

XSUNX INC
Form 10-Q/A
April 08, 2008

Amendment No. 2

to

FORM 10-Q

SECURITIES EXCHANGE COMMISSION
Washington, D.C. 20549

Quarterly Report under Section 13 or 15(d) of
The Securities Exchange Act of 1934

For Quarter Ended December 31, 2007

Commission file number: 000-29621

XSUNX, INC.

(Exact name of registrant as specified in its charter)

Colorado
(State of incorporation)

84-1384159
(I.R.S. Employer Identification No.)

65 Enterprise, Aliso Viejo, CA 92656
(Address of principal executive offices) (Zip Code)

Registrant's telephone number: (949) 330-8060

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

Title of each class: None Name of each exchange on which registered: N/A

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

Title of each class: None

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

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. As of February 15, 2008 the number of shares outstanding of the registrant's only class of common stock was 173,402,188.

Table of Contents

	PAGE
PART I - FINANCIAL INFORMATION	
Item 1. Condensed Consolidated Financial Statements	
Independent Auditor's Report	F-1
Balance Sheets December 31, 2007 (unaudited) and September 30, 2007 audited	F-2
Statements of Operations for the Three Months ended December 31, 2007 and 2006 (unaudited) and the period February 25, 1997 (inception) to December 31, 2007	F-3
Statements of Stockholders Equity for the period February 25, 1997 (inception) to December 31, 2007 unaudited)	F-4
Statements of Cash Flows for the Three Months ended December 31, 2007 and 2006 (unaudited) and the period February 27, 1997 (inception) to December 31, 2007	F-5
Notes to Condensed Consolidated Financial Statements (Unaudited)	F-6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	3
Item 3 Qualitative and Quantitative Disclosures About Market Risk	8
Item 4. Controls and Procedures	8
PART II - OTHER INFORMATION	
Item 1. Legal Proceedings	9
Item 1a. Risk Factors	9
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	15
Item 3. Defaults upon Senior Securities	16
Item 4. Submission of Matters to a Vote of Security Holders	16
Item 5. Other Information	16
Item 6. Exhibits and Reports on Form 8-K	16
Signatures	18

Explanatory Statement

We are filing this amendment number two to our Quarterly Report on Form 10Q to enhance disclosures and update our financial statements relating to the Company's Marketable Prototype Machine and reflecting the value of the asset net of accumulated depreciation.

As a result, of these changes, we are also filing new Certificates has Exhibits 31.1, 31.2, 32.1 and 32.2 hereto.

JASPERS + HALL, PC
CERTIFIED PUBLIC ACCOUNTANTS

9175 E. Kenyon Avenue, Suite 100
Denver, CO 80237
303-796-0099

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors
XSUNX, INC.
Aliso Viejo, CA

We have reviewed the accompanying balance sheet of XSUNX, INC. (a development stage company) as of December 31, 2007, and the related statements of operations, stockholders' equity (deficit), and cash flows for the three-month period then ended. These financial statements are the responsibility of the Company's management.

We conducted our review in accordance with standards of the Public Company Accounting Oversight Board (United States). The review of interim financial information consists principally of applying analytical procedures to financial data and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with standards of the Public Company Accounting Oversight Board (United States), the objective of which is the expression of an opinion regarding the consolidated financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements for them to be in conformity with accounting principles generally accepted in the United States.

Jaspers + Hall, PC
Denver, CO
February 14, 2008

/s/ Jaspers + Hall, PC
Jaspers + Hall, PC
Denver, Colorado
February 14, 2008

F-1

XSUNX, INC.
(A Development Stage Company)
Balance Sheets

	(Unaudited) December 31, 2007	(Audited) September 30, 2007
<u>ASSETS:</u>		
Current assets:		
Cash	\$ 2,188,260	\$ 1,773,748
Prepaid Expenses	41,481	54,377
Total current assets	2,229,741	1,828,125
Fixed assets:		
Office & Misc. Equipment	39,450	39,437
Research and Development Equipment	634,907	532,795
Leasehold Improvement	89,825	89,825
Total Fixed Assets	764,182	662,057
Less Depreciation	(159,722)	(118,064)
Total fixed assets	604,410	543,993
Other assets:		
Patents/Trade Marks		-
Security Deposit	5,815	5,815
Accrued Interest Receivable	234,192	143,452
Note Receivable	1,500,000	1,500,000
Marketable Prototype (Net of Accumulated Depreciation)	1,632,625	1,720,875
Total other assets	3,372,632	3,370,142
TOTAL ASSETS	\$ 6,206,783	\$ 5,742,260
<u>LIABILITIES AND STOCKHOLDERS' EQUITY:</u>		
Current Liabilities:		
Accounts Payable	\$ 238,897	\$ 259,652
Accrued Expenses	55,077	53,036
Current Portion of Note Payable		
Total current liabilities	293,974	312,688
Stockholders' Equity:		
Preferred Stock, par value \$0.01 per share; 50,000,000 shares authorized; no shares issued and outstanding		
Treasury Stock, no par value; no shares were issued or outstanding		
Common Stock, no par value; 500,000,000 shares authorized; 164,753,188 shares issued and outstanding at December 31, 2007 and 157,919,856 shares were issued and outstanding at September 30, 2007		
	15,669,169	13,563,869
Paid in Capital - Common Stock Warrants & Fees	3,635,418	2,326,553
Deferred Stock Compensation	(1,135,300)	

Deficit accumulated during the development stage	(12,256,478)	(10,460,850)
Total stockholders' profit (deficit)	5,912,809	5,429,572
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 6,206,783	\$ 5,742,260

See Accountants' Review Report

F-2

XSUNX, INC.
(A Development Stage Company)
Statement of Operations
(Unaudited)

	Three Months Ended December 31,		Feb. 25, 1997 (Inception) to December 31,
	2007	2006	2007
Revenue			
Service Income	\$ -	\$ -	\$ 14,880
Other Income			-
Total Revenue	-	-	14,880
Expenses:			
Advertising	4,530	16,747	65,132
Bank Charges	531	25	4,411
Conferences & Seminars	3,715	9,271	29,707
Consulting	27,277	35,982	1,537,861
Depreciation	129,958	27,047	311,760
Directors' Fees			11,983
Due Diligence			45,832
Dues and Subscriptions			-
Equipment Rental			1,733
Filing Fees			8,610
Impairment loss			923,834
Insurance	22,164	3,535	92,483
Legal & Accounting	59,039	77,418	797,419
Licenses & Fees	618	20	7,163
Commitment and Loan Fees			741,834
Meals & Entertainment			4,119
Miscellaneous	100	2,135	7,478
Office Expenses	3,794	6,229	45,294
Patent Fees		1,181	2,469
Postage & Shipping	1,375	688	16,203
Printing	408	6,911	28,878
Public Relations	68,674	26,630	558,035
Recruitment Expenses	1,403		48,467
Research & Development	6,406	209,945	2,022,328
Rent	17,208	14,860	129,731
Salaries	235,585	140,615	1,994,707
Subscription Reports		10	9,858
Taxes	1,666		10,503
Telephone	4,987	7,162	79,910
Transfer Agent Expense		283	20,365
Travel, Meals & Entertainment	31,376	29,829	305,869
Utilities	2,408		10,511
Abandoned Equipment			808
Option / Warrant Expense	1,308,865		3,785,418

Total Operating Expenses	1,902,087	616,523	13,630,713
Other (Income) Expense			
Interest Expense	395		248,955
Interest Income	(106,854)	(32,843)	(448,536)
Legal Settlement			(1,100,000)
Other			-
Forgiveness of Debt			(59,773)
Total Other Income/Expense	(106,459)	(32,843)	(1,359,354)
Net (Loss)	\$ (1,795,628)	\$ (583,680)	\$ (12,256,478)
Per Share Information:			
Basic and Diluted			
Weighted average number of common shares outstanding	163,724,263	157,169,856	
Net Loss per Common Share	\$ (0.01)	\$ (0.004)	

See Accountants' Review Report

XSUNX, INC.
(A Development Stage Company)
Statement of Stockholders' Equity (Deficit)
December 31, 2007
(Unaudited)

	Treasury Stock		Common Stock		Paid in Capital	Deficit	
	# of Shares	Amount	# of Shares	Amount	Common Stock Warrants	During the Exploration Stage	Totals
Inception February 25, 1997	-	-	-	-	-	-	-
Issuance of stock for cash	-	-	15,880	217,700	-	-	217,700
Issuance of stock to Founders	-	-	14,110	-	-	-	-
Issuance of stock for consolidation	-	-	445,000	312,106	-	-	312,106
Net Loss for Year	-	-	-	-	-	(193,973)	(193,973)
Balance - September 30, 1997	-	-	474,990	529,806	-	(193,973)	335,834
Issuance of stock for services	-	-	1,500	30,000	-	-	30,000
Issuance of stock for cash	-	-	50,200	204,000	-	-	204,000
Consolidation stock cancelled	-	-	(60,000)	(50,000)	-	-	(50,000)
Net Loss for Year	-	-	-	-	-	(799,451)	(799,451)
Balance - September 30, 1998	-	-	466,690	713,806	-	(993,424)	(279,618)
Issuance of stock for cash	-	-	151,458	717,113	-	-	717,113
Issuance of stock for services	-	-	135,000	463,500	-	-	463,500
Net Loss for Year	-	-	-	-	-	(1,482,017)	(1,482,017)
Balance - September 30, 1999	-	-	753,148	1,894,419	-	(2,475,441)	(581,022)
Issuance of stock for cash	-	-	15,000	27,000	-	-	27,000
Net Loss for year	-	-	-	-	-	(118,369)	(118,369)

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Balance - September 30, 2000	-	-	768,148	1,921,419	-	(2,593,810)	(672,391)
Extinguishment of debt	-	-	-	337,887	-	-	337,887
Net Loss for year	-	-	-	-	-	(32,402)	(32,402)
Balance - September 30, 2001	-	-	768,148	2,259,306	-	(2,626,212)	(366,906)
Net Loss for year	-	-	-	-	-	(47,297)	(47,297)
Balance - September 30, 2002	-	-	768,148	2,259,306	-	(2,673,509)	(414,203)
Issuance of stock for Assets	-	-	70,000,000	3	-	-	3
Issuance of stock for Cash	-	-	9,000,000	225,450	-	-	225,450
Issuance of stock for Debt	-	-	115,000	121,828	-	-	121,828
Issuance of stock for Expenses	-	-	115,000	89,939	-	-	89,939
Issuance of stock for Services	-	-	31,300,000	125,200	-	-	125,200
Net Loss for year	-	-	-	-	-	(145,868)	(145,868)
Balance - September 30, 2003	-	-	111,298,148	2,821,726	-	(2,819,377)	2,350
Issuance of stock for cash	-	-	2,737,954	282,670	-	-	282,670
Issuance of Common Stock Warrants	-	-	-	-	1,200,000	-	1,200,000
Net Loss for Year	-	-	-	-	-	(1,509,068)	(1,509,068)
Balance - September 30, 2004			114,036,102	3,104,396	1,200,000	(4,328,445)	(24,049)
Issuance of stock for cash	-	-	6,747,037	531,395	-	-	531,395
Issuance of stock for services	-	-	3,093,500	360,945	-	-	360,945
Issuance of stock for collateral	26,798,418	-	-	-	-	-	-
Net Loss for Year			-	-	-	(1,400,839)	(1,400,839)
Balance - September 30, 2005	26,798,418	-	123,876,639	3,996,735	1,200,000	(5,729,284)	(532,549)
	-	-	72,366	31,500	-	-	31,500

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Issuance of stock for services							
Issuance of Common Stock Warrants	-	-	-	-	951,250	-	951,250
Issuance of stock for debenture conversion	-	-	21,657,895	5,850,000			5,850,000
Issuance of stock for interest expense	-	-	712,956	241,383			241,383
Issuance of stock for warrant conversion	-	-	10,850,000	3,171,250			3,171,250
Net Loss for Year	-	-	-	-	-	(3,441,940)	(3,441,940)
Balance September 30, 2006	26,798,418	-	157,169,856	13,290,869	2,151,250	(9,171,354)	6,270,765
Cancelation of Stock for Services Returned			(150,000)	(12,000)			(12,000)
Release of Security Collateral	(26,798,418)						
Issuance of Stock for Warrants - Jim Bentley			900,000	285,000	(150,000)		135,000
Stock Option / Warrant Expense					325,303		325,303
Net Loss for Year						(1,289,497)	(1,289,497)
Balance September 30, 2007	- \$	-	157,919,856	\$ 13,563,869	\$ 2,326,553	\$ (10,460,850)	5,429,572
Issuance of Stock for Cash			3,333,332	\$ 1,000,000			1,000,000
Issuance of Common Stock for Services			3,500,000	\$ 1,105,300	\$ 1,308,865		2,414,165
Deferred Stock Compensation							(1,135,300)
Net Loss for the Period						(1,795,628)	(1,795,628)
Balance December 31, 2007	- \$	-	164,753,188	\$ 15,669,169	\$ 3,635,418	\$ (12,256,478)	5,912,809

See Accountants' Review Report

XSUNX, INC.
(A Development Stage Company)
Statement of Cash Flows
(Unaudited)

	Three Months Ended December 31,		Feb. 25, 1997 (Inception) to December 31, 2007
	2007	2006	
Cash Flows from Operating Activities:			
Net Loss	\$ (1,795,628)	\$ (583,680)	\$ (12,375,778)
Issuance of Common Stock for Services			1,336,999
Issuance of Common Stock for Commitment Fee			310,117
Amortization of Common Stock for Commitment Fee			54,300
Option / Warrant Expense	1,308,865		3,785,418
Issuance of Stock for Interest			241,383
Depreciation	129,958	27,047	292,147
Adjustments to reconcile net loss to cash used in operating activities:			
(Increase) in Deferred Financing Costs			-
(Increase) Accounts Receivable			-
(Increase) Security Deposit	-	(1,700)	(5,815)
(Increase) in Prepaid Expense	(17,104)		(71,481)
(Decrease) in Accounts Payable	(20,755)	449,880	238,897
Increase (Decrease) in Accrued Liabilities	2,041	(476,153)	55,077
Net Cash Flows Used for Operating Activities	(392,623)	(584,606)	(6,073,736)
Cash Flows from Investing Activities:			
Purchase of Fixed Assets	(102,125)	(28,360)	(764,183)
Purchase of Marketable Prototype and Patent	-		(1,765,000)
Note Receivable	-		(1,500,000)
Accrued Interest earned	(90,740)		(234,192)
Net Cash Flows Used for Investing Activities	(192,865)	(28,360)	(4,263,375)
Cash Flows from Financing Activities:			
Proceeds from Warrant Conversion			3,171,250
Proceeds from Debenture Conversion			5,000,000
Proceeds from Convertible Debt			-
Issuance of Common Stock for Warrants			135,000
Issuance of Common Stock for cash	1,000,000		4,219,121
Net Cash Flows Provided by Financing Activities	1,000,000	-	12,525,371
Net Increase (Decrease) in Cash	414,512	(612,966)	2,188,260

Cash and cash equivalents - Beginning of period	1,773,748	4,305,105	-
Cash and cash equivalents - End of period	\$ 2,188,260	\$ 3,692,139	\$ 2,188,260

Supplemental Disclosure of Cash Flow Information

Cash Paid During the Period:

Interest	\$ 395	\$ 72,938
Income Taxes	\$ -	\$ -

NON-CASH TRANSACTIONS

Common stock issued (returned) in exchange for services		\$ 1,336,998
Conversion of debt for Stock		\$ -
Common Stock Issued for Commitment Fee	\$	\$ 364,417
Common Stock Issued for Interest		\$ 241,383

See Accountants' Review Report

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

Note 1 – Presentation of Interim Information:

In the opinion of the management of XSUNX, Inc., (the “Company”) the accompanying unaudited financial statements include all normal adjustments considered necessary to present fairly the financial position as of December 31, 2007 and the results of operations for the three months ended December 31, 2007 and 2006 and for the period February 25, 1997 (inception) to December 31, 2007, and cash flows for the three-months ended December 31, 2007 and 2006 and for the period February 25, 1997 (inception) to December 31, 2007. Interim results are not necessarily indicative of results for a full year.

The financial statements and notes are presented as permitted by Form 10-Q, and do not contain certain information included in the Company’s audited financial statements and notes for the fiscal year ended September 30, 2007.

Note 2 - Stock-Based Compensation

Effective September 30, 2007, XsunX adopted SFAS No. 123(R), “Share-Based Payment” (SFAS No. 123(R)). This statement replaces SFAS No. 123, “Accounting for Stock-Based Compensation” (SFAS No. 123) and supersedes APB No. 25. SFAS No. 123(R) requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the grant. This statement was adopted using the modified prospective method of application, which requires us to recognize compensation expense on a prospective basis. Therefore, prior period financial statements have not been restated. Under this method, in addition to reflecting compensation expense for new share-based grants, expense is also recognized to reflect the remaining service period of grants that had been included in pro-forma disclosures in prior periods.

XsunX records the fair value of stock-based compensation grants as an expense. In order to determine the fair value of stock options on the date of grant, XsunX applies the Black-Scholes option-pricing model. Inherent in this model are assumptions related to expected stock-price volatility, option life, risk-free interest rate and dividend yield. While the risk-free interest rate and dividend yield are less subjective assumptions, typically based on factual data derived from public sources, the expected stock-price volatility and option life assumptions require a greater level of judgment.

XsunX uses an expected stock-price volatility assumption that is based on historical implied volatilities of the underlying stock which is obtained from public data sources. With regard to the weighted-average option life assumption, XsunX considers the exercise behavior of past grants and models the pattern of aggregate exercises. Patterns are determined on specific criteria of the aggregate pool of optionees. Forfeiture rates are based on the Company’s historical data and future estimates for stock option forfeitures. There are 18,978,666 options and warrants issued of which 10,272,334 are vested. The exercise price range for the Company’s options and warrants are \$0.15 to \$1.69. The weighted average remaining life of the option and warrant grants range from .1 years to 4.9 years. We have based our expected volatility on the historical performance of our stock adjusted for extreme period of volatility that resulted from unusual events. The range of volatility for our options and warrants is 53 to 86 based on the specific grant. The risk free interest rate used in our calculation was 3.54%. Total net stock-based compensation expense is attributable to the granting of and the remaining requisite service periods of stock options previously granted. Compensation expense attributable to net stock-based compensation in first quarter ending December 31, 2007 was \$1,308,865, increasing basic loss \$.008 per share.

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

Note 3 – Lease - Golden Suite:

As of July 1, 2006 a new lease was signed for the Golden Office in the amount of \$1,687.50 per month plus a fee of \$825.00 for utilities. The rent increased to \$1,738 per month on July 1, 2007 and will increase to \$1,790.00 per month on July 1, 2008. The lease expires on June 30, 2009.

Note 4 – Financing:

On November 1, 2007, XsunX signed a \$21 million common stock purchase agreement with Fusion Capital Fund II, LLC, an Illinois limited liability Company ("Fusion Capital"). Upon signing the agreement, XsunX received \$1,000,000 from Fusion Capital as an initial purchase under the \$21 million commitment in exchange for 3,333,332 shares of our common stock. Concurrently with entering into the common stock purchase agreement, we entered into a registration rights agreement with Fusion Capital. Under the registration rights agreement, we agreed to file a registration statement related to the transaction with the U.S. Securities & Exchange Commission ("SEC") covering the shares that have been issued or may be issued to Fusion Capital under the common stock purchase agreement. After the SEC has declared effective the registration statement related to the transaction we have the right over a 25-month period to sell our shares of common stock to Fusion Capital, from time to time, in amounts up to \$1 million per sale, depending on certain conditions as set forth in the common stock purchase agreement, up to the full aggregate commitment of \$21 million.

The purchase price of the shares related to the \$20 million balance of future funding will be based on the prevailing market prices of the Company's shares at the time of sales without any fixed discount, and the Company will control the timing and amount of any sale of shares to Fusion Capital. There are no upper limits to the price Fusion Capital may pay to purchase our common stock. However, Fusion Capital shall not be obligated to purchase any shares of our common stock on any business day that the price of our common stock is below \$0.20. There are no negative covenants, restrictions on future funding(s), penalties or liquidated damages in the agreement. The common stock purchase agreement may be terminated by us at any time at our discretion without any cost to us.

In consideration for entering into the \$21 million agreement we agreed to issue to Fusion Capital 3,500,000 shares of our common stock, valued at \$1,105,300 or approx. \$0.32 per share as financing commitment shares which Fusion Capital has agreed to hold for the term of the common stock purchase agreement. This commitment fee and associated direct costs related to the equity transaction will be recorded net of proceeds in the equity section of the balance sheet. The value of the shares issued for the commitment fee were \$1,105,300 and \$30,000 was booked as an estimate of direct costs of the transaction for a total of \$1,135,300. Should the agreement be terminated, the remaining unamortized portion of the commitment fee will be expensed. Additionally, under the stock purchase agreement we granted Fusion Capital common stock purchase warrants to purchase 1,666,666 shares of our common stock at \$0.50, and 1,666,666 shares of our common stock at \$0.75. The shares underlying the warrant grants do not carry mandatory registration requirements under the terms of the common stock purchase agreement and registration rights agreement.

The proceeds received by the Company under the common stock purchase agreement are expected to be used to build an initial base production system delivering full size commercial quality solar modules, and initiate the manufacture of the first of four (4) planned 25 megawatt systems under the Company's planned 100 megawatt thin film solar module production facility. Proceeds may also be used to lease and prepare manufacturing facilities with the necessary support systems for the manufacturing line, inventory, staff, and general working capital.

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

Note 5 – Technology Development and Licensing Agreement:

On January 1, 2007, XsunX, Inc. issued a secured, seven year, 10% note to Sencera, LLC in the amount up to \$1,500,000. Under the terms, the Company provided Sencera, LLC with \$400,000 at the time of signing and \$137,500 per month for up to eight months. These funds are to be used to develop technology and obtain licenses in agreement with the Technology Development and License Agreement between Sencera and XsunX, Inc also signed on January 1, 2007. The License Agreement provides XsunX with licensing rights to plasma deposition technologies for future use by XsunX in solar product manufacturing technologies. The note may be converted into a membership interest in Sencera, LLP and an extension of the license for a period of three years. The security consists of the license rights, the ability to exercise the conversion and all other rights and remedies provided by law.

On September 7, 2007, XsunX initiated the final funding of disbursements under the Promissory Note and Loan Agreement dated January 1, 2007, between XsunX and Sencera, LLC. Under the Promissory Note and Loan Agreement, XsunX has funded and extended the principal amount of \$1,500,000 dollars to Sencera, LLC.

Use of the licensed plasma technology by XsunX in any of its planned or future processes or products has and continues to be subject to completion of development by Sencera, LLC, substantiation of intended performance criteria under the agreements, and determination of commercial application suitability by XsunX.

As of December 31, 2007, the current balance of the note receivable was \$1,500,000 plus accrued interest earned of \$234,192.

Note 6 – Employment and Consulting Agreements:

The Company authorized employment incentive option grants to the following employees on October 23rd 2007 at an exercise price per share of \$0.36 in conjunction with a performance milestone based vesting schedule as described below:

Joseph Grimes	500,000 Option Shares
Robert G. Wendt	500,000 Option Shares
Dr. Guang Lin	300,000 Option Shares

The vesting schedule for Mr. Grimes and Mr. Wendt is:

The Option shall become exercisable in the following amounts upon the delivery and/or achievement by Optionee(s) of the following performance milestones as they may relate to the Company's phased build out plan for a solar module manufacturing facility:

(a) 100,000 shares upon the assembly and commissioning of the base line production system.

(b) 100,000 shares upon the production of a commercial size working sample of the Company's planned tandem junction amorphous silicon solar module.

(c) 300,000 shares upon the assembly and commissioning of the initial 25 mega watt production system as contemplated within the Company's phased build out plan for a solar module manufacturing facility.

F-8

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

The vesting schedule for Dr. Guang is:

The Option shall become exercisable in the following amounts upon the delivery and/or achievement by Optionee of the following performance milestones as they may relate to the Company's phased build out plan for a solar module manufacturing facility:

- (a) 100,000 shares upon the assembly and commissioning of the base line production system.
- (b) 150,000 shares upon the production of a commercial size working sample of the Company's planned tandem junction amorphous silicon solar module.
- (c) 50,000 shares upon the assembly and commissioning of the initial 25 mega watt production system as contemplated within the Company's phased build out plan for a solar module manufacturing facility.

Note 7 - Changes/Additions to the Board of Directors:

Addition - Mr. Oz Fundingsland as Director

On November 12, 2007, the Company announced the appointment of Mr. Oz Fundingsland as Director, effective November 12, 2007. Mr. Fundingsland brings over forty years of sales, marketing, executive business management, finance, and corporate governance experience to XsunX. His professional and business experience principally originated with his tenure, commencing in 1964, at Applied Magnetics Corp., a disk drive and data storage company. Prior to his retirement from Applied Magnetics in 1994, Mr. Fundingsland served as an Executive Officer and Vice President of Sales and Marketing for 11 years directing sales growth from \$50 million to over \$550 million. Commencing in 1993 through 2003 Mr. Fundingsland served as a member of the board of directors for the International Disk Drive Equipment Manufacturers Association "IDEMA" where he retired emeritus, and continues to serve as an advisor to the board. For the last 13 years, Mr. Fundingsland has provided consulting services assisting with sales, marketing, and management to a host of companies within the disk drive, optical, software, and LED industries.

Addition - Dr. Michael A. Russak as Director

On November 28, 2007, the Company announced the appointment of Dr. Michael A. Russak as a Director, effective November 26, 2007. Dr. Russak is also a member of the Company's Scientific Advisory Board. Dr. Russak has over thirty five years of industrial experience progressing from a research scientist to senior executive officer of two public companies. He has expertise in thin film materials and devices for magnetic recording, photovoltaic, solar thermal applications, semiconductor devices as well as glass, glass-ceramic and ceramic materials. He also has over twelve years experience at the executive management level of public companies with significant off shore development and manufacturing functions. He received his B.S. in Ceramic Engineering in 1968 and Ph.D. in Materials Science in 1971, both from Rutgers University in New Brunswick, NJ. During his career, he has been a contributing scientist and program manager at the Grumman Aerospace Corporation, a Research Staff Member and technical manager in the areas of thin film materials and processes at the Research Division of the IBM Corporation at the T.J. Watson Research Laboratories. In 1993, he joined HMT Technology, a manufacturer of thin film disks for magnetic storage, as Vice President of Research and Development. His responsibilities included new product design and introduction.

Dr. Russak became Chief Technical Officer of HMT and held that position until 2000 when HMT merged with Komag Inc. Dr. Russak was appointed President and Chief Technical Officer of the combined company. He continued to set technical, operational and business direction for Komag until his retirement at the end of 2006. Dr. Russak is currently Executive Director of IDEMA-US, the trade association for the Hard Disk Drive Industry. He has published over 90 technical papers, and holds 23 U.S. patents.

F-9

XSUNX, INC.
 (A Development Stage Company)
 Notes to Financial Statements
 December 31, 2007
 (Unaudited)

Board of Directors Incentive Option Grants — In furtherance of the Company’s policy to compensate current members, and attract new members, to its Board of Directors, the Company authorized incentive option grants to the following Directors at an exercise price per share of \$0.36. The options were issued in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act of 1933. The options carry 5 year exercise terms and vest as described below:

Thomas Anderson	October 23, 2007	1,500,000 Option Shares (*)
Oz Fundingsland	November 11, 2007	500,000 Option Shares
Dr. Michael Russak	November 26, 2007	500,000 Option Shares

The vesting schedule for Mr. Anderson is:

The Option shall become exercisable in the following amounts upon the delivery and/or achievement by Optionee of the following milestones:

- (a) The Option became exercisable in the amount of 1,000,000 shares upon the effective date of the grant for services rendered as a member of the Company Board of Directors from the period beginning October 1, 2003 through September 30, 2007.
- (b) Beginning October 1, 2007, the Option shall vest and become exercisable at the rate of 62,500 shares upon the anniversary of each calendar quarter of continuous service as a Director, or prorated portion thereof, for services rendered as a member of the Company’s Board of Directors up to a total of 250,000 shares.

(*) Amendment to Stock Option Grant — On November 12, 2007 the Company entered into an agreement amending the terms of a stock option grant dated October 23, 2007 between the Company and Mr. Thomas Anderson, a member of the XsunX Board of Directors. The amendment provided for an increase of 250,000 options to the pool of options available within the vesting provisions of the grant. All other provision of the stock option grant remained the same. The vesting schedule for item (b) was amended as follows:

- (b) Beginning October 1, 2007 the Option shall vest and become exercisable at the rate of 62,500 Shares upon the anniversary of each calendar quarter of continuous service as a Director, or prorated portion thereof, for services rendered as a member of the Company Board of Directors up to a total of 500,000 shares.

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

The vesting schedule for Mr. Fundingsland is:

The Option shall become exercisable in the following amounts upon the delivery and/or achievement by Optionee of the following milestones:

- (a) Beginning November 12, 2007, the Option shall vest and become exercisable at the rate of 62,500 shares upon the anniversary of each calendar quarter of continuous service as a Director, or prorated portion thereof, for services rendered as a member of the Company's Board of Directors up to a total of 500,000 shares.

The vesting schedule for Dr. Russak is:

The Option shall become exercisable in the following amounts upon the delivery and/or achievement by Optionee of the following milestones:

- (a) Beginning November 26, 2007 the Option shall vest and become exercisable at the rate of 62,500 shares upon the anniversary of each calendar quarter of continuous service as a Director, or prorated portion thereof, for services rendered as a member of the Company's Board of Directors up to a total of 500,000 shares.

Note 8 – Legal:

On December 7, 2007, the Company filed an action for breach of contract and declaratory relief in the Superior Court of Orange County, California, against Wharton Capital Partners, Ltd, Wharton Capital Markets LLC, and Capitoline Financial Group LLC. The action is captioned XsunX, Inc. v. Wharton Capital Partners, Ltd, et al., and is pending in the above Court as case no. 07CC12772 ("XsunX Action"). The XsunX Action was brought to seek a court determination that the Company does not owe any fees to the above defendants by reason of the Fusion Capital transaction, (see Note. 3 - Financing). The Company believes that no agreement between Wharton and the Company was executed and therefore no valid agreement between the parties exists. The XsunX Action also seeks return of confidential materials from the above defendants. On January 3, 2008, Wharton Capital Partners, Ltd, and Wharton Capital Markets LLC, filed an action in the U.S. District Court for the Southern District of New York against the Company stemming from the same matter. That action is captioned Wharton Capital Partners Ltd, and Wharton Capital Markets LLC v. XsunX, Inc., and is pending in the above Court as case no. 080CV0056 ("Wharton Action"). The Wharton Action seeks fees in an amount equal to 7% of the gross proceeds received by the Company under the Fusion financing agreement. The Company asserts that no fees are owed to Wharton Capital Partners, Ltd, Wharton Capital Markets LLC, or Capitoline Financial Group LLC. The Company intends to vigorously prosecute the XsunX Action and to vigorously defend the Wharton Action. In the event that the Company does not prevail we may be required to provide Wharton a payment of 7% of any proceeds received by the Company under the Fusion financing agreement.

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
December 31, 2007
(Unaudited)

Note 9 - Subsequent Events:

Executive Compensation

The Board of Directors of the Company Authorized Salary Increases in January 2008 for the following individuals: