ending at midnight on the last day of the lease term, which shall be on NOVEMBER 31, 2028, upon the condition that the TENANT pays rent therefore, and otherwise performs as in this Lease provided.

2. RENTAL. TENANT agrees to pay to LANDLORD monthly \$8,505.00 total rent (\$102,060.00 annually) commencing December 1, 2023 as rental for said premises based on initial base rent of \$15.00 PER SQUARE FT and additional rent of a pro-rata share of the property taxes (estimated at \$1,277.65 per month or \$3.03 per sq. ft per year), building insurance (estimated at \$63.25 per month or \$.15 per sq. ft per year), common area maintenance cost (estimated at \$838.60 per month or \$1.99 per sq. ft per year) which includes exterior maintenance of lawns, plantings and parking areas, common utilities (exterior lighting and outside water) and trash removal. The additional rent of \$5.17 per sq. ft. yearly rent shall be for the first 12 months of the Lease and adjusted annually thereafter. Rents shall be paid by direct deposit into an account designated by the LANDLORD. Rents received after the 5th of the month shall carry a 5% penalty.

3. OCCUPANCY. TENANT is granted occupancy on August 1st, 2023, for purposes of completing necessary TENANT Improvements. TENANT shall assume all utilities and comply with paragraphs 11 and 12 of this Lease pertaining to Insurance.

4. DEPOSIT. TENANT shall tender a deposit of \$0.00 at Lease signing to be held by the Landlord as security for this agreement and \$8,505.00 for the first month's rent for the month of December 2023 which shall be due at Lease signing.

5. USE OF PREMISES. TENANT covenants and agrees during the term of this Lease to use and occupy the leasehold premises only for a Medical Laboratory and Office Space.

6. QUIET ENJOYMENT. LANDLORD covenants that its estate in said premises is in 246 GROUP, LC and that the TENANT on paying the rent herein reserved and performing all the agreements by the TENANT to be performed as provided in this Lease, shall and may peaceably have, hold, and enjoy the demised premises for the term of this Lease free from molestation, eviction or disturbance by the LANDLORD or any other persons or legal entity whatsoever

7. UTILITIES. TENANT shall pay all utilities of every type and description at TENANT'S expense, including electricity, gas, water, sewer, and telephone.

8. CARE AND MAINTENANCE OF PREMISES.

(a) Landlord's Duty of Care and Maintenance. Landlord will keep the roof, structural part of the floor, walls and other structural parts of the premises in good repair.

(b) TENANT's Duty of Care and Maintenance. Except as may be set forth on Exhibit "B" to this Lease, TENANT will furnish its own interior decorating. TENANT will use good faith efforts not to permit or allow the premises to be damaged or depreciated in value by any act or negligence of TENANT, its agents, employees, customers, or invitees. TENANT shall, at its own cost and expense, maintain in good order and condition, the interior of the leased premises (including interior walls) lighting, bulbs and tubes, and all plumbing and sewer systems, all electrical and wiring systems, and all heating, ventilation, and air conditioning systems. In addition, TENANT is solely responsible for repair, maintenance and replacement of plate glass windows, exterior doors, and exterior signage. TENANT at its own expense will install and maintain floor covering and wall coverings. TENANT shall not remodel or alter the exterior or structural portions of the leased premises without first obtaining the written approval of Landlord or Northpoint Crossing Condominiums Owner's Association, as applicable.

(c) TENANT to Make no Unlawful Use. TENANT will make no unlawful use of the premises and agrees to comply with all valid regulations of all city, state and federal regulations, ordinances and laws concerning TENANT's use of the premises.

9. (a) SURRENDERING OF PREMISES AT END OF TERM-REMOVAL OF FIXTURES.

TENANT agrees that upon the termination of this Lease, it will surrender, yield up and deliver the leased premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of TENANT.

(b) TENANT may, at the expiration of the term of this Lease, or renewal or renewals thereof, if TENANT is not in default hereunder, remove any fixtures or equipment which said TENANT has installed in the leased premises, provided said TENANT repairs any and all damages caused by removal.

(c) HOLDING OVER. Continued possession, beyond the expiratory date of the term of this Lease, including any renewals or extensions thereto by the TENANT, coupled with the receipt of the specified rental by the LANDLORD (and absent a written agreement by both parties for an extension of this Lease, or for a new lease) shall constitute a month-to-month extension of this Lease. Occupancy by the TENANT during this "holding over" period shall be charged as 115% of the base rent at the time of Lease expiration.

10. ASSIGNMENT AND SUBLetting. Any assignment of this Lease or subletting of the premises or any part thereof, without the LANDLORD'S written permission shall, at the option of the LANDLORD, make the rental for the balance of the Lease term due and payable at once. Such written permission shall not be unreasonably withheld.

11. INSURANCE.

(a) LANDLORD and TENANT will each keep its respective property interests in the premises and its liability in regard thereto, and the personal property on the premises, reasonably insured against hazards and causalities; that is, fire and those items usually covered by extended coverage; and TENANT will procure and deliver to the LANDLORD a certification from the respective insurance companies to that effect. Such insurance shall be made payable to the parties hereto as their interests may appear, except that the TENANT'S share of such insurance proceeds is hereby assigned and made payable to the LANDLORD to secure rent or other obligations then due and owing LANDLORD by TENANT.

(b) TENANT will not do or omit the doing of any act which would vitiate any insurance or increase the insurance rates in force upon the real estate improvements on the premises or upon any personal property of the TENANT upon which the LANDLORD by law or by the terms of this Lease, has or shall have a lien.

(c) Subrogation rights are not to be waived unless a special provision is attached to this Lease.

(d) TENANT further agrees to comply with recommendations of Iowa Insurance Service Bureau and to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said premises and on the building of which said premises are a part, due to increased risks or hazards resulting from TENANT'S use of the premises otherwise than as herein contemplated and agreed.

12. INDEMNITY AND LIABILITY INSURANCE. Except as to any negligence of the LANDLORD, arising out of roof and structural parts of the building, TENANT will protect, indemnify and save harmless the LANDLORD from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about the leased premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by the TENANT or any person claiming through or under the TENANT. The TENANT further covenants and agrees that it will at its own expense procure and maintain casualty and liability insurance in a responsible company or companies authorized to do business in the State of Iowa, in amounts not less than \$2,000,000 for any one occurrence, and \$4,000,000 aggregate protecting the LANDLORD against such claim, damages, costs or expenses on account of injury to any person or persons, or to any property belonging to any person or persons, by reason of such casualty, accident or happening on or about the demised premises during the term thereof. Certificates or copies of said policies, naming the LANDLORD, and providing for fifteen (15) days' notice to the LANDLORD before cancellation shall be delivered to the LANDLORD within twenty (20) days from the date of the beginning of the term of this Lease.

13. FIRE AND CASUALTY - PARTIAL DESTRUCTION OF PREMISES.

(a) In the event of a partial destruction or damage of the leased premises, which is a business interference, that is, which prevents the conducting of a normal business operation and which damage is reasonably repairable within ninety (90) days after its occurrence, this Lease shall not terminate but the rent for the lease premises shall abate during the time of such business interference. In the event of partial destruction, LANDLORD shall repair such damages within ninety (90) days of its occurrence unless prevented from so doing by acts of God, the elements, the public enemy, strikes, riots, insurrection, government regulation, city ordinances, labor, material or transportation shortages, or other causes beyond LANDLORD'S reasonable control.

(b) ZONING. Should the zoning ordinance of the city or municipality in which this property is located make it impossible for LANDLORD, using diligent and timely effort to obtain necessary permits and to repair and/or rebuild so that TENANT is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as in the next paragraph provided.

(c) TOTAL DESTRUCTION OF BUSINESS USE. In the event of a destruction or damage of the leased premises including the parking area (if a parking area is a part of the subject matter of this Lease) so that TENANT is not able to conduct its business on the premises or the then current legal use for which the premises are being used and which damages cannot be repaired within ninety (90) days this Lease may be terminated at the option of either the LANDLORD or TENANT. Such termination in such event shall be affected by written notice of one party to the other, within twenty (20) days after such destruction. TENANT shall surrender possession within ten (10) days after such notice issues, and each party shall be released from all future obligations hereunder, TENANT paying rental pro rata only to the date of such destruction. In the event of such termination of this Lease, LANDLORD at its option, may rebuild or not, according to its wishes and needs.

14. CONDEMNATION.

(a) DISPOSITION OF AWARDS. Should the whole or any part of the demised premises be condemned or taken by a competent authority for any public or quasi-public use or purpose, each party shall be entitled to retain, as its own property,

any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

(b) DATE OF LEASE TERMINATION. If the whole of the demised premises shall be so condemned or taken, the LANDLORD shall not be liable to the TENANT except and as its rights are preserved as in Paragraph 13 (a) above.

15. TERMINATION OF LEASE AND DEFAULTS OF TENANT.

(a) TERMINATION UPON EXPIRATION OR UPON NOTICE OF DEFAULTS.

This Lease shall terminate upon expiration of the demised term; or if this Lease expressly and in writing provides for any option or options, and if any such option is exercised by the TENANT, then this Lease will terminate at the expiration of the option term or terms. Upon default in payment of rental herein or upon any other default by TENANT in accordance with the terms and provisions of this Lease, this Lease may at the option of the LANDLORD be cancelled and forfeited, PROVIDED, HOWEVER, before any such cancellation and forfeiture except as provided in 15 (b) below, LANDLORD shall give TENANT a written notice specifying the default, or defaults, and stating that this Lease will be canceled and forfeited ten (10) days after the giving of such notice, unless such default, or defaults, are remedied within such grace period. (See Paragraph 16, below.) As an additional optional procedure or as an alternative to the foregoing (and neither exclusive of the other), LANDLORD may proceed as in Paragraph 16, below, provided.

(b) BANKRUPTCY OR INSOLVENCY OF TENANT. In the event TENANT is adjudicated a bankrupt or in the event of a judicial sale or other transfer of TENANT'S leasehold interest by reason by any bankruptcy or insolvency proceedings or by other operation of law, but not by death, and such bankruptcy, judicial sale or transfer has not been vacated or set aside within ten (10) days from the giving of notice thereof by LANDLORD to TENANT, then and in any such events, LANDLORD may, at its option, immediately terminate this Lease, reenter said premises, upon giving of ten (10) days written notice by LANDLORD to TENANT, all to the extent permitted by applicable law.

(c) In (a) and (b) above, waiver as to any default shall not constitute a waiver of any subsequent default or defaults.

(d) Acceptance of keys, advertising and re-renting by the LANDLORD upon the TENANT'S default shall be construed only as an effort to mitigate damages by the LANDLORD, and not as an agreement to terminate this Lease.

16. RIGHT OF EITHER PARTY TO MAKE GOOD ANY DEFAULT OF THE OTHER. If default shall be made by either party in the performance of, or compliance with, any of the terms, covenants or conditions of this Lease, and such default shall have continued for thirty (30) days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term, covenant or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 9% per annum, from date of advance.

17. MECHANIC'S LIENS. Neither the TENANT nor anyone claiming by, though, or under the TENANT, shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the TENANT therein, and notice is hereby given that no contractor, sub-contractors, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of the LANDLORD, the TENANT covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

18. RIGHTS CUMULATIVE. The various rights, powers, options, elections and remedies of either party, provided in this Lease, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way un-remedied, unsatisfied or un-discharged.

19. NOTICES AND DEMANDS. Notices as provided for in this Lease shall be given to the respective parties hereto at the respective addresses designated on page one of this Lease unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this Lease when sent, addressed as above designated, postage prepaid, by registered or certified mail, return receipt requested, by the United States mail and so deposited in a United States mailbox.

20. PROVISIONS TO BIND AND BENEFIT SUCCESSORS AND ASSIGNS. Each and every covenant and agreement herein contained shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the

parties hereto; except that if any part of this Lease is held in joint tenancy, the successor in interest shall be the surviving joint TENANT.

21. CHANGES TO BE IN WRITING. None of the covenants, provisions, terms, or conditions of this Lease to be kept or performed by LANDLORD or TENANT shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to the LANDLORD and TENANT. This Lease contains the whole agreement of the parties.

22. CONSTRUCTION. Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.

23. PARKING. TENANT will share the drive and parking facilities surrounding the leasehold premises on the land owned by the LANDLORD with the other TENANTS. Costs for resurfacing or replacing the parking areas are the responsibility of the LANDLORD and are not included within the maintenance obligations of the TENANT under the prior provisions of this Lease.

24. RENEWAL OPTION. TENANT may elect to extend the Lease term for THREE (3) successive periods of FIVE (5) years each. Rent for each renewal period shall be adjusted by the increase, if any, in the CPI Index for All Urban Consumers applied to the Rent from the beginning of the expiring Lease term compared to 180 days prior to expiration of the expiring Lease term.

25. SIGNAGE. Unless otherwise stated in this Lease, all signage visible from the exterior of the building (including but not limited to signs posted on the pylon, building surfaces, exterior facing glass and common grounds) must be approved by the LANDLORD in compliance with Condominium Association Bylaws and City of Iowa City sign ordinances.

26. LANDLORD IMPROVEMENTS. Upon execution of this Lease by all parties and payment by TENANT to LANDLORD of the first month's rent, Landlord shall install improvements to the leasehold premises as set forth on Exhibit "A".

27. TENANT IMPROVEMENTS. TENANT shall construct improvements to the Premises (the "Tenant Improvements") in substantial conformity with the plans and specifications pursuant to the provisions of the Apex Construction Company, Inc. Proposal dated June 8, 2023 (the "Proposal") attached hereto as Exhibit B. LANDLORD shall provide TENANT with a one-time TENANT improvement allowance in the amount of up to, but not exceeding \$50.00 per rentable square foot of the Premises for a maximum allowance of \$253,000.00 (the "TENANT Improvement Allowance") for the costs relating to the TENANT Improvements. In no event shall LANDLORD be obligated to contribute toward the cost of the TENANT Improvements which are not agreed upon by LANDLORD or which exceeds the TENANT

Improvement Allowance. Upon TENANT's presentation to LANDLORD by no later than December 1, 2023, of customary documentation supporting the charges for completion of such TENANT Improvements, which documentation is of a scope and detail sufficient to satisfy a commercial construction lender operating in the market area in which the Building is located and which shall include copies of paid invoices from TENANT's contractor and lien waivers, LANDLORD shall reimburse TENANT for the cost of the completed TENANT Work, up to the amount of the Tenant Improvement Allowance. All costs of any TENANT Work in excess of the Tenant Improvement Allowance shall be paid by TENANT promptly when due. Any portion of the Tenant Improvement Allowance which has not been expended and requested from LANDLORD by December 1, 2023, shall be forfeited.

LANDLORD and TENANT acknowledge a Ten (10) year amortization period of rent payments is necessary to allow LANDLORD to fully amortize and recoup LANDLORD's Tenant Improvement Allowance. If TENANT terminates the Lease or fails to renew the Lease prior to a minimum period of Ten (10) years following the rent commencement date of November 1, 2023, TENANT shall pay to LANDLORD, as additional rent, the unamortized portion of the Tenant Improvement Allowance within thirty (30) days of the early termination or non-renewal date, as applicable. For example, assuming a maximum Tenant Improvement Allowance of \$263,000.00 and TENANT terminates its Lease with LANDLORD after the initial five (5) year term, TENANT would pay LANDLORD \$126,500 within thirty (30) days following the non-renewal of the Lease based upon \$263,000 Tenant Improvement Allowance multiplied by 5/10 (the fraction of which the numerator is the years of rent payment prior to lease termination or nonrenewal and the denominator of which is 10 years).

28. AMERICAN DISABILITIES ACT COMPLIANCE. LANDLORD shall be responsible for initial ADA compliance for the two completed bathrooms. The TENANT shall be solely responsible for all remaining compliance with the American Disabilities Act.

29. LANDLORD'S ACCESS. The LANDLORD and its representatives and employees shall have full access to the premises for viewing the same and showing to prospective purchasers and to make necessary repairs upon reasonable notice to the TENANT unless emergency circumstances apply.

30. SAVINGS CLAUSE. In the event that any provision of this Lease is deemed to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

31. ENVIRONMENTAL COVENANT. The interest conveyed in this Lease is subject to an Environmental Covenant. See Exhibit C for the precise language.

32. ACKNOWLEDGEMENT OF CONDOMINIUM REGIME. TENANT acknowledges and accepts the leasehold premises as part of a Condominium Regime and agrees to be bound by rules and restrictions accompanying the Regime and Association. See Exhibit D for Rules and Regulations.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease in duplicate the day and year first above written.

246 GROUP, LC

By: /s/ Thomas J. Bender

Thomas J. Bender, Manager

Cardio Diagnostics Holdings, Inc

By: /s/ Meesha Dogan

Meesha Dogan, PhD, CEO and Founder

ExhibitA

Landlord to prepare leased space prior to occupancy by TENANT to "vanilla box" (described as follows:)

- 1) Exterior walls to be taped, sanded and ready to paint.
- 2) Perimeter Electrical Outlets installed to City Code.
- 3) Two Completed ADA compliant Bathrooms
- 4) HVAC set up but not distributed.
- 5) 400 AMP Electrical Panel.

See attached architectural drawing. [omitted in Exhibit filing]

Exhibit A – Architectural Drawing (omitted)

EXHIBIT B

Apex Construction Company, Inc. Proposal dated June 8, 2023

see next two pages

[omitted from Exhibit Filing]

ExhibitC

THE LEASEHOLD INTEREST CONVEYED IS SUBJECT TO AN
ENVIRONMENTAL COVENANT RECORDED IN THE JOHNSON COUNTY RECORDER'S
OFFICE ON July 20, 2011 IN BOOK 4779 AT PAGE 674.

THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY
AND USE LIMITATIONS:

No additional enclosed spaces, as defined in Iowa Department of Natural Resources Rule 567, Iowa Administrative Code (567 I.A.C. 135.2), and as subsequently amended, shall be constructed within the boundaries of the Property (see attached area of Environmental Covenant map). For purposes of reference, an enclosed space means, 'space which can act as a receptor or pathway capable of creating a risk of explosion or inhalation hazard to humans and includes "explosive receptors" and "confined spaces". Explosive receptors means those receptors designated in these rules (Chapter 567 IAC 135) which are evaluated for explosive risk. Confined spaces means those receptors designated in these rules (Chapter 567 IAC 135) for evaluation of vapor inhalation risks.' Enclosed spaces may

include subsurface structures such as buildings with basements, utility vaults, and storm and sanitary sewers.

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EXHIBIT D

RULES AND REGULATIONS FOR NORTHPOINT CROSSING CONDOMINIUMS OWNERS' ASSOCIATION

1. Any fine for violation of these Rules and Regulations as set forth herein shall be assessed against the Unit Owner who directly or indirectly through its employees or agents, commits the violation. The Board of Directors shall have the authority to assess and collect fines and fees set forth herein and shall have the authority to waive or reduce any fines or fees, as it deems appropriate. The Board of Directors may, in its discretion, issue a verbal or written warning in lieu of a fine for a first-time violation. Fines are due within one (1) week upon citation of a violation or assessment by the Board of Directors.
2. In the event the Association incurs any attorney fees, expenses, or costs due to a Unit Owner's violation of these Rules and Regulations or for collection of any unpaid fines, the Unit Owner shall pay such reasonable attorney fees, expenses and costs incurred by the Association.
3. Unit Owners shall, at their sole expense, maintain the interior of their Units in clean and sanitary condition pursuant to Article VIII(3)(a)-(b) of the Declaration. Failure to maintain the Unit in a clean and sanitary condition will result in the assessment of cleaning costs against the Unit pursuant to Article VIII(2)(c) of the Declaration.
 - a. The Owner of any Unit with cockroaches shall take immediate action to exterminate the cockroaches and abate and clean the unsanitary conditions precipitating the cockroach infestation. If the unsanitary conditions of a Unit results in the presence of cockroaches in other Units, the Owner of the Unit with unsanitary conditions shall be fined \$1,000.00.
4. No storage or equipment receptacles shall be placed or stored in or on the Common Elements (General and Limited), as defined in Articles IV and V of the Declaration, unless expressly approved by the Board of Directors of the Association.
 - a. The Unit Owner placing the storage or equipment receptacle on the Common Elements, whether with approval or not, shall be solely responsible and liable for any injury or damage to person or property caused by such placement.
 - b. The Association reserves the right to charge fees and/or levy fines for both approved and unapproved placements of storage or equipment receptacles in or on the Common Elements.
 1. The fine for placement of grease receptacles in or on the Common Elements is \$1,000.00 per month.
5. All garbage, trash, and recycling must be placed in the appropriate receptacles and the doors to the enclosure must be closed when not in use to shield them from public view at all times. The fine for leaving the gates open and unsecured is \$250.00 for the first violation, and \$500.00 for any subsequent violation.
6. No Unit Owner or the Unit Owner's agent, employee, or contractor is permitted on the roof without express approval of the Board of Directors of the Association or the Association's management provider. Unit Owners may not obstruct or otherwise interfere with roof access approved by the Board of Directors of the Association or the Association's management provider, including roof access by approved contractors, vendors, maintenance and service crews, and repairmen. The fine for interfering with approved roof access is \$500.00 for the first violation, and \$1,000.00 for any subsequent violation.
7. Vehicles may be parked in any available parking space, except parking spaces restricted for a particular purpose by the Association, such as ADA accessible or patient parking.

- a. Vehicles shall not be parked in such a manner as to impede or prevent the flow of traffic or other vehicles.
- b. Vehicles shall not be parked in such a manner as to occupy more than a single marked parking space.
- c. The Association reserves the right to tow vehicles parked in any manner that restricts the flow of traffic or occupies more than a single parking space. The cost of towing vehicles belonging to the Unit Owner or the Unit Owner's staff shall be assessed against the Unit Owner. In addition to the cost of towing, the Unit Owner shall be fined \$100.00 for the first parking violation, and \$500.00 for every parking violation thereafter.

8. Unit Owners are responsible for prompt payment of dues under Article VI of the Bylaws to the Association. Failure to pay the full amount owed when due may result in a \$500.00 fine per day until paid in full.

9. Disruptive behavior by a Unit Owner or the Unit Owner's employees or agents that results in a response to the Northpoint Crossing Condominiums by law enforcement officers or agencies, shall result in a \$500.00 fine.

10. Unit Owners shall not interfere with a prospective sale or lease of a Unit, nor harass prospective buyers or lessees. The fine for interfering with a prospective sale or lease, or harassing a prospective buyer or lessee is \$1,000.00 for each violation.

Conduct constituting interference with a prospective sale or lease, or harassment of prospective buyers or lessees, includes, but is not limited to, any of the following:

- a. Following or loitering near a prospective buyer or lessee to annoy, harass, alarm or distress the prospective buyer or lessee.
- b. Engaging in conduct that is obnoxious, annoying, intimidating, or alarming to a prospective buyer or lessee.
- c. Communicating with a prospective buyer or lessee in a manner that is obnoxious, annoying, intimidating, or alarming.
- d. Making disparaging or untrue remarks regarding another Unit Owner or the Association to a prospective buyer or lessee; or
- e. Engaging in any of the above behavior or conduct toward another Unit Owner or the Unit Owner's agent or employee, when said Unit Owner or agent or employee is accompanying or in the presence of a prospective buyer or lessee.

11. The Association has the authority to grant concessions or easements with respect to any part of the Common Elements pursuant to Article IV(2) of the Declaration. Unit Owners are reminded that, pursuant to Article IX(2)(c) of the Declaration, they may not alter, construct, or place anything in or on the Common Elements, without written consent of the Board of Directors, including any signs on sidewalks. The fine for altering, constructing, or placing anything in or on the Common Elements, including signs on sidewalks, is \$500.00 per violation.

12. In the event any one or more of the rules contained in these Rules and Regulations shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable rule shall be severed from these Rules and Regulations and shall not affect any other rule herein, and these Rules and Regulations shall be construed as if such invalid, illegal or unenforceable rule had never been contained herein.

EXHIBIT 10.2

311 W. SUPERIOR CHICAGO, ILLINOIS

OFFICE BUILDING LEASE

TENANT:

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ATTACHMENTS

Exhibit A - Additional Provisions Exhibit B - Legal
Description of Project Exhibit C - Intentionally Omitted
Exhibit D- Floor Plan Showing the Premises Exhibit E - Base Rent
Schedule
Exhibit F - Intentionally Omitted Exhibit G -
Commencement Letter

311 W. SUPERIOR CHICAGO, ILLINOIS

OFFICE BUILDING LEASE

This LEASE AGREEMENT ("Lease") is made and entered into as of this 15th day of June, 2023 ("Effective Date") by and between **311 W. SUPERIOR, L.L.C.**, an Illinois limited liability company ("Landlord"), and **CARDIO DIAGNOSTICS HOLDINGS, INC.**, a Delaware Corporation ("Tenant").

1. Lease of Premises.

In consideration of the Rent, as defined at Section 5.3(d), and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown on the floor plan attached hereto as **Exhibit D**, and further described at Section 2U. The Premises are located within the Building described in Section 2(k). Tenant shall have the nonexclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants, and invitees, to use of the Common Areas, as defined at Section 2(d).

2. Definitions.

As used in this Lease, the following terms shall have the following meanings:

- (a) Base Rent: See Base Rent Schedule attached hereto as **Exhibit E**.
- (b) Base Year: 2024
- (c) Broker(s): For Landlord: Matt Alexander, Spectrum Real Estate Properties, Inc. For Tenant: Mr. Brandon Green, CBRE
- (d) Commencement Date: The later of August 1, 2023, or upon substantial completion of Landlord's work.
- (e) Pre-Term Possession: Tenant's vendors shall be able to occupy the Premises at no cost thirty (30) days prior to completion of Landlords Work, for installation of Tenant's Personal IT, signage, and additional furniture. Tenant's vendors shall coordinate with Landlord prior to occupancy and will schedule accordingly as to not interfere with construction of the Premises. Upon Landlord's substantial completion of the Premises, any occupancy by Tenant prior to the Lease Commencement Date shall be at no cost to Tenant and shall be considered beneficial occupancy.
- (f) Common Areas: The building lobbies, common corridors and hallways, restrooms, stairways, elevators, and other areas designated by Landlord as public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.
- (g) Expiration Date: November 30, 2026, or as adjusted in accordance with Section 4 (b); or unless otherwise terminated sooner in accordance with the provisions of this Lease.
- (h) Landlord's Mailing Address: 351 W. Hubbard, Suite 610, Chicago, Illinois 60654. Tenant's Mailing Address: 311 W. Superior, Suite 444, Chicago, Illinois 60654.

- (i) Monthly Installments of Base Rent: See Base Rent Schedule attached hereto as **Exhibit E**.
- (j) Premises: That portion of the Building containing 4,973 square feet of Rentable Area, shown on **Exhibit D**, located on the 4th floor of the Building and known as Suite 444.
- (k) Project: The building of which the Premises are a part (the "Building") and any other buildings or improvements on the real property (the "Property") located at 311 W. Superior, Chicago, Illinois, and further described on **Exhibit B**.
- (l) Rentable Area: As to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to adjustment by Landlord, provided that it is applicable to Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project. There is an eighteen percent (18%) "add-on" factor to Tenant's usable square footage.
- (m) Security Deposit (Section 7): \$12,849.50
- (n) Furniture: Landlord shall provide Tenant use of existing workstations, chairs, desks, conference table and all other FF&E within the Premises throughout the Lease Term, at no charge on an "as is where is" basis. Furniture remains sole property of Landlord and will return to Landlord's inventory upon the expiration of the lease.
- (o) State: Illinois.
- (p) Tenant's Proportionate Share: 5.45%. Such share is a fraction, the numerator of which is the Rentable Area of the Premises, and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project currently consists of one building(s) containing a total Rentable Area of 91,304 square feet.
- (q) Tenant's Use Clause (Section 8): General office use and no other use or purpose including but not limited to general business events, meetings and gatherings usual and customary to Tenant's business.
- (r) Term: The period of forty (40) months commencing on the Commencement Date and expiring at midnight on the Expiration Date.
- (s) Lease Year: The twelve (12)-month period commencing on the Commencement Date and expiring on the first anniversary thereof and each subsequent twelve (12)-month period during the Term.
- (t) Guarantor: None.

3.

Exhibits and Addenda. The exhibits listed below are incorporated by reference in this Lease

- Exhibit A - Additional Provisions
- Exhibit B - Legal Description of Project
- Exhibit C - Intentionally Omitted
- Exhibit D - Floor Plan Showing the Premises
- Exhibit E - Base Rent Schedule

4. Lease Grant/ Possession.

(a) Subject to and upon the terms herein set forth, Landlord leases to Tenant and Tenant leases from Landlord the Premises on an "as is" basis (except as otherwise expressly set forth herein), together with the right, in common with others, to use the Common Areas. By taking possession of the Premises, Tenant is deemed to have accepted the Premises and agreed that the Premises is in good order and satisfactory condition, with no representation or warranty by Landlord as to the condition of the Premises or the Building or suitability thereof for Tenant's use.

(b) If the Commencement Date as set forth in Section 2(c) is a specified date, the Commencement Date shall be postponed until the date Landlord delivers possession of the Premises to Tenant, and the Expiration Date shall correspondingly be postponed on a per diem basis.

5. Rent.

5.1. Payment of Base Rent. Tenant agrees to pay the Base Rent for the Premises in accordance with those monthly installments specified on the Base Rent Schedule attached hereto as **Exhibit E**. Monthly Installments of Base Rent shall be payable in advance on the first day of each calendar month of the Term in the amount specified on the Base Rent Schedule for that particular month. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease.

5.1. Project Operating Costs.

(a) In addition to its obligation to pay Monthly Installments of Base Rent, Tenant shall also be obligated to pay, as Additional Rent for each Lease Year Tenant's Proportionate Share of Project Operating Costs (defined below) to the extent such costs exceed Project Operating Costs for the Base Year. The Additional Rent payable hereunder for the years in which the Term begins and ends shall be prorated to correspond to that portion of the applicable calendar year occurring within the term of this Lease.

(b) The term "Project Operating Costs" shall include all those items described in the following Sections S.2(b)(i) and (ii).

(i) All federal, state, county, and local governmental taxes, assessments, water and sewer charges and other similar governmental charges of every kind or nature (collectively, "Taxes"), which Landlord shall pay, or become obligated to pay, because of, in connection with the ownership, management, control or operation of the Building, Property, or of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, including, without limitation (i) real property taxes or assessments levied or assessed against the Building, (ii) any expenses (including, but not limited to, legal fees) incurred by Landlord in any contest of real estate taxes or assessments or the assessed value of the Building, Property, however, there shall be no attorneys' fees charged if there are no savings in excess of all fees, legal fees and costs expended, (iii) assessments or charges levied or assessed against the Building by any redevelopment agency, and (iv) any tax measured by gross rentals received from the leasing of the Premises, or Building, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided

that if, at any time during the Term, any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease or on the rent received under any other leases of space in the Building, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases of space in the Building, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other leased premises within the Building, then any and all of such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operating Costs. For purposes hereof, Taxes for any year shall be Taxes which are due for payment or paid in that year, rather than Taxes which are assessed or become a lien during such year. If, at any time during the Term, the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least eighty-five percent (85%) of the Rentable Area in the Building occupied, then the "Taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the taxes which would have been payable if the Project were completed and at least eighty-five percent (85%) of the Rentable Area in the Building occupied. However, the taxes assessed shall be the lesser of the actual taxes assessed and the adjustment as made by the Landlord above. Notwithstanding anything in this Section 5.2(b)(i) to the contrary, Tenant shall not be obligated to pay any State, Federal or local income tax or similar tax imposed on or due by the Landlord.

(ii) Operating costs incurred by Landlord in maintaining and operating the Building, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including, but not limited to, public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building) as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building, and equipment, improvements and facilities located within the Building, including, without limitation, engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Building tenants); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) management of the Building, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market rental value of any on-site manager's office); (8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building; (9) costs, expenditures or charges (whether capitalized or not) due to requirements of any governmental or quasi governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by Landlord with the reasonable intent to reduce Project Operating Costs; (11) legal, accounting and other professional fees incurred in connection with the operation, maintenance and management of the Building; and (12) any other costs or expenses incurred by Landlord under this Lease or with respect to the Building and not otherwise reimbursed by specific tenants of the Building, which are properly allocable to the operation and maintenance of the Building in accordance with generally accepted accounting principles. The Expenses shall be adjusted to equal Landlord's reasonable estimate of Expenses had the total Building been occupied and had the total Building been furnished all services. Notwithstanding anything contained herein, "Operating Costs" may include at Landlord's discretion, a pro rata share of Landlord's on-site and off-site personnel based on a reasonable allocation as pro-rated between similar type buildings Landlord, or its principals, may own from time to time, consistently applied.

5.2. Estimated Payments and Operating Statements.

(a) Estimated Payments. Landlord or its agent shall furnish to Tenant, prior to the Commencement Date and prior to the commencement of each calendar year after the Base Year, a written statement setting forth Landlord's estimate of Tenant's Proportionate Share of the Project Operating Costs (the "Estimated Operating Statement") for such ensuing calendar year. Tenant shall pay to Landlord, on the first day of each month, as Additional Rent, an amount equal to one twelfth (1/12) of Landlord's estimate of Tenant's Proportionate Share of such Project Operating Costs. If, however, Landlord shall fail to furnish any such

Estimated Operating Statement subsequent to the commencement of any calendar year during the term of this Lease, then until the first day of the month following the month in which such Estimated Operating Statement is furnished to Tenant, Tenant shall pay to Landlord, on the first day of each month, an amount equal to the monthly installment of estimated Project Operating Costs payable under this section with respect to the last month of the immediately preceding calendar year. Upon furnishing such Estimated Operating Statement to Tenant, Landlord shall give notice to Tenant stating whether the monthly installments of Project Operating Costs which Tenant has paid to date during the current calendar year are more or less than the estimated sums which Tenant should have been paying to Landlord for the current calendar year, based on that Estimated Operating Statement. In the event there is a deficiency with respect to the estimated amounts paid by Tenant to date in the current calendar year, Tenant shall pay the amount of such deficiency within thirty (30) days after demand therefor; in the event there shall have been an overpayment, Landlord shall permit Tenant to credit the amount thereof against the subsequent payments of Additional Rent next due during the calendar year in which Landlord notifies Tenant of such overpayment. If there shall be any increase or decrease in the estimated Project Operating Costs for any Lease Year, whether during or after such year, Landlord may furnish to Tenant a revised interim Estimated Operating Statement and the Additional Rent shall be adjusted and paid, or refunded by way of credits against future payments, as the case may be, or Landlord may wait and make such adjustments as per subparagraph (b) below. Notwithstanding the foregoing, Landlord may adjust its estimate for Taxes at such time as actual tax bills become available, but no more frequently than once per year.

(b) Operating Statement. Within ninety (90) days after the end of each calendar year, or as soon thereafter as possible, Landlord shall furnish to Tenant a statement pertaining to the actual payments made by Landlord for Project Operating Costs for that immediately preceding year (the "Operating Statement"). If the Operating Statement shows that the sums paid by Tenant, pursuant to the Estimated Operating Statement, or any revision thereof, exceed Tenant's Proportionate Share of the actual Project Operating Costs for the calendar year in question, Landlord shall permit Tenant to credit the amount of such excess in installments, against the subsequent payments of Additional Rent next due during the remainder of the calendar year in which such Operating Statement is furnished pursuant to this section; and if such Operating Statement shows that the aggregate amount of the estimated sums paid by Tenant were less than the Tenant's Proportionate Share of the actual Project Operating Costs, Tenant shall pay the amount of such deficiency within thirty (30) days after demand therefor. Failure of Landlord to submit the written Operating Statement referred to herein shall not constitute a waiver of any rights of Landlord, but no more frequently than once per year.

(c) Disputes. Each Operating Statement given by Landlord shall be conclusive and binding upon Tenant, unless within thirty (30) days after the receipt thereof, Tenant shall notify Landlord that Tenant disputes Project Operating Costs for the year covered by such Operating Statement, specifying the particular respects in which the Operating Statement is claimed to be incorrect. Notwithstanding any such notice disputing the Operating Statement, any amount due to Landlord, as shown on any such Operating Statement, shall be paid by Tenant within thirty (30) days after Landlord's demand, as provided above, but without prejudice to any such written objection. Tenant or its authorized representative shall have the right to examine Landlord's books and records with respect to the Project Operating Costs for the year of such Operating Statement during normal business hours and upon reasonable notice at any time within forty-five (45) days following submission of the Operating Statement by Landlord. If, within twenty-one (21) days after Landlord's receipt of Tenant's notification of dispute of the Project Operating Costs for the year of such Operating Statement, Landlord and Tenant fail to agree, in writing, upon the actual amount of Project Operating Costs and Tenant's Proportionate Share thereof, then Landlord and Tenant shall jointly select an independent, certified public accountant, licensed in the State of Illinois, who shall prepare a report addressing the objections raised by Tenant. The fees and costs of said accountant shall be paid one-half(1/2) by Landlord and one-half(1/2) by Tenant, and the determination of said accountant shall be conclusive and binding on Landlord and Tenant. Any sums owed by Landlord to Tenant based on the accountant's report shall be paid to Tenant in the form of a credit against those subsequent payments of Additional Rent next due during the remainder of the calendar year in which the determination of such overpayment is made. Notwithstanding anything herein to the contrary, Tenant shall not be permitted to dispute any Project Operating Costs for any Lease Year in which Landlord makes no claim for Additional Rent from Tenant with respect to Project Operating Costs.

(d) Definition of Rent. All costs and expenses which Tenant assumes or agrees to pay to Landlord under this Lease (except with respect to Base Rent) shall be deemed "Additional Rent" (which, together with the Base Rent, is sometimes referred to as the 'Rent'). The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefor and without deduction or offset, in lawful money of the United States of America.

(e) Rent Control. If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

(f) Taxes Payable by Tenant. In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (i) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than the Work, regardless of whether title to such improvements is held by Tenant or Landlord; (ii) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (iii) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (iv) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

6.

Interest and Late Charges.

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at lesser of (i) two percent (2%) in excess of the "prime" or "reference" or "base" rate of interest announced as such, from time to time, by the JPMorgan Chase ("Prime") and (ii) the maximum rate then allowed by law. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest (as described above in this Section 6), if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such delinquent installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

7.

Security Deposit.

(a) Tenant agrees to deposit with Landlord the Security Deposit in the form of cash, the amount as set forth at Section 2(k) above upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord (which may be withheld in Landlord's sole discretion), and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

(b) If Tenant fails to pay any Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid; for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach; and for any loss or damage sustained by Landlord as a result of Tenant's default or breach; and Landlord may so apply or use this Security Deposit without prejudice to any other remedy. Landlord may have by reason of Tenant's default or breach, if Landlord so uses any of the Security Deposit. Tenant shall, within ten (10) business days after written demand therefor, restore the Security Deposit to the full amount originally deposited. Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Section 26 hereof. Within thirty (30) days after the Term (or

any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit (less any damage fee or other offset as provided herein in this Lease) to Tenant, or, if Landlord has permitted Tenant to assign its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver this Security Deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

8. Option to Renew.

Tenant shall have one (1) option to renew and extend this Lease each for an additional three (3) year term on the same covenants, terms and conditions as stated in this Lease provided that: (1) at the time of the exercise of such right and at the time the extension Term begins, Tenant shall not be in default in the performance of any of the covenants, terms and conditions contained in this Lease; (b) that this Lease shall not have been terminated during the initial Term or any additional extension of the Term and shall be in full force and effect at the date of such exercise of the option to renew and at the date the extension Term begins; (c) that such extension shall not be effective as to any portions of the Premises that are subleased at any time between the date of exercise of such right and the date the extension Term begins; and (d) that each renewal period shall be on the same terms, covenants and conditions contained in this Lease except that the Base Rent for each extension Term shall be the last year of the initial or first renewal Term's Base Rent, as applicable, plus three percent (3%) and three percent (3%) additional each year thereafter. Tenant shall exercise its rights of renewal for each extension of the Term granted hereby only in the following manner: at any time after the Commencement Date of this Lease, but not later than six (6) months prior to the end of the then-current Term. Tenant shall notify Landlord in writing of its election to exercise the right to renew the Term of this Lease for one or more additional periods. If Tenant fails to timely notify Landlord in writing, Tenant shall be deemed to have waived its Option to Renew.

9. Option to Expand/Relocate.

In the event that Tenant desires to expand during the Lease Term, Landlord shall provide to Tenant an Option to Expand and relocate to office space that is currently available within Landlord's office portfolio ("Expansion Premises"). The Expansion Premises will be delivered to Tenant on an "as is-where is" basis and: must be a minimum of 2,000 rentable square feet or greater than the current Premises and: the lease term for the Expansion Premises must be a minimum of three (3) years or greater. The effective date (the "New Commencement Date") shall commence upon Landlord's notice to Tenant that the Expansion Premises are ready for Tenant's occupancy. If Tenant exercises its Option to Expand pursuant to this Section 9 and the New Commencement Date of such leasing of additional space is (a) within three hundred sixty-five (365) days of the Commencement Date, all terms and conditions of this Lease (including Base Rent per square foot and Base Year) shall apply to the Expansion Premises (with exception of 350 N. LaSalle and 414 N. Orleans which would be offered at fair market rates); or (b) three hundred sixty-five (365) days or more after the Commencement Date, all terms and conditions of this Lease shall apply with the exception of rent, and concession which will be offered to Tenant at the greater of the current Lease rate or the fair market rate. Upon execution of an Expansion Premises Amendment to Lease, Tenant shall immediately pay to Landlord the unamortized construction cost for the current Premises calculated at a rate of 10% as of the New Commencement Date. Commissions for the Expansion Premises will only be payable on new lease term beyond the current Expiration Date. Exercising the Option to Expand does not release Tenant from its current obligations to the Lease should Tenant decide not to proceed with the Expansion Premises.

10. Signage.

Tenant shall be provided, free of charge, initial building standard signage on the Building directory and the suite entrance.

11. Storage.

Tenant shall have use of an approximately 10 x 10 square foot storage room adjacent to Suite 444 at no additional cost throughout the term of the Lease.

12. Restoration.

Tenant shall have no restoration obligations upon the expiration or earlier termination of the Lease.

13. Parking.

Monthly, daily, and hourly parking is available at prevailing rates at the surface parking lots located to the North and South of the Building. Landlord owned lots are currently full, but Tenant will be added to waiting list.

14. Tenant's Use of the Premises.

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project, or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do, or permit to be done, anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Section 8. Tenant shall not do, or permit anything to be done, in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. Landlord will not allow any activity in the Building that will unreasonably interfere with Tenant's use and enjoyment of the Premises and will actively pursue all remedies against any other tenants of the Building violating a clause similar to this Paragraph 8, contained in other tenant leases.

15. Services and Utilities.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during generally recognized business days, and during hours determined by Landlord in its sole discretion (which are presently from 8:00 a.m. to 6:00 p.m. on weekdays and from 8:00 a.m. to 1:00 p.m. on Saturdays, with Sundays and holidays excluded), and subject to the Rules and Regulations of the Building or Project, heating, ventilation and air conditioning ("HVAC") as required, in Landlord's judgment, for the comfortable use and occupancy of the Premises. If Tenant desires HVAC at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefor on demand. Landlord shall also maintain and keep lighted the common stairs, common entries, and restrooms in the Building. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (i) the installation, use, or interruption of use, of any equipment in connection with the furnishing of any of the foregoing services; (ii) failure to furnish, or delay in furnishing, any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project; or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the costs thereof, including the cost of installation, operation, and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. Landlord will use all reasonable measures to remedy any and all disruptions associated with the delivery of common area utilities in a timely manner.

Tenant shall not, without the written consent of Landlord, use any apparatus or device in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume any water or electric current in excess of that usually furnished or supplied for the use of premises as general office space (as determined by Landlord), without first procuring the written consent of Landlord, which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the

Tenant and Tenant agrees to pay to Landlord promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for such water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

Landlord shall furnish elevator service, common area lighting replacement for building standard lights, common area restroom supplies, window washing and janitor services in a manner that such services are customarily furnished to comparable office buildings in the area.

Tenant shall pay a deemed pro-rata share of electrical service equal to One and Twenty-Five/100 Dollars (\$1.25) per Rentable Square Foot per year.

16. Preparation and Condition of the Premises.

16.1. The Work and Work Letter Agreement. Landlord agrees to perform certain improvements to the Premises in accordance with the Work Letter attached as Exhibit A.

16.2. Space Planning. Landlord shall supply its space planner at no charge.

17. Construction, Repairs and Maintenance.

17.1. Landlord's Obligations. Landlord shall maintain in good order, condition, and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other tenant in the

Building. The Landlord will also cause the Premises to be cleaned and generally cared for by Landlord's janitorial service five (5) days per week except Building Holidays.

17.2. Tenant's Obligations.

(a) Tenant, at Tenant's sole expense, shall, except for services furnished by Landlord pursuant to Section 9 hereof, maintain the Premises in good order, condition and repair, including, but not limited to, the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, including, but not limited to individual point of use hot water tanks, pipes and fixtures, electrical wiring, switches and fixtures and special items and equipment installed by or at the expense of Tenant.

(b) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Section 13 below) in the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.

(c) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds, at the expense of Tenant, as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the rate set forth in Section 6 above from the date of such work. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

17.3. Compliance with Law. Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

17.4. Load and Equipment Limits. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineering shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

17.5. Interference/Construction in the Building. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises. Tenant understands that improvements to the Building and in other tenant's space in the Building will be performed during Tenant's occupancy and use of the Premises and may result in some inconvenience to Tenant (including noise, dust, debris, vibration, and partitioning or barricading of areas under construction from time to time). Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance or interruption to business arising from such construction activities in the Building. Landlord will make reasonable efforts to minimize the inconvenience and disturbance caused by any such repair and/ or construction work but is not responsible for business interruption or damage to property which results from any such repair and/or construction work. The foregoing shall not limit any claim Tenant may have against third party contractors under applicable law. Landlord agrees to reasonably cooperate with any requests by Tenant to perform any such construction work during other than normal business hours, provided that, Tenant shall be responsible to pay for additional costs incurred by Landlord due to such after-hours construction, and/or delay in Landlord's completion of a particular buildout of another tenant's space.

17.6. **Return of Premises.** Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord in the same condition as on the date Tenant took possession, except for normal wear and tear, and subject to the provisions of Section 12(a) below, alterations approved by Landlord. Any damage to the Premises, including any structural damage, resulting from Tenant's use, or from the removal of Tenant's fixtures, furnishings, and equipment pursuant to Section 13(b) below, shall be repaired by Tenant at Tenant's expense.

18. Alterations and Additions.

(a) Tenant shall not make any additions, alterations, or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations, or improvements upon the expiration of the Term and restoring the Premises to the same condition as on the date Tenant took possession. If not so conditioned, it gets returned in its altered state. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion.

Tenant shall pay the costs of any work done on the Premises pursuant to Section 12(a) above, and shall keep the Premises, Building and Project free and clear of liens of any kind or nature. Tenant hereby indemnifies, defends against, and keeps Landlord free and harmless from and against any and all liability, loss, damage, costs, attorneys' fees (of counsel selected by Landlord) and any other expense incurred by Landlord on account of, or as a result of, or due to, claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

(c) Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are, or become, the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

(c) If the cost of the proposed work is in excess of Fifteen Thousand and No/100 Dollars (\$15,000.00), Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond or deposit in an amount equal to one hundred percent (100%) the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanics and materialmen's liens and to insure timely completion of the work. Nothing contained in this Section 12(c) shall relieve Tenant of its obligation under Section 12(b) above to keep the Premises, Building and Project free of all liens.

(d) Unless their removal is required by Landlord, as provided in Section 12(a) above, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which may be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13(b) below.

19. Leasehold Improvements; Tenant's Property.

(a) All fixtures, equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of or during the Term, whether or not by, or at the expense of, Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises; shall be the property of Landlord; and shall not be removed by Tenant, except as expressly provided in Section 11.6 and in Section 13(b).

(b) All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building or the Premises, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair, at its sole cost and expense, and to Landlord's satisfaction, any and all damage to the Premises or to the Building resulting from such removal.

20. Certain Rights Reserved by Landlord.

Landlord reserves the following rights, exercisable without liability to Tenant for (i) damage or injury to property, person, or business, (ii) causing an actual or constructive eviction from the Premises, or (iii) disturbing Tenant's use or possession of the Premises:

- (a) to name the Building and Project and to change the name or street address of the Building or Project;
- (b) install and maintain all signs on the exterior and interior of the Building and Project;
- (c) to have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes;
- (d) at any time during the Term, and on a reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six (6) months of the Term, to show the Premises to prospective tenants thereof; and
- (e) to enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its reasonable, good faith efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

21. Assignment and Subletting.

Tenant acknowledges that Landlord has entered into this Lease in reliance on Tenant's creditworthiness, reputation, and ability to operate the Premises for the purposes set forth in Section 8 above. No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as specifically provided in this Section 15.

(a) Tenant is prohibited from entering into an assignment or sublease if the proposed assignee or subtenant is currently leasing space in the Building or in any of Landlord's real estate portfolio, or if Landlord, or its agent, is then negotiating with, or from whom Landlord or its agent has been given or received any written or oral proposal within the past 12 months, regarding a lease of space in the Building or Landlord's real estate portfolio.

(b) Tenant shall not, without the prior consent of Landlord, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

(c) If, at any time or from time to time during the Term, Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give written notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant's notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:

(i) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld, and Tenant shall furnish sufficient information to Landlord so that Landlord may make a reasonable determination as to the creditworthiness and reputation of the proposed assignee or subtenant;

(ii) the assignment or sublease shall be on the same terms set forth in the notice given to Landlord and true and correct copies of all documentation proposed to evidence any such assignment or sublease shall be furnished to Landlord;

(iii) no assignment or sublease shall be valid and no assignee or sublessees shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;

(iv) no assignee or sublessee shall have a further right to assign or sublet except on the terms herein contained;

(v) any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however, denominated under the assignment or sublease, which exceed, in the aggregate, (1) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) plus (2) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as Additional Rent under this Lease without affecting or reducing any other obligations of Tenant hereunder; and

(vi) any such assignment or sublease shall be specifically subject to all of the terms and conditions of this Lease, and, in the event of an assignment, such assignee shall specifically assume, in writing and in a form satisfactory to Landlord, all of Tenant's rights and obligations hereunder.

(d) Notwithstanding the provisions of Sections 15(a) and 15(b) above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or termination option to Landlord (pursuant to Section 15(b) above), to any corporation which controls, is controlled by, or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern, provided that (1) the assignee or sublessee assumes, in full, the obligations of Tenant under this Lease; (2) Tenant remains fully liable under this Lease; (3) the use of the Premises under Section 8 above remains unchanged; and (4) any successor to Tenant's interest resulting from merger or consolidation has a net worth which is equal to, or greater than, that of the Tenant immediately before such merger or consolidation.

(e) No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter or modify the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant, or successor. Landlord may consent to subsequent assignments of the Lease, sublettings or amendments or modifications to the Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

(f) If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting, or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand pay Landlord an administrative fee of Two Hundred Fifty and No/100 Dollars (\$250.00), plus any reasonable attorneys' fees (of counsel selected by Landlord), reasonably incurred by Landlord in connection with such act or request.

22. Holding Over.

If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of the Tenant's right to possession (a) Tenant shall be deemed a tenant at will; (b) Tenant shall pay one hundred fifty percent (150%) of the Base Rent and Additional Rent last prevailing hereunder, and also shall pay all damages sustained by Landlord, consequential as well as direct, by reason of such remaining in possession after the expiration or termination of this Lease; (c) there shall be no renewal or extension of this Lease by operation of law; and (d) the tenancy at will may be terminated upon thirty (30) days' notice from Landlord; or, at the sole option of Landlord, expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one (1) year on the same terms and conditions as provided in this Lease at the last year Base Rent plus ten percent (10%). The provisions of this Section 16 shall not constitute a waiver by Landlord of any reentry rights of Landlord provided hereunder or by law.

23. **Surrender of Premises.**

(a) Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (1) reasonable wear and tear, (2) loss by fire or other casualty, and (3) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.

(b) If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date, Tenant shall surrender all keys to the Premises.

24. **Destruction or Damage.**

(a) If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements or other casualty, Landlord shall, subject to the provisions of this Section 18, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days of the date on which such casualty occurred. If Landlord determines that repairs can be completed within ninety (90) days, this Lease shall remain in full force and effect, and, provided that such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 18(d) below.

(b) If in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days of the date on which such casualty occurred, Landlord may elect, upon notice to Tenant given within (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 18(a) above. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

(c) If any other portion of the Building or Project is totally destroyed or damaged to the extent that, in Landlord's opinion, repair thereof cannot be completed within ninety (90) days of the date on which such casualty occurred, Landlord may elect, upon notice to Tenant, given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 18(a) above. If Landlord does not elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

(d) If the Premises are to be repaired under this Section 18, Landlord shall repair, at its cost, any injury or damage to the Building and the Work in the Premises, and Tenant shall be responsible, at its sole cost and expense, for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building or Project as a result of any damage from fire or other casualty.

(e) This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement, shall have no application.

25. Eminent Domain.

(a) If the whole of the Building or Premises is condemned or in any other manner taken for any public purpose, this Lease shall terminate as of the date of such condemnation and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (1) Tenant shall have the right to terminate this lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (2) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.

(b) In the event of any taking, partial or whole, all the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment, or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's Property.

(c) In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as reasonably practicable to its condition prior to the condemnation or taking, but only to the extent of the Work. Tenant shall be responsible, at its sole cost and expense for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property.

26. Indemnification.

(a) Tenant shall and hereby does indemnify, defend and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (1) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed or suffered by Tenant to be done in, on or about the Premises; (2) any breach or default by Tenant of any of Tenant's obligations under this Lease; or (3) any negligent or otherwise tortious act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall, at Tenant's expense, and by counsel selected by Landlord, defend Landlord in any action or proceeding arising from any such claim and shall, and hereby does indemnify, defend, and hold Landlord harmless from and against all costs, attorneys' fees, expert witness fees and any other expenses incurred in such action or proceeding, unless any loss is occasioned by Landlord's gross negligence. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause.

(b) Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Project or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant of the Building or Project.

(c) Landlord shall and hereby does, indemnify and hold Tenant harmless from and against any and all claims (1) arising from or out of any occurrence in, upon or at the Common Areas or the occupancy or use of same, or any part thereof, by Landlord, or others, without Limitation with the exception of those matters which stem directly from Tenant's negligence, omissions or intentional acts and (2) arising out of any breach of any warranty or representation of Landlord or default in the performance of any obligation of Landlord under this Lease. [In the event Tenant shall, with no fault on its part, be made a party to any litigation commenced by or against Landlord, then

Landlord shall protect and hold Tenant harmless and pay all costs, expenses and reasonable attorney's fees paid or incurred by Tenant in connection with such litigation.

27. Tenant's Insurance.

(a) All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlord, and, at Landlord's request, any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (1) a cross-liability endorsement, (2) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (3) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payments under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefor. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with evidence of renewal of any such policy (together with evidence of the payment of the premium for such renewal), at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums incurred therefor, together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

(b) Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration or termination of the Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (1) all Leasehold Improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to the provisions of Section 12 above), and (2) trade fixtures, merchandise and other personal property from time to time in, or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this lease following a casualty as set forth herein, the proceeds under (1) shall be paid to Landlord, and the proceeds under (2) above shall be paid to Tenant.

(c) Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration or termination of the Term, Tenant shall procure, pay for and maintain in effect workers' compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation or condition of the Premises and the operations of Tenant in, on or about the Premises, providing personal injury and broad form property damage con to the following limits: General Liability: One Million and No/100 Dollars (\$1,000,000.00) per occurrence, Two Million and No/100 Dollars (\$2,000,000.00) per General Aggregate, and One Million and No/100 Dollars (\$1,000,000.00) combined single limit for bodily injury, death and property damage liability. Tenant shall also maintain a Two Million and No/100 Dollars (\$2,000,000.00) Liability Umbrella. Landlord reserves the right, at its sole discretion, to modify the types and limits of Tenant's insurance requirements.

(d) Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Section 21.

28. Waiver of Subrogation.

Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, on account of loss by, or damage to, the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

29. Subordination and Attornment.

29.1. Subordination of Lease. This Lease, and all rights of Tenant hereunder are and shall be subject and subordinate to all mortgages, or trust deeds in the nature of a mortgage (both collectively referred to hereafter as "mortgages"), which may now or hereafter affect or encumber the Property and/or the Building. This subordination shall likewise apply to each and every advance made, or hereafter to be made, under such mortgages; to all renewals, modifications, replacements, and extensions of such mortgages; and to spreaders and consolidations of such mortgages. This Section 23 shall be self-operative and no further instrument of subordination shall be required. However, in confirmation of such subordination, Tenant shall promptly execute, acknowledge, and deliver any instrument that Landlord, or the holder of any such mortgage (or their respective successors-in-interest), may request in order to evidence such subordination. If Tenant fails to execute, acknowledge, or deliver any such instrument within ten (10) business days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact, which appointment is agreed to be coupled with an interest, to execute and deliver any such instruments for and on behalf of Tenant. Any mortgage to which this Lease is subject and subordinate is hereinafter referred to as a "Superior Mortgage" and the holder of a Superior Mortgage is hereinafter referred to as a "Superior Mortgagee." Notwithstanding the foregoing, at Landlord's election, this Lease may be made senior to the lien of any mortgage, if the mortgagee thereunder so requests.

29.2. Notice in the Event of Default. Upon any default of Landlord, including but not limited to, any act or omission which would give Tenant any right, immediately or after the lapse of a period of time, to cancel or terminate this Lease, to claim a partial or total eviction, or to take any other action hereunder, Tenant shall send, by registered or certified mail, return receipt requested, written notice of such default to Landlord and to each Superior Mortgagee whose name and address shall previously have been furnished to Tenant. Tenant shall not exercise any such right until a thirty (30) day period for remedying such default shall have elapsed following the giving of such notice; provided, however, that if such default cannot reasonably be cured within such thirty (30) day period, then Landlord shall have such additional time to cure such default as is reasonably necessary under the circumstances, exercising good faith and due diligence but in no event more than ninety (90) days. If Landlord fails to cure such default, within the time provided in the immediately preceding sentence, then Tenant shall not exercise any such right until Tenant shall have given, after the expiration of such time, an additional notice of default in the manner described in the immediately preceding sentence, to the Superior Mortgagee, and each of the Superior Mortgagee shall have had an additional thirty (30) days after such additional notice to cure such default; provided that if such default cannot reasonably be cured within such thirty (30)-day period, then the Superior Mortgagee shall have such additional time to cure such default as is reasonably necessary under the circumstances, exercising good faith and due diligence but in no event more than ninety (90) days.

29.3. Successor Landlord. If any Superior Mortgagee shall succeed to the rights of Landlord hereunder, whether through possession or foreclosure action, or otherwise, then, at the request of such party (hereinafter referred to as "Successor Landlord"), Tenant shall attorn to, and recognize, each Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument such Successor Landlord may reasonably request to further evidence such attornment.

30. Estopel Certificates.

Each party agrees, at any time and from time to time, as requested by the other party, to execute and deliver to the other (and to any existing or prospective mortgagee, ground lessor, or purchaser designated by Landlord), within ten (10) days after the written request therefor, a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); certifying the dates to which the Base Rent and Additional Rent have been paid; stating whether or not the other party is in default in performance of any of its obligations under this Lease; and, if so, specifying each such default; and stating whether or not any event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event. Any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the party requesting the certificate and by others with whom such party may be dealing, regardless of independent investigation. Tenant also shall include in any such statements such other information concerning this Lease as Landlord may reasonably request including, but not limited to, the amount of Base Rent and Additional Rent under this Lease, and whether Landlord has completed all improvements to the Premises required under this Lease. If Tenant fails to execute, acknowledge, or deliver any such statement within ten (10) days after request therefor, Tenant hereby irrevocably constitutes and appoints Landlord as Tenant's attorney-in-fact (which appointment is agreed to be coupled with an interest), to execute and deliver any such statements for and on behalf of Tenant.

31. Transfer of Landlord's Interest.

In the event of any sale or transfer by Landlord of the Premises, Building or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises, Building, Project or this Lease occurring after the consummation of such sale or transfer, providing the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any Security Deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the Security Deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto, so long as notice of such transfer is delivered to Tenant.

32. Default.

32.1. Tenant's Default. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (a) if Tenant abandons or vacates the Premises; or
- (b) if Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for ten (10) business days after such payment is due and payable; or
- (c) if Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for ten (10) business days after written notice thereof from Landlord to Tenant; or
- (d) if a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- (e) if Tenant makes a general assignment for the benefit of creditors; or
- (f) if Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within sixty (60) days thereafter, or if, under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of sixty (60) days; or
- (g) if in any proceeding or action in which Tenant is a party, a trustee, receiver, agent, or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- (h) if Tenant is a partnership or consists of more than one (1) person or entity, if any general partner of the partnership or other person or entity is involved in any of the acts or events described in Sections 26.1(d) through (g) above; or
- (i) if Tenant smokes or permits smoking within the Premises; or
- (j) if Tenant fails to supply/maintain to Landlord, a current insurance certificate in accordance with Section 21 (Tenant's Insurance).

32.2. **Remedies.** In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- (a) terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or
- (b) continue this Lease in effect, reenter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- (c) reenter the Premises under the provisions of Section 26.2 (b) above, and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

TENANT EXPRESSLY WAIVES THE SERVICE OF ANY STATUTORY DEMAND OR NOTICE WHICH IS A PREREQUISITE TO LANDLORD'S COMMENCEMENT OF EVICTION PROCEEDINGS AGAINST TENANT. INCLUDING THE DEMANDS AND NOTICES SPECIFIED IN 735 ILCS §§ 5/9-209 AND 5/9-210). TENANT WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LAWSUIT BROUGHT BY LANDLORD TO RECOVER POSSESSION OF THE PREMISES FOLLOWING LANDLORD'S TERMINATION OF THIS LEASE PURSUANT TO THIS SECTION 26.2 OR THE RIGHT OF TENANT TO POSSESSION OF THE PREMISES PURSUANT TO THIS SECTION

26.2 AND ON ANY CLAIM FOR DELINQUENT RENT WHICH LANDLORD MAY JOIN IN ITS LAWSUIT TO RECOVER POSSESSION.

If Landlord reenters the Premises under the provisions of Sections 26.2 (b) and 26.2 (c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any reentry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's property in the Premises and to place such property in storage at a bonded public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting which is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Tenant shall also pay to Landlord, as soon as determined, any cost and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

32.3. **Damages.** Should Landlord elect to terminate this Lease under the provisions of Sections 26.2(a) or 26.2(c) above, Landlord may recover as damages from Tenant the following:

- (a) **Past Rent.** The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus

(b) Rent Prior to Award. The worth at the time of the award by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus [REDACTED]

(c) Rent After Award. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; plus [REDACTED]

(d) Proximately Caused Damages. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (i) retaking possession of the Premises, (ii) maintaining the Premises after Tenant's default, (iii) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (iv) reletting the Premises, including broker's commissions. [REDACTED]

"The worth at the time of the award" as used in Sections 26.3 (a) and 26.3 (b) above, is to be computed by allowing interest at the rate of Prime plus two per cent (2%) per annum. "The worth at the time of the award" as used in Section 26.3 (c) above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%). [REDACTED]

(e) Not a Waiver. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any other breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition unless Landlord gives Tenant written notice of such waiver. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default. [REDACTED]

(f) Curing Tenant's Defaults. If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to), without waiving such default, perform the same for the account and at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefor, together with interest at the rate set forth in Section 6 above. [REDACTED]

(g) Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease, subject to the notice and cure provisions of Section 23.2 above, then Landlord shall be liable to Tenant for any actual damages sustained by Tenant as a direct result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building or Project, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease. [REDACTED]

33. Brokerage Fees.

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except for Tenant's Broker, as identified in Section 2(h) above. Tenant hereby indemnifies, defends, and holds Landlord harmless from any cost, expense, or liability (including costs of suit and reasonable attorneys' fee of counsel selected by Landlord) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant. [REDACTED]

34. Notices.

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if transmitted by facsimile, personally delivered, sent by overnight courier or certified or registered U.S. mail, return receipt requested, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building Manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises, or by email. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices. If mailed, notices shall be deemed given two (2) business days after mailing. If emailed to Tenant, notice shall be deemed given that day. [REDACTED]

35. Government Energy or Utility Controls.

In the event of imposition of federal, state, or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

36. Substitution [Intentionally omitted]

37. Quiet Enjoyment

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

38. Observance of Law.

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will, in any way, conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant.

39. Force Majeure.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Section 33 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

40. Sign Control.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal, or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten {10} business days of written demand by Landlord.

41. Rules and Regulations.

It is the intention of Landlord that the Building shall be operated at all times as a first-class office building, and Tenant covenants that it will not engage in, or permit, any activities which are not consistent with such standard. In furtherance of this purpose, but not in limitation thereof, Tenant agrees to abide by the following rules and regulations, and further agrees that Landlord may make such reasonable changes or additions to such rules and regulations as it may deem necessary or advisable so long as such additions or changes do not discriminate against Tenant, are applied uniformly against all other tenants of the Building, and a copy of any such changes or additions is delivered to Tenant. Landlord shall require adherence to all rules and regulations by all other tenants.

(a) Any sign, lettering, picture, notice, or advertisement installed within the Premises which is visible from the public corridors within the Building shall be installed in such manner, and be of such character and style, as Landlord shall approve, in writing, in its reasonable discretion. No sign, lettering, picture, notice or advertisement shall be placed on any outside window or door or in a position to be visible from outside the Building. Landlord will install Tenant Signage and Tenant shall be added to the Building directory, at Landlord's expense.

(b) Sidewalks, entrances, passages, courts, corridors, halls, elevators, and stairways in and about the Building shall not be obstructed nor shall objects be placed against glass partitions, doors or windows which would be unsightly from the Building's corridors or from the exterior of the Building.

(c) Except as otherwise provided herein, no animals, pets, bicycles, or any other vehicles shall be brought, or permitted to be, in the Building or the Premises with the exception of certified service animals as defined by the Americans with Disabilities Act. While Landlord respects and is compliant with the rules and laws as they relate to service animals, it does not recognize emotional support animals or web issued "support animal" certificates in the "service" capacity.

(d) Room-to-room canvasses to solicit business from other tenants of the Building are not permitted.

(e) Tenant shall not waste electricity, water, or air conditioning. All controls shall be adjusted only by authorized Building personnel.

(f) Tenant shall not utilize the Premises in any manner which would overload the standard heating, ventilating or air conditioning systems of the Building.

(g) Tenant shall not permit the use of any apparatus for sound production or transmission in such manner that the sound so transmitted or produced shall be audible or vibrations shall be detectable beyond the Premises.

(h) Tenant shall not utilize any electronic, radiowave, microwave or other transmitting, receiving or amplification device which would disturb or interfere with any other tenant of the Building or the operation of the Building generally.

(i) Tenant shall not utilize any equipment or apparatus in such manner as to create any magnetic fields or waves which adversely affect or interfere with the operation of any systems or equipment in the Building.

(g) Tenant shall keep all electrical and mechanical apparatus owned by Tenant free of vibration, noise and air waves which may be transmitted beyond the Premises.

(k) All corridor doors shall remain closed at all times.

(l) No locks or similar devices shall be attached to any door except by Landlord and Landlord shall have the right to retain a key to all such locks.

(m) Except in the case of Landlord's or Landlord's employees', agents', or contractors' intentional or, to the extent permitted by law, negligent acts or omissions, Tenant assumes full responsibility of protecting the Premises from theft, robbery, and pilferage. Except during Tenant's normal business hours, Tenant shall keep all doors to the Premises locked and other means of entry to the Premises closed and secured.

(n) Only machinery or mechanical devices of a nature directly related to Tenant's ordinary use of the Premises shall be installed, placed, or used in the Premises and the installation and use of all such machinery and mechanical devices is subject to the other rules contained in this Lease.

(o) Except with the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed, all cleaning, repairing, janitorial, decorating, painting or other services and work in and about the Premises shall be performed only by authorized Building personnel.

(p) Except as otherwise specifically provided herein, safes, furniture, equipment, machines and other large or bulky articles shall be brought to the Building, and into and out of the Premises, at such times, and in such manner, as Landlord shall direct (including the designation of elevator), and at Tenant's sole risk and costs. Prior to Tenant's removal of such articles from the Building, Tenant shall obtain written authorization of the office of the Building and shall present such authorization to a designated employee of Landlord.

(q) Tenant shall not in any manner deface or damage the Building.

(r) Inflammables such as gasoline, kerosene, naphtha and benzene, or explosives or any other articles of an intrinsically dangerous nature are not permitted in the Building or the Premises without Landlord's prior written consent.

(s) Landlord shall advise the Tenant as to the maximum amount of electrical current which can safely be used in the Premises, and shall provide Tenant with a copy of the final electrical drawings for the Premises, taking into account the capacity of the electrical wiring of Building and the Premises and the needs of other tenants, and Tenant shall not use more than such safe capacity. Landlord's consent to the installation of electrical equipment shall, unless Tenant has actual knowledge to the contrary, be deemed to be a determination that said equipment is within such safe capacity.

(t) To the extent permitted by law, Tenant shall not permit picketing or other union activity involving its employees in the Building, except in those locations and subject to time and other constraints as to which Landlord may give its prior written consent, which consent may be withheld in Landlord's sole discretion.

(u) Tenant shall not enter into or upon the roof or basement of the Building or any storage, heating, ventilation, air conditioning, mechanical or elevator machinery housing areas.

(v) Tenant shall not distribute literature, flyers, handouts or pamphlets of any type in any of the common areas of the Building.

(w) Tenant shall not cook, otherwise prepare, or sell any food or beverages in or from the Premises, other than as is reasonably necessary in order to accommodate Tenant's employees.

(x) Tenant shall not permit objectionable odors or vapors to emanate from the Premises.

(y) Tenant shall not place a load upon any floor of the Premises exceeding the floor load capacity for which such floor was designed or allowed by law to carry.

(z) No floor coverings other than those provided for in the plans and specifications for the original space improvements, shall be affixed to any floor in the Premises by means of glue or other adhesive without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed.

(aa) The directories of the Building shall be used exclusively for the display of the name and suite number of the tenants only and will be provided at the expense of the Landlord. Additional names requested by Tenant to be displayed in the directories must be approved by the Landlord and, if approved, will be provided at the expense of the Tenant. Changes in the directory listings requested by the Tenant after the Commencement Date will be submitted to the Landlord for approval, which approval shall not be unreasonably withheld or delayed, and, if approved, will be provided at the expense of the Tenant.

(bb) Tenant shall comply with all applicable laws, ordinances, governmental orders or regulations and applicable orders or directions from any public office or body having jurisdiction, with respect to the Premises, the Building, the Project and its respective use or occupancy thereof. Tenant shall not make or permit any use of the Premises, the Building, or the Project, respectively which is directly or indirectly forbidden by law, ordinance, governmental regulation or order, or direction of applicable public authority, or which may be dangerous to person or property. Further, Tenant shall not cause the Premises to have at any time an occupancy ratio if greater than one person per 100 square feet of net floor area, provided further Tenant shall at all times comply with the ordinances of the City of Chicago regarding the number of persons which can occupy the Premises. As used herein, the term "net floor area" shall mean the floor area within the perimeter of the Premises not including elevators, stairways, other shaft enclosures and portions of the floor area occupied by stationary computer equipment and machinery. In the event Tenant exceeds the permitted occupancy ratio for the Premises, Landlord shall have the option, as one of Landlord's remedies for Tenant's breach, to charge Tenant for any additional operating costs incurred with respect to the Premises or the Building as a result of Tenant's excess occupancy.

(cc) Tenant shall not take or permit to be taken in or out of other entrances of the Building, or take or permit on other elevators, any item normally taken in or out through service doors or in or on freight elevators; and Tenant shall not, whether temporarily, accidentally or otherwise, allow anything to remain in place or store anything in, or obstruct in any way, any sidewalk, court, passageway, entrance or shipping area. Tenant shall lend its full cooperation to keep such areas free from all obstruction and in a clean and sanitary condition, and move all supplies, furniture and equipment as soon as received directly to the Premises, and shall move all such items and waste (other than waste customarily removed by Building employees) that are at any time being taken from the Premises directly to the areas designated for disposal. All courts, passageways, entrances, exits, elevators, escalators, stairways, corridors, halls and roofs are not for the use of the general public and Landlord shall, in all cases, retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided, however, that nothing herein contained shall be construed to prevent such access to persons with whom Tenant deals within the normal course of Tenant's business unless such persons are engaged in illegal activities. Neither Tenant nor any employee or invitee of Tenant shall enter into areas reserved for the exclusive use of Landlord, its employees, or invitees.

(dd) Service requirements of Tenant will be attended to only upon application at the office of the Building. Employees of Landlord shall not perform any work or do anything outside of their duties unless under special instructions from Landlord.

(ee) The toilet rooms, urinals, wash bowls and other apparatus located in the Building shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be

thrown therein, and the expense of any breakage, stonage or damage resulting from the violation of this rule shall be borne by Tenant if Tenant, or its employees or invitees, shall have caused it.

(ff) Landlord reserves the right to exclude or evict from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.

(gg) Except for the exclusive use of Tenant, its employees and invitees, no vending machines of any description shall be installed, maintained, or operated without the written consent of Landlord. Landlord hereby consents to Tenant's use of a commercial coffee service vendor of its choice.

(hh) No smoking is permitted in the building or in Tenant's Premises by Tenant or Tenant's guests, employees, clients, and the like.

(ii) Tenant, its employees or invitees shall not participate in any action that disturbs neighboring tenants. Yelling, screaming, and/or profane language directed towards other tenants, their employees, or other guests of the building shall be considered a violation of Tenant's Lease.

42. Miscellaneous.

42.1. Accord and Satisfaction; Allocation of Payments. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right, in its sole discretion, to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

42.2. Addenda. If any provision contained in any addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.

42.3. Attorneys' Fees. Without limitation, and notwithstanding anything to the contrary contained in this Lease, in the event of any litigation between the parties to this Lease to enforce any provision of this Lease or any right of Landlord hereto, then in addition to any and all sums payable pursuant to this Lease, Tenant shall pay to Landlord any and all costs and expenses, including reasonable attorney's fees and costs, incurred by Landlord, only the event litigation was commenced by Landlord to enforce any provision of this Lease or any right of Landlord hereto.

42.4. Captions; Section Numbers. The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease. All references to Section numbers refer to Sections in this Lease.

42.5. Changes Requested by Lender. Neither Landlord nor Tenant shall unreasonably withhold or delay its respective consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as such changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights, or materially increase any obligations, of the party from whom consent to such change or amendment is requested.

42.6. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois.

42.7. Consent. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, approval or statement of satisfaction.

42.8. Corporate Authority. If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

42.9. Counterparts. This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.

42.10. Execution of Lease. The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation, or an option for, Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Notwithstanding the foregoing, execution of this Lease by Tenant and its return to Landlord shall be binding upon Tenant but shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

42.11. Furnishing of Financial Statements; Tenant's Representations. In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records, and information furnished by Tenant to Landlord in connection with this Lease are true, correct, and complete in all material respects, no more often than annually.

42.12. Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

42.13. Prior Agreements; Amendments. This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

42.14. Recording. Tenant shall not record this Lease or any "short form" memorandum of this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.

42.15. Severability. A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

42.16. Successors and Assigns. This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.

42.17. Time of the Essence. Time is of the essence of this Lease.

42.18. Acceptance of Surrender; Consent. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease. Landlord's consent to or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

42.19. Limitation of Liability. Any liability of Landlord under this Lease shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord, its members, or their respective members, partners, shareholders, officers, directors, agents or employees, in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its members, or their respective members, partners, shareholders, officers, directors, agents or employees. In no event shall Landlord be liable for consequential or special damages as a result of a breach or default under this Lease.

42.20. Noise. Tenant is aware that the primary use of the Building's space is dedicated to office type use and agrees to implement policies and procedures that would be consistent with the Quiet Enjoyment provision (Section 31) of the Lease.

Tenant shall not permit the use of any apparatus for sound production or transmission in such manner that the sound so transmitted or produced shall be audible or vibrations shall be detectable beyond the Premises.

Tenant shall not do, or permit anything to be done, in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Landlord will not allow any activity in the Building that will unreasonably interfere with Building's Tenant's use and enjoyment of the Premises, and will actively pursue all remedies against any tenant of the Building violating the Quiet Enjoyment provision.

In addition, Tenant understands and agrees that the Building is a multi-tenant occupied building and as such, excessive noise shall not emanate from Tenant's Premises that in Landlord's judgement disturbs other tenants in the Building.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

311 W. SUPERIOR, LLC,
an Illinois limited liability company

TENANT:

Cardio Diagnostics Holdings, Inc.
a Delaware Corporation

By: Spectrum Real Estate Properties, Inc.

By: /s/

Name:

Its: Management Agent

By:

Name:

Its:

/s/

Meeshanthini
V. Dogan

Meesha
Dogan

CEO

EXHIBIT A

ADDITIONAL PROVISIONS

1. Landlord's Work. Landlord shall, at Landlord's sole cost and expense and using building standard materials when and where possible, perform general construction improvements to the Premises prior to the Lease Commencement Date as shown on space plan Exhibit D, attached hereto ("Landlord's Work"). In the event of a dispute regarding items as listed below, Landlord's building standard methods and materials shall prevail. In the event that Tenant's provided direction and decisions as it relates to Landlord Work, as described below, and /or Tenant work interferes with Landlord's ability to perform work, Landlord shall not be responsible for any delays. Landlord shall use best efforts to complete work as listed below but cannot be held responsible for supply chain issues and or delays due to the current business environment. Landlord's Work shall include the following general construction improvements to the Premises:

- i. Empty Premises
- ii. Empty storage and clean shelves to remain in Premise
- iii. Remove two wooden partitions.
- iv. Create two new fully enclosed areas as per Exhibit D.
- v. Adjust existing electrical and IT to newly created floor plan as per Exhibit D.
- vi. Paint all drywall surfaces throughout the space with one (1) coat of building standard paint.
- vii. Deep clean premises

Tenant Work: Tenant shall be responsible for its furniture, workstations, and any required phone and data cabling and electrical connections.

A-1

EXHIBIT B
LEGAL DESCRIPTION

Lots 6 to 12 and the West 20 feet of Lot 5 in Block 16 in Butler, Wright, and Webster's Addition to Chicago in the Northeast $\frac{1}{4}$ of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, according to the Plat thereof recorded January 25, 1855, as Document 56461, in Cook County, Illinois.

B-1

EXHIBIT C
INTENTIONALLY OMITTED
C-1

EXHIBIT D

FLOOR PLAN OF PREMISES

Spectrum Real Estate
311 W. Superior Suite 444
4,973 R.S.F.

D-1

EXHIBIT E
BASE RENT AND OTHER PROVISIONS

Period	Base Rent Per Rentable Square Foot	Monthly Installments of Base Rent
*8/1/2023 - 7/31 /2024	\$31.00	\$12,846.92
8/1/2024 - 7/31/2025	\$31.62	\$13,103.85
8/1/2025 - 7/31/2026	\$32.25	\$13,364.93
8/1/2026 - 1/30/2026	\$32.90	\$13,634.31

* August, September, October & November 2023 Monthly Rent shall be Abated

E-1

EXHIBIT F

INTENTIONALLY OMITTED

F-1

EXHIBIT G

COMMENCEMENT LETTER

TO: 311 W. Superior, LLC
c/o Spectrum Real Estate Properties, Inc.
414 N. Orleans, Suite 610 Chicago, IL 60654
Attention: Jerry Lasky

RE: **311 W. Superior, Chicago, Illinois (the "Building")**

The undersigned (the "Tenant"), as tenant under that certain lease (the "Lease") dated _____, 2023, made with **311 W. Superior, LLC**, an Illinois limited liability company (together with its successors and/or assigns, the "Landlord"), covering approximately 4,973 square feet of space at the Landlord's property generally described as 311 W. Superior, Suite 444 in Cook County, Illinois (the "Premises"), hereby certifies as follows:

1. The Tenant has entered into occupancy of the Premises described in the Lease. The Lease is in full force and effect and has not been assigned, modified, supplemented, or amended in any way.
2. The commencement date of the term of the Lease is August 1, 2023. The expiration date of the term of the Lease is November 30, 2026.
3. There are no defaults either by the Tenant or the Landlord thereunder. On this date there are no existing defenses, offsets, claims or credits which the Tenant has against the enforcement of the Lease by the Landlord.
4. All work contemplated to be completed by Landlord in the Lease Agreement has been completed.

EXECUTED as of this _____ day of _____, 2023.

TENANT:

Cardio Diagnostics Holdings, Inc.

a Delaware Corporation

By: _____

Name: _____

Title: _____

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DISCLAIMER

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