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EMERGING VISION INC  
Form 10-Q  
November 15, 2004

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 September 30, 2004

OR

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: 1-14128

EMERGING VISION, INC.  
(Exact name of Registrant as specified in its Charter)

New York  
-----  
(State of Incorporation)

11-3096941  
-----  
(IRS Employer Identification No.)

100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
(Address of Principal Executive Offices, including Zip Code)

(516) 390-2100  
(Registrant's Telephone Number, Including Area Code)

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    X                      No  
      -----                      -----

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

Yes                              No    X  
      -----                              -----

As of November 8, 2004, there were 70,323,698 outstanding shares of the Registrant's Common Stock, par value \$0.01 per share.

Item 1. Financial Statements

EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS

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(In Thousands, Except Share Data)

## ASSETS

### Current assets:

Cash and cash equivalents  
Franchise receivables, net of allowance of \$419 and \$844, respectively  
Other receivables, net of allowance of \$68 and \$118, respectively  
Current portion of franchise notes receivable, net of allowance of \$45 and \$241,  
respectively  
Inventories, net  
Prepaid expenses and other current assets

Total current assets

Property and equipment, net  
Franchise notes and other receivables, net of allowance of \$18 and \$541, respectively  
Goodwill  
Other assets

Total assets

## LIABILITIES AND SHAREHOLDERS' EQUITY

### Current liabilities:

Current portion of long-term debt  
Accounts payable and accrued liabilities  
Payables associated with proxy contest and related litigation  
Accrual for store closings  
Related party borrowings

Total current liabilities

Long-term debt

Related party borrowings

Franchise deposits and other liabilities

Contingencies

### Shareholders' equity:

Preferred stock, \$0.01 par value per share; 5,000,000 shares authorized:  
Senior Convertible Preferred Stock, \$100,000 liquidation preference per share;  
1 share issued and outstanding  
Common stock, \$0.01 par value per share; 150,000,000 shares authorized; 70,506,035  
and 67,682,087 shares issued, respectively, and 70,323,698 and 67,499,750 shares  
outstanding, respectively  
Treasury stock, at cost, 182,337 shares  
Additional paid-in capital  
Accumulated deficit

Total shareholders' equity (deficit)

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Total liabilities and shareholders' equity

The accompanying notes are an integral part of these consolidated balance sheets.

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EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)  
(In Thousands, Except Per Share Data)

	For the Three Months Ended September 30,	
	2004	2003
Revenues:		
Net sales	\$ 1,898	\$ 1,881
Franchise royalties	1,639	1,631
Other franchise related fees	50	51
Interest on franchise notes receivable	18	33
Other income	22	15
Total revenues	3,627	3,611
Costs and expenses:		
Cost of sales	245	188
Selling, general and administrative expenses	2,973	2,868
Costs for proxy contest and related litigation	159	-
Interest expense	21	12
Total costs and expenses	3,398	3,068
Income from continuing operations before provision for income taxes	229	543
Provision for income taxes	-	-
Income from continuing operations	229	543
Income (loss) from discontinued operations	-	56
Net income	\$ 229	\$ 599
Per share information - basic and diluted:		
Income from continuing operations	\$ 0.00	\$ 0.01
Income (loss) from discontinued operations	0.00	0.00
Net income	\$ 0.00	\$ 0.01
Weighted-average number of common shares outstanding - Basic	70,324	79,914

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Diluted

113,826  
=====

100,593  
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The accompanying notes are an integral part of these consolidated statements.

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EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)  
(In Thousands)

	For t
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	20
	-----
Cash flows from operating activities:	
Income from continuing operations	\$
Adjustments to reconcile income from continuing operations to net cash used in operating activities:	
Depreciation and amortization	
Stock-based compensation	
Provision for doubtful accounts	
Gain on settlement of debt	
Amortization of debt discount	
Changes in operating assets and liabilities:	
Franchise and other receivables	
Inventories	
Prepaid expenses and other current assets	
Other assets	
Accounts payable and accrued liabilities	(1,
Payables associated with proxy contest and related litigation	(
Franchise deposits and other liabilities	(
Accrual for store closings	-----
Net cash used in operating activities	-----
Cash flows from investing activities:	
Franchise notes receivable issued	(
Proceeds from franchise and other notes receivable	(
Purchases of property and equipment	-----
Net cash (used in) provided by investing activities	(
Cash flows from financing activities:	
Proceeds from borrowings	(
Payments on borrowings	(
Proceeds from issuance of common stock upon exercise of options and warrants	(
Net proceeds from Rights Offering	-----
Net cash (used in) provided by financing activities	(
Net cash (used in) provided by continuing operations	(
Net cash used in discontinued operations	-----

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Net (decrease) increase in cash and cash equivalents	(
Cash and cash equivalents - beginning of period	1,
Cash and cash equivalents - end of period	\$ 1,
Supplemental disclosures of cash flow information:	
Cash paid during the period for:	
Interest	\$
Taxes	\$

The accompanying notes are an integral part of these consolidated statements.

EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY  
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2004  
(In Thousands, Except Share Data)

	Senior Convertible Preferred Stock Shares	Amount	Common Shares
	-----	-----	-----
BALANCE - DECEMBER 31, 2003 (Audited).....	1	\$ 74	67,682,08
Exercise of stock options and warrants.....	-	-	2,823,94
Issuance of stock warrants.....	-	-	
Net income.....	-	-	
	-----	-----	-----
BALANCE - SEPTEMBER 30, 2004 (Unaudited).....	1	\$ 74	70,506,03
	=====	=====	=====

EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY - (CONTINUED)  
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2004  
(In Thousands, Except Share Data)

	Treasury Stock, at cost Shares	Amount	Additional Paid-In Capital
	-----	-----	-----
BALANCE - DECEMBER 31, 2003 (Audited).....	182,337	\$ (204)	125,987
Exercise of stock options and warrants.....	-	-	78
Issuance of stock warrants.....	-	-	5
Net income.....	-	-	-
	-----	-----	-----

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BALANCE - SEPTEMBER 30, 2004 (Unaudited).....	182,337	\$ (204)	\$126,070	\$
	=====	=====	=====	=====

The accompanying notes are an integral part of this consolidated statement.

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### EMERGING VISION, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

#### NOTE 1 - BASIS OF PRESENTATION:

The accompanying Consolidated Financial Statements of Emerging Vision, Inc. and subsidiaries (collectively, the "Company") have been prepared in accordance with U.S. accounting principles generally accepted for interim financial statement presentation and in accordance with the instructions to Quarterly Reports on Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted for complete financial statement presentation. In the opinion of management, all adjustments for a fair statement of the results of operations and financial position for the interim periods presented have been included. All such adjustments are of a normal recurring nature. This financial information should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in the Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2003. There have been no changes in significant accounting policies since December 31, 2003.

#### NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES:

##### Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with the provisions of SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure - an amendment of SFAS No. 123." This Statement amends SFAS No. 123, "Accounting for Stock-Based Compensation," to provide alternative methods of transition for a voluntary change to the fair value-based method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results of operations.

Stock-based compensation cost of approximately \$5,000 is reflected in net income for the three and nine months ended September 30, 2004. Stock-based compensation cost of approximately \$1,000 is reflected in net income for the three and nine months ended September 30, 2003. The following table illustrates the effect on net income and net income per share as if the fair value method had been applied to all outstanding and unvested awards in each period presented:

Three Months Ended September 30, (In thousands)		Nin S (I
2004	2003	2004
----	----	----

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Net income - as reported	\$ 229	\$ 599	\$ 912
Add: Stock-based compensation expense included in reported net income	5	-	5
Deduct: Stock-based compensation expense determined under fair value method	(6)	(9)	(47)
	-----	-----	-----
Pro forma net income	\$ 228	\$ 590	\$ 870
	=====	=====	=====
Net income per share:			
Basic and diluted - as reported	\$ 0.00	\$ 0.01	\$ 0.01
	=====	=====	=====
Basic and diluted - pro forma	\$ 0.00	\$ 0.01	\$ 0.01
	=====	=====	=====

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### Revenue Recognition

The Company charges franchisees a nonrefundable initial franchise fee. Initial franchise fees are recognized at the time all material services required to be provided by the Company have been substantially performed. Continuing franchise royalty fees are based upon a percentage of the gross revenues generated by each franchised location and are recorded as earned, subject to meeting all of the requirements of SEC Staff Accounting Bulletin ("SAB") No. 103, "Update of Codification of Staff Accounting Bulletins," and SAB 104, "Revenue Recognition." SAB 103 superceded SAB 101, "Revenue Recognition in Financial Statements," and replaced it, as well as other previously issued bulletins, with a codified format for the updated information. SAB 104 revised or rescinded portions of the interpretative guidance included in SAB 103.

The Company derives its revenues from the following three principal sources:

Net sales - Represents sales from eye care products and related services;

Franchise royalties - Represents continuing franchise royalty fees based upon a percentage of the gross revenues generated by each franchised location;

Other franchise related fees - Represents the net gains from the sale of Company-owned store assets to franchisees; and certain fees collected by the Company under the terms of franchise agreements (including, but not limited to, initial franchise fees, transfer fees and renewal fees).

The Company recognizes revenues in accordance with SAB 103 and SAB 104. Accordingly, revenues are recorded when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the Company's price to the buyer is fixed or determinable, and collectibility is reasonably assured. To the extent that collectibility of royalties and/or interest on franchise notes is not reasonably assured, the Company recognizes such revenue when the cash is received.

The Company also follows the provisions of Emerging Issue Task Force ("EITF") Issue 01-09, "Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)," and accordingly, accounts for discounts, coupons and promotions (that are offered to its customers) as a direct reduction of sales.

### Reclassifications

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Certain reclassifications have been made to prior years' consolidated financial statements to conform to current year presentation.

### NOTE 3 - PER SHARE INFORMATION:

In accordance with SFAS No. 128, "Earnings Per Share", basic net income per common share ("Basic EPS") is computed by dividing net income attributable to common shareholders by the weighted-average number of common shares outstanding. Diluted net income per common share ("Diluted EPS") is computed by dividing the net income by the weighted-average number of common shares and dilutive common share equivalents and convertible securities then outstanding. SFAS No. 128 requires the presentation of both Basic EPS and Diluted EPS on the face of the Company's Consolidated Statements of Operations. Common stock equivalents totaling 7,944,153 were excluded from the calculation of Diluted EPS for the three and nine months ended September 30, 2004, as the exercise prices of the stock options and other convertible securities were greater than the average share price for the three and nine months ended September 30, 2004, and, therefore, their inclusion would have been anti-dilutive. Common stock equivalents totaling 9,062,323 were excluded from the calculation for the three and nine months ended September 30, 2003, respectively.

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The following table sets forth the computation of basic and diluted per share information:

	For the Three Months Ended September 30, (In thousands)		For the (
	2004 ----	2003 ----	2004 ----
<b>Numerator:</b>			
Income from continuing operations	\$ 229	\$ 543	\$ 91
Income (loss) from discontinued operations	-	56	
	-----	-----	-----
Net income	\$ 229	\$ 599	\$ 91
	=====	=====	=====
<b>Denominator:</b>			
Weighted average common shares outstanding	70,324	79,914	69,19
Dilutive effect of:			
Stock options and warrants	43,502	286	42,00
Warrants issued in connection with Rights Offering	-	20,393	
	-----	-----	-----
Weighted average common shares outstanding, assuming dilution	113,826	100,593	111,19
	=====	=====	=====
<b>Basic and Diluted Per Share Information:</b>			
Income from continuing operations	\$ 0.00	\$ 0.01	\$ 0.0
Income (loss) from discontinued operations	0.00	0.00	0.0
	-----	-----	-----
Net income	\$ 0.00	\$ 0.01	\$ 0.0
	=====	=====	=====



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### NOTE 4 - ACCRUAL FOR STORE CLOSINGS:

In accordance with SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," the Company records a liability for a cost associated with an exit or disposal activity when the liability is incurred. As of September 30, 2004, \$42,000 remained accrued for store closings on the accompanying Consolidated Balance Sheet. No additional provision was provided during the nine months ended September 30, 2004.

### NOTE 5 - CONTINGENCIES:

#### Litigation

In 1999, Apryl Robinson commenced an action in Kentucky against, among others, the Company, seeking an unspecified amount of damages and alleging numerous claims, including fraud and misrepresentation. The claims that are the subject of this action were subsequently tried in an action in New York that resulted in a judgment in favor of the Company, and against Ms. Robinson and Dr. Larry Joel, a co-defendant in such action. Subsequently, Ms. Robinson and Dr. Joel filed for bankruptcy in Kentucky, and received a discharge from the trustee. Presently, there is a motion pending in the U.S. Bankruptcy Court to vacate Dr. Joel's discharge based upon, among other things, fraud on the Bankruptcy Court. A trial on this motion is anticipated to commence in late 2004.

In 1999, Berenter Greenhouse and Webster, the advertising agency previously utilized by the Company, commenced an action, against the Company, in the New York State Supreme Court, New York County, for amounts alleged to be due for advertising and related fees. The amounts claimed by the plaintiff are in excess of \$200,000. In response to this action, the Company filed counterclaims of approximately \$500,000, based upon estimated overpayments allegedly made by the

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Company pursuant to the agreement previously entered into between the parties. As of the date hereof, these proceedings were still in the discovery stage.

In July 2001, the Company commenced an Arbitration Proceeding, in the Ontario Superior Court of Justice, against Eye-Site, Inc. and Eye Site (Ontario), Ltd., as the makers of two promissory notes (in the aggregate original principal amount of \$600,000) made by one or more of the makers in favor of the Company, as well as against Mohammed Ali, as the guarantor of the obligations of each maker under each note. The notes were issued, by the makers, in connection with the makers' acquisition of a Master Franchise Agreement for the Province of Ontario, Canada, as well as their purchase of the assets of, and a Sterling Optical Center Franchise for, four of the Company's retail optical stores then located in Ontario, Canada. In response, the defendants counterclaimed for damages, in the amount of \$1,500,000, based upon, among other items, alleged misrepresentations made by representatives of the Company in connection with these transactions. The Company believes that it has a meritorious defense to each counterclaim. As of the date hereof, these proceedings were in the discovery stage.

In February 2002, Kaye Scholer, LLP, the law firm previously retained by the Company as its outside counsel, commenced an action in the New York State Supreme Court seeking unpaid legal fees of approximately \$122,000. As of the date hereof, the Company has answered the complaint in such action. The Company believes that it has a meritorious defense to such claim.

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In November 2002, ADD of North Dakota, ADD of Jamestown, Inc., each former franchisees of the Company, and Aron Dinesen, their principal shareholder, commenced an action against the Company, in the United States District Court, District of North Dakota, Southeastern Division, alleging, among other things, that the Company breached certain of its obligations under each of their respective Franchise Agreements. In response thereto, the defendant asserted counterclaims based upon the defendants alleged breach of each such franchise agreement and of certain of the other agreements executed by the defendants in connection therewith. In August 2004, the Court granted the Company's motion for summary judgment on its counterclaims and for dismissal of the plaintiff's claims. The Company currently is seeking to enforce the judgment.

On May 20, 2003, Irondequoit Mall, LLC commenced an action against the Company and Sterling Vision of Irondequoit, Inc. alleging, among other things, that the Company had breached its obligations under its guaranty of the lease for the former Sterling Optical store located in Rochester, New York. The defendants believe that they have a meritorious defense to such action. As of the date hereof, these proceedings were in the discovery stage.

In October 2003, Luzerne Optical Laboratories, Ltd. ("Luzerne") commenced an action against the Company in the Court of Common Pleas of the County of Luzerne, State of Pennsylvania, which action was thereafter removed to the Federal Court, Middle District of Pennsylvania. In this action, plaintiff seeks to recover, from the Company, the approximate sum of \$240,000 for certain laboratory services allegedly provided to the Company. The Company believes that is has a meritorious defense to such action. As of the date hereof, these proceedings were in the discovery stage.

In December 2003, Westminster Mall Company commenced an action against the Company and Sterling Vision of Westminster, Inc., the Company's wholly-owned subsidiary, in the District Court of the County of Jefferson, State of Colorado, in which the plaintiff, as the Landlord of the Company's former Sterling Optical store located in Westminster, Colorado, is seeking, among other things, damages against such subsidiary under the lease for such store in the approximate amount of \$229,000, and damages against the Company under its guaranty of such lease, in the approximate amount of \$110,000. The Landlord was granted a default judgment against such subsidiary, which default judgment was uncontested by such subsidiary. The Company has answered the Landlord's complaint in this action and believes that it has a meritorious defense to such action. As of the date hereof, these proceedings were in the discovery stage.

In April 2004, Rubloff Hastings, LLC commenced an action against the Company, in the District Court of Adams County, Nebraska, in which the plaintiff, as the Landlord of the Company's former Sterling Optical store located in Hastings, Nebraska, was seeking, among other things, damages under the Company's lease for the store in the approximate amount of \$59,000. In November 2004, the Company settled this action with the Landlord, the terms of which provide that the Company pay, to the Landlord, the aggregate sum of

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\$40,000, payable in three consecutive installments, in consideration for Landlord's dismissal of the action, with prejudice, and the exchange of mutual general releases.

In April 2004, Jean Sundstrom, a franchisee of the Company, commenced an action, in the Wisconsin Circuit Court, Winebago County, which action was later removed, on a motion by the Company, to the United States District Court, Eastern District of Wisconsin, against the Company alleging, among other things, that the Company breached certain of its obligations under her franchise agreement. The Company has counterclaims against the plaintiff based upon the

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plaintiff's alleged breach of such franchise agreement and of certain of the other agreements executed by the plaintiff. The Company believed that it had a meritorious defense to plaintiffs' claims in such action. On November 2, 2004, the Court granted the Company's motion to dismiss the action. In addition, the Company commenced, in May 2004, a separate action against plaintiff in the Supreme Court, Nassau County, New York, by expedited procedure, alleging a breach, by plaintiff, of her obligations under certain promissory notes given, by plaintiff, to the Company. In October 2004, the Court granted the Company's motion to enter a default judgment against plaintiff (as defendant in such New York action) on all of the Company's claims raised in such action.

In addition to the foregoing, in the ordinary course of business the Company is a defendant in certain lawsuits alleging various claims incurred, certain of which claims are covered by various insurance policies, subject to certain deductible amounts and maximum policy limits. In the opinion of management, the resolution of these claims should not have a material adverse effect, individually or in the aggregate, upon the Company's business or financial condition. Other than as set forth above, management believes that there are no other legal proceedings, pending or threatened, to which the Company is, or may be, a party, or to which any of its properties are or may be subject to, which, in the opinion of management, will have a material adverse effect on the Company.

Additionally, with respect to the landlord-tenant actions described herein, the Company has already accounted for the estimated possible costs (including possible judgments) associated with such actions as part of accounts payable and accrued liabilities and the accrual for store closings as of September 30, 2004.

### Guarantees

As of September 30, 2004, the Company was a guarantor of certain leases of retail optical stores franchised and subleased to its franchisees. In the event that all of such franchisees defaulted on their respective subleases, the Company would be obligated for aggregate lease obligations of approximately \$4,292,000. The Company continually evaluates the credit-worthiness of its franchisees in order to determine their ability to continue to perform under their respective subleases. Additionally, in the event that a franchisee defaults under its sublease, the Company has the right to take over operation of the respective location and operate as a Company-owned store as well as implementing other remedies against a franchisee.

### NOTE 6 - THE PROXY CONTEST AND RELATED LITIGATION

In May 2004, Benito R. Fernandez, a former director of the Company, and Horizons Investors Corporation ("Horizons"), a company controlled by Mr. Fernandez, commenced an action in New York Supreme Court against the Company and four of his then fellow directors, which action was removed by the Company to the United States District Court for the Eastern District of New York. In their action, the plaintiffs alleged violations of state law arising from the Company's purported failure to provide plaintiffs with a complete and current list of the Company's shareholders, and alleged breaches of fiduciary duty by directors of the Company in connection with the setting of the record date and Annual Meeting.

On June 2, 2004, Mr. Fernandez, through Horizons, filed a preliminary proxy statement with the SEC in opposition to the Company's director nominees, soliciting proxies in support of a slate of six insurgent director nominees hand-picked by Fernandez. On June 16, 2004, Fernandez amended his preliminary proxy statement to, among other things, exclude one of his original nominees from his slate and ultimately filed a definitive proxy statement with the SEC on

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June 25, 2004.

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The Company's 2004 Annual Meeting of Shareholders (the "Annual Meeting") was held on July 14, 2004 and, on July 26, 2004, the independent inspectors of election, IVS Associates, Inc., certified the voting results. The Company's nominees received 36,013,976 (approximately 56.6%) of the votes cast for the contested election of directors. There were 63,582,913 (approximately 90.3%) votes cast at the Annual Meeting out of a possible 70,422,217 voting shares. The insurgent nominees of Horizons, the owner of 23,726,531 (approximately 33.7%) shares of the Company, received only 3,796,925 (approximately 6.0% of the total votes cast) additional votes, for a total of 27,523,456 (approximately 43.3%) of the votes cast.

Accordingly, the Company's director nominees Seymour G. Siegel, Alan Cohen and Harvey Ross have been elected to serve as Class I directors of the Company, for a term of one year expiring in 2005, and Joel L. Gold, Robert Cohen and Christopher G. Payan have been elected as Class II directors of the Company, for a term of two years expiring in 2006.

On July 28, 2004, the aforementioned action was dismissed by Horizons, without prejudice, on consent.

During the three and nine months ended September 30, 2004, the Company incurred approximately \$159,000 and \$580,000, respectively, of costs associated with the proxy contest and related litigation, of which, as of September 30, 2004, approximately \$229,000 remained due and is included in payables associated with proxy contest and related litigation on the accompanying Consolidated Balance Sheet.

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### Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

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This Report contains certain forward-looking statements and information relating to the Company that are based on the beliefs of the Company's management, as well as assumptions made by, and information currently available to, the Company's management. When used in this Report, the words "anticipate", "believe", "estimate", "expect", "there can be no assurance", "may", "could", "would", "might", "intends" and similar expressions, as they relate to the Company or the Company's management, are intended to identify forward-looking statements. Such statements reflect the view of the Company at the date they are made with respect to future events, are not guarantees of future performance and are subject to various risks and uncertainties. These risks and uncertainties may include, among other items: potential conflicts of interest that could occur with certain of our directors; the retention of certain members of our management team; our inability to control the management of our franchised stores; the effects of new federal, state and local regulations that affect the health care industry; insured health plan reimbursement policies and practices with respect to our products and services; our ability to continue to enter favorable arrangements with health care providers; increased competition from other eyewear providers; the general consumer acceptance of refractive laser

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surgery; product demand and market acceptance risks; the effect of general economic conditions; the impact of competitive products, services and pricing; product development, commercialization and technological difficulties; our ability, or lack thereof, to secure additional equity or debt financing in the future, if necessary, due to the potential lack of liquidity of our common stock; the potential limitation on the use of our net operating loss carry-forwards in accordance with Section 382 of the Internal Revenue Code of 1986, as amended, based on certain changes in ownership that have occurred or could in the future occur; the possibility that we will be unable to successfully execute our business plan; and the outcome of pending and future litigation. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein with the forward-looking statements referred to above. The Company does not intend to update these forward-looking statements for the occurrence of events or developments not within the Company's control.

### Results of Operations

For the Three and Nine Months Ended September 30, 2004, as Compared to the  
-----  
Comparable Period in 2003  
-----

Net sales for Company-owned stores, including revenues generated by the Company's wholly-owned subsidiary, VisionCare of California, Inc. ("VCC"), a specialized health care maintenance organization licensed by the State of California Department of Managed Health Care, increased by approximately \$17,000, or 0.9%, to \$1,898,000 for the three months ended September 30, 2004, as compared to \$1,881,000 for the comparable period in 2003, and increased by approximately \$17,000, or 0.3%, to \$5,715,000 for the nine months ended September 30, 2004, as compared to \$5,698,000 for the comparable period in 2003. These increases were primarily due to an increase in membership fees generated by VCC during the three and nine months ended September 30, 2004, offset, in part, by a decrease in Company-owned store sales primarily due to a lower average number of stores in operation during the same comparable period.

As of September 30, 2004, there were 165 stores in operation, consisting of 11 Company-owned stores (including 2 Company-owned stores being managed by franchisees) and 154 franchised stores, as compared to 172 stores in operation as of September 30, 2003, consisting of 13 Company-owned stores (including 6 Company-owned stores being managed by franchisees) and 159 franchised stores. On a same store basis (for those stores that the Company continues to operate as Company-owned stores), comparative net sales decreased by \$55,000, or 6.1%, to \$854,000 for the three months ended September 30, 2004, as compared to \$909,000 for the comparable period in 2003, and decreased by \$205,000, or 7.1%, to \$2,664,000 for the nine months ended September 30, 2004, as compared to \$2,869,000 for the comparable period in 2003. Management believes that the year-to-date decline was a direct result of generally weak sales levels experienced in the upstate New York market, where the majority of the Company-owned stores are located, combined with the effects of employee turnover in certain of the stores.

Franchise royalties increased by \$8,000, or 0.5%, to \$1,639,000 for the three months ended September 30, 2004, as compared to \$1,631,000 for the comparable period in 2003, and increased by \$212,000, or 4.4%, to \$5,040,000 for the nine months ended September 30, 2004, as compared to \$4,828,000 for the comparable period in 2003. Management believes that these increases were a result of a slight increase in franchise sales for the stores that were open during both of the comparable periods, combined with increased levels of field support to franchisees.

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Other franchise related fees (which includes initial franchise fees, renewal fees and fees related to the transfer of store ownership from one franchisee to another) decreased by \$1,000, or 2.0%, to \$50,000 for the three months ended September 30, 2004, as compared to \$51,000 for the comparable period in 2003, and decreased by \$108,000, or 42.0%, to \$149,000 for the nine months ended September 30, 2004, as compared to \$257,000 for the comparable period in 2003. The decrease for the nine months ended September 30, 2004 was directly attributable to the Company entering into thirteen new franchise agreements during the nine months ended September 30, 2003, as opposed to five new franchise agreements during the comparable period in 2004.

Interest on franchise notes receivable decreased by \$15,000, or 45.5%, to \$18,000 for the three months ended September 30, 2004, as compared to \$33,000 for the comparable period in 2003, and decreased \$65,000, or 51.6%, to \$61,000 for the nine months ended September 30, 2004, as compared to \$126,000 for the comparable period in 2003. These decreases were primarily due to numerous franchise notes maturing during the past 12 months with only three and seven new notes, respectively, being generated during the three and nine month periods ended September 30, 2004.

Excluding revenues generated by VCC, the Company's gross profit margin decreased by 7.1%, to 70.3%, for the three months ended September 30, 2004, as compared to 77.4% for the comparable period in 2003, and decreased by 5.9%, to 71.0% for the nine months ended September 30, 2004, as compared to 76.9% for the comparable period in 2003. These decreases were mainly a result of the fact that in 2003, the Company settled liabilities with certain of its vendors at lower amounts than originally anticipated, which had a positive effect on its gross profit margin during the three and nine months ended September 30, 2003. No such settlements occurred in 2004. In the future, the Company's gross profit margin may fluctuate depending upon the extent and timing of changes in the product mix in Company-owned stores, competitive pricing, and promotional incentives.

Selling, general and administrative expenses increased by \$105,000, or 3.7%, to \$2,973,000 for the three months ended September 30, 2004, as compared to \$2,868,000 for the comparable period in 2003, and increased by \$232,000, or 2.7%, to \$8,732,000 for the nine months ended September 30, 2004, as compared to \$8,500,000 for the comparable period in 2003. This was primarily a result of increases in salaries and related expenses of \$96,000 and \$252,000 for the three and nine months ended September 30, 2004, respectively.

Interest expense increased by \$9,000, to \$21,000, for the three months ended September 30, 2004, as compared to \$12,000 for the comparable period in 2003, and decreased by \$116,000, to \$53,000, for the nine months ended September 30, 2004, as compared to \$169,000 for the comparable period in 2003. The decrease was primarily due to the amortization of the discount associated with certain financing during the three and nine months ended September 30, 2003.

### Liquidity and Capital Resources

As of September 30, 2004, the Company had negative working capital of \$744,000 and had cash on hand of \$1,019,000. During the nine months ended September 30, 2004, the Company used \$16,000 of cash in its operating activities. This usage was a primarily a result of a decrease in accounts payable and accrued liabilities of \$1,076,000, offset, in part, by income from continuing operations of \$912,000.

For the nine months ended September 30, 2004, cash flows used in investing activities were \$248,000, principally due to capital expenditures and the issuance of seven franchise promissory notes, offset by proceeds received on the

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Company's franchise notes receivable.

For the nine months ended September 30, 2004, cash flows used in financing activities were \$100,000, principally due to the repayment of the Company's debt and related party borrowings, offset by proceeds received from the exercise of stock options and warrants.

The Company plans to increase its cash flows during the remainder of 2004 and into 2005 and improve store profitability through increased monitoring of store-by-store operations, continuing to reduce administrative overhead expenses where necessary and feasible, actively supporting development programs for franchisees, and adding new franchised stores to the system. Management believes

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that with the successful execution of the aforementioned plans to improve cash flows, its existing cash and the collection of outstanding receivables, there will be sufficient liquidity available for the Company to continue in operation for the ensuing twelve-month period. However, there can be no assurance that the Company will be able to successfully execute the aforementioned plans.

### Future Contractual Obligations

The Company has an employment agreement with its Chief Executive Officer, which extends through February 2005. The employment agreement provides for certain base compensation and other miscellaneous benefits. The employment agreement also provides for an incentive bonus based upon the Company's achievement of certain EBITDA targets, as defined. The aggregate future annual base compensation relating to this employment agreement for the quarter ending December 31, 2004 is approximately \$78,000 and for the period January 1, 2005 through February 2005 is approximately \$33,000.

The Company leases locations for both its Company-owned and franchised stores, as well as its executive and administrative offices. The following table shows the Company's minimum future rental payments for Company-owned stores, executive and administrative offices, as well as for stores leased by the Company and subleased to franchisees (in thousands):

	Total Lease Obligations	Sublease Rentals	Net Ob
October 1, 2004 - September 30, 2005	\$ 4,967	\$ 4,514	\$
October 1, 2005 - September 30, 2006	3,151	2,833	
October 1, 2006 - September 30, 2007	2,149	1,931	
October 1, 2007 - September 30, 2008	1,618	1,455	
October 1, 2008 - September 30, 2009	2,673	2,399	
Thereafter	767	688	
	\$ 15,325	\$ 13,820	\$

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Item 3. Quantitative and Qualitative Disclosures about Market Risk

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The Company presently has outstanding certain equity instruments with beneficial conversion terms. Accordingly, the Company, in the future, could incur non-cash charges to equity (as a result of the exercise of such beneficial conversion terms), which would have a negative impact on future per share calculations.

The Company believes that the level of risk related to its cash equivalents is not material to the Company's financial condition or results of operations.

Item 4. Controls and Procedures

a) Evaluation of Disclosure Controls and Procedures

Based on their evaluation of the Company's disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q, the Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by the Company in such reports is accumulated and communicated to the Company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

b) Changes in Internal Controls

There were no changes that occurred during the fiscal quarter covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

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In November 2004, Rubloff Hastings, LLC's action against the Company was settled for the aggregate sum of \$40,000, in consideration for Landlord's dismissal of the action, with prejudice, and the exchange of mutual general releases.

In November 2004, the United States District Court, Eastern District of Wisconsin granted the Company's motion to dismiss the action commenced by Jean Sundstrom, a franchisee of the Company, where such franchisee alleged, among other things, that the Company breached certain of its obligations under her franchise agreement. In October 2004, the Supreme Court, Nassau County, New York granted the Company's motion to enter a default judgment against such franchisee (as defendant in such New York action) on breach of her obligations under



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certain promissory notes.

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities  
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Not applicable.

Item 3. Defaults Upon Senior Securities  
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Not applicable.

Item 4. Submission of Matters to a Vote of Security Holders  
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Not applicable.

Item 5. Other Information  
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Not applicable.

Item 6. Exhibits and Reports on Form 8-K  
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A. Exhibits

31.1 Certification of Chief Executive Officer pursuant to Securities Exchange Act Rules 13a-14 and 15d-14

31.2 Certification of Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-14 and 15d-14

32.1 Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

B. Reports on Form 8-K

Not applicable.

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SIGNATURES

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

EMERGING VISION, INC.  
(Registrant)

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BY: /s/ Christopher G. Payan

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Christopher G. Payan  
Chief Executive Officer

BY: /s/ Brian P. Alessi

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Brian P. Alessi  
Chief Financial Officer and Treasurer

Dated: November 12, 2004

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Exhibit 31.1

I, Christopher G. Payan, certify that:

1. I have reviewed this Form 10-Q of Emerging Vision, Inc.;
2. Based on my knowledge, this report does not contain any untrue statements 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 period 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)) for the registrant and we 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) 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
  - c) 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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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 registrant's board of directors (or persons performing the equivalent function):

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 controls over financial reporting.

Date: November 12, 2004

/s/ Christopher G. Payan

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Christopher G. Payan  
Chief Executive Officer

Exhibit 31.2

I, Brian P. Alessi, certify that:

1. I have reviewed this Form 10-Q of Emerging Vision, Inc.;

2. Based on my knowledge, this report does not contain any untrue statements 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 period 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)) for the registrant and we 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) 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

c) 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 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

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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 registrant's board of directors (or persons performing the equivalent function):

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 controls over financial reporting.

Date: November 12, 2004

/s/ Brian P. Alessi

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Brian P. Alessi  
Chief Financial Officer

Exhibit 32.1

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

The undersigned hereby certifies, pursuant to, and as required by, 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Emerging Vision, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2004 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 12, 2004

/s/ Christopher G. Payan

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Christopher G. Payan  
Chief Executive Officer

/s/ Brian P. Alessi

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Brian P. Alessi  
Chief Financial Officer

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The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code) and is not being filed as part of the Form 10-Q or as a separate disclosure document.