



**TLC Vision Corporation**

**2008 Annual Report to Stockholders**

Dear Fellow Shareholders:

In 2008, we saw both the tremendous upside of the strategy changes we incorporated in our core centers business in 2007, and the downside of having a core service (LASIK surgery) which is highly dependent on consumer confidence.

We started 2008 with the best quarter in the Company's history. Our first quarter 2008 results were impressive. Refractive Centers revenue was up 14% over the prior year, consolidated net income was up 75%, earnings per diluted share were up 142%, operating cash flow was up 49%, and we reduced our total debt by 6%. The reason for the great quarter was twofold. First, we reaped the benefits of successfully transitioning our refractive centers to a new, robust operating model that we had built in 2007. Secondly, the economy, although challenged, was operating under a consumer confidence index (CCI) of 95 at the start of the year.

It is important to note that laser vision correction demand is a function of consumer discretionary spending. During the April/May timeframe of 2008, we began to notice a significant decline in our Refractive Centers volume. The procedure volume decline continued throughout the rest of the year (as the economy continued to decline from a CCI of 95 to 38 by year end.)

As LASIK procedure volume declined, we acted quickly to reduce our cost structure. Throughout the remainder of the year, we cut \$20 million out of the business. The cost reductions came through:

- A reduction of 18 percent of the workforce
- Lower marketing expenditures
- Mandatory unpaid days off for all employees
- Elimination of all bonuses
- Significant reduction in Capital expenditures

Management was not exempt -- everyone in the Company shared the pain. As a result of these cost reduction measures and the dedication of our employees, we were still able to outperform the industry and gain market share in 2008.

In addition to the dramatic cost reductions we implemented, we benefitted from the diversification in our model. In 2008, 34.5% of our revenue came from services that were reimbursed by third-party insurance or Medicare. This is critical in an economy where discretionary spending slowed dramatically. As a result, we achieved adjusted EBITDA of \$18.6 million for 2008 and operating cash flow of \$15.8 million on the strength of our two diversified businesses, Doctor Services and Eye Care. Doctor Services performed approximately 75,000 total non-LASIK surgeries across 374 hospitals and ambulatory surgery centers. Surgical volume grew by 7%. Our new mobile IntraLase offering continues to help offset the decline in our refractive access procedures.

Vision Source added 202 net new offices bringing their total to 1,934. Revenue per site increased by 5% against an industry that grew 1% and their adjusted EBITDA grew 13.3% from the prior year.

We find ourselves in an unprecedented economic climate in the laser vision correction marketplace. The industry has never operated with a CCI as low as it is today. U.S. laser vision correction volume was approximately 987,000 procedures in 2008, which was a 26% decrease from 2007. 2009 forecasts from industry sources estimate approximately 705,000 procedures, a nearly 29% decline from 2008.

In June of 2007, we entered into an \$85 million term loan to buy back 20 million shares of our stock. At that time the consumer confidence index stood at 108.5 and we were very confident in the changes to our core LASIK centers business, which was confirmed by our performance in the first quarter of 2008. The cash generated in 2007 and 2008, enabled us to de-lever the business.

Obviously, we did not see both the severity and length of the economic downturn and as a result of the economic crisis and the sharp decline in consumer discretionary spending during 2008, the Company's financial performance deteriorated during the fourth quarter causing two events to occur.

First, we recorded a non-cash impairment charge of \$83.5 million that reflects the write-down of mostly intangible assets. Generally accepted accounting principles require us to review the carrying value of our assets at least annually and to perform detailed valuations in situations where market indicators suggest a decline in value. The resulting impairment charge was most heavily weighted in our two refractive businesses that have seen significant declines in volume in 2008. Although we expect the value of these businesses to return as the economy rebounds, generally accepted accounting principles do not allow us to reestablish intangibles previously written off.

Second, the Company fell out of compliance with its primary financial covenants under its credit facility as of December 31, 2008. We remain current on our principal and interest payments and have secured a limited waiver from our lenders with respect to the credit facility through May 31, 2008. This allows the Company time to restructure our loan agreement and provide the Company with a more flexible capital structure reflecting current economic conditions.

As the economy worsened in 2008, we realized that our current capital structure could be significantly challenging. We engaged financial advisors to help us explore various alternatives to restructure the balance sheet to include:

- Selling the entire business or significant assets
- Seeking capital infusions
- Restructuring our current debt

However, market conditions prohibited us from completing any of these alternatives during 2008. We are focused on a number of tasks moving forward including:

- Working constructively with our lenders to create a more flexible capital structure reflective of the challenges within the economy and that will effectively bridge us to an economic rebound
- Continuing to run a very lean organization

We will continue to run a very lean organization in 2009 until we get some signs that the economy will rebound. We have implemented more changes to include a further reduction in force, a suspension of the 401k match and additional cuts in our consumer marketing spend.

With these changes, your management expects to take \$51.5 million in cost out of the business in 2008 and 2009 in response to the economic downturn. We will have to begin spending on consumer marketing at some point, but we strongly believe the rest of the cost reductions will be permanent as we've improved our business processes along the way.

Despite the state of the economy, we still believe we can continue our two year trend of growing faster than the market...or in this case declining less.

As the market leader in each of our businesses, the future of the Company still looks very bright. We took quick and decisive action to protect the Company for the long term. We believe there is a significant pent-up demand for LASIK surgery in the marketplace, where we will continue to perform ahead of the overall market. The operating leverage in our model has improved dramatically over the past 12 months as the cost reductions in staff and overhead are permanent, which will raise our contribution margin more quickly and even higher with volume rebounds.

More importantly, in the short-term, we have two businesses that are less reliant on discretionary spending and continue to drive stable cash flows in a weak economy.

Our mission is to improve lives by improving vision and we accomplish that through:

- Excellent surgeons who continue to support the Company
- Mobilization of technology
- The best technology supported by our largest partner in AMO
- Optometric franchising
- Tiger Woods, who continues to be the most recognized person in the world
- Over 5000 optometrists who trust their patients to TLC
- The best clinical outcomes in the industry

I want to thank Jim Wachtman, *TLCVision's* former CEO, for his dedicated service and significant contribution to the Company. Jim was a driving force in the industry and helped to build TLC as the market leader. We thank Jim for his leadership over the past 13 years and wish him and his family well for the future.

I also want to thank our loyal employees who have given more than their fair share in 2008. We have very talented people here at *TLCVision* who truly care about our mission. I realize that we have asked you, our shareholders, to have tremendous patience as we look towards an economic recovery that will unlock demand and fill our refractive centers once again. We appreciate your patience, and we remain committed to finding the best restructuring alternative for all of our constituents.



James B. Tiffany  
President and Chief Operating Officer

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

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FORM 10-K

FOR THE YEAR ENDED DECEMBER 31, 2008

COMMISSION FILE NUMBER: 0-29302

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TLC VISION CORPORATION  
(Exact name of registrant as specified in its charter)

NEW BRUNSWICK, CANADA  
(State or jurisdiction of  
incorporation or organization)

980151150  
(I.R.S. Employer Identification No.)

5280 SOLAR DRIVE, SUITE 300  
MISSISSAUGA, ONTARIO  
(Address of principal executive offices)  
Registrant's telephone, including area code:

L4W 5M8  
(Zip Code)  
(905) 602-2020

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Common Shares, No Par Value, with common share purchase rights

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

None

NAME OF EACH EXCHANGE ON WHICH REGISTERED:

Nasdaq Global Market  
Toronto Stock Exchange

Indicate by check mark whether the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☐ Yes ☒ No

Indicate by check mark whether the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. ☐ Yes ☒ No

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b(2) of the Exchange Act.  
☐ Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐ Smaller Reporting Company

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 June 30, 2008, the aggregate market value of the registrant's Common Shares held by non-affiliates of the registrant was approximately \$49.8 million.

As of March 23, 2009, there were 50,565,219 shares of the registrant's Common Shares outstanding.

DOCUMENTS INCORPORATED BY REFERENCE:

Definitive Proxy Statement for the Company's 2009 annual shareholders meeting (incorporated in Part III to the extent provided in Items 10, 11, 12, 13 and 14).

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This Annual Report on Form 10-K (herein, together with all amendments, exhibits and schedules hereto, referred to as the "Form 10-K") contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 ("Exchange Act"), which statements may be identified by the use of forward looking terminology, such as "may", "will", "expect", "anticipate", "estimate", "plans" or "continue" or the negative thereof or other variations thereon or comparable terminology referring to future events or results. The Company's actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth elsewhere in this Form 10-K. See "Item 1A. Risk Factors" for cautionary statements identifying important factors with respect to such forward-looking statements, including certain risks and uncertainties, that could cause actual results to differ materially from results referred to in forward-looking statements. The Company operates in a continually changing business environment and new factors emerge from time to time. The Company cannot predict such factors nor can it assess the impact, if any, of such factors on its financial position or results of operations. Accordingly, forward-looking statements should not be relied upon as a predictor of actual results. The Company disclaims any responsibility to update any forward-looking statement provided in the Form 10-K except as required by law. Unless the context indicates or requires otherwise, references in this Form 10-K to "we," "our," "us," the "Company" or "TLCVision" shall mean TLC Vision Corporation and its subsidiaries. References to "\$" or "dollars" shall mean U.S. dollars unless otherwise indicated. References to "Cdn\$" shall mean Canadian dollars. References to the "Commission" shall mean the U.S. Securities and Exchange Commission.

## PART I

### ITEM 1. BUSINESS

#### OVERVIEW

TLC Vision Corporation is an eye care services company dedicated to improving lives through improving vision by providing high-quality care directly to patients and as a partner with their doctors and facilities. The majority of the Company's revenues come from owning and operating refractive centers that employ laser technologies to treat common refractive vision disorders such as myopia (nearsightedness), hyperopia (farsightedness) and astigmatism. In its doctor services business, the Company furnishes doctors and medical facilities with mobile or fixed site access to refractive and cataract surgery equipment, supplies, technicians and diagnostic products, as well as owns and manages single-specialty ambulatory surgery centers. In its eye care business, the Company currently provides franchise opportunities to independent optometrists under its Vision Source® brand.

#### LIQUIDITY

The Company relies on the following sources of liquidity to continue to operate as a going concern: (i) cash and cash equivalents on hand; (ii) cash generated from operations; (iii) borrowings under the Company's revolving credit facility; (iv) net proceeds from asset sales; and (v) access to the capital markets. The Company's principal uses of cash are to provide for working capital to fund its operation and to service its debt and other contractual obligations. The changes in financial markets in the late summer and fall of 2008 limited the ability of companies such as TLCVision to access the capital markets. The deepening recession in the fourth quarter of 2008 has had a significant impact on the Company's operations, resulting in a sharp decline in the financial performance. As a result, the Company's liquidity became progressively constrained in the fourth quarter of 2008. The Company has incurred losses from continuing operations of \$98.3 million and \$35.3 million for the years ended December 31, 2008 and 2007, respectively.

Beginning in early 2008, in response to the deteriorated economic environment the Company implemented a series of initiatives to balance its costs of operation with the new lower level of refractive procedures. The Company continues to implement cost reduction and cash generation initiatives, including reductions in headcount, freezing or reducing salaries and benefits, reductions in discretionary spending including direct to consumer marketing, reductions in overhead costs, lower capital spending, the sale of surplus assets and the closure of underperforming refractive centers/mobile refractive routes.

Due to the sharp decline in customer demand during the second half of fiscal 2008, and the resulting decline in sales, the Company's financial performance deteriorated sharply during the fourth quarter of 2008 resulting in the Company's inability to be in compliance with its primary financial covenants under its Credit Facility as of December 31, 2008. See Note 14, "Debt," in the consolidated financial statements for information on the Company's various debt agreements. Furthermore, in the current economic environment, it is unlikely that the Company's financial performance in 2009 will be sufficient to enable it to be in compliance with these covenants for the balance of 2009 unless amended. Accordingly, the Company is in active discussions with the lenders to secure both a short-term financial debt covenant compliance waiver to cure the existing default, as well as further amendments to the Credit Facility to avoid a subsequent default. There can be no assurances that the lenders will grant such waivers or amendments on commercially reasonable terms, if at all.

In light of the existing non-compliance with the financial covenants as of December 31, 2008, and given that it is unlikely that the Company will be in compliance with the covenants currently in the Credit Facility for the balance of 2009 unless amended, borrowings of \$82.7 million under the Credit Facility have been recorded as current liabilities as of December 31, 2008. Accordingly, at December 31, 2008, the Company has a working capital deficiency of approximately \$99.5 million. Subsequent to December 31, 2008, the Company borrowed an additional \$17.4 million under the revolving portion of its Credit Facility raising the total outstanding debt under the Credit Facility to \$100.1 million as of February 28, 2009.

The Company will likely continue to incur operating losses in 2009 and its liquidity remains constrained such that it may not be sufficient to meet the Company's cash operating needs in this period of economic uncertainty. The Company is in active discussions with its lenders to ensure that it has sufficient liquidity in excess of what is available under its Credit Facility, although there is no assurance that the Company can obtain additional liquidity on commercially reasonable terms, if at all. If the Company is unable to obtain or sustain the liquidity required to operate its business the Company may need to seek to modify the terms of its debts and/or to reorganize its capital structure.

The Company's independent registered public accounting firm's report issued in the December 31, 2008 Annual Report on Form 10-K included an explanatory paragraph describing the existence of conditions that raise substantial doubt about the Company's ability to continue as a going concern, including significant losses, limited access to additional liquidity and compliance with certain financial covenants. The financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern.

## REFRACTIVE DISORDERS

The eye is a complex organ composed of many parts, and normal vision requires these parts to work well together. When a person looks at an object, light rays are reflected from the object to the cornea. In response, the cornea and lens refract and focus the light rays directly on the retina. At the retina, the light rays are converted to electrical impulses that are transmitted through the optic nerve to the brain, where the image is translated and perceived.

Any deviation from normal vision is called a refractive error. Myopia, hyperopia, astigmatism and presbyopia are different types of refractive errors.

- Myopia (nearsightedness) means the eye is longer than normal resulting in difficulty seeing distant objects as clearly as near objects.
- Hyperopia (farsightedness) means the eye is shorter than normal resulting in difficulty seeing near objects as clearly as distant objects.
- Astigmatism means the cornea is oval-shaped resulting in blurred vision.
- Presbyopia is the loss of lens and eye muscle flexibility due to the natural aging process, causing difficulty in focusing on near objects and usually corrected by reading glasses. Because vision correction surgery cannot reverse the aging process, presbyopia cannot be corrected surgically. However, there are surgical and non-surgical techniques available that can effectively manage presbyopia.

## TREATMENTS FOR REFRACTIVE DISORDERS

*Eyeglasses.* Eyeglasses remain the most common method of correcting refractive errors because they are safe and relatively inexpensive. Eyeglasses correct nearsightedness and farsightedness by using appropriate lenses to diverge or converge light rays and focus them directly on the retina. The drawbacks of eyeglasses are possible dissatisfaction with personal appearance, inability to participate in certain sports or work activities and possible distortion in visual images when eyeglasses are used to correct large refractive errors.

*Contact Lenses.* Contact lenses correct nearsightedness, farsightedness and astigmatism similarly to eyeglasses. If fitted and used as directed, contact lenses are an effective and safe way to correct refractive errors. However, daily use of contact lenses can result in the increased risk of corneal infections, hypersensitivity reactions and other problems.

*Surgical Procedures.* Vision correction surgery is an elective procedure available that alters the way light rays are focused directly on the retina, thus eliminating or dramatically reducing the need for eyeglasses or contact lenses. Several types of vision correction surgery are available, and prospective patients are encouraged to carefully consider the alternatives, the associated benefits and risks of each procedure, and seek the advice of their eye care professional. Vision correction surgeries available at TLC*Vision* include:

- LASIK (Laser In Situ Keratomileusis). LASIK corrects nearsightedness, farsightedness and astigmatism by using an excimer laser to reshape the cornea. Because LASIK creates a corneal flap to reshape the cornea and does not disrupt the front surface of the cornea, it generally is less painful, has a quicker recovery period and shorter post-operative need for steroid eye drops than other surgical procedures. LASIK is currently the most common laser refractive procedure and may be the treatment of choice for patients desiring a more rapid visual recovery.
- CustomLASIK. Widely introduced in 2003, CustomLASIK is a technologically supported advancement to LASIK. CustomLASIK involves increased pre-operative diagnostic capabilities that measure the eye from front to back using “wavefront” technology to create a three dimensional corneal map. The information from that map guides the laser in customizing the laser ablation to an individual’s visual irregularities, beyond myopia and hyperopia. CustomLASIK using wavefront technology has the potential to improve not only how much a person can see, in terms of visual acuity measured by the standard 20/20 eye chart, but also how well an individual can see in terms of contrast sensitivity and fine detail. This translates to a reduced occurrence of night vision disturbances post-LASIK.
- PRK (Photorefractive Keratectomy). PRK corrects nearsightedness, farsightedness and astigmatism by using an excimer laser to reshape the cornea without making a flap. During PRK, the protective surface layer of the cornea (the epithelium) is removed prior to the laser refractive treatment to reshape the cornea. This protective layer regenerates during the first week after surgery. The risk of pain, infection and corneal scarring is higher with PRK than with LASIK; however, the intra-operative risks are lessened with PRK because no corneal flap is created.
- LASEK (Laser Assisted Sub-Epithelial Keratectomy). LASEK corrects nearsightedness, farsightedness and astigmatism by using an excimer laser to reshape the cornea. Unlike LASIK that creates a corneal flap, LASEK loosens and folds the protective outer layer of the cornea (the epithelium) to the side prior to the laser refractive treatment. At the completion of the laser refractive treatment the epithelium is put back in its original position. This combines the advantages of LASIK with the safety of PRK. The risk of pain, infection and corneal scarring is higher with LASEK than with LASIK; however, the intra-operative risks are lessened with LASEK because the flap which is created is only in the epithelium. The United States Food and Drug Administration (“FDA”) has not yet approved use of the excimer laser for LASEK.
- AK (Astigmatic Keratotomy). AK corrects astigmatism by making microscopic incisions in the cornea to relax and change the shape of the cornea.
- INTACS. INTACS corrects very low levels of nearsightedness (–1.00 diopters to –3.00 diopters) by implanting rings in the cornea to reshape it rather than surgically altering the cornea. INTACS may also be used to correct irregularities in the shape of the cornea caused by some corneal dystrophies.
- CK (Conductive Keratoplasty). For patients age 40 and older, CK is designed for the temporary reduction of farsightedness (+.75 to +3.25 diopters) or treat an aging change to the focusing power of the eye called presbyopia. CK uses radio frequency instead of a laser to reshape the cornea.
- PTK (Phototherapeutic Keratectomy). PTK treats abrasions, scars or other abnormalities of the cornea caused by injury, disease or previous surgery. PTK uses an excimer laser to remove superficial opacities and irregularities of the cornea to improve vision or reduce symptoms of pain or discomfort due to an underlying eye condition.
- Refractive IOL Procedures. Intraocular lenses (IOLs) are permanent or semi-permanent, artificial lenses that are implanted to replace or supplement the eye’s natural crystalline lens. While not a common procedure for correcting refractive errors, the placement of a refractive IOL can help patients who are not candidates for laser refractive surgery. IOLs have been used in the United States since the late 1960s to restore visual function to cataract patients, and more recently are being used in refractive surgery procedures. There are several types of refractive IOLs: phakic IOLs, multi-focal IOLs and accommodating IOLs. Patient suitability and quality of visual outcome for each of these lens options varies.

## LASER CORRECTION PROCEDURES

Excimer laser technology was developed by International Business Machines Corporation in 1976 and has been used in the computer industry for many years to etch sophisticated computer chips. Excimer lasers have the desirable qualities of producing very precise ablation (removal of tissue) without affecting the area outside of the target zone. In 1981, it was shown that the excimer laser could ablate corneal tissue. Each pulse of the excimer laser can remove 0.25 microns of tissue in 12 billionths of a second. The first laser experiment on human eyes was performed in 1985 and the first human eye was treated with the excimer laser in the United States in 1988.

Excimer laser procedures are designed to reshape the outer layers of the cornea to treat vision disorders by changing the curvature of the cornea. Prior to the procedure being performed, the doctor develops a treatment plan taking into consideration the exact

correction required utilizing the results of each individual patient's eye examination and diagnostic tests performed, such as topography and wavefront analysis. The treatment plan is entered into the laser and the software of the excimer laser then calculates the optimal number of pulses needed to achieve the intended corneal correction using a specially developed algorithm. These procedures are performed on an outpatient basis using only topical anesthetic eye drops that promote patient comfort during the procedure. Patients are reclined in a chair, an eyelid holder is inserted to prevent blinking, and the surgeon positions the patient in direct alignment with the fixation target of the excimer laser. The stromal layer of the cornea is exposed either by removing the epithelium (PRK or LASEK) or creating a thin flap of the outermost layer of the cornea using either a femtosecond laser or a microkeratome blade. The surgeon uses a foot switch to apply the excimer beam that emits a rapid succession of excimer laser pulses, and once complete, the flap is returned to its original position. The typical procedure takes 10 to 15 minutes from set-up to completion, with the length of time of the actual excimer laser treatment lasting between 15 to 90 seconds, depending on the amount of correction required.

In order to market an excimer laser for commercial sale in the United States, the manufacturer must obtain pre-market approval from the FDA. An FDA pre-market approval is specific for each laser manufacturer and model and sets out a range of approved indications. However, the FDA is not authorized to regulate the practice of medicine. Therefore, in the same way that doctors often prescribe drugs for "off-label" uses (i.e., uses for which the FDA did not originally approve the drug), a doctor may use a device such as the excimer laser for a procedure or an indication not specifically approved by the FDA, if that doctor determines that it is in the best interest of the patient. The initial FDA pre-market approval for the sale of an excimer laser for refractive procedures was granted in 1995 for the laser of Summit Technologies, Inc. (now Alcon Laboratories, Inc., a division of Nestle, S.A.). That first approval was for the treatment of myopia. To date, the FDA has approved for sale excimer lasers from approximately seven different manufacturers for LASIK and from approximately eight different manufacturers for PRK, including VISX, Inc., a subsidiary of Abbott Medical Optics (formerly Advanced Medical Optics), which is the market leader and the provider of most of the Company's excimer lasers. In Canada and Europe, the use of excimer lasers to perform refractive surgery is not currently subject to regulatory approval, and excimer lasers have been used to treat myopia since 1990 and to treat hyperopia since 1996. The Therapeutic Products Directorate of Health Canada regulates the sale of devices, including excimer lasers used to perform procedures at the Company's Canadian eye care centers.

## THE REFRACTIVE MARKET

While estimates of market size should not be taken as projections of revenues or of the Company's ability to penetrate that market, Market Scope's November 2008 Comprehensive Report on the Refractive Market estimates that the 2009 U.S. refractive market potential is 113 million eyes. To date, based on Market Scope's estimate of the number of people who have had procedures, only an estimated 11.8% of this target population has had laser vision correction.

Estimates by Market Scope indicate that 1.3 million laser vision correction procedures were performed in the United States in 2004, 1.4 million were performed in each of 2005, 2006 and 2007, and 1.0 million were performed in 2008. Market Scope estimates, as of February 2009, that 0.7 million laser vision correction procedures will be performed in 2009.

Laser vision correction procedures are not covered by traditional health care plans and therefore procedure growth remains more a function of consumer discretionary spending. LASIK industry analysts rely on consumer spending patterns, which correlate directly to consumer sentiment, in order to predict industry growth trends. The U.S. Consumer Confidence Index ("CCI") is an indicator designed to measure consumer confidence, which is defined as the degree of optimism on the state of the economy that consumers are expressing through their activities of savings and spending. The CCI fell to an all-time low in December 2008 and continues to deteriorate during early 2009.

There can be no assurance that laser vision correction will be more widely accepted by eye care doctors or the general population as an alternative to existing methods of treating refractive disorders. The acceptance of laser vision correction may be affected adversely by its cost (particularly since laser vision correction is typically not covered fully or at all by government insurers or other third party payors and, therefore, must be paid for primarily by the individual receiving treatment), concerns relating to its safety and effectiveness, general resistance to surgery, the effectiveness of alternative methods of correcting refractive vision disorders, the lack of long-term follow-up data and the possibility of unknown side effects. There can be no assurance that long-term follow-up data will not reveal complications that may have a material adverse effect on the acceptance of laser vision correction. Many consumers may choose not to have laser vision correction due to the availability and promotion of effective and less expensive non-surgical methods for vision correction. Any future reported adverse events or other unfavorable publicity involving patient outcomes from laser vision correction procedures also could adversely affect its acceptance whether or not the procedures are performed at TLCVision eye care centers. Market acceptance also could be affected by regulatory developments. The failure of laser vision correction to achieve continued increased market acceptance would have a material adverse effect on the Company's business, financial condition and results of operations.

## MARKET FOR CATARACT SURGERY

According to Prevent Blindness America, cataracts are a leading cause of blindness among older adults in the United States. More than 20 million Americans age 40 and older have cataracts. The National Eye Institute (“NEI”) states that cataracts are the leading cause of low vision among all Americans, responsible for about 50 percent of all cases. The NEI estimates that the number of adults 40 years and older in the U.S. with cataracts will increase by 47 percent to 30.1 million in 2020. Cataract surgery is the most frequently performed surgery in the United States, with more than 3.0 million Americans undergoing cataract surgery each year. By age 80, more than half of all Americans either have a cataract or have had cataract surgery.

## TLC VISION CORPORATION

TLCVision was originally incorporated by articles of incorporation under the *Business Corporations Act* (Ontario) on May 28, 1993. By articles of amendment dated October 1, 1993, the name of the Company was changed to TLC The Laser Center Inc., and by articles of amendment dated March 22, 1995, certain changes were effected in the issued and authorized capital of the Company with the effect that the authorized capital of the Company became an unlimited number of Common Shares. On September 1, 1998, TLC The Laser Center, Inc. amalgamated under the laws of Ontario with certain wholly owned subsidiaries. By articles of amendment filed November 5, 1999, the Company changed its name to TLC Laser Eye Centers Inc. On May 13, 2002, the Company filed articles of continuance with the province of New Brunswick and changed its name to TLC Vision Corporation. On May 15, 2002, the Company completed its business combination with Laser Vision Centers, Inc., a leading U.S. provider of access to excimer lasers, microkeratomes, cataract equipment and related support services.

## BUSINESS STRATEGY

TLCVision is an eye care services company dedicated to improving lives through improving vision. The Company’s strategy focuses on driving market share growth across its three lines of business.

### Refractive Centers

The Company will focus on growing market share and maintaining earnings and cash generation in its core refractive centers business by maximizing revenues through doctor referrals, managed care contracts, and creative patient acquisition initiatives and by balancing its costs of operations against the resulting unit volume. The consumer-focused strategy, introduced in 2007, is designed to balance doctor referrals and direct to consumer approaches to maximize the likelihood that a potential customer chooses TLC for his/her refractive surgery. Although procedure volume for the Company declined in 2008 due to deteriorating economic conditions, the Company’s volume declined approximately 10% less than the overall industry rate and has outperformed the industry for eight consecutive quarters. These indicators suggest that the Company’s retail-oriented pricing strategy, supported by increased advertising and the successful optometric co-management philosophy, is an attractive combination that facilitates growth in patient volumes well in excess of underlying market growth rates. The primary tenants of this strategy are:

- a retail-oriented pricing strategy that includes an attractive entry-level price point and logical increases tied to technology upgrades;
- direct-to-consumer communication that creates both brand awareness and potential LASIK patients, utilizing broad-reach media, Internet, telephone, direct mail, email, alumni and referral programs;
- a continued commitment to the co-management model, which allows primary care doctors to provide the best clinical outcomes for their patients while retaining them in their practices;
- providing continuing clinical education for our affiliate optometrists, as well as practice development education and tools focused on educating their staffs;
- additional marketing to health plans and health plan members for increased penetration in the managed care market;
- a “best in class” customer contact management center; and
- a continued commitment to a “gold standard” patient experience and high quality patient outcomes.

In addition, with the decline in demand for refractive surgery in 2008 and predictions that this demand may further soften in 2009, the Company has endeavored to balance its costs of operation with the anticipated level of surgeries in its refractive centers. Those cost reductions include reductions in headcount, freezing or reducing salaries and benefits, decreases in discretionary spending including direct to consumer marketing, reductions in overhead costs, and the closure of underperforming refractive centers.

#### Doctors' Services

The doctor services business is dedicated to improving lives through improving vision by providing doctors and facilities with mobile and fixed site access to cataract and refractive surgical equipment supported by the industry's best trained engineers and technicians. The Company focuses on growing its doctor services business by leveraging existing relationships with a significant number of ophthalmologists and optometrists to:

- gain cost efficiencies across all offerings and balance those costs against near-term market demand
- expand the Company's existing service and product offerings; and
- grow the number of mobile customers and seek complementary acquisitions to accelerate this growth.

#### Eye Care

Vision Source® is dedicated to improving lives through improving vision by providing purchasing discounts, practice development and cooperative marketing to independent eye care doctors in support of their patient care requirements. The Company focuses on driving growth in its eye care business by continuing to geographically expand its Vision Source® optometric franchise offering in both the United States and Canada, seeking to offer additional services and programs that ensure the success of its franchisees while exploring opportunities in other professional service offerings.

#### Other Strategic Initiatives Focus

As part of the ongoing assessment of its business, the Company will continue to focus its efforts and capital investments by selling or exiting certain businesses, such as its stand-alone ambulatory surgery centers. The Company will continue to closely monitor profitability and cash flow, with a goal of deploying its capital primarily to: (1) pay down existing debt, (2) invest in new technologies and equipment to maximize unit volumes and better utilize its existing infrastructure, and (3) selectively invest in order to grow the business.

### DESCRIPTION OF REFRACTIVE LASER CENTERS BUSINESS

The Company currently owns and manages refractive laser centers in the United States and Canada. Each center typically has one excimer laser with a select portion of the centers having two or more lasers. The majority of the Company's excimer lasers are manufactured by VISX, a division of Abbott Medical Optics (formerly Advanced Medical Optics). The Company does not have an exclusive manufacturing agreement with VISX as the VISX laser technologies are available on a non-exclusive basis to all LASIK providers.

The Company's centers currently draw upon a variety of patient acquisition strategies that include its co-management referral relationships, health plan programs and direct-to-consumer advertising. Pricing within the centers is generally standardized, with some variation based upon geography, and includes an attractive entry-level price point with logical increases based on technology upgrades. Pricing for most procedures includes pre- and post-operative care and the TLC Lifetime Commitment®.

A typical TLC*Vision* refractive center has between 3,000 and 5,000 square feet of space and is located in a high-end retail, medical or general office building. Although the legal and payment structures can vary from state to state depending upon state and provincial law and market conditions, the Company generally receives revenues in the form of (1) amounts charged to patients for procedures performed at laser centers, (2) management and facility fees paid by doctors who use the TLC*Vision* center to perform laser vision correction procedures and (3) administrative fees for billing and collection services from doctors who co-manage patients treated at the centers. Most TLC*Vision* centers have a clinical director who is an optometrist and oversees the clinical aspects of the center and builds and supports the network of affiliated eye care doctors. Most centers also have a center manager and one or more surgical consultants and patient assistants. The number of staff depends on the activity level of the center. One senior staff person, who is

designated as the center manager, assists in the preparation of the center's annual business plan and supervises the day-to-day operations of the center.

TLCVision has developed proprietary management and administrative software designed to assist eye care professionals in providing high levels of patient care. The software permits TLCVision centers to provide a potential candidate with current information on affiliated doctors throughout North America, to help them locate the closest TLCVision center, to permit tracking of calls and procedures, to coordinate patient and doctor scheduling, and to produce financial and surgical outcome reporting and analysis. The software has been installed in substantially all TLCVision centers. TLCVision also has an online consumer consultation site on its websites ([www.tlcvision.com](http://www.tlcvision.com) and [www.lasik.com](http://www.lasik.com)). This consumer consultation site allows consumers to book their consultation with the Company online. TLCVision also maintains a customer contact management center (1-888-TLC-2020), which is staffed six days a week.

The TLC Lifetime Commitment® program, established in 1997 and offered through TLCVision centers, entitles patients within a certain range of vision correction to have certain enhancement procedures for further correction at no cost at any time during their lifetime, if necessary. To remain eligible for the program patients must have an annual eye exam, at the patient's expense, with a TLCVision affiliated doctor. The purpose of the program is to respond to the infrequent occasion where the patient's sight might regress over time, requiring an enhancement procedure. In addition, the program responds to the doctors' concern that patients may not return for their annual eye examination once their eyes are treated. The Company believes that this program has been well received by both patients and doctors.

### Pricing

In TLC centers, the Company typically charges a per-eye fee that starts as low as \$895 for conventional LASIK using a microkeratome and then escalates to as much as \$2,695 for custom ablation using the IntraLase femtosecond laser for flap creation ("bladeless LASIK"). At TLCVision centers in Canada, the Company typically charges approximately Cdn \$2,000 per eye for LASIK. Most patients typically pay an average of approximately \$1,900 per eye. If the patient receives pre- and post-operative care from a primary care eye doctor, that doctor will typically charge approximately 15% to 20% of the patient fee (\$200 to \$400 depending on the procedure performed); in most cases, the total procedure costs to the patients are often included in a single invoice. Although competitors in certain markets may charge less for these procedures, the Company believes that important factors affecting competition in the laser vision correction market, other than price, are quality of service, reputation and skill of surgeon, customer service reputation, and relationships with affiliated doctors.

The cost of laser vision correction procedures is not covered by provincial health care plans in Canada or reimbursable under Medicare or Medicaid in the United States. However, the Company believes it has positioned itself well in the private insurance and employer market through its "Corporate Advantage" program and its TruVision™ offering, which offers discounts to selected corporations or health plan members and is now available to more than 100 million individuals.

### Co-management Model

The Company has developed and implemented a medical co-management model under which it not only establishes, manages and operates TLCVision centers and provides an array of related support services, but also coordinates the activities of primary care doctors (usually optometrists), who co-manage refractive surgery patients, and refractive surgeons (ophthalmologists), who perform laser vision correction procedures in affiliation with the local center. The primary care doctors assess whether patients are candidates for laser vision correction and provide pre- and post-operative care, including an initial eye examination and follow-up visits. The co-management model permits the surgeon to focus on providing superior laser vision correction surgery while allowing the patient's primary eye care doctor to continue providing care after the patient's surgery is completed. In addition, most TLCVision centers have an optometrist on staff who works to support and expand the local network of affiliated doctors. The staff optometrist provides a range of clinical training and consultation services to affiliated primary care doctors to support these doctors' individual practices and to assist them in providing quality patient care. See "Government Regulation - Regulation of Optometrists and Ophthalmologists."

TLCVision believes that its strong relationships with its affiliated eye care doctors, though non-exclusive, represent an important competitive advantage for its centers.

The Company believes that primary care doctors' relationships with TLCVision and the doctors' acceptance of laser vision correction enhances the doctors' practices. The affiliated eye doctors (usually optometrists) charge fees to assess candidates for laser vision correction and provide pre- and post-operative care, including an initial eye examination and follow-up visits. The primary care doctor's potential revenue loss from sales of contact lenses and eyeglasses may be offset by professional fees earned from both laser vision correction pre- and post-operative care and examinations required under the TLC Lifetime Commitment® program.

### *Sales and Marketing*

While TLC*Vision* believes that many individuals with myopia or hyperopia are potential candidates for laser vision correction, these procedures must compete with corrective eyewear as well as other surgical and non-surgical treatments for these conditions. The decision to have laser vision correction largely represents a choice dictated by an individual's desire to reduce or eliminate their reliance on eyeglasses or contact lenses. The Company therefore seeks to increase its refractive procedure volume and its market penetration through other innovative marketing programs targeted to doctors, to the public directly, and to corporations and health plans.

In support of its strong relationships with its affiliated eye care doctors, a portion of the Company's marketing resources are devoted to joint marketing programs. The Company provides doctors with brochures, videos, posters and other materials that help them educate their patients about laser vision correction. Those doctors who wish to market directly to their patients or the public may receive support from the Company in the development of marketing programs. The Company believes the most effective way to market to doctors is to be perceived as a leader in the eye care industry. To this end, the Company strives to be affiliated with clinical leaders, educate doctors on laser vision and refractive correction, and remain current with new procedures, technology and techniques. The Company also promotes its services to doctors in Canada and the United States through conferences, advertisements in journals, direct marketing, its web sites, newsletters and its support of ophthalmologic and optometric professional associations.

In addition, the Company markets directly to potential patients through a variety of methods, including radio, television and print advertising, Internet sites, direct mail, alumni programs and local market sponsorships. Tiger Woods, world-famous golfer and TLC*Vision* patient, continues to participate in the Company's external marketing efforts, including those aimed directly at the public. The Company uses a variety of traditionally accepted advertising, direct marketing and public relations efforts to reach potential patients. The Company maintains a comprehensive Internet strategy with the goal of having a leading refractive presence on the Internet through TLC*Vision*-owned websites, partnerships and sponsorships with other websites.

### *Contracts with Eye Doctors*

The Company works with a network of eye care doctors (mostly optometrists) in each market in which it operates who perform the pre-operative screening and post-operative care for patients who have had laser vision correction. Those doctors then co-manage their patients with affiliated surgeons, who perform the laser vision correction procedure themselves. In most states and provinces, co-management doctors have the option of charging the patient directly for their services or having the Company collect the fees on their behalf.

Most surgeons performing laser vision correction procedures through a TLC*Vision* center owned, managed or operated by the Company do so under one of three types of standard agreements (as modified for use in the various U.S. states as required by state law). Each agreement typically prohibits surgeons from disclosing confidential information relating to the center, soliciting patients or employees of the center, or participating in any other eye care center within a specified area. However, there can be no assurance that such agreements will be enforceable.

Surgeons must meet the credential requirements of the state or province in which they practice and must receive training approved by the manufacturer of the equipment on which they perform procedures. Surgeons are responsible for maintaining appropriate malpractice insurance and most agree to indemnify the Company and its affiliates for any losses incurred as a result of the surgeon's negligence or malpractice.

Most states prohibit the Company from practicing medicine, employing physicians to practice medicine on the Company's behalf or employing optometrists to render optometric services on the Company's behalf. Because the Company does not practice medicine or optometry, its activities are limited to owning and managing eye care centers and affiliating with other health care providers. Affiliated doctors provide a significant source of patients for laser vision correction at the Company's centers. Accordingly, the success of the Company's operations depends upon its ability to enter into agreements on acceptable terms with a sufficient number of health care providers, including institutions and eye care doctors, to render surgical and other professional services at facilities owned or managed by the Company. There can be no assurance that the Company will be able to enter into or maintain agreements with doctors or other health care providers on satisfactory terms or that such agreements will be profitable to the Company. Failure to enter into or maintain such agreements with a sufficient number of qualified doctors will have a material adverse effect on the Company's business, financial condition and results of operations.

## DESCRIPTION OF DOCTOR SERVICES BUSINESS

TLC*Vision's* doctor services business provides doctors and medical facilities with mobile or fixed-site access to refractive and cataract surgery equipment, supplies, technicians and diagnostic products, as well as owns and manages single-specialty ambulatory surgery centers.

### DESCRIPTION OF MOBILE CATARACT SEGMENT

Through its Sightpath Medical subsidiary, formerly known as Midwest Surgical Services ("MSS"), TLC*Vision* provides mobile and fixed site cataract equipment and related services in approximately 41 states. As of December 31, 2008, Sightpath Medical employed 53 mobile cataract equipment technicians and operated 54 mobile cataract systems. A Sightpath Medical certified surgical technician transports the mobile equipment from one surgery location to the next and prepares the equipment at each stop so that the operating room is ready for cataract surgery. Technicians are also certified to scrub for cataract cases as requested by the surgeon and facility. A typical service offering will include cataract equipment (a phaco emulsifier with back-up, a surgical microscope), the IOL, surgical instruments and supplies. Related services including YAG capsulotomies and SLT lasers treatments are also available.

Cataract patients, the majority of whom are elderly, typically prefer to receive treatment near their homes. Sightpath Medical focuses on developing relationships among local hospitals, referring optometrists and eye surgeons in small to medium-sized markets where Sightpath Medical's shared-access approach and mobile systems make it economically feasible for optometrists and surgeons to provide cataract surgical services that are "close to home."

The Sightpath Medical sales staff focuses on identifying small to medium-sized markets, which usually do not have convenient access to the services of a cataract eye surgeon. After identifying such a market, Sightpath Medical's sales staff will contact the local hospital and local optometrists to develop interest in "close to home" cataract surgery services. When there is sufficient interest, the sales staff brings the hospital and optometrists in contact with an eye surgeon who is willing to provide services to that local market. By bringing these various parties into contact, Sightpath Medical seeks to increase demand for its mobile cataract services and increase convenience for cataract patients.

Sightpath Medical is the exclusive distributor of the Foresee PHP™ in the United States. This preferential hyperacuity perimeter is a diagnostic piece of equipment utilized by optometrists and ophthalmologists for the early detection of "Wet AMD", the leading cause of vision loss for people over age 50 in the United States. According to Macular Degeneration Partnership, there are as many as 15 million Americans affected with the disease. The Foresee PHP™ is an FDA cleared, clinically validated device that detects conversion from intermediate dry AMD to the vision-threatening "wet" form known as Choroidal Neovascularization. Sightpath Medical distributes the Foresee PHP™ out of its Minneapolis, Minnesota location.

Under the standard sales agreement for the Foresee PHP™, Sightpath Medical provides the diagnostic device, a printer to generate reports from the device for the doctor's interpretation, and a motorized table that allows for adjusting the device to each patient. Sightpath Medical also offers an extended warranty for purchase.

### DESCRIPTION OF MOBILE REFRACTIVE SEGMENT

TLC*Vision's* mobile refractive (or access) business provides eye surgeons access to excimer femtosecond laser platforms, microkeratomes, other equipment and value-added support services such as training, technical support and equipment maintenance. TLC*Vision's* access delivery system, located primarily in the United States, utilizes both mobile equipment and fixed-site locations. The Company believes that this flexible delivery system enlarges the pool of potential locations, eye surgeons and patients that it can serve, and allows it to effectively respond to changing market demands.

TLC*Vision's* mobile access systems are typically used by eye surgeons who perform fewer than 30 procedures per month or are in markets where they are able to offer consolidated surgery days to patients. A certified laser technician accompanies each excimer laser from location to location. If an eye surgeon uses the microkeratome service, the Company generally supplies one microkeratome, one accessory kit and a second Company employee, who is certified by the microkeratome manufacturer and acts as a surgical technician.

Mobile laser equipment is provided by means of a proprietary Roll-On/Roll-Off laser system. The Roll-On/Roll-Off laser system, elements of which have been patented, consists of an excimer laser mounted on a motorized air suspension platform. The Roll-On/Roll-Off laser system is transported between locations in a specifically modified truck and allows an excimer laser to be easily moved upon reaching its destination. Due to the design of the Roll-On/Roll-Off system, the laser usually requires only minor adjustments and minimal set-up time at each destination. As of December 31, 2008, TLC*Vision* had 26 Roll-On/Roll-Off systems in operation, all of which were located in the United States.

TLCVision's fixed site lasers are dedicated to single locations where eye surgeons typically perform more than 40 cases per month over several surgery days to maintain a competitive offering for patients. As of December 31, 2008, the Company had approximately 38 U.S. fixed sites. Some fixed sites exclusively serve single practice groups and others are located in ambulatory surgery centers where they can be used by a qualified eye surgeon.

During 2008, the Company expanded its mobile Intralase offering in the United States, activating 5 additional units during the year, for a total of 10 units now active. The Company anticipates that strong demand for this offering could lead to expansion of additional units during 2009.

The Company also provides a broad range of support services to the eye surgeons who use its equipment, including arranging for training of physicians and staff, technical support and equipment maintenance, industry updates and marketing advice, clinical advisory support, patient financing, partnership opportunities and practice satelliting.

Eye surgeons pay TLCVision a fee for each procedure the surgeon performs using the Company's equipment and services. The Company typically provides each piece of equipment to many different eye surgeons, which allows it to more efficiently use the equipment and to offer it at an affordable price. TLCVision refers to its practice of providing equipment to multiple eye surgeons as shared access. This service is generally governed under one of three types of agreements:

- Under standard refractive mobile access agreements with surgeons, TLCVision provides some or all of the following: laser platform and microkeratome equipment, certain related supplies for the equipment (such as laser gases, per procedure cards and microkeratome blades), laser operator, microkeratome technicians, maintenance and certain technology upgrades. In addition, the Company may provide marketing assistance, coordination of surgeon training and other support services. This access is provided on agreed upon dates at either the surgeons' offices or a third party's facility. In return, the surgeons pay a per procedure fee for access services and generally agree to exclusively use TLCVision's equipment for refractive surgery. The Company does not provide medical services to the patients or any administrative services to the access surgeon customer.
- Under standard refractive fixed access agreements with surgeons, TLCVision generally provides the following: a fixed-base laser platform and microkeratome equipment, certain related supplies for the equipment (such as laser gases, per procedure cards and microkeratome blades), periodic maintenance and certain technology upgrades. In return, the surgeons pay either a per procedure fee and guarantee a minimum number of procedures per month, or a flat monthly fee plus the cost of per procedure cards and blades. In addition, the surgeons generally agree to use exclusively TLCVision's equipment for refractive surgery. The Company does not provide a laser operator, microkeratome technician, medical services or any administrative services to the access surgeon customer.
- Under joint venture arrangements, TLCVision directly or indirectly provides either mobile or fixed-base laser access and the following: microkeratome equipment, certain related supplies for the equipment (such as laser gases, per procedure cards and microkeratome blades), laser operator, microkeratome technician, maintenance and certain technology upgrades, the laser facility, management services which include administrative services such as billing and collections, staffing for the refractive practice, marketing assistance and funds and other support services. TLCVision receives an access fee and management services fees in addition to being reimbursed for the direct costs paid by the Company for the laser facility operations. In return, the surgeons generally agree to exclusively use the Company's equipment for refractive surgery and/or not to compete with the Company within a certain area. Neither TLCVision nor the joint ventures provide medical services to the patients.

## DESCRIPTION OF SURGICAL AND SECONDARY CARE CENTER SEGMENT

As of December 31, 2008, TLCVision had a majority ownership in two integrated surgical operations in the state of Michigan and the Philadelphia/western New Jersey metropolitan areas that include both refractive practices and ambulatory surgical centers ("ASCs"). The Company has ownership interests in an additional five free-standing, actively-operating ASCs. ASCs provide outpatient surgery services in a less institutional, more productive and cost-efficient setting than traditional hospitals. The two primary procedures performed in the ASCs are cataract extraction with IOL implantation and YAG capsulotomies. However, the ASCs have the capability to accommodate additional ophthalmic surgical procedures as well as additional procedures such as podiatry and pain control, in certain instances.

During 2008, the Company divested one of its majority owned free-standing ASCs and the Company continues to review potential opportunities to sell additional free-standing ASC investments during 2009.

## DESCRIPTION OF EYE CARE BUSINESS

The Company's eye care business is comprised of two reportable segments, which include the optometric franchising segment and the age-related macular degeneration segment.

### DESCRIPTION OF OPTOMETRIC FRANCHISING SEGMENT

The Company's optometric franchising segment primarily consists of Vision Source®, a majority-owned subsidiary that provides marketing, practice development and purchasing power to independently-owned and operated optometric practices in the United States and Canada. As of December 31, 2008 and 2007, Vision Source® had approximately 1,900 and 1,700 franchisees, respectively, under franchise agreements across North America. In exchange for providing services to its franchisees, Vision Source® received franchise fees equal to a predetermined percentage of gross practice billings. This segment supports the development of independent practices and complements the Company's co-management model.

### DESCRIPTION OF AGE-RELATED MACULAR DEGENERATION ("AMD") SEGMENT

The AMD segment includes the Company's ownership interest in OccuLogix, Inc. ("OccuLogix") a health care company focused on ophthalmic devices for the diagnosis and treatment of age-related eye diseases. During the fourth quarter of 2008, OccuLogix completed a recapitalization that diluted TLCVision's ownership interest from 33% to 8% as of year-end. Until such recapitalization, TLCVision accounted for the operating results of OccuLogix under the equity method of accounting. The Company's investment/equity balance related to OccuLogix was \$0 as of December 31, 2008 and 2007.

## WEBSITE AND AVAILABLE INFORMATION

TLCVision has linked its branded eye care centers, network doctors and potential patients through its websites, [www.tlcvision.com](http://www.tlcvision.com) and [www.lasik.com](http://www.lasik.com), which provide a directory of affiliated eye care providers and contain questions and answers about laser vision correction. TLCVision's corporate website [www.tlcv.com](http://www.tlcv.com) contains information for shareholders and investors.

TLCVision makes available free of charge on or through its website ([www.tlcv.com](http://www.tlcv.com)) its Proxy Statement, Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. The material is made available through the Company's website as soon as reasonably practicable after the material is electronically filed with or furnished to the Commission. All of TLCVision's filings may be read or copied at the SEC's Public Reference Room at 100 F Street, NE, Washington D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet website ([www.sec.gov](http://www.sec.gov)) that contains reports, proxy and information statements regarding issuers that file electronically.

The Company has adopted a Code of Conduct that applies to its principal executive officer, principal financial officer and principal accounting officer, as well as all other employees and Board of Directors. This Code of Conduct and the Company's corporate governance policies are posted on the Company's website [www.tlcv.com](http://www.tlcv.com). The Company intends to satisfy its disclosure requirements regarding amendments to or waivers from its Code of Conduct by posting such information on this website. The charters of the committees of the Company's Board of Directors are available on the Company's website and are also available in print free of charge.

## EQUIPMENT AND CAPITAL FINANCING

The Company primarily utilizes VISX excimer lasers for refractive surgery. See "Laser Correction Procedures" for further details regarding VISX. The Company does not have an exclusive manufacturing agreement with VISX as the VISX laser technologies are available on a non-exclusive basis to all LASIK providers. Based on the availability of cash and financing, the Company expects to upgrade the capabilities of its lasers as technology improves. Although there can be no assurance, the Company believes that, based on the number of existing excimer laser manufacturers, the current inventory levels of those manufacturers is more than adequate for the Company's future operations.

## COMPETITION

### CONSUMER MARKET FOR VISION CORRECTION

Within the consumer market, excimer laser procedures performed at the Company's refractive center and access locations compete with other surgical and non-surgical treatments for refractive disorders, including eyeglasses, contact lenses and other types of refractive surgery and technologies currently available and under development such as corneal rings, intraocular lenses and surgery with different types of lasers. Although the Company believes that eyeglasses and contact lens use will continue to be the most popular form of vision correction in the foreseeable future, as market acceptance for laser vision correction continues to increase, competition within this market will grow. There can be no assurance that the Company's management, operations and marketing plans are or will be successful in meeting this competition. Further, there can be no assurance that the Company's competitors' access to capital, financing or other resources or their market presence will not give these competitors an advantage against the Company. In addition, other surgical and non-surgical techniques to treat vision disorders are currently in use and under development and may prove to be more attractive to consumers than laser vision correction.

### MARKET FOR LASER VISION CORRECTION

Within the consumer market for laser vision correction, the Company continues to face increasing competition from other service providers. As market acceptance for laser vision correction continues to increase, competition within this market may grow. Laser vision correction providers are divided into three major segments: corporate-owned centers; independent surgeon-owned centers; and institution-owned centers. According to Market Scope information for 2008, independent surgeon-owned centers accounted for the largest percentage of total procedure volume in the industry with an approximate 60% market share. Corporate-owned centers accounted for 33% of total procedures performed, which is a decrease over prior year of 6 percentage points. The remaining 7% of laser vision correction procedures were performed at institution-owned centers, such as hospitals or universities.

The Company believes the important factors affecting competition in the laser vision correction market are quality of service, surgeon skill and reputation, awareness through advertising, price and available managed care or corporate discount offerings. The Company believes that its competitiveness is enhanced by a strong network of affiliated doctors. Suppliers of conventional vision correction (eyeglasses and contact lenses), such as optometric chains, also compete with the Company either by marketing alternatives to laser vision correction or by purchasing excimer lasers and offering refractive surgery to their customers. These service providers may have greater marketing and financial resources and experience than the Company and may be able to offer laser vision correction at lower rates. Competition has also increased in part due to the greater availability and lower costs of excimer lasers.

As an elective procedure, overall laser vision correction surgery volumes are constrained by economic conditions in North America, which impact consumer confidence and may leave potential consumers with less disposable income. In addition, it is evident that the market has segmented into two distinct groups of patients who have laser vision correction: (1) value-priced segment and (2) premium-priced segment. Industry trends and research indicate that the value-priced segment (under reasonable economic conditions) is larger and growing faster than the premium-priced segment. However, in a period of economic weakness, these potential customers can be more adversely impacted by unemployment, restricted access to financing and available discretionary funds. The Company's approach to patient acquisition balances its appeal to both the premium and the value-priced segment through its combined consumer-focused approach and optometric co-management philosophy.

TLCVision competes in fragmented geographic markets. The Company's principal corporate competitors include LCA-Vision, Inc. and Lasik Vision Institute, Inc.

## GOVERNMENT REGULATION

### EXCIMER LASER REGULATION

#### United States

Medical devices, such as the excimer lasers used in the Company's U.S. centers, are subject to stringent regulation by the FDA and cannot be marketed for commercial use in the United States until the FDA grants pre-market approval for the device. To obtain a pre-market approval for a medical device, excimer laser manufacturers must file a pre-market approval application that includes clinical data and the results of pre-clinical and other testing sufficient to show that there is a reasonable assurance of safety and effectiveness of their excimer lasers. Human clinical trials must be conducted pursuant to Investigational Device Exemptions issued by the FDA in order to generate data necessary to support a pre-market approval. See "Business – Laser Correction Procedures."

The FDA is not authorized to regulate the practice of medicine, and ophthalmologists, including those affiliated with TLC*Vision* eye care centers, may perform the LASIK procedure using lasers with a pre-market approval for PRK only (off-label use) in an exercise of professional judgment in connection with the practice of medicine.

The use of an excimer laser to treat both eyes on the same day (bilateral treatment) has been neither approved nor prohibited by the FDA. The FDA has stated that it considers the use of the excimer laser for bilateral treatment to be a practice of medicine decision, which the FDA is not authorized to regulate. Ophthalmologists, including those affiliated with the Company's branded eye care centers, widely perform bilateral treatment in an exercise of professional judgment in connection with the practice of medicine. The FDA could seek to challenge this practice in the future.

Any excimer laser manufacturer that obtains pre-market approval for use of its excimer lasers will continue to be subject to regulation by the FDA. Although the FDA does not specifically regulate surgeons' use of excimer lasers, the FDA actively enforces regulations prohibiting marketing of products for non-approved uses and conducts periodic inspections of manufacturers.

Failure to comply with applicable FDA requirements could subject the Company, its affiliated doctors or laser manufacturers to enforcement action, including product seizure, recalls, withdrawal of approvals and civil and criminal penalties, any one or more of which could have a material adverse effect on the Company's business, financial condition and operations. Further, failure to comply with regulatory requirements or any adverse regulatory action, including a reversal of the FDA's current position that the "off-label" use of excimer lasers by doctors outside the FDA-approved guidelines is a practice of medicine decision (which the FDA is not authorized to regulate), could result in a limitation on or prohibition of the Company's use of excimer lasers, which in turn could have a material adverse effect on the Company's business, financial condition and operations.

The marketing and promotion of laser vision correction in the United States are subject to regulation by the FDA and the Federal Trade Commission ("FTC"). The FDA and FTC have released a joint communiqué on the requirements for marketing laser vision correction in compliance with the laws administered by both agencies. The FTC staff also issued more detailed staff guidance on the marketing and promotion of laser vision correction and has been monitoring marketing activities in this area through a non-public inquiry to identify areas that may require further FTC attention.

### Canada

The use of excimer lasers in Canada to perform refractive surgery is not subject to regulatory approval, and excimer lasers have been used to treat myopia since 1990 and hyperopia since 1996. The Therapeutic Products Directorate of Health Canada ("TPD") regulates the sale of devices, including excimer lasers used to perform procedures at the Company's Canadian eye care centers. Pursuant to the regulations prescribed under the Canadian Food and Drugs Act, the TPD may permit manufacturers or importers to sell a certain number of devices to perform procedures provided the devices are used in compliance with specified requirements for investigational testing. Permission to sell the device may be suspended or cancelled where the TPD determines its use endangers the health of patients or users or where the regulations have been violated. Devices may also be sold for use on a non-investigational basis where evidence available in Canada to the manufacturer or importer substantiates the benefits and performance characteristics claimed for the device. The Company believes that the sale of the excimer lasers to its eye care centers, as well as their use at the centers, complies with TPD requirements. Canadian regulatory authorities could impose restrictions, which could have a material adverse effect on the Company's business, financial condition and operations.

## REGULATION OF OPTOMETRISTS AND OPHTHALMOLOGISTS

### United States

The health care industry in the United States is highly regulated. The Company and its operations are subject to extensive federal, state and local laws, rules and regulations, including those prohibiting corporations from practicing medicine and optometry, prohibiting unlawful rebates and division of fees, anti-kickback laws, fee-splitting laws, self-referral laws, laws limiting the manner in which prospective patients may be solicited and professional licensing rules. Approximately 42 states in which the Company currently does business limit or prohibit corporations from practicing medicine and employing or engaging physicians to practice medicine.

The Company has reviewed these laws and regulations with its health care counsel, and although there can be no assurance, the Company believes that its operations currently comply with applicable laws in all material respects. Also, the Company expects that doctors affiliated with TLC*Vision* will comply with such laws in all material respects, although it cannot ensure such compliance by its affiliated doctors.

*Federal Law.* A federal law known as the "anti-kickback statute" prohibits the offer, solicitation, payment or receipt of any remuneration that directly or indirectly is intended to induce or is in return for the referral of patients for or the ordering of items or services reimbursable by Medicare or any other federally financed health care program. This statute also prohibits remuneration intended to induce the purchasing of or arranging for or recommending the purchase or order of any item, good, facility or service for which payment may be made under federal health care programs. This statute has been applied to otherwise legitimate investment interests if even one purpose of the offer to invest is to induce referrals from the investor. Safe harbor regulations provide absolute protection from prosecution for certain categories of relationships that meet all elements of an applicable safe harbor. However, relationships that do not meet all elements of a safe harbor are not illegal per se, but must be reviewed on an individual basis to determine the risk of fraud and abuse to any federal or state funded health care system.

Subject to certain exceptions, federal law also prohibits referrals for the provision of Medicare or Medicaid-covered "designated health services" from a doctor to another entity with which the doctor (or an immediate family member) has a financial relationship (which includes ownership and compensation arrangements). This law, known as the "Stark Law," applies only to referrals made by a doctor and does not apply outside of the Medicare and Medicaid programs or to items or services that are not one of the 11 designated health services.

Laser vision correction is not reimbursable by Medicare, Medicaid or other federal programs. As a result, neither the anti-kickback statute nor the Stark Law applies to the Company's laser vision correction business. However, the Company may be subject to similar state laws that apply regardless of the type of service or the manner of payment.

Doctors affiliated with the Company's ambulatory surgery company (OR Partners, Inc.), the Company's mobile cataract services business (Sightpath Medical, Inc.), or the Company's secondary care centers provide services that are reimbursable under Medicare and Medicaid. Further, ophthalmologists and optometrists co-manage Medicare and Medicaid patients who receive services at the Company's secondary care centers. The co-management model is based, in part, upon the referral by an optometrist for surgical services performed by an ophthalmologist and the provision of pre- and post-operative services by the referring optometrist. The Office of the Inspector General ("OIG") for the Department of Health and Human Services, the government agency responsible for enforcing the anti-kickback statute, has stated publicly that to the extent there is an agreement between optometrists and ophthalmologists to refer back to each other, such an agreement could constitute a violation of the anti-kickback statute. The Company believes, however, that its co-management program does not violate the anti-kickback statute, as patients are given the choice whether to return to the referring optometrist or to stay with the ophthalmologist for post-operative care. Nevertheless, there can be no guarantee that the OIG will agree with the Company's analysis of the law. If the Company's co-management program were challenged as violating the anti-kickback statute and the Company were unsuccessful in defending against such a challenge, then civil or criminal fines and penalties, including exclusion of the Company, the ophthalmologists and the optometrists from the Medicare and Medicaid programs, may be imposed on the Company. The Company could also be required to revise the structure of its co-management program or curtail its activities, any of which could have a material adverse effect upon the Company's business, financial condition and results of operations.

The provision of services covered by the Medicare and Medicaid programs in the Company's ambulatory surgery business, mobile cataract business and secondary care centers also triggers potential application of the Stark Law. The co-management model could establish a financial relationship, as defined in the Stark Law, between the ophthalmologist and the optometrist. Similarly, to the extent that the Company provides any designated health services as defined in the statute, the Stark Law could be triggered as a result of any of the several financial relationships between the Company and ophthalmologists. Based on its current interpretation of the Stark Law as set forth in the interim final rule published in 2004, the Company believes that the referrals from ophthalmologists and optometrists either will be for services that are not designated health care services as defined in the statute or will be covered by an exception to the Stark Law. The government may disagree with the Company's position and there may be changes in the government's interpretation of the Stark Law, including an expansion of the services that constitute "designated health services." In such case, the Company may be subject to civil penalties as well as administrative exclusion and would likely be required to revise the structure of its legal arrangements or curtail its activities, any of which could have a material adverse effect on the Company's business, financial condition and results of operations.

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") were enacted to (a) improve the efficiency and effectiveness of the healthcare system by standardizing the exchange of electronic information for certain administrative and financial transactions and (b) protect the confidentiality and security of health information. HIPAA directed the Department of Health and Human Services to promulgate a set of interlocking regulations to implement the goals of HIPAA. The regulations apply to "covered entities" that include health plans, healthcare clearinghouses and healthcare providers who transmit protected health information ("PHI") in electronic form in connection with certain administrative and billing transactions. These regulations can be divided into the following:

- Privacy Regulations designed to protect and enhance the rights of patients by providing patient access to their PHI and controlling the use of their PHI;
- Security Regulations designed to protect electronic health information by mandating certain physical, technical and administrative safeguards;
- Electronic Transactions and Code Sets Regulations designed to standardize electronic data interchange in the health care industry;
- Standard Unique Employer Identifier Regulations designed to standardize employer identification numbers used in certain electronic transactions; and
- Standard Unique Health Identifier for Health Care Providers Regulations designed to standardize the identification of health care providers used in electronic transactions.

The Company has instituted policies and procedures throughout the Company designed to comply with the Privacy Regulations and other HIPAA regulations. Further, the Company is self-insured and meets the definition of “small” health plan and the Company’s plan sponsor has taken steps to institute policies and procedures to comply with the Privacy Regulations. The Company has implemented employee training programs explaining how the regulations apply to their job role.

*State Law.* In addition to the requirements described above, the regulatory requirements that the Company must satisfy to conduct its business will vary from state to state, and accordingly, the manner of operation by the Company and the degree of control over the delivery of refractive surgery by the Company may differ among the states.

A number of states have enacted laws that prohibit what is known as the corporate practice of medicine. These laws are designed to prevent interference in the medical decision-making process by anyone who is not a licensed physician. Many states have similar restrictions in connection with the practice of optometry. Application of the corporate practice of medicine prohibition varies from state to state. Therefore, while some states may allow a business corporation to exercise significant management responsibilities over the day-to-day operation of a medical or optometric practice, other states may restrict or prohibit such activities. The Company believes that it has structured its relationship with eye care doctors in connection with the operation of eye care centers as well as in connection with its secondary care centers so that they conform to applicable corporate practice of medicine restrictions in all material respects. Nevertheless, if challenged, those relationships may be found to violate a particular state corporate practice of medicine prohibition. Such a finding may require the Company to revise the structure of its legal arrangements or curtail its activities, and this could have a material adverse effect on the Company's business, financial condition and operations.

Many states prohibit a physician from sharing or "splitting" fees with persons or entities not authorized to practice medicine. The Company's co-management model for refractive procedures presumes that a patient will make a single global payment to the laser center, which is a management entity acting on behalf of the ophthalmologist and optometrist to collect fees on their behalf. In turn, the ophthalmologist and optometrist pay facility and management fees to the laser center out of the patient fees collected. While the Company believes that these arrangements do not violate any of the prohibitions in any material respects, one or more states may interpret this structure as non-compliant with the state fee-splitting prohibition, thereby requiring the Company to change its procedures in connection with billing and collecting for services. Violation of state fee-splitting prohibitions may subject the ophthalmologists and optometrists to sanctions, and may result in the Company incurring legal fees, as well as being subjected to fines or other costs, and this could have a material adverse effect on the Company's business, financial condition and operations.

Just as in the case of the federal anti-kickback statute, while the Company believes that it is conforming to applicable state anti-kickback statutes in all material respects, there can be no assurance that each state will agree with the Company's position and not challenge the Company. If the Company were unsuccessful in defending against such a challenge, the result may be civil or criminal fines or penalties for the Company as well as the ophthalmologists and optometrists. Such a result would require the Company to revise the structure of its legal arrangements or curtail its activities, and this could have a material adverse effect on the Company's business, financial condition and operations.

Similarly, just as in the case of the federal Stark Law, while the Company believes that it is operating in compliance with applicable state anti-self-referral laws in all material respects, each state may not agree with the Company's position and there may be a change in the state's interpretation or enforcement of its own law. In such case, the Company may be subject to fines and penalties as well as other administrative sanctions and would likely be required to revise the structure of its legal arrangements or curtail its activities. This could have a material adverse effect on the Company's business, financial condition and operations.

## Canada

Conflict of interest regulations in certain Canadian provinces prohibit optometrists, ophthalmologists or corporations owned or controlled by them from receiving benefits from suppliers of medical goods or services to whom the optometrist or ophthalmologist refers his or her patients. In certain circumstances, these regulations deem it a conflict of interest for an ophthalmologist to order a diagnostic or therapeutic service to be performed by a facility in which the ophthalmologist has any proprietary interest. This does not include a proprietary interest in a publicly traded company not owned or controlled by the ophthalmologist or a member of his/her family. Certain of the Company's eye care centers in Canada are owned and managed by a subsidiary in which affiliated doctors own a minority interest. The Company expects that ophthalmologists and optometrists affiliated with *TLCVision* will comply with the applicable regulations, although it cannot ensure such compliance by doctors.

The laws of certain Canadian provinces prohibit health care professionals from splitting fees with non-health care professionals and prohibit non-licensed entities (such as the Company) from practicing medicine or optometry and, in certain circumstances, from employing physicians or optometrists directly. The Company believes that its operations comply with such laws in all material respects, and expects that doctors affiliated with *TLCVision* centers will comply with such laws, although it cannot ensure such compliance by doctors.

Optometrists and ophthalmologists are subject to varying degrees and types of provincial regulation governing professional misconduct, including restrictions relating to advertising, and in the case of optometrists, a prohibition against exceeding the lawful scope of practice. In Canada, laser vision correction is not within the permitted scope of practice of optometrists. Accordingly, *TLCVision* does not allow optometrists to perform the procedure at *TLCVision* centers in Canada.

## FACILITY LICENSURE AND CERTIFICATE OF NEED

The Company believes that it has all licenses necessary to operate its business. The Company may be required to obtain licenses from a department of health, or a division thereof, in the various states in which it opens eye care centers. There can be no assurance that the Company will be able to obtain facility licenses in all states that may require facility licensure.

Some states require the permission of their department of health, or a division thereof, such as a health planning commission, in the form of a Certificate of Need ("CON") prior to the construction or modification of an ambulatory care facility, such as a laser center, or the purchase of certain medical equipment in excess of an amount set by the state. There can be no assurance that the Company will be able to acquire a CON in all states where a CON is required.

The Company is not aware of any Canadian health regulations that impose facility-licensing requirements on the operation of eye care centers.

## RISK OF NON-COMPLIANCE

Many of these laws and regulations governing the health care industry are ambiguous in nature and have not been definitively interpreted by courts and regulatory authorities. Moreover, state and local laws vary from jurisdiction to jurisdiction. Accordingly, the Company may not always be able to predict clearly how such laws and regulations will be interpreted or applied by courts and regulatory authorities and some of the Company's activities could be challenged. In addition, the regulatory environment in which the Company operates could change significantly in the future. Numerous legislative proposals have been introduced in Congress and in various state legislatures over the past several years that would, if enacted, effect major reforms of the U.S. health care system. The Company cannot predict whether any of these proposals will be adopted and, if adopted, what impact such legislation would have on the Company's business. The Company has reviewed existing laws and regulations with its health care counsel, and although there can be no assurance, the Company believes that its operations currently comply with applicable laws in all material respects. Also, *TLCVision* expects that affiliated doctors will comply with such laws in all material respects, although it cannot assure such compliance by doctors. The Company could be required to revise the structure of its legal arrangements or the structure of its fees, incur substantial legal fees, fines or other costs, or curtail certain of its business activities, reducing the potential profit to the Company of some of its legal arrangements, any of which may have a material adverse effect on the Company's business, financial condition and operations.

## INTELLECTUAL PROPERTY

The Company and its subsidiaries own over 30 trademarks and service marks that are subjects of U.S. federal and/or Canadian registrations or pending applications for registration. In addition, the Company owns a U.S. patent directed to certain aspects of the Laser Vision Centers Roll-On/Roll-Off system, which will expire in November 2016. It also owns a U.S. patent directed to a treatment of a potential side effect of laser vision correction generally known as "central islands," that will expire in May 2014. The Company's service marks, patents and other intellectual property may offer the Company a competitive advantage in the marketplace and could be important to the success of the Company. One or all of the patents, trademarks, service marks or registrations therefore may be challenged, invalidated or circumvented in the future. The Company's pending patent applications are subject to examination by the U.S. Patent and Trademark Office and may not result in an issued patent.

The medical device industry, including the ophthalmic laser sector, has been characterized by substantial litigation in the United States and Canada regarding patents and proprietary rights. There are a number of patents concerning methods and apparatus for performing corneal procedures with excimer lasers. Although the Company currently leases or purchases excimer lasers and other technology from the manufacturers, in the event that the use of an excimer laser or other procedure performed at any of the Company's refractive or secondary care centers is deemed to infringe a patent or other proprietary right, the Company may be prohibited from using the equipment or performing the procedure that is the subject of the patent dispute or may be required to obtain a royalty-bearing license, which may not be available on favorable terms, if at all. The costs associated with any such licensing arrangements may be substantial and could include ongoing royalty payments. In the event that a license is not available, the Company may be required to seek the use of products that do not infringe the patent.

## EMPLOYEES

Including part-time employees, the Company had approximately 1,000 and 1,200 employees as of December 31, 2008 and 2007, respectively. The Company's future growth will be highly dependent upon the skills of its key technical and management personnel both in its corporate offices and in its eye care centers, some of whom would be difficult to replace. There can be no assurance that the Company can retain such personnel or that it can attract or retain other highly qualified personnel in the future. No employee of the Company is represented by a collective bargaining agreement, nor has the Company experienced a work stoppage. The Company considers its relations with its employees to be good. See "Item 1A - Risk Factors - Dependence on Key Personnel."

## ITEM 1A. RISK FACTORS

The following are certain risk factors that could affect the Company, financial results and results of operations. These risk factors should be considered in connection with evaluating the forward-looking statements contained in this Annual Report on Form 10-K because these factors could cause the actual results and conditions to differ materially from those projected in forward-looking statements. The risks that are highlighted here are not the only ones that the Company faces. If any of the risks actually occur, the Company, financial condition or results of operations could be negatively affected. In that case, the trading price of the Company's stock could decline, and *TLCVision's* stockholders may lose all or part of their investment.

### THE COMPANY MAY BE UNABLE TO CONTINUE AS A GOING CONCERN.

The Company relies on the following sources of liquidity to continue to operate as a going concern: (i) cash and cash equivalents on hand; (ii) cash generated from operations; (iii) borrowings under the Company's revolving credit facility; (iv) net proceeds from asset sales; and (v) access to the capital markets. The Company's principal uses of cash are to provide for working capital to fund its operation and to service its debt and other contractual obligations. The changes in financial markets in the late summer and fall of 2008 limited the ability of companies such as *TLCVision* to access the capital markets. The deepening recession in the fourth quarter of 2008 has had a significant impact on the Company's operations, resulting in a sharp decline in demand for refractive surgery and financial performance. As a result, the Company's liquidity became progressively constrained in the fourth quarter of 2008. The Company has incurred losses from continuing operations of \$98.3 million and \$35.3 million for the years ended December 31, 2008 and 2007, respectively.

Beginning in early 2008, in response to the deteriorated economic environment the Company implemented a series of initiatives to balance its costs of operation with the new lower level of refractive procedures. The Company continues to implement cost reduction and cash generation initiatives, including reductions in headcount, freezing or reducing salaries and benefits, reductions in discretionary spending including direct to consumer marketing, reductions in overhead costs, lower capital spending, the sale of surplus assets and the closure of underperforming refractive centers/mobile refractive routes.

Due to the sharp decline in customer demand during the second half of fiscal 2008, and the resulting decline in sales, the Company's financial performance deteriorated sharply during the fourth quarter of 2008 resulting in the Company's inability to be in compliance with its primary financial covenants under its Credit Facility as of December 31, 2008. See Note 14, "Debt," in the consolidated financial statements for information on the Company's various debt agreements. Furthermore, in the current economic environment, it is unlikely that the Company's financial performance in 2009 will be sufficient to enable it to be in compliance with these covenants for the balance of 2009 unless amended. Accordingly, the Company is in active discussions with the lenders to secure both a short-term financial debt covenant compliance waiver to cure the existing default, as well as further amendments to the Credit Facility to avoid a subsequent default. There can be no assurances that the lenders will grant such waivers or amendments on commercially reasonable terms, if at all.

In light of the existing non-compliance with the financial covenants as of December 31, 2008, and given that it is unlikely that the Company will be in compliance with the covenants currently in the Credit Facility for the balance of 2009 unless amended, borrowings of \$82.7 million under the Credit Facility have been recorded as current liabilities as of December 31, 2008. Accordingly, at December 31, 2008, the Company has a working capital deficiency of approximately \$99.5 million. Subsequent to December 31, 2008, the Company borrowed an additional \$17.4 million under the revolving portion of its Credit Facility raising the total outstanding debt under the Credit Facility to \$100.1 million as of February 28, 2009.

The Company will likely continue to incur operating losses in 2009 and its liquidity remains constrained such that it may not be sufficient to meet the Company's cash operating needs in this period of economic uncertainty. The Company is in active discussions with its lenders to ensure that it has sufficient liquidity in excess of what is available under its Credit Facility, although there is no assurance that the Company can obtain additional liquidity on commercially reasonable terms, if at all. If the Company is unable to obtain or sustain the liquidity required to operate its business the Company may need to seek to modify the terms of its debts and/or to reorganize its capital structure.

The Company's independent registered public accounting firm's report issued in the December 31, 2008 Annual Report on Form 10-K included an explanatory paragraph describing the existence of conditions that raise substantial doubt about the Company's ability to continue as a going concern, including significant losses, limited access to additional liquidity and compliance with certain financial covenants. The financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern.

#### CHANGES IN GENERAL ECONOMIC CONDITIONS MAY CAUSE FLUCTUATIONS IN THE COMPANY'S REVENUES AND PROFITABILITY.

During 2008, the United States experienced sharp declines in key economic indicators, including the CCI. The CCI, as reported by the Conference Board, a non-profit business group that is highly regarded by investors and the Federal Reserve, fell from 87.3 at January 2008 to 38.6 at December 2008, and has fallen to a record low estimate of 25.0 as of February 2009. Laser vision correction is generally not reimbursed by health care insurance companies or other third-party payors and is therefore impacted by consumer discretionary spending patterns. As a result, overall U.S. industry-wide demand declined by approximately 26% in 2008, with further declines forecasted for 2009. Accordingly, the Company's operating results may vary based upon the impact of changes in economic conditions and the resulting impact on discretionary spending habits of consumers interested in laser vision correction. If consumer discretionary spend does not rebound or continues to decrease, further declines in procedure levels and revenue may result. In addition, weakened economic conditions, including the distressed credit market, may result in an increase in the number of our customers who experience financial distress, do not qualify for patient financing or declare bankruptcy. A continued decline in the economy could have a material impact on the Company's financial condition and operating results.

#### IF THE COMPANY'S COMMON SHARES AS TRADED ON THE NASDAQ FAIL TO REACH \$1.00 PER SHARE, THE COMPANY'S COMMON SHARES WOULD BE AT RISK OF BEING DELISTED.

The Company's listing on the NASDAQ Global Market ("NASDAQ") is conditioned upon its continued compliance with the Nasdaq Marketplace Rules, including a rule that requires that the minimum bid price per share for its common shares not be less than \$1.00 for 30 consecutive trading days. On October 16, 2008, NASDAQ filed an immediately effective rule change with the SEC to grant a suspension effective until Monday, January 19, 2009, in the enforcement of the Company's minimum bid price and market value requirements. Given the extraordinary market conditions, NASDAQ has extended its suspension until July 20, 2009. All companies that do not meet the minimum bid have the ability to regain compliance, either during the suspension or during the compliance period resuming after the suspension, by achieving a \$1.00 closing bid price for a minimum of 10 consecutive trading days.

If the Company's share price fails to increase significantly prior to July 20, 2009 and fails to comply and cannot remedy its noncompliance during any applicable notice or grace periods, the Company's common shares could be delisted from the Nasdaq Capital Market. The suspension of trading and/or delisting of the Company's common shares could have a material adverse effect on the trading price, volume and marketability of its common stock. Further, if the Company's common shares are delisted, the Company may have difficulties in raising, or may be unable to raise, additional funds with which to operate its business by selling the Company's common stock.

In addition, if the Company's total market capitalization declines further, or if the Toronto Stock Exchange ("TSX") concludes that the Company's financial condition is such that it is questionable as to whether the Company will be able to continue as a going concern, the TSX could suspend trading of and delist the Company's common shares.

#### THE COMPANY HAS REPORTED ACCUMULATED DEFICITS; ITS FUTURE PROFITABILITY IS UNCERTAIN.

For the year ended December 31, 2008, *TLCVision* reported an annual net loss of \$98.3 million and an accumulated deficit balance of \$373.7 million. Management is uncertain as to the profitability level of the Company going forward. The Company's profitability will depend on a number of factors, including:

- macroeconomic conditions in the United States and Canada, including the availability of discretionary income;
- general demand for eye-care services;
- the Company's public image in the marketplace;
- market acceptance of *TLCVision*'s value-oriented pricing strategy;
- the Company's ability to control costs;
- the Company's ability to execute its business strategy;
- the Company's ability to obtain adequate insurance against malpractice claims and reduce the number of claims;
- concerns about the safety and effectiveness of laser vision correction;
- competitive factors;
- regulatory developments;
- the Company's ability to retain and attract qualified personnel; and
- doctors' ability to obtain adequate insurance against malpractice claims at reasonable rates.

#### THE MARKET FOR LASER VISION CORRECTION IS INTENSELY COMPETITIVE AND COMPETITION MAY INCREASE.

Some of the Company's current or future competitors may have greater financial, technical, managerial, marketing and/or other resources and experience than *TLCVision*. The availability of such resources may allow current and future competitors to operate and compete more effectively than the Company. *TLCVision* competes with hospitals, individual ophthalmologists, other corporate laser centers and manufacturers of excimer laser equipment in offering laser vision correction services and/or access to excimer lasers. The Company's principal corporate competitors include LCA-Vision, Inc. and Lasik Vision Institute, Inc.

Competition in the market for laser vision correction could increase as excimer laser surgery becomes more commonplace. In addition, competition would increase if state or provincial laws were amended to permit optometrists, in addition to ophthalmologists, to perform laser vision correction. The Company will compete on the basis of quality of service, surgeon skill, reputation and price. If more providers offer laser vision correction in a given geographic market, the price charged for such procedures may decrease. Competitors have offered laser vision correction at prices considerably lower than *TLCVision*'s prices. The laser vision correction industry has been significantly affected by reductions in the price for laser vision correction. Market conditions may compel the Company to lower prices in its centers to remain competitive and any reduction in its prices may not be offset by an increase in the Company's procedure volume or decreases in costs. A decrease in either the fees or procedures performed at *TLCVision*'s eye care centers or in the number of procedures performed at centers could cause revenues to decline, and business and financial conditions to weaken.

Laser vision correction competes with other surgical and non-surgical means of correcting refractive disorders, including eyeglasses, contact lenses, other types of refractive surgery and other technologies currently available and under development, such as intraocular lenses and surgery with different types of lasers. The Company's management, operations and marketing plans may not be successful in meeting this competition. Certain competitive optometry chains and other suppliers of eyeglasses and contact lenses may have substantially greater financial, technical, managerial, marketing and other resources and experience than *TLCVision* and may promote alternatives to laser vision correction or purchase laser systems and offer laser vision correction to their customers.

If the price of excimer laser systems decreases, additional competition could develop. The price for excimer laser systems could decrease for a number of reasons, including technological innovation and increased competition among laser manufacturers. Further reductions in the price of excimer lasers could reduce demand for the Company's laser access services by making it economically more attractive for eye surgeons to buy excimer lasers rather than utilize our services.

Most affiliated surgeons performing laser vision correction at the Company's centers and significant employees have agreed to restrictions on competing with *TLCVision*, or soliciting patients or employees associated with their facilities; however, these non-competition agreements may not be enforceable.

#### THE MARKET ACCEPTANCE OF LASER VISION CORRECTION IS UNCERTAIN.

The Company believes that the profitability and growth of *TLCVision* will depend upon broad acceptance of laser vision correction in the United States and, to a lesser extent, Canada. The Company may have difficulty generating revenue and growing its business if laser vision correction does not become more widely accepted by the general population as an alternative to existing methods of treating refractive vision disorders. Laser vision correction may not become more widely accepted due to a number of factors, including:

- its cost, particularly since laser vision correction typically is not covered by government or private insurers;
- general resistance to surgery;
- the fact that effective and less expensive alternative methods of correcting refractive vision disorders are widely available;
- the lack of long-term follow-up data;
- the possibility of unknown side effects; and
- reported adverse events or other unfavorable publicity involving patient outcomes from laser vision correction.

#### CONCERNS ABOUT POTENTIAL SIDE EFFECTS AND LONG-TERM RESULTS OF LASER VISION CORRECTION MAY NEGATIVELY IMPACT MARKET ACCEPTANCE OF LASER VISION CORRECTION AND PREVENT THE COMPANY FROM GROWING ITS BUSINESS.

Concerns have been raised with respect to the predictability and stability of results and potential complications or side effects of laser vision correction. Any complications or side effects of laser vision correction may call into question the safety and effectiveness of laser vision correction, which in turn may damage the likelihood of market acceptance of laser vision correction. Complications or side effects of laser vision correction could lead to product liability, malpractice or other claims against the Company. Also, complications or side effects could jeopardize the approval by the FDA of the excimer laser for sale for laser vision correction. Although results of studies show that the majority of patients experienced no serious side effects numerous years after laser vision correction using PRK, complications may be identified in further long-term follow-up studies of PRK. There are no long-term studies on the side effects of LASIK, the procedure more often performed in recent years. However, studies of patients multiple years after LASIK reported the majority of patients had a high overall satisfaction with the procedure.

There is no independent industry source for data on side effects or complications from laser vision correction. In addition, the Company does not track side effects. Some of the possible side effects of laser vision correction are:

- foreign body sensation;
- pain or discomfort;
- sensitivity to bright lights;
- blurred vision;
- dryness or tearing;
- fluctuation in vision;
- night glare;
- poor or reduced visual quality;
- overcorrection or under-correction;
- regression; and
- corneal flap or corneal healing complications.

The Company believes that the percentage of patients who experience serious side effects as a result of laser vision correction at its centers is likely less than 1%. However, there is no study to support this belief.

Laser vision correction may also involve the removal of "Bowman's membrane," an intermediate layer between the outer corneal layer and the middle corneal layer of the eye. Although several studies have demonstrated no significant adverse reactions to excimer laser removal of Bowman's membrane, the long-term effect of the removal of Bowman's membrane on patients is unclear.

## THE COMPANY MAY BE UNABLE TO ENTER INTO OR MAINTAIN AGREEMENTS WITH DOCTORS OR OTHER HEALTH CARE PROVIDERS ON SATISFACTORY TERMS.

TLC*Vision* will have difficulty generating revenue if the Company is unable to enter into or maintain agreements on satisfactory terms with doctors or other health care providers. Most states prohibit the Company from practicing medicine, employing doctors to practice medicine on the Company's behalf, or employing optometrists to render optometric services on the Company's behalf. In most states TLC*Vision* may only own and manage centers and enter into affiliations with doctors and other health care providers. Also, affiliated doctors have provided a significant source of patients for the Company's refractive centers and that is expected to continue. Accordingly, the success of the Company's business depends upon its ability to enter into agreements on acceptable terms with a sufficient number of health care providers, including institutions and eye care doctors to render or arrange surgical and other professional services at facilities TLC*Vision* owns or manages.

## QUARTERLY FLUCTUATIONS IN OPERATING RESULTS MAKE FINANCIAL FORECASTING DIFFICULT.

The Company experienced significant fluctuations in quarterly income during 2008, ranging from first quarter net income of \$6.1 million, to fourth quarter net loss of \$95.4 million. TLC*Vision* may experience future quarterly losses, which may exceed prior quarterly losses. The Company's expense levels will be based, in part, on our expectations as to future revenues. Historically, quarterly results of operations have varied, and future results may continue to fluctuate significantly from quarter to quarter. Accordingly, quarter-to-quarter comparisons of our operating results may not be meaningful and should not be relied upon as indications of our future performance or annual operating results. Quarterly results will depend on numerous factors, including economic conditions in our geographic markets, market acceptance of our services, seasonal factors, availability of capital under our Credit Facility, and other factors described in this Form 10-K.

## THE MARKET PRICE OF TLC*VISION*'S COMMON SHARES MAY BE VOLATILE.

Historically, the market price of the Company's common shares has been volatile. Between December 2002 and April 2004, the market price of the Company's common shares, as traded on the NASDAQ Global Market, increased from a low closing price of \$0.91 to a high closing price of \$12.82. The market price then again decreased, to a low closing price of \$0.14 on December 11, 2008. TLC*Vision*'s common shares will likely be volatile in the future due to industry developments and business-specific factors such as:

- the Company's ability to effectively penetrate the laser vision correction market;
- success of its patient acquisition strategies;
- the Company's ability to execute its business strategy;
- new technological innovations and products;
- changes in government regulations;
- adverse regulatory action;
- public concerns about the safety and effectiveness of laser vision correction;
- loss of key management;
- announcements of non-routine events such as acquisitions or litigation;
- variations in TLC*Vision*'s financial results;
- fluctuations in competitors' stock prices;
- the issuance of new or changed stock market analyst reports and recommendations concerning our common shares or competitors' stock;
- changes in earnings estimates by securities analysts;
- the Company's ability to meet analysts' projections;
- changes in the market for medical services; or
- general economic, political and market conditions.

## THE COMPANY MAY BE UNABLE TO EXECUTE ITS BUSINESS STRATEGY.

The Company's business strategy focuses on driving market share growth across the Company's three lines of business. In addition, as part of the ongoing assessment of its business, the Company will continue to focus its efforts and capital investments by selling or exiting certain businesses, such as its stand-alone ambulatory surgery centers. The Company will continue to closely monitor profitability and cash flow, with a goal of deploying its capital primarily to: (1) pay down existing debt, (2) invest in new technologies and equipment to maximize unit volumes and better utilize its existing infrastructure, and (3) selectively invest in order to grow the business.

If management does not successfully execute this strategy or if the strategy is not effective, the Company may be unable to maintain or grow revenues and profitability, and may be unable to reduce its existing debt levels or meet its debt obligations.

#### THE COMPANY MAY MAKE INVESTMENTS THAT MAY NOT BE PROFITABLE.

The Company makes investments that are intended to support its business strategy, generally targeted to companies in the laser vision correction or doctor services businesses. In addition, the Company evaluates the strategic fit of current operations and investments, and have divested those that do not fit our strategy or enhance shareholder value. If the Company is unable to successfully manage its current and future investments, if those investments are not profitable or do not generate the expected returns, or if *TLCVision* is not successful in completing divestitures or achieving its targeted exit valuation, then future operating results may be adversely impacted.

#### THE COMPANY'S REFRACTIVE CENTERS STRATEGY DEPENDS ON ITS ABILITY TO SUCCESSFULLY EXECUTE DIRECT TO CONSUMER ADVERTISING PROGRAMS.

The success of *TLCVision*'s refractive centers strategy will be dependent on increasing the number of procedures at TLC Laser Eye Centers through the Company's consumer advertising programs in combination with existing optometric co-management philosophy. The success of this direct to consumer advertising is dependent upon several factors, including the Company's ability to:

- cost-effectively generate procedures through advertising programs;
- develop consumer advertising as a core competency in the Company; and
- maintain a reliable contact management center, including call center operations and lead follow-up programs.

#### THE COMPANY'S LONG-TERM SUCCESS WILL DEPEND, IN PART, ON ITS ABILITY TO OPEN NEW CENTERS, MAKE ACQUISITIONS, OR ENTER INTO AFFILIATION ARRANGEMENTS.

To an extent, the general growth of the Company will be dependent on increasing the number of eye care centers through internal development or acquisitions and entering into affiliation arrangements with local eye care professionals.

Opening new centers involves many challenges, including:

- the integration of operations and technologies into existing platforms;
- hiring and training personnel to staff the center;
- developing and implementing effective marketing programs to attract potential patients to the center; and
- managing the losses incurred during the development and ramp-up period.

Acquiring an existing center presents these same operational challenges, and additional special risks, including:

- identifying unanticipated liabilities and contingencies;
- diversion of management attention; and
- possible adverse effects on operating results resulting from:
  - possible future goodwill impairment;
  - increased interest costs;
  - the issuance of additional securities; and
  - increased costs resulting from difficulties related to the integration of the acquired businesses.

The Company's ability to achieve growth through acquisitions will depend on a number of factors, including:

- the availability of attractive acquisition opportunities;
- the availability of capital to complete acquisitions;
- the availability of working capital to fund the operations of acquired businesses; and
- the effect of existing and emerging competition on operations.

*TLCVision* may not be able to successfully identify suitable acquisition candidates, complete acquisitions on acceptable terms, if at all, or successfully integrate acquired businesses into its operations. The Company's past and possible future acquisitions may not achieve adequate levels of revenue, profitability or productivity, or may not otherwise perform as expected.

**THE COMPANY MAY BE UNABLE TO SUCCESSFULLY IMPLEMENT AND INTEGRATE NEW OPERATIONS AND FACILITIES.**

The Company's success depends on its ability to manage existing operations and facilities and to expand businesses consistent with *TLCVision's* business strategy. Until recently, the Company has grown rapidly in the United States. The Company's future growth and expansion will increase management's responsibilities and demands on operating information technologies and financial systems and resources. The Company's business and financial results are dependent upon a number of factors, including the ability to:

- implement upgraded operations, information technologies and financial systems, procedures and controls;
- hire and train new staff and managerial personnel;
- adapt or amend the business structure to comply with present or future legal requirements affecting arrangements with doctors, including state prohibitions on fee-splitting, corporate practice of optometry and medicine and referrals to facilities in which doctors have a financial interest;
- obtain regulatory approvals, where necessary, and comply with licensing requirements applicable to doctors and facilities operated, and services offered, by doctors; and
- successfully integrate acquisitions into our existing business model.

The Company's failure or inability to successfully implement these and other factors may adversely affect the quality and profitability of its business operations.

**THE COMPANY MUST SUCCESSFULLY BALANCE DEMAND FOR REFRACTIVE SURGERY WITH ITS OPERATING COSTS, PARTICULARLY IN ITS REFRACTIVE CENTERS AND REFRACTIVE ACCESS SEGMENTS**

The demand for refractive surgery declined approximately 26% in 2008 and it is anticipated that demand may further soften in 2009. Both the Company's refractive centers and refractive access segments have been adversely impacted by this slowing of demand. In response, the Company has reduced costs through a variety of initiatives including reductions in headcount, freezing or reducing salaries and benefits, decreases in discretionary spending including direct to consumer marketing, reductions in overhead costs, and the closure of underperforming refractive centers/mobile refractive routes. There is no guarantee that these cost reduction initiatives will achieve their intended savings targets or that these reductions will be sufficient to maintain earnings or positive cash flow. Additionally, reductions in direct to consumer marketing may impact the level of demand in its refractive centers segment.

**THE COMPANY DEPENDS ON KEY PERSONNEL WHOSE LOSS COULD ADVERSELY AFFECT ITS BUSINESS.**

*TLCVision's* success and growth depends in part on the active participation of key medical and management personnel. The Company maintains key person insurance for James Wachtman, CEO, and several key ophthalmologists. Despite having this insurance in place, the loss of any one of these key individuals could adversely affect the quality, profitability and growth prospects of business operations.

The Company has employment or similar agreements with the above individuals and other key personnel. The terms of these agreements include, in some cases, entitlements to substantial severance payments in the event of termination of employment by either *TLCVision* or the employee.

**THE COMPANY MAY BE SUBJECT TO MALPRACTICE AND OTHER SIMILAR CLAIMS AND MAY BE UNABLE TO OBTAIN OR MAINTAIN ADEQUATE INSURANCE AGAINST THESE CLAIMS.**

The provision of medical services at the Company's centers entails an inherent risk of potential malpractice and other similar claims. All of the Company's U.S. professional malpractice insurance has a \$250,000 deductible per claim. Patients at the Company's centers execute informed consent statements prior to any procedure performed by doctors, but these consents may not provide adequate liability protection. Although *TLCVision* does not engage in the practice of medicine or have responsibility for compliance with regulatory and other requirements directly applicable to doctors and doctor groups, claims, suits or complaints relating to services provided at the Company's centers may be asserted against *TLCVision* in the future, and the assertion or outcome of these claims could result in higher administrative and legal expenses, including settlement costs or litigation damages.

The Company currently maintains malpractice insurance coverage and accruals that it believes are adequate both as to risks and amounts covered. In addition, *TLCVision* requires the doctors who provide medical services maintain comprehensive professional liability insurance. Further, most of these doctors have agreed to indemnify the Company against certain malpractice and other claims.

TLC*Vision's* insurance coverage, however, may not be adequate to satisfy claims, insurance maintained by the doctors may not protect Company, and such indemnification may not be enforceable or, if enforced, may not be sufficient. The Company's inability to obtain adequate insurance or an increase in the future cost of insurance to TLC*Vision* and the doctors who provide medical services at the centers may have a material adverse effect on the Company's business and financial results.

The excimer laser system uses hazardous gases which if not properly contained could result in injury. The Company may not have adequate insurance for liabilities arising from injuries caused by the excimer laser system or hazardous gases. While the Company believes that any claims alleging defects in its excimer laser systems would usually be covered by the manufacturers' product liability insurance, the manufacturers of the Company's excimer laser systems may not continue to carry adequate product liability insurance.

#### THE COMPANY MAY FACE CLAIMS FOR FEDERAL, STATE AND LOCAL TAXES.

TLC*Vision* operates in 48 states and two Canadian provinces and is subject to various federal, state and local income, payroll, unemployment, property, franchise, capital, sales and use tax on operations, payroll, assets and services. The Company endeavors to comply with all such applicable tax regulations, many of which are subject to different interpretations, and have hired outside tax advisors who assist in the process. Many states and other taxing authorities have been interpreting laws and regulations more aggressively to the detriment of taxpayers. The Company believes that it has adequate provisions and accruals in the financial statements for tax liabilities, although TLC*Vision* cannot predict the outcome of future tax assessments.

#### COMPLIANCE WITH INDUSTRY REGULATIONS IS COSTLY AND BURDENSOME.

TLC*Vision's* operations are subject to extensive federal, state and local laws, rules and regulations. The Company's efforts to comply with these laws, rules and regulations may impose significant costs, and failure to comply with these laws, rules and regulations may result in fines or other charges being imposed. The Company has incurred significant costs, and expects to incur future costs in connection with compliance with the provisions of the Sarbanes-Oxley Act of 2002. The Company's failure to comply with the provisions of the Sarbanes-Oxley Act, including provisions relating to internal financial controls, could have a material adverse effect on TLC*Vision*.

Many state laws limit or prohibit corporations from practicing medicine and optometry, and many federal and state laws extensively regulate the solicitation of prospective patients, the structure of fees and contractual arrangements with hospitals, surgery centers, ophthalmologists and optometrists, among others. Some states also impose licensing requirements. Although the Company attempts to structure its business and contractual relationships in compliance with these laws in all material respects, if any aspect of its operations was found to violate applicable laws, the Company could be subject to significant fines or other penalties, required to cease operations in a particular jurisdiction, prevented from commencing operations in a particular state or otherwise be required to revise the structure of its business or legal arrangements. Many of these laws and regulations are ambiguous, have not been definitively interpreted by courts or regulatory authorities, and vary from jurisdiction to jurisdiction. Accordingly, the Company may not be able to predict how these laws and regulations will be interpreted or applied by courts and regulatory authorities, and some of the Company's activities could be challenged.

Numerous legislative proposals to reform the U.S. health care system have been introduced in Congress and in various state legislatures over the past several years. TLC*Vision* cannot predict whether any of these proposals will be adopted and, if adopted, what impact this legislation would have on the Company's business. To respond to any such changes, the Company could be required to revise the structure of its legal arrangements or its fee structure, incur substantial legal fees, fines or other costs, or curtail some of the Company's business activities, reducing the potential profit of some of its arrangements.

State medical boards and state boards of optometry generally set limits on the activities of ophthalmologists and optometrists. In some instances, issues have been raised as to whether participation in a co-management program violates some of these limits. If a state authority were to find that the Company's co-management program did not comply with state licensing laws, TLC*Vision* would be required to revise the structure of its legal arrangements or curtail operations, and affiliated doctors might terminate their relationships with the Company.

Federal and state civil and criminal statutes impose penalties, including substantial civil and criminal fines and imprisonment, on health care providers and persons who provide services to health care providers, including management businesses such as TLC*Vision*, for fraudulently or wrongfully billing government or other insurers. In addition, the federal law prohibiting false Medicare/Medicaid billings allows a private person to bring a civil action in the name of the U.S. government for violations of its provisions and obtain a portion of the damages if the action is successful. The Company believes that it is in material compliance with these billing laws, but the business could be adversely affected if governmental authorities were to scrutinize or challenge the Company's activities or private parties were to assert a false claim or action against TLC*Vision* in the name of the U.S. government.

Although the Company believes that it has obtained the necessary licenses or certificates of need in states where such licenses are required and that the Company is not required to obtain any licenses in other states, some of the state regulations governing the need for such licenses are unclear, and there is no applicable precedent or regulatory guidance to help resolve these issues. A state regulatory authority could determine that *TLCVision* is operating a center inappropriately without a required license or certificate of need, which could subject the Company to significant fines or other penalties, result in *TLCVision* being required to cease operations in a state or otherwise jeopardize business and financial results. If the Company expands to a new geographic market, it may be unable to obtain any new license required in that jurisdiction.

#### COMPLIANCE WITH ADDITIONAL HEALTH CARE REGULATIONS IN CANADA IS COSTLY AND BURDENSOME.

Some Canadian provinces have adopted conflict of interest regulations that prohibit optometrists, ophthalmologists or corporations they own or control from receiving benefits from suppliers of medical goods or services to whom they refer patients. The laws of some Canadian provinces also prohibit health care professionals from splitting fees with non-health care professionals and prohibit non-licensed entities such as *TLCVision* from practicing medicine or optometry and from directly employing physicians or optometrists. The Company believes that it is in material compliance with these requirements, but a review of the Company's operations by Canadian regulators or changes in the interpretation or enforcement of existing Canadian legal requirements or the adoption of new requirements could require significant costs to comply with laws and regulations in the future or require the Company to change the structure of our arrangements with doctors.

#### COMPLIANCE WITH U.S. FOOD AND DRUG ADMINISTRATION REGULATIONS REGARDING THE USE OF EXCIMER LASER SYSTEMS FOR LASER VISION CORRECTION IS COSTLY AND BURDENSOME.

To date, the FDA has approved excimer laser systems manufactured by some manufacturers for sale for the treatment of nearsightedness, farsightedness and astigmatism up to stated levels of correction. Failure to comply with applicable FDA requirements with respect to the use of the excimer laser could subject the Company, its affiliated doctors or laser manufacturers to enforcement action, including product seizure, recalls, withdrawal of approvals and civil and criminal penalties.

The FDA has adopted guidelines in connection with the approval of excimer laser systems for laser vision correction. The FDA, however, has also stated that decisions by doctors and patients to proceed outside the FDA-approved guidelines are a practice of medicine decision, which the FDA is not authorized to regulate. Failure to comply with FDA requirements or any adverse FDA action, including a reversal of its interpretation with respect to the practice of medicine, could result in a limitation on or prohibition of the Company's use of excimer lasers.

Discovery of problems, violations of current laws or future legislative or administrative action in the United States or elsewhere may adversely affect the laser manufacturers' ability to obtain regulatory approval of laser equipment. Furthermore, the failure of other excimer laser manufacturers to comply with applicable federal, state or foreign regulatory requirements, or any adverse action against or involving such manufacturers, could limit the supply of excimer lasers, substantially increase the cost of excimer lasers, limit the number of patients that can be treated at the Company's centers and limit *TLCVision's* ability to use excimer lasers.

Most of the Company's eye care centers and access sites in the United States use VISX excimer lasers. If VISX, or other excimer laser manufacturers, fail to comply with applicable federal, state or foreign regulatory requirements, or if any adverse regulatory action is taken against or involves such manufacturers, the supply of lasers could be limited and the cost of excimer lasers could increase.

The Roll-On/Roll-Off laser system consists of an excimer laser mounted on a motorized, air suspension platform and transported in a specially modified truck. The Company believes that use of this transport system does not require FDA approval; the FDA has taken no position in regard to such approval. The FDA could, however, take the position that excimer lasers are not approved for use in this transport system. Such a view by the FDA could lead to an enforcement action against the Company, which could impede *TLCVision's* ability to maintain or increase its volume of excimer laser surgeries. This could have a material adverse effect on the Company's business and financial results. Similarly, the Company believes that FDA approval is not required for *TLCVision's* mobile use of microkeratomes or the cataract equipment transported by the Company's mobile cataract operations. The FDA, however, could take a contrary position that could result in an enforcement action.

## DISPUTES WITH RESPECT TO INTELLECTUAL PROPERTY COULD ADVERSELY AFFECT TLCVISION'S BUSINESS.

There has been substantial litigation in the United States and Canada regarding the patents on ophthalmic lasers. Although *TLCVision* currently leases or purchases excimer lasers and other technology from the manufacturers, if the use of an excimer laser or other procedure performed at any of the Company's centers is deemed to infringe a patent or other proprietary right, the Company may be prohibited from using the equipment or performing the procedure that is the subject of the patent dispute or may be required to obtain a royalty-bearing license, which may involve substantial costs, including ongoing royalty payments. If a license is not available on acceptable terms, the Company may be required to seek the use of products which do not infringe the patent.

*TLCVision* has also secured patents for portions of the equipment it uses to transport mobile lasers. *TLCVision* patents and other proprietary technology are important to the Company's success. These patents could be challenged, invalidated or circumvented in the future. Litigation regarding intellectual property is common and the Company's patents may not adequately protect its intellectual property. Defending and prosecuting intellectual property proceedings is costly and involves substantial commitments of management time. Failure to successfully defend the Company's rights with respect to *TLCVision's* intellectual property may require the payment of damages and/or ceasing the use of equipment to transport mobile lasers, which may have a material adverse effect on business.

## THE ABILITY OF OUR SHAREHOLDERS TO EFFECT CHANGES IN CONTROL OF THE COMPANY IS LIMITED.

*TLCVision* has a shareholder rights plan enabling the Board of Directors to delay a change in control of the Company, which could discourage a third party from attempting to acquire control of the Company, even if an attempt would be beneficial to the interests of the shareholders. In addition, since *TLCVision* is a Canadian corporation, investments in the Company may be subject to the provisions of the Investment Canada Act. In general, this act provides a system for the notification to the Investment Canada agency of acquisitions of Canadian businesses by non-Canadian investors and for the review by the Investment Canada agency of acquisitions that meet thresholds specified in the act. To the extent that a non-Canadian person or company attempted to acquire 33% or more of *TLCVision's* outstanding common stock, the threshold for a presumption of control, the transaction could be reviewable by the Investment Canada agency. The Investment Canada Act also applies to a change of control effected by a sale of all or substantially all of the assets of the Company. These factors and others could have the effect of delaying, deferring or preventing a change of control of the Company supported by shareholders but opposed by our Board of Directors.

## WE HAVE SIGNIFICANT TAX NET OPERATING LOSS CARRYOVERS THAT MAY NOT BE UTILIZED.

As of December 31, 2008, the Company has net operating losses available for carry forward for income tax purposes of approximately \$239.0 million, which may be available to reduce taxable income in future years. There is no guarantee that all, if any, of the Company's net operating losses will be utilized in future periods. See Note 19, "Income Taxes," of the consolidated financial statements for additional information.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

## ITEM 2. PROPERTIES

The Company's refractive centers are located in leased premises throughout the United States and Canada. The leases are negotiated on market terms and typically have terms of five to ten years. *TLCVision's* International Corporate Office is located in leased office space in Mississauga, Ontario, Canada under a lease that will expire in 2016. *TLCVision's* U.S. Corporate Office is located in approximately 29,000 square feet of leased office space in St. Louis, Missouri under a lease that will expire in 2016. *TLCVision* also maintains approximately 17,000 square feet of office/warehouse space, a portion of which is subleased, in Bloomington, Minnesota primarily for its doctor services operations. The Bloomington facility lease expires in 2009. The terms of the Company's leases provide for total aggregate monthly lease obligations of approximately \$0.7 million in 2009.

## ITEM 3. LEGAL PROCEEDINGS

As of December 31, 2008, there are no material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the Company or any of its subsidiaries is a party or of which any of their property is the subject. There have been no material changes in legal proceedings other than as reported in the Company's June 30, 2008 Form 10-Q from that reported in the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

The Company is subject to various claims and legal actions in the ordinary course of its business, which may or may not be covered by insurance. These matters include, without limitation, professional liability, employee-related matters and inquiries and investigations by governmental agencies. While the ultimate results of such matters cannot be predicted with certainty, the Company believes that the resolution of these matters will not have a material adverse effect, individually or in the aggregate, on its consolidated financial position or results of operations.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the quarter ended December 31, 2008.

#### ITEM 4A. EXECUTIVE OFFICERS OF THE REGISTRANT

The following are brief summaries of the business experience of each of the Company's executive officers:

James C. Wachtman, age 48, became the Company's Chief Executive Officer and President in August 2004. Prior to that, Mr. Wachtman served as Chief Operating Officer of LaserVision Centres Inc. ("LaserVision") from June 1996 to July 1998, and as President and Chief Operating Officer of LaserVision from August 1998 to May 2002 and as *TLCVision's* President and Chief Operating Officer from May 2002 to August 2004. Prior to joining LaserVision, Mr. Wachtman was employed in various senior management positions by McGaw, Inc., a manufacturer of medical disposables. He holds a Bachelors of Science degree in Management and Marketing from Missouri State University.

Steven P. Rasche, age 49, became the Company's Chief Financial Officer and Treasurer in August 2004. Prior thereto, Mr. Rasche served as the Chief Financial Officer of Public Safety Equipment, Inc., a marketer of safety equipment from May 1996 to July 2004. He began his professional career in 1983 with Price Waterhouse, LLP (now PricewaterhouseCoopers, LLP) and later moved to United Van Lines, Inc., a household goods mover, where he progressed through a variety of financial leadership roles. Mr. Rasche is a Certified Public Accountant ("CPA") and holds a Bachelors of Science degree in Accounting from the University of Missouri and a Master of Business Administration Degree from the J.L. Kellogg Graduate School of Management at Northwestern University.

Brian L. Andrew, age 57, became the Company's General Counsel and Secretary in February 2005. Prior thereto, Mr. Andrew was the Chair of the Health Law Practice Group and a member in the St. Louis, Missouri office of Husch & Eppenger, LLC (now Husch Blackwell Sanders, LLC), a large multi-office law firm. Mr. Andrew has also served as Assistant Counsel to the American Optometric Association and Associate General Counsel for MetLife HealthCare Management Corporation. He holds an undergraduate degree from the University of Missouri-Columbia, a Masters degree from Webster University and a law degree from the St. Louis University School of Law.

James B. Tiffany, age 52, was appointed as President of Sightpath Medical, Inc. (formerly MSS, Inc.), a subsidiary of the Company, in August 2003. Prior to that Mr. Tiffany served as Vice President of Sales and Marketing of LaserVision from January 1999 to July 2000 and General Manager of MSS, Inc. from July 2000 to August 2003. Mr. Tiffany received his undergraduate degree from Arizona State University and a Master of Business Administration Degree from Washington University in St. Louis, Missouri.

Larry D. Hohl, age 54, was appointed President of Refractive Centers in January 2008. Mr. Hohl has the responsibility for *TLCVision's* refractive centers business functions, including sales, marketing, operations, clinical services and professional relations. Prior to joining the Company, he served as Vice President of Operations and Owner Operator/Franchisee for Robeks Corporation, a franchisor of health food stores, from January 2004 through December 2007. Mr. Hohl began his professional career in 1976 with International Business Machines Corporation, a multinational computer technology and consulting corporation. He has held a number of senior management positions for companies such as Procter & Gamble, a consumer goods manufacturer, PepsiCo, Inc., a leading global snack and beverage company, and Nike, Inc., a supplier of athletic shoes, apparel and sports equipment. Mr. Hohl received his Bachelors of Science degree in Business Administration/Marketing, from Arizona State University.

James J. Hyland, age 56, joined *TLCVision* as Vice President, Investor Relations in 2007. Prior to joining *TLCVision*, Mr. Hyland was VP Investor Relations and Corporate Communications for USF Corp, a \$2.4 billion Chicago based transportation holding company. In addition, Mr. Hyland was Senior Vice President Investor Relations for Comdisco, a Rosemont, Illinois based Fortune 500 financial and technology services firm. Mr. Hyland is a graduate of the University of Illinois with a Bachelors of Science degree in Business Administration, with a specialization in Finance.

Henry Lynn, age 58, became Chief Information Officer ("CIO") of *TLCVision* in March 1998. Mr. Lynn has executive management responsibilities regarding the various information systems utilized throughout the Company. Prior to joining *TLCVision*,

he was employed as the CIO for Beacon Eye, Inc., a laser vision correction company. He holds a Data Processing degree from Glasgow College of Technology, Scotland.

Dr. Glenn Ellisor, age 51, is the founder of Vision Source®, a subsidiary of the Company that was acquired by the Company in 1997, and currently serves as President, Eye Care. Dr. Ellisor continues to practice as a licensed Optometrist at an optical eye care center. He has served on advisory panels for Ciba Vision, Optos plc, Optical Dynamics, Bausch & Lomb and Alcon Laboratories, Inc. He is a member of the American Optometric Association, the Texas Optometric Association and Harris County Optometric Association. Dr. Ellisor graduated from Stephen F. Austin University in 1982 with a degree in Biology and a minor in business and graduated from the University of Houston College of Optometry in 1984.

Charles H. Judy, age 39, joined the Company in 2007 as Vice President, Human Resources. Prior to joining TLCVision, Mr. Judy was a National Human Resources Director at Deloitte, one of the world's largest professional services firms with over 120,000 employees. During his thirteen years with the organization, Mr. Judy provided senior human resources and recruiting leadership to a number of large and diverse practices throughout the world. Mr. Judy was also the Vice President, Human Resources for Maverick Technologies LLC, North America's largest independent control systems integrator and industrial automation consultancy. He is a graduate of Tulane University's A.B. Freeman School of Business with a Bachelors of Science in Management. Mr. Judy is also a CPA and a certified Senior Professional of Human Resources.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### MARKET INFORMATION

The Common Shares of the Company are listed on the Toronto Stock Exchange under the symbol "TLC" and on the NASDAQ Global Market under the symbol "TLCV." The following table sets forth, for the periods indicated, the high and low closing prices per Common Share of the Common Shares on the Toronto Stock Exchange and the NASDAQ Global Market:

|                                        | THE<br>TORONTO<br>STOCK<br>EXCHANGE |           | NASDAQ<br>GLOBAL<br>MARKET |        |
|----------------------------------------|-------------------------------------|-----------|----------------------------|--------|
|                                        | HIGH                                | LOW       | HIGH                       | LOW    |
| 2007                                   |                                     |           |                            |        |
| First Quarter March 31, 2007 .....     | Cdn\$7.13                           | Cdn\$6.02 | \$6.00                     | \$5.10 |
| Second Quarter June 30, 2007 .....     | 6.80                                | 5.45      | 6.06                       | 5.10   |
| Third Quarter September 30, 2007 ..... | 5.45                                | 3.17      | 5.21                       | 3.06   |
| Fourth Quarter December 31, 2007 ..... | 3.71                                | 2.02      | 3.79                       | 2.08   |
| 2008                                   |                                     |           |                            |        |
| First Quarter March 31, 2008 .....     | Cdn\$3.13                           | Cdn\$0.98 | \$3.17                     | \$0.96 |
| Second Quarter June 30, 2008 .....     | 1.62                                | 1.03      | 1.58                       | 0.99   |
| Third Quarter September 30, 2008 ..... | 1.39                                | 0.80      | 1.37                       | 0.74   |
| Fourth Quarter December 31, 2008 ..... | 0.79                                | 0.16      | 0.74                       | 0.14   |

As of March 9, 2009, there were approximately 709 shareholders of record of the Common Shares.

The Company has never declared or paid cash dividends on the Common Shares. It is the current policy of the Board of Directors of the Company to retain earnings to reduce the financial leverage of the Company, and finance growth and development of its business, and therefore, the Company does not anticipate paying cash dividends on its Common Shares in the near future. In addition, the Company's ability to pay dividends is currently restricted pursuant to the Company's Credit Facility, discussed in further detail in Note 14, "Debt," in the consolidated financial statements.

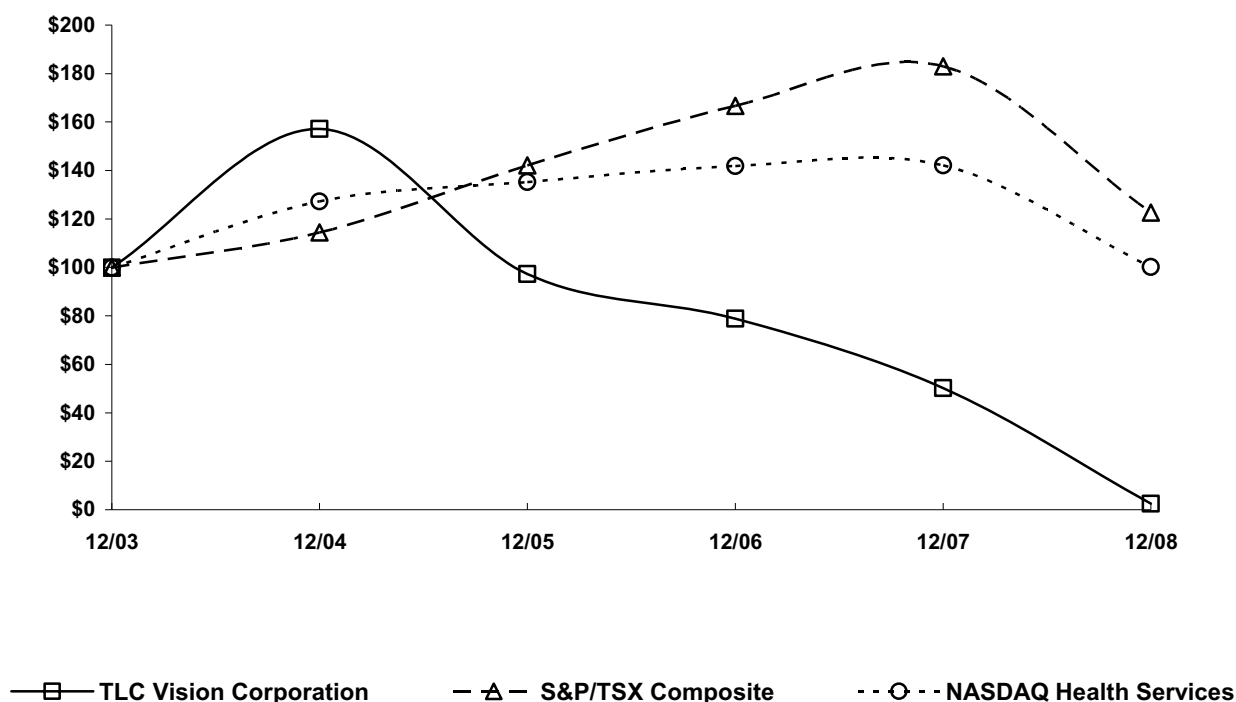
## PERFORMANCE GRAPH

The information contained in this Performance Graph section shall not be deemed to be “soliciting material” or “filed” or incorporated by reference in future filings with the SEC, or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that the Company specifically incorporates it by reference into a document filed under the Securities Act of 1933, as amended, or the Exchange Act.

The following graph shows the cumulative total shareholder return (assuming reinvestment of dividends) from December 31, 2003 through the fiscal year ended December 31, 2008 compared to the cumulative total return on the S&P/TSX Composite Index and the NASDAQ Health Services Stocks Index.

### COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\*

Among TLC Vision Corporation, The S&P/TSX Composite Index  
And The NASDAQ Health Services Index



\*\$100 invested on 12/31/03 in stock & index-including reinvestment of dividends.  
Fiscal year ending December 31.

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|                        | 12/31/03 | 12/31/04 | 12/31/05 | 12/31/06 | 12/31/07 | 12/31/08 |
|------------------------|----------|----------|----------|----------|----------|----------|
| TLC Vision Corporation | 100.00   | 157.16   | 97.29    | 78.88    | 50.23    | 2.56     |
| S&P/TSX Composite      | 100.00   | 114.48   | 142.10   | 166.63   | 183.01   | 122.61   |
| NASDAQ Health Services | 100.00   | 127.29   | 135.26   | 141.82   | 142.06   | 100.14   |

## STOCK REPURCHASE

During June 2007, the Company repurchased and cancelled 20.0 million of its outstanding common shares (representing approximately 30% of total shares outstanding) through a modified "Dutch" auction. The shares were purchased at a price of \$5.75 per share with a total cost of \$117.6 million (including applicable transaction expenses). This transaction was financed through a combination of cash-on-hand, short-term investments, and \$85 million in proceeds under the Company's June 2007 Credit Facility. No share repurchases occurred during the year ended December 31, 2008.

## ITEM 6. SELECTED FINANCIAL DATA

The following tables set forth selected historical consolidated financial data of *TLCVision* for the fiscal years ended December 31, 2008, 2007, 2006, 2005 and 2004, which have been derived from the consolidated financial statements of the Company included elsewhere in this Form 10-K and the consolidated financial statements of the Company included in the Company's December 31, 2005 and 2004 Annual Reports on Form 10-K. The following table should be read in conjunction with the Company's financial statements, the related notes thereto and the information contained in "Item 7 - Management's Discussion and Analysis of Financial Condition and Results of Operations."

|                                                                          | YEAR ENDED<br>DECEMBER 31, |                |                |                |                |
|--------------------------------------------------------------------------|----------------------------|----------------|----------------|----------------|----------------|
|                                                                          | <u>2004(2)</u>             | <u>2005(3)</u> | <u>2006(4)</u> | <u>2007(5)</u> | <u>2008(6)</u> |
| (U.S. dollars, in thousands except per share amounts and operating data) |                            |                |                |                |                |
| STATEMENT OF OPERATIONS DATA                                             |                            |                |                |                |                |
| Net revenues .....                                                       | \$ 242,481                 | \$ 255,547     | \$ 277,853     | \$ 298,414     | \$ 275,668     |
| Cost of revenues (excluding amortization) ...                            | 168,796                    | 178,572        | 192,937        | 209,084        | 194,938        |
| Gross profit .....                                                       | 73,685                     | 76,975         | 84,916         | 89,330         | 80,730         |
| General and administrative .....                                         | 26,747                     | 36,458         | 34,476         | 34,819         | 28,016         |
| Marketing and sales .....                                                | 18,702                     | 21,714         | 27,791         | 42,979         | 42,725         |
| Impairment .....                                                         | --                         | --             | --             | 7,659          | 85,047         |
| Income (loss) from continuing operations,<br>net of tax .....            | 41,402                     | 7,169          | 13,680         | (35,300)       | (98,254)       |
| Income (loss) from discontinued operations,<br>net of tax .....          | 1,072                      | 950            | (2,161)        | (8,214)        | --             |
| Net income (loss) .....                                                  | 42,474                     | 8,119          | 11,519         | (43,514)       | (98,254)       |
| Income (loss) per share from continuing<br>operations, diluted .....     | \$ 0.58                    | \$ 0.10        | \$ 0.20        | \$ (0.60)      | \$ (1.95)      |
| Income (loss) per share, diluted .....                                   | \$ 0.60                    | \$ 0.11        | \$ 0.17        | \$ (0.74)      | \$ (1.95)      |
| Weighted average number of Common<br>Shares outstanding, diluted .....   | 71,088                     | 71,380         | 69,580         | 59,139         | 50,319         |

|                                               | DECEMBER 31,   |                |                |                |                |
|-----------------------------------------------|----------------|----------------|----------------|----------------|----------------|
|                                               | <u>2004(2)</u> | <u>2005(3)</u> | <u>2006(4)</u> | <u>2007(5)</u> | <u>2008(6)</u> |
| BALANCE SHEET DATA                            |                |                |                |                |                |
| Cash and cash equivalents .....               | \$ 33,435      | \$ 31,729      | \$ 28,917      | \$ 12,925      | \$ 4,492       |
| Working capital .....                         | 131,195        | 66,896         | 40,015         | (11,141)       | (99,478)       |
| Total assets .....                            | 304,007        | 301,043        | 294,302        | 237,810        | 136,982        |
| Long-term debt, excluding current portion ... | 9,991          | 12,665         | 15,122         | 98,417         | 16,500         |
| STOCKHOLDERS' EQUITY                          |                |                |                |                |                |
| Common stock .....                            | 458,959        | 450,703        | 450,133        | 337,473        | 339,112        |
| Option and warrant equity .....               | 2,872          | 1,861          | 1,806          | 837            | 745            |
| Accumulated other comprehensive loss .....    | --             | --             | --             | (784)          | (1,545)        |
| Accumulated deficit .....                     | (252,278)      | (244,159)      | (232,640)      | (275,404)      | (373,658)      |
| Total stockholders' equity (deficit) .....    | 209,553        | 208,405        | 219,299        | 62,122         | (35,346)       |

|                                                                      | YEAR ENDED<br>DECEMBER 31, |                |                |                |                |
|----------------------------------------------------------------------|----------------------------|----------------|----------------|----------------|----------------|
|                                                                      | <u>2004(2)</u>             | <u>2005(3)</u> | <u>2006(4)</u> | <u>2007(5)</u> | <u>2008(6)</u> |
| OPERATING DATA (unaudited)                                           |                            |                |                |                |                |
| Number of majority owned eye care centers at end of period (7) ..... | 59                         | 64             | 67             | 66             | 66             |
| Number of minority owned eye care centers at end of period (1) ..... | <u>9</u>                   | <u>9</u>       | <u>9</u>       | <u>14</u>      | <u>9</u>       |
| Number of TLCVision branded eye care centers at end of period.....   | 68                         | 73             | 76             | 80             | 75             |
| Number of access service sites                                       |                            |                |                |                |                |
| Refractive .....                                                     | 326                        | 318            | 327            | 327            | 320            |
| Mobile Cataract .....                                                | 371                        | 563            | 689            | 444            | 367            |
| Number of laser vision correction procedures:                        |                            |                |                |                |                |
| Majority owned centers .....                                         | 99,100                     | 101,000        | 101,000        | 105,700        | 88,300         |
| Minority owned centers .....                                         | <u>18,700</u>              | <u>20,000</u>  | <u>20,300</u>  | <u>21,400</u>  | <u>16,800</u>  |
| Total TLCVision branded center Procedures .....                      | 117,800                    | 121,000        | 121,300        | 127,100        | 105,100        |
| Access.....                                                          | <u>78,600</u>              | <u>69,900</u>  | <u>65,900</u>  | <u>59,500</u>  | <u>44,100</u>  |
| Total TLCVision branded refractive Procedures .....                  | 196,400                    | 190,900        | 187,200        | 186,600        | 149,200        |
| Mobile Cataract .....                                                | 43,700                     | 49,000         | 55,700         | 56,900         | 59,500         |

- (1) Minority owned centers primarily represent the Company's 30% interest in LECC centers.
- (2) In fiscal 2004, the selected financial data of the Company included:
- (a) an adjustment to the fair value of long-term receivables of \$1.2 million;
  - (b) other income of \$25.8 million from the gain on sale of OccuLogix stock; and
  - (c) an executive severance charge of \$2.6 million.
- (3) In fiscal 2005, the selected financial data of the Company included:
- (a) a write-down of \$1.1 million in the fair value of intangibles and an adjustment to the fair value of long-term liabilities of \$0.2 million; and
  - (b) OccuLogix inventory and accounts receivable write-downs of \$1.6 million after minority interests.
- (4) In fiscal 2006, the selected financial data of the Company included:
- (a) an impairment of goodwill of \$4.1 million, which related to discontinued operations;
  - (b) gain on sales and issuances of subsidiary stock of \$1.8 million;
  - (c) severance charges totaling \$1.0 million (\$0.6 million net of minority interests);
  - (d) net write-downs of assets and liabilities of \$1.9 million (\$1.1 million net of minority interests);
  - (e) income tax benefit of \$5.3 million related to a partial reversal of the deferred tax asset valuation allowance;
  - (f) income tax benefit of \$0.9 million related to IRC Section 382 and \$1.5 million related to deductible interest expense adjustments; and
  - (g) consolidated results of OccuLogix for the three months ended March 31, 2006 before deconsolidation effective April 1, 2006.
- (5) In fiscal 2007, the selected financial data of the Company included:
- (a) impairments of goodwill and other assets of \$9.6 million and \$7.4 million, respectively, which are inclusive of impairments related to discontinued operations;
  - (b) the repurchase of 20.0 million of the Company's outstanding common shares at a price of \$5.75 per share, plus various transaction related costs;
  - (c) a new \$110.0 million credit facility, which included \$85.0 million of senior term debt and available borrowings of an additional \$25.0 million under a revolving credit facility; and
  - (d) severance charges totaling \$1.3 million.

- (6) In fiscal 2008, the selected financial data of the Company included:
- (a) impairment losses of \$85.0 million, which reduced the carrying values of goodwill, intangible assets, other long-term assets, and fixed assets by \$73.4 million, \$6.2 million, \$4.8 million and \$0.6 million, respectively.
  - (b) approximately \$76.0 million of long-term debt related to the Company's credit facility that has been re-classified as current debt due to the Company's covenant violation and issues surrounding the Company's ability to continue as a going concern.
- (7) The Company reviews its definition of centers when there is a change in its level of operating control and/or ownership at the center, or if the mode of service delivery at the location is significantly altered. As a result, prior year figures may vary from previously reported financials in order to better reflect changes in the Company's current portfolio of centers.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the consolidated financial statements and the related notes thereto, which are included in Item 8 of this Form 10-K. The following discussion is based upon the Company's results under U.S. generally accepted accounting principles. Unless otherwise specified, all dollar amounts are U.S. dollars.

### OVERVIEW

TLC Vision Corporation is an eye care services company dedicated to improving lives through improving vision by providing high-quality care directly to patients and as a partner with their doctors and facilities. The majority of the Company's revenues come from owning and operating refractive centers that employ laser technologies to treat common refractive vision disorders such as myopia (nearsightedness), hyperopia (farsightedness) and astigmatism. In its doctor services business, the Company furnishes doctors and medical facilities with mobile or fixed site access to refractive and cataract surgery equipment, supplies, technicians and diagnostic products, as well as owns and manages single-specialty ambulatory surgery centers. In its eye care business, the Company currently provides franchise opportunities to independent optometrists under its Vision Source® brand.

Except as described in the following paragraphs, the Company recognizes revenues at the time procedures are performed or services are rendered. Revenues primarily include amounts charged to patients for procedures performed at laser centers, amounts charged to physicians for laser access and service fees, and management fees from managing refractive and secondary care practices. Follow-up consultations, which help ensure general patient satisfaction and safety, are free of separate charge to patients, very short in nature and are therefore considered inconsequential for revenue deferral, though the Company does accrue at the point of procedure for the minimal anticipated costs of the follow-up consultations.

The Company offers a portion of its patients extended lifetime warranties, i.e., the TLC Lifetime Commitment®. Participation in the TLC Lifetime Commitment® program is included in the surgical price for a specific type of procedure selected by a portion of its patients. Under this pricing model, the Company accounts for the TLC Lifetime Commitment® program as a warranty obligation under the provisions of Statement of Financial Accounting Standards ("SFAS") No. 5, "Accounting for Contingencies." Accordingly, the costs expected to be incurred to satisfy the obligation are accrued as a liability at the point of sale given the Company's ability to reasonably estimate such costs based on historical trends and the satisfaction of all other revenue recognition criteria.

During the year ended December 31, 2007, the Company began offering an extended TLC Lifetime Commitment® warranty at a separately-priced fee to customers selecting a lower level base surgical procedure. Under applicable accounting rules, 100% of revenues and related costs from the sale of the separately priced lifetime warranty are to be deferred and recognized over the life of the contract on a straight-line basis unless sufficient experience exists to indicate that the costs to provide the service will be incurred other than on a straight-line basis. Revenues generated under this program are initially deferred and recognized over a period of five years based on management's future estimates of re-treatment volume, which are based on historical warranty claim activity. The Company believes it has sufficient experience to support recognition on other than a straight-line basis. Accordingly, the Company has deferred these revenues and are recognizing them over the period in which the future costs of performing the enhancement procedure are expected to be incurred.

In addition to the deferral of revenues related to the separately-priced TLC Lifetime Commitment®, the Company has deferred a portion of its costs of service related to professional fees paid to the attending surgeon when an initial procedure is performed. The physician receives no incremental fee for an enhancement procedure under the TLC Lifetime Commitment®. Accordingly, a portion of the professional fee paid at the time of the initial procedure to the attending surgeon relates to the future enhancement procedures to be performed under the separately-priced TLC Lifetime Commitment® and qualifies for deferral as a direct and incremental cost. The Company uses the same historical experience to amortize deferred professional fees that it uses to amortize deferred revenue. Other

costs expected to be incurred if a complication were to occur are accrued at the point of procedure as part of the Company's general enhancement accrual based on historical trend estimates.

Under the terms of management service agreements, the Company provides non-clinical services, which include facilities, staffing, equipment lease and maintenance, marketing and administrative services to refractive and secondary care practices in return for management fees. For third-party payor programs and corporations with arrangements with *TLCVision*, the Company's management fee and the fee charged by the surgeon are both discounted in proportion to the discount afforded to these organizations. While the Company does not direct the manner in which the surgeons practice medicine, the Company does direct the day-to-day non-clinical operations of the centers. The management service agreements typically are for an extended period of time, ranging from five to 15 years. Management fees are equal to the net revenue of the physician practice, less amounts retained by the physician groups.

Included in costs of revenue are the laser fees payable to laser manufacturers for royalties, doctors' compensation, use and maintenance of the lasers, variable expenses for consumables and facility fees, as well as center costs associated with personnel, facilities and depreciation of center assets.

Marketing and sales and general and administrative expenses include expenses that are not directly related to the provision of laser correction services or cataract services.

The Company serves surgeons who performed approximately 231,700 procedures, including refractive and cataract procedures, at the Company's centers or using the Company's equipment during the year ended December 31, 2008. During the year ended December 31, 2008, the Company's refractive center and access procedure volume, including minority owned centers, decreased to 149,200 from 186,600 in the year ended December 31, 2007, a decrease of 37,400 procedures (20%). Being an elective procedure, laser vision correction volumes fluctuate due to changes in economic and stock market conditions, unemployment rates, consumer confidence and political uncertainty, which management believes were the primary causes for the significant year over year decline. Demand for laser vision correction also is affected by perceived safety and effectiveness concerns given the lack of long-term follow-up data.

## DEVELOPMENTS DURING 2008

### LIQUIDITY

The Company relies on the following sources of liquidity to continue to operate as a going concern: (i) cash and cash equivalents on hand; (ii) cash generated from operations; (iii) borrowings under the Company's revolving credit facility; (iv) net proceeds from asset sales; and (v) access to the capital markets. The Company's principal uses of cash are to provide for working capital to fund its operation and to service its debt and other contractual obligations. The changes in financial markets in the late summer and fall of 2008 limited the ability of companies such as *TLCVision* to access the capital markets. The deepening recession in the fourth quarter of 2008 has had a significant impact on the Company's operations, resulting in a sharp decline in the demand for refractive surgery and financial performance. As a result, the Company's liquidity became progressively constrained in the fourth quarter of 2008. The Company has incurred losses from continuing operations of \$98.3 million and \$35.3 million for the years ended December 31, 2008 and 2007, respectively.

Beginning in early 2008, in response to the deteriorated economic environment the Company implemented a series of initiatives to balance its costs of operation with the new lower level of refractive procedures. The Company continues to implement cost reduction and cash generation initiatives, including reductions in headcount, freezing or reducing salaries and benefits, reductions in discretionary spending including direct to consumer marketing, reductions in overhead costs, lower capital spending, the sale of surplus assets and the closure of underperforming refractive centers/mobile refractive routes.

Due to the sharp decline in customer demand during the second half of fiscal 2008, and the resulting decline in sales, the Company's financial performance deteriorated sharply during the fourth quarter of 2008 resulting in the Company's inability to be in compliance with its primary financial covenants under its Credit Facility as of December 31, 2008. See Note 14, "Debt," in the consolidated financial statements for information on the Company's various debt agreements. Furthermore, in the current economic environment, it is unlikely that the Company's financial performance in 2009 will be sufficient to enable it to be in compliance with these covenants for the balance of 2009 unless amended. Accordingly, the Company is in active discussions with the lenders to secure both a short-term financial debt covenant compliance waiver to cure the existing default, as well as further amendments to the Credit Facility to avoid a subsequent default. There can be no assurances that the lenders will grant such waivers or amendments on commercially reasonable terms, if at all.

In light of the existing non-compliance with the financial covenants as of December 31, 2008, and given that it is unlikely that the Company will be in compliance with the covenants currently in the Credit Facility for the balance of 2009 unless amended, borrowings of \$82.7 million under the Credit Facility have been recorded as current liabilities as of December 31, 2008. Accordingly, at December 31, 2008, the Company has a working capital deficiency of approximately \$99.5 million. Subsequent to December 31, 2008, the Company borrowed an additional \$17.4 million under the revolving portion of its Credit Facility raising the total outstanding debt under the Credit Facility to \$100.1 million as of February 28, 2009.

The Company will likely continue to incur operating losses in 2009 and its liquidity remains constrained such that it may not be sufficient to meet the Company's cash operating needs in this period of economic uncertainty. The Company is in active discussions with its lenders to ensure that it has sufficient liquidity in excess of what is available under its Credit Facility, although there is no assurance that the Company can obtain additional liquidity on commercially reasonable terms, if at all. If the Company is unable to obtain or sustain the liquidity required to operate its business the Company may need to seek to modify the terms of its debts and/or to reorganize its capital structure.

The Company's independent registered public accounting firm's report issued in the December 31, 2008 Annual Report on Form 10-K included an explanatory paragraph describing the existence of conditions that raise substantial doubt about the Company's ability to continue as a going concern, including significant losses, limited access to additional liquidity and compliance with certain financial covenants. The financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern.

## IMPAIRMENT

Goodwill and indefinite-lived intangible assets are tested for impairment annually and whenever events or circumstances (such as a significant adverse change in business climate or the decision to sell a business) indicate that more likely than not an impairment may have occurred. If the carrying value of goodwill or an indefinite-lived intangible asset exceeds its fair value, an impairment loss is recognized. The evaluation of impairment involves comparing the current fair value of each of the Company's reporting units to their recorded value, including goodwill. The Company uses a combination of the income and market approaches to determine the current fair value of each of its reporting units. A number of significant assumptions and estimates are involved in the application of the income and market approaches, including forecasted operating cash flows, discount rates, market multiples, etc. The Company considers historical experience and all available information at the time the fair values of its reporting units are estimated. However, fair values that could be realized in an actual transaction may differ from those used to evaluate the impairment of intangible assets.

During 2008, the Company determined that the carrying amounts of goodwill and definite-lived intangible assets within various segments were impaired \$79.6 million. Management determined the implied fair value of goodwill associated with the reporting units within these segments by subtracting the estimated fair value of tangible assets and intangible assets subject to amortization associated with each reporting unit from the estimated fair value of each reporting unit. The impairment charges were generally the result of the overall refractive market decline experienced by the Company as well as equity market conditions, which led to an overall decline in fair value of various reporting units of the Company.

During 2008, the Company recognized a \$4.8 million impairment of multiple cost and equity method investments due to the decline in their estimated fair value. The decline in fair values were deemed to be other than temporary based on the investees' inability to generate or sustain an earnings capacity that would justify the carrying amount of the investment. In addition, the Company recognized a \$0.6 million impairment of fixed assets of an ASC given the entities' inability to generate an earnings capacity that would justify carrying values.

A summary of impairment charges recorded by reporting segment during the year ended December 31, 2008 follows:

|                            | <b><u>FISCAL 2008 IMPAIRMENT CHARGES</u></b>             |                            |                        |                                                    |                     |
|----------------------------|----------------------------------------------------------|----------------------------|------------------------|----------------------------------------------------|---------------------|
|                            | <b><u>Investments and<br/>Other Long-Term Assets</u></b> | <b><u>Fixed Assets</u></b> | <b><u>Goodwill</u></b> | <b><u>Definite-Lived<br/>Intangible Assets</u></b> | <b><u>Total</u></b> |
| Refractive Centers .....   | \$ --                                                    | \$ --                      | \$ 66,843              | \$ 4,658                                           | \$ 71,501           |
| Refractive Access .....    | --                                                       | --                         | 4,993                  | 1,500                                              | 6,493               |
| Other Doctor Services..... | 2,478                                                    | 639                        | 1,555                  | 17                                                 | 4,689               |
| Corporate .....            | 2,364                                                    | --                         | --                     | --                                                 | 2,364               |
| Total.....                 | <u>\$ 4,842</u>                                          | <u>\$ 639</u>              | <u>\$ 73,391</u>       | <u>\$ 6,175</u>                                    | <u>\$ 85,047</u>    |

## ACQUISITIONS

The Company's strategy includes periodic acquisitions of, or investments in, entities that operate within its chosen markets. During the year ended December 31, 2008 and 2007, the Company made acquisition and equity investments of \$8.9 million and \$4.8 million, respectively, to acquire or invest in various entities.

Included in acquisition and equity investments are cash payments during 2008 and 2007 of approximately \$6.6 million and \$2.8 million, respectively, related to the Company's 2005 TruVision™ acquisition, which have been included in the purchase price allocation. Of the 2008 and 2007 amounts, approximately \$2.0 million and \$2.8 million, respectively, relate to cash paid under the contingent earn-out provisions of the acquisition, which are included in the purchase price allocation. The remaining \$4.6 million paid during 2008 relates to an amendment to the TruVision™ merger agreement, which removed the contingent earn-out provisions, discussed in further detail below.

During February 2007, Lindsay Atwood, as Shareholders' Representative pursuant to the October 2005 Agreement and Plan of Merger by which the Company acquired TruVision, Inc., filed a lawsuit in state court in Salt Lake City, Utah in a matter styled Atwood v. TLC Vision Corporation. Mr. Atwood challenged the calculation of the first of three contingent annual earn-out payments set forth in the merger agreement. The lawsuit was stayed and the complaint was in arbitration until the parties concluded out-of-court to amend the merger agreement during May 2008. As part of the amended agreement, the Company and Mr. Atwood agreed to eliminate and replace the current and future earn-out provisions in exchange for \$12.3 million to be paid in three installment payments, and certain other immaterial assets. The amendment did not significantly impact net income as the cash payments represent additional purchase consideration related to the acquisition.

On May 30, 2007 the Company entered into an agreement with JEGC OCC Corp ("Purchaser") for the sale of all of its common shares of OccuLogix. The agreement provided for a two-step sale, and on June 22, 2007, the Company completed its sale of 1.9 million shares of OccuLogix's common stock for \$2.0 million and recorded a gain of \$0.9 million. Immediately following the sale of stock, the Company owned approximately 33% of OccuLogix's outstanding stock. The Company agreed to sell the remaining shares subject to certain conditions, including the ability of the Purchaser to obtain financing. The Purchaser was unable to complete the purchase of the Company's remaining common shares of OccuLogix, and the Company and the Purchaser elected to terminate the agreement during the quarter ended June 30, 2008.

## DIVESTITURES

The Company's strategy includes periodic divestitures of subsidiaries or investments that operate in the refractive, cataract or eye care markets. During the year ended December 31, 2008, the Company received approximately \$1.3 million in cash proceeds resulting from various immaterial divestitures. During the year ended December 31, 2007, the Company received approximately \$3.6 million in cash proceeds from divestitures. Included in the 2007 figure is approximately \$2.0 million in cash proceeds received on the sale of OccuLogix, Inc. stock and \$1.6 million in cash proceeds resulting from various other divestitures.

## CREDIT FACILITY AMENDMENT DATED FEBRUARY 2008

During February 2008, the Company reached agreement with its lenders to amend the consolidated fixed charge coverage ratio and leverage ratio covenants associated with the Credit Facility, discussed in further detail in Note 14, "Debt," to the consolidated financial statements. The ratio covenant changes were effective for the period beginning after September 30, 2007. The amendment raised the interest rate margin on all of the Company's debt under the Credit Facility by 2.50% per annum, effective February 2008. The Company has accounted for the amendment as a modification of debt. The amendment resulted in the Company incurring various creditor and legal fees of \$0.5 million, which were capitalized to the extent allowable during the quarter ending March 31, 2008 and will be amortized through 2013.

## CRITICAL ACCOUNTING POLICIES

### IMPAIRMENT OF GOODWILL

The Company accounts for its goodwill in accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," which requires the Company to test goodwill for impairment annually and whenever events occur or circumstances change that would more likely than not reduce the fair value of the reporting unit below its carrying value. SFAS No. 142 requires the Company to determine the fair value of its reporting units. Because quoted market prices do not exist for the Company's reporting units, the Company uses a combination of present values of expected future cash flows (i.e. the income approach) and multiples of earnings (i.e. the market approach) to estimate fair value. Management must make significant estimates and assumptions about future conditions to estimate

future cash flows and appropriate multiples. If these estimates or related assumptions change in the future, including general economic and competitive conditions, the Company may be required to record additional impairment charges related to these assets. During the year ended December 31, 2008, the Company recorded a \$73.4 million impairment charge against goodwill, which is further discussed in Note 4, "Impairment," of the consolidated financial statements.

#### IMPAIRMENT OF LONG-LIVED ASSETS

The Company accounts for its long-lived assets in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which requires the Company to assess the recoverability of these assets when events or changes in circumstances indicate that the carrying amount of the long-lived asset (group) might not be recoverable. If impairment indicators exist, the Company determines whether the projected undiscounted cash flows will be sufficient to cover the carrying value of such assets. This requires the Company to make significant judgments about the expected future cash flows of the asset group. The future cash flows are dependent on many factors including general and economic conditions and are subject to change. A change in these assumptions could result in material charges to income.

#### RECOVERABILITY OF DEFERRED TAX ASSETS

The Company has generated deferred tax assets and liabilities due to temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the income tax bases of such assets and liabilities. Valuation allowances are recorded to reduce deferred tax assets to the amount expected to be realized. In assessing the adequacy of the valuation allowances, the Company considers the scheduled reversal of deferred tax liabilities, future taxable income and prudent and feasible tax planning strategies. At December 31, 2008, the Company had valuation allowances of \$140.8 million to fully offset deferred tax assets of \$140.8 million. The valuation allowance was based on the uncertainty of the realizability of certain deferred tax assets. In the event the Company determines it is more likely than not it will be able to use a deferred tax asset in the future in excess of its net carrying value, the valuation allowance would be reduced, thereby increasing net income, reducing goodwill or increasing equity in the period such determination is made.

#### ACCRUAL OF MEDICAL MALPRACTICE CLAIMS

The nature of the Company's business is such that it is subject to medical malpractice lawsuits. To mitigate a portion of this risk, the Company maintains insurance in the United States for individual malpractice claims with a deductible of \$250,000 per claim. Management and the Company's insurance carrier review malpractice lawsuits for purposes of establishing ultimate loss estimates. The Company has recorded reserves to cover the estimated costs of the deductible for both reported and unreported medical malpractice claims incurred. The estimates are based on the average monthly claims expense and the estimated average time lag between the performance of a procedure and notification of a claim. If the number of claims or the cost of settled claims is higher than the Company's historical experience or if the actual time lag varies from the estimated time lag, the Company may need to record significant additional expense.

#### ACCRUED ENHANCEMENT

The Company offers a portion of its patients extended lifetime warranties, i.e., the TLC Lifetime Commitment®. Participation in the TLC Lifetime Commitment® program is included in the surgical price for a specific type of procedure selected by a portion of the Company's patients. Under this pricing model, the Company accounts for the TLC Lifetime Commitment® program as a warranty obligation under the provisions of SFAS No. 5, "Accounting for Contingencies." Accordingly, the costs expected to be incurred to satisfy the obligation are accrued as a liability at the point of sale given our ability to reasonably estimate such costs based on historical trends and the satisfaction of all other revenue recognition criteria.

#### DEFERRED REVENUES

During the year ended December 31, 2007, the Company began offering an extended TLC Lifetime Commitment® warranty at a separately-priced fee to customers selecting a lower level base surgical procedure. Under applicable accounting rules, 100% of revenues and related costs from the sale of the separately priced lifetime warranty are to be deferred and recognized over the life of the contract on a straight-line basis unless sufficient experience exists to indicate that the costs to provide the service will be incurred other than on a straight-line basis. Revenues generated under this program are initially deferred and recognized over a period of five years based on management's future estimates of re-treatment volume, which are based on historical warranty claim activity. The Company believes it has sufficient experience to support recognition on other than a straight-line basis. Accordingly, the Company has deferred these revenues and are recognizing them over the period in which the future costs of performing the enhancement procedure are expected to be incurred.

In addition to the deferral of revenues related to the separately-priced TLC Lifetime Commitment®, the Company has deferred a portion of its costs of service related to professional fees paid to the attending surgeon when an initial procedure is performed. The physician receives no incremental fee for an enhancement procedure under the TLC Lifetime Commitment®. Accordingly, a portion of the professional fee paid at the time of the initial procedure to the attending surgeon relates to the future enhancement procedures to be performed under the separately-priced TLC Lifetime Commitment® and qualifies for deferral as a direct and incremental cost. The Company uses the same historical experience to amortize deferred professional fees that it uses to amortize deferred revenue. Other costs expected to be incurred if a complication were to occur are accrued at the point of procedure as part of the Company's general enhancement accrual based on historical trend estimates.

The deferred revenue balances related to the TLC Lifetime Commitment® at December 31, 2008 and 2007 totaled \$1.1 million and \$0.7 million, respectively.

## RISK FACTORS

See "Item 1A - Risk Factors."

### YEAR ENDED DECEMBER 31, 2008 COMPARED TO THE YEAR ENDED DECEMBER 31, 2007

Total revenues for the year ended December 31, 2008 were \$275.7 million, a decrease of \$22.7 million (8%) from revenues of \$298.4 million for the year ended December 31, 2007. The decrease in revenue was primarily attributable to the decline in refractive centers and refractive access procedures, partially offset by higher cataract volume and growth in eye care.

Revenues from refractive centers for the year ended December 31, 2008 were \$151.4 million, a decrease of \$23.8 million (14%) from revenues of \$175.2 million for the year ended December 31, 2007. The decrease in revenues from centers resulted from lower center procedure volume, which accounted for a decrease in revenues of approximately \$28.8 million. The revenue decline caused by the procedure shortfall was partially offset by increased revenue on improved pricing discipline and increased mix of higher priced procedures, which accounted for approximately \$5.0 million of increased revenue. For the year ended December 31, 2008, majority-owned center procedures were approximately 88,300, a decrease of 17,400 from 105,700 procedures for the year ended December 31, 2007.

Revenues from doctor services for the year ended December 31, 2008 were \$95.6 million, a decrease of \$1.1 million (1%) from revenues of \$96.7 million for the year ended December 31, 2007. The revenue decrease from doctor services was due principally to procedure shortfalls in refractive access, partially offset by increases in the Company's mobile cataract and other segments.

Revenues from the Company's mobile cataract segment for the year ended December 31, 2008 were \$40.9 million, an increase of \$3.3 million (9%) from revenues of \$37.6 million for the year ended December 31, 2007. The increase in mobile cataract revenue was due to increased surgical procedure volume of 5% and higher Foresee PHP™ sales volume.

Revenues from the refractive access services segment for the year ended December 31, 2008 were \$29.2 million, a decrease of \$6.3 million (18%) from revenues of \$35.5 million for the year ended December 31, 2007. For the year ended December 30, 2008, excimer procedures declined by 15,300 (26%) from the prior year period on lower customer demand, which accounted for a decrease in revenues of approximately \$9.1 million. This decrease was partially offset by higher average pricing and mobile Intralase revenues, which together increased revenues by approximately \$2.8 million.

Revenues from the Company's businesses that manage cataract and secondary care centers for the year ended December 31, 2008 were \$25.5 million, an increase of \$1.9 million (8%) from revenues of \$23.6 million for the year ended December 31, 2007. The increase was primarily driven by a 16% increase in majority-owned procedures, partially offset by less favorable procedure mix.

Revenues from eye care for the year ended December 31, 2008 were \$28.6 million, an increase of \$2.1 million (8%) from revenues of \$26.5 million for the year ended December 31, 2007. This increase was primarily due to a 13% increase in the total number of franchisees.

Total cost of revenues (excluding amortization expense for all segments) for the year ended December 31, 2008 was \$194.9 million, a decrease of \$14.2 million (7%) from the cost of revenues of \$209.1 million for the year ended December 31, 2007.

The cost of revenues from refractive centers for the year ended December 31, 2008 was \$110.8 million, a decrease of \$16.2 million (13%) from cost of revenues of \$127.0 million for the year ended December 31, 2007. This decrease was attributable to a \$10.5 million cost of revenue decline caused by lower procedure volume, \$4.6 million in fixed cost reductions and \$1.1 million related to decreased variable cost per procedure. Gross margins for centers was 26.8% during the year ended December 31, 2008, down over prior year gross margin of 27.5%.

The cost of revenues from doctor services for the year ended December 31, 2008 was \$71.1 million, an increase of \$1.0 million (1%) from cost of revenues of \$70.1 million for the year ended December 31, 2007. Gross margins decreased to 25.6% during the year ended December 31, 2008 from 27.5% in the prior year period. The increase in cost of revenues was due to the following:

The cost of revenues from the Company's mobile cataract segment for the year ended December 31, 2008 was \$30.3 million, an increase of \$3.4 million (13%) from cost of revenues of \$26.9 million for the year ended December 31, 2007. This percentage increase was primarily due to higher cataract procedure volume and higher lens supply costs.

The cost of revenues from refractive access segment for the year ended December 31, 2008 was \$23.6 million, a decrease of \$4.4 million (16%) from cost of revenues of \$28.0 million for the year ended December 31, 2007. This decrease was primarily attributable to \$7.2 million of lower costs associated with decreased excimer procedures, partially offset by an increase in cost of revenues of \$2.8 million primarily associated with higher cost procedures and the mobile Intralase offering.

The cost of revenues from the Company's businesses that manage cataract and secondary care centers for the year ended December 31, 2008 was \$17.2 million, an increase of \$2.0 million (13%) from cost of revenues of \$15.2 million for the year ended December 31, 2007. The increase was caused primarily by the increase in procedures and higher per procedure cataract lens cost.

The cost of revenues from eye care for the year ended December 31, 2008 was \$13.0 million, an increase of \$1.0 million (8%) from cost of revenues of \$12.0 million for the year ended December 31, 2007. The increase was essentially consistent with the increase in the number of franchisees. Gross margins fell slightly to 54.5% during the year ended December 31, 2008 from 54.7% in the prior year period.

General and administrative expenses of \$28.0 million for the year ended December 31, 2008 decreased \$6.8 million from \$34.8 million for the year ended December 31, 2007. The decrease was primarily related to lower salary related expenses of \$2.9 million, lower professional fees of \$1.5 million, and a favorable change of \$2.5 million in foreign currency transaction gains and losses.

Marketing expenses decreased to \$42.7 million for the year ended December 31, 2008 from \$43.0 million for the year ended December 31, 2007. The \$0.3 million decrease was primarily due to a reduction in refractive center and refractive access marketing spend during the fourth quarter 2008, down \$1.3 million over prior year fourth quarter, in order to reduce costs during the economic downturn. Partially offsetting this decline was an increase in marketing spend in the mobile cataract segment to support a dedicated Foresee PHP™ sales force.

During the year ended December 31, 2008, the Company recorded an impairment loss of \$85.0 million. The impairment loss was primarily the result of the Company's annual impairment analysis required under Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets," which resulted in an impairment loss reducing the carrying amounts of goodwill by \$73.4 million, primarily in the refractive centers segment. In addition, the Company recorded impairment charges for indefinite-lived intangible assets, other long-term assets and fixed assets within various segments. The impairment loss was generally the result of the overall refractive market decline experienced by the Company, which lead to an overall decline in fair value of various reporting units of the Company. During the year ended December 30, 2007, the Company recorded an impairment loss of \$7.7 million against goodwill and other long-term assets. The 2007 impairment loss is included in the Company's doctor services segment and relates to the decline in the fair values of various ambulatory surgical centers owned by the Company compared to carrying values.

Other operating income increased to \$0.3 million for the year ended December 31, 2008 from other operating expense of \$2.8 million for the year ended December 31, 2007. The increase in other operating income was primarily related to lower severance and center closing costs incurred during 2008.

During the year ended December 31, 2007, the Company recorded a \$0.9 million gain on the sale of 1.9 million shares of OccuLogix, Inc. common stock. No shares of OccuLogix, Inc. common stock were sold during the year ended December 31, 2008.

Interest income decreased to \$0.7 million for the year ended December 31, 2008 from \$1.6 million for the year ended December 31, 2007. This \$0.9 million decrease was primarily due to lower interest earnings related to lower average cash and short-term investment balances over the prior year.

Interest expense increased to \$10.1 million for the year ended December 31, 2008 from \$5.8 million for the year ended December 31, 2007. This \$4.3 million increase reflects the leveraged re-capitalization of the Company during June 2007 and was primarily due to interest on borrowings under the new Credit Facility. The average interest rate for the year ended December 31, 2008 was approximately 9.4%, which includes the impact of deferred loan costs and other fees.

Minority interest expense increased to \$9.5 million for the year ended December 31, 2008 from \$8.9 million for the year ended December 31, 2007 due primarily to higher profits in non-wholly owned entities.

Losses from equity investments was \$0.6 million for the year ended December 31, 2008 compared to \$12.4 million for the year ended December 31, 2007. The \$11.8 million favorable change primarily resulted from the Company no longer recognizing losses generated by the Company's investment in OccuLogix, Inc., as the investment was reduced to \$0 at December 31, 2007. The equity losses amounted to approximately \$13.4 million during the year ended December 31, 2007, and were partially offset by lower equity earnings of \$1.6 million in the Company's remaining investments.

For the year ended December 31, 2008, the Company recognized income tax expense of \$0.9 million. For the year ended December 31, 2007, the Company recognized income tax expense of \$8.5 million, primarily related to an increase in the valuation allowance.

Loss from discontinued operations for the year ended December 31, 2007 include the net operating results from two ambulatory surgery centers that were sold in 2007, which were formerly included in the Company's doctor services business. These discontinued operations generated net sales of approximately \$3.5 million and a net loss of \$8.2 million for the year ended December 31, 2007, which includes goodwill impairment charges of \$9.3 million. There were no discontinued operations for the year ended December 31, 2008.

Net loss for the year ended December 31, 2008 was \$98.3 million, or (\$1.95) per basic and diluted share, compared \$43.5 million, or (\$0.74) per basic and diluted share, for the year ended December 31, 2007.

#### YEAR ENDED DECEMBER 31, 2007 COMPARED TO THE YEAR ENDED DECEMBER 31, 2006

Total revenues for the year ended December 31, 2007 were \$298.4 million, an increase of \$20.6 million (7%) over revenues of \$277.9 million for the year ended December 31, 2006. This increase was due to a \$13.2 million increase in refractive center revenues, a \$3.7 million increase in doctor services revenues and a \$3.7 million increase in eye care revenues.

Revenues from the refractive center segment for the year ended December 31, 2007 were \$175.2 million, an increase of \$13.2 million (8%) from revenues of \$162.0 million for the year ended December 31, 2006. Refractive center revenues increased primarily due to procedure volume increase, which accounted for a \$7.5 million increase in revenues, and an increased mix of higher priced procedures, which accounted for a \$5.7 million increase in revenues. For the year ended December 31, 2007, majority-owned refractive center procedures were approximately 105,700, an increase of 4,700 (5%) over the prior year.

Revenues from doctor services for the year ended December 31, 2007 were \$96.7 million, an increase of \$3.7 million (4%) from revenues of \$93.0 million for the year ended December 31, 2006. This increase was primarily due to increases in the Company's mobile cataract and "other" segments.

Revenues from the Company's mobile cataract segment for the year ended December 31, 2007 were \$37.6 million, an increase of \$2.5 million (7%) from revenues of \$35.1 million for the year ended December 31, 2006. This increase was due to a higher average price and revenues generated from Foresee PHP™, a new product offering that the Company began selling at the end of 2006.

Revenues from the refractive access segment for the year ended December 31, 2007 were \$35.5 million, a decrease of \$1.2 million (3%) from revenues of \$36.7 million for the year ended December 31, 2006. For the year ended December 31, 2007, access procedures declined by approximately 6,400 (10%) from the prior year period and accounted for a decrease in revenues of approximately \$3.6 million. This decrease in access revenues was offset by higher average pricing, which accounted for an increase in revenues of approximately \$2.4 million.

Revenues from the Company's "other" businesses, which manage cataract and secondary care centers, for the year ended

December 31, 2007 were \$23.6 million, an increase of \$2.4 million (11%) from revenues of \$21.2 million for the year ended December 31, 2006. This increase is primarily related to the opening of two new ambulatory surgery centers in 2007 as well as growth in surgical volume due to the addition of surgeons.

Revenues from eye care for the year ended December 31, 2007 were \$26.5 million, an increase of \$3.7 million (16%) from revenues of \$22.9 million for the year ended December 31, 2006. This increase was primarily due to an increase in the Company's optometric franchising segment and its 9% growth in the number of franchisees that it serves.

Total cost of revenues (excluding amortization expense for all segments) for the year ended December 31, 2007 was \$209.1 million, an increase of \$16.2 million (8%) over the cost of revenues of \$192.9 million for the year ended December 31, 2006. Primarily causing the increase in cost of revenues was a \$12.0 million (10%) increase at refractive centers on higher procedure volume over 2006.

The cost of revenues from refractive centers for the year ended December 31, 2007 was \$127.0 million, an increase of \$12.0 million (10%) from cost of revenues of \$115.0 million for the year ended December 31, 2006. This increase was primarily attributable to an increase in procedures, which accounted for approximately \$2.7 million in costs, \$7.6 million in fixed cost increases and \$1.7 million related to increased variable cost per procedure. Gross margins for centers were 27.5% for the year ended December 31, 2007, down from 29.0% during the year ended December 31, 2006.

The cost of revenues from doctor services for the year ended December 31, 2007 was \$70.1 million, an increase of \$3.5 million (5%) from cost of revenues of \$66.6 million for the year ended December 31, 2006. Gross margins for doctor services were 27.5% for the year ended December 31, 2007, down from 28.4% during the year ended December 31, 2006.

The cost of revenues from the Company's mobile cataract segment for the year ended December 31, 2007 was \$26.9 million, an increase of \$2.3 million (9%) from cost of revenues of \$24.6 million for the year ended December 31, 2006. This increase was consistent with the increase in revenues, which was due to higher cataract volume and a new product offering that the Company began selling at the end of 2006. Gross margins for the Company's mobile cataract segment were 28.4%, down from 29.7% during the year ended December 31, 2006.

The cost of revenues from refractive access segment for the year ended December 31, 2007 was \$28.0 million, an increase of \$0.5 million (2%) from cost of revenues of \$27.5 million for the year ended December 31, 2006. This increase was primarily attributable to \$3.2 million of higher costs primarily associated with higher priced procedures and new service offerings, offset in part by the decrease in access procedures that reduced cost of revenues by approximately \$2.7 million. Gross margins for the refractive access segment decreased to 21.1% for the year ended December 31, 2007, from 24.9% in the prior year period.

The cost of revenues from the Company's "other" businesses, which manage cataract and secondary care centers, for the year ended December 31, 2007 was \$15.1 million, an increase of \$0.7 million (5%) from cost of revenues of \$14.4 million for the year ended December 31, 2006. The increase was primarily due to increased costs of supplies at several of the Company's ambulatory surgery centers in the current year due to volume growth. Gross margins increased to 35.8% during the year ended December 31, 2007 from 32.2% in the prior year.

The cost of revenues from eye care for the year ended December 31, 2007 was \$12.0 million, an increase of \$0.6 million (5%) from cost of revenues of \$11.4 million for the year ended December 31, 2006. The increase was primarily driven by increased costs associated with increased revenues at the Company's optometric franchising segment, partially offset by a decrease due to the deconsolidation of OccuLogix. Gross margins increased to 54.7% during the year ended December 31, 2007 from 50.2% in the prior year period.

General and administrative expenses increased to \$34.8 million for the year ended December 31, 2007 from \$34.5 million for the year ended December 31, 2006. The increase of \$0.3 million during the period primarily included higher non-cash foreign exchange losses of \$1.0 million and strategic restructuring related costs of \$1.0 million. The increase was partially offset by a \$1.8 million decrease from the AMD segment due to the deconsolidation of OccuLogix in the second quarter of 2006.

Marketing expenses increased to \$43.0 million for the year ended December 31, 2007 from \$27.8 million for the year ended December 31, 2006. The \$15.2 million (55%) increase was primarily due to significant increases in marketing spend in the Company's refractive center segment, up \$12.7 million (65%), as the Company increased spending as part of its direct-to-consumer marketing initiative.

Research and development, clinical and regulatory expenses decreased to \$0 for the year ended December 31, 2007 from \$1.5 million for the year ended December 31, 2006. Research and development, clinical and regulatory expenses were incurred by OccuLogix as it conducted clinical trials related to its rheopheresis application to the FDA. The decrease was due to the deconsolidation of OccuLogix in the second quarter of 2006.

Amortization expense decreased to \$3.4 million for the year ended December 31, 2007 from \$3.5 million for the year ended December 31, 2006. This decrease was primarily due to certain intangible assets that were fully amortized during the year ended December 31, 2006.

During the year ended December 31, 2007, the Company recognized an impairment loss of \$7.7 million associated with its ambulatory surgery centers. The impairment charge resulted in decreases to both other assets and goodwill. No such impairment was recorded during the year ended December 31, 2006.

During the year ended December 31, 2007, the Company recorded a \$0.9 million gain on the sale of 1.9 million shares of OccuLogix common stock compared to \$1.4 million gain on the sale of 0.8 million shares of OccuLogix common stock in the prior year.

Net other operating expenses increased to \$2.8 million for the year ended December 31, 2007 from \$0.9 million for the year ended December 31, 2006. For the year ended December 31, 2007, other operating expenses primarily included \$1.4 million in center closing costs, \$1.3 million in severance accruals and \$0.2 million in losses from the sales of subsidiaries. These expenses were partially offset by miscellaneous income of \$0.1 million. For the year ended December 31, 2006, other operating expenses primarily included \$1.0 million of severance accruals, \$0.3 million of net write-downs in the fair values of fixed assets and long-term liabilities and \$0.2 million of center closing costs. These expenses were partially offset by a \$0.3 million reimbursement received under a previous research and development arrangement and \$0.3 million of gain on sales and issuances of subsidiary stock.

Interest income decreased to \$1.6 million for the year ended December 31, 2007 from \$2.3 million for the year ended December 31, 2006. This \$0.7 million decrease was primarily due to less cash and short-term investments on hand during the year ended December 30, 2007 versus the prior year.

Interest expense increased to \$5.8 million for the year ended December 30, 2007 from \$1.5 million for the year ended December 31, 2006. This \$4.3 million increase reflects the increase in the Company's total outstanding debt, driven primarily by borrowings under our new credit facility entered into during June 2007.

Minority interest expense increased to \$8.9 million for the year ended December 31, 2007 from \$6.5 million for the year ended December 31, 2006. This \$2.4 million increase was primarily due to the Company not recognizing any minority interest for the AMD segment during the year ended December 31, 2007 due to the Company accounting for its investment in OccuLogix under the equity method, which began in the second quarter of 2006.

Losses from equity investments were \$12.4 million for the year ended December 31, 2007 as compared to \$2.6 million for the year ended December 31, 2006. This \$9.8 million increase was primarily due to an increase of \$7.6 million in the loss from the AMD segment in the year ended December 31, 2007. The increase in AMD equity losses in 2007 was due to the Company not accounting for its investment in OccuLogix under the equity method until the second quarter of 2006 and due to the poor operating results of OccuLogix during 2007.

For the year ended December 31, 2007, the Company recognized an income tax expense of \$8.5 million. This expense included \$7.2 million in expense related to an increase in valuation allowance against net deferred tax assets. For the year ended December 31, 2006, the Company recognized income tax benefit of \$3.7 million.

Losses from discontinued operations include the divestitures of two ambulatory surgery centers, which were formerly included in the Company's doctor services business. The divestitures of these locations were completed during 2007 and resulted in losses from discontinued operations of \$8.2 million and \$2.1 million for the years ended December 31, 2007 and 2006, respectively. Included in the losses from discontinued operations are goodwill impairment charges of \$9.3 million and \$4.1 million for the years ended December 31, 2007 and 2006, respectively. Loss from discontinued operations included net sales of approximately \$3.5 million in 2007 and \$4.0 million in 2006. Refer to the Discontinued Operations section of Note 2, "Summary of Significant Accounting Policies," to the consolidated financial statements for more information.

Net loss for the year ended December 31, 2007 increased to \$43.5 million or (\$0.74) per diluted share from net income of \$11.5 million or \$0.17 per diluted share for the year ended December 31, 2006. Excluding the impact of the AMD segment, net loss

increased to \$31.0 million or (\$0.53) per diluted share for the year ended December 31, 2007 from net income of \$18.7 million or \$0.27 per diluted share for the prior year period.

## LIQUIDITY AND CAPITAL RESOURCES

### *Liquidity*

During the year ended December 31, 2008, the Company continued to focus its activities primarily on its strategic growth initiatives, fixed cost structure optimization, and capital preservation in response to current economic conditions. Cash and cash equivalents at December 31, 2008 totaled \$4.5 million, a decrease of \$8.4 million from December 31, 2007. This change was comprised of \$15.8 million in cash provided by operating activities, offset primarily by capital expenditures, acquisition and equity investments, principal payments of debt, capitalized debt costs and distributions to minority interests. Net current liabilities at December 31, 2008 were \$99.5 million, an unfavorable change of \$88.4 million from \$11.1 million at December 31, 2007. This change was primarily due to a \$76.0 million reclassification of the Company's Credit Facility's long-term debt to short term as a result of debt covenant violations and issues regarding the Company's ability to continue as a going concern.

The Company's principal cash requirements have included normal operating expenses, debt repayments, distributions to minority partners, capital expenditures, acquisitions and investments. Normal operating expenses include doctors' compensation, procedure royalty fees, procedure medical supply expenses, travel and entertainment, professional fees, insurance, rent, equipment maintenance, wages, utilities and marketing.

The Company relies on the following sources of liquidity to continue to operate as a going concern: (i) cash and cash equivalents on hand; (ii) cash generated from operations; (iii) borrowings under the Company's revolving credit facility; (iv) net proceeds from asset sales; and (v) access to the capital markets. The Company's principal uses of cash are to provide for working capital to fund its operation and to service its debt and other contractual obligations. The changes in financial markets in the late summer and fall of 2008 limited the ability of companies such as *TLCVision* to access the capital markets. The deepening recession in the fourth quarter of 2008 has had a significant impact on the Company's operations, resulting in a sharp decline in the demand for refractive surgery and financial performance. As a result, the Company's liquidity became progressively constrained in the fourth quarter of 2008. The Company has incurred losses from continuing operations of \$98.3 million and \$35.3 million for the years ended December 31, 2008 and 2007, respectively.

Beginning in early 2008, in response to the deteriorated economic environment the Company implemented a series of initiatives to balance its costs of operation with the new lower level of refractive procedures. The Company continues to implement cost reduction and cash generation initiatives, including reductions in headcount, freezing or reducing salaries and benefits, reductions in discretionary spending including direct to consumer marketing, reductions in overhead costs, lower capital spending, the sale of surplus assets and the closure of underperforming refractive centers/mobile refractive routes.

Due to the sharp decline in customer demand during the second half of fiscal 2008, and the resulting decline in sales, the Company's financial performance deteriorated sharply during the fourth quarter of 2008 resulting in the Company's inability to be in compliance with its primary financial covenants under its Credit Facility as of December 31, 2008. See Note 14, "Debt," in the consolidated financial statements for information on the Company's various debt agreements. Furthermore, in the current economic environment, it is unlikely that the Company's financial performance in 2009 will be sufficient to enable it to be in compliance with these covenants for the balance of 2009 unless amended. Accordingly, the Company is in active discussions with the lenders to secure both a short-term financial debt covenant compliance waiver to cure the existing default, as well as further amendments to the Credit Facility to avoid a subsequent default. There can be no assurances that the lenders will grant such waivers or amendments on commercially reasonable terms, if at all.

In light of the existing non-compliance with the financial covenants as of December 31, 2008, and given that it is unlikely that the Company will be in compliance with the covenants currently in the Credit Facility for the balance of 2009 unless amended, borrowings of \$82.7 million under the Credit Facility have been recorded as current liabilities as of December 31, 2008. Accordingly, at December 31, 2008, the Company has a working capital deficiency of approximately \$99.5 million. Subsequent to December 31, 2008, the Company borrowed an additional \$17.4 million under the revolving portion of its Credit Facility raising the total outstanding debt under the Credit Facility to \$100.1 million as of February 28, 2009.

The Company will likely continue to incur operating losses in 2009 and its liquidity remains constrained such that it may not be sufficient to meet the Company's cash operating needs in this period of economic uncertainty. The Company is in active discussions with its lenders to ensure that it has sufficient liquidity in excess of what is available under its Credit Facility, although there is no assurance that the Company can obtain additional liquidity on commercially reasonable terms, if at all. If the Company is unable to obtain or sustain the liquidity required to operate its business the Company may need to seek to modify the terms of its debts and/or to reorganize its capital structure.

The Company's independent registered public accounting firm's report issued in the December 31, 2008 Annual Report on Form 10-K included an explanatory paragraph describing the existence of conditions that raise substantial doubt about the Company's ability to continue as a going concern, including significant losses, limited access to additional liquidity and compliance with certain financial covenants. The financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern.

#### *Credit Facility*

During June 2007, the Company entered into a \$110.0 million credit facility ("Credit Facility" or "Agreement"). The facility is secured by substantially all the assets of the Company and consists of both senior term debt and a revolver as follows:

Senior term debt, totaling \$85.0 million, with a six-year term and required amortization payments of 1% per annum plus a percentage of excess cash flow (as defined in the agreement) and sales of assets or borrowings outside of the normal course of business. As of December 31, 2008, \$76.7 million was outstanding on this portion of the facility.

A revolving credit facility, totaling \$25.0 million with a five-year term. As of December 31, 2008, \$6.0 million was outstanding under this portion of the facility and approximately \$18.0 million was unused and available, which is net of outstanding letters of credit totaling approximately \$1.0 million.

Interest on the facility is calculated based on either prime rate or the London Interbank Offered Rate (LIBOR) plus a margin, which at December 31, 2008 was 4.00% for prime rate borrowings and 5.00% for LIBOR rate borrowings. In addition, the Company pays a commitment fee equal to 0.35% on the undrawn portion of the revolving credit facility.

Under the Credit Facility, the Company is required to make additional principal payments annually on the term loan if excess cash flow (as defined in the Agreement) exists. For the year ended December 31, 2007, it was determined the Company had excess cash flows as defined under the terms of the Credit Facility. As a result, the Company was required to make an additional principal payment of \$1.7 million during the quarter ended March 31, 2008. In addition, \$3.0 million of optional prepayments were made during the year ended December 31, 2008, which were partially applied against the Company's future quarterly principal payments resulting in the next quarterly principal payment being contractually due on June 30, 2009. The Company estimates that no excess cash flows as defined under the terms of the Credit Facility will exist at December 31, 2008.

The Credit Facility also requires the Company to maintain various financial and non-financial covenants as defined in the agreement. During February 2008, the Company reached agreement with its lenders to amend the consolidated fixed charge coverage ratio and leverage ratio covenants associated with the Credit Facility. The ratio covenant changes were effective for the period beginning after September 30, 2007. The amendment also raised the interest rate margin on all of the Company's debt under the Credit Facility by 2.50% per annum, effective February 2008. The Company accounted for the amendment as a modification of debt. The amendment resulted in the Company incurring various creditor and legal fees of \$0.5 million, which were capitalized to the extent allowable during the quarter ended March 31, 2008 and are being amortized through 2013.

The Company was not in compliance with its financial covenants as of December 31, 2008.

#### *Contractual Obligations*

As of December 31, 2008, the Company had contractual obligations relating to debt, debt related interest, operating leases for rental of office space, inventory purchases and marketing contracts requiring future minimum payments aggregating to \$181.0 million. Obligations by period reflect stated contractual due dates. Despite the maturity date, obligations of \$82.7 million under the Credit Facility have been classified as current liabilities at December 31, 2008 due to existing covenant violation. See Note 14, "Debt," of the consolidated financial statements for additional information. Future minimum contractual payments are as follows:

### **PAYMENTS DUE BY PERIOD**

| <b><u>CONTRACTUAL OBLIGATIONS</u></b> | <b><u>TOTAL</u></b> | <b>LESS<br/>THAN 1<br/>YEAR</b> | <b>1 TO 3<br/>YEARS</b> | <b>MORE<br/>THAN 3<br/>YEARS</b> |
|---------------------------------------|---------------------|---------------------------------|-------------------------|----------------------------------|
| Debt                                  | \$ 105,581          | \$ 13,051                       | \$ 10,724               | \$ 81,806                        |
| Interest on debt                      | 25,411              | 6,413                           | 11,137                  | 7,861                            |
| Operating leases                      | 28,704              | 7,810                           | 11,790                  | 9,104                            |
| Inventory purchases                   | 12,600              | 12,600                          | --                      | --                               |
| Marketing contracts                   | 8,750               | 2,750                           | 6,000                   | --                               |
| Total                                 | <u>\$ 181,046</u>   | <u>\$ 42,624</u>                | <u>\$ 39,651</u>        | <u>\$ 98,771</u>                 |

Future interest payments on debt include approximately \$21.4 million associated with the outstanding Term Loan under the Company's Credit Facility and assumes an interest rate of 6.25%. The actual interest rate on the Term Loan is variable and the Company may make advance principal payments in future periods affecting the Company's current estimate of future interest payments.

Future interest payments on debt also includes approximately \$0.4 million associated with outstanding borrowings under the revolving portion of the Company's Credit Facility and assume an interest rate of 6.25%. The Company assumes borrowings under the revolving portion of the Credit Facility will be outstanding for a period of one year for the purpose of the future interest payment calculation, however no guarantee can be made that such borrowings will remain outstanding in this dollar amount or for this period.

#### *Equity Transactions*

During June 2007, the Company repurchased and cancelled 20.0 million of its outstanding common shares (representing approximately 30% of total shares outstanding) through a modified "Dutch" auction. The shares were purchased at a price of \$5.75 per share with a total cost of \$117.6 million (including applicable transaction expenses). This transaction was financed through a combination of cash-on-hand and the \$85 million proceeds under the Company's Credit Facility.

On April 11, 2006, the Company sold 0.8 million shares of OccuLogix common stock and recorded a gain of \$1.4 million. After the sale of stock, the Company owned approximately 49% of OccuLogix. Due to the insignificance of the results of operations of OccuLogix from April 1, 2006 through April 11, 2006, the Company deconsolidated OccuLogix effective April 1, 2006 and accounted for its investment in OccuLogix under the equity method through late 2008, at which point a recapitalization of OccuLogix occurred that diluted the Company's ownership level to 8%.

#### **CASH PROVIDED BY OPERATING ACTIVITIES**

Net cash provided by operating activities was \$15.8 million for the year ended December 31, 2008. The cash flows provided by operating activities were comprised of the net loss of \$98.3 million plus non-cash items including depreciation and amortization of \$19.7 million, minority interests of \$9.5 million, non-cash stock-based compensation expense of \$1.4 million, and \$85.0 million of impairment charges. Operating cash flow was also impacted by \$2.3 million in adverse net operating asset and liability changes. This \$2.3 million change consisted of a \$2.4 million decrease in accounts payable and accrued expenses and a \$0.6 million increase in accounts receivable, partially offset by a \$0.7 million decrease in prepaid expenses and other current assets.

#### **CASH USED IN INVESTING ACTIVITIES**

Net cash used in investing activities was \$7.6 million for the year ended December 31, 2008. The cash used in investing activities included capital expenditures of \$3.5 million and acquisitions and investments of \$8.9 million, which primarily includes payments related to the acquisition of TruVision™ in 2005. These cash outflows were partially offset by \$2.1 million of distributions and loan payments received from equity investments, proceeds from the sales of fixed assets of \$1.3 million and \$1.3 million of proceeds received on the divestitures of businesses.

#### **CASH USED IN FINANCING ACTIVITIES**

Net cash used in financing activities was \$16.7 million for the year ended December 31, 2008. Net cash used during this period was primarily related to repayment of certain notes payable and capitalized lease obligation of \$33.1 million, capitalized debt costs of \$0.5 million and \$9.9 million of distributions to minority interests. Partially offsetting the cash used in financing activities were proceeds from debt financing of \$25.4 million, issuances of common stock of \$0.4 million and restricted cash movement of \$1.1 million.

## NEW ACCOUNTING PRONOUNCEMENTS

For a discussion on prospective accounting pronouncements, see Note 2, "Summary of Significant Accounting Policies," in the accompanying audited consolidated financial statements and notes thereto set forth in Item 8 of this report.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

### *Investments*

The Company has invested in various companies, some of which are in development stages. The investments in development stage companies are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize. The Company could lose its various investments in development stage companies. As of December 31, 2008 and 2007, the Company had investments and other long-term assets of \$4.3 million and \$5.9 million, respectively, in development stage companies. The Company's impairment charges on investments in development stage companies were \$2.4 million during fiscal 2008. No impairment charges were recorded against investments in development stage companies during the years ended 2007 and 2006.

### *Interest Rate Risk*

The Company does not enter into financial instruments for trading or speculative purposes. As required under the Company's Credit Facility, during August and December 2007 the Company entered into interest rate swap agreements to eliminate the variability of cash required for interest payments for a majority of the total variable rate debt. Under the agreement entered during August 2007, the Company receives a floating rate based on the LIBOR interest rate and pays a fixed rate of 5.0% on notional amounts ranging from \$20 million to \$42 million over the life of the swap agreement, which matures on April 1, 2010. Under the agreement entered during December 2007, with an effective date of January 2, 2008, the Company receives a floating rate based on the LIBOR interest rate and pays a fixed rate of 3.9% on notional amounts ranging from \$20 million to \$32 million over the life of the swap agreement, which matures on April 1, 2010.

As of December 31, 2008 and 2007 the outstanding notional amounts of the interest rate swaps was \$59 million and \$20 million, respectively, and the Company has recorded liabilities of \$1.5 million and \$0.8 million, respectively, to recognize the fair value of the interest derivatives. The net offset is recorded in accumulated other comprehensive income, as the instruments have been designated as qualifying cash flow hedges.

There is risk that the Company's interest derivatives may become ineffective in future periods, which would result in the Company recording such ineffectiveness in earnings.

### *Foreign Currency Risk*

The Company's net assets, net earnings and cash flows from its Canadian subsidiaries are based on the U.S. dollar equivalent of such amounts measured in the Canadian dollar functional currency. Assets and liabilities of the Canadian operations are translated to U.S. dollars using the applicable exchange rate as of the end of a reporting period. Revenues, expenses and cash flow are translated using the average exchange rate during the reporting period. A hypothetical 10% unfavorable change in the Canadian-to-U.S. dollar exchange rate would cause a \$0.6 million decrease to the Company's net asset balance.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### RESPONSIBILITY FOR FINANCIAL STATEMENTS

The accompanying consolidated financial statements of TLC Vision Corporation have been prepared by management in conformity with accounting principles generally accepted in the United States. The significant accounting policies have been set out in the consolidated financial statements. These statements are presented on the accrual basis of accounting. Accordingly, a precise determination of many assets and liabilities is dependent upon future events. Therefore, estimates and approximations have been made using careful judgment. Recognizing that the Company is responsible for both the integrity and objectivity of the financial statements, management is satisfied that these financial statements have been prepared within reasonable limits of materiality under United States generally accepted accounting principles.

During the year ended December 31, 2008, the Board of Directors had an Audit Committee consisting of four non-management directors. The committee met with management and the auditors to review any significant accounting, internal control and auditing matters and to review and finalize the annual financial statements of the Company along with the report of independent registered public accounting firm prior to the submission of the financial statements to the Board of Directors for final approval.

The financial information throughout the text of this Annual Report is consistent with the information presented in the financial statements.

The Company's accounting procedures and related systems of internal control are designed to provide reasonable assurance that its assets are safeguarded and its financial records are reliable.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders  
TLC Vision Corporation

We have audited the accompanying consolidated balance sheets of TLC Vision Corporation (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' (deficit) equity, and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15a. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of TLC Vision Corporation at December 31, 2008 and 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the financial statements taken as a whole, presents fairly in all material respects, the information set forth therein.

As discussed in Note 19 to the consolidated financial statements, the Company changed its method of accounting for income tax uncertainties effective January 1, 2007.

The accompanying financial statements have been prepared assuming that TLC Vision Corporation will continue as a going concern. As more fully described in Note 3, the Company has incurred recurring operating losses and has a working capital deficiency. In addition, the Company has not complied with certain financial covenants within the Company's loan agreements. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 3. The 2008 consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from the outcome of this uncertainty.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), TLC Vision Corporation's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 31, 2009 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

St. Louis, Missouri  
March 31, 2009

TLC VISION CORPORATION  
CONSOLIDATED STATEMENTS OF OPERATIONS  
(In thousands, except per share amounts)

|                                                                          | YEAR ENDED DECEMBER 31, |                    |                  |
|--------------------------------------------------------------------------|-------------------------|--------------------|------------------|
|                                                                          | 2008                    | 2007               | 2006             |
| Revenues:                                                                |                         |                    |                  |
| Refractive centers .....                                                 | \$ 151,442              | \$ 175,206         | \$ 162,015       |
| Doctor services .....                                                    | 95,615                  | 96,697             | 92,978           |
| Eye care .....                                                           | 28,611                  | 26,511             | 22,860           |
| Total revenues .....                                                     | <u>275,668</u>          | <u>298,414</u>     | <u>277,853</u>   |
| Cost of revenues (excluding amortization expense shown below):           |                         |                    |                  |
| Refractive centers .....                                                 | 110,824                 | 127,024            | 114,981          |
| Doctor services .....                                                    | 71,104                  | 70,061             | 66,564           |
| Eye care .....                                                           | 13,010                  | 11,999             | 11,392           |
| Total cost of revenues (excluding amortization expense shown below)..... | <u>194,938</u>          | <u>209,084</u>     | <u>192,937</u>   |
| Gross profit.....                                                        | <u>80,730</u>           | <u>89,330</u>      | <u>84,916</u>    |
| General and administrative.....                                          | 28,016                  | 34,819             | 34,476           |
| Marketing and sales.....                                                 | 42,725                  | 42,979             | 27,791           |
| Research and development, clinical and regulatory .....                  | --                      | --                 | 1,475            |
| Amortization of intangibles.....                                         | 3,233                   | 3,398              | 3,451            |
| Impairment of goodwill and other assets.....                             | 85,047                  | 7,659              | --               |
| Other (income) expenses, net .....                                       | <u>(339)</u>            | <u>2,753</u>       | <u>874</u>       |
|                                                                          | <u>158,682</u>          | <u>91,608</u>      | <u>68,067</u>    |
| Operating (loss) income from continuing operations .....                 | (77,952)                | (2,278)            | 16,849           |
| Gain on sale of OccuLogix, Inc. stock .....                              | --                      | 899                | 1,450            |
| Interest income .....                                                    | 734                     | 1,621              | 2,330            |
| Interest expense .....                                                   | (10,072)                | (5,778)            | (1,455)          |
| Minority interests .....                                                 | (9,530)                 | (8,921)            | (6,513)          |
| Loss from equity investments.....                                        | <u>(560)</u>            | <u>(12,367)</u>    | <u>(2,636)</u>   |
| (Loss) income from continuing operations before income taxes.....        | (97,380)                | (26,824)           | 10,025           |
| Income tax (expense) benefit.....                                        | <u>(874)</u>            | <u>(8,476)</u>     | <u>3,655</u>     |
| (Loss) income from continuing operations .....                           | (98,254)                | (35,300)           | 13,680           |
| Loss from discontinued operations, net of tax.....                       | --                      | (8,214)            | (2,161)          |
| Net (loss) income.....                                                   | <u>\$ (98,254)</u>      | <u>\$ (43,514)</u> | <u>\$ 11,519</u> |
| (Loss) earnings per share - basic .....                                  | <u>\$ (1.95)</u>        | <u>\$ (0.74)</u>   | <u>\$ 0.17</u>   |
| (Loss) earnings per share - diluted .....                                | <u>\$ (1.95)</u>        | <u>\$ (0.74)</u>   | <u>\$ 0.17</u>   |
| Weighted-average number of common shares outstanding - basic .....       | <u>50,319</u>           | <u>59,139</u>      | <u>68,907</u>    |
| Weighted-average number of common shares outstanding - diluted.....      | <u>50,319</u>           | <u>59,139</u>      | <u>69,580</u>    |

See notes to consolidated financial statements.

TLC VISION CORPORATION  
CONSOLIDATED BALANCE SHEETS  
(In thousands)

|                                                              | DECEMBER 31,      |                   |
|--------------------------------------------------------------|-------------------|-------------------|
|                                                              | 2008              | 2007              |
| <b>ASSETS</b>                                                |                   |                   |
| Current assets:                                              |                   |                   |
| Cash and cash equivalents .....                              | \$ 4,492          | \$ 12,925         |
| Accounts receivable, net.....                                | 16,870            | 18,076            |
| Prepaid expenses, inventory and other .....                  | 14,214            | 14,882            |
| Total current assets.....                                    | 35,576            | 45,883            |
| Restricted cash .....                                        | --                | 1,101             |
| Investments and other assets, net .....                      | 11,694            | 17,524            |
| Goodwill.....                                                | 28,570            | 94,346            |
| Other intangible assets, net.....                            | 10,628            | 17,020            |
| Fixed assets, net .....                                      | 50,514            | 61,936            |
| Total assets .....                                           | <u>\$ 136,982</u> | <u>\$ 237,810</u> |
| <b>LIABILITIES</b>                                           |                   |                   |
| Current liabilities:                                         |                   |                   |
| Accounts payable .....                                       | \$ 17,897         | \$ 17,177         |
| Accrued liabilities.....                                     | 28,076            | 28,115            |
| Current maturities of long-term debt, including              |                   |                   |
| \$82.7 million in default at December 31, 2008 .....         | 89,081            | 11,732            |
| Total current liabilities .....                              | 135,054           | 57,024            |
| Other long-term liabilities .....                            | 5,444             | 5,023             |
| Long-term debt, less current maturities.....                 | 16,500            | 98,417            |
| Minority interests .....                                     | 15,330            | 15,224            |
| Total liabilities .....                                      | 172,328           | 175,688           |
| <b>STOCKHOLDERS' EQUITY</b>                                  |                   |                   |
| Common stock, no par value; unlimited number authorized..... | 339,112           | 337,473           |
| Option and warrant equity .....                              | 745               | 837               |
| Accumulated other comprehensive loss .....                   | (1,545)           | (784)             |
| Accumulated deficit .....                                    | (373,658)         | (275,404)         |
| Total stockholders' (deficit) equity.....                    | (35,346)          | 62,122            |
| Total liabilities and stockholders' (deficit) equity .....   | <u>\$ 136,982</u> | <u>\$ 237,810</u> |

See notes to consolidated financial statements.

Approved on behalf of the Board:

/s/ JAMES C. WACHTMAN  
James C. Wachtman, Director

/s/ WARREN S. RUSTAND  
Warren S. Rustand, Director

TLC VISION CORPORATION  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)

|                                                                                                  | YEAR ENDED DECEMBER 31, |                  |                  |
|--------------------------------------------------------------------------------------------------|-------------------------|------------------|------------------|
|                                                                                                  | 2008                    | 2007             | 2006             |
| <b>OPERATING ACTIVITIES</b>                                                                      |                         |                  |                  |
| Net (loss) income .....                                                                          | \$ (98,254)             | \$ (43,514)      | \$ 11,519        |
| Adjustments to reconcile net income to net cash from operating activities:                       |                         |                  |                  |
| Depreciation and amortization .....                                                              | 19,670                  | 18,859           | 16,392           |
| Reimbursements of investments in research and development arrangements .....                     | --                      | --               | (300)            |
| Deferred taxes .....                                                                             | --                      | 7,172            | (5,241)          |
| Minority interests .....                                                                         | 9,530                   | 9,423            | 7,022            |
| Gain on sales and issuances of subsidiary stock .....                                            | --                      | (899)            | (1,799)          |
| (Gain) loss on sales of subsidiaries .....                                                       | (139)                   | 233              | --               |
| Loss from equity investments .....                                                               | 560                     | 12,367           | 2,636            |
| (Gain) loss on sales and disposals of fixed assets .....                                         | (269)                   | (11)             | 140              |
| Non-cash compensation expense .....                                                              | 1,391                   | 1,115            | 1,444            |
| Write-down of OccuLogix inventory .....                                                          | --                      | --               | 1,625            |
| Adjustments to the fair values of long-lived assets and liabilities .....                        | --                      | --               | 294              |
| Impairment .....                                                                                 | 85,047                  | 16,950           | 4,087            |
| Other .....                                                                                      | 561                     | 275              | 84               |
| Changes in operating assets and liabilities, net of acquisitions and dispositions:               |                         |                  |                  |
| Accounts receivable .....                                                                        | (626)                   | 392              | 632              |
| Prepaid expenses, inventory and other current assets .....                                       | 704                     | (280)            | (3,165)          |
| Accounts payable and accrued liabilities .....                                                   | (2,352)                 | 9,248            | (1,882)          |
| Cash provided by operating activities .....                                                      | <u>15,823</u>           | <u>31,330</u>    | <u>33,488</u>    |
| <b>INVESTING ACTIVITIES</b>                                                                      |                         |                  |                  |
| Purchases of fixed assets .....                                                                  | (3,534)                 | (13,279)         | (11,493)         |
| Proceeds from sales of fixed assets .....                                                        | 1,259                   | 1,114            | 681              |
| Proceeds from divestitures of investments and subsidiaries, net .....                            | 1,281                   | 1,619            | --               |
| Proceeds from sale of OccuLogix, Inc. stock, net .....                                           | --                      | 2,000            | 2,456            |
| Distributions and loan payments received from equity investments .....                           | 2,107                   | 2,846            | 3,613            |
| Reimbursements from research and development arrangements .....                                  | --                      | --               | 300              |
| Acquisitions and equity investments .....                                                        | (8,862)                 | (4,815)          | (7,839)          |
| OccuLogix, Inc. cash balance at time of deconsolidation .....                                    | --                      | --               | (14,814)         |
| Proceeds from sales of short-term investments .....                                              | --                      | 17,375           | 10,325           |
| Purchases of short-term investments .....                                                        | --                      | (5,800)          | (5,425)          |
| Other .....                                                                                      | 144                     | 123              | (12)             |
| Cash (used in) provided by investing activities .....                                            | <u>(7,605)</u>          | <u>1,183</u>     | <u>(22,208)</u>  |
| <b>FINANCING ACTIVITIES</b>                                                                      |                         |                  |                  |
| Decrease (increase) in restricted cash .....                                                     | 1,101                   | (66)             | (60)             |
| Proceeds from debt financing .....                                                               | 25,392                  | 89,717           | 441              |
| Principal payments of debt financing and capital leases .....                                    | (33,070)                | (11,998)         | (6,479)          |
| Capitalized debt costs .....                                                                     | (534)                   | (1,960)          | --               |
| Distributions to minority interests .....                                                        | (9,895)                 | (9,454)          | (9,197)          |
| Purchases of treasury stock .....                                                                | --                      | (117,569)        | --               |
| Proceeds from issuances of OccuLogix, Inc. stock, net and cash acquired upon consolidation ..... | --                      | --               | 233              |
| Proceeds from issuances of common stock .....                                                    | 355                     | 2,825            | 970              |
| Cash used in financing activities .....                                                          | <u>(16,651)</u>         | <u>(48,505)</u>  | <u>(14,092)</u>  |
| Net decrease in cash and cash equivalents during the period .....                                | (8,433)                 | (15,992)         | (2,812)          |
| Cash and cash equivalents, beginning of period .....                                             | <u>12,925</u>           | <u>28,917</u>    | <u>31,729</u>    |
| Cash and cash equivalents, end of period .....                                                   | <u>\$ 4,492</u>         | <u>\$ 12,925</u> | <u>\$ 28,917</u> |

See notes to consolidated financial statements.

TLC VISION CORPORATION  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY  
(In thousands)

|                                                                                   | <u>COMMON STOCK</u> |               | <u>OPTION<br/>AND<br/>WARRANT<br/>EQUITY</u> | <u>TREASURY STOCK</u> |               | <u>ACCUMULATED<br/>OTHER<br/>COMPREHENSIVE<br/>LOSS</u> | <u>ACCUMULATED<br/>DEFICIT</u> | <u>TOTAL</u> |
|-----------------------------------------------------------------------------------|---------------------|---------------|----------------------------------------------|-----------------------|---------------|---------------------------------------------------------|--------------------------------|--------------|
|                                                                                   | <u>SHARES</u>       | <u>AMOUNT</u> |                                              | <u>SHARES</u>         | <u>AMOUNT</u> |                                                         |                                |              |
| Balance December 31, 2005.....                                                    | 68,691              | \$ 450,703    | \$ 1,861                                     | --                    | \$ --         | \$ --                                                   | \$ (244,159)                   | \$ 208,405   |
| Shares issued as part of the employee<br>share purchase plan and 401(k) plan..... | 142                 | 740           |                                              |                       |               |                                                         |                                | 740          |
| Exercise of stock options.....                                                    | 258                 | 647           | (50)                                         |                       |               |                                                         |                                | 597          |
| Options expired or forfeited .....                                                |                     | 5             | (5)                                          |                       |               |                                                         |                                | --           |
| Adjustment of utilized net operating loss<br>carry forwards.....                  |                     | (3,116)       |                                              |                       |               |                                                         |                                | (3,116)      |
| Stock based compensation.....                                                     |                     | 983           |                                              |                       |               |                                                         |                                | 983          |
| Changes in subsidiaries' stockholders'<br>equity .....                            |                     | 171           |                                              |                       |               |                                                         |                                | 171          |
| Net income.....                                                                   |                     |               |                                              |                       |               |                                                         | 11,519                         | 11,519       |
| Balance December 31, 2006.....                                                    | 69,091              | \$ 450,133    | \$ 1,806                                     | --                    | \$ --         | \$ --                                                   | \$ (232,640)                   | \$ 219,299   |
| Shares issued as part of the employee<br>share purchase plan and 401(k) plan..... | 70                  | 264           |                                              |                       |               |                                                         |                                | 264          |
| Exercise of stock options.....                                                    | 979                 | 3,222         | (661)                                        |                       |               |                                                         |                                | 2,561        |
| Options expired or forfeited .....                                                |                     | 308           | (308)                                        |                       |               |                                                         |                                | --           |
| Stock based compensation.....                                                     |                     | 1,115         |                                              |                       |               |                                                         |                                | 1,115        |
| Purchase of treasury stock .....                                                  |                     |               |                                              | 20,000                | (117,569)     |                                                         |                                | (117,569)    |
| Retirement of treasury stock.....                                                 | (20,000)            | (117,569)     |                                              | (20,000)              | 117,569       |                                                         |                                | --           |
| Adjustment related to adoption of FIN 48<br>(see note 19) .....                   |                     |               |                                              |                       |               |                                                         | 750                            | 750          |
| Comprehensive loss                                                                |                     |               |                                              |                       |               |                                                         |                                |              |
| Deferred hedge loss .....                                                         |                     |               |                                              |                       |               | (784)                                                   |                                | (784)        |
| Net loss .....                                                                    |                     |               |                                              |                       |               |                                                         | (43,514)                       | (43,514)     |
| Balance December 31, 2007.....                                                    | 50,140              | \$ 337,473    | \$ 837                                       | --                    | \$ --         | \$ (784)                                                | \$ (275,404)                   | \$ 62,122    |
| Shares issued as part of the employee<br>share purchase plan and 401(k) plan..... | 180                 | 185           |                                              |                       |               |                                                         |                                | 185          |
| Exercise of stock options.....                                                    | 86                  | 259           | (89)                                         |                       |               |                                                         |                                | 170          |
| Options expired or forfeited .....                                                |                     | 3             | (3)                                          |                       |               |                                                         |                                | --           |
| Stock based compensation.....                                                     |                     | 1,391         |                                              |                       |               |                                                         |                                | 1,391        |
| Changes in subsidiaries' stockholders'<br>equity .....                            |                     | (199)         |                                              |                       |               |                                                         |                                | (199)        |
| Comprehensive loss                                                                |                     |               |                                              |                       |               |                                                         |                                |              |
| Deferred hedge loss .....                                                         |                     |               |                                              |                       |               | (761)                                                   |                                | (761)        |
| Net loss .....                                                                    |                     |               |                                              |                       |               |                                                         | (98,254)                       | (98,254)     |
| Balance December 31, 2008.....                                                    | 50,406              | \$ 339,112    | \$ 745                                       | --                    | \$ --         | \$ (1,545)                                              | \$ (373,658)                   | \$ (35,346)  |

See notes to consolidated financial statements.

# TLC VISION CORPORATION

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(tabular amounts in thousands, except per share amounts)

### 1. NATURE OF OPERATIONS

TLC Vision Corporation is an eye care services company dedicated to improving lives through improving vision by providing high-quality care directly to patients and as a partner with their doctors and facilities. The majority of the Company's revenues come from owning and operating refractive centers that employ laser technologies to treat common refractive vision disorders such as myopia (nearsightedness), hyperopia (farsightedness) and astigmatism. In its doctor services business, the Company furnishes doctors and medical facilities with mobile or fixed site access to refractive and cataract surgery equipment, supplies, technicians and diagnostic products, as well as owns and manages single-specialty ambulatory surgery centers. In its eye care business, the Company's primary business provides franchise opportunities to independent optometrists under its Vision Source® brand.

### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Basis of Presentation and Principles of Consolidation

The consolidated financial statements include the accounts of the Company, its majority-owned subsidiaries and all variable interest entities that the Company is the primary beneficiary. All significant intercompany transactions and balances have been eliminated in consolidation.

#### Discontinued Operations

During 2007, the Company completed the divestiture of two ambulatory surgical centers, which were part of the Company's doctor services business. The results for these components are accounted for as discontinued operations in the consolidated financial statements for the years prior to 2008 presented herein.

Summarized, combined condensed statements of income for discontinued operations:

|                                                                     | YEAR ENDED DECEMBER 31, |            |
|---------------------------------------------------------------------|-------------------------|------------|
|                                                                     | 2007                    | 2006       |
| Total revenues.....                                                 | \$ 3,535                | \$ 3,973   |
| Gross profit .....                                                  | 1,739                   | 1,861      |
| Impairment of goodwill .....                                        | 9,291                   | 4,087      |
| Operating (loss) income.....                                        | (7,796)                 | (2,405)    |
| (Loss) income from discontinued operations before income taxes..... | (8,214)                 | (2,914)    |
| Income tax benefit (expense).....                                   | --                      | 753        |
| (Loss) income from discontinued operations, net of tax.....         | \$ (8,214)              | \$ (2,161) |

#### Variable Interest Entities

The Company consolidates physician practices that are managed but not owned by the Company because the Company is the primary beneficiary. The consolidation of the physician practices results in an increase in revenues and cost of revenues for refractive centers, however it has no material impact on total assets, gross profit or operating income and no impact on net income.

#### Cash and Cash Equivalents

Cash and cash equivalents include highly liquid short-term investments with original maturities of 90 days or less.

#### Short-Term Investments

As of December 31, 2008, the Company had no material short-term investments outstanding. During the year-ended December 31, 2007, the Company utilized all of its short-term investments to partially fund a repurchase of 20 million shares its common stock (see Note 16, "Share Repurchase").

## Inventories

Inventories are stated at the lower of cost or market with cost determined on a first-in, first-out basis. The Company's inventory balances primarily consist of supplies used in its various eye treatments.

## Investments

The Company has certain investments in equity securities. Investments are accounted for using the equity method if the Company has significant influence, but not control, over an investee. All other equity investments in which the Company does not have the ability to exercise significant influence are accounted for under the cost method. Under the cost method of accounting, investments that do not have a quoted market price (non-marketable equity securities) are carried at cost and are adjusted only for other than temporary declines in fair value and additional investment activity.

## Fixed Assets

Fixed assets are recorded at cost or the present value of future minimum lease payments for assets accounted for as a capital lease. The costs of additions, improvements and major replacements are capitalized, while maintenance and repairs are expensed as incurred. Depreciation is provided on the straight-line basis and at rates intended to represent the assets productive lives as follows:

|                                   |                                                       |
|-----------------------------------|-------------------------------------------------------|
| Buildings                         | - 40 years                                            |
| Computer equipment and software   | - three to four years                                 |
| Furniture, fixtures and equipment | - seven years                                         |
| Laser and medical equipment       | - five to seven years                                 |
| Leasehold improvements            | - shorter of useful life or initial term of the lease |
| Vehicles and other                | - five years                                          |

## Goodwill

The Company tests for impairment at least annually, on November 30, and more frequently if changes in circumstances or events indicate that it is more likely than not that impairment has occurred. The Company recorded goodwill impairment charges of \$73.4 million and \$9.6 million during the years ended December 31, 2008 and 2007, respectively. See Note 4, "Impairment," for additional details.

## Other Intangible Assets

Other intangible assets consist primarily of practice management agreements ("PMAs"), deferred contract rights, and trade names. PMAs represent the cost of obtaining the exclusive right to manage eye care centers and secondary care centers in affiliation with the related physician group during the term of the respective agreements. Deferred contract rights represent the value of contracts with affiliated doctors to provide basic access and service. Trade names represent the value associated with the name of an entity that was acquired by the Company. All identifiable intangibles with a finite life are amortized using the straight-line method over the respective estimated useful lives.

## Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or circumstances indicate that the carrying amount of the asset group may not be recoverable.

## Medical Malpractice Accruals

To mitigate a portion of the risk associated with medical malpractice lawsuits, the Company maintains insurance for individual malpractice claims with a deductible of \$250,000 per claim. The Company and its insurance carrier review malpractice lawsuits for purposes of establishing ultimate loss estimates. The Company records reserves to cover the estimated costs of the deductible for both reported and unreported medical malpractice claims incurred. The estimates are based on the average monthly claims expense and the estimated average time lag between the performance of a procedure and notification of a claim. If the number of claims or the cost of settled claims is higher than the Company's historical experience or if the actual time lag varies from the estimated time lag, the Company may need to record significant additional expense.

## Revenue Recognition

The Company's refractive centers currently employ different pricing and patient acquisition strategies depending upon the market. All are based upon the same pricing methodology, which begins with an entry level price and has logical, technology based upgrades. Pricing is generally inclusive of all follow-up visits.

Except as described in the following paragraphs, the Company recognizes revenues at the time procedures are performed or services are rendered. Revenues primarily include amounts charged to patients for procedures performed at laser centers, net of discounts, contractual adjustments in certain regions and amounts collected as an agent of co-managing doctors. Follow-up consultations, which help ensure general patient satisfaction and safety, are free of separate charge to patients, very short in nature and are therefore considered inconsequential for revenue deferral, though the Company does accrue at the point of procedure for the minimal anticipated costs of the follow-up consultations.

The Company offers a portion of its patients extended lifetime warranties, i.e., the TLC Lifetime Commitment®. Participation in the TLC Lifetime Commitment® program is included in the surgical price for a specific type of procedure selected by a portion of its patients. Under this pricing model, the Company accounts for the TLC Lifetime Commitment® program as a warranty obligation under the provisions of SFAS No. 5, "Accounting for Contingencies." Accordingly, the costs expected to be incurred to satisfy the obligation are accrued as a liability at the point of sale given the Company's ability to reasonably estimate such costs based on historical trends and the satisfaction of all other revenue recognition criteria.

During the year ended December 31, 2007, the Company began offering an extended TLC Lifetime Commitment® warranty at a separately-priced fee to customers selecting a lower level base surgical procedure. Under applicable accounting rules, 100% of revenues and related costs from the sale of the separately priced lifetime warranty are to be deferred and recognized over the life of the contract on a straight-line basis unless sufficient experience exists to indicate that the costs to provide the service will be incurred other than on a straight-line basis. Revenues generated under this program are initially deferred and recognized over a period of five years based on management's future estimates of re-treatment volume, which are based on historical warranty claim activity. The Company believes it has sufficient experience to support recognition on other than a straight-line basis. Accordingly, the Company has deferred these revenues and are recognizing them over the period in which the future costs of performing the enhancement procedure are expected to be incurred.

In addition to the deferral of revenues related to the separately-priced TLC Lifetime Commitment®, the Company has deferred a portion of its costs of service related to professional fees paid to the attending surgeon when an initial procedure is performed. The physician receives no incremental fee for an enhancement procedure under the TLC Lifetime Commitment®. Accordingly, a portion of the professional fee paid at the time of the initial procedure to the attending surgeon relates to the future enhancement procedures to be performed under the separately-priced TLC Lifetime Commitment® and qualifies for deferral as a direct and incremental cost. The Company uses the same historical experience to amortize deferred professional fees that it uses to amortize deferred revenue. Other costs expected to be incurred if a complication were to occur are accrued at the point of procedure as part of the Company's general enhancement accrual based on historical trend estimates.

The deferred revenue balances related to the TLC Lifetime Commitment® at December 31, 2008 and 2007 totaled \$1.1 million and \$0.7 million, respectively.

Under the terms of management service agreements, the Company provides non-clinical services, which include facilities, staffing, equipment lease and maintenance, marketing and administrative services to refractive and secondary care practices in return for management fees. For third-party payor programs and corporations with arrangements with TLC*Vision*, the Company's management fee and the fee charged by the surgeon are both discounted in proportion to the discount afforded to these organizations. While the Company does not direct the manner in which the surgeons practice medicine, the Company does direct the day-to-day non-clinical operations of the centers. The management service agreements typically are for an extended period of time, ranging from five to 15 years. Management fees are equal to the net revenue of the physician practice, less amounts retained by the physician groups.

Revenue from doctor services represents the amount charged to the customer/surgeon for access to equipment and technical support based on use, as well as management fees from cataract and secondary care practices.

The Company's eye care business revenue principally includes optometric franchising services. Revenues from these services are recognized as the service is rendered or when the procedure is performed.

## Cost of Revenues

Included in cost of revenues are the laser fees payable to laser manufacturers for royalties, use and maintenance of the lasers, variable expenses for consumables, financing costs, facility fees as well as center costs associated with personnel and facilities depreciation.

## Marketing

Marketing costs are expensed as incurred.

## Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recorded based on the difference between the income tax basis of assets and liabilities and their carrying amounts for financial reporting purposes at the applicable enacted statutory tax rates. Deferred tax assets are reduced by a valuation allowance if, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized.

## Foreign Currency Exchange

The functional currency of the Company's Canadian operations is the U.S. dollar. The assets and liabilities of the Company's Canadian operations are maintained in Canadian dollars and remeasured into U.S. dollars at exchange rates prevailing at the consolidated balance sheet date for monetary items and at exchange rates prevailing at the transaction dates for nonmonetary items. Revenues and expenses are remeasured into U.S. dollars at average exchange rates prevailing during the year with the exception of depreciation and amortization, which are translated at historical exchange rates. Exchange gains and losses are included in net loss/income.

## Earnings Per Share

Basic earnings or loss per share is determined by dividing net income or loss available to common shareholders by the weighted average number of common shares outstanding during the period. Diluted earnings or loss per share reflects the potential dilution that could occur if options to purchase common shares were exercised. In periods in which the inclusion of such instruments is anti-dilutive, the effect of such securities is not given consideration.

## Contingent Consideration

When the Company enters into agreements in connection with acquisitions that provide for contingent consideration based on certain predefined targets being met, an analysis is made to determine whether the contingent consideration represents an additional purchase price obligation or is deemed to be compensation expense. The accounting treatment if the consideration is determined to be an additional purchase price payment is to increase the value assigned to the net assets acquired. Where the contingent consideration is deemed to be compensation, the expense is reflected as an operating expense in the periods that the service is rendered.

## Use of Estimates

The preparation of financial statements in conformity with U.S. 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 reporting periods. Actual results could differ from these estimates. These estimates are reviewed periodically, and as adjustments become necessary, they are reported in income in the period in which they become known.

## Reclassifications

Certain reclassifications of prior years' presentations have been made to conform to the 2008 presentation.

## Prospective Accounting Pronouncements

In March 2008, the Financial Accounting Standards Board ("FASB") issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities, an Amendment of FASB No. 133," ("SFAS 161"). SFAS 161 is intended to improve transparency in financial reporting by requiring enhanced disclosures of an entity's derivative instruments and hedging activities and

their effects on the entity's financial position, financial performance, and cash flows. SFAS 161 applies to all derivative instruments within the scope of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," ("SFAS 133"). SFAS 161 also applies to non-derivative hedging instruments and all hedged items designated and qualifying under SFAS 133. SFAS 161 is effective prospectively for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. SFAS 161 encourages, but does not require, comparative disclosures for periods prior to its initial adoption. The Company will adopt SFAS 161 on January 1, 2009 and management is currently evaluating the potential impact on the financial statements when implemented.

In December 2007, the FASB issued SFAS No. 141(R), "Business Combinations," ("SFAS 141(R)"). SFAS 141(R) requires the Company to continue to follow the guidance in SFAS 141 for certain aspects of business combinations, with additional guidance provided defining the acquirer, recognizing and measuring the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree, assets and liabilities arising from contingencies, defining a bargain purchase and recognizing and measuring goodwill or a gain from a bargain purchase. In addition, under SFAS 141(R), adjustments associated with changes in tax contingencies that occur after the one year measurement period are recorded as adjustments to income. This statement is effective for all business combinations for which the acquisition date is on or after the beginning of an entity's first fiscal year that begins after December 15, 2008; however, the guidance in this standard regarding the treatment of income tax contingencies is retrospective to business combinations completed prior to January 1, 2009. The Company will adopt SFAS 141(R) for any business combinations occurring at or subsequent to January 1, 2009.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements," an Amendment of ARB No. 51, "Consolidated Financial Statements," ("SFAS 160"). SFAS 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. This statement is effective as of the beginning of an entity's first fiscal year that begins after December 15, 2008 with retrospective application. The Company will adopt SFAS 160 beginning January 1, 2009 and management is currently evaluating the potential impact on the financial statements when implemented.

### 3. LIQUIDITY

The Company relies on the following sources of liquidity to continue to operate as a going concern: (i) cash and cash equivalents on hand; (ii) cash generated from operations; (iii) borrowings under the Company's revolving credit facility; (iv) net proceeds from asset sales; and (v) access to the capital markets. The Company's principal uses of cash are to provide for working capital to fund its operation and to service its debt and other contractual obligations. The changes in financial markets in the late summer and fall of 2008 limited the ability of companies such as *TLCVision* to access the capital markets. The deepening recession in the fourth quarter of 2008 has had a significant impact on the Company's operations, resulting in a sharp decline in the demand for refractive surgery and financial performance. As a result, the Company's liquidity became progressively constrained in the fourth quarter of 2008. The Company has incurred losses from continuing operations of \$98.3 million and \$35.3 million for the years ended December 31, 2008 and 2007, respectively.

Beginning in early 2008, in response to the deteriorated economic environment the Company implemented a series of initiatives to balance its costs of operation with the new lower level of refractive procedures. The Company continues to implement cost reduction and cash generation initiatives, including reductions in headcount, freezing or reducing salaries and benefits, reductions in discretionary spending including direct to consumer marketing, reductions in overhead costs, lower capital spending, the sale of surplus assets and the closure of underperforming refractive centers/mobile refractive routes.

Due to the sharp decline in customer demand during the second half of fiscal 2008, and the resulting decline in sales, the Company's financial performance deteriorated sharply during the fourth quarter of 2008 resulting in the Company's inability to be in compliance with its primary financial covenants under its Credit Facility as of December 31, 2008. See Note 14, "Debt," in the consolidated financial statements for information on the Company's various debt agreements. Furthermore, in the current economic environment, it is unlikely that the Company's financial performance in 2009 will be sufficient to enable it to be in compliance with these covenants for the balance of 2009 unless amended. Accordingly, the Company is in active discussions with the lenders to secure both a short-term financial debt covenant compliance waiver to cure the existing default, as well as further amendments to the Credit Facility to avoid a subsequent default. There can be no assurances that the lenders will grant such waivers or amendments on commercially reasonable terms, if at all.

In light of the existing non-compliance with the financial covenants as of December 31, 2008, and given that it is unlikely that the Company will be in compliance with the covenants currently in the Credit Facility for the balance of 2009 unless amended, borrowings of \$82.7 million under the Credit Facility have been recorded as current liabilities as of December 31, 2008. Accordingly,

at December 31, 2008, the Company has a working capital deficiency of approximately \$99.5 million. Subsequent to December 31, 2008, the Company borrowed an additional \$17.4 million under the revolving portion of its Credit Facility raising the total outstanding debt under the Credit Facility to \$100.1 million as of February 28, 2009.

The Company will likely continue to incur operating losses in 2009 and its liquidity remains constrained such that it may not be sufficient to meet the Company's cash operating needs in this period of economic uncertainty. The Company is in active discussions with its lenders to ensure that it has sufficient liquidity in excess of what is available under its Credit Facility, although there is no assurance that the Company can obtain additional liquidity on commercially reasonable terms, if at all. If the Company is unable to obtain or sustain the liquidity required to operate its business the Company may need to seek to modify the terms of its debts and/or to reorganize its capital structure.

The Company's independent registered public accounting firm's report issued in the December 31, 2008 Annual Report on Form 10-K included an explanatory paragraph describing the existence of conditions that raise substantial doubt about the Company's ability to continue as a going concern, including significant losses, limited access to additional liquidity and compliance with certain financial covenants. The financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount of and classification of liabilities that may result should the Company be unable to continue as a going concern.

#### 4. IMPAIRMENT

##### *2008 Impairment*

Goodwill and indefinite-lived intangible assets are tested for impairment annually and whenever events or circumstances (such as a significant adverse change in business climate or the decision to sell a business) indicate that more likely than not an impairment may have occurred. If the carrying value of goodwill or an indefinite-lived intangible asset exceeds its fair value, an impairment loss is recognized. The evaluation of impairment involves comparing the current fair value of each of the Company's reporting units to their recorded value, including goodwill. The Company uses a combination of the income and market approaches to determine the current fair value of each of its reporting units. A number of significant assumptions and estimates are involved in the application of the income and market approaches, including forecasted operating cash flows, discount rates, market multiples, etc. The Company considers historical experience and all available information at the time the fair values of its reporting units are estimated. However, fair values that could be realized in an actual transaction may differ from those used to evaluate the impairment of intangible assets.

During 2008, the Company determined that the carrying amounts of goodwill and definite-lived intangible assets within various segments were impaired \$79.6 million. Management determined the implied fair value of goodwill associated with the reporting units within these segments by subtracting the estimated fair value of tangible assets and intangible assets subject to amortization associated with each reporting unit from the estimated fair value of each reporting unit. The impairment charges were generally the result of the overall refractive market decline experienced by the Company as well as equity market conditions, which led to an overall decline in fair value of various reporting units of the Company.

During 2008, the Company recognized a \$4.8 million impairment of multiple cost and equity method investments due to the decline in their estimated fair value. The decline in fair values were deemed to be other than temporary based on the investees' inability to generate or sustain an earnings capacity that would justify the carrying amount of the investment. In addition, the Company recognized a \$0.6 million impairment of fixed assets of an ASC given the entities' inability to generate an earnings capacity that would justify carrying values.

A summary of impairment charges recorded by reporting segment during the year ended December 31, 2008 follows:

|                            | <b><u>FISCAL 2008 IMPAIRMENT CHARGES</u></b>             |                            |                        |                                                    |                     |
|----------------------------|----------------------------------------------------------|----------------------------|------------------------|----------------------------------------------------|---------------------|
|                            | <b><u>Investments and<br/>Other Long-Term Assets</u></b> | <b><u>Fixed Assets</u></b> | <b><u>Goodwill</u></b> | <b><u>Definite-Lived<br/>Intangible Assets</u></b> | <b><u>Total</u></b> |
| Refractive Centers .....   | \$ --                                                    | \$ --                      | \$ 66,843              | \$ 4,658                                           | \$ 71,501           |
| Refractive Access .....    | --                                                       | --                         | 4,993                  | 1,500                                              | 6,493               |
| Other Doctor Services..... | 2,478                                                    | 639                        | 1,555                  | 17                                                 | 4,689               |
| Corporate .....            | <u>2,364</u>                                             | <u>--</u>                  | <u>--</u>              | <u>--</u>                                          | <u>2,364</u>        |
| Total.....                 | <u>\$ 4,842</u>                                          | <u>\$ 639</u>              | <u>\$ 73,391</u>       | <u>\$ 6,175</u>                                    | <u>\$ 85,047</u>    |

## *2007 Impairment*

During the year ended December 31, 2007, the Company completed the divestiture of two ambulatory surgical centers (ASCs), which were part of the Company's doctor services business. The Company has multiple stand-alone ASCs, each of which were individually acquired. Each stand alone ASC is a business with its own discrete operations, cash flows and financial statements, including separate goodwill balances, if applicable, that were recorded at the time each ASC was acquired.

In conjunction with the proposed sale of two individual ASCs, management determined during the quarter ended September 30, 2007 an interim impairment analysis on all of the Company's ASC reporting units was required. The interim impairment analyses resulted in an impairment charge of approximately \$12.4 million during the quarter ended September 30, 2007. Management again reviewed the carrying values of the individual ASC reporting units as part of its annual impairment analysis performed during the quarter ended December 31, 2007 and determined an additional impairment charge of \$4.6 million was necessary, bringing the total 2007 impairment charge to \$17.0 million. Of the total \$17.0 million charge, approximately \$9.6 million related to impaired goodwill balances of the majority owned ASCs and the remaining \$7.4 million related to the Company's equity method investments in its minority owned ASCs. Approximately \$9.3 million of the goodwill impairment charge related to individual ASC reporting units classified as discontinued operations (see Note 2, "Summary of Significant Accounting Policies").

## 5. ACQUISITIONS AND DISPOSITIONS

### *Acquisitions*

The Company's strategy includes periodic acquisitions of, or investments in, entities that operate within its chosen markets. During the year ended December 31, 2008 and 2007, the Company made acquisition and equity investments of \$8.9 million and \$4.8 million, respectively, to acquire or invest in various entities.

Included in acquisition and equity investments are cash payments during 2008 and 2007 of approximately \$6.6 million and \$2.8 million, respectively, related to the Company's 2005 TruVision™ acquisition, which have been included in the purchase price allocation. Of the 2008 and 2007 amounts, approximately \$2.0 million and \$2.8 million, respectively, relate to cash paid under the contingent earn-out provisions of the acquisition, which are included in the purchase price allocation. The remaining \$4.6 million paid during 2008 relates to an amendment to the TruVision™ merger agreement, which removed the contingent earn-out provisions, discussed in further detail below.

During February 2007, Lindsay Atwood, as Shareholders' Representative pursuant to the October 2005 Agreement and Plan of Merger by which the Company acquired TruVision, Inc., filed a lawsuit in state court in Salt Lake City, Utah in a matter styled Atwood v. TLC Vision Corporation. Mr. Atwood challenged the calculation of the first of three contingent annual earn-out payments set forth in the merger agreement. The lawsuit was stayed and the complaint was in arbitration until the parties concluded out-of-court to amend the merger agreement during May 2008. As part of the amended agreement, the Company and Mr. Atwood agreed to eliminate and replace the current and future earn-out provisions in exchange for \$12.3 million to be paid in three installment payments, and certain other immaterial assets. The amendment did not significantly impact net income as the cash payments represent additional purchase consideration related to the acquisition.

On May 30, 2007 the Company entered into an agreement with JEGC OCC Corp ("Purchaser") for the sale of all of its common shares of OccuLogix. The agreement provided for a two-step sale, and on June 22, 2007, the Company completed its sale of 1.9 million shares of OccuLogix's common stock for \$2.0 million and recorded a gain of \$0.9 million. Immediately following the sale of stock, the Company owned approximately 33% of OccuLogix's outstanding stock. The Company agreed to sell the remaining shares subject to certain conditions, including the ability of the Purchaser to obtain financing. The Purchaser was unable to complete the purchase of the Company's remaining common shares of OccuLogix, and the Company and the Purchaser elected to terminate the agreement during the quarter ended June 30, 2008.

### *Divestitures*

The Company's strategy includes periodic divestitures of subsidiaries or investments that operate in the refractive, cataract or eye care markets. During the year ended December 31, 2008, the Company received approximately \$1.3 million in cash proceeds resulting from various immaterial divestitures. During the year ended December 31, 2007, the Company received approximately \$3.6 million in cash proceeds from divestitures. Included in the 2007 figure is approximately \$2.0 million in cash proceeds received on the sale of OccuLogix, Inc. stock and \$1.6 million in cash proceeds resulting from various other divestitures.

## 6. RESTRICTED CASH

As of December 31, 2008, the Company had no restricted cash. The Company had \$1.1 million of restricted cash as of December 31, 2007 to guarantee outstanding bank letters of credit for leases and litigation.

## 7. ACCOUNTS RECEIVABLE

Accounts receivable, net of allowances, consist of the following:

|                                  | DECEMBER 31,     |                  |
|----------------------------------|------------------|------------------|
|                                  | 2008             | 2007             |
| Refractive centers.....          | \$ 673           | \$ 848           |
| Doctor services                  |                  |                  |
| Refractive access.....           | 2,802            | 3,631            |
| Mobile cataract.....             | 4,427            | 4,083            |
| Other.....                       | 2,882            | 3,315            |
| Eye care                         |                  |                  |
| Optometric franchising.....      | 5,243            | 4,312            |
|                                  | 16,027           | 16,189           |
| Other corporate receivables..... | 843              | 1,887            |
|                                  | <u>\$ 16,870</u> | <u>\$ 18,076</u> |

The Company is exposed to credit risk on accounts receivable from its various customers:

- Refractive centers accounts receivable are due principally from open-access surgeons who utilize the Company's facilities and staff on a per-use basis (pursuant to their contractual agreement). While the Company offers consumer financing options for LASIK surgery, the credit risk is borne by the Company's third-party providers who perform an independent credit evaluation on each potential patient before extending credit.
- Doctor services accounts receivable are generally due from surgeon and medical facility partners who contract with the Company to use its mobile technology platform.
- Eye care accounts receivable represent fees due from franchisees pursuant to their franchise agreements.

In order to reduce its credit risk, the Company has adopted credit policies, which include the review of credit limits, and maintains an active collections process. As of December 31, 2008 and 2007, the Company had reserves for doubtful accounts and contractual allowances of \$3.5 million and \$2.0 million, respectively. The Company does not have a significant exposure to any individual customer.

## 8. PREPAID EXPENSES, INVENTORY AND OTHER CURRENT ASSETS

Prepaid expenses, inventory and other current assets consist of the following:

|                           | DECEMBER 31,     |                  |
|---------------------------|------------------|------------------|
|                           | 2008             | 2007             |
| Prepaid expenses.....     | \$ 3,341         | \$ 3,758         |
| Inventory.....            | 9,371            | 8,986            |
| Other current assets..... | 1,502            | 2,138            |
|                           | <u>\$ 14,214</u> | <u>\$ 14,882</u> |

## 9. INVESTMENTS AND OTHER LONG-TERM ASSETS

Investments and other assets, net of allowances, consist of the following:

|                                 | DECEMBER 31,     |                  |
|---------------------------------|------------------|------------------|
|                                 | 2008             | 2007             |
| Equity method investments ..... | \$ 4,059         | \$ 7,022         |
| Cost method investments .....   | 2,010            | 3,625            |
| Long-term receivables.....      | 2,771            | 4,071            |
| Capitalized debt costs.....     | 1,755            | 1,785            |
| Other.....                      | 1,099            | 1,021            |
|                                 | <u>\$ 11,694</u> | <u>\$ 17,524</u> |

During the year ended December 31, 2008, the Company recorded a \$4.8 million impairment charge against its investments and other long-term assets due to the decline in estimated fair values. The impairment charge reduced the carrying value of the Company's equity method investments by \$2.5 million and the Company's cost method investments by \$2.3 million. The impairment charge is discussed in further detail in Note 4, "Impairment."

Equity method investments as of December 31, 2008 and 2007 primarily include the following:

|                                                   | INVESTMENT % AT<br>DECEMBER 31, |      |
|---------------------------------------------------|---------------------------------|------|
|                                                   | 2008                            | 2007 |
| OccuLogix (dba TearLab Corporation, Inc.)* .....  | 8%                              | 33%  |
| Laser Eye Centers of California .....             | 30                              | 30   |
| Liberty Eye Surgery Center LLC .....              | 49                              | 49   |
| Rockland Surgery Center, LP ** .....              | --                              | 38   |
| Eastern Oregon Regional Surgery Center, LLC ..... | 49                              | 49   |
| Summit Ambulatory Surgical Center LLP .....       | 24                              | 24   |
| TLC Oklahoma Doctors LLC.....                     | 25                              | 25   |
| TLC Northwest Ohio LLC .....                      | 25%                             | 25%  |

\* Ownership in OccuLogix was diluted to 8% resulting in the Company no longer accounting for the results of OccuLogix under the equity method of accounting as of December 31, 2008.

\*\* Rockland Surgery Center was divested during the year ended December 31, 2008.

For the years ended December 31, 2008 and 2007 the Company recognized \$0 and \$13.4 million of equity losses from OccuLogix. Since December 31, 2007 the Company has suspended use of equity method accounting for OccuLogix as the Company's equity investment balance in OccuLogix was reduced to \$0 due to continual losses incurred by OccuLogix and the Company is not required to provide any additional funding to OccuLogix.

As of December 31, 2008, the Company owned approximately 8%, or 0.8 million shares, of OccuLogix's issued and outstanding common stock with a fair market value of \$1.5 million based on the December 31, 2008 closing price of OccuLogix's common stock. During the quarter ended December 31, 2008, OccuLogix completed a recapitalization, which reduced the Company's ownership percentage in OccuLogix, and effected a 1-for-25 reverse stock split.

On July 21, 2008 OccuLogix filed an amendment to its Annual Report on Form 10-K/A for its fiscal year ended December 31, 2007 to amend and restate its consolidated balance sheets as of December 31, 2007 and 2006 and related consolidated statements of operations, stockholders' equity, and cash flows for the fiscal years ended December 31, 2007 and 2006. In addition, OccuLogix restated selected quarterly financial data within the Form 10-K/A. The Company has reviewed OccuLogix's restatement and concluded that the impact of OccuLogix's restatement on previously filed TLC Vision Corporation financials is immaterial.

For the year ended December 31, 2007, OccuLogix reported the following (as restated):

|                                            | <b>YEAR ENDED<br/>DECEMBER 31, 2007</b> |
|--------------------------------------------|-----------------------------------------|
| Net sales.....                             | \$ 92                                   |
| Gross profit.....                          | (2,307)                                 |
| Net loss from continuing operations.....   | (34,401)                                |
| Net loss from discontinued operations..... | (35,429)                                |
| Net loss .....                             | \$ (69,830)                             |

## 10. GOODWILL

The Company's goodwill amount by reporting segment is as follows:

|                                             |                               | <b>DOCTOR SERVICES</b>       |                            |                 |                                   | <b>EYE CARE</b>  |  |
|---------------------------------------------|-------------------------------|------------------------------|----------------------------|-----------------|-----------------------------------|------------------|--|
|                                             | <b>REFRACTIVE<br/>CENTERS</b> | <b>REFRACTIVE<br/>ACCESS</b> | <b>MOBILE<br/>CATARACT</b> | <b>OTHER</b>    | <b>OPTOMETRIC<br/>FRANCHISING</b> | <b>TOTAL</b>     |  |
| December 31, 2006 .....                     | 53,747                        | 11,195                       | 10,806                     | 14,295          | 6,105                             | 96,148           |  |
| Impairment .....                            | --                            | --                           | --                         | (9,636)         | --                                | (9,636)          |  |
| Acquired during the period .....            | 8,521                         | --                           | 338                        | --              | --                                | 8,859            |  |
| Disposals and other during the period ..... | (193)                         | --                           | (93)                       | (739)           | --                                | (1,025)          |  |
| December 31, 2007 .....                     | <u>\$ 62,075</u>              | <u>\$ 11,195</u>             | <u>\$ 11,051</u>           | <u>\$ 3,920</u> | <u>\$ 6,105</u>                   | <u>\$ 94,346</u> |  |
| Impairment .....                            | (66,843)                      | (4,993)                      | --                         | (1,555)         | --                                | (73,391)         |  |
| Acquired during the period .....            | 7,729                         | --                           | --                         | --              | --                                | 7,729            |  |
| Disposals and other during the period ..... | (114)                         | --                           | --                         | --              | --                                | (114)            |  |
| December 31, 2008 .....                     | <u>\$ 2,847</u>               | <u>\$ 6,202</u>              | <u>\$ 11,051</u>           | <u>\$ 2,365</u> | <u>\$ 6,105</u>                   | <u>\$ 28,570</u> |  |

During the years ended December 31, 2008 and 2007, the Company recorded impairment charges of \$73.4 million and \$9.6 million, respectively, against goodwill. Refer to Note 4, "Impairment," for additional information regarding these charges.

### *2008 and 2007 Acquired Goodwill*

During the years ended December 31, 2008 and 2007, the Company acquired or invested in certain entities resulting in approximately \$7.7 million and \$8.9 million, respectively, of acquired goodwill. A significant portion of these amounts related to the earn-out of the 2005 acquisition of TruVision™.

## 11. DEFINITE-LIVED INTANGIBLE ASSETS

The Company's definite-lived intangible assets consist of practice management agreements, deferred contract rights, trade names and other intangibles. The Company has no indefinite-lived intangible assets. Amortization expense was \$3.2 million, \$3.4 million and \$3.5 million for the years ended December 31, 2008, 2007 and 2006, respectively.

During year ended December 31, 2008, the Company recorded a \$6.2 million impairment loss against definite-lived intangible assets due to the carrying amounts of such assets exceeding their respective fair values, which were estimated by calculating the present value of future cash flows attributable to such assets. Refer to Note 4, "Impairment," for additional information regarding the impairment loss. During the years ended December 31, 2007 and 2006, no such impairment losses occurred.

The remaining weighted average amortization period for practice management agreements is 4.5 years, for deferred contract rights is 3.6 years, for trade names is 16.5 years and for other intangibles is 8.0 years as of December 31, 2008.

Intangible assets subject to amortization consist of the following at December 31:

|                                    | 2008                             |                                     | 2007                             |                                     |
|------------------------------------|----------------------------------|-------------------------------------|----------------------------------|-------------------------------------|
|                                    | <u>GROSS CARRYING<br/>AMOUNT</u> | <u>ACCUMULATED<br/>AMORTIZATION</u> | <u>GROSS CARRYING<br/>AMOUNT</u> | <u>ACCUMULATED<br/>AMORTIZATION</u> |
| Practice management agreements.... | \$ 25,215                        | \$ 19,924                           | \$ 23,015                        | \$ 18,366                           |
| Deferred contract rights .....     | 3,870                            | 2,422                               | 11,081                           | 7,740                               |
| Trade names.....                   | 630                              | 110                                 | 5,870                            | 797                                 |
| Other .....                        | <u>4,936</u>                     | <u>1,567</u>                        | <u>5,500</u>                     | <u>1,543</u>                        |
| Total.....                         | <u>\$ 34,651</u>                 | <u>\$ 24,023</u>                    | <u>\$ 45,466</u>                 | <u>\$ 28,446</u>                    |

The estimated amortization expense for the next five years as of December 31, 2008 is as follows:

|            |          |
|------------|----------|
| 2009 ..... | \$ 2,349 |
| 2010 ..... | 2,311    |
| 2011 ..... | 1,675    |
| 2012 ..... | 1,385    |
| 2013 ..... | 787      |

## 12. FIXED ASSETS

Fixed assets, including capital leased assets, consist of the following:

|                                        | DECEMBER 31,     |                  |
|----------------------------------------|------------------|------------------|
|                                        | <u>2008</u>      | <u>2007</u>      |
| Land and buildings.....                | \$ 12,286        | \$ 12,285        |
| Computer equipment and software .....  | 14,363           | 14,483           |
| Furniture, fixtures and equipment..... | 7,943            | 7,587            |
| Laser and medical equipment .....      | 93,905           | 95,360           |
| Leasehold improvements .....           | 24,947           | 24,640           |
| Vehicles and other .....               | <u>5,938</u>     | <u>4,701</u>     |
|                                        | 159,382          | 159,056          |
| Less accumulated depreciation .....    | <u>108,868</u>   | <u>97,120</u>    |
| Net book value .....                   | <u>\$ 50,514</u> | <u>\$ 61,936</u> |

For the years ended December 31, 2008, 2007 and 2006, depreciation expense was \$16.4 million, \$15.3 million and \$12.8 million, respectively. Depreciation expense includes depreciation of assets reported under capital leases.

During year ended December 31, 2008, the Company recorded a \$0.6 million impairment charge against fixed assets. Refer to Note 4, "Impairment," for additional information regarding the impairment charge. During the years ended December 31, 2007 and 2006, no such impairment charges occurred.

Certain fixed assets are pledged as collateral for certain long-term debt and capital lease obligations.

## 13. ACCRUED LIABILITIES

Accrued liabilities include \$3.7 million and \$6.6 million of accrued wages and related expenses as of December 31, 2008 and 2007, respectively.

As of December 31, 2008, accrued liabilities also includes \$7.8 million due to the former owners of TruVision as part of the amended merger agreement. Approximately \$4.0 million of this liability was paid during January 2009.

#### 14. DEBT

The Company's debt consists of:

|                                                                                                                                                                                              | DECEMBER 31,     |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|------------------|
|                                                                                                                                                                                              | 2008             | 2007             |
| Senior term loan; weighted average interest rate of 8.76% and 8.16% at December 31, 2008 and 2007, respectively .....                                                                        | \$ 76,667        | \$ 82,748        |
| Revolving credit facility, weighted average interest rate of 6.60%.....                                                                                                                      | 6,000            | --               |
| Capital lease obligations, payable through 2013, interest at various rates .....                                                                                                             | 14,176           | 17,389           |
| Sale-leaseback debt - interest imputed at 6.25%, due through October 2016, collateralized by building (Cdn \$6.7 million and \$7.4 million at December 31, 2008 and 2007 respectively) ..... | 5,453            | 6,297            |
| Other .....                                                                                                                                                                                  | 3,285            | 3,715            |
|                                                                                                                                                                                              | <u>105,581</u>   | <u>110,149</u>   |
| Less current portion.....                                                                                                                                                                    | <u>89,081</u>    | <u>11,732</u>    |
|                                                                                                                                                                                              | <u>\$ 16,500</u> | <u>\$ 98,417</u> |

Principal contractual maturities for each of the next five years and thereafter as of December 31, 2008 are provided below:

|                  |                  |
|------------------|------------------|
| 2009.....        | \$ 13,051        |
| 2010.....        | 5,910            |
| 2011.....        | 4,814            |
| 2012.....        | 3,806            |
| 2013.....        | 2,451            |
| Thereafter ..... | <u>75,549</u>    |
| Total .....      | <u>\$105,581</u> |

Given that the Company is not in compliance with the existing covenants under the Credit Facility, all borrowings under the Credit Facility have been recorded as current liabilities in the Company's consolidated balance sheet at December 31, 2008.

##### *June 2007 Credit Facility*

During June 2007, the Company entered into a \$110.0 million credit facility ("Credit Facility" or "Agreement"). The facility is secured by substantially all the assets of the Company and consists of both senior term debt and a revolver as follows:

Senior term debt, totaling \$85.0 million, with a six-year term and required amortization payments of 1% per annum plus a percentage of excess cash flow (as defined in the Agreement) and sales of assets or borrowings outside of the normal course of business. As of December 31, 2008, \$76.7 million was outstanding on this portion of the facility.

A revolving credit facility, totaling \$25.0 million with a five-year term. As of December 31, 2008, \$6.0 million was outstanding under this portion of the facility and approximately \$18.0 million was unused and available, which is net of outstanding letters of credit totaling approximately \$1.0 million.

Interest on the facility is calculated based on either prime rate or the London Interbank Offered Rate (LIBOR) plus a margin, which at December 31, 2008 was 4.00% for prime rate borrowings and 5.00% for LIBOR rate borrowings. In addition, the Company pays an annual commitment fee equal to 0.35% on the undrawn portion of the revolving credit facility.

Under the Credit Facility, the Company is required to make additional principal payments annually on the term loan if excess cash flow (as defined in the Agreement) exists. For the year ended December 31, 2007, it was determined the Company had excess cash flows as defined under the terms of the Credit Facility. As a result, the Company was required to make an additional principal payment of \$1.7 million during the quarter ended March 31, 2008. In addition, \$3.0 million of optional prepayments were made during the year ended December 31, 2008, which were partially applied against the Company's future quarterly principal payments resulting in the next quarterly principal payment being contractually due on June 30, 2009. The Company estimates that no excess cash flows as defined under the terms of the Credit Facility will exist at December 31, 2008.

The Credit Facility also requires the Company to maintain various financial and non-financial covenants as defined in the

Agreement. During February 2008, the Company reached agreement with its lenders to amend the consolidated fixed charge coverage ratio and leverage ratio covenants associated with the Credit Facility. The ratio covenant changes were effective for the period beginning after September 30, 2007. The amendment also raised the interest rate margin on all of the Company's debt under the Credit Facility by 2.50% per annum, effective February 2008. The Company accounted for the amendment as a modification of debt. The amendment resulted in the Company incurring various creditor and legal fees of \$0.5 million, which were capitalized to the extent allowable during the quarter ended March 31, 2008 and are being amortized through 2013.

The Company was not in compliance with its financial covenants as of December 31, 2008.

Principal contractual maturities under the Company's Credit Facility for each of the next five years and thereafter as of December 31, 2008 are provided below:

|                 |                 |
|-----------------|-----------------|
| 2009.....       | \$ 6,637        |
| 2010.....       | 850             |
| 2011.....       | 850             |
| 2012.....       | 850             |
| 2013.....       | 850             |
| Thereafter..... | <u>72,630</u>   |
| Total .....     | <u>\$82,667</u> |

Given that the Company is not in compliance with the existing covenants under the Credit Facility, all borrowings under the Credit Facility have been recorded as current liabilities in the Company's consolidated balance sheet at December 31, 2008.

#### *Capital Lease Obligations*

The Company has entered into various capital leases, primarily to purchase equipment. Payments for capital lease obligations for each of the next five years and thereafter as of December 31, 2008 are as follows:

|                            |                  |
|----------------------------|------------------|
| 2009 .....                 | \$ 5,542         |
| 2010 .....                 | 4,336            |
| 2011 .....                 | 3,243            |
| 2012 .....                 | 2,040            |
| 2013 .....                 | 770              |
| Thereafter.....            | <u>12</u>        |
| Total.....                 | 15,943           |
| Less interest portion..... | <u>1,767</u>     |
|                            | <u>\$ 14,176</u> |

#### *Sale-leaseback Transaction*

During the year ended May 31, 2002, the Company completed a sale-leaseback transaction. Total consideration received for the sale of the building and related land was Cdn\$10.1 million, which was comprised of Cdn\$8.6 million in cash and a Cdn\$1.5 million 8.0% note receivable ("Note"). The Note had a seven-year term with the first of four annual payments of Cdn\$0.1 million starting on the third anniversary of the sale and a final payment of Cdn\$1.1 million that was received during the year ended December 31, 2008.

The Company accounted for this transaction in accordance with SFAS No. 98, "Accounting for Leases" ("SFAS 98"). SFAS 98 prohibits sale recognition on a sale-leaseback transaction when the sublease is considered to be other than minor and the Company's only recourse to any future amounts owing from the other party is other than the leased asset. A sublease is considered to be minor when the present value of the sublease rent is less than 10% of the total fair market value. The Company accounted for the transaction as a financing transaction which requires sale proceeds to be recorded as a liability and for the Note to not be recognized. In addition, since the sale recognition is not accounted for, the carrying value of the asset is not adjusted for and the asset continues to be depreciated over the original depreciation period of 40 years. Lease payments, exclusive of an interest portion, decrease the liability while payments received on the Note increase the liability. As of December 31, 2008 and 2007, the liability outstanding relating to the sale-leaseback transaction was \$5.5 million and \$6.3 million, respectively.

Future minimum lease payments under the sale-leaseback transaction over the next five years and thereafter are as follows:

|                 |                    |
|-----------------|--------------------|
| 2009 .....      | Cdn\$ 1,050        |
| 2010 .....      | 1,050              |
| 2011 .....      | 1,055              |
| 2012 .....      | 1,110              |
| 2013 .....      | 1,110              |
| Thereafter..... | <u>3,118</u>       |
|                 | <u>Cdn\$ 8,493</u> |

## 15. CAPITAL LEASE AGREEMENT

In conjunction with a portion of *TLCVision's* refractive procedures, the Company utilizes Abbott Medical Optics (formerly Advance Medical Optics) IntraLase femtosecond laser technology to create bladeless corneal flaps. Most lasers were obtained from the manufacturer and accounted for as a capital lease under SFAS No. 13, "Accounting for Leases." Effective December 18, 2007, the Company amended its Master Capital Lease Agreement with Abbott Medical Optics, which extended the lease payment period and reduced periodic lease payments. Management determined the amended lease agreement still qualifies as a capital lease. Under SFAS No. 13, when both the original lease and the amended agreement are classified as capital leases, the recorded asset and obligation balances are adjusted at the date of the revision, by the difference between the outstanding obligation balance and the present value of the future minimum lease payments. Accordingly, the Company recorded an approximate \$1 million reduction to its debt and fixed asset balances during the year ended December 31, 2007.

## 16. SHARE REPURCHASE

During June 2007, the Company repurchased and cancelled 20.0 million of its outstanding common shares (representing approximately 30% of total shares outstanding) through a modified "Dutch" auction. The shares were purchased at a price of \$5.75 per share with a total cost of \$117.6 million (including applicable transaction expenses). This transaction was financed through a combination of cash-on-hand, short-term investments, and the \$85 million proceeds under the Company's Credit Facility described in Note 14, "Debt."

## 17. INTEREST RATE SWAP AGREEMENT

The Company does not enter into financial instruments for trading or speculative purposes. As required under the Company's Credit Facility, during August and December 2007 the Company entered into interest rate swap agreements to eliminate the variability of cash required for interest payments for a majority of the total variable rate debt. Under the agreement entered during August 2007, the Company receives a floating rate based on the LIBOR interest rate and pays a fixed rate of 5.0% on notional amounts ranging from \$20 million to \$42 million over the life of the swap agreement, which matures on April 1, 2010. Under the agreement entered during December 2007, with an effective date of January 2, 2008, the Company receives a floating rate based on the LIBOR interest rate and pays a fixed rate of 3.9% on notional amounts ranging from \$20 million to \$32 million over the life of the swap agreement, which matures on April 1, 2010.

As of December 31, 2008 and 2007 the outstanding notional amounts of the interest rate swaps was \$59 million and \$20 million, respectively, and the Company has recorded liabilities of \$1.5 million and \$0.8 million, respectively, to recognize the fair value of the interest derivatives. The net offset is recorded in accumulated other comprehensive income, as the instruments have been designated as qualifying cash flow hedges.

Refer to Note 24, "Fair Value Measurement," for information regarding the Company's January 1, 2008 adoption of SFAS 157, "Fair Value Measurements," and its impact relating to the Company's interest rate swaps.

## 18. STOCK-BASED COMPENSATION

As of December 31, 2008, the Company has issued stock options to employees, directors and certain other individuals. Options granted have terms ranging from five to ten years. Vesting provisions on options granted to date primarily include options that vest immediately and options that vest in equal amounts annually, typically over a four-year period.

Total stock-based compensation for the years ended December 31, 2008, 2007 and 2006, was \$1.4 million, \$1.1 million and \$1.4 million, respectively. Total stock-based compensation includes expense for TLCVision stock options and its Employee Share Purchase Plan.

As of December 31, 2008, the issued and outstanding options denominated in U.S. dollars were at the following prices and terms:

| OUTSTANDING             |                        |                                                         |                                          | EXERCISABLE            |                                          |
|-------------------------|------------------------|---------------------------------------------------------|------------------------------------------|------------------------|------------------------------------------|
| PRICE RANGE<br>(U.S.\$) | NUMBER OF<br>OPTIONS * | WEIGHTED<br>AVERAGE<br>REMAINING<br>CONTRACTUAL<br>LIFE | WEIGHTED<br>AVERAGE<br>EXERCISE<br>PRICE | NUMBER OF<br>OPTIONS * | WEIGHTED<br>AVERAGE<br>EXERCISE<br>PRICE |
| \$ 0.20 - \$ 1.88       | 1,225                  | 6.3 years                                               | \$ 0.55                                  | 115                    | \$ 1.31                                  |
| \$ 2.44 - \$ 4.83       | 2,059                  | 5.0 years                                               | 3.57                                     | 935                    | 3.64                                     |
| \$ 5.95 - \$ 6.81       | 773                    | 1.7 years                                               | 6.37                                     | 502                    | 6.35                                     |
| \$ 8.19 - \$ 11.64      | 610                    | 0.9 years                                               | 10.42                                    | 608                    | 10.42                                    |
|                         | <u>4,667</u>           | 4.2 years                                               | <u>\$ 4.14</u>                           | <u>2,160</u>           | <u>\$ 6.06</u>                           |

\* Values in thousands.

As of December 31, 2008, the issued and outstanding options denominated in Canadian dollars were at the following prices and terms:

| OUTSTANDING             |                        |                                                         |                                          | EXERCISABLE            |                                          |
|-------------------------|------------------------|---------------------------------------------------------|------------------------------------------|------------------------|------------------------------------------|
| PRICE RANGE<br>(CDN \$) | NUMBER OF<br>OPTIONS * | WEIGHTED<br>AVERAGE<br>REMAINING<br>CONTRACTUAL<br>LIFE | WEIGHTED<br>AVERAGE<br>EXERCISE<br>PRICE | NUMBER OF<br>OPTIONS * | WEIGHTED<br>AVERAGE<br>EXERCISE<br>PRICE |
| \$ 0.25 - \$ 1.82       | 105                    | 5.5 years                                               | Cdn\$ 0.88                               | 21                     | Cdn\$1.82                                |
| \$ 2.98 - \$ 5.31       | 138                    | 5.6 years                                               | 3.82                                     | 47                     | 4.22                                     |
| \$ 7.51 - \$ 7.95       | 57                     | 1.6 years                                               | 7.59                                     | 34                     | 7.64                                     |
| \$11.02 - \$ 15.49      | 48                     | 0.9 years                                               | 12.75                                    | 48                     | 12.75                                    |
|                         | <u>348</u>             | 4.3 years                                               | <u>Cdn\$ 4.79</u>                        | <u>150</u>             | <u>Cdn\$7.41</u>                         |

\* Values in thousands.

Approximately 0.1 million and 0.5 million options were authorized for issuance but were not granted as of December 31, 2008 and 2007, respectively. A summary of option activity during the last three years follows:

|                                    | <b>OPTIONS *</b> | <b>WEIGHTED<br/>AVERAGE<br/>EXERCISE PRICE<br/>PER SHARE</b> | <b>WEIGHTED<br/>AVERAGE<br/>EXERCISE PRICE<br/>PER SHARE</b> | <b>AGGREGATE<br/>INTRINSIC<br/>VALUE<br/>US OPTIONS</b> | <b>AGGREGATE<br/>INTRINSIC<br/>VALUE<br/>CDN OPTIONS</b> |
|------------------------------------|------------------|--------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------|----------------------------------------------------------|
| December 31, 2005 .....            | 3,536            | US\$5.53                                                     | Cdn\$5.26                                                    |                                                         |                                                          |
| Granted.....                       | 1,902            | 5.51                                                         | 6.39                                                         |                                                         |                                                          |
| Exercised.....                     | (258)            | 1.91                                                         | 3.97                                                         |                                                         |                                                          |
| Forfeited.....                     | (51)             | 4.92                                                         | 4.80                                                         |                                                         |                                                          |
| Expired.....                       | (39)             | 8.63                                                         | 11.28                                                        |                                                         |                                                          |
| December 31, 2006 .....            | 5,090            | US\$5.66                                                     | Cdn\$5.53                                                    |                                                         |                                                          |
| Granted.....                       | 1,366            | 3.21                                                         | 2.98                                                         |                                                         |                                                          |
| Exercised.....                     | (979)            | 2.41                                                         | 3.57                                                         |                                                         |                                                          |
| Forfeited.....                     | (454)            | 5.52                                                         | 8.51                                                         |                                                         |                                                          |
| Expired.....                       | (398)            | 6.57                                                         | 4.75                                                         |                                                         |                                                          |
| December 31, 2007 .....            | 4,625            | US\$5.43                                                     | Cdn\$6.03                                                    |                                                         |                                                          |
| Granted.....                       | 1,227            | 0.50                                                         | 0.64                                                         |                                                         |                                                          |
| Exercised.....                     | (86)             | 1.86                                                         | 1.82                                                         |                                                         |                                                          |
| Forfeited.....                     | (189)            | 4.50                                                         | 7.97                                                         |                                                         |                                                          |
| Expired.....                       | (562)            | 6.85                                                         | 9.02                                                         |                                                         |                                                          |
| December 31, 2008 .....            | <u>5,015</u>     | <u>US\$4.14</u>                                              | <u>Cdn\$4.79</u>                                             | <u>US\$0</u>                                            | <u>Cdn\$0</u>                                            |
| Exercisable at December 31, 2008.. | <u>2,310</u>     | <u>US\$6.06</u>                                              | <u>Cdn\$7.41</u>                                             | <u>US\$0</u>                                            | <u>Cdn\$0</u>                                            |

\* Values in thousands.

The weighted average remaining contractual lives of U.S. and Canadian exercisable options as of December 31, 2008 were 2.4 years and 2.3 years, respectively.

During the years ended December 31, 2008, 2007 and 2006, the total intrinsic value of options exercised, defined as the excess fair value of the underlying stock over the exercise price of the options, was approximately \$0.1 million, \$2.1 million and \$0.8 million, respectively.

The Company granted 1.2 million, 1.4 million and 1.9 million options during the years ended December 31, 2008, 2007 and 2006, respectively. The options granted had a fair value of \$0.3 million for the year ended 2008, \$2.3 million for the year ended 2007 and \$5.2 million for the year ended 2006.

The fair values of TLC*Vision's* options granted were estimated at the date of grant for employee options and at the measurement date for non-employee options using the Black-Scholes option pricing model. The following table shows the Company's assumptions used to compute stock based compensation expense:

|                                                  | <b>2008</b> | <b>2007</b> | <b>2006</b> |
|--------------------------------------------------|-------------|-------------|-------------|
| Weighted-average risk free rate of interest..... | 2.19%       | 3.57%       | 4.48%       |
| Expected volatility .....                        | 64%         | 56%         | 60%         |
| Weighted-average expected award life.....        | 4.9 years   | 4.9 years   | 4.1 years   |
| Dividend yield .....                             | 0.00%       | 0.00%       | 0.00%       |

Expected volatility was based on historical volatility on the Company's common stock, which the Company currently believes is the best indicator available for future volatility. The risk-free interest rate was based on U.S. Treasury security yields at the time of grant. The dividend yield on the Company's common stock is assumed to be zero since the Company has not paid dividends and has no current plans to do so in the future due to restrictions contained within the Company's Credit Facility. The expected life was primarily based on historical exercise patterns of option holders, which the Company believes are representative of future behavior.

As of December 31, 2008, the total unrecognized compensation expense related to TLC*Vision* non-vested employee awards was approximately \$2.9 million. The unrecognized compensation expense will be recognized over the remaining vesting period, which expires December 2012 for certain options. The weighted-average expense period for non-vested employee awards is 2.5 years.

## 19. INCOME TAXES

Significant components of the Company's deferred tax assets and liabilities are as follows:

|                                                           | DECEMBER 31, |           |
|-----------------------------------------------------------|--------------|-----------|
|                                                           | 2008         | 2007      |
| Deferred tax asset:                                       |              |           |
| Net operating loss carry forwards.....                    | \$ 91,156    | \$ 93,742 |
| Fixed assets.....                                         | 243          | (134)     |
| Intangibles .....                                         | 14,263       | 9,451     |
| Investments.....                                          | 15,989       | 18,259    |
| Accruals and other reserves.....                          | 5,163        | 4,697     |
| Tax credits .....                                         | 166          | 357       |
| Other .....                                               | 13,780       | 513       |
| Total deferred tax asset.....                             | 140,760      | 126,885   |
| Valuation allowance .....                                 | (140,760)    | (126,885) |
| Total deferred tax asset, net of valuation allowance..... | \$ --        | \$ --     |

The Company determined in both fiscal 2008 and 2007 that sufficient evidence did not exist to support recognition of a deferred tax asset. This determination was based on many factors including the current year loss, the lack of taxable income forecasted in future periods, and other relevant factors.

As of December 31, 2008, the Company has net operating losses available for carry forward for income tax purposes of approximately \$239.0 million, which may be available to reduce taxable income in future years. The U.S. carry forward losses of \$205.9 million expire between 2009 and 2028. Canadian carry forward losses of \$33.1 can only be utilized by the source company and expire between 2009 and 2028.

Of the total valuation allowance, separate amounts of approximately \$11.0 million will be recorded directly to equity and as a reduction to goodwill, if and when those portions of the deferred tax assets are realized and the associated valuation allowance is reversed.

Section 382 of the Internal Revenue Code of 1986, as amended, imposes significant annual limitations on the utilization of net operating losses (NOLs). Such NOL limitations result upon the occurrence of certain events, including an "ownership change" as defined by Section 382.

Under Section 382, when an ownership change occurs, the calculation of the annual NOL limitation is affected by several factors, including the number of shares outstanding and the trading price before the ownership change occurred. As a result of recent significant shareholder activity, the Company engaged a tax service provider during 2008 to perform a comprehensive Section 382 study to determine if an ownership change occurred during the current fiscal year. The preliminary conclusion of this study, which was reached during the three months ended June 30, 2008, was that an ownership change occurred in early 2008. Additional analysis is needed to determine the exact impact of the resulting limit on future utilization of the NOLs and the amount that will not be utilizable. The Company currently estimates that up to \$67.7 million of NOLs will not be utilizable as a result of the ownership changes; however, this amount is subject to change upon completion of the analysis.

The differences between the provision for income taxes and the amount computed by applying the statutory Canadian income tax rate to income before income taxes were as follows:

|                                                                            | YEAR ENDED DECEMBER 31, |            |            |
|----------------------------------------------------------------------------|-------------------------|------------|------------|
|                                                                            | 2008                    | 2007       | 2006       |
| Income tax (benefit) expense at the Canadian statutory rate of 36.12%..... | \$(35,174)              | \$ (8,142) | \$ 6,289   |
| Change in valuation allowance .....                                        | 23,052                  | 15,098     | (6,246)    |
| Expenses not deductible for income tax purposes .....                      | 12,136                  | 216        | 224        |
| State taxes .....                                                          | 605                     | 691        | 633        |
| Canadian income tax.....                                                   | 269                     | 632        | 180        |
| IRC Section 382 adjustments.....                                           | --                      | --         | (3,415)    |
| Deductible interest expense adjustments .....                              | --                      | --         | (1,464)    |
| Rate differential on United States operations .....                        | (14)                    | (19)       | 144        |
| Income tax expense (benefit) from continuing operations.....               | 874                     | 8,476      | (3,655)    |
| Discontinued operations income tax (benefit) expense .....                 | --                      | --         | (753)      |
| Income tax expense (benefit) .....                                         | \$ 874                  | \$ 8,476   | \$ (4,408) |

The provision for income taxes from continuing operations is as follows:

|                                                              | YEAR ENDED DECEMBER 31, |                 |                   |
|--------------------------------------------------------------|-------------------------|-----------------|-------------------|
|                                                              | 2008                    | 2007            | 2006              |
| Current:                                                     |                         |                 |                   |
| Canada .....                                                 | \$ 269                  | \$ 632          | \$ 180            |
| United States - federal.....                                 | --                      | --              | 129               |
| United States - state .....                                  | 605                     | 691             | 524               |
| Other .....                                                  | --                      | (19)            | --                |
|                                                              | <u>\$ 874</u>           | <u>\$ 1,304</u> | <u>\$ 833</u>     |
| Deferred:                                                    |                         |                 |                   |
| United States - federal.....                                 | \$ --                   | \$ 6,899        | \$ (4,165)        |
| United States - state .....                                  | --                      | 273             | (323)             |
|                                                              | <u>\$ --</u>            | <u>\$ 7,172</u> | <u>\$ (4,488)</u> |
| Income tax expense (benefit) from continuing operations..... | <u>\$ 874</u>           | <u>\$ 8,476</u> | <u>\$ (3,655)</u> |

The Company has established accruals for certain tax contingencies for exposures associated with tax deductions and return filing positions which may be challenged. The tax contingency accruals are adjusted quarterly in light of changing facts and circumstances, such as the progress of tax audits, case law and statute of limitations. A number of years may elapse before a particular matter is resolved. The Company believes its tax contingency accruals are adequate to address known tax contingencies. Tax contingency accruals are recorded in accrued liabilities in the balance sheets.

In July 2006, the FASB issued FASB Interpretation No. 48 ("FIN 48"), "Accounting for Uncertainty in Income Taxes." FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, "Accounting for Income Taxes." FIN 48 provides a two-step approach to recognizing and measuring uncertain tax positions accounted for in accordance with SFAS No. 109. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates it is more likely than not that the tax position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely of being realized upon ultimate settlement. The Company adopted the provisions of FIN 48 effective January 1, 2007.

As a result of implementing FIN 48, the Company recognized a \$0.8 million decrease to reserves for uncertain tax positions. This decrease was accounted for as an adjustment to the beginning balance of accumulated deficit on the balance sheet. Including the cumulative effect decrease, at the beginning of 2007 the Company had approximately \$0.3 million of total gross unrecognized tax benefits, all of which would favorably impact the effective tax rate. The Company recognizes accrued interest and penalties related to unrecognized tax benefits in income tax expense. As of December 31, 2008 the Company has accrued \$0.2 million in interest and penalties related to unrecognized tax benefits. The Company considers many factors when evaluating and estimating its tax positions and tax benefits, which may require periodic adjustments and which may not reflect actual outcomes.

The Company, including its domestic and foreign subsidiaries, is subject to U.S. federal income tax as well as income tax of multiple state and other jurisdictions. Tax years 1997 through present are not yet closed for U.S. federal and state income tax purposes due to net operating losses carried forward from that time.

## 20. OTHER (INCOME) EXPENSES, NET

Other (income) expenses, net include the following operating items:

|                                                                            | YEAR ENDED DECEMBER 31, |                 |               |
|----------------------------------------------------------------------------|-------------------------|-----------------|---------------|
|                                                                            | 2008                    | 2007            | 2006          |
| Other (income) expense:                                                    |                         |                 |               |
| (Gain) loss on sales and disposals of fixed assets .....                   | \$ (269)                | \$ (11)         | \$ 140        |
| Adjustments to the fair values of long-lived assets and liabilities .....  | --                      | --              | 294           |
| Center closing costs .....                                                 | --                      | 1,352           | 234           |
| (Gain) loss on sales of subsidiaries .....                                 | (139)                   | 233             | --            |
| Gain on sales and issuances of subsidiary stock .....                      | --                      | --              | (349)         |
| Reimbursements from previous research and development arrangements .....   | --                      | --              | (300)         |
| Severance accruals for employees under terms of employment contracts ..... | --                      | 1,268           | 229           |
| OccuLogix severance accruals .....                                         | --                      | --              | 820           |
| Miscellaneous expense (income) .....                                       | 69                      | (89)            | (194)         |
|                                                                            | <u>\$ (339)</u>         | <u>\$ 2,753</u> | <u>\$ 874</u> |

## 21. (LOSS) EARNINGS PER SHARE

Basic loss per share was \$1.95 and \$0.74 for the years ended December 31, 2008 and 2007, respectively. For the year ended December 31, 2006 basic earnings per share were \$0.17. The per share amounts have been computed on the basis of the weighted average number of shares outstanding.

Below is a reconciliation of basic and diluted per share detail to net loss and income:

|                                                                     | YEAR ENDED DECEMBER 31, |                    |                  |
|---------------------------------------------------------------------|-------------------------|--------------------|------------------|
|                                                                     | 2008                    | 2007               | 2006             |
| Net (loss) income from continuing operations .....                  | \$ (98,254)             | \$ (35,300)        | \$ 13,680        |
| Net (loss) income from discontinued operations ..                   | --                      | (8,214)            | (2,161)          |
| Net (loss) income .....                                             | <u>\$ (98,254)</u>      | <u>\$ (43,514)</u> | <u>\$ 11,519</u> |
| Weighted-average shares outstanding - basic .....                   | 50,319                  | 59,139             | 68,907           |
| Stock options * .....                                               | --                      | --                 | 673              |
| Weighted-average shares outstanding - diluted ....                  | <u>50,319</u>           | <u>59,139</u>      | <u>69,580</u>    |
| (Loss) earnings per share from continuing operations .....          | \$ (1.95)               | \$ (0.60)          | \$ 0.20          |
| (Loss) earnings per share from continuing operations, diluted ..... | \$ (1.95)               | \$ (0.60)          | \$ 0.20          |
| (Loss) earnings per share .....                                     | \$ (1.95)               | \$ (0.74)          | \$ 0.17          |
| (Loss) earnings per share, diluted .....                            | \$ (1.95)               | \$ (0.74)          | \$ 0.17          |

\* The effects of including the incremental shares associated with options and warrants are anti-dilutive for years ended December 31, 2008 and 2007 and are not included in weighted-average shares outstanding-diluted. The total weighted-average number of options with exercise prices less than the average closing price of the Company's common stock was 0.2 million for the year ended December 31, 2008.

## 22. COMMITMENTS AND CONTINGENCIES

### Commitments

The Company leases certain center facilities under operating leases with terms generally of five to ten years. Certain leases contain rent escalation clauses and rent-free periods that are charged to rent expense on a straight-line basis. The leases usually contain renewal clauses at the Company's option at fair market value. For the years ended December 31, 2008, 2007 and 2006 total rent expense, including minimum and contingent payments, was \$9.2 million, \$10.0 million and \$9.1 million, respectively. As of December 31, 2008, the Company has commitments relating to non-cancellable operating leases for rental of office space and equipment, which require future minimum payments aggregating approximately \$28.7 million. Future minimum payments over the next five years and thereafter are as follows:

|                 |                  |
|-----------------|------------------|
| 2009 .....      | \$ 7,810         |
| 2010 .....      | 6,731            |
| 2011 .....      | 5,059            |
| 2012 .....      | 3,712            |
| 2013 .....      | 2,069            |
| Thereafter..... | <u>3,323</u>     |
|                 | <u>\$ 28,704</u> |

As of December 31, 2008, the Company had commitments related to long-term marketing contracts which require payments totaling \$8.8 million through 2011. Future minimum payments over the next three years are as follows

|            |                 |
|------------|-----------------|
| 2009 ..... | 2,750           |
| 2010 ..... | 3,000           |
| 2011 ..... | <u>3,000</u>    |
|            | <u>\$ 8,750</u> |

The Company's wholly owned subsidiary, Sightpath Medical (formerly MSS, Inc.), is the U.S. distributor of the Foresee PHP™, a diagnostic piece of equipment utilized by optometrists and ophthalmologists for the early detection of wet age-related macular degeneration. Sightpath Medical has an inventory purchase commitment related to the Foresee PHP™ totaling \$12.6 million during 2009.

### Legal Contingencies

The Company is subject to other various claims and legal actions in the ordinary course of its business, which may or may not be covered by insurance. These matters include, without limitation, professional liability, employee-related matters and inquiries and investigations by governmental agencies. While the ultimate results of such matters cannot be predicted with certainty, the Company believes that the resolution of these matters will not have a material adverse effect on its consolidated financial position or results of operations.

There have been no material changes in legal proceedings other than reported in the Company's June 30, 2008 Form 10-Q from that reported in the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

### Regulatory Tax Contingencies

TLCVision operates in 48 states and two Canadian provinces and is subject to various federal, state and local income, payroll, unemployment, property, franchise, capital, sales and use tax on its operations, payroll, assets and services. TLCVision endeavors to comply with all such applicable tax regulations, many of which are subject to different interpretations, and has hired outside tax advisors who assist in the process. Many states and other taxing authorities have been interpreting laws and regulations more aggressively to the detriment of taxpayers such as TLCVision and its customers. TLCVision believes that it has adequate provisions and accruals in its financial statements for such liabilities, although it cannot predict the outcome of future tax assessments.

## 23. SEGMENT INFORMATION

The Company's reportable segments are strategic business units that offer different products and services. They are managed and evaluated separately by the chief operating decision maker because each business requires different management and marketing strategies. Prior to 2007, the Company aggregated the refractive centers and access operations into one reportable segment. Beginning

in 2007, the Company realigned its organization such that the refractive access segment is now being managed and reported separately. The Company has three lines of business and six reportable segments including “Other” as follows:

- Refractive Centers: The refractive centers business provides a significant portion of the Company’s revenue and is in the business of providing corrective laser surgery (principally LASIK) in fixed sites typically branded under the TLC name.
- Doctor Services: The doctor services business provides a variety of services and products directly to doctors and the facilities in which they perform surgery. It consists of the following segments:
  - Mobile Cataract: The mobile cataract segment provides technology and diagnostic equipment and services to doctors and hospitals to support cataract surgery as well as treatment of other eye diseases.
  - Refractive Access: The refractive access segment assists surgeons in providing corrective laser surgery in their own practice location by providing refractive technology, technicians, service and practice development support at the surgeon’s office.
  - Other: The Company has ownership interests in businesses that manage surgical and secondary care centers. None of these businesses meets the quantitative criteria to be disclosed separately as a reportable segment and they are included in “Other” for segment disclosure purposes.
- Eye Care: The eye care business consists of two business segments:
  - Optometric Franchising: The optometric franchising segment provides marketing, practice development and purchasing power to independently-owned and operated optometric practices in the United States and Canada.
  - Age-Related Macular Degeneration (“AMD”): The AMD segment includes the Company’s ownership interest in OccuLogix, which is a health care company currently focused on ophthalmic devices for the diagnosis and treatment of age-related eye diseases. During the three months ended December 31, 2008, the Company’s ownership level in OccuLogix was diluted to a level below 20%, resulting in the Company no longer accounting for the results of OccuLogix under the equity method of accounting on a prospective basis.

During 2007, the Company completed the divestiture of two ambulatory surgical centers, which were part of the Company’s doctor services business. The results for these divested components are accounted for as discontinued operations in the consolidated financial statements for years ended December 31, 2007 and 2006.

Corporate depreciation and amortization of \$2.3 million, \$2.4 million, and \$2.6 million for 2008, 2007 and 2006, respectively, is included in corporate operating expenses. For purposes of the depreciation and amortization disclosures shown below, these amounts are included in the “Refractive Centers” segment.

The Company reviews its definition of centers when there is a change in its level of operating control and/or ownership at the center, or if the mode of service delivery at the location is significantly altered. As a result, prior year figures may vary from previously reported financials in order to better reflect changes in the Company’s current portfolio of centers.

Assets of the Company’s corporate operations, including corporate headquarters, have not been allocated among the various segments. The amounts are included in the “Refractive Centers” segment.

The Company's reportable segments are as follows:

| <b>YEAR ENDED DECEMBER 31, 2008</b><br><b>(IN THOUSANDS)</b> |                               |                              |                            |              |                                   |            |              |
|--------------------------------------------------------------|-------------------------------|------------------------------|----------------------------|--------------|-----------------------------------|------------|--------------|
|                                                              | <b>DOCTOR SERVICES</b>        |                              |                            |              | <b>EYE CARE</b>                   |            |              |
|                                                              | <b>REFRACTIVE<br/>CENTERS</b> | <b>REFRACTIVE<br/>ACCESS</b> | <b>MOBILE<br/>CATARACT</b> | <b>OTHER</b> | <b>OPTOMETRIC<br/>FRANCHISING</b> | <b>AMD</b> | <b>TOTAL</b> |
| Revenues .....                                               | \$ 151,442                    | \$ 29,176                    | \$ 40,916                  | \$ 25,523    | \$ 28,611                         | \$ -       | \$ 275,668   |
| Cost of revenues (excluding amortization) .....              | 110,824                       | 23,623                       | 30,294                     | 17,187       | 13,010                            | -          | 194,938      |
| Gross profit .....                                           | 40,618                        | 5,553                        | 10,622                     | 8,336        | 15,601                            | -          | 80,730       |
| Segment expenses:                                            |                               |                              |                            |              |                                   |            |              |
| Marketing and sales .....                                    | 31,235                        | 140                          | 6,533                      | 484          | 4,333                             | -          | 42,725       |
| G&A, amortization and other .....                            | 7,765                         | (299)                        | 3,931                      | 1,591        | 51                                | -          | 13,039       |
| Impairment * .....                                           | 73,865                        | 6,493                        | -                          | 4,689        | -                                 | -          | 85,047       |
| Minority interests .....                                     | 912                           | 56                           | -                          | 3,383        | 5,179                             | -          | 9,530        |
| Earnings from equity investments .....                       | 1,820                         | -                            | -                          | (1,260)      | -                                 | -          | 560          |
| Segment (loss) profit .....                                  | \$ (74,979)                   | \$ (837)                     | \$ 158                     | \$ (551)     | \$ 6,038                          | \$ -       | \$ (70,171)  |
| Corporate operating expenses .....                           |                               |                              |                            |              |                                   |            | (17,871)     |
| Interest expense, net .....                                  |                               |                              |                            |              |                                   |            | (9,338)      |
| Income tax expense .....                                     |                               |                              |                            |              |                                   |            | (874)        |
| Net loss .....                                               |                               |                              |                            |              |                                   |            | (98,254)     |
| Depreciation and amortization .....                          | \$ 12,423                     | \$ 2,939                     | \$ 2,742                   | \$ 1,516     | \$ 50                             | \$ -       | \$ 19,670    |
| Total assets .....                                           | \$ 74,892                     | \$ 16,910                    | \$ 25,531                  | \$ 4,555     | \$ 15,094                         | \$ -       | \$ 136,982   |

\* Note: Refractive Centers impairment charge of \$73.9 million includes approximately \$2.3 million of allocated corporate related impairment charges.

| <b>YEAR ENDED DECEMBER 31, 2007</b><br><b>(IN THOUSANDS)</b>     |                               |                              |                            |              |                                   |            |              |
|------------------------------------------------------------------|-------------------------------|------------------------------|----------------------------|--------------|-----------------------------------|------------|--------------|
|                                                                  | <b>DOCTOR SERVICES</b>        |                              |                            |              | <b>EYE CARE</b>                   |            |              |
|                                                                  | <b>REFRACTIVE<br/>CENTERS</b> | <b>REFRACTIVE<br/>ACCESS</b> | <b>MOBILE<br/>CATARACT</b> | <b>OTHER</b> | <b>OPTOMETRIC<br/>FRANCHISING</b> | <b>AMD</b> | <b>TOTAL</b> |
| Revenues .....                                                   | \$ 175,206                    | \$ 35,535                    | \$ 37,556                  | \$ 23,606    | \$ 26,511                         | \$ -       | \$ 298,414   |
| Cost of revenues (excluding amortization) .....                  | 127,024                       | 28,020                       | 26,889                     | 15,152       | 11,999                            | -          | 209,084      |
| Gross profit .....                                               | 48,182                        | 7,515                        | 10,667                     | 8,454        | 14,512                            | -          | 89,330       |
| Segment expenses:                                                |                               |                              |                            |              |                                   |            |              |
| Gain on sale of OccuLogix stock .....                            | -                             | -                            | -                          | -            | -                                 | (899)      | (899)        |
| Marketing and sales .....                                        | 32,543                        | 1,372                        | 4,252                      | 470          | 4,342                             | -          | 42,979       |
| G&A, amortization and other .....                                | 11,587                        | 64                           | 4,182                      | 2,198        | 167                               | -          | 18,198       |
| Impairment goodwill and other assets .....                       | -                             | -                            | -                          | 7,659        | -                                 | -          | 7,659        |
| Minority interests .....                                         | 1,270                         | 133                          | -                          | 2,981        | 4,537                             | -          | 8,921        |
| (Earnings) losses from equity investments .....                  | 86                            | -                            | -                          | (1,115)      | -                                 | 13,396     | 12,367       |
| Segment profit (loss) .....                                      | \$ 2,696                      | \$ 5,946                     | \$ 2,233                   | \$ (3,739)   | \$ 5,466                          | \$(12,497) | \$ 105       |
| Corporate operating expenses .....                               |                               |                              |                            |              |                                   |            | (22,772)     |
| Interest expense, net .....                                      |                               |                              |                            |              |                                   |            | (4,157)      |
| Income tax expense .....                                         |                               |                              |                            |              |                                   |            | (8,476)      |
| Net loss from continuing operations .....                        |                               |                              |                            |              |                                   |            | (35,300)     |
| Net loss from discontinued operations** .....                    |                               |                              |                            |              |                                   |            | (8,214)      |
| Net loss .....                                                   |                               |                              |                            |              |                                   |            | (43,514)     |
| Depreciation and amortization from continuing operations .....   | \$ 11,930                     | \$ 2,486                     | \$ 2,863                   | \$ 1,425     | \$ 58                             | \$ -       | \$ 18,762    |
| Depreciation and amortization from discontinued operations ..... |                               |                              |                            |              |                                   |            | 97           |
| Depreciation and amortization .....                              |                               |                              |                            |              |                                   |            | \$ 18,859    |
| Total assets .....                                               | \$ 159,912                    | \$ 27,979                    | \$ 26,154                  | \$ 8,750     | \$ 15,015                         | \$ -       | \$ 237,810   |

\*\* Note: Net loss from discontinued operations for the year ended December 31, 2007 includes a goodwill impairment charge of \$9.3 million and relates to the "Other" segment.

**YEAR ENDED DECEMBER 31, 2006**  
(IN THOUSANDS)

**DOCTOR SERVICES**

**EYE CARE**

|                                                                  | <b><u>REFRACTIVE<br/>CENTERS</u></b> | <b><u>REFRACTIVE<br/>ACCESS</u></b> | <b><u>MOBILE<br/>CATARACT</u></b> | <b><u>OTHER</u></b> | <b><u>OPTOMETRIC<br/>FRANCHISING</u></b> | <b><u>AMD</u></b> | <b><u>TOTAL</u></b> |
|------------------------------------------------------------------|--------------------------------------|-------------------------------------|-----------------------------------|---------------------|------------------------------------------|-------------------|---------------------|
| Revenues .....                                                   | \$ 162,015                           | \$ 36,685                           | \$ 35,058                         | \$ 21,235           | \$ 22,860                                | \$ -              | \$ 277,853          |
| Cost of revenues (excluding amortization) .....                  | 114,981                              | 27,543                              | 24,631                            | 14,390              | 9,733                                    | 1,659             | 192,937             |
| Gross profit .....                                               | 47,034                               | 9,142                               | 10,427                            | 6,845               | 13,127                                   | (1,659)           | 84,916              |
| Segment expenses:                                                |                                      |                                     |                                   |                     |                                          |                   |                     |
| Gain on sale of OccuLogix stock .....                            | -                                    | -                                   | -                                 | -                   | -                                        | (1,450)           | (1,450)             |
| Marketing and sales .....                                        | 19,639                               | 413                                 | 3,012                             | 437                 | 4,121                                    | 169               | 27,791              |
| G&A, amortization and other .....                                | 11,621                               | 265                                 | 4,034                             | 1,773               | 150                                      | 4,083             | 21,926              |
| Minority interests .....                                         | 2,144                                | 284                                 | -                                 | 2,720               | 4,080                                    | (2,715)           | 6,513               |
| (Earnings) losses from equity investments .....                  | (1,356)                              | -                                   | -                                 | (1,817)             | -                                        | 5,809             | 2,636               |
| Segment profit (loss) .....                                      | \$ 14,986                            | \$ 8,180                            | \$ 3,381                          | \$ 3,732            | \$ 4,776                                 | \$ (7,555)        | \$ 27,500           |
| Corporate operating expenses .....                               |                                      |                                     |                                   |                     |                                          |                   | (18,350)            |
| Interest income, net .....                                       |                                      |                                     |                                   |                     |                                          |                   | 875                 |
| Income tax benefit .....                                         |                                      |                                     |                                   |                     |                                          |                   | 3,655               |
| Net income from continuing operations .....                      |                                      |                                     |                                   |                     |                                          |                   | 13,680              |
| Net loss from discontinued operations *** .....                  |                                      |                                     |                                   |                     |                                          |                   | (2,161)             |
| Net income .....                                                 |                                      |                                     |                                   |                     |                                          |                   | 11,519              |
| Depreciation and amortization from continuing operations .....   | \$ 10,017                            | \$ 2,146                            | \$ 2,683                          | \$ 1,337            | \$ 58                                    | \$ 34             | \$ 16,275           |
| Depreciation and amortization from discontinued operations ..... |                                      |                                     |                                   |                     |                                          |                   | 117                 |
| Depreciation and amortization .....                              |                                      |                                     |                                   |                     |                                          |                   | \$ 16,392           |
| Total assets .....                                               | \$ 189,125                           | \$ 29,510                           | \$ 23,806                         | \$ 24,078           | \$ 13,421                                | \$ 14,362         | \$ 294,302          |

\*\*\* Note: Net loss from discontinued operations for the year ended December 31, 2006 includes a goodwill impairment charge of \$4.1 million and relates to the “other” segment.

The Company's geographic segments are as follows:

| <b><u>YEAR ENDED DECEMBER 31, 2008</u></b> | <b><u>CANADA</u></b> | <b><u>UNITED STATES</u></b> | <b><u>TOTAL</u></b> |
|--------------------------------------------|----------------------|-----------------------------|---------------------|
| Revenues from continuing operations .....  | \$ 15,199            | \$ 260,469                  | \$ 275,668          |
| Total fixed assets and intangibles .....   | \$ 6,510             | \$ 83,202                   | \$ 89,712           |
| <b><u>YEAR ENDED DECEMBER 31, 2007</u></b> | <b><u>CANADA</u></b> | <b><u>UNITED STATES</u></b> | <b><u>TOTAL</u></b> |
| Revenues from continuing operations .....  | \$ 16,608            | \$ 281,806                  | \$ 298,414          |
| Total fixed assets and intangibles .....   | \$ 8,445             | \$ 164,857                  | \$ 173,302          |
| <b><u>YEAR ENDED DECEMBER 31, 2006</u></b> | <b><u>CANADA</u></b> | <b><u>UNITED STATES</u></b> | <b><u>TOTAL</u></b> |
| Revenues from continuing operations .....  | \$ 14,395            | \$ 263,458                  | \$ 277,853          |
| Total fixed assets and intangibles .....   | \$ 7,938             | \$ 165,601                  | \$ 173,539          |

## 24. FAIR VALUE MEASUREMENTS

In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards 157, “Fair Value Measurements,” (“SFAS 157”), which defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. During February 2008, the FASB issued Staff Position No. 157-2 that delays the effective date of SFAS No. 157 for non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The Company’s 2008 adoption of SFAS 157 did not have a material impact on the financial statements and management is currently evaluating the potential impact of the deferred portion of SFAS 157 on the financial statements when implemented.

In October 2008, the FASB issued FASB Staff Position (FSP) No. 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active” (FSP 157-3), which clarified the application of SFAS No. 157 in an inactive market and demonstrated how the fair value of a financial asset is determined when the market for that financial asset is inactive. FSP 157-3 was effective upon issuance, including prior periods for which financial statements had not been issued. The adoption of FSP 157-3 did not

have a material effect on the Company's results of operations or financial condition since it did not have any financial assets in inactive markets.

The fair value framework requires the categorization of assets and liabilities into three levels based upon the assumptions (inputs) used to price the assets or liabilities. Level 1 provides the most reliable measure of fair value, whereas Level 3 generally requires significant management judgment. The three levels are defined as follows:

- *Level 1:* Unadjusted quoted prices in active markets for identical assets and liabilities.
- *Level 2:* Observable inputs other than those included in Level 1. For example, quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets or liabilities in inactive markets.
- *Level 3:* Unobservable inputs reflecting management's own assumptions about the inputs used in pricing the asset or liability.

Cash and cash equivalents of \$4.5 million at December 31, 2008 are primarily comprised of either bank deposits or amounts invested in money market funds, the fair value of which is based on unadjusted quoted prices in active markets for identical assets (Level 1).

The Company accounts for its interest rate swaps at fair value and at December 31, 2008 and 2007 had liabilities (amounts due to counterparties) of \$1.5 million and \$0.8 million, respectively, which were reported on the balance sheet as other long-term liabilities. The interest rate swaps are valued using inputs obtained in quoted public markets (Level 2).

The Company also uses fair value measurements when it periodically evaluates the recoverability of goodwill and other intangible assets, and when preparing annual fair value disclosures regarding the company's long-term debt portfolio.

## 25. FINANCIAL INSTRUMENTS

As of December 31, 2008, the carrying value and approximate fair value of the Company's debt, excluding capital lease obligations, was \$91.4 million and \$89.0 million, respectively. As of December 31, 2007, the carrying value and approximate fair value of the Company's long-term debt, excluding capital lease obligations, was \$92.8 million and \$91.6 million, respectively. The fair value of the Company's long-term debt was estimated by discounting the amount of future cash flows associated with the respective debt instruments using the Company's current incremental rate of borrowing for similar debt instruments. The calculation of fair value assumes no acceleration of payments that may be required under default provisions included in the Company's Credit Facility.

The carrying value of the Company's cost method investments was \$2.0 million and \$3.6 million as of December 31, 2008 and 2007. During the year ended December 31, 2008, the Company recorded impairment charges of \$2.3 million to reduce the carrying value of its cost method investments to better reflected estimated market values.

## 26. SUPPLEMENTAL CASH FLOW INFORMATION

Significant non-cash transactions:

|                                                                 | YEAR ENDED DECEMBER 31, |          |           |
|-----------------------------------------------------------------|-------------------------|----------|-----------|
|                                                                 | 2008                    | 2007     | 2006      |
| Capital lease obligations relating to equipment purchases ..... | \$ 3,110                | \$ 8,513 | \$ 11,129 |
| Option and warrant reduction .....                              | 92                      | 969      | 55        |
| Retirement of treasury stock.....                               | --                      | 117,569  | --        |
| Other comprehensive loss on interest rate swap .....            | 761                     | 784      | --        |

Cash paid for the following:

|                    | YEAR ENDED DECEMBER 31, |                 |                 |
|--------------------|-------------------------|-----------------|-----------------|
|                    | 2008                    | 2007            | 2006            |
| Interest.....      | <u>\$ 9,406</u>         | <u>\$ 4,771</u> | <u>\$ 1,453</u> |
| Income taxes ..... | <u>\$ 1,246</u>         | <u>\$ 1,143</u> | <u>\$ 1,814</u> |

## 27. RELATED PARTY TRANSACTIONS

The Company has an agreement with Minnesota Eye Consultants to provide refractive access services. Dr. Richard Lindstrom, a director of TLCVision, is founder, partner and attending surgeon of Minnesota Eye Consultants. The Company received revenue of \$0.8 million, \$1.0 million and \$0.8 million as a result of the agreement for the years ended December 31, 2008, 2007 and 2006, respectively. Dr. Lindstrom also receives annual compensation from the Company in his capacity as medical director of TLCVision and as a consultant to Sightpath Medical.

As of December 31, 2008, the Company owned approximately 8% of OccuLogix. One of the Company's current Board members (Dr. Lindstrom) is also a Board member of OccuLogix. Further, Mr. Davidson, who resigned from the Company's Board in January 2008, was also a Board member of OccuLogix. In addition, Mr. Vamvakas, who served on the Board of TLCVision until June 2007, and was formerly the Chairman and CEO for the Company, is currently the Chairman and formerly the CEO of OccuLogix.

## 28. DEFINED CONTRIBUTION AND EMPLOYEE STOCK PURCHASE PLANS

### *Defined Contribution Plan (401k)*

The Company sponsors a defined contribution plan, which extends participation eligibility to substantially all U.S. employees. The Company matches 25% of participants' before-tax contributions up to 8% of eligible compensation. Prior to the third quarter of 2006, this match was provided in the form of Company stock. Beginning in the third quarter of 2006, the match is provided in the form of cash. Amounts charged to expense during the years ended December 31, 2008, 2007 and 2006 were \$0.5 million, \$0.5 million and \$0.6 million, respectively, under the defined contribution plan.

### *Employee Stock Purchase Plan*

Under our Employee Stock Purchase Plan ("ESPP") participants may contribute up to 10% of their annual compensation to purchase common shares of the Company stock. The purchase price of the shares is equal to 85% of the closing price of TLCVision on the first day or the last day of each quarterly offering period, whichever is less.

For the years ended December 31, 2008 and 2007, there were approximately 180,000 and 70,000 shares issued under the Employee Stock Purchase and 401k Plans.

## 29. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following is a summary of the unaudited quarterly results of operations:

|                                                                     | THREE MONTHS<br>ENDED MARCH 31,<br><u>2008 (1)</u> | THREE MONTHS<br>ENDED JUNE 30,<br><u>2008 (2)</u> | THREE MONTHS<br>ENDED SEPTEMBER 30,<br><u>2008 (3)</u> | THREE MONTHS<br>ENDED DECEMBER 31,<br><u>2008 (4)</u> |
|---------------------------------------------------------------------|----------------------------------------------------|---------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------|
| Revenues .....                                                      | \$ 90,355                                          | \$ 74,097                                         | \$ 57,534                                              | \$ 53,682                                             |
| Gross profit .....                                                  | 32,035                                             | 21,317                                            | 16,075                                                 | 11,303                                                |
| Net income (loss) from<br>continuing operations .....               | 6,072                                              | (2,200)                                           | (6,711)                                                | (95,415)                                              |
| Net income (loss) .....                                             | 6,072                                              | (2,200)                                           | (6,711)                                                | (95,415)                                              |
| Income (loss) per share from<br>continuing operations .....         | 0.12                                               | (0.04)                                            | (0.13)                                                 | (1.89)                                                |
| Income (loss) per share from<br>continuing operations, diluted..... | 0.12                                               | (0.04)                                            | (0.13)                                                 | (1.89)                                                |
| Income (loss) per share.....                                        | 0.12                                               | (0.04)                                            | (0.13)                                                 | (1.89)                                                |
| Income (loss) per share, diluted ....                               | 0.12                                               | (0.04)                                            | (0.13)                                                 | (1.89)                                                |

|                                                                      | THREE MONTHS<br>ENDED MARCH 31,<br><u>2007 (5)</u> | THREE MONTHS<br>ENDED JUNE 30,<br><u>2007 (6)</u> | THREE MONTHS<br>ENDED SEPTEMBER 30,<br><u>2007 (7)</u> | THREE MONTHS<br>ENDED DECEMBER 31,<br><u>2007 (8)</u> |
|----------------------------------------------------------------------|----------------------------------------------------|---------------------------------------------------|--------------------------------------------------------|-------------------------------------------------------|
| Revenues .....                                                       | \$ 82,346                                          | \$ 80,081                                         | \$ 69,693                                              | \$ 66,294                                             |
| Gross profit .....                                                   | 27,834                                             | 25,758                                            | 18,833                                                 | 16,905                                                |
| Net income (loss) from<br>continuing operations .....                | 3,283                                              | 530                                               | (13,603)                                               | (25,510)                                              |
| Net income (loss) .....                                              | 3,478                                              | 876                                               | (22,584)                                               | (25,284)                                              |
| Income (loss) per share from<br>continuing operations .....          | 0.05                                               | 0.01                                              | (0.27)                                                 | (0.51)                                                |
| Income (loss) per share from<br>continuing operations, diluted ..... | 0.05                                               | 0.01                                              | (0.27)                                                 | (0.51)                                                |
| Income (loss) per share .....                                        | 0.05                                               | 0.01                                              | (0.45)                                                 | (0.51)                                                |
| Income (loss) per share, diluted ....                                | 0.05                                               | 0.01                                              | (0.45)                                                 | (0.51)                                                |

- (1) In the three months ended March 31, 2008, net income includes a \$0.1 million gain on the sale of subsidiaries.
- (2) In the three months ended June 30, 2008, net loss includes a \$0.2 million gain on the sale and disposal of fixed assets.
- (3) In the three months ended September 30, 2008, net loss includes:
- (a) a \$1.5 million impairment charge to goodwill and other long-term assets; and
  - (b) a \$0.1 million gain on the sale and disposal of fixed assets.
- (4) In the three months ended December 31, 2008, net loss includes an \$83.5 million impairment to goodwill, definite-lived intangible assets, fixed assets and other long-term assets.
- (5) In the three months ended March 31, 2007, net income includes severance charges totaling \$0.4 million.
- (6) In the three months ended June 30, 2007, net income includes a \$0.9 million gain on sale of OccuLogix common stock.
- (7) In the three months ended September 30, 2007, net loss includes:
- (a) a \$12.4 million impairment charge to goodwill and other;
  - (b) \$0.2 million related to center closing costs; and
  - (c) \$0.2 million in loss on the sale of subsidiaries.
- (8) In the three months ended December 31, 2007, net loss includes:
- (a) a \$4.5 million impairment to the Company's investments in the stand-alone ASC's;
  - (b) severance charges totaling \$0.7 million; and
  - (c) \$1.0 million related to center closing costs.

#### ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

#### ITEM 9A. CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of the end of the period covered by the report, the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act). Based on that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded

that the Company's disclosure controls and procedures were effective, in all material respects, to ensure that information required to be disclosed in the reports the Company files and submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms.

There have been no significant changes in the Company's internal controls over financial reporting that occurred during the quarter ended December 31, 2008 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

#### MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of the Company is responsible for establishing and maintaining effective internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934. The Company's internal control over financial reporting is designed to provide reasonable assurance to the Company's management and board of directors regarding the preparation and fair presentation of published financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control – Integrated Framework*. Based on our assessment, we believe that, as of December 31, 2008, the Company's internal control over financial reporting is effective based on those criteria.

The effectiveness of internal control over financial reporting as of December 31, 2008, has been audited by Ernst & Young LLP, an independent registered public accounting firm who also audited the Company's consolidated financial statements. Ernst & Young's attestation report on the Company's internal control over financial reporting is included in Item 8, "Financial Statements and Supplementary Data."

## Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders of TLC Vision Corporation

We have audited TLC Vision Corporation's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). TLC Vision Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, TLC Vision Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of TLC Vision Corporation as of December 31, 2008 and 2007, and the related consolidated statements of operations, stockholders' (deficit) equity, and cash flows for each of the three years in the period ended December 31, 2008 and our report dated March 31, 2009 expressed an unqualified opinion thereon that included an explanatory paragraph regarding TLC Vision Corporation's ability to continue as a going concern.

/s/Ernst & Young LLP

St. Louis, Missouri  
March 31, 2009

## ITEM 9B. OTHER INFORMATION

Not applicable.

## PART III

## ITEM 10. DIRECTORS, EXECUTIVE OFFICERS OF AND CORPORATE GOVERNANCE

The information required by Item 401 of Regulation S-K regarding directors is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008. Information regarding executive officers is included under "Executive Officers of the Registrant" in Part I, Item 4A of this Report and is incorporated herein by reference. The information required by Item 405 of Regulation S-K is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008. The information required by Items 407(c)(3), (d)(4), and (d)(5) of Regulation S-K is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008.

Formal, written policies and procedures have been adopted, consistent with legal requirements, including a Code of Ethics applicable to the Company's principal executive officer, principal financial officer, and principal accounting officer or controller. The Company's Corporate Governance Guidelines, its charters for each of its Audit, Compensation, Nominating and Corporate Governance Committees and its Code of Ethics covering all Employees are available on the Company's website, [www.tlcvision.com](http://www.tlcvision.com), and a copy will be mailed upon request to Investor Relations, TLC Vision Corporation, 16305 Swingley Ridge Rd., Ste. 300, Chesterfield, MO 63017.

## ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

### EQUITY COMPENSATION PLAN INFORMATION

The following table provides information as of December 31, 2008, regarding compensation plans under which equity securities of TLCVision are authorized for issuance (shares in thousands).

| Plan category                                                       | Number of securities<br>to be issued upon<br>exercise of<br>outstanding options,<br>warrants and rights<br>(a) | Weighted-average<br>exercise price of<br>outstanding<br>options, warrants<br>and rights<br>(b) | Number of securities<br>remaining available for<br>future issuances under<br>equity compensation<br>plans (excluding<br>securities reflected in<br>column (a))<br>(c) |
|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equity compensation plans approved by<br>security holders .....     | 5,015                                                                                                          | \$4.14(1)                                                                                      | 61                                                                                                                                                                    |
| Equity compensation plans not approved by<br>security holders ..... | --                                                                                                             | --                                                                                             | --                                                                                                                                                                    |
| Total.....                                                          | <u>5,015</u>                                                                                                   | <u>\$4.14(1)</u>                                                                               | <u>61</u>                                                                                                                                                             |

(1) Represents the weighted-average exercise price of outstanding options, warrants and rights denominated in U.S. dollars. The weighted-average exercise price of outstanding options, warrants and rights denominated in Canadian dollars was Cdn\$4.79.

See Note 18, "Stock-Based Compensation," to the audited consolidated financial statements for more information regarding the material features of the Company's outstanding options, warrants and rights.

#### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item 13 is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008.

#### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 is hereby incorporated by reference to the Company's definitive proxy statement to be filed within 120 days after the end of the Company's fiscal year ended December 31, 2008.

### PART IV

#### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of the report:

(1) Financial statements:

Report of Independent Registered Public Accounting Firm.

Consolidated Statements of Operations – Years Ended December 31, 2008, 2007 and 2006.

Consolidated Balance Sheets as of December 31, 2008 and 2007.

Consolidated Statements of Cash Flows – Years Ended December 31, 2008, 2007 and 2006.

Consolidated Statements of Stockholders' Equity – Years Ended December 31, 2008, 2007 and 2006.

Notes to Consolidated Financial Statements

(2) Financial statement schedules required to be filed by Item 8 and Item 15(d) of Form 10-K.

Schedule II - Valuation and Qualifying Accounts and Reserves

Except as provided below, all schedules for which provision is made in the applicable accounting regulations of the Commission either have been included in the consolidated financial statements or are not required under the related instructions, or are inapplicable and therefore have been omitted.

(3) Exhibits required by Item 601 of Regulation S-K and by Item 14(c).

See Exhibit Index.

(b) Exhibits required by Item 601 of Regulation S-K.

See Exhibit Index.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

TLC VISION CORPORATION

By /s/ JAMES C. WACHTMAN

James C. Wachtman, Chief Executive Officer

March 31, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date indicated.

| <u>SIGNATURE</u>                                                    | <u>TITLE</u>                                    | <u>DATED</u>   |
|---------------------------------------------------------------------|-------------------------------------------------|----------------|
| <u>/s/ JAMES C WACHTMAN</u><br>James C. Wachtman                    | Chief Executive Officer and Director            | March 31, 2009 |
| <u>/s/ STEVEN P. RASCHE</u><br>Steven P. Rasche                     | Chief Financial Officer                         | March 31, 2009 |
| <u>/s/ WARREN S. RUSTAND</u><br>Warren S. Rustand                   | Chairman of the Board of Directors and Director | March 31, 2009 |
| <u>/s/ RICHARD L. LINDSTROM, M.D.</u><br>Richard L. Lindstrom, M.D. | Director                                        | March 31, 2009 |
| <u>/s/ TOBY S. WILT</u><br>Toby S. Wilt                             | Director                                        | March 31, 2009 |
| <u>/s/ MICHAEL D. DEPAOLIS, O.D.</u><br>Michael D. DePaolis, O.D.   | Director                                        | March 31, 2009 |
| <u>/s/ JAY T. HOLMES</u><br>Jay T. Holmes                           | Director                                        | March 31, 2009 |
| <u>/s/ OLDEN C. LEE</u><br>Olden C. Lee                             | Director                                        | March 31, 2009 |

SCHEDULE II

VALUATION AND QUALIFYING ACCOUNTS AND RESERVES  
(all values in thousands)

|                                                                       | <u>BALANCE AT<br/>BEGINNING<br/>OF PERIOD</u> | <u>PROVISION</u> | <u>OTHER</u> | <u>DEDUCTIONS-<br/>UNCOLLECTABLE<br/>AMOUNTS</u> | <u>BALANCE AT<br/>END<br/>OF PERIOD</u> |
|-----------------------------------------------------------------------|-----------------------------------------------|------------------|--------------|--------------------------------------------------|-----------------------------------------|
| 2006                                                                  |                                               |                  |              |                                                  |                                         |
| Provision for contractual allowances and doubtful accounts receivable | \$ 4,229                                      | \$ (339)         | \$ (1,048)   | \$ (471)                                         | \$ 2,371                                |
| Provision against investments and other assets                        | 2,314                                         | --               | --           | --                                               | 2,314                                   |
| Deferred tax asset valuation allowance                                | 75,607                                        | (5,875)          | 40,267       | --                                               | 109,999                                 |
| 2007                                                                  |                                               |                  |              |                                                  |                                         |
| Provision for contractual allowances and doubtful accounts receivable | \$ 2,371                                      | \$ (9)           | \$ (18)      | \$ (379)                                         | \$ 1,965                                |
| Provision against investments and other assets                        | 2,314                                         | --               | --           | --                                               | 2,314                                   |
| Deferred tax asset valuation allowance                                | 109,999                                       | 7,926            | 8,960        | --                                               | 126,885                                 |
| 2008                                                                  |                                               |                  |              |                                                  |                                         |
| Provision for contractual allowances and doubtful accounts receivable | \$ 1,965                                      | \$ 1,709         | \$ (29)      | \$ (128)                                         | \$ 3,517                                |
| Provision against investments and other assets                        | 2,314                                         | --               | --           | --                                               | 2,314                                   |
| Deferred tax asset valuation allowance                                | 126,885                                       | 23,037           | (9,174)      | --                                               | 140,748                                 |

During 2006, the provision for doubtful accounts receivable was reduced by \$1.0 million as a result of the deconsolidation of OccuLogix. During 2006, the increase of the deferred tax asset valuation allowance was primarily a result of additional valuation allowances related to net operating loss carry forwards resulting from the comprehensive IRC Section 382 analysis completed in the second quarter and the IRC Section 163(j) analysis completed in the fourth quarter partially offset by a decrease related to the deconsolidation of OccuLogix.

During 2007, the increase of the deferred tax asset valuation allowance was primarily a result of additional valuation allowances related to net operating loss carry forwards and a deferred tax asset write-down of \$7.2 million.

During 2008, increases of the deferred tax asset valuation allowance were primarily a result of additional valuation allowances related to net operating loss carry forwards. Decreases to the deferred tax asset valuation allowance were primarily due to the expiration and elimination of Canadian and United Kingdom net operation losses and foreign exchange.

## EXHIBIT INDEX

| <u>EXHIBIT<br/>NO.</u> | <u>DESCRIPTION</u>                                                                                                                                                                                                                                                                                                                                                     |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1                    | Articles of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's 10-K filed with the Commission on August 28, 1998)                                                                                                                                                                                                                                |
| 3.2                    | Articles of Amendment (incorporated by reference to Exhibit 3.2 to the Company's 10-K filed with the Commission on August 29, 2000)                                                                                                                                                                                                                                    |
| 3.3                    | Articles of Continuance (incorporated by reference to Exhibit 3.6 to the Company's Registration Statement on Form S-4/A filed with the Commission on March 1, 2002 (file no. 333-71532))                                                                                                                                                                               |
| 3.4                    | Articles of Amendment (incorporated by reference to Exhibit 4.2 to the Company's Post Effective Amendment No. 1 on Form S-8 to the Company's Registration Statement on Form S-4 filed with the Commission on May 14, 2002 (file no. 333-71532))                                                                                                                        |
| 3.5                    | By-Laws of the Company (incorporated by reference to Exhibit 3.6 to the Company's Registration Statement on Form S-4/A filed with the Commission on March 1, 2002 (file no. 333-71532))                                                                                                                                                                                |
| 4.1                    | Shareholder Rights Plan Agreement dated March 4, 2005, as amended as of June 16, 2005, between the Company and CIBC Mellon Trust Company (incorporated by reference to Exhibit 99.2 to the Company's 8-K filed with the Commission on June 20, 2005 (file no. 000-29302))                                                                                              |
| 10.1*                  | TLC Vision Corporation Amended and Restated Share Option Plan (incorporated by reference to Exhibit 4.2 to the Company's Registration Statement on Form S-8 filed with the Commission on June 23, 2004 (file no. 333-116769))                                                                                                                                          |
| 10.2*                  | TLC Corporation 2004 Employee Share Purchase Plan (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-8 filed with the Commission on June 23, 2004 (file no. 333-116769))                                                                                                                                                      |
| 10.3*                  | Employment Agreement with James C. Wachtman dated May 15, 2002 (incorporated by reference to Exhibit 10.13 to the Company's 10-K for the year ended May 31, 2002)                                                                                                                                                                                                      |
| 10.4*                  | Employment Agreement with Steve Rasche dated July 1, 2004 (incorporated by reference to Exhibit 10.17 to the Company's 10-K for the year ended December 31, 2004)                                                                                                                                                                                                      |
| 10.5*                  | Employment Agreement with Brian Andrew dated December 31, 2004 (incorporated by reference to Exhibit 10.18 to the Company's 10-K for the year ended December 31, 2004)                                                                                                                                                                                                 |
| 10.6                   | Agreement and Plan of Merger By and Among TruVision, Inc. and TLC Wildcard Corp. and TLC Vision Corporation and TLC Vision (USA) Corporation and Lindsay T. Atwood dated as of October 27, 2005 (incorporated by reference to Exhibit 2.3 to the Company's 10-Q for the three and nine months ended September 30, 2005)                                                |
| 10.7                   | Amended and Restated Credit Agreement By and Among TLC Vision Corporation, TLC Vision (USA) Corporation, CIT Capital Securities, LLC, CIT Healthcare, LLC and Lenders dated as of June 21, 2007 (incorporated by reference to Exhibit 12.(B) to the Company's Schedule TO-I/A filed June 22, 2007)                                                                     |
| 10.8                   | Amendment No. 1 to the Amended and Restated Credit Agreement dated as of June 21, 2007 (incorporated by reference to Exhibit 10.23 to the Company's 10-K for the year ended December 31, 2007)                                                                                                                                                                         |
| 10.9                   | Amended and Restated Master Capital Lease Agreement with Advanced Medical Optics ("IntraLase Corp"), portions of which omitted pursuant to a request for confidential treatment filed separately with the Commission, dated December 18, 2007 (incorporated by reference to Exhibit 10.1 to the Company's 10-Q for the three and nine months ended September 30, 2008) |
| 10.10*                 | Consulting Agreement with Richard L. Lindstrom, M.D. dated July 1, 2008 (incorporated by reference to Exhibit 10.2 to the Company's 10-Q for the three and nine months ended September 30, 2008)                                                                                                                                                                       |
| 21                     | List of the Company's Subsidiaries                                                                                                                                                                                                                                                                                                                                     |
| 23                     | Consent of Independent Registered Public Accounting Firm                                                                                                                                                                                                                                                                                                               |
| 31.1                   | CEO's Certification required by Rule 13A-14(a) of the Securities Exchange Act of 1934.                                                                                                                                                                                                                                                                                 |
| 31.2                   | CFO's Certification required by Rule 13A-14(a) of the Securities Exchange Act of 1934.                                                                                                                                                                                                                                                                                 |

| <b><u>EXHIBIT<br/>NO.</u></b> | <b><u>DESCRIPTION</u></b>                                                                                                          |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 32.1                          | CEO's Certification of periodic financial report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002,<br>U.S.C. Section 1350 |
| 32.2                          | CFO's Certification of periodic financial report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002,<br>U.S.C. Section 1350 |

\* Management contract or compensatory plan arrangement.

**Listing of the TLC Vision Corporation Subsidiaries**

| <u>Name</u>                                        | <u>State/Province of Incorporation/Organization</u> |
|----------------------------------------------------|-----------------------------------------------------|
| American Eye Instruments, Inc.                     | OR                                                  |
| Coastal Vision Laser Eye Centers, LLC              | CA                                                  |
| Del Val ASC, LLC                                   | DE                                                  |
| Delaware Valley Vision Assoc. Group Practice, LLC  | PA                                                  |
| Eastern Oregon Regional Surgery Center, LLC        | OR                                                  |
| Eau Claire Refractive, LLC                         | DE                                                  |
| Kirkwood Surgery Center LLC                        | MO                                                  |
| Laser Eye Care of Ventura, LLC                     | DE                                                  |
| Laser Eye Care of California, LLC                  | DE                                                  |
| Laser Eye Surgery, Inc.                            | UT                                                  |
| Laser Vision Center of Edina LLC                   | MN                                                  |
| Laser Vision Centers, Inc.                         | DE                                                  |
| LECC Berg Feinfeld Eye Centers, LLC                | CA                                                  |
| Liberty Eye Surgical Center, LLC                   | PA                                                  |
| LVCI California, LLC                               | DE                                                  |
| Memphis Refractive, LLC                            | DE                                                  |
| OccuLogix Canada Corp                              | DE                                                  |
| OccuLogix Holdings, Inc.                           | DE                                                  |
| OccuLogix, Inc.                                    | DE                                                  |
| OccuLogix LLC                                      | DE                                                  |
| Ogden Refractive LLC                               | DE                                                  |
| OR Partners, Inc.                                  | DE                                                  |
| OR Providers, Inc.                                 | OH                                                  |
| Pacific Hills Surgery Center, Inc.                 | CA                                                  |
| Pheresys Therapeutics Corporation                  | DE                                                  |
| Philadelphia Vision Associates Group Practice, LLC | PA                                                  |
| Phoenix Eye Surgical Center, LLC                   | AZ                                                  |
| Providence Refractive LLC                          | DE                                                  |
| Rheo Clinic, Inc.                                  | CANADA                                              |
| Robins Iowa Refractive, LLC                        | DE                                                  |
| San Jose Refractive LLC                            | DE                                                  |
| Sightpath Medical Inc. (formerly MSS, Inc.)        | MN                                                  |
| Smile Source LP                                    | TX                                                  |
| Smile Source Management L.L.C.                     | TX                                                  |
| Smile Source Marketing Inc.                        | TX                                                  |
| Southeast Medical, Inc.                            | LA                                                  |
| Southern Ophthalmics, Inc.                         | SC                                                  |
| Summit Ambulatory Surgical Center LLP              | DE                                                  |
| Surgical Services of Michigan, L.L.C.              | MI                                                  |
| TLC Capital Corporation                            | DE                                                  |
| TLC Florida Eye Laser Center LLC                   | DE                                                  |
| TLC Laser Eye Care of La Jolla LLC                 | DE                                                  |
| TLC Laser Eye Centers (ATAC) LLC                   | DE                                                  |
| TLC Laser Eye Centers (Refractive I) Inc.          | DE                                                  |
| TLC Management (Delaware Valley), LLC              | DE                                                  |
| TLC Management Services Inc.                       | DE                                                  |
| TLC Michigan L.L.C.                                | MI                                                  |
| TLC Michigan Investments, LLC                      | MI                                                  |

|                                                       |                  |
|-------------------------------------------------------|------------------|
| TLC Midwest Eye Laser Center, Inc.                    | IL               |
| TLC Northwest Ohio LLC                                | OH               |
| TLC Oklahoma Doctors L.L.C.                           | OK               |
| TLC Personnel Services LLC                            | MI               |
| TLC The Laser Center (Annapolis) Inc.                 | MD               |
| TLC The Laser Center (Baltimore Management) LLC       | MD               |
| TLC The Laser Center (Baltimore) Inc.                 | MD               |
| TLC The Laser Center (Boca Raton) Limited Partnership | FL               |
| TLC The Laser Center (Carolina) Inc.                  | NC               |
| TLC The Laser Center (Connecticut) L.L.C.             | CT               |
| TLC The Laser Center Detroit L.L.C.                   | MI               |
| TLC The Laser Center (Indiana) Inc.                   | IN               |
| TLC The Laser Center (Indiana) LLC                    | IN               |
| TLC The Laser Center (Institute) Inc.                 | DE               |
| TLC The Laser Center Kalamazoo L.L.C.                 | MI               |
| TLC The Laser Center Lansing L.L.C.                   | MI               |
| TLC The Laser Center (Moncton) Inc.                   | CANADA – ONTARIO |
| TLC The Laser Center (Northeast) Inc.                 | MD               |
| TLC The Laser Center (Pittsburgh) L.L.C.              | PA               |
| TLC The Laser Center (Tri-Cities) Inc.                | TN               |
| TLC The London Laser Center Inc.                      | CANADA – ONTARIO |
| TLC VC, LLC                                           | DE               |
| TLC Vision (USA) Corporation                          | DE               |
| TLC Vision Source, Inc.                               | TX               |
| TLC Whitten Laser Eye Associates LLC                  | DE               |
| TruVision, Inc.                                       | UT               |
| TruVision Contacts, Inc.                              | UT               |
| TruVision Provider Online Services, Inc.              | UT               |
| Valley Laser Eye Center LLC                           | ND               |
| Vision Corporation                                    | CANADA – ONTARIO |
| Vision Source LP                                      | TX               |
| Vision Source Management LLC                          | TX               |
| Vision Source Marketing, Inc.                         | TX               |

## Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8, No. 333-115910, Form S-8, No. 333-116769, Form S-8, No. 333-71532, Form S-8, No. 333-55480, Form S-8, No. 333-62907, and Form S-8, No. 333-137159) of TLC Vision Corporation of our reports dated March 31, 2009, with respect to the consolidated financial statements and schedule of TLC Vision Corporation, and the effectiveness of internal control over financial reporting of TLC Vision Corporation, included in the Annual Report (Form 10-K) for the year ended December 31, 2008.

/s/Ernst & Young LLP

St. Louis, Missouri  
March 31, 2009

## CERTIFICATION

I, James C. Wachtman, certify that:

1. I have reviewed this annual report on Form 10-K of TLC Vision Corporation;

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 periods 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 annual 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 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 annual 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) 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.

Date: March 31, 2009

/s/ James C. Wachtman  
James C. Wachtman  
Chief Executive Officer

## CERTIFICATION

I, Steven P. Rasche, certify that:

1. I have reviewed this annual report on Form 10-K of TLC Vision Corporation;

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 periods 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 annual 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 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 annual 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) 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.

Date: March 31, 2009

/s/ Steven P. Rasche  
Steven P. Rasche  
Chief Financial Officer

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

In connection with the Annual Report of TLC Vision Corporation (the "Company") on Form 10-K for the period ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James C. Wachtman, Chief Executive Officer, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (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.

Date: March 31, 2009

/s/ James C. Wachtman  
James C. Wachtman  
Chief Executive Officer

\* A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to TLC Vision Corporation and will be retained by TLC Vision Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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

In connection with the Annual Report of TLC Vision Corporation (the "Company") on Form 10-K for the period ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Steven P. Rasche, Chief Financial Officer, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (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.

Date: March 31, 2009

/s/ Steven P. Rasche  
Steven P. Rasche  
Chief Financial Officer

\* A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to TLC Vision Corporation and will be retained by TLC Vision Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

# SHAREHOLDER INFORMATION

## TRANSFER AGENT AND SHAREHOLDER RECORDS

Shareholders requiring information or assistance regarding individual stock records or stock certificates should contact the Transfer Agent:

The CIBC Mellon Trust Company  
T: (800) 387-0825

## STOCK EXCHANGE LISTING

Shares of the Corporation are listed on the NASDAQ National Market and the Toronto Stock Exchange.

TRADING SYMBOLS  
NASDAQ – TLCV  
TSX – TLC

## FORM 10-K

Additional copies of the Company's Annual Report on Form 10-K (without exhibits) are available from the Company at no charge. Requests should be directed to Investor Relations at the Company's U.S. Corporate Office.

## INDEPENDENT AUDITORS

Ernst & Young LLP

## INVESTOR RELATIONS

Shareholders, analysts, investment professionals, members of the media and potential investors who would like information about TLCVision's activities should contact:

T: (636) 534-2369  
T: (888) 289-5824  
F: (636) 489-0204  
E: investor.relations@tlcvision.com

## COMPANY EXECUTIVES

**James B. Tiffany**  
President and Chief Operating Officer

**Brian L. Andrew**  
General Counsel and Secretary

**Larry D. Hohl**  
President, Refractive Centers

**Steven P. Rasche**  
Chief Financial Officer

## BOARD OF DIRECTORS

**Warren S. Rustand**  
Chairman of the Board,  
TLC Vision Corporation  
Managing Partner, SCCapital Partners  
Chairman and CEO of Summit Capital Consulting

**Michael D. DePaolis, O.D.**  
Co-Founder and Member,  
DePaolis and Ryan, O.D., PC

**Jay T. Holmes**  
Attorney and Business Consultant

**Olden C. Lee**  
Principal, Lee Management Consulting Company

**Richard L. Lindstrom, M.D.**  
Medical Director, TLC Vision Corporation  
Medical Director, Sightpath Medical

**Toby S. Wilt**  
Chairman, Christie Cookie Company

## ANNUAL AND SPECIAL MEETING

The Company's annual and special meeting of shareholders is scheduled for June 19, 2009, at 10:00 a.m. Eastern Time at the offices of Torys LLP, 79 Wellington Street West, 33rd Floor, Toronto, Ontario.

# TLC CONTACT INFORMATION

## U.S. CORPORATE OFFICE

TLC Vision Corporation  
16305 Swingley Ridge Road, Suite 300  
Chesterfield, MO 63017  
T: (636) 534-2300  
T: (888) 289-5824  
F: (636) 534-2301

## INTERNATIONAL CORPORATE OFFICE

TLC Vision Corporation  
5280 Solar Drive, Suite 100  
Mississauga, Ontario L4W 5M8  
T: (905) 602-2020  
T: (800) 852-1033  
F: (905) 602-2025

## ON THE INTERNET

Interested investors may browse TLCVision's Website at [www.tlcv.com](http://www.tlcv.com) to obtain regularly updated information including press releases, webcasts, share trading data, quarterly reports and financial statements.

# TLC KEYS TO SUCCESS

## OUR VISION

To be the most trusted  
name in vision  
correction services

## OUR MISSION

To improve lives by  
improving vision

## OUR VALUES

Focus on our employees  
Operational Excellence  
Customer Driven  
Uncompromising Integrity  
Stakeholder Success