XSUNX INC

FORM 10-K
(Annual Report)

Filed 01/13/10 for the Period Ending 09/30/09

Address	65 ENTERPRISE ALISO VIEJO, CA 92656
Telephone	949 330 8060
CIK	0001039466
Symbol	XSNX
SIC Code	3081 - Unsupported Plastics Film and Sheet
Industry	Semiconductors
Sector	Technology
Fiscal Year	09/30

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

FORM 10-K

ANNUAL REPORT PURSUANT TO
THE SECURITIES EXCHANGE ACT OF 1934

For the Fiscal Year Ended September 30, 2009

Commission File Number 000-29621

XSUNX, INC.

(Exact Name of Registrant as Specified in Its Charter)

Colorado	**84-1384159**
(State of Incorporation)	(I.R.S. Employer Identification No.)

65 Enterprise, Aliso Viejo, CA 92656
(Address of Principal Executive Offices) (Zip Code)

(949) 330-8060
(Registrant's Telephone Number)

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: **Common Stock, no par value per share**

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

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the 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), (2) has been subject to the filing requirements for at least the past 90 days. Yes ☒ NO ☐

Check 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, or a non-accelerated filer.

(Check one):

☐ 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.) (Check one): Yes ☐ NO ☒

As of September 30, 2009, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately $26,983,741 million based on the closing price as reported on the OTCBB.

As of January 12, 2010, there were 200,095,217 shares of the registrant's company stock outstanding.

XSUNX, INC.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the Securities Act of 1933, as amended (the "Securities Act") which are subject to risks, uncertainties and assumptions that are difficult to predict. All statements in this Annual Report on Form 10-K, other than statements of historical fact, are forward-looking statements. These forward-looking statements are made pursuant to safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The forward-looking statements include statements, among other things, concerning our business strategy, including anticipated trends and developments in and management plans for, our business and the markets in which we operate; future financial results, operating results, revenues, gross margin, operating expenses, products, projected costs and capital expenditures; research and development programs; sales and marketing initiatives; and competition. In some cases, you can identify these statements by forward-looking words, such as "estimate", "expect", "anticipate", "project", "plan", "intend", "believe", "forecast", "foresee", "likely", "may", "should", "goal", "target", "might", "will", "could", "predict" and "continue", the negative or plural of these words and other comparable terminology. The forward-looking statements are only predictions based on our current expectations and our projections about future events. All forward-looking statements included in this Annual Report on Form 10-K are based upon information available to us as of the filing date of this Annual Report on Form 10-K. You should not place undue reliance on these forward-looking statements. We undertake no obligation to update any of these forward-looking statements for any reason. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance, or achievements to differ materially from those expressed or implied by these statements. These factors include the matters discussed in the section entitled "Item 1A: Risk Factors" and elsewhere in this Form 10-K. You should carefully consider the risks and uncertainties described under this section.

For further information about these and other risks, uncertainties and factors, please review the disclosure included in this report under Item 1A "Risk Factors."

PART I

Item 1. Business.

In this Report, we use the terms "Company," "XsunX," "we," "us," and "our," unless otherwise indicated, or the context otherwise requires, to refer to XsunX, Inc.

Organization

XsunX, Inc. ("XsunX," the "Company" or the "issuer") is a Colorado corporation formerly known as Sun River Mining Inc. ("Sun River"). The Company was originally incorporated in Colorado on February 25, 1997. Effective September 24, 2003, the Company completed a plan of reorganization and name change to XsunX, Inc.

Business Overview

In the fiscal year ended September 30, 2009 XsunX modified its previous plans to directly establish solar module manufacturing infrastructure. We have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the solar industry. Our current efforts are focused on the combination of highly developed thin film solar processes with state-of-the-art mature magnetic media thin film manufacturing technologies derived from the hard disc drive (HDD) industry to improve manufacturing output, increase cell efficiency and production yields, and lower the costs for the production of high efficiency Copper Indium Gallium (di) Selenide (CIGS) thin film solar cells.

It is our belief that by leveraging the manufacturing processes from the HDD industry and adapting them to thin-film CIGS solar technologies, we can reduce the cost per watt for solar to well below $1 per watt, thereby making solar a viable alternative in the energy field. Furthermore, it is our belief that our expertise, experience and the proprietary technology we are developing in this area will allow us to seek joint ventures with larger companies thereby generating revenue streams through licensing fees and manufacturing royalties.

Re-Focus Plan of Operations

In late 2008, XsunX began investigating the viability of small area CIGS thin film solar manufacturing technology that would employ the use of high rate thin film manufacturing techniques successfully used within the magnetic media industry to produce hard disc drives (HDD). For decades, the HDD industry has had to continually improve manufacturing output, and production yields, to lower the costs for the production of high efficiency magnetic media. In January 2009, XsunX began working directly with the HDD industry to validate the possibility of transitioning this manufacturing technology to the thin film photovoltaic (TFPV) industry and more specifically for the manufacture of CIGS solar cells.

In February, 2009, XsunX and Intevac, Inc., a leading provider of magnetic media deposition equipment to the hard disk drive (HDD) industry, began to collaborate in the development of techniques and equipment for the production of commercially marketable processes and equipment for the manufacture of CIGS thin-film solar cells on small area wafers similar in size to traditional crystalline silicon wafers of approximately 5" squares. Through the successful combination of cross-industry specialties, XsunX plans to develop a new breed of thin film photovoltaic (TFPV) manufacturing techniques to produce CIGS based thin-film solar cells.

CIGS Thin Film Solar Devices

Copper Indium Gallium (di) Selenide (CIGS) exceeds all other thin film solar cell performance to date delivering nearly 20% conversions in laboratory environments. The Nation Renewable Energy Laboratories (NREL) believes that CIGS solar module efficiencies could easily match silicon performance while costing less to produce. It is this high efficiency low cost potential for CIGS, and its wide array of uses and applications, that provides the basis to drive the cost of energy production for alternative sources to unprecedented new lows. For this reason NREL views CIGS as a significant solar technology and supports continuous development and research efforts related to CIGS thin films. XsunX has found interest in its CIGS program at NREL and is working with NREL to establish a Cooperative Research and Development Agreement to assist in the commercialization process.

We believe that through the successful combination of small area processing techniques with the high rate processing techniques developed within the hard disc media industry , overall factory yields (total watts of production per day) can be increased thereby resulting in lower production costs while still delivering the full energy and low cost potential that CIGS based devices can offer.

CIGS: Current Manufacturing Limitations

Current techniques for the production of CIGS thin films do not leverage stationary small area, high rate, production technologies which allow for the precise control of thin film properties. Development and production of CIGS, and many other thin films like amorphous silicon (a-Si), have focused on the use of large area substrates or continuous moving roll-to-roll deposition methods. While CIGS holds the record for best thin film cell performance at nearly 20% in smaller area devices, scaling these laboratory results to large area devices have proved costly and difficult, resulting in much lower product efficiencies.

A number of manufacturers of CIGS today use large area or continuously moving roll-to- roll substrates in an effort to mass produce and then cut these large areas up into smaller wafer sized pieces for use in solar module assemblies. They sacrifice quality for quantity and the net results are products that deliver only fractions of the CIGS potential. Others employ manufacturing techniques that to date have yet to deliver the potential for low cost and high efficiency CIGS solar cells. Typically most commercially produced CIGS solar cells provide between 8% to 10% conversion efficiencies which leaves virtually 100% of the potential efficiencies untapped.

Rapid Small Area Processing vs. Large Panel Processing

Traditional economies-of-scale theory dictates that large panel processing decreases costs. Large volumes or output are achieved with each batch or panel that comes off a line. This is particularly true for amorphous silicon (a-Si) where 10 to 50 panels can be simultaneously processed is a single large batch system. However, the goal of single cell processing is to achieve similar production volumes but through speed. We believe that the benefits of rapid single cell processing over large panel processing include.

- **Factory Floor Print:** Large format panels require floor space and while real estate is less expensive than in the past the cost is still significant. In contrast single cell processing can be conducted in a facility that is significantly smaller. Additionally much of the cost of a large facility is the recurring monthly utility bill which amplifies the problem. The cost of a large facility becomes even larger if clean rooms are required.
- **Product Acceptability:** CIGS is deposited in a substrate configuration and must have a top glass to achieve UL, IEC, and TUV certifications. Without a top glass the product will not meet the 20-30 year lifetime typical for the solar industry. As a result the final product panel weight will be significant. In contrast the single cells that are strung together can use a single tempered top glass and a thin moisture barrier back sheet (similar to a silicon solar cell panel). Not only is handling of the back sheet easier in production the resulting module can be up to ~1/2 the weight.
- **Scrap:** With large format processing, if there is a problem during processing the entire panel is scrapped leading to significant loss of production potential. As a result scraping is a significant problem for large format monolithically integrated solar panels. For a single cell with an area of approximately twenty five square inches (for the 125mm pseudo square), a processing problem results in scraping only about 1.45 Watts of product.
- **Breakage:** Silicon solar cells are very thin and fragile. This leads to losses resulting from breakage during manufacture and assembly. Our proposed CIGS cell deposition is done on stainless steel wafers. Stainless does not break.
- **Large Defects:** A large defect for large area deposition anywhere on the panel will require the entire panel to be scrapped because that defect will 'drag' the rest of the panel to virtually zero output. For single cell production the cell that encountered the defect can simply be removed during cell testing and performance sorting.
- **Small Defects or Composition Variation:** For a large area substrate, statistically there are more small area defects and compositional variations. These defects and compositional variations can cause slightly different performance from cell to cell across the large format monolithically integrated panel. The result is the entire panel is 'drug' down to the lowest current cell. For single cell processing, each cell is tested and binned (or sorted) according to efficiency and current prior to assembly thereby resulting in a more efficient use of a factories potential production capacities.

- **Process Control:** While all of the above are significant factors to consider when comparing large area to small area production, large area process control quite possibly could be the biggest differentiating feature between large monolithically integrated panels. Control of the manufacturing process over a large area, even with well controlled process such as sputtering has shown significant challenges.

CIGS Experience

Our staff experience includes nearly 15 years of thin film and CIGS experience in successful technology development, equipment design, and production of several million square feet CIGS products in a commercial production setting. Our Chief Technology Officer has worked side by side with leading researchers at NREL and in fact shares an R&D 100 award with NREL staff for efforts related to CIGS technology development.

Our resident XsunX thin film CIGS technologists and manufacturing experts are working jointly with a leading producer of manufacturing equipment utilized in the hard disc market to create a unique process of coupling small area deposition (approximately 5X5 inch squares), material control, and material transport technologies from the disk drive industry for use in the production of thin film CIGS solar cells. We are combining the expertise and years of technological improvements derived from the sophisticated hard disc drive manufacturing industry with XsunX staff experience in the thin film industry.

CIGS: Strategy and Differentiation

The XsunX approach is to capitalize on past commercialization experience of CIGS and to combine this experience with smaller area deposition within high rate hard disk drive (HDD) equipment. It is anticipated that the combination of these two principals will lead to solar conversion efficiency approaching that achieved in laboratories as well as achieving high yield and high throughput, similar to the HDD industry.

We are adapting sophisticated high rate production tools from the disk drive industry with process knowledge from the CIGS and thin film industry. By maintaining a relatively small deposition area, we believe reduces a significant challenge that has faced the CIGS industry in the past: maintaining cell performance while scaling production.

We believe that key advantages to the adaptation of high rate HDD technologies to CIGS thin film manufacture include:

The Ability to Leverage Previous Commercialization Experience Developed for CIGS Thin Films and the HDD Industry

- Not Starting from “Scratch”
- Lower Cost Re-Tooling of Existing Systems
- Maximizing:
  - ✓ Pre-existing Equipment Designs to Speed Development
  - ✓ Proven High Rate Hard Disk Drive Mass Material and Process Control Techniques
  - ✓ Small Area Process Controls to Improve Thin Film Quality
  - ✓ Reducing Time to Market Through the Use of Development Systems Sized to Match Commercial Production Systems – No Need to Scale System Architecture to Achieve Commercial Production

Applications for Thin Film CIGS Solar Cells

We believe that high efficiency flexible CIGS solar cells provide an immense opportunity for use in multiple market segments. The modular format of single thin film CIGS solar cells offers an opportunity to become the solar building blocks for a wide variety of applications including:

- **Replacing Existing Silicon Wafers** : A virtual drop in replacement for expensive and unpredictable silicon wafer costs. We believe this is a vast market opportunity to replace aging technology.
- **Utility Scale Solar Fields** : Due to the modular building block aspect of using wafers solar module size and power output can be tailored to deliver the needs of any size solar farm or application. The constraints of monolithic thin film technology no longer limit panel size.
- **BIPV Products** : High performance thin film flexible CIGS wafers can be designed into an array of building products including roofing materials, building facades, and glass.
- **Residential Markets** : Unlike lower performance thin film solutions, high performance CIGS modules deliver the energy density necessary to make residential applications economical.
- **Consumer Products** : A growing array of consumer products from hand held devices to vehicles and gadgets of all types have begun to integrate solar. Thin film CIGS wafers can be sized to meet the needs of these rapidly growing market segments.

Sales and Marketing

We have developed and have begun to implement a plan to offer joint venture manufacturing opportunities for regional well funded, manufacturing partners in a number of industry sectors. To date we have focused primarily on semiconductor and solar companies. Although XsunX focuses on the development of solar technology and products, we are not a systems or a machine manufacturer. Our plan is to license technology we develop that provides for a complete front end CIGS solar cell manufacturing process coupled with a back end process to convert the CIGS solar cells into solar modules. We have and intend to continue to develop relationships with equipment manufacturers that can build systems to our specifications thereby allowing us to offer turn-key manufacturing solutions to enable our joint venture companies to manufacturer CIGS small area cells quickly and inexpensively.

We anticipate that at the conclusion of the development of our CIGS technology, that we will generate revenue from an array of services and license fees from manufacturers that utilize our technologies. These revenue fees may include inception license fees and royalty streams based upon the efficiencies our unique CIGS technology, guidance for the conversion of new or existing facilities, production line equipment and systems design and markups, training and implementation, as well as R&D support, and product reliability expertise.

Intellectual Property

We plan to market license opportunities for our technology and not directly manufacture the solar technologies and related products that may employ the use of our thin film technologies. This business model requires that we develop and maintain intellectual property that includes both patented and proprietary technologies. We have licensed certain patented and patent pending technologies, and we are developing with the intent to file for patent protection certain other thin film manufacturing technologies. The following is an outline of certain patents and technologies we have acquired, licensed, or are developing:

In September 2003 the Company was assigned the rights to three patents as part of an Asset Purchase Agreement with Xoptix Inc., a California corporation. The patents acquired were No. 6,180,871 for Transparent Solar Cell and Method of Fabrication (Device), granted on January 30, 2001; No. 6,320,117 for Transparent Solar Cell and Method of Fabrication (Method of Fabrication), granted on November 20, 2001; and No. 6,509,204 for Transparent Solar Cell and Method of Fabrication (formed with a Schottky barrier diode and method of its manufacture), granted on January 21, 2003.

In May 2008 XsunX licensed certain patented and patent-pending technologies from MVSystems, Inc. providing XsunX a worldwide, non-exclusive, royalty-free, irrevocable, fully-paid up right and license, with the right to sublicense the following patents and patent application and any reissues, re-examinations, divisionals, continuations and extensions thereof: (a) U.S. Patent No. 6,488,777 B2; (b) U.S. Patent No. 6,258,408 B1; and (c) U.S. Patent App. No. 10/905,545 (Pub. No. US 2005/0150542 A1) (together, the "Patents"). The license limits XsunX to the use of the Patents for the development by XsunX of commercial-grade (*i.e.* ., web width 30 cm or more and nominal output exceeding 1 megawatt/year based on 1 shift operation) solar cells, photovoltaic technologies, solar cell panels and methods of manufacture. The license grants XsunX exclusive ownership of any improvements made by XsunX to the licensed patents. In April 2009 the Company received notice from MVSystems that U.S. Patent App. No. 10/905,545 (Pub. No. US 2005/0150542 A1) application referenced above had been rejected by the US Patent Office for various deficiencies. In August 2009 MVSystems notified the Company that it had amended its application and re-filed the amended patent application with the U.S Patent Office.

In the fiscal year ended September 30, 2009 we have begun the development of process technology and engineering efforts to adapt certain manufacturing technologies and systems utilized in the production of magnetic media for use to manufacture discreet (individual) thin film solar cells. As we continue to develop these new technologies, we may actively seek patent protection for certain aspects related to methods and apparatus we develop. We can give no assurance that any such patent(s) will be granted for any process and manufacturing technology that we may develop individually or in conjunction with third parties.

We rely on trademark and copyright law, trade secret protection and confidentiality or license agreements with our employees, customers, partners and others to protect our proprietary rights. We have not been subject to any intellectual property claims.

Company History

XsunX is a Colorado corporation formerly known as Sun River Mining Inc. ("Sun River"). The Company was originally incorporated in Colorado on February 25, 1997. Effective September 24, 2003, the Company completed a Plan of Reorganization and Asset Purchase Agreement (the "Plan").

Pursuant to the Plan, the Company acquired the following three patents from Xoptix, Inc., a California corporation for Seventy Million (70,000,000) shares of common stock (post reverse split one for twenty): No. 6,180,871 for Transparent Solar Cell and Method of Fabrication (Device), granted on January 30, 2001; No. 6,320,117 for Transparent Solar Cell and Method of Fabrication (Method of Fabrication), granted on November 20, 2001; and No. 6,509,204 for Transparent Solar Cell and Method of Fabrication (formed with a Schottky barrier diode and method of its manufacture), granted on January 21, 2003.

Pursuant to the Plan, the Company authorized the issuance of 110,530,000 (post reverse split) common shares. Prior to the Plan, the Company had no tangible assets and insignificant liabilities. Subsequent to the Plan, the Company completed its name change from Sun River Mining, Inc. to XsunX, Inc. The transaction was completed on September 30, 2003.

Government Contracts

There are no government contracts at this time.

Competitive Conditions

A number of thin film solar cell technologies have and are being developed by other companies. Such technologies include amorphous silicon, cadmium telluride, copper-indium-gallium-selenide (CIGS), and copper indium diselenide as well as advanced concepts in thin film crystalline silicon, and the use of organic materials. Given the benefit of time, investment, and advances in manufacturing technologies any of these competing technologies may be offered in formats delivering power similar or greater to technologies developed that may be developed by us, and they may also achieve manufacturing costs per watt lower than cost per watt to manufacture technologies developed by us.

In accessing the principal competitive factors in the market for solar electric power products, we use price per watt, stability and reliability, conversion efficiency, diversity in use applications, and other performance metrics such as scalability of manufacturing processes and the ability to adapt new technologies into cell designs and the manufacturing process without antiquation of existing infrastructure. If we do not compete successfully with respect to these or other factors, it could materially and adversely affect our business, results of operations, and financial condition.

A number of large companies are actively engaged in the development, manufacturing and marketing of solar electric power products. The seven largest TFPV cell suppliers are Q-Cells, Shell Solar, Sharp Corporation, BP Solar, Kyocera Corporation, First Solar, and Energy Conversion Devices, which together supply the significant portion of the current TFPV market. All of these companies have greater resources to devote to research, development, manufacturing and marketing than we do.

Other competitive factors lie in the current use of other clean, renewable energy technologies such as wind, ocean thermal, ocean tidal, and geo-thermal power sources and conventional fossil fuel based technologies for the production of electricity. We expect our primary competition will be within the solar cell marketplace itself. Barriers to entering the solar cell manufacturing industry include the technical know-how required to produce solar cells that maintain acceptable efficiency rates, the design of efficient and scalable manufacturing processes, and access to necessary manufacturing infrastructure.

Compliance with Environmental Laws and Regulations

The operations of the Company are subject to local, state and federal laws and regulations governing environmental quality and pollution control. Compliance with these regulations by the Company has required that we retain the use of consulting firms to assist in the engineering and design of systems related to equipment operations, management of industrial gas storage and delivery systems, and occupancy fire and safety construction standards to deal with emergency conditions. We do not anticipate that these costs will have a material effect on the Company's operations or competitive position, and the cost of such compliance has not been material. The Company is unable to assess or predict at this time what effect additional regulations or legislation could have on its activities.

Employees and Consultants

As of the fiscal year ended September 30, 2009 we had 5 salaried employees. This represents a decrease of 5 employees over the same period ended 2008. The Company also engages consultants to perform specific functions that otherwise would require an employee. We have not experienced any work stoppages and we consider relations with our employees to be good.

Available Information

Our website address is www.xsunx.com. We make available on our website access to our Annual Report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to these reports that we have filed with the U.S. Securities and Exchange Commission ("SEC"). The information found on our website is not part of this or any other report we file with, or furnish to, the SEC.

Item 1A. Risk Factors

An investment in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as the other information in this Annual Report on Form 10-K, in evaluating XsunX and our business. If any of the following risks occur, our business, financial condition and results of operations could be materially and adversely affected. Accordingly, the trading price of our common stock could decline and you may lose all or part of your investment in our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks that we currently do not know about or that we currently believe to be immaterial may also impair our business operations.

We Have Not Generated Any Significant Revenues and Our Financial Statements Raise Substantial Doubt About Our Ability to Continue As A Going Concern.

We are a development stage company and, to date, have not generated any significant revenues. The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, which contemplate our continuation as a going concern. Net loss for the years ended September 30, 2009 and 2008 was $10,634,133 million and $4,058,952 million, respectively. Net cash used for operations was $2,862,327 and $2,695,476 for the years ended September 30, 2009 and 2008, respectively. From inception through September 30, 2009, we had an accumulated deficit of $31,709,202.

The items discussed above raise substantial doubt about our ability to continue as a going concern. We cannot assure you that we can achieve or sustain profitability in the future. Our operations are subject to the risks and competition inherent in the establishment of a business enterprise. There can be no assurance that future operations will be profitable. Revenues and profits, if any, will depend upon various factors, including whether our product development can be completed, whether our products will achieve market acceptance and whether we obtain additional financing. We may not achieve our business objectives and the failure to achieve such goals would have a materially adverse impact on us.

We expect that we will need to obtain additional financing to continue to operate our business, including capital expenditures to complete the development of marketable thin film manufacturing technologies, and financing may be unavailable or available only on disadvantageous terms which could cause the Company to curtail its business operations and delay the execution of its business plan.

We have in the past experienced substantial losses and negative cash flow from operations and have required financing, including equity and debt financing, in order to pursue the commercialization of products based on our technologies. We expect that we will continue to need significant financing to operate our business. Furthermore, there can be no assurance that additional financing will be available or that the terms of such additional financing, if available, will be acceptable to us. If additional financing is not available or not available on terms acceptable to us, our ability to fund our operations, complete the development of marketable technologies, develop a sales network, maintain our research and development efforts or otherwise respond to competitive pressures may be significantly impaired. We could also be forced to curtail our business operations, reduce our investments, decrease or eliminate capital expenditures and delay the execution of our business plan, including, without limitation, all aspects of our operations, which would have a material adverse affect on our business.

We may be required to raise additional financing by issuing new securities with terms or rights superior to those of our shares of common stock, which could adversely affect the market price of our shares of common stock and our business.

We will require additional financing to fund future operations, including expansion in current and new markets, development and acquisition, capital costs and the costs of any necessary implementation of technological innovations or alternative technologies. We may not be able to obtain financing on favorable terms, if at all. If we raise additional funds by issuing equity securities, the percentage ownership of our current stockholders will be reduced, and the holders of the new equity securities may have rights superior to those of the holders of shares of common stock, which could adversely affect the market price and the voting power of shares of our common stock. If we raise additional funds by issuing debt securities, the holders of these debt securities would similarly have some rights senior to those of the holders of shares of common stock, and the terms of these debt securities could impose restrictions on operations and create a significant interest expense for us which could have a materially adverse affect on our business.

If future products based on technologies we are developing cannot be developed for manufacture and sold commercially or our products become obsolete or noncompetitive, we may be unable to recover our investments or achieve profitability which will have a materially adverse affect on our business.

There can be no assurance that such research and development efforts will be successful or that we will be able to develop commercial applications for our products and technologies. Further, the areas in which we are developing technologies and products are characterized by rapid and significant technological change. Rapid technological development may result in our products becoming obsolete or noncompetitive. If future products based on our technologies cannot be developed for manufacture and sold commercially or our products become obsolete or noncompetitive, we may be unable to recover our investments or achieve profitability. In addition, the commercialization schedule may be delayed if we experience delays in meeting development goals, if products based on our technologies exhibit technical defects, or if we are unable to meet cost or performance goals. In this event, potential purchasers of products based on our technologies may choose alternative technologies and any delays could allow potential competitors to gain market advantages.

There is no assurance that the market will accept our products once development has been completed which could have an adverse affect on our business.

There can be no assurance that products based on our technologies will be perceived as being superior to existing products or new products being developed by competing companies or that such products will otherwise be accepted by consumers. The market prices for products based on our technologies may exceed the prices of competitive products based on existing technologies or new products based on technologies currently under development by competitors. There can be no assurance that the prices of products based on our technologies will be perceived by consumers as cost-effective or that the prices of such products will be competitive with existing products or with other new products or technologies. If consumers do not accept products based on our technologies, we may be unable to recover our investments or achieve profitability.

Other companies, many of which have greater resources than we have, may develop competing products or technologies which cause products based on our technologies to become noncompetitive which could have an adverse affect on our business .

We will be competing with firms, both domestic and foreign, that perform research and development, as well as firms that manufacture and sell solar products. In addition, we expect additional potential competitors to enter the markets for solar products in the future. Some of these current and potential competitors are among the largest industrial companies in the world with longer operating histories, greater name recognition, access to larger customer bases, well-established business organizations and product lines and significantly greater resources and research and development staff and facilities. There can be no assurance that one or more such companies will not succeed in developing technologies or products that will become available for commercial sale prior to our products, that will have performance superior to products based on our technologies or that would otherwise render our products noncompetitive. If we fail to compete successfully, our business would suffer and we may lose or be unable to gain market share.

The loss of strategic relationships used in the development of our thin film manufacturing technologies and products could impede our ability to complete the development of our products and have a material adverse affect on our business.

We have established a plan of operations under which a portion of our operations rely on strategic relationships with third parties, to provide systems design, assembly and support. A loss of any of our third party relationships for any reason could cause us to experience difficulties in implementing our business strategy. There can be no assurance that we could establish other relationships of adequate expertise in a timely manner or at all.

We may suffer the loss of key personnel or may be unable to attract and retain qualified personnel to maintain and expand our business which could have a material adverse affect on our business.

Our success is highly dependent on the continued services of a limited number of skilled managers, scientists and technicians. The loss of any of these individuals could have a material adverse effect on us. In addition, our success will depend upon, among other factors, the recruitment and retention of additional highly skilled and experienced management and technical personnel. There can be no assurance that we will be able to retain existing employees or to attract and retain additional personnel on acceptable terms given the competition for such personnel in industrial, academic and nonprofit research sectors.

We may not be successful in protecting our intellectual property and proprietary rights and may be required to expend significant amounts of money and time in attempting to protect these rights. If we are unable to protect our intellectual property and proprietary rights, our competitive position in the market could suffer.

Our intellectual property consists of patents, trade secrets, and trade dress. Our success depends in part on our ability to obtain patents and maintain adequate protection of our other intellectual property for our technologies and products in the U.S. and in other countries. The laws of some foreign countries do not protect proprietary rights to the same extent as do the laws of the U.S., and many companies have encountered significant problems in protecting their proprietary rights in these foreign countries. These problems may be caused by, among other factors, a lack of rules and methods for defending intellectual property rights.

Our future commercial success requires us not to infringe on patents and proprietary rights of third parties, or breach any licenses or other agreements that we have entered into with respect to our technologies, products and businesses. The enforceability of patent positions cannot be predicted with certainty. We intend to apply for patents covering both our technologies and our products, if any, as we deem appropriate. Patents, if issued, may be challenged, invalidated or circumvented. There can be no assurance that no other relevant patents have been issued that could block our ability to obtain patents or to operate as we would like. Others may develop similar technologies or may duplicate technologies developed by us.

We are not currently a party to any litigation with respect to any of our patent positions or trade secrets. However, if we become involved in litigation or interference proceedings declared by the United States Patent and Trademark Office, or other intellectual property proceedings outside of the U.S., we might have to spend significant amounts of money to defend our intellectual property rights. If any of our competitors file patent applications or obtain patents that claim inventions or other rights also claimed by us, we may have to participate in interference proceedings declared by the relevant patent regulatory agency to determine priority of invention and our right to a patent of these inventions in the U.S. Even if the outcome is favorable, such proceedings might result in substantial costs to us, including, significant legal fees and other expenses, diversion of management time and disruption of our business. Even if successful on priority grounds, an interference proceeding may result in loss of claims based on patentability grounds raised in the interference proceeding. Uncertainties resulting from initiation and continuation of any patent or related litigation also might harm our ability to continue our research or to bring products to market.

An adverse ruling arising out of any intellectual property dispute, including an adverse decision as to the priority of our inventions would undercut or invalidate our intellectual property position. An adverse ruling also could subject us to significant liability for damages, prevent us from using certain processes or products, or require us to enter into royalty or licensing agreements with third parties. Furthermore, necessary licenses may not be available to us on satisfactory terms, or at all.

Confidentiality agreements with employees and others may not adequately prevent disclosure of trade secrets and other proprietary information.

To protect our proprietary technologies and processes, we rely on trade secret protection as well as on formal legal devices such as patents. Although we have taken security measures to protect our trade secrets and other proprietary information, these measures may not provide adequate protection for such information. Our policy is to execute confidentiality and proprietary information agreements with each of our employees and consultants upon the commencement of an employment or consulting arrangement with us. These agreements generally require that all confidential information developed by the individual or made known to the individual by us during the course of the individual's relationship with us be kept confidential and not be disclosed to third parties. These agreements also generally provide that technology conceived by the individual in the course of rendering services to us shall be our exclusive property. Even though these agreements are in place there can be no assurances that that trade secrets and proprietary information will not be disclosed, that others will not independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets, or that we can fully protect our trade secrets and proprietary information. Violations by others of our confidentiality agreements and the loss of employees who have specialized knowledge and expertise could harm our competitive position and cause our sales and operating results to decline as a result of increased competition. Costly and time-consuming litigation might be necessary to enforce and determine the scope of our proprietary rights, and failure to obtain or maintain trade secret protection might adversely affect our ability to continue our research or bring products to market.

Downturns in general economic conditions could adversely affect our profitability.

Downturns in general economic conditions can cause fluctuations in demand for our products, product prices, volumes and margins. Future economic conditions may not be favorable to our industry. A decline in the demand for our products or a shift to lower-margin products due to deteriorating economic conditions could adversely affect sales of our intended products and our profitability and could also result in impairments of certain of our assets.

Standards for compliance with section 404 of The Sarbanes-Oxley Act Of 2002 are uncertain, and if we fail to comply in a timely manner, our business could be harmed and our stock price could decline.

This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report. The standards that must be met for management to assess the internal control over financial reporting as effective are new and complex, and require significant documentation, testing and possible remediation to meet the detailed standards and will impose significant additional expenses on us. We may encounter problems or delays in completing activities necessary to make an assessment of our internal control over financial reporting. In addition, rules may be adopted by the SEC, pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 that will require annual assessment of our internal control over financial reporting, and attestation of our assessment by our independent registered public accountants. The attestation process by our independent registered public accountants will be new and we may encounter problems or delays in completing the implementation of any requested improvements and receiving an attestation of our assessment by our independent registered public accountants. If we cannot assess our internal control over financial reporting as effective, or our independent registered public accountants are unable to provide an unqualified attestation report on such assessment, investor confidence and share value may be negatively impacted.

Our common stock is considered a "Penny Stock" and as a result, related broker-dealer requirements affect it's trading and liquidity.

Our common stock is considered to be a "penny stock" since it meets one or more of the definitions in Rules 15g-2 through 15g-6 promulgated under Section 15(g) of the Exchange Act. These include but are not limited to the following: (i) the common stock trades at a price less than $5.00 per share; (ii) the common stock is not traded on a "recognized" national exchange; (iii) the common stock is not quoted on the NASDAQ Stock Market, or (iv) the common stock is issued by a company with average revenues of less than $6.0 million for the past three (3) years. The principal result or effect of being designated a "penny stock" is that securities broker-dealers cannot recommend our Common Stock to investors, thus hampering its liquidity.

Section 15(g) and Rule 15g-2 require broker-dealers dealing in penny stocks to provide potential investors with documentation disclosing the risks of penny stocks and to obtain a manually signed and dated written receipt of the documents before effecting any transaction in a penny stock for the investor's account. Potential investors in our Common Stock are urged to obtain and read such disclosure carefully before purchasing any of our shares.

Moreover, Rule 15g-9 requires broker-dealers in penny stocks to approve the account of any investor for transactions in such stocks before selling any penny stock to that investor. This procedure requires the broker-dealer to (i) obtain from the investor information concerning his or her financial situation, investment experience and investment objectives; (ii) reasonably determine, based on that information, that transactions in penny stocks are suitable for the investor and that the investor has sufficient knowledge and experience as to be reasonably capable of evaluating the risks of penny stock transactions; (iii) provide the investor with a written statement setting forth the basis on which the broker-dealer made the determination in (ii) above; and (iv) receive a signed and dated copy of such statement from the investor, confirming that it accurately reflects the investor's financial situation, investment experience and investment objectives.

The trading market in our common stock is limited and may cause volatility in the market price.

Our common stock is currently traded on a limited basis on the OTCBB. The OTCBB is an inter-dealer, over-the-counter market that provides significantly less liquidity than the NASDAQ Stock Market and the other national markets. Quotes for stocks included on the OTCBB

are not listed in the financial sections of newspapers as are those for the NASDAQ Stock Market. Therefore, prices for securities traded solely on the OTCBB may be difficult to obtain.

The quotation of our common stock on the OTCBB does not assure that a meaningful, consistent and liquid trading market currently exists, and in recent years such market has experienced extreme price and volume fluctuations that have particularly affected the market prices of many smaller companies like us. Thus, the market price for our common stock is subject to volatility and holders of common stock may be unable to resell their shares at or near their original purchase price or at any price. In the absence of an active trading market:

- investors may have difficulty buying and selling or obtaining market quotations;
- market visibility for our common stock may be limited; and
- a lack of visibility for our common stock may have a depressive effect on the market for our common stock.

Due to the low price of the securities, many brokerage firms may not be willing to effect transactions in the securities. Even if a purchaser finds a broker willing to effect a transaction in these securities, the combination of brokerage commissions, state transfer taxes, if any, and any other selling costs may exceed the selling price. Further, many lending institutions will not permit the use of such securities as collateral for any loans. Such restrictions could have a materially adverse affect on our business.

We may have difficulty raising necessary capital to fund operations as a result of market price volatility for our shares of common stock.

The market price of our common stock is likely to be highly volatile and could fluctuate widely in price in response to various factors, many of which are beyond our control, including:

- technological innovations or new products and services by us or our competitors;
- additions or departures of key personnel;
- sales of our common stock;
- our ability to integrate operations, technology, products and services;
- our ability to execute our business plan;
- operating results below expectations;
- loss of any strategic relationship;
- industry developments;
- economic and other external factors; and
- period-to-period fluctuations in our financial results.

Because we have a limited operating history with limited revenues to date, you may consider any one of these factors to be material. Our stock price may fluctuate widely as a result of any of the above listed factors. In recent years, the securities markets in the United States have experienced a high level of price and volume volatility, and the market price of securities of many companies have experienced wide fluctuations that have not necessarily been related to the operations, performances, underlying asset values or prospects of such companies. For these reasons, our shares of common stock can also be expected to be subject to volatility resulting from purely market forces over which we will have no control. If our business development plans are successful, we may require additional financing to continue to develop and exploit existing and new technologies and to expand into new markets. The exploitation of our technologies may, therefore, be dependent upon our ability to obtain financing through debt and equity or other means.

Item 1B. Unresolved Staff Comments

As of the date of this Annual Report on Form 10-K, there are no unresolved staff comments regarding our previously filed periodic or current reports under the Securities Exchange Act of 1934, as amended.

Item 2. Properties

California Corporate Office Lease

Effective April 1, 2009 the Company reduced its leased facilities at its Aliso Viejo, CA offices by approximately 50%. This resulted in associated reductions to monthly lease and facility expenses totaling approximately $2,000 leaving a monthly lease and facility liability of approximately $1,400. The Company plans to continue to lease these facilities for the foreseeable future.

Oregon Manufacturing Facility Lease and Lease Termination

In furtherance of its revised plan of operations focusing on the development of new manufacturing technology for CIGS thin films, and plans to establish manufacturing operations through joint venture license agreements for such new technology, the Company elected to eliminate its Oregon based facility. On August 27, 2009, the Company entered into a lease termination and mutual release of claims with Merix Corporation, an Oregon corporation. Pursuant to the terms of the Agreement, the Parties agreed to terminate that certain sublease agreement by and between the Parties, dated April 1, 2008, related to certain real property described therein which comprised the Company's Oregon based facility (the "Premises"). Accordingly, the Company agreed to vacate the Premises on or before September 1, 2009. In connection with the termination of the Sublease, the Company also agreed (a) to sell certain equipment, currently housed on the Premises, to Merix for the amount of $111,620, (b) to allow Merix to complete a full drawdown of that certain $106,000 irrevocable letter of credit issued by Wells Fargo Bank, N.A., at the request of the Company, in favor of Merix. The combined amounts of the sale of equipment and draw down to the letter of credit totaling $217,620 were credited to the accrued lease payment liabilities. The remaining accrued lease payment liabilities and contractual term lease obligation were reduced to $456,920.66 and the Company issued an unsecured promissory note in favor of Merix in the amount of $456,920.66. The note accrues interest at 10% per annum. The Parties agreed to unconditionally release each other from the obligations imposed by, or related to, the Sublease, except for the obligations established by the Agreement. The termination of the Sublease eliminates continued monthly operating costs associated with the facility, which the Company no longer requires for its plan of operations, while also reducing the Company's short-term liabilities associated with the lease to zero and reducing the Company's long-term liabilities by approximately sixty-five percent (65%).

Colorado Facilities Lease

On September 30, 2009 the Company extended the lease at its Golden, Colorado facility for an additional six months expiring on March 31, 2010 at the lease rate of $1,790 per month plus $945.00 in triple net for a total of $2,735 per month. While the Company does not currently conduct operations of any significance in the facility a machine built under contract for the Company, and held in inventory for sale by the Company, is housed in this facility and we are engaged in efforts to market and sell this machine. Upon the sale of the machine we do not anticipate continued use of the facility in our operations.

The Company owns no real property.

Item 3. Legal Proceedings

In the ordinary conduct of our business, we may become involved in various lawsuits and legal proceedings, which arise in the ordinary course of business. However, litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business. We are currently not aware of any such legal proceedings or claims that we believe will have, individually or in the aggregate, a material adverse affect on our business, financial condition or operating results except as set forth below.

On September 3, 2009, XsunX received notice of an action filed by a vendor in the State of Oregon, Multnomah County, requesting, a) that the court grant the re-possession of certain industrial gas management equipment (the "equipment") for shipment back to the vendor (XsunX had returned the equipment to the vendor on August 28, 2009), b) that the court grant the vendor unspecified re-stocking and re-shipment fees, or c) the sum of $117,207.07 plus interest and collection fees for payment for the equipment. The vendor allegations stem from XsunX's determination that the vendor had modified an order for the equipment previously placed by XsunX without approval by XsunX through the issuance of an authorizing purchase order. Attempts by XsunX to return the equipment were met with demands for re-stocking fees from the vendor. XsunX has refused to pay re-stocking fees for equipment it believes was modified without approval. The vendor agreed to the return of the equipment and then subsequently filed its claim. Since the filing of the claim the vendor has proposed that it provide XsunX with a re-stocking credit leaving approximately $95,000 in re-stocking fees, interest, and collection fees. We dispute this amount and have retained counsel to aggressively defend this matter.

Item 4. Submission of Matters to a Vote of Security Holders

None during the period ended September 30, 2009.

PART II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters and Issuer Purchases of Equity Securities

Price Range of Common Stock

The Company's common stock trades on the OTC Bulletin Board under the symbol "XSNX". The range of high, low and close bid quotations for the Company's common stock by fiscal quarter within the last two fiscal years, as reported by the National Quotation Bureau Incorporated, was as follows:

Year Ended September 30, 2009	High	Low	Close
First Quarter ended December 31, 2008	0.30	0.18	0.19
Second Quarter ended March 31, 2009	0.20	0.09	0.16
Third Quarter ended June 30, 2009	0.17	0.11	0.13
Fourth Quarter ended September 30, 2009	0.22	0.10	0.15
Year Ended September 30, 2008			
First Quarter ended December 31, 2007	0.55	0.29	0.55
Second Quarter ended March 31, 2008	0.74	0.35	0.40
Third Quarter ended June 30, 2008	0.51	0.38	0.39
Fourth Quarter ended September 30, 2008	0.43	0.26	0.26

The market price for our common stock, like that of other technology companies, is highly volatile and is subject to fluctuations in response to variations in our operating results, announcements related to technological innovation or business development, or other events and factors. Our stock price may also be affected by broader market trends unrelated to our performance.

The above quotations reflect inter-dealer prices, without retail mark-up, mark-down, or commission and may not necessarily represent actual transactions.

Number of Holders

As of September 30, 2009, there were approximately 286 record holders of the Company's common stock, not counting shares held in "street name" in brokerage accounts which is unknown. As of September 30, 2009, there were approximately 196,484,610 shares of common stock outstanding on record with the Company's stock transfer agent, Mountain Share Transfer. On September 30, 2009 the last reported sales price of our common stock on the OTCBB was $0.15 per share.

Transfer Agent

Our transfer agent is Mountain Share Transfer, Inc. located at 1625 Abilene Drive, Broomfield, CO 80020

Dividends

The Company has not declared or paid any cash dividends on its common stock and does not anticipate paying dividends for the foreseeable future.

Stock Option Plan

On January 5, 2007, the Board of Directors of XsunX resolved to establish the Company's 2007 Stock Option Plan to enable the Company to obtain and retain the services of the types of employees, consultants and directors who could contribute to the Company's long range success and to provide incentives which are linked directly to increases in share value which will inure to the benefit of all stockholders of the Company. Options granted under the Plan may be either Incentive Options or Nonqualified Options and shall be administered by the Company's Board of Directors ("Board"). Each Option shall be exercisable to the nearest whole share, in installments or otherwise, as the respective Option agreements may provide. Notwithstanding any other provision of the Plan or of any Option agreement, each Option shall expire on the date specified in the Option agreement. A total of 20,000,000 shares of common stock are authorized under the plan.

Stock Compensation, Issuance of Stock Purchase Options

During the fiscal year ended September 30, 2009, the board of directors authorized the grant of options to purchase an aggregate 5,350,000 stock options. The stock options are exercisable for a period of five years from the date of grant at an exercise price between $0.16 and $0.36 per share and expire at various times through March 2014.

Employment Option Grants — In connection with the Company's efforts to develop and commercialize thin film solar manufacturing technology and as part of reductions to salaries, the Company authorized employment option grants to the following employees on in the year ended September 30, 2009. The options have a 5 year exercise terms and vest in conjunction with employment and performance milestones based vesting schedule as described below:

Name	Date of Grant	Amount	Exercise Price	Term
Vanessa Watkins (1)	October 10, 2008	115,000	$ 0.36	5 yr.
Tyler Anderson	October 10, 2009	100,000	$ 0.36	5 yr.
Yang Zhuang	October 29, 2009	20,000	$ 0.36	5 yr.
Vanessa Watkins (2)	March 31, 2009	115,000	$ 0.16	5 yr.
Joseph Grimes	March 31, 2009	2,500,000	$ 0.16	5 yr.
Robert G. Wendt	March 31, 2009	2,500,000	$ 0.16	5 yr.

The vesting schedule for Vanessa Watkins is as follows:

(a) (1) The Option became exercisable in the amount of 38,334 shares on April 6, 2009. Thereafter, the Option shall vest and become exercisable at the rate of 38,333 Shares per year of continuous employment.

(2) The Option became exercisable in the amount of 38,334 shares on April 1, 2009. Thereafter, the Option shall vest and become exercisable at the rate of 38,333 Shares per year of continuous employment.

The vesting schedule for Tyler Anderson is as follows:

(a) The Option became exercisable in the amount of 33,334 shares on May 12, 2009. Thereafter, the Option shall vest and become exercisable at the rate of 33,333 Shares per year of continuous employment. As of September 30, 2009 Mr. Anderson no longer worked for the Company and the total grant of 100,000 options was terminated and the options were returned to the pool of available options under the XsunX 2007 Stock Option Plan.

The vesting schedule for Yang Zhuang is as follows:

(a) The Option became exercisable in the amount of 6,667 shares on August 18, 2009. Thereafter, the Option shall vest and become exercisable at the rate of 6,666 Shares per year of continuous employment. As of September 30, 2009 Mr. Zhuang no longer worked for the Company and the total grant of 20,000 options was terminated and the options were returned to the pool of available options under the XsunX 2007 Stock Option Plan.

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

The option became exercisable in the following amounts upon the delivery and/or achievement by the optionee(s) of the following employment and performance milestones:

(a) 208,333 shares vested on April 1, 2009 and thereafter 208,333 shall vest per each XsunX fiscal calendar quarter of continuous employment from the date of grant.

(b) In the event of a sale or merger of all or substantially all of the Company’s assets to an acquiring party following which the Company would not be a surviving operating entity, the Company will provide Optionee a fifteen (15) day prior notice of such proposed event providing for immediate vesting of all remaining unvested Options.

(c) All remaining unvested Options shall vest and become exercisable upon the assembly and third party validation of a functioning XsunX manufactured solar module producing a 10% frame to frame average DC power conversion rating under standard test conditions (STC), and the subsequent sale and delivery of a solar module manufactured by XsunX meeting similar specifications.

Table of Equity Compensation

The following table sets forth summary information, as of September 30, 2009, concerning securities authorized for issuance under all equity compensation plans and agreements for the fiscal years ended September 30, 2009, and 2008 is as follows:

	2009	2008
Risk free interest rate	1.67% to 2.77%	3.23% to 4.87%
Stock volatility factor	90.56% to 104.73%	53% to 122%
Weighted average expected option life	5 years	5 years
Expected dividend yield	None	None

A summary of the Company's stock option activity and related information follows:

	2009		2008	
	Number of Options	Weighted average exercise price	Number of Options	Weighted average exercise price
Outstanding, beginning of year	5,750,000	$ 0.39	1,950,000	$ 0.46
Granted	5,350,000	$ 0.17	3,800,000	$ 0.36
Exercised	-	$ -	-	$ -
Expired	(920,000)	$ 0.41	-	$ -
Outstanding, end of year	10,180,000	$ 0.27	5,750,000	$ 0.39
Exercisable at the end of year	4,927,500	$ 0.33	2,927,500	$ 0.40
Weighted average fair value of options granted during the year		$ 0.11		$ 0.28

The weighted average remaining contractual life of options outstanding issued under the plan as of September 30, 2009 was as follows:

Exercisable Prices	Stock Options Outstanding	Stock Options Exercisable	Weighted Average Remaining Contractual Life (years)
$ 0.46	1,150,000	950,000	2.32 years
$ 0.53	100,000	100,000	2.40 years
$ 0.45	100,000	100,000	2.56 years
$ 0.41	100,000	100,000	2.91 years
$ 0.36	2,500,000	1,437,500	3.07 years
$ 0.36	500,000	437,500	3.12 years
$ 0.36	500,000	437,500	3.16 years
$ 0.36	115,000	57,501	4.03 years
$ 0.16	5,115,000	1,307,499	4.50 years
	10,180,000	4,927,500	

Stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest. Stock-based compensation expense recognized in the financial statements of operations during the year ended September 30, 2009, included compensation expense for the stock-based payment awards granted prior to, but not yet vested, as of September 30, 2009 based on the grant date fair value estimated, and compensation expense for the stock-based payment awards granted subsequent to September 30, 2009, based on the grant date fair value estimated. We account for forfeitures as they occur. The stock-based compensation expense recognized in the statement of operations during the fiscal years ended September 30, 2009 and 2008 was $534,518 and $673,287, respectively.

Warrants

During the fiscal year ended September 30, 2009, the Company issued no warrants. At September 30, 2009, the Company had a total of 4,195,332 warrants to purchase 4,047,332 shares of common stock outstanding.

A summary of the Company's warrants activity and related information follows:

	2009		2008	
	Number of Options	Weighted average exercise price	Number of Options	Weighted average exercise price
Outstanding, beginning of year	4,195,332	$ 0.61	15,362,000	$ 0.22
Granted	-	$ -	3,333,332	$ 0.63
Exercised	-	$ -		$ -
Expired	-	$ -	(14,500,000)	$ 0.20
Outstanding, end of year	4,195,332	$ 0.61	4,195,332	$ 0.61
Exercisable at the end of year	4,047,332	$ 0.62	4,047,332	$ 0.61
Weighted average fair value of warrants granted during the year		$ -		$ 0.63

At September 30, 2009, the weighted average remaining contractual life of options outstanding:

Exercisable Prices	Warrants Outstanding	Warrants Exercisable	Weighted Average Remaining Contractual Life (years)
$ 1.69	112,000	112,000	1.51 years
$ 0.51	500,000	352,000	1.80 years
$ 0.20	250,000	250,000	2.25 years
$ 0.50	1,666,666	1,666,666	3.09 years
$ 0.75	1,666,666	1,666,666	3.09 years
	4,195,332	4,047,332	

Recent Sales of Securities (Registered and Unregistered)

The authorized Common stock of the Company was established at 500,000,000 shares with no par value. The Company is also authorized to issue 50,000,000 shares of preferred stock with a par value of $0.01 per share. The rights, preferences and privileges of the holders of the preferred stock will be determined by the Board of Directors prior to issuance of such shares. The following represents a detailed analysis of the 2009 Common stock transactions.

In the fiscal period ended September 30, 2009, there was a placement of the Company's common stock pursuant to an S-1 Registration declared effective by the U.S. Securities and Exchange Commission on April 10, 2008. Pursuant to the S-1 Registration, the Company sold 3,000,000 shares of common stock at a price of $0.20 each, for total proceeds of $600,000 to Fusion Capital Fund II, LLC. Pursuant to the S-1 Registration Statement declared effective by the SEC on April 10, 2008, the Company has sold to Fusion Capital Fund II, LLC through September 30, 2009, a total of approximately 18,347,581 shares for a total investment of $5,808,723. These shares were sold at various pricing between $0.405 and $0.20 per share. The registration statement is currently not available for use for sales to Fusion.

Through private placements, on September 8th and 23rd, 2009, which were made in reliance upon an exemption from registration under rule 506 of Regulation D promulgated under Section 4(2) of the Securities Act of 1933, we issued 1,129,483 and then 5,000,000 restricted shares of common stock respectively to an Accredited Investor, as defined in Rule 501(a) of Regulation D as promulgated by the SEC, for gross cash proceeds of $70,000 on September 8, 2009, and gross cash proceeds of $350,000 on September 23, 2009.

Issuance of Shares for Services

For the fiscal period ended September 30, 2009, the Company issued a total of 1,062,690 shares of its restricted common stock in connection with service agreements to provide various marketing, and consulting services to the Company as follows:

In November 2008, the Company issued 50,000 shares of its restricted common stock in connection with a service agreement to provide marketing and financing service to the Company. The shares were valued at $0.22 per share, the share price on the date the agreement was reached. The service agreement ended on December 31, 2008.

In August 2009, the Company issued 76,976 shares of its restricted common stock as payment for $10,500 in accrued service fees in connection with a service agreement to provide marketing and public relations services to the Company. The shares were valued at $0.1364 per share, the average share price between the period May 1, 2009 and August 30, 2009 in which the fees were accrued and services were rendered.

In August 2009, the Company issued 900,000 shares of its restricted common stock in connection with a service agreement to provide marketing and public relations services to the Company. The shares were valued at $0.12 per share, the share price on the date the agreement was reached. The service provider has agreed not to sell or transfer the shares prior to September 2010.

In September 2009, the Company issued 35,714 shares of its restricted common stock in connection with a service agreement to provide marketing and financing service to the Company. Subject to the service agreement the shares were valued at $5,000.

Use of Proceeds from the Sale of Securities

The proceeds from the above sales of securities were and are being used primarily to fund efforts by the Company to develop marketable technologies for the manufacture of thin film solar technologies, and in the day-to-day operations of the Company and to pay the accrued liabilities associated with these operations.

Item 6. Selected Financial Data

N/A

Item 7. Management's Discussion and Analysis or Plan of Operations

Cautionary and Forward-Looking Statements

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K. In addition to historical consolidated financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions as described under the "Cautionary Note Regarding Forward-Looking Statements" that appears earlier in this Annual Report on Form 10-K. Our actual results could differ materially from those anticipated by these forward-looking statements as a result of many factors, including those discussed under "Item 1A: Risk Factors" and elsewhere in this Annual Report on Form 10-K.

The Company undertakes no obligation to publicly revise these forward-looking statements to reflect events or circumstances that arise after the date hereof. Readers should carefully review the factors described in other documents the Company files from time to time with the Securities and Exchange Commission, including the Quarterly Reports on Form 10-Q and Annual Report on Form 10-K filed and any Current Reports on Form 8-K filed by the Company.

Business Overview

In the fiscal year ended September 30, 2009 XsunX modified its previous plans to directly establish solar module manufacturing infrastructure. We have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the industry. Our current efforts are focused on the combination of highly developed thin film solar processes with state-of-the-art mature magnetic media thin film manufacturing technologies derived from the hard disc drive (HDD) industry to improve manufacturing output, increase cell efficiency and production yields, and lower the costs for the production of high efficiency Copper Indium Gallium (di) Selenide (CIGS) thin film solar cells.

It is our belief that by leveraging the manufacturing processes from the HDD industry and adapting them to thin-film solar technologies, we can reduce the cost per watt for solar to well below $1 per watt, thereby making solar a viable alternative in the energy field. Furthermore, it is our belief that our expertise, experience and proprietary technology in this area will allow us to seek joint ventures with larger companies thereby generating revenue streams through licensing fees and manufacturing royalties.

Plan of Operations

For the fiscal year ending September 30, 2010, the Company has developed a plan of operations based upon three significant management implementations which began in the 2009 fiscal year. The first is cost-cutting measures, including the closure of the Oregon solar module manufacturing facility which was under assembly, layoff of staff employed under efforts to establish the Oregon facility, and an across the board reduction of salaries, with the intended goal of reducing operating expenses not directly related to the development of new technologies under the Company's revised plans. The second was a modified sales strategy. Rather than operate under a direct manufacturing business model, XsunX plans to develop joint-ventures with pre-existing semi-conductor companies that management believes may be capable and prepared to invest in the green energy market. Lastly, we have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the industry. In furtherance of these efforts the Company has begun the development of a hybrid manufacturing system combining certain technologies derived from the magnetic media manufacturing industry with manufacturing techniques for thin film solar to produce high efficiency Copper Indium Gallium (di) Selenide (CIGS) thin film solar cells.

Our current Plan of Operations, based upon the aforementioned activities, commits $1.65 million for general, administrative and working capital under a phase one plan necessary to prove and prepare the commercial viability of the new thin film CIGS manufacturing systems we are developing. Once we have completed our initial development efforts and proven the commercial viability of these new manufacturing technologies we plan to launch a phase two plan to establish a pilot production system for marketing and sales efforts, continued process improvement, and general business development efforts related to the commercialization of our proposed new CIGS manufacturing technology.

The Company may change any or all of the budget categories in the execution of its business attempts. None of the items is to be considered fixed or unchangeable.

Management believes the summary data and audit presented herein is a fair presentation of the Company's results of operations for the periods presented. Due to the Company's change in primary business focus and new business opportunities these historical results may not necessarily be indicative of results to be expected for any future period. As such, future results of the Company may differ significantly from previous periods.

Results of Operations for the Fiscal Year Ended September 30, 2009 Compared to Fiscal Year Ended September 30, 2008

Revenue and Cost of Sales:

The Company generated no revenues in the fiscal years ended September 30, 2009, and 2008. There were no associated costs of goods sold in any of the fiscal periods represented above. The Company to date has had minimal revenue and cost of sales, and is still in the development stage.

Selling and Marketing Expenses:

Selling and Marketing (S&M) expenses decreased by ($224,498) during the fiscal year ended September 30, 2009 to $212,700 as compared to $437,198 for the fiscal year ended September 30, 2008. The decreases in S&M expenses were primarily due to a decrease in branding efforts and investor relations expenses associated with the Company's efforts to modify its plan of operations.

General and Administrative Expenses:

General and Administrative (G&A) expenses increased by $55,494 during the fiscal year ended September 30, 2009 to $2,745,269 as compared to $2,689,775 for the fiscal year ended September 30, 2008. The increase in G&A expenses were primarily due to the increase in rent and operating expense for the Oregon facilities related to the Company's prior efforts to establish amorphous silicon solar module manufacturing operations, and accounting expenses related to the Company's re-audit of the fiscal years ended September 30, 2007, and 2006.

Research and Development:

Research and development expenses increased by $399,474 during the fiscal year ended September 30, 2009 to $358,884 as compared to ($40,590) for the fiscal year ended September 30, 2008. The increase in R&D was due primarily to an increase in contract engineering expenses and laboratory materials related to the Company's efforts to develop new manufacturing technology for the production of thin film CIGS solar technologies, and because the Company had recovered previous R&D expenses in the fiscal year ended September 30, 2008.

Net Loss:

For the fiscal year ended September 30, 2009, our net loss was ($10,634,133) as compared to a net loss of ($4,058,952) for the fiscal year ended September 30, 2008. This increase in Net Loss of $6,575,180 compared to the fiscal year ended September 30, 2008 was primarily driven by the Company's impairment of certain assets related to the Company's prior efforts to establish amorphous silicon solar module manufacturing infrastructure. This impairment resulted in an expense of $5,826,990. This represents a total write down to zero for the portion of the Company's Manufacturing Equipment in Process account that the Company does not anticipate using under its new plan of operations. The valuation adjustment was the result of an analysis of certain significant unobservable events and the inputs used in determining the amount of the valuation adjustment include the decision to move to new manufacturing technology under efforts to establish a competitive advantage.

Liquidity and Capital Resources

We had working capital at September 30, 2009 of $517,387, as compared to working capital of $3,321,294 as of September 30, 2008. The decrease in working capital of $2,803,907 was the result of an increase in operating expenses, and no revenue producing activities for the fiscal year ended September 30, 2009.

Cash flow used by operating activities was ($2,862,327) for the fiscal year ended September 30, 2009, as compared to cash flow used by operating activities of ($2,695,476) for the fiscal year ended September 30, 2008. The increase in cash flow used of $166,851 by operating activities was primarily due to the increase of $(6,575,181) in operating net loss due to the Company refocusing its operations from solar module manufacturing to focus on development of new thin film solar technology. The majority of the net change in net loss consisted of an increase in asset impairment of $5,611,365, and an increase in write down of inventory asset of $1,117,000.

Cash flow used in investing activities was $(16,174) for the fiscal year ended September 30, 2009, as compared to cash flow used in investing activities of ($4,228,623) during the fiscal year ended September 30, 2008. The decrease in investing activities of $4,212,449, primarily due to the Company's change in business development focus, whereby, there were no investments in manufacturing equipment and facilities in process, and the purchase of fixed assets decreased by $95,039 Also, the Company had a no notes receivable for the fiscal year ended September 30, 2009.

Cash flow provided by financing activities was $1,020,000 for the fiscal year ended September 30, 2009, as compared to cash provided by financing activities of $7,544,700 during the fiscal year ended September 30, 2008. The decrease in cash flow provided by financing activities of $6,524,700 was the result of a reduction to cash provided through equity financing.

The Company is currently engaged in efforts to develop a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the solar industry. However the cash flow requirements associated with the completion of these development efforts, and the transition to revenue recognition will exceed cash generated from operations in the current and future periods. We may seek to obtain additional financing from equity and/or debt placements. We have been able to raise capital in a series of equity and debt offerings in the past. While there can be no assurances that we will be able to obtain such additional financing, on terms acceptable to us and at the times required, or at all, we believe that sufficient capital can be raised in the foreseeable future as necessary.

Off-Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships such as entities often referred to as structured finance or special purpose entities that would have been established for the purpose of facilitating off-balance-sheet arrangements or for other contractually narrow or limited purposes. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our products will be quoted for sale and licensure in United States dollars and as our business development efforts progress we anticipate the sale and/or licensure of our products to foreign entities. To the extent that we may be exposed to foreign currency risks related to the rise and/or fall of foreign currencies against the U.S. dollar we will report in United States dollars.

Item 8. Financial Statements and Supplementary Data

All financial information required by this Item is attached hereto at the end of this report beginning on page F-1 and is hereby incorporated by reference.

Item 9. Changes in and Disagreements on Accounting and Financial Disclosure

The PCAOB revoked the registration of our former independent registered public accounting firm, Jaspers + Hall, PC on or about October 21, 2008. After receiving notice of such revocation, the Company's Board of Directors dismissed Jaspers + Hall, PC effective October 31, 2008 and engaged Stark Winter Schenkein & Co., LLP ("SWS") to serve as the Company's new independent registered public accounting firm effective as of November 3, 2008 as set forth in the Company's Current Report on Form 8-K as filed with the SEC on November 6, 2008. On December 23, 2008, the Company received a Comment Letter from the SEC stating that the Company may not include the reports of Jaspers + Hall, PC in its filings and that the Company should have a firm that is registered with the PCAOB re-audit that year. In addition to auditing the Company's financial statements for the fiscal year ended September 30, 2008, SWS also re-audited the Company's financial statements for the fiscal years ended September 30, 2007 and 2006. All audit work performed on the September 30, 2008, 2007 and 2006, financial statements by SWSC was performed by SWS's full time employees.

Effective as of July 17, 2009 (the "Effective Date"), Stark Winter Schenkein & Co., LLP ("SWS") was dismissed by the board of directors of XsunX as the Company's principal independent registered public accounting firm. None of SWS's reports included in the Company's financial statements for the past two (2) fiscal years, as well as the subsequent interim periods through the Effective Date, contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles. SWS's report did contain a paragraph relating to the Company's ability to continue as a going concern. During the Company's two (2) most recent fiscal years, as well as the subsequent interim period through the Effective Date, there were no disagreements between the Company and SWS on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedures, which disagreements if not resolved to their satisfaction would have caused them to make reference to the subject matter of the disagreement in connection with SWS's report. During the Company's most recent two (2) fiscal years, as well as the subsequent interim period through the Effective Date, SWS did not advise the Company of any of the matters identified in Item 304(a)(v)(A) - (D) of Regulation S-K.

Effective as of July 17, 2009, the board of directors of the Company approved the engagement of HJ Associates & Consultants, LLP ("HJ") as its principal independent registered public accounting firm to audit the Company's financial statements. The Company did not consult HJ on any matters described in Item 304(a) (2) of Regulation S-K during the Registrant's two (2) most recent fiscal years or any subsequent interim period prior to engaging HJ.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Our Chief Executive Officer and Chief Operating Officer, have evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. The evaluation included certain control areas in which we have made, and are continuing to make, changes to improve and enhance controls. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Based on such evaluation, our Chief Executive Officer and Chief Operating Officer have concluded that, as of the end of such period, our disclosure controls and procedures were effective, and we have discovered no material weakness.

Internal Control over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control structure and procedures over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f)) under the Exchange Act. The SEC rule making for the Sarbanes-Oxley Act of 2002 Section 404 requires that a company's internal controls over financial reporting be based upon a recognized internal control framework. Our management conducted an assessment of the effectiveness of our internal control over financial reporting as of September 30, 2009 based on the framework set forth in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") that has been modified to more appropriately reflect the current limited operational scope of the Company as a Development Stage company. The Company used the COSO guide - The Internal Control over Financial Reporting - Guidance for Smaller Public Companies to implement the Company's internal control framework. Additionally, the limited scope of operations of the Company means that traditional separation of duties controls are not used by the Company as a result of the limited staffing within the Company. The Company relies on alternative procedures to overcome this non-material control weakness.

During the Company's fiscal year ended September 30, 2009, management continued revising the Company's internal and controls procedure document basing this revision upon additional guidance for implementing the model framework created by COSO as is appropriate to our operations and operations of smaller public entities. This framework is entitled Internal Control-Integrated Framework. The COSO Framework, which is the common shortened title, was published in 1992 and has been updated, and we believe will satisfy the SEC requirements of Section 404 of the Sarbanes-Oxley Act of 2002. As the Company expands operations, additional staff will be added to implement separation of duties controls as well.

Based on that evaluation, our Chief Executive Officer and our Chief Operating Officer concluded that our internal control over financial reporting as of September 30, 2009 was effective. Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. 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.

Changes in Internal Control over Financial Reporting

Except as noted above, there have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Auditors Report on Internal Control over Financial Reporting

This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

Item 9B. Other Information

Under the Company's previous efforts to establish a thin film solar module manufacturing facility the Company had placed an order for certain thin film deposition equipment with a vendor. In June the vendor and XsunX proposed terms for the cancellation of the order without further obligation to either party. On December 21, 2009 the parties agreed to the termination of the order.

On October 16, 2009 the Company accepted an offer for the sale of 2,556,818 shares of its restricted common stock in a private placement for cash proceeds of $225,000.

On November 16, 2009 the Company issued 53,789 shares of its common restricted stock for services related to marketing and public relations valued at $10,000 dollars.

On December 31, 2009 the Company accepted an offer for the sale of 1,000,000 shares of its restricted common stock in a private placement for cash proceeds of $88,000.

In the fiscal year ended September 30, 2009 XsunX modified its previous plans to directly establish amorphous silicon product manufacturing infrastructure. We have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the industry. In furtherance of these efforts the Company has begun the development of a hybrid manufacturing system combining certain technologies derived from the magnetic media manufacturing industry with manufacturing techniques for thin film solar. The Company has agreed to an estimate of $1,150,000 from a vendor for the cost of this prototype system, and in October 2009 paid an initial $115,000 deposit towards the manufacture of this system. The vendor and the Company are now engaged in efforts to complete the testing and engineering designs necessary to build the system.

In March 2009 XsunX received notice from the State of Colorado offering determination that sales tax and penalties were due for what the state perceived as a purchase of a machine for use by XsunX rather than as an inventory item that was developed for re-sale. On April 10, 2009 the Company filed a protest and hearing request disputing the findings of the tax auditor requesting that the total tax liability determination be reversed. On November 17, 2009 the Colorado Department of Revenue withdrew and cancelled its assessment of tax liability in total.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance

The following table lists the executive offices and directors of the Company during the fiscal year ended September 30, 2009:

Name	Age	Position Held	Tenure
Tom Djokovich	52	CEO, Director, Secretary, and acting Principal Accounting Officer	CEO and Director since October 2003, Secretary and PAO since September 2009
Joseph Grimes	52	President, COO, Director	President since March 2009, COO since April 2006, and as a director Since August 2008
Jeff Huitt (1)	48	CFO	Since January 2007
Robert Wendt	47	CTO	Since March 2009
Thomas Anderson	44	Director	Since August 2001
Oz Fundingsland	66	Director	Since November 2007
Michael Russak	62	Director	Since November 2007

(1) In March, 2009, as part of our efforts to modify the Company's plan of operations, the Company and Mr. Huitt agreed to the termination of Mr. Huitt's employment agreement and status as an employee of the Company. In March the Company and Mr. Huitt's consulting firm, Orion Business Services, LLC, entered into a professional service consulting agreement under which Mr. Huitt would provide financial consulting services to the Company as a consulting chief financial officer. Effective September 9, 2009 Mr. Huitt and the Company agreed to the termination of services in the capacity of CFO.

The above listed directors will serve until the next annual meeting of the stockholders or until their death, resignation, retirement, removal, or disqualification, and until their successors have been duly elected and qualified. Vacancies in the existing Board of Directors are filled by majority vote of the remaining Directors. There are no agreements or understandings for any officer or director to resign at the request of another person and no officer or director is acting on behalf of or will act at the direction of any other person. There is no family relationship between any of our directors.

The directors of the Company will devote such time to the Company's affairs on an "as needed" basis, but typically less than 20 hours per month. As a result, the actual amount of time which they will devote to the Company's affairs is unknown and is likely to vary substantially from month to month.

Biographical Information

Mr. Tom Djokovich, age 52, Chief Executive Officer and a Director as of October 2003, acting Principal Accounting Officer as of September 2009;

Mr. Djokovich was the founder and served from 1995 to 2002 as the Chief Executive Officer of Accesspoint Corporation, a vertically integrated provider of electronic transaction processing and e-business solutions for merchants. Under Mr. Djokovich's guidance, Accesspoint became a member of the Visa/MasterCard association, the national check processing association NACHA, and developed one of the payment industry's most diverse set of network based transaction processing, business management and CRM systems for both Internet and conventional points of sale. Prior to Accesspoint, Mr. Djokovich founded TMD Construction and Development in 1979. TMD provided management for multimillion-dollar projects incorporating at times hundreds of employees, subcontractors and international material acquisitions for commercial, industrial and custom residential construction services as a licensed building firm in California. In 1995 Mr. Djokovich developed an early Internet based business-to-business ordering system for the construction industry.

Mr. Joseph Grimes, age 52, Chief Operating Officer as of April 2006, a Director as of August 2008, and President as of March 2009;

Mr. Grimes brings to XsunX more than eight years direct experience in thin-film technology and manufacturing. He was most recently Vice President, Defense Solutions, for Envisage Technology Company, where he directed and managed the defense group business development process, acquisition strategies and vision for next generation applications from October 2005 to March 2006. Previously he was Co-Founder, President and CEO of ISERA Group, where he established the company infrastructure and guided five development teams, finally selling the company to Envisage from 1993 to 2005. His direct experience in thin-film technology came with Applied Magnetics Corporation from 1985 to 1993 as manager for thin-film prototype assembly. Mr. Grimes holds a Bachelor's degree in business economics and environmental studies, and a Master's in computer modeling and operation research applications, both from the University of California at Santa Barbara.

Mr. Robert Wendt, age 47, Chief Technology Officer as of March 2009;

Mr. Wendt holds a B.S. and M.S. in Metallurgical Engineering and Material Science from the Colorado School of Mines. His responsibility encompasses technical specification of the facilities, equipment, and manufacturing processes for XsunX. Prior to joining XsunX in 2007, Mr. Wendt served at various times as Vice President of Sales, Product Development, and Engineering at Global Solar Energy from May 1996 to 2005. At Global Solar, Mr. Wendt has led and directed several areas including copper indium gallium di-selenide (CIGS) technology development, equipment design and integration, facilities design and construction, engineering, production, and operations

Prior to Global Solar, Mr. Wendt was at ITN with responsibility for the development of thin-film deposition technologies, thin-film PV, and development of charge controller/battery systems for portable solar cell powered systems. Prior to joining ITN, Mr. Wendt spent eight years with Lockheed Marietta Astronautics, Denver Division. While in this position, Mr. Wendt was program manager/principal investigator on over 20 material-based programs. During 1994/1995, Mr. Wendt was the technical lead for thin-film PV research at the Denver Division.

Independent Directors

Mr. Thomas Anderson, age 44, became a director of the Company in August 2001;

Mr. Anderson presently works as the Director of Southwest Business Operations for American Capital Energy, a commercial and utility scale solar integrator. He has been with American Capital Energy since October, 2008. He recently served as Managing Director of the Environmental Science and Engineering Directorate of Qinetiq North America in Los Alamos, New Mexico. He was with Qinetiq North America, formerly Apogen Technologies, from January, 2005, through September, 2008. Mr. Anderson worked for 19 years in the environmental consulting field, providing consulting services in the areas of environmental compliance, characterization and remediation services to Department of Energy, Department of Defense, and industrial clients. He formerly worked as a Senior Environmental Scientist at Concurrent Technologies Corp. from November 2000 to December 2004. He earned his B.S. in Geology from Denison University and his M.S. in Environmental Science and Engineering from Colorado School of Mines.

Mr. Oz Fundingsland as Director, age 66, became a director of the Company in November 2007;

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.

Dr. Michael A. Russak as Director, age 62, became a director of the Company in November 2007;

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. Michael A. Russak currently holds the position of Executive Vice President of Business Development with Intevac, Inc. in Santa Clara, CA. He has been working as a consultant in the hard disk drive and photovoltaic industries since Jan 2007. He is also currently the Executive Director of IDEMA-U.S. (the hard disk drive industry trade association) and a member of the Board of Directors and Scientific Advisory Board of XsunX, Inc. From 2001 to 2006 he was President and Chief Technical Officer of Komag, Inc., a manufacturer of hard magnetic recording disks for hard disk drive applications. From 1993 to 2001 he was Chief Technical Officer of HMT Technology, Inc. also a manufacturer of magnetic recording disks. From 1985 to 1993 he was a research staff member and program manager in the Research Division of the IBM Corporation. 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. He has published over 90 technical papers, and holds 23 U.S. patents.

Involvement in Certain Legal Proceedings

None of the members of the Board of Directors or other executives has been involved in any bankruptcy proceedings, criminal proceedings, any proceeding involving any possibility of enjoining or suspending members of our Board of Directors or other executives from engaging in any business, securities or banking activities, and have not been found to have violated, nor been accused of having violated, any federal or state securities or commodities laws.

Board Committees; Audit Committee

As of September 30, 2009, the Company's board was comprised of five directors, three of which are considered independent directors and the Company did not have an audit committee. Further, none of the members of the board of directors is qualified as a financial expert. We are a development stage company with limited resources and we are actively seeking a qualified financial expert for addition to the board. The board of directors will appoint committees as necessary, including an audit committee as resources permit. In the meantime, the Board serves as the Company's audit committee utilizing business judgment rules and good faith efforts.

Section 16(A) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires the Company's officers and directors, and certain persons who own more than 10% of a registered class of the Company's equity securities (collectively, "Reporting Persons"), to file reports of ownership and changes in ownership ("Section 16 Reports") with the SEC. Reporting Persons are required by the SEC to furnish the Company with copies of all Section 16 Reports they file. Based on its review of the copies of such forms received by it, or written representations from certain reporting persons, the Company believes that, during the fiscal year ended September 30, 2009, all filing requirements applicable to its officers, directors, and greater than ten-percent beneficial owners were complied with the exception that one report, covering an aggregate of three gift and donation transactions were not timely filed by the chief executive officer with the SEC via Form 4 or via year-end report on Form 5.

Code of Ethics

The Company's board of directors adopted a Code of Ethics policy on January 7, 2008.

Item 11. Executive Compensation

Overview

We are a development stage Company and we rely on our board of directors to evaluate compensation and incentive offerings made by the Company as it applies to our executive officers, and efforts to attract and maintain qualified staff. To date, our compensation policy has been conducted on a case by case basis with input from our chief executive officer, and focused on the following three primary areas; (a) salary compensatory with peer group companies and peer position, (b) cash bonuses tied to sales and revenue attainment, and (c) long term equity compensation tied to strategic objectives of establishing solar module manufacturing infrastructure.

In this Compensation Discussion and Analysis, the individuals in the Summary Compensation Table set forth below are referred to as the "named executive officers". Generally, the types of compensation and benefits provided to the named executive officers may be similar to what we intend to provided to future executive officers. The named executive officers for fiscal 2009 are Tom M. Djokovich, our chief executive officer, Joseph Grimes, our chief operating officer, Jeff Huitt our chief financial officer for portions of the 2009 fiscal year, and Robert Wendt, our chief technical officer.

Executive Compensation

The following table sets forth information with respect to compensation earned by our chief executive officer, our former chief financial officer, our chief operating officer, and our chief technical officer (collectively, our "named executive officers") for the fiscal years ended September 30, 2009, and 2008 respectively.

Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards ($)	All Other Compensation ($)	Total ($)
Tom Djokovich, CEO (1)	2009	165,000	0	0	0	4,800	169,800
	2008	220,000	0	0	0	4,800	224,800
Joe Grimes, COO (2)	2009	157,500	0	0	107,750	4,800	270,050
	2008	210,000	30,000	0	44,600	4,800	289,400
Jeff Huitt, CFO (3)	2009	155,000	0	0	39,000	4,800	198,800
	2008	155,000	0	0	44,600	4,800	204,400
Robert Wendt, CTO (4)	2009	150,000	0	0	107,750	4,800	262,550
	2008	200,000	0	0	44,600	3,600	203,600

(1) In March 2009 Mr. Djokovich and the Company agreed to the reduction of annual salary from $220,000 to $165,000 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In addition to Mr. Djokovich's base compensation the Company also provides Mr. Djokovich with a $400 monthly health insurance allowance.

(2) In March 2009 Mr. Grimes and the Company agreed to the reduction of annual salary from $210,000 to $157,500 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In addition to Mr. Grimes base compensation the Company also provides Mr. Grimes with a $400 monthly health insurance allowance. Mr. Grimes employment agreement with the Company included a facilities finders and relocation bonus of $30,000 which was fully paid in the year ended September 30, 2008 upon completion of the requirements.

(3) In March, 2009, as part of our efforts to modify the Company's plan of operations, the Company and Mr. Huitt agreed to the termination of Mr. Huitt's employment status as an employee of the Company and annual salary of $155,000 and a $400 monthly health insurance allowance. In March the Company and Mr. Huitt's consulting firm, Orion Business Services, LLC, entered into a professional service consulting agreement under which Mr. Huitt would provide financial consulting services to the Company as a consulting chief financial officer. The Company paid $65,625 for these professional consulting services in the fiscal year ended September 30, 2009. Effective September 9, 2009 Orion Business Services, LLC and the Company agreed to the termination of Mr. Huitt's services in the capacity as chief financial officer for the Company.

(4) Prior to March 2009 Mr. Wendt held the position of Vice President of Engineering and Product Development and was not an executive officer to the Company. In March 2009 Mr. Wendt was elected to the position of chief technical officer for XsunX. In March 2009 Mr. Wendt and the Company also agreed to the reduction of annual salary from $200,000 to $150,000 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In addition to Mr. Wendt's base compensation the Company also agreed to provide Mr. Wendt with a $400 monthly health insurance allowance.

No other compensation not described above was paid or distributed during the listed fiscal years to the executive officers of the Company.

Grants of Plan-Based Awards Table

The following table sets forth summary information regarding all grants of plan-based awards made to our named executive officers during the two years ended September 30, 2009, and 2008 respectively.

Name	Grant Date	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards ($)
Tom Djokovich, CEO	2009	0	0	0
	2008	0	0	0
Jeff Huitt, CFO	2009	0	0	0
	2008	0	0.46	44,600
Joe Grimes, COO	2009	2,500,000	0.16	68,750
	2008	500,000	0.36	44,600
Robert Wendt, CTO	2009	2,500,000	0.16	68,750
	2008	500,000	0.36	44,600

Outstanding Equity Awards at Fiscal Year End Table

The following table sets forth the outstanding equity awards with respect our named executive officers for the fiscal year ended September 30, 2009

	OPTION AWARDS					STOCK AWARDS			
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Unearned Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercisable Unearned Options (#)	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock that Have Not Vested ($)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (#)
Tom Djokovich, CEO	—	—	—	—	—	—	—	—	—
Jeff Huitt, CFO	—	—	—	—	—	—	—	—	—
Joe Grimes, COO	624,999	1,875,001	0	$ 0.16	4/1/2014	—	—	—	—
	0	500,000	0	$ 0.36	10/23/2012	—	—	—	—
	400,000	100,000	0	$ 0.46	1/26/2012	—	—	—	—
	352,000	148,000	0	$ 0.51	7/19/2011	—	—	—	—
	112,000	0	0	$ 1.69	4/4/2011	—	—	—	—
Robert Wendt	624,999	1,875,001	0	$ 0.16	4/1/2014	—	—	—	—
	0	500,000	0	$ 0.36	10/23/2012	-	-	-	-
	400,000	100,000	0	$ 0.46	1/26/2012	-	-	-	-

Option Exercises

None

Pension Benefits

None

Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans

None

Employment Agreements and Arrangements

Tom M. Djokovich

Mr. Djokovich serves as our chief executive officer, acting principal accounting officer, and a director. We do not have an employment agreement with Mr. Djokovich. He currently works at the discretion of the board of directors as he has since October 2003. His annual base salary compensation for the 2009 period was initially $220,000, and he was provided a $400 per month allowance for use in the payment of medical benefits. In March 2009 Mr. Djokovich and the Company agreed to the reduction of annual salary from $220,000 to $165,000 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. His medical allowance payment was unchanged. His total compensation is based solely on the annual base cash salary and we do not have any equity based, cash bonus, or special compensation agreements or understanding in place with Mr. Djokovich.

Joseph Grimes

On November 6, 2007, we entered into an amended and restated employment agreement with Mr. Joseph Grimes, our chief operating officer. Under the terms of his employment agreement, Mr. Grimes is entitled to a minimum annual base salary of $210,000 (subject to annual review and increase upon the attainment by the Company of a minimum of $5,000,000 in revenue in any calendar year) and is eligible to receive additional compensation in the form of a cash payment bonus upon certain remaining business development attainment goals as follows; a $5,000 cash payment bonus upon the successful implementation of a pilot production line,. Mr. Grimes is also eligible for cash payment bonus subject to attainment by the Company of certain minimum revenues in the course of a calendar year as follows; a $5,000 cash payment bonus upon the attainment by the Company of $5,000,000 in revenue, a $10,000 cash payment bonus upon the attainment by the Company of $10,000,000 in revenue, a $15,000 cash payment bonus upon the attainment by the Company of $15,000,000 in revenue. We also provide Mr. Grimes a $400 monthly allowance for use in payment for health benefits with the balance of such benefits paid by Mr. Grimes. Our employment agreement with Mr. Grimes provides that, in the event that Mr. Grimes employment is terminated by us without good cause, Mr. Grimes will receive a severance payment in the amount equal to 6 months of his annual base salary, payable within 30 days of such termination. Under the employment agreement Mr. Grimes is also subject to confidentiality and non-solicitation provisions which provide that Mr. Grimes will not divulge information or solicit employees for 24 months after termination of his employment.

In March 2009 Mr. Grimes and the Company agreed to the reduction of annual base salary from $210,000 to $157,500 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In conjunction with agreeing to the reduction in base salary the Company provided Mr. Grimes with a stock option grant to purchase 2,500,000 shares of our common stock, exercisable at $0.16 cents per share.

Jeff Huitt

On January 1, 2007, we entered into an employment agreement with Mr. Jeff Huitt, our former chief financial officer. Under the terms of his employment agreement, Mr. Huitt was initially entitled to a minimum annual base salary of $135,000 which was adjusted to $155,000 in November 2007 after review by the board. We also provide Mr. Huitt a $400 monthly allowance for use in payment for health benefits with the balance of such benefits paid by Mr. Huitt.

In March, 2009, as part of our efforts to modify the Company's plan of operations, the Company and Mr. Huitt agreed to the termination of Mr. Huitt's employment status as an employee of the Company and annual salary of $155,000 and a $400 monthly health insurance allowance. In March the Company and Mr. Huitt's consulting firm, Orion Business Services, LLC, entered into a professional service consulting agreement under which Mr. Huitt would provide financial consulting services to the Company as a consulting chief financial officer. The Company paid $65,625 for these professional consulting services in the fiscal year ended September 30, 2009. Effective September 9, 2009 Orion Business Services, LLC and the Company agreed to the termination of Mr. Huitt's services in the capacity as chief financial officer for the Company.

Robert Wendt

On January 1, 2007, we entered into an employment agreement with Mr. Robert Wendt, our chief technical officer. Under the terms of his employment agreement, Mr. Wendt was initially entitled to a minimum annual base salary of $150,000 which was adjusted to $200,000 in November 2007 after review by the board. We also provide Mr. Wendt a $300 monthly allowance for use in payment for health benefits with the balance of such benefits paid by Mr. Wendt.

In March 2009 Mr. Wendt and the Company agreed to the reduction of annual salary from $200,000 to $150,000 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In conjunction with agreeing to the reduction in base salary the Company provided Mr. Wendt with a stock option grant to purchase 2,500,000 shares of our common stock, exercisable at $0.16 cents per share.

Potential Payments Upon Termination or Change-In-Control

Terms of an amended and restated employment agreement dated November 6, 2007, with Mr. Grimes, our chief operating officer, provide that in the event that Mr. Grimes employment is terminated by us without good cause, Mr. Grimes may receive a severance payment in the amount equal to 6 months of his annual base salary then paid to Mr. Grimes, all payable within 30 days of such termination. Potential cost to the Company could total at minimum $100,000 for the termination of Mr. Grimes subject to the termination without good cause by the Company.

Terms of a two year Key Employee Retention Agreement dated September 1, 2009, with Mr. Robert Wendt, our chief technical officer, provide that in the event that Mr. Wendt's employment is terminated by the Company without good cause, Mr. Wendt may receive twelve months salary at the then salary rate at time of termination, twelve months Company paid costs for actual costs incurred by Mr. Wendt for medical benefits related to COBRA coverage, and a relocation payment up to $2,500. Potential cost to the Company could total at minimum $164,500 for the termination of Mr. Wendt subject to the termination without good cause by the Company.

Long Term Incentive Plans — Awards in Last Fiscal Year

The following table and notes set forth the incentive awards provided to named officers of the Company in 2009 fiscal year.

	Date Issued	Number Issued	Exercise Price	Expiration Date	Consideration
Joseph Grimes (1)	31-March-09	2,500,000	$ 0.16	1-April-14	As part of an employment incentive agreement related to salary reductions
Robert Wendt (1)	31-March-09	2,500,000	$ 0.16	1-April-14	As part of an employment incentive agreement related to salary reductions

(1) The vesting schedule for Mr. Grimes and Mr. Wendt is as follows:

The option shall become exercisable in the following amounts upon the delivery and/or achievement by the optionee(s) of the following employment and performance milestones:

(a) 208,333 shares vested on April 1, 2009 and thereafter 208,333 shall vest per each XsunX fiscal calendar quarter of continuous employment from the date of grant.

(b) In the event of a sale or merger of all or substantially all of the Company's assets to an acquiring party following which the Company would not be a surviving operating entity, the Company will provide Optionee a fifteen (15) day prior notice of such proposed event providing for immediate vesting of all remaining unvested Options.

(c) All remaining unvested Options shall vest and become exercisable upon the assembly and third party validation of a functioning XsunX manufactured solar module producing a 10% frame to frame average DC power conversion rating under standard test conditions (STC), and the subsequent sale and delivery of a solar module manufactured by XsunX meeting similar specifications.

Director Compensation

In the fiscal year ended September 30, 2009, Directors received no additional cash or non cash compensation for their service to the Company as directors. Outside Directors received an annual retainer fee of $9,000. All Directors were reimbursed for expenses actually incurred in connection with attending meetings of the Board of Directors.

SUMMARY COMPENSATION TABLE OF DIRECTORS

Name	Fees Earned or Paid in Cash ($)	Stock Awards ($)	Option Awards ($)	All Other Compensation ($)	Total ($)
Tom Djokovich	0	0	0	0	0
Joseph Grimes	0	0	0	0	0
Thomas Anderson	$ 9,000	0	63,011	0	$ 72,011
Oz Fundingsland	$ 9,000	0	59,063	0	$ 68,063
Dr. Michael Russak	$ 9,000	0	53,150	0	$ 62,150

Compensation Committee Interlocks and Insider Participation

For the fiscal year ended September 30, 2009 adjustments or additions to new or existing employment agreements were reviewed and deliberated by the five members of the Company's Board of Directors.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table sets forth, as of January 8, 2010, the number of shares of common stock owned of record and beneficially by executive officers, directors and persons who hold 5.0% or more of the outstanding common stock of the Company. Also included are the shares held by all executive officers and directors as a group. Unless otherwise indicated, the address of each beneficial owner listed below is c/o XsunX, Inc., 65 Enterprise, Aliso Viejo, California 92656.

Shareholders/Beneficial Owners	Number of Shares	Ownership Percentage (1)
Tom Djokovich (2) President & Director	16,293,000	8.1%
Thomas Anderson Director	1,500,000	< 1%
Oz Fundingsland Director	500,000	< 1%
Mike Russak Director	500,000	< 1%
Joseph Grimes (3) Chief Operating Officer	1,697,332	< 1%
Robert Wendt (3) Chief Technical Officer	1,048,332	< 1%

All directors and executive officers as a group of (6 persons) account for ownership of 21,538,664 shares representing 10.76% of the issued and outstanding common stock. Each principal shareholder has sole investment power and sole voting power over the shares.

(1) Applicable percentage ownership is based on 200,095,217 shares of common stock issued and outstanding as of January 8, 2010. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Shares of common stock that are currently exercisable or exercisable within 60 days of January 8, 2010 are deemed to be beneficially owned by the person holding such securities for the purpose of computing the percentage of ownership of such person, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person.

(2) Includes 15,368,000 shares owned by the Djokovich Limited Partnership. Mr. Djokovich shares voting and dispositive power with respect to these shares with Mrs. Djokovich.

(3) Includes 500,161 warrants/options that may vest and be exercised within 60 days of the date of January 7, 2010.

Item 13. Certain Relationships and Related Transactions, and Director Independence

No officer, director, or related person of the Company has or proposes to have any direct or indirect material interest in any asset proposed to be acquired by the Company through securities holdings, contracts, options or otherwise or any transaction in which the amount involved exceeds the lesser of $120,000 or one percent of the Company's total assets at year end.

The Company has adopted a policy under which any consulting or finder’s fee that may be paid to a third party for consulting services to assist management in evaluating a prospective business opportunity can be paid in stock, stock purchase options or in cash. Any such issuance of stock or stock purchase options would be made on an ad hoc basis. Accordingly, the Company is unable to predict whether or in what amount such a stock issuance might be made.

The following directors are independent: Thomas Anderson, Oz Fundingsland and. Dr. Michael Russak.

The following directors are not independent: Tom Djokovich and Joseph Grimes.

Item 14. Principal Accounting Fees and Services

Audit Fees 2009

As of the fiscal year ended September 30, 2009 HJ Associates & Consultants, LLP had billed the Company $17,359 for the following professional services: review of the interim financial statements included in quarterly reports on Form 10-Q for the periods ended June 30, 2009, and for audit fees related to the Company’s annual report on Form 10-K. No other fees were billed by HJ Associates & Consultants, LLP in the fiscal year ended September 30, 2009.

During the fiscal year ended September 30, 2009 Stark Winter Schenkein & Co., LLP (“ SWSC ”) had billed the Company $95,550 for the following professional services: $10,000 for preparation of Income Tax Returns for the tax years 2006, 2007, and 2008, $62,500 for related audit work and services on the Form 10K for the fiscal year 2008, and the re-audit of the 2007, and 2006 periods, $23,050 for review of the interim financial statements included in quarterly reports on Form 10-Q for the periods ended December 31, 2008 and March 31, 2009. They were not paid any fees relating to the 2009 audit based on their dismissal as auditor.

Audit Fees 2008

As of September 30, 2008 Stark Winter Schenkein & Co., LLP had not yet been engaged by the Company. Billings and payments related to the audit work and services on the Form 10K for the fiscal period 2008 were made in the fiscal year ended September 30, 2009 as described above in the review of the audit fees for 2009.

Jaspers + Hall, PC was paid $12,300 for work performed in the fiscal period ended September 30, 2008 for work on our first through third quarter reports Form 10-Q and for its work on the Companies Form S-1 Registration statement. They were not paid any fees relating to the 2008 audit based on their dismissal as auditor.

The Company’s Board acts as the audit committee and had no “pre-approval policies and procedures” in effect for the auditors’ engagement for audit years 2008, and 2009.

PART IV

Item 15. Exhibits, Financial Statement Schedules

Exhibits:

Exhibit	Description
3.1	Articles of Incorporation (1)
3.2	Bylaws (2)
10.1	XsunX Plan of Reorganization and Asset Purchase Agreement, dated September 23, 2003. (3)
10.2	XsunX 2007 Stock Option Plan, dated January 5, 2007. (4)
10.3	MVSystems, Inc. Non-Exclusive License and Cross-License Agreement, dated May 30, 2008. (5)
10.4	Form of Employment Retention agreement between the Company and Robert Wendt, dated September 1, 2009 (6)
10.5	Form of Stock Sale Agreement used in connection with the sale of equity to accredited investors totaling 6,000,000 shares of common stock (6)
10.6	Form of Stock Option Agreement used in connection with the issuance of Options to employees in the fiscal year ended September 30, 2009. (6)
10.7	Lease Termination and Mutual Release of Claims, dated August 27, 2009 between the Company and Merix Corporation (6)
10.8	Promissory Note in the amount of $456,920.66, dated August 27, 2009 between the Company and Merix Corporation (6)
10.9	Form of Professional Services Agreement between Orion and the Company, dated March 9, 2009 (6)
10.10	Sencera LLC, Separation Agreement, dated June 13, 2008.(7)
16.1	Auditor Letter (6)
31.1	Sarbanes-Oxley Certification (6)
31.2	Sarbanes-Oxley Certification (6)
32.1	Sarbanes-Oxley Certification (6)
32.2	Sarbanes-Oxley Certification (6)

(1) Incorporated by reference to Registration Statement Form 10SB12G #000-29621dated February 18, 2000 and by reference to exhibits included with the Company’s prior Report on Form 8-K/A filed with the Securities and Exchange Commission dated October 29, 2003.

(2) Incorporated by reference to Registration Statement Form 10SB12G #000-29621 filed with the Securities and Exchange Commission dated February 18, 2000.

(3) Incorporated by reference to exhibits included with the Company’s prior Report on Form 8-K/A filed with the Securities and Exchange Commission dated October 29, 2003.

(4) Incorporated by reference to exhibits included with the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission dated January 5, 2007.

(5) Incorporated by reference to exhibits included with the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission dated June 6, 2008.

(6) Provided herewith

(7) Incorporated by reference to exhibits included with the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission dated June 17, 2008.

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.

Date: January 12, 2010 **XSUNX, INC.**

By: /s/ Tom Djokovich
Name: Tom Djokovich
Title: CEO and Principal Accounting Officer

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 dates indicated.

/s/ Tom Djokovich January 12 , 2010
Tom Djokovich, Chief Executive Officer, Principal Executive Officer, Principal Financial and Accounting Officer, and Director

/s/ Joseph Grimes January 12, 2010
Joseph Grimes, President, Chief Operating Officer and Director

/s/ Thomas Anderson January 12, 2010
Thomas Anderson, Director

/s/ Oz Fundingsland January 12, 2010
Oz Fundingsland, Director

/s/ Michael Russak January 12, 2010
Michael Russak, Director

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders
XsunX, Inc. (A Development Stage Company)
Alisa Viejo, California

We have audited the accompanying balance sheet of XsunX, Inc. (a development stage company) as of September 30, 2009, and the related statements of operations, stockholders' equity (deficit), and cash flows for the year then ended and the period from February 25, 1997 (inception) to September 30, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. The financial statements for the period from February 25, 1997 (inception) to September 30, 2008 were audited by other auditors and our opinion, insofar as it relates to cumulative amounts included for such prior periods, is based solely on the reports of such other auditors.

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 financial position of XsunX, Inc. as of September 30, 2009, and the results of its operations and its cash flows for each of the year ended September 30, 2009 and the period from February 25, 1997 (inception) to September 30, 2009, in conformity with U.S. generally accepted accounting principles.

We were not engaged to examine management's assessment of the effectiveness of XsunX, Inc.'s internal control over financial reporting as of September 30, 2009, included in the accompanying managements' report and, accordingly, we do not express an opinion thereon.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company does not generate significant revenue and has negative cash flows from operations which raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

HJ Associates & Consultants, LLP
Salt Lake City, Utah
January 11, 2010

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Stockholders and Board of Directors
XsunX, Inc.

We have audited the accompanying balance sheet of XsunX, Inc., as of September 30, 2008 and the related statements of operations, stockholders' equity and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements 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 audits 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, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of XsunX, Inc., at September 30, 2008, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As described in Note 1 of the financial statements, the Company has an accumulated deficit as of September 30, 2008, and needs to raise additional capital to finance its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans as to this matter are further described in Note 1. The 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.

Stark Winter Schenkein & Co. LLP
Denver, Colorado
January 30, 2009

STARK • WINTER • SCHENKEIN & CO., LLP • *Certified Public Accountants* • *Financial Consultants*
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AN INDEPENDENT MEMBER OF BKR INTERNATIONAL

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

	September 30, 2009	September 30, 2008
ASSETS		
CURRENT ASSETS		
Cash & cash equivalents	$ 530,717	$ 2,389,218
Inventory asset	300,000	1,417,000
Prepaid expenses	118,332	11,986
Total Current Assets	949,049	3,818,204
PROPERTY & EQUIPMENT		
Office & miscellaneous equipment	51,708	50,010
Machinery & equipment	450,386	435,910
Leasehold improvements	89,825	89,825
	591,919	575,745
Less accumulated depreciation	(378,353)	(299,559)
Net Property & Equipment	213,566	276,186
OTHER ASSETS		
Manufacturing equipment in progress	207,219	5,824,630
Security deposit	5,815	5,815
Total Other Assets	213,034	5,830,445
TOTAL ASSETS	$ 1,375,649	$ 9,924,835
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	$ 389,293	$ 425,548
Accrued expenses	24,451	30,957
Credit card payable	17,918	40,405
Total Current Liabilities	431,662	496,910
LONG TERM LIABILITIES		
Accrued interest on note payable	4,256	-
Note payable, vendor	456,921	-
Total Long Term Liabilities	461,177	-
TOTAL LIABILITIES	892,839	496,910
SHAREHOLDERS' EQUITY		
Preferred stock, $0.01 par value; 50,000,000 authorized preferred shares	-	-
Common stock, no par value; 500,000,000 authorized common shares 196,484,610 and 186,292,437 shares issued and outstanding, respectively	23,767,869	22,613,369
Paid in capital, common stock warrants	3,175,930	2,641,412
Additional paid in capital	5,248,213	5,248,213
Deficit accumulated during the development stage	(31,709,202)	(21,075,069)
TOTAL SHAREHOLDERS' EQUITY	482,810	9,427,925
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 1,375,649	$ 9,924,835

The Accompanying Notes are an Integral Part of These Financial Statements

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

	Years Ended		From Inception February 25, 1997 to
	September 30, 2009	September 30, 2008	September 30, 2009
REVENUE	$ -	$ -	$ 14,880
OPERATING EXPENSES			
Selling, general and administrative, and research and development expense	3,316,853	3,331,683	14,597,953
Stock option and warrant expense	534,518	673,287	3,450,120
Depreciation and amortization expense	127,293	257,222	562,406
TOTAL OPERATING EXPENSES	3,978,664	4,262,192	18,610,479
LOSS FROM OPERATIONS BEFORE OTHER INCOME/(EXPENSE)	(3,978,664)	(4,262,192)	(18,595,599)
OTHER INCOME/(EXPENSES)			
Interest income	5,443	176,250	445,493
Impairment of assets	(5,826,990)	(215,625)	(7,031,449)
Legal settlement	-	-	1,100,000
Loan fees	-	-	(7,001,990)
Write down of inventory asset	(1,117,000)	-	(1,117,000)
Forgiveness of debt	287,381	245,000	592,154
Other, non-operating	-	(1,331)	(5,215)
Interest expense	(4,303)	(1,054)	(95,596)
TOTAL OTHER INCOME/(EXPENSES)	(6,655,469)	203,240	(13,113,603)
NET LOSS	$ (10,634,133)	$ (4,058,952)	$ (31,709,202)
BASIC AND DILUTED LOSS PER SHARE	$ (0.06)	$ (0.02)	
WEIGHTED-AVERAGE COMMON SHARES OUTSTANDING BASIC AND DILUTED	189,455,449	166,998,772	

The Accompanying Notes are an Integral Part of These Financial Statements

XSUNX, INC.
(A Development Stage Company)
Statements of Stockholders' Equity
From Inception February 25, 1997 to September 30, 2009

	Common Stock		Additional Paid-in Capital	Stock Options/ Warrants Paid-in-Capital	Treasury Stock	Deficit Accumulated during the Development Stage	Total
	Shares	Amount			Shares		
Balance at 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 the year ended September 30, 1997		-	-	-	-	(193,973)	(193,973)
Balance at September 30, 1997	474,990	529,806	-	-	-	(193,973)	335,833
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 the year ended September 30, 1998	-	-	-	-	-	(799,451)	(799,451)
Balance at 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 the year ended September 30, 1999	-	-	-	-	-	(1,482,017)	(1,482,017)
Balance at 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 the year ended September 30, 2000	-	-	-	-	-	(118,369)	(118,369)
Balance at September 30, 2000	768,148	1,921,419	-	-	-	(2,593,810)	(672,391)
Extinguishment of debt	-	337,887	-	-	-	-	337,887
Net Loss for the year ended September 30, 2001	-	-	-	-	-	(32,402)	(32,402)
Balance at September 30, 2001	768,148	2,259,306	-	-	-	(2,626,212)	(366,906)
Net Loss for the year ended September 30, 2002	-	-	-	-	-	(47,297)	(47,297)
Balance at 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 the year ended September 30, 2003	-	-	-	-	-	(145,868)	(145,868)
Balance at September 30, 2003	111,298,148	2,821,726	-	-	-	(2,819,377)	2,349
Issuance of stock for cash	2,737,954	282,670	-	-	-	-	282,670
Warrant expense	-	-	-	825,000	-	375,000	1,200,000
Net Loss for the year ended September 30, 2004	-	-	-	-	-	(1,509,068)	(1,509,068)
Balance at September 30, 2004	114,036,102	3,104,396	-	825,000	-	(3,953,445)	(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
Warrant expense	-	-	-	180,000	-	-	180,000
Beneficial conversion	-	-	400,000	-	-	-	400,000
Shares held as collateral for debentures	-	-	-	-	26,798,418	-	-
Net Loss for the year ended September 30, 2005	-	-	-	-	-	(1,980,838)	(1,980,838)
Balance at September 30, 2005	123,876,639	3,996,736	400,000	1,005,000	26,798,418	(5,934,283)	(532,547)
Issuance of stock for services	72,366	31,500	-	-	-	-	31,500
Warrant expense	-	-	-	996,250	-	-	996,250
Beneficial conversion	-	-	5,685,573	-	-	-	5,685,573
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 the year ended September 30, 2006	-	-	-	-	-	(9,112,988)	(9,112,988)
Balance at September 30, 2006 (restated)	157,169,856	13,290,869	6,085,573	2,001,250	26,798,418	(15,047,271)	6,330,421

The Accompanying Notes are an Integral Part of These Financial Statements

XSUNX, INC.
(A Development Stage Company)
Statements of Stockholders' Equity
From Inception February 25, 1997 to September 30, 2009

	Common Stock		Additional Paid-in	Stock Options/ Warrants	Treasury Stock	Deficit Accumulated during the Development	
	Shares	Amount	Capital	Paid-in-Capital	Shares	Stage	Total
Cancellation of stock for serivces returned	(150,000)	-	-	-	-	-	-
Release of security collateral	-	-	-	-	(26,798,418)	-	-
Issuance of stock for warrants	900,000	135,000	-	-	-	-	135,000
Stock option and warrant expense	-	-	-	772,315	-	-	772,315
Net Loss for the year ended September 30, 2007	-	-	-	-	-	(1,968,846)	(1,968,846)
Balance at September 30, 2007 (restated)	157,919,856	13,425,869	6,085,573	2,773,565	-	(17,016,117)	5,268,890
Fusion Equity common stock purchase	15,347,581	5,200,000	(55,300)	-	-	-	5,144,700
Commiment fees	3,500,000	1,190,000	(1,190,000)	-	-	-	-
Cumorah common stock purchase	8,650,000	2,500,000	-	-	-	-	2,500,000
Wharton settlement	875,000	297,500	(397,500)	-	-	-	(100,000)
MVS warrant cancellation	-	-	805,440	(805,440)	-	-	-
Stock options and warrant expense	-	-	-	673,287	-	-	673,287
Net Loss for the year ended September 30, 2008	-	-	-	-	-	(4,058,952)	(4,058,952)
Balance at September 30, 2008	186,292,437	22,613,369	5,248,213	2,641,412	-	(21,075,069)	9,427,925
Issuance of stock for cash	2,000,000	400,000	-	-	-	-	400,000
Issuance of stock for cash	1,000,000	200,000	-	-	-	-	200,000
Issuance of stock for services	50,000	11,000	-	-	-	-	11,000
Issuance of stock for cash	1,129,483	70,000	-	-	-	-	70,000
Issuance of stock for services	900,000	108,000	-	-	-	-	108,000
Issuance of stock for services	76,976	10,500	-	-	-	-	10,500
Issuance of stock for services	35,714	5,000	-	-	-	-	5,000
Issuance of stock for cash	5,000,000	350,000	-	-	-	-	350,000
Stock compensation expense	-	-	-	534,518	-	-	534,518
Net Loss for the year ended September 30, 2009	-	-	-	-	-	(10,634,133)	(10,634,133)
Balance at September 30, 2009	196,484,610	$ 23,767,869	$ 5,248,213	$ 3,175,930	$ -	$ (31,709,202)	$ 482,810

The Accompanying Notes are an Integral Part of These Financial Statements

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

	Years Ended		From Inception February 25,1997 to
	September 30, 2009	September 30, 2008	September 30, 2009
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	$ (10,634,133)	$ (4,058,952)	$ (31,709,202)
Adjustment to reconcile net loss to net cash used in operating activities			
Depreciation & amortization	127,293	257,222	562,406
Common stock issued for services and interest	134,500	-	1,964,134
Stock option and warrant expense	534,518	673,287	3,450,120
Beneficial conversion and commitment fees	-	-	5,685,573
Asset impairment	5,826,990	215,625	7,031,449
Write down of inventory asset	1,117,000	-	1,117,000
Gain on settlement of debt	(287,381)	-	(287,381)
Settlement of lease	59,784	-	59,784
Change in Assets and Liabilites			
(Increase) Decrease in:			
Prepaid expenses	(106,346)	329,771	(118,332)
Inventory asset	-	(1,700,000)	(1,417,000)
Other assets	-	1,638,326	(5,815)
Increase (Decrease) in:			
Accounts payable	345,211	16,729	2,439,940
Accrued expenses	(2,250)	(36,951)	28,707
Credit cards payable	22,487	(30,533)	17,918
NET CASH USED IN OPERATING ACTIVITIES	(2,862,327)	(2,695,476)	(11,198,617)
CASH FLOWS USED IN INVESTING ACTIVITIES:			
Purchase of manufacturing equipment and facilities in process	-	(5,617,410)	(5,824,629)
Payments on note receivable	-	-	(1,500,000)
Receipts on note receivable	-	1,500,000	1,500,000
Purchase of marketable prototype	-	-	(1,780,396)
Purchase of fixed assets	(16,174)	(111,213)	(591,919)
NET CASH USED IN INVESTING ACTIVITIES	(16,174)	(4,228,623)	(8,196,944)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from warrant conversion	-	-	3,306,250
Proceeds from debentures	-	-	5,850,000
Proceeds for issuance of common stock, net	1,020,000	7,544,700	10,770,028
NET CASH PROVIDED BY FINANCING ACTIVITIES	1,020,000	7,544,700	19,926,278
NET INCREASE (DECREASE) IN CASH	(1,858,501)	620,601	530,717
CASH & CASH EQUIVALENTS, BEGINNING OF YEAR	2,389,218	1,768,616	-
CASH & CASH EQUIVALENTS, END OF YEAR	$ 530,717	$ 2,389,218	$ 530,717
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION			
Interest paid	$ 46	$ 47,217	$ 119,663
Taxes paid	$ -	$ -	$ -

SUPPLEMENTAL SCHEDULE OF NON-CASH INVESTING AND FINANCING ACTIVITIES

During the fiscal year ended September 30, 2009, the Company agreed upon a settlement of its remaining lease obligation on the Oregon facility, and issued a promissory note in the amount of $456,921. During the year ended September 30, 2008, the Company issued 875,000 shares of common stock for settlement of debt at a fair value of $297,500.

The Accompanying Notes are an Integral Part of These Financial Statements

XSUNX, INC.
(A Development Stage Company)
Notes to Financial Statements
September 30, 2009 and 2008

1. ORGANIZATION AND LINE OF BUSINESS

Organization

XsunX, Inc. ("XsunX," the "Company" or the "issuer") is a Colorado corporation formerly known as Sun River Mining Inc. ("Sun River"). The Company was originally incorporated in Colorado on February 25, 1997. Effective September 24, 2003, the Company completed a Plan of Reorganization and Asset Purchase Agreement (the "Plan").

Line of Business

In the fiscal year ended September 30, 2009 XsunX modified its previous plans to directly establish product manufacturing infrastructure. We have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the industry. Our current efforts are focused on the combination of proven thin film solar processes with state-of-the-art mature magnetic media thin film manufacturing technologies derived from the hard disc drive (HDD) industry to improve manufacturing output, increase cell efficiency and production yields, and lower the costs for the production of high efficiency Copper Indium Gallium (di) Selenide (CIGS) thin film solar cells.

It is our belief that by leveraging the manufacturing processes from the HDD industry and adapting them to thin-film solar technologies, we can reduce the cost per watt for solar to well below $1 per watt, thereby making solar a viable alternative in the energy field. Furthermore, it is our belief that our expertise, experience and proprietary technology in this area will allow us to seek joint ventures with larger companies thereby generating revenue streams through licensing fees and manufacturing royalties.

Going Concern

The accompanying financial statements have been prepared on a going concern basis of accounting, which contemplates continuity of operations, realization of assets, liabilities and commitments in the normal course of business. The accompanying financial statements do not reflect any adjustments that might result if the Company is unable to continue as a going concern. The Company does not generate revenue, and has negative cash flows from operations, which raise substantial doubt about the Company's ability to continue as a going concern. The ability of the Company to continue as a going concern and appropriateness of using the going concern basis is dependent upon, among other things, additional cash infusion. The Company has obtained funds from its shareholders since its inception through September 30, 2009. Management believes the existing shareholders and the prospective new investors will provide the additional cash needed to meet the Company's obligations as they become due, and will allow the development of its core of business.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

This summary of significant accounting policies of XsunX, Inc. is presented to assist in understanding the Company's financial statements. The financial statements and notes are representations of the Company's management, which is responsible for their integrity and objectivity. These accounting policies conform to accounting principles generally accepted in the United States of America and have been consistently applied in the preparation of the financial statements.

Development Stage Activities and Operations

The Company has been in its initial stages of formation and for the fiscal years ended September 30, 2009, and 2008, had no revenues. A development stage activity as one in which all efforts are devoted substantially to establishing a new business and even if planned principal operations have commenced, revenues are insignificant.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the accompanying financial statements. Significant estimates made in preparing these financial statements include the estimate of useful lives of property and equipment, the deferred tax valuation allowance, impairment of assets, commitments and contingencies, and the fair value of stock options. Actual results could differ from those estimates.

Cash and Cash Equivalents

For purposes of the statements of cash flows, cash and cash equivalents include cash in banks and money markets with an original maturity of three months or less.

Fair Value of Financial Instruments

The Company's financial instruments, including cash and cash equivalents, accounts payable and accrued liabilities are carried at cost, which approximates their fair value, due to the relatively short maturity of these instruments. As of September 30, 2009, and 2008, the Company's notes payable have stated borrowing rates that are consistent with those currently available to the Company and, accordingly, the Company believes the carrying value of these debt instruments approximates their fair value.

Revenue Recognition

The Company recognizes revenue when services are performed, and at the time of shipment of products, provided that evidence of an

arrangement exists, title and risk of loss have passed to the customer, fees are fixed or determinable, and collection of the related receivable is reasonably assured. To date, only a limited amount of consulting revenue has been earned and the Company is still in the development stage. The Company's revenue recognition policy will be re-evaluated in light of the licensing of solar manufacturing technologies in the future.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

Property and Equipment
Property and equipment are stated at cost, and are depreciated using straight line over its estimated useful lives:

Leasehold improvements	Length of the lease
Computer software and equipment	3 Years
Furniture & fixtures	5 Years
Machinery & equipment	5 Years

The Company capitalizes property and equipment over $500. Property and equipment under $500 are expensed in the year purchased.

Loss per Share
Loss per Share is the calculation of basic earnings per share and diluted earnings per share. Basic earnings per share are computed by dividing income available to common shareholders by the weighted-average number of common shares available. Diluted earnings per share is computed similar to basic earnings per share except that the denominator is increased to include the number of additional common shares that would have been outstanding if the potential common shares had been issued and if the additional common shares were dilutive. The Company's diluted loss per share is the same as the basic loss per share for the fiscal years ended September 30, 2009, and 2008, as the inclusion of any potential shares would have had an anti-dilutive effect due to the Company generating a loss.

Advertising
Advertising costs are expensed as incurred. Total advertising costs were $11,340, and $19,894 for the fiscal years ended September 30, 2009, and 2008, respectively.

Research and Development
Research and development costs are expensed as incurred. Total research and development costs were $358,884, and $(40,590) for the fiscal years ended September 30, 2009, and 2008, respectively. In the fiscal year ended September 30, 2008 the Company recovered previous R&D expenses.

Inventory
Inventories are stated at the lower of cost or market, and consist of a marketable production prototype. As of September 30, 2009 and 2008, the value of the inventory was $300,000 and $1,417,000, respectively.

Stock-Based Compensation
Share-based Payment applies to transactions in which an entity exchanges its equity instruments for goods or services and also applies to liabilities an entity may incur for goods or services that are to follow a fair value of those equity instruments. We are required to follow a fair value approach using an option-pricing model, such as the Black Scholes option valuation model, at the date of a stock option grant. The deferred compensation calculated under the fair value method would then be amortized over the respective vesting period of the stock option. This has not had a material impact on our results of operations.

Income Taxes
Deferred income taxes are provided using the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry-forwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of the changes in tax laws and rates of the date of enactment.

When tax returns are filed, it is highly certain that some positions taken would be sustained upon examination by the taxing authorities, while others are subject to uncertainty about the merits of the position taken or the amount of the position that would be ultimately sustained. The benefit of a tax position is recognized in the financial statements in the period during which, based on all available evidence, management believes it is more likely than not that the position will be sustained upon examination, including the resolution of appeals or litigation processes, if any. Tax positions taken are not offset or aggregated with other positions. Tax positions that meet the more-likely-than-not recognition threshold are measured as the largest amount of tax benefit that is more than 50 percent likely of being realized upon settlement with the applicable taxing authority. The portion of the benefits associated with tax positions taken that exceeds the amount measured as described above is reflected as a liability for unrecognized tax benefits in the accompanying balance sheet along with any associated interest and penalties that would be payable to the taxing authorities upon examination.

Recent Accounting Pronouncements
In June 2009, the FASB issued guidance under Accounting Standards Codification ("ASC") Topic 105, "Generally Accepted Accounting Principles" (SFAS No. 168, The FASB Accounting Standards Codification TM and the Hierarchy of Generally Accepted Accounting Principles). This guidance establishes the FASB ASC as the single source of authoritative U.S. GAAP recognized by the

FASB to be applied by nongovernmental entities. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative U.S. GAAP for SEC registrants. SFAS 168 and the ASC are effective for financial statements issued for interim and annual periods ending after September 15, 2009. The ASC supersedes all existing non-SEC accounting and reporting standards. All other non-grandfathered, non-SEC accounting literature not included in the ASC has become non-authoritative. Following SFAS 168, the FASB will no longer issue new standards in the form of Statements, FSPs, or EITF Abstracts. Instead, the FASB will issue Accounting Standards Updates, which will serve only to update the ASC, provide background information about the guidance, and provide the bases for conclusions on the change(s) in the ASC. We adopted ASC 105 effective for our financial statements issued as of September 30, 2009. The adoption of this guidance did not have an impact on our financial statements but will alter the references to accounting literature within the consolidated financial statements.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

In August 2009, the FASB issued guidance under Accounting Standards Update ("ASU") No. 2009-05, "Measuring Liabilities at Fair Value". This guidance clarifies how the fair value a liability should be determined. This guidance is effective for the first reporting period after issuance. We will adopt this guidance for our fiscal year ended September 30, 2009. The adoption of this guidance has no material impact on our financial statements

Reclassification
Certain expenses for the fiscal year ended September 30, 2008 were reclassified to conform with the expenses for the fiscal year ended September 30, 2009.

3. CAPITAL STOCK

At September 30, 2009, the Company's authorized stock consisted of 500,000,000 shares of common stock, with no par value. The Company is also authorized to issue 50,000,000 shares of preferred stock with a par value of $0.01 per share. The rights, preferences and privileges of the holders of the preferred stock will be determined by the Board of Directors prior to issuance of such shares. During the year ended September 30, 2009, the Company issued 3,000,000 shares of common stock issued through a private placement at a price of $0.20 per share for cash of $600,000; 5,000,000 shares of common stock issued at a price of $0.07 per share for cash of $350,000; 1,129,483 shares of common stock issued at a price of $0.062 per share for cash of $70,000; 1,062,690 shares of common stock issued at prices between $0.12 and $0.22 per share for services. During the year ended September 30, 2008, the Company issued 8,650,000 shares of common stock at a price of $0.2890 per share for cash of $2,500,000; 15,347,581 shares of common stock issued at an average price of $0.3388 per share for gross cash proceeds of $5,200,000; 3,500,000 shares of common stock issued at a price of $0.34 per share as part of a financing commitment fee of $1,190,000; 875,000 shares of common stock issued at a price of $0.34 per share for settlement of a debt.

4. STOCK OPTIONS AND WARRANTS

The Company adopted a Stock Option Plan for the purposes of granting stock options to its employees and others providing services to the Company, which reserves and sets aside for the granting of Options for Twenty Million (20,000,000) shares of Common Stock. Options granted under the Plan may be either Incentive Options or Nonqualified Options and shall be administered by the Company's Board of Directors ("Board"). Each Option shall be exercisable to the nearest whole share, in installments or otherwise, as the respective Option agreements may provide. Notwithstanding any other provision of the Plan or of any Option agreement, each Option shall expire on the date specified in the Option agreement. During the fiscal year ended September 30, 2009, the Company granted 5,350,000 stock options. The stock options are exercisable for a period of five years from the date of grant at an exercise price between $0.16 and $0.36 per share and expire at various times through March 2014.

	2009	2008
Risk free interest rate	1.67% to 2.77%	3.23% to 4.87%
Stock volatility factor	90.56% to 104.73%	53% to 122%
Weighted average expected option life	5 years	5 years
Expected dividend yield	None	None

4. STOCK OPTIONS AND WARRANTS (Continued)

A summary of the Company's stock option activity and related information follows:

	2009		2008	
	Number of Options	Weighted average exercise price	Number of Options	Weighted average exercise price
Outstanding, beginning of year	5,750,000	$ 0.39	1,950,000	$ 0.46
Granted	5,350,000	$ 0.17	3,800,000	$ 0.36
Exercised	-	$ -	-	$ -
Expired	(920,000)	$ 0.41	-	$ -
Outstanding, end of year	10,180,000	$ 0.27	5,750,000	$ 0.39
Exercisable at the end of year	4,927,500	$ 0.33	2,927,500	$ 0.40
Weighted average fair value of options granted during the year		$ 0.11		$ 0.28

The weighted average remaining contractual life of options outstanding issued under the plan as of September 30, 2009 was as follows:

Exercisable Prices	Stock Options Outstanding	Stock Options Exercisable	Weighted Average Remaining Contractual Life (years)
$ 0.46	1,150,000	950,000	2.32 years
$ 0.53	100,000	100,000	2.40 years
$ 0.45	100,000	100,000	2.56 years
$ 0.41	100,000	100,000	2.91 years
$ 0.36	2,500,000	1,437,500	3.07 years
$ 0.36	500,000	437,500	3.12 years
$ 0.36	500,000	437,500	3.16 years
$ 0.36	115,000	57,501	4.03 years
$ 0.16	5,115,000	1,307,499	4.50 years
	10,180,000	4,927,500	

Stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest. Stock-based compensation expense recognized in the financial statements of operations during the fiscal year ended September 30, 2009, included compensation expense for the stock-based payment awards granted prior to, but not yet vested, as of September 30, 2009 based on the grant date fair value estimated, and compensation expense for the stock-based payment awards granted subsequent to September 30, 2009, based on the grant date fair value estimated. We account for forfeitures as they occur. The stock-based compensation expense recognized in the statement of operations during the fiscal years ended September 30, 2009 and 2008 was $534,518 and $673,287, respectively.

4. STOCK OPTIONS AND WARRANTS (Continued)

Warrants

A summary of the Company's warrants activity and related information follows:

	2009		2008	
	Number of Options	Weighted average exercise price	Number of Options	Weighted average exercise price
Outstanding, beginning of year	4,195,332	$ 0.61	15,362,000	$ 0.22
Granted	-	$ -	3,333,332	$ 0.63
Exercised	-	$ -		$ -
Expired	-	$ -	(14,500,000)	$ 0.20
Outstanding, end of year	4,195,332	$ 0.61	4,195,332	$ 0.61
Exercisable at the end of year	4,047,332	$ 0.62	4,047,332	$ 0.61
Weighted average fair value of warrants granted during the year		$ -		$ 0.63

At September 30, 2009, the weighted average remaining contractual life of options outstanding:

Exercisable Prices	Warrants Outstanding	Warrants Exercisable	Weighted Average Remaining Contractual Life (years)
$ 1.69	112,000	112,000	1.51 years
$ 0.51	500,000	352,000	1.80 years
$ 0.20	250,000	250,000	2.25 years
$ 0.50	1,666,666	1,666,666	3.09 years
$ 0.75	1,666,666	1,666,666	3.09 years
	4,195,332	4,047,332	

5. INCOME TAXES

The Company files income tax returns in the U.S. Federal jurisdiction, and the state of California. With few exceptions, the Company is no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations by tax authorities for years before 2006.

Included in the balance at September 30, 2009, are no tax positions for which the ultimate deductibility is highly certain, but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect the annual effective tax rate but would accelerate the payment of cash to the taxing authority to an earlier period.

The Company's policy is to recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. During the fiscal year ended September 30, 2009, the Company did not recognize interest and penalties.

6. DEFERRED TAX BENEFIT

At September 30, 2009, the Company had net operating loss carry-forwards of approximately $16,648,000 that may be offset against future taxable income from the year 2010 through 2030. No tax benefit has been reported in the September 30, 2009 financial statements since the potential tax benefit is offset by a valuation allowance of the same amount.

Due to the change in ownership provisions of the Tax Reform Act of 1986, net operating loss carry-forwards for Federal income tax reporting purposes are subject to annual limitations. Should a change in ownership occur, net operating loss carry-forwards may be limited as to use in future years.

6. DEFERRED TAX BENEFIT (Continued)

The income tax provision differs from the amount of income tax determined by applying the U.S. federal and state income tax rate of 40% to pretax income from continuing operations for the fiscal year ended September 30, 2009 due to the following:

	2009
Book Income	$ (4,253,653)
State Income Taxes	-
Nondeductible Stock Compensation	213,807
Other	1,784
NOL Carryover	-
Valuation Allowance	4,038,062
Income Tax Expense	$ -

At September 30, 2008, the Company had net operating loss carry forwards of approximately, $6,576,177 for federal income tax purposes. The deferred tax assets of $2,630,471 are composed of the Company's net operating loss carry forwards of approximately $6,576,177 at the approximate tax effect of 40%. There are no other material deferred tax assets or liabilities of the Company as of September 30, 2008.

Deferred taxes are provided on a liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry-forwards and deferred tax liabilities are recognized for taxable temporary differences. Temporary differences are the differences between the reported amounts of assets and liabilities and their tax bases. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Net deferred tax assets consist of the following components as of September 30, 2009:

	2009
Deferred Tax Assets:	
NOL Carryforward	$ 6,659,187
Depreciation	38,990
Contribution Carryforward	40
Section 179 Expense Carry-Forward	90,686
Deferred Tax Liabilities:	-
Valuation Allowance	(6,788,903)
Net Deferred Tax Asset	$ -

7. IMPAIRMENT OF ASSETS

Manufacturing Equipment in Process

In response to changes within the financial markets and solar industry the Company modified its business development efforts. The change to operation and business development plans required the review and valuation assessment of each of the assets that make up the total under the Company's Manufacturing Equipment in Process account. The review has resulted in a write down of certain assets related to the Company's efforts to establish amorphous silicon solar module manufacturing infrastructure that the Company does not anticipate utilizing under its new plan. This impairment resulted in an expense of $5,826,990. This represents a total write down to zero for the portion of the Company's Manufacturing Equipment in Process account that the Company does not anticipate using under its new plan of operations. The valuation adjustment was the result of an analysis of certain significant unobservable events and the inputs used in determining the amount of the valuation adjustment include the decision to move to new manufacturing technology under efforts to establish a competitive advantage. As these assets were not in service, there was no impact to depreciation expense or accumulated depreciation. The non-cash expense for the period ended September 30, 2009 is $209,580. However, there was an impact to the impairment expense recorded for the period.

Inventory Asset for Sale

The Company has engaged in efforts to market and sell a production prototype machine held in inventory for sale. We have engaged in efforts to solicit buyers, but we cannot be assured that a sale of the machine will be finalized in the near term. In an effort to develop alternate methods for the sale of the system the Company is engaged in discussions with interested parties for an arms-length trade of the system for services related to the Company's efforts to develop new thin film manufacturing techniques for CIGS thin films. As a result of these negotiations utilizing the system as a trade for services, the company reasonably believes that the book value of the marketable prototype should be adjusted to reflect a current fair market valuation of $300,000 representing an average of the trade

discussions under way at September 30, 2009. Management also believes that the write down of $1,117,000 to a book value of $300,000 represents the reasonable salvage value for the marketable prototype machine.

8. PROMISSORY NOTE

During the fiscal year ended September 30, 2009, the Company converted an accounts payable for accrued facility lease payments to a promissory note in the amount of $456,921 The note accrues interest at 10% per annum. The note, including all principal and interest are due September 1, 2011. The interest expense for the fiscal year ended September 30, 2009 is $4,256. Also, as part of the lease payments the Company returned equipment to the lease holder and recognized a non-cash loss of $59,784.

9. SETTLEMENT OF DEBT

During the fiscal year ended September 30, 2009, the Company was forgiven an accounts payable liability for equipment and services in the amount of $287,381.

10. CONCENTRATION OF CREDIT RISK

The Company has a concentration of credit risk for cash by maintaining deposits with banks, which may at a time exceed insured amounts. The accounts are insured by the Federal Deposit Insurance Corporation up to $250,000 per financial institution. At September 30, 2009, the Company's uninsured cash deposits were $280,717.

11. COMMITMENTS AND CONTINGENCIES

California Corporate Office Lease
Effective April 1, 2009 the Company reduced its leased facilities at its Aliso Viejo, CA offices by approximately 50%. This resulted in associated reductions to monthly lease and facility expenses totaling approximately $2,000 leaving a monthly lease and facility liability of approximately $1,400. The Company plans to continue to lease these facilities for the foreseeable future.

Oregon Manufacturing Facility Lease
In furtherance of its revised plan of operations focusing on the development of new manufacturing technology for CIGS thin films and plans to establish manufacturing operations through joint venture license agreements for such new technology the Company elected to eliminate its Oregon based facility. On August 27, 2009, the Company entered into a lease termination and mutual release of claims with Merix Corporation, an Oregon corporation. Pursuant to the terms of the Agreement, the Parties agreed to terminate that certain sublease agreement by and between the Parties, dated April 1, 2008, related to certain real property described therein which comprised the Company's Oregon based facility (the "Premises"). Accordingly, the Company agreed to vacate the Premises on or before September 1, 2009. In connection with the termination of the Sublease, the Company also agreed (a) to sell certain equipment, currently housed on the Premises, to Merix for the amount of $111,620, (b) to allow Merix to complete a full drawdown of that certain $106,000 irrevocable letter of credit issued by Wells Fargo Bank, N.A., at the request of the Company, in favor of Merix. The combined amounts of the sale of equipment and draw down to the letter of credit totaling $217,620 were credited to the accrued lease payment liabilities. The remaining accrued lease payment liabilities and contractual term lease obligation were reduced to $456,920.66 and the Company issued an unsecured promissory note in favor of Merix in the amount of $456,920.66. The note accrues interest at 10% per annum. The Parties agreed to unconditionally release each other from the obligations imposed by, or related to, the Sublease, except for the obligations established by the Agreement. The termination of the Sublease eliminates continued monthly operating costs associated with the facility, which the Company no longer requires for its plan of operations, while also reducing the Company's short-term liabilities associated with the lease to zero and reducing the Company's long-term liabilities by approximately sixty-five percent (65%).

Colorado Facilities Lease
On September 30, 2009 the Company extended the lease at its Golden, Colorado facility for an additional six months expiring on March 31, 2010 at the lease rate of $1,790 per month plus $945.00 in triple net for a total of $2,735 per month. While the Company does not currently conduct operations of any significance in the facility a machine built under contract for the Company, and held in inventory for sale by the Company, is housed in this facility and we are engaged in efforts to market and sell this machine. Upon the sale of the machine we do not anticipate continued use of the facility in our operations.

Marketable Production Prototype Machine

An inspection on April 30, 2009 of a production prototype machine built for the Company to prove technology for intended resale by the Company resulted in the determination that the machine continues to fail to meet contractual requirements and on May 4, 2009 XsunX provided the vendor, MVSystems Inc., a notice asserting that MVSystems is in material default of the terms of the agreement for the machine between the parties. No resolution to this notice of default has been agreed to by the parties.

Marketable Production Prototype Sales Tax Dispute
In March 2009 XsunX received notice from the State of Colorado offering determination that sales tax and penalties were due for what the state perceived as a purchase of a machine for use by XsunX rather than as an inventory item that was developed for re-sale. On April 10, 2009 the Company filed a protest and hearing request disputing the findings of the tax auditor requesting that the total tax liability determination be reversed. As of September 30, 2009 we had not yet received a final determination from the Colorado

Department of Revenue and we had a potential contingent liability in the amount of $72,800 for tax on the machine. On November 17, 2009 the Colorado Department of Revenue withdrew and cancelled its assessment of tax liability in total.

11. COMMITMENTS AND CONTINGENCIES (Continued)

Manufacturing Facility Production Equipment Dispute

Under the Company's previous efforts to establish a thin film solar module manufacturing facility the Company had placed an order for certain thin film deposition equipment with a vendor. While the Company worked with the vendor to verify and approve the contractual compliance of certain deliverables associated with $2,500,000 in invoicing received by the Company from the vendor the Company reported this invoice as a liability in its quarterly report for the period ended December 31, 2008 on Form 10Q. We completed our review of the deliverables and the vendor's compliance with contractual requirements and determined that the deliverables under the invoice did not meet the required contractual specifications. For the period ended March 31, 2009 the Company reversed the $2,500,000 accounts payable liability until such time that the contractual requirements had been met by the vendor. In June the vendor and XsunX proposed terms for the cancellation of the order without further obligation to either party. As of the year ended September 30, 2009 the parties had agreed to terms but had not executed a signed release. The terms did not include or create any current or continuing liabilities for XsunX or the vendor. On December 21, 2009 the parties agreed to the termination of the order and all liabilities associated with the order further providing that neither party would be require to provide continuing services or payment.

Under the Company's previous efforts to establish a thin film solar module manufacturing facility the Company had placed an order for glass washing systems totaling $523,950 with a vendor. Deposits totaling $130,987.50 were paid to the vendor prior to the cancellation of the order by the Company, and no systems have been delivered. The vendor is claiming that a balance is due prior to shipment in the amount of $408,963 which includes certain accrued interest payments. The Company has cancelled this order and disputes this amount and has instructed the vendor to apply the deposit payment of $130,987.50 towards re-stocking fees as full and final settlement to the account. Invoicing for this item totaling $209,580 remains on the Company's account payables until such time that a final adjustment can be determined between the parties. In the judgment of management this remaining accounts payable amount of $209,580, if necessary, fairly represents an allowance sufficient to account for adjustments to re-stocking credits.

On September 3, 2009, XsunX received notice of an action filed by a vendor in the State of Oregon, Multnomah County, requesting, a) that the court grant the re-possession of certain industrial gas management equipment (the "equipment") for shipment back to the vendor (XsunX had returned the equipment to the vendor on August 28, 2009), b) that the court grant the vendor unspecified re-stocking and re-shipment fees, or c) the sum of $117,207.07 plus interest and collection fees for payment for the equipment. The vendor allegations stem from XsunX's determination that the vendor had modified an order for the equipment previously placed by XsunX without approval by XsunX through the issuance of an authorizing purchase order. Attempts by XsunX to return the equipment were met with demands for re-stocking fees from the vendor. XsunX has refused to pay re-stocking fees for equipment it believes was modified without approval. The vendor agreed to the return of the equipment and then subsequently filed its claim. Since the filing of the claim the vendor has proposed that it provide XsunX with a re-stocking credit leaving approximately $95,000 in re-stocking fees, interest, and collection fees. We dispute this amount and have retained counsel to aggressively defend this matter. At this time the Company is unable to estimate a loss related to this action.

Employment Agreements

On November 6, 2007, we entered into an amended and restated employment agreement with Mr. Joseph Grimes, our chief operating officer. Under the terms of his employment agreement, Mr. Grimes is entitled to a minimum annual base salary of $210,000. In March 2009 Mr. Grimes and the Company agreed to the reduction of annual base salary from $210,000 to $157,500 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In conjunction with agreeing to the reduction in base salary the Company also provided Mr. Grimes with a stock option grant to purchase 2,500,000 shares of our common stock, exercisable at $0.16 cents per share. In the event that Mr. Grimes employment is terminated by us without good cause, Mr. Grimes may receive a severance payment in the amount equal to 6 months of his annual base salary then paid to Mr. Grimes, all payable within 30 days of such termination. Potential cost to the Company could total at minimum $100,000 for the termination of Mr. Grimes subject to the termination without good cause by the Company.

On January 1, 2007, we entered into an employment agreement with Mr. Robert Wendt, our chief technical officer. Under the terms of his employment agreement, Mr. Wendt was initially entitled to a minimum annual base salary of $150,000 which was adjusted to $200,000 in November 2007 after review by the board. In March 2009 Mr. Wendt and the Company agreed to the reduction of annual salary from $200,000 to $150,000 as part of cost cutting measures approved by the Board of Directors in association with the Company's efforts to modify its plan of operations. In conjunction with agreeing to the reduction in base salary the Company also provided Mr. Wendt with a stock option grant to purchase 2,500,000 shares of our common stock, exercisable at $0.16 cents per share. In September 2009 the Company agreed to the terms of a two year Key Employee Retention Agreement with Mr. Robert Wendt providing that in the event that Mr. Wendt's employment is terminated by the Company without good cause, Mr. Wendt may receive twelve months salary at the then salary rate at time of termination, twelve months Company paid costs for actual costs incurred by Mr. Wendt for medical benefits related to COBRA coverage, and a relocation payment up to $2,500. Potential cost to the Company could total at minimum $164,500 for the termination of Mr. Wendt subject to the termination without good cause by the Company.

12. NOTE RECEIVABLE

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 were 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 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 a Promissory Note and Loan Agreement dated January 1, 2007, between XsunX and a private technology development firm. Under the Promissory Note and Loan Agreement XsunX has funded and extended the principal amount of $1,500,000 dollars to the private firm. On June 13, 2008, the Company entered into a separations agreement with Sencera, LLC which resulted in the full repayment of the principal $1,500,000 balance of the note plus accrued interest of approximately $173,251.

13. SUBSEQUENT EVENTS

The following are items management has evaluated as subsequent events as of January 11, 2010, the date the financial statements were issued.

Under the Company's previous efforts to establish a thin film solar module manufacturing facility the Company had placed an order for certain thin film deposition equipment with a vendor. In June the vendor and XsunX proposed terms for the cancellation of the order without further obligation to either party. On December 21, 2009 the parties agreed to the termination of the order and all liabilities associated with the order further providing that neither party would be require to provide continuing services or payment.

On October 16, 2009, the Company accepted an offer for the sale of 2,556,818 shares of its restricted common stock in a private placement for cash proceeds of $225,000.

On November 16, 2009 the Company issued 53,789 shares of its common restricted stock for services related to marketing and public relations valued at $10,000 dollars.

On December 31, 2009 the Company accepted an offer for the sale of 1,000,000 shares of its restricted common stock in a private placement for cash proceeds of $88,000.

In the fiscal year ended September 30, 2009 XsunX modified its previous plans to directly establish amorphous silicon product manufacturing infrastructure. We have re-focused operations on the development of a cross-industry thin film solar manufacturing concept that we believe provides an opportunity for XsunX to establish a competitive advantage within the industry. In furtherance of these efforts the Company has begun the development of a hybrid manufacturing system combining certain technologies derived from the magnetic media manufacturing industry with manufacturing techniques for thin film solar. The Company has agreed to an estimate of $1,150,000 from a vendor for the cost of this prototype system, and in October 2009 paid an initial $115,000 deposit towards the manufacture of this system. The vendor and the Company are now engaged in efforts to complete the testing and engineering designs necessary to build the system.

In March 2009 XsunX received notice from the State of Colorado offering determination that sales tax and penalties were due for what the state perceived as a purchase of a machine for use by XsunX rather than as an inventory item that was developed for re-sale. On April 10, 2009 the Company filed a protest and hearing request disputing the findings of the tax auditor requesting that the total tax liability determination be reversed. On November 17, 2009 the Colorado Department of Revenue withdrew and cancelled its assessment of tax liability in total.

Key Employee Retention Agreement

This Key Employee Retention Agreement (the "Agreement"), is entered into as of this 1 st day of September, 2009 (the "Effective Date"), by and between XsunX, Inc., a Colorado corporation, (the "Company"), and Robert G. Wendt (the "Employee"). Company and Employee may be referred collectively hereafter as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, the Company recognizes the valuable services that the Employee will render to the Company and the Company desires to retain the services of Employee; and

WHEREAS, the Employee is willing to serve the Company, but desires a severance arrangement in the event the Employee's employment is terminated as provided herein.

NOW, THEREFORE, in consideration of the Employee's service to the Company and the mutual agreements herein contained, and for other god and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Employee agree as follows:

AGREEMENT

ARTICLE 1

Eligibility of Benefits

1.1 Qualifying Termination . A "Qualifying Termination" shall mean the termination of the Employee's employment by the Company due to any of the following:

(a) The sale of all or substantially all of the assets of the Company which results in the termination without cause of Employee within three (3) months of a sale of all or substantially all of the assets of the Company; or

(b) A reduction in force; or

(c) Elimination of Employee's position; or

(d) Other termination without cause.

The Company shall not be required to provide any benefits to the Employee pursuant to this Agreement unless a Qualifying Termination occurs and all other conditions provided herein are met.

1.2 Termination for Cause . For the purpose of this Agreement, the Company or a successor company shall have "Cause" to terminate the Employee only in the event of:

(a) The conviction of a felony; or

(b) The willful engaging by the Employee in gross misconduct, which material and demonstrably injures the Company or it affiliates. For the purposes of this paragraph, no act or failure to act on the part of the Employee shall be considered "willful" unless done or omitted to be done by Employee not in good faith and without reasonable belief the Employee's action or omission was in the best interest of the Company or its affiliates; or

(c) Employee fails to perform all duties required of Employee to reasonable satisfaction of Company in accordance with performance standards imposed by Company.

1.3 Term of Agreement. This agreement shall be effective as of the date first indicated above and shall remain in effect until the earlier of: (a) Two years from the Effective Date; or (b) the effective date of Employee's promotion to another position in the Company which position provides severance or change in control benefits in an amount which exceeds the amount of severance payable to Employee in the event of a Qualifying Termination hereunder, or (c) the Employee and Company agree to the mutual termination of this Agreement.

ARTICLE II

Benefits After A Qualifying Termination

2.1 Release Agreement . Prior to and as a condition of the payment of any severance or benefit amounts by the Company to the Employee hereunder, the Employee shall execute a Release and Compromise of All Claims Agreement in the form similar to Exhibit "A" attached hereto and incorporated herein (the "Release").

2.2 Basic Severance Payment . The Company shall pay to the Employee as severance pay, a cash lump sum amount to twelve (12) month's salary at the base salary amount at the Effective Date of this agreement. This includes the cash value of Employee's accrued and unused vacation benefits up to the date of the Qualifying Termination. Said severance payment shall be made by the Company to the Employee after the Release becomes effective, as set forth in the Release.

2.3 Benefits . If the Employee was a participant in one of the Company's sponsored medical and/or dental plans at the time of the Qualifying Termination and the Employee elects to receive continuing medical and/or dental coverage under COBRA following such Qualifying Termination, the Company shall reimburse Employee for actual costs paid by Employee per month for such COBRA coverage, up to the same dollar contribution level previously paid by the Company at the time of the Qualifying Termination. Such reimbursement payments shall commence on the date employee makes his first COBRA payment for continuation coverage and shall continue until the earlier of the Employee's termination of said COBRA coverage or twelve (12) months following the Qualifying Termination. The Employee must continue to pay the monthly COBRA premiums to receive continued medical/dental benefits during said twelve month period will be made available to the Employee at his sole cost under COBRA.

2.4 Relocation . It is understood by Company that Employee has relocated for the benefit of the Company. Upon a Qualifying Termination, the Company will pay to the Employee reasonable cost up to $2,500 dollars to relocate to his permanent address and for any cost incurred for breaking lease obligations at his temporary housing location.

2.5 Income Tax Withholding . The Company may withhold from any payments made under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or governmental regulation or ruling.

2.6 Sole Severance Obligation . The severance, benefit, and relocation amounts set forth in Sections 2.2, 2.3, and 2.4 herein shall be the sole severance obligation of the Company to Employee in the event of a Qualifying Termination. This Agreement does not preclude Employee's participation in any voluntary severance plan that the Company may establish in the future, in accordance with the provision specified in any such plan. For the purpose of this Agreement, the Employee's participation in any such voluntary severance plan shall not constitute a Qualifying Termination.

ARTICLE III

Miscellaneous

3.1 At-Will Employment . Employee and Company acknowledge that, except and otherwise may be provided under any other written agreement between Company and Employee, the employment of Employee is "at will", meaning either Party may terminate employment for any reason at any time with or without Cause. Employee acknowledges no statements, representation or promises as to employment longevity have been made to Employee whatsoever.

3.2 Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration. The Party desiring arbitration shall deliver written notice of demand for arbitration to the other Party within a reasonable time after the controversy or claim arises, but in not event after the date when institution of legal or equitable proceedings based on such controversy or claim would be barred by applicable statute of limitations.

The arbitration shall be heard before a single neutral arbitrator appointed by mutual agreement of the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose on arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator. In either case, the arbitrator(s) shall be knowledgeable in executive and employee compensation matters, and shall not have any current or past substantial business or financial relationships with any Party to the arbitration. The arbitration shall be conducted under the rules of the Federal Arbitration Act, except as modified herein, and shall take place in Golden, Colorado. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the Parties. The award of the arbitrator(s) shall be final and binding and shall be enforceable in any court of competent jurisdiction.

3.3 Entire Understanding . This Agreement contains the entire understanding between the Company and the Employee with respect to the subject matter hereof and supersedes any prior employee retention agreement between the Company and the Employee.

3.4 Severability. If, for any reason, any one or more of the provisions or part of a provision contained in the Agreement shall be held to be invalid, illegal or unenforceable in any respect, such validity, illegality, or unenforceability shall not affect any other provision or part of a provision of this Agreement not held so invalid, illegal or unenforceable, and each other provision or part of a provision shall, to the full extent consistent with law, continue in full force and effect.

3.5 Consolidation, Merger, or Sale of Assets . Nothing in the Agreement shall preclude the Company from consolidating or merging into or with or transferring all or substantially all of its assets to another corporation which assumes this Agreement and all obligations and undertaking of the Company hereunder. Upon such a consolidation, merger or transfer of assets and assumption, the term, "the Company", as used here shall mean such other corporation and this Agreement shall continue in full force and effect.

3.6 Notices . All notices, request, demands and other communications required or permitted hereunder shall be given in writing and shall be deemed to have been duty given if delivered or mailed, postage prepaid, first class as follows:

To the Company

XsunX Inc.

Attention: Tom Djokovich

To the employee:

XXXXX

Attention: Robert Wendt

or to such other addresses as wither Party shall have previously specified in writing to the other.

3.7 No Attachment. Except as required by law, no right to receive payments under this Agreement shall be subject to anticipation, commutation, alienation, sale, assignment, encumbrance, charge, pledge, or hypothecation, or to execution attachment, levy, or similar process or assignment by operation of law, or any attempt, voluntary or involuntary, to effect any such action shall be null, void and of no effect.

3.8 Binding Agreement. This agreement shall be binding upon and shall inure to the benefit of, the Employee and the Company and their respective successors and permitted assigns.

3.9 Modification and Waiver . This Agreement may not be modified or amended except by an instrument in writing and signed by the Parties. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement except by written instrument signed by the Party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

3.10 Headings . The headings contained in the Agreement are included solely for convenience and shall not in any way affect the meaning or interpretation of any of the provision of this Agreement.

3.11 Governing Law . This agreement and its validity, interpretation, performance, and enforcement shall be governed by the laws of the State of Colorado, without regard to the choice of law provisions thereof.

3.12 Entire Agreement. This Agreement constitutes the entire agreement between the parties respecting the subject matter hereof, and there are no representations, warranties, agreements or commitments between the parties hereto except as set forth herein. The Agreement controls over any and all provisions or guidelines contained in any Employee Manual, Employee Handbook, Company Policy Manual or other similar document. Employee expressly acknowledges that no Employee Manual, Employee Handbook, Company Policy Manual or other similar document is or shall become a contract between the Company and Employee.

IN WITNESS WHEREOF , THE Company has caused this Agreement to be executed by its officers thereunto duty authorized, and the Employee has signed this Agreement, all as the date first written.

XSUNX, INC.

Tom Djokovich
CEO

EMPLOYEE

Robert G Wendt

Exhibit “A”

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the “Agreement”) is between _____ (hereinafter “Employee”) and XsunX, Inc. (hereinafter “the Company). The employment relationship between Employee and the Company has ceased, effective _____. The Company and Employee desire to enter into this Agreement to compromise, release and settle those claims decribed herein relating to employment or termination.

The Company and Employee hereby agree as follows:

1. Employee’s employment with the Company will terminate as of _____ (the “Effective Date”.

2. Employee shall receive from the Company, in cash, payable on or as soon as practicable after the seventh day following the execution of this Agreement by Employee the sum of _____ dollars ($_____), less all applicable taxes. Employee will also received twelve (12) months continued benefits coverage.

3. For and in consideration of the mutual covenants herein, including the cash payment to Employee, all of which are described above, Employee agrees to compromise, release and fully and forever discharge and convenants not to sue the Company, including, but not in limitation thereof, all directors, officers, employees, agents, or attorneys thereof, from and with respect to any and all claims of whatever kind or nature, known or unknown, suspected or unsuspected, and however arising, including, but, not in limitation thereof, all claims for personal injury (including all claims for medical treatment related thereto), pain and suffering, mental anguish, humiliation or embarrassment, loss of diminution of self or professional esteem, reputation, or any and all claims of whatever kind or nature, known or unknown, suspected or unsuspected, arising out of , resulting from or concerning Employee’s employment with the Company or Employee’s cessation or employment with the Company or the circumstances leading thereto

4. This compromise, release and discharge shall specifically include, and shall constitute as knowing and voluntary waiver of, any and all claims, of whatever kind or nature, and however arising, Employee has or may have pursuant to or under the Age Discrimination in Employment Act of 1967 (hereinafter “ADEA”), 29 U.S.C. § 621, et seq ., the Civil Rights Act of 1964 42 U.S.C. §2000e, et seq., and any and all statutes of a similar nature or import, or concerning the same subject matter, whether federal statues, those of the State of Colorado, including specifically, but not in limitation thereof, the Colorado Civil Rights Act _____ et seq., and other applicable employment law statutes.

5. In connection with any waiver of any potential claims under the ADEA, Employee further expressly acknowledges and agrees:

(a) Employee's waiver of any potential rights or claims under the ADEA that have arisen on or before the date of this Agreement;

(b) In return for this Agreement, Employee will receive consideration beyond that which Employee was already entitled to receive before entering into this Agreement;

(c) Employee has been advised by the Company to consult with an attorney of the Employee's choice before signing this Agreement;

(d) Employee was given a copy of this Agreement on _____, and informed that Employee had twenty-one (21) days within which to consider the Agreement; and

(e) Employee was informed that Employee has until seven (7) days following the date of execution of this Agreement in which to revoke this Agreement and this Agreement will not be effective or enforceable until the revocation period has expired.

6. This compromise, release and discharge shall also specifically include any and all claims, of whatever kind or nature, and however arising, and however characterized, Employee has or may have for wrongful discharge or breach of any express or implied employment agreement, whether arising under the law of the United States, the State of Colorado, or otherwise.

7. Employee further acknowledges, agree and warrants that the compromise, release and discharge is done knowingly, and voluntarily, that Employee has had the opportunity to fully consider and understand the terms of this compromise, release and discharge. Employee further acknowledges that no representation or coercion of any kind have been made or used to induce Employee to enter into this compromise, release and discharge, and that the mutual considerations herein for this compromise, release and discharge are fair and are fully satisfactory.

8. This compromise, release and discharge shall be binding upon, and the benefits shall accrue to, the heirs, representatives, successors and assigns of the parties hereto.

9. Employee understands that this compromise, release and discharge shall not be effective until seven (7) days from the date of Employee's execution of this Agreement, and that Employee may revoke this compromise, release and discharge with that seven day period, but after that seven day period, the compromise, release and discharge shall be fully binding and effective.

10. Employee agrees that Employee's current employment with the Company will end irrevocably on the _____date_____, with not guarantee of future employment.

11. This instrument constitutes and contains the entire agreement and final understanding concerning Employee's employment, termination from the same and the other subject matters addressed herein between the parties. It is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes and replaces all prior negotiations and all agreement, proposed or otherwise, whether written or oral, concerning the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon enforceable against either party. This is a fully integrated agreement.

12. The parties hereto hereby sign and execute this Release and Settlement Agreement in accordance with the terms contained herein.

Robert G. Wendt

Date

XsunX, Inc.

By _____

Date

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this _____ day of _____, by Robert G Wendt.

Public Notary

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this _____ day of _____, by , of XsunX, Inc, a Colorado corporation, on behalf of the corporation.

Public Notary

My Commission Expires:

STOCK PURCHASE AGREEMENT AND REPRESENTATIONS

This stock purchase agreement ("Agreement"), along with the Signature Page and Questionnaire attached hereto, and by this reference incorporated herein, is made effective _____**,** 2009 by and between XsunX, a Colorado corporation ("XsunX") and the purchaser(s) signatory hereto ("Private Purchaser"). XsunX has received an offer to purchase certain shares of common voting stock ("Shares") of XsunX by Private Purchaser, and XsunX and Private Purchaser agree as set forth herein and represent to each other with regard thereto as follows:

1. XsunX is a duly organized Colorado corporation. The Articles of Incorporation of XsunX were filed on February 25, 1997. XsunX is authorized by its Articles of Incorporation to issue up to 500,000,000 shares of common voting stock, par value $.00 per share, of which approximately _____ shares are outstanding as of the date hereof.

2. Neither XsunX nor any of its officers, directors, employees, agents or representatives have made any representation or statement of opinion regarding the value of XsunX or the Shares, Private Purchaser is purchasing the Shares purely on a speculative basis and confirms that Private Purchaser has been given no reason to believe that Private Purchaser will receive any return on the purchase of Shares.

3. Private Purchaser has offered to purchase the number of Shares at a price per share set forth on the Signature Page and Questionnaire which is attached hereto, incorporated herein, and made a part hereof, for a total purchase price as set forth on the Signature Page and Questionnaire. The purchase price shall be payable in cash or cash equivalent representing immediately available funds to the satisfaction of XsunX. Private Purchaser shall pay the purchase price prior to the issuance of the Shares. The Shares may be sold from authorized but unissued shares of XsunX, or treasury shares held by XsunX.

4. Private Purchaser understands that Private Purchaser must bear the economic risk of the investment for an indefinite period of time because the Shares will be restricted and no public market will exist for the Shares. Private Purchaser understands the speculative nature of investment in XsunX and that Private Purchaser could lose Private Purchaser's entire purchase price payment.

5. Private Purchaser represents that it has been called to Private Purchaser's attention that Private Purchaser's proposed investment in XsunX involves a high degree of risk which may result in the loss of the total amount of that investment.

6. Private Purchaser acknowledges that XsunX has made available to Private Purchaser or Private Purchaser's personal advisors the opportunity to obtain any and all information required to evaluate the merits and risks of purchase of the Shares, and that, XsunX has, prior to the sale of the Shares, accorded Private Purchaser and Private Purchaser's representative, if any, the opportunity to ask questions and receive answers concerning the terms and conditions of the proposed purchase and to obtain any additional information necessary to evaluate the merits and risks of the purchase of the Shares.

7. Private Purchaser and (if applicable) Private Purchaser's personal advisors and representatives have had an opportunity to ask questions of and receive satisfactory answers from XsunX, or any person or persons acting on XsunX's behalf, concerning the terms and conditions of Private Purchaser's proposed investment in XsunX, and all such questions have been answered to the complete satisfaction of Private Purchaser.

8. Private Purchaser represents that all of the information provided by Private Purchaser or Private Purchaser's representatives to XsunX is true, correct, accurate and current and that Private Purchaser is not subject to backup withholding. Private Purchaser specifically represents that all of the information provided on the Signature Page and Questionnaire is true, correct, accurate and current.

9. The personal, business and financial information of Private Purchaser which may have been provided to XsunX, if any, and in any form, is complete and accurate, and presents a true statement of Private Purchaser's financial condition.

10. Private Purchaser has adequate means of providing for Private Purchaser's current needs and possible personal contingencies, and Private Purchaser has no need in the foreseeable future to sell the Shares for which Private Purchaser hereby subscribes. Private Purchaser is able to bear the economic risks of Private Purchaser's purchase of Shares and, consequently, without limiting the generality of the foregoing, Private Purchaser is able to hold Private Purchaser's Shares for an indefinite period of time, and Private Purchaser has a sufficient net worth to sustain a loss of Private Purchaser's entire investment in XsunX in the event such loss should occur.

11. If Private Purchaser is an individual, Private Purchaser is 18 years of age or older.

12. Private Purchaser understands that the Shares will not be transferable except under limited circumstances.

13. Private Purchaser is acquiring the Shares for Private Purchaser's own account for investment with no present intention of dividing Private Purchaser's interest with others or of reselling or otherwise disposing of all or any portion of the same. Private Purchaser shall not engage in a distribution of the Shares.

14. Private Purchaser has such knowledge and experience in financial and business matters that Private Purchaser is capable of evaluating the merits and risks of an investment in XsunX or (if applicable) Private Purchaser and Private Purchaser's representative, together, have such knowledge and experience in financial and business matters that Private Purchaser and Private Purchaser's representative are capable of evaluating the merits and risks of the prospective investment in XsunX.

15. The Shares will be acquired for Private Purchaser's own account for investment in a manner which would not require registration pursuant to the provisions of the Act, as amended, and Private Purchaser does not now have any reason to anticipate any change in Private Purchaser's circumstances or other particular occasion or event which would cause Private Purchaser to sell or otherwise dispose of the Shares.

16. Private Purchaser understands that the Commissioner of Corporations for the State of California or the State of Colorado, or any other state ("Commissioner") has not or will not recommend or endorse a purchase of the Shares.

17. Private Purchaser hereby represents and warrants that Private Purchaser's total purchase of Shares shall not exceed 10% of Private Purchaser's net worth (exclusive of principal residence, mortgage thereon, home furnishings and automobiles).

18. Private Purchaser: (i) has a pre-existing personal or business relationship with XsunX, its officers, directors or its Affiliates or representatives, and (ii) meets those certain standards involving Private Purchaser's minimum net worth and annual income as established by the California Commissioner of Corporations relating to Private Purchaser's income and net worth, or is an Accredited Investor as defined in rule 501 (a) of Regulation D as promulgated by the Securities and Exchange Commission. The foregoing income and net worth is considered to be indicative of Private Purchaser's ability to be sophisticated regarding the proposed purchase of Shares.

19. Private Purchaser is not a member of FINRA or other self-regulatory agency which would require prior approval of a purchase of the Shares.

20. Private Purchaser acknowledges that Private Purchaser understands the meaning and legal consequences of the representations, warranties, and covenants set forth herein, and that XsunX has relied on such representations, warranties and covenants.

21. Private Purchaser acknowledges and understands that the Shares will be subject to transfer and sale restrictions imposed pursuant to SEC Rule 144 of the Rules promulgated under the Securities Act of 1933 ("Act") and the regulations promulgated thereunder. Private Purchaser shall comply with Rule 144 and with all policies and procedures established by XsunX with regard to Rule 144 matters. Private Purchaser acknowledges that XsunX or its attorneys or transfer agent may require a restrictive legend on the certificate or certificates representing the Shares pursuant to the restrictions on transfer of the Shares imposed by Rule 144.

22. Notwithstanding anything in this Agreement to the contrary, the undersigned acknowledges that: (i) the Shares are subject to restrictions on transfer or sale imposed pursuant to Rule 144; (ii) the Shares are being purchased in a private transaction which is not part of a distribution of the Shares; (iii) the undersigned intends to hold the Shares for the account of the undersigned and does not intend to sell the shares as a part of a distribution or otherwise; and (iv) neither the undersigned nor the seller of the Shares is an underwriter for purposes of Rule 144. A legend regarding Rule 144 restrictions may be placed upon the certificate evidencing ownership of the Shares.

23. Private Purchaser acknowledges that Private Purchaser is aware that there are substantial restrictions on the transferability of the Shares. Because the Shares will not, and Private Purchaser has no right to require that the Shares, be registered pursuant to the provisions of the Act or otherwise, Private Purchaser agrees not to sell, transfer, assign, pledge, hypothecate or otherwise dispose of any Shares unless such sale is exempt from such registration pursuant to the provisions of the Act. Private Purchaser further acknowledges that unless as provided for in this Agreement, XsunX has no obligation to assist Private Purchaser in obtaining any exemption from any registration requirements imposed by applicable law. Private Purchaser also acknowledges that Private Purchaser shall be responsible for compliance with all conditions on transfer imposed by the Commissioner or by the Securities and Exchange Commission ("SEC").

24. Private Purchaser understands and agrees that the following restrictions and limitations are applicable to Private Purchaser's purchase and any sale, transfer, assignment, pledge, hypothecation or other disposition of Shares pursuant to Section 4(2) of the Act and Regulation D promulgated pursuant thereto:

24.1. Private Purchaser agrees that notwithstanding any other restrictions placed on the sale or transfer of the Shares pursuant to this Agreement, Rule 144, or otherwise, the Shares shall not be sold, pledged, hypothecated or otherwise disposed of unless the Shares are registered pursuant to the Act and applicable state securities laws or are exempt there from; and

24.2. A legend in substantially the following form may be placed on any certificate(s) or other documents evidencing the Shares:

THE SECURITIES REPRESENTED BY THIS INSTRUMENT OR DOCUMENT HAVE BEEN ACQUIRED FOR INVESTMENT ONLY AND HAVE NOT BEEN REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT OF 1933 AS AMENDED ("ACT"), AND HAVE BEEN OFFERED AND SOLD IN RELIANCE UPON THE EXEMPTION SET FORTH IN SECTIONS 4(1) OR 4(2) OF THE ACT AND UPON RULE 504 OF REGULATION D PROMULGATED PURSUANT THERETO. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF, EXCEPT UPON DELIVERY TO XSUNX OF AN OPINION OF COUNSEL SATISFACTORY TO XSUNX.

25. Private Purchaser may not cancel, terminate, or revoke this Agreement, or any agreement of Private Purchaser made hereunder, and this Agreement shall survive the death, dissolution, or disability of Private Purchaser and shall be binding upon the heirs, executors, administrators, successors and assigns of Private Purchaser.

26. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by all parties hereto.

27. This Agreement shall be enforced, governed and construed in all respects in accordance with the laws of the State of California without giving effect to the conflicts of laws provisions. Private Purchaser hereby agrees that any suit, action or proceeding with respect to this Agreement, any amendments or any replacements hereof, and any transactions relating hereto shall be brought in the state courts of, or the federal courts in, the State of California, and Private Purchaser hereby irrevocably consents and submits to the jurisdiction of such courts for the purpose of any such suit, action or proceeding, and Private Purchaser agrees that service of process on Private Purchaser in such suit, action or proceeding may be made In accordance with the notice provisions of this Agreement, In any such action, venue shall lie exclusively in Orange County, California. Private Purchaser hereby waives, and agrees not to assert against XsunX, or any successor assignee thereof, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, (i) any claim that Private Purchaser is not personally subject to the jurisdiction of the above-named courts or that property is exempt or immune from set-off, execution or attachment either prior to judgment or in execution thereof, and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding is brought in an inconvenient forum or that the venue of suit, action or proceeding is improper or that this Agreement or any amendments or any replacements hereof may not be enforced in, or by such courts.

THE SHARES OFFERED HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF CERTAIN STATES, AND ARE BEING OFFERED AND SOLD IN RELIANCE ON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH LAWS. THE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY.

PRIVATE PURCHASER MAY BE REQUIRED TO HOLD THE SHARES INDEFINITELY UNLESS SUCH SHARES ARE SUBSEQUENTLY REGISTERED UNDER THE SECURITIES ACTOF 1933 ("ACT") OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. NO SHARES MAY BE SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS XSUNX AND ITS LEGAL COUNSEL HAVE RECEIVED EVIDENCE SATISFACTORY TO BOTH THAT SUCH TRANSFER DOES NOT INVOLVE A TRANSACTION REQUIRING QUALIFICATION OR REGISTRATION UNDER STATE OR FEDERAL SECURITIES LAWS AND IS IN COMPLIANCE WITH SUCH LAWS.

(SIGNATURES APPEAR ON FOLLOWING PAGES)

SIGNATURE PAGE AND QUESTIONAIRE TO STOCK PURCHASE AGREEMENT AMONG XSUNX, INC. AND THE PRIVATE PURCHASER(S) NAMED BELOW

As applicable, the undersigned further represents and warrants as indicated below by the undersigned's initials:

I. ACCREDITED INVESTOR STATUS

A. Individual investors: (Initial one or more of the following three statements)

1. ____ I certify that I am an accredited investor because I have had individual income (exclusive of any income earned by my spouse) of more than US$200,000 in each of the most recent two years and I reasonably expect to have an individual income in excess of US$200,000 for the current year.

2. ____ I certify that I am an accredited investor because I have had joint income with my spouse in excess of US$300,000 in each of the two most recent years and I reasonably expect to have joint income with my spouse in excess of $300,000 for the current year.

3. ____ I certify that I am an accredited investor because I have an individual net worth, or my spouse and I have a joint net worth, in excess of US$1,000,000.

B. Partnerships, corporations, trusts or other entities :
(Initial one of the following statements)

1. The undersigned hereby certifies that it is an accredited investor because it is:

_____ a. an employee benefit plan whose total assets exceed US$5,000,000;

_____ b. an employee benefit plan whose investment decisions are made by a plan fiduciary which is either a bank, savings and loan association or an insurance company (as defined in Section 3(a) of the Securities Act) or an investment adviser registered as such under the Investment Advisers Acts of 1940;

_____ c. a self-directed employee benefit plan, including an Individual Retirement Account, with investment decisions made solely by persons that are accredited investors;

_____ d. an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC"), not formed for the specific purpose of acquiring the Shares with total assets in excess of US$5,000,000;

___ _____ e. any corporation, partnership or Massachusetts or similar business trust, not formed for the specific purpose of acquiring the Shares, with total assets in excess of US$5,000,000; or

_____ f. a trust with total assets in excess of US$5,000,000, not formed for the specific purpose of acquiring the Shares, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of an investment in the Shares.

___ _____ 2. The undersigned hereby certifies that it is an accredited investor because it is an entity in which each of the equity owners qualifies as an accredited investor under items A(1), (2) or (3) or item B(1) above.

II. Indemnification . The undersigned agrees, to the fullest extent permitted pursuant by law, to indemnify, defend, and hold harmless XsunX, Inc. and its agents, representatives and employees from and against all liability, damage, loss, cost and expense (including reasonable attorneys' fees) which they may incur by reason of the failure of the undersigned to fulfill any of the terms or conditions of the Agreement or this Signatory Page and Questionnaire, or by reason of any inaccuracy or omission in the information furnished by the undersigned herein or any breach of the representations and warranties made by the undersigned herein, or in any document provided by the undersigned, directly or indirectly, to XsunX, Inc.

III. Limitation on Short Sales and Hedging Transactions . Private Purchaser agrees that beginning on the effective date of this Agreement, the Private Purchaser and its agents, representatives and affiliates shall not in any manner whatsoever enter into or effect, directly or indirectly, any (i) "short sale" (as such term is defined in Section 242.200 of Regulation SHO of the 1934 Act) of the Common Stock or (ii) hedging transaction, which establishes a net short position with respect to the Common Stock.

IV. Offer and Purchase Price . Private Purchaser hereby offers to purchase _____ Shares of XsunX common stock at a price per share of _____ for a total purchase price of _____ USD **)** , the "Purchase Price". Upon payment to the account of XsunX as set forth herein, such _____ Shares shall be, validly issued and be fully paid and nonassessable. The Shares shall be issued in certificated form and shall bear the restrictive legend set forth in Section 24.2 above.

THE FOLLOWING SECTION MUST BE COMPLETED BY PRIVATE PURCHASER

Private Purchaser:

Name (please print)

Social Security # (or Tax ID #)

Address:
(Including Zip Code)

Phone Number

Fax Number _____

Name in which shares should be issued:

Private Purchaser will hold title as follows:

{ } Community Property

{ } Joint Tenants with Right Survivorship
{ } Tenants in Common
{ } Individually
{ } Other: (Corporation, Trust, Etc., please indicate)*

*If Private Purchaser is an entity, the attached Certificate of Signatory must also be completed.

Private Purchaser shall pay the purchase price by wire transfer of immediately available funds to:

IN WITNESS WHEREOF, subject to acceptance by the Company, Private Purchaser has provided the foregoing warranties and undertaken the foregoing obligations and the parties have executed this Agreement effective as of the date first set forth above.

Private Purchaser:

By: _____

Print Name:

THIS PURCHASE OFFER IS ACCEPTED THIS _____ DAY OF _____, 2009.

XsunX, Inc., a Colorado corporation

By: _____
Tom M. Djokovich

Its: CEO

CERTIFICATE OF SIGNATORY

(To be completed if Shares are being subscribed for by an entity)

I, _____., am the _____ (the "Entity").

I certify that I am empowered and duly authorized by the Entity to execute and carry out the terms of the Purchase Agreement and to purchase and hold the Common Stock, and certify further that the Purchase Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

IN WITNESS WHEREOF, I have set my hand this _____.

_____

(Signature)

ACKNOWLEDGMENT OF RECEIPT OF COMPANY FILINGS

XsunX, Inc., the "Company", has received an offer to purchase certain shares of common voting stock of the Company by purchaser(s) signatory hereto ("Private Purchaser"). Private Purchaser has a pre-existing personal or business relationship with the Company, its officers, directors or its Affiliates or representatives. The sale of stock contemplated by Private Purchasers offer has not been registered with the Securities and Exchange Commission or with any State securities commissions and is offered under Section 4(2) of Regulation D thereof, or other applicable exemptions, relating to limited offerings.

PRIVATE PURCHASER UNDERSTAND THAT THE COMPANY FILINGS HAVE BEEN FURNISHED OR MADE AVAILABLE TO PRIVATE PURCHASER OR PRIVATE PURCHASER REPRESENTATIVE FOR THE PURPOSE OF OBTAINING PERTINENT INFORMATION ABOUT THE PURCHASE OF SHARES IN THE COMPANY. THIS RECEIPT MUST BE SIGNED AND RETURNED TO THE COMPANY OR YOUR PURCHASER REPRESENTATIVE AT THE TIME YOU RECEIVE THE COMPANY FILINGS.

As a condition of the receipt of the Company Filings, Private Purchaser represents that:

(1) Private Purchaser recognizes the speculative nature of an investment in the Company and the risk of total loss from such an investment. Private Purchaser also understands that an investment in the Company is not liquid and thus Private Purchaser is prepared to hold this investment indefinitely.

(2) Private Purchaser hereby represent that Private Purchaser meets either or both of the following standards: (a) by virtue of Private Purchaser own investment acumen, business experience, or independent advice, Private Purchaser is capable of evaluating the hazards and merits of making an investment; and/or (b) Private Purchaser has financial responsibility measured by annual income and net worth which is suitable to a proposed investment in a high risk investment program.

(3) Private Purchaser hereby represents that:

(a) Private Purchaser have received and read the Company Filings that are on file with the Securities and Exchange Commission;

(4) Private Purchaser understand that Private Purchaser and their Purchaser Representative(s), if any, have had an opportunity to review all pertinent facts concerning the Company and management and to obtain other information Private Purchaser might request, to the extent possessed or obtained without unreasonable effort and expense, in order to verify the accuracy of the information in the Company Filings for XsunX, Inc.

(5) If Private Purchaser decides to complete their proposed purchase of shares in the Company Private Purchaser also will complete and execute a Stock Purchase Agreement agreed to by the Company and Private Purchaser.

Dated: _____

Private Purchaser: _____ By: _____

_____ (Private Purchaser Representative)

THE SECURITY REPRESENTED BY THIS CERTIFICATE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

STOCK OPTION AGREEMENT

THIS STOCK OPTION AGREEMENT ("Agreement") is made effective as of the date of grant set forth below ("Date of Grant") by and between XSUNX, INC., a Colorado corporation ("Company"), and the optionee named below ("Optionee") as contemplated in the Company's 2007 Option Plan ("Plan"). Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

Optionee:

Social Security Number:

Address:

Total Option Shares:

Exercise Price Per Share:

Date of Grant:

First Vesting Date:

Expiration Date for Exercise of Options:

Stock Option Number:

1. **Conditional Grant of Option** . The Company hereby conditionally grants to Optionee an option ("Option") to purchase the total number of shares of Common Stock of the Company set forth above ("Shares") at the Exercise Price Per Share set forth above ("Exercise Price"), subject to all of the terms and conditions of this Agreement and the Plan. If designated as an Incentive Stock Option above, the Option is intended to qualify as an "incentive stock option" ("ISO") within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended ("Code"). Subject to the Plan, only Employees of the Company shall receive ISOs. This Agreement shall be deemed a Stock Option Agreement as defined in the Plan. The terms and conditions of the Plan are incorporated herein by this reference. All specific terms and references, including capitalized terms and references, which are undefined in this Agreement, shall have the definition and meaning ascribed to them in the Plan, including, without limitation, the definition of the terms Employee and Consultant.

2. **Exercise Price** . The Exercise Price, is not less than the fair market value per share of Common Stock on the date of grant, as determined by the Board; provided, however, in the event Optionee is an Employee and owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of its Parent or Subsidiary corporations immediately before the Option is granted, said exercise price is not less than one hundred ten percent (110%) of the fair market value per share of Common Stock on the date of grant as determined by the Board.

3. **Exercise of Option** . Subject to the vesting schedule contained herein and the other conditions set forth in this Agreement, all or part of the Option may be exercised prior to its expiration from the first vesting date set forth above (“First Vesting Date”) up to and including 5:00 p.m. Pacific Standard Time on the expiration date set forth above ("Expiration Date") at the time or times set forth herein in accordance with the provisions of the Plan as follows:

(i) **Vesting** :

(a) The Option shall become exercisable in the amount of _____ shares upon the First Vesting Date. Thereafter, unless all options have vested subject to other terms of this Agreement, the Option shall vest and become exercisable at the rate of _____ Shares per each XsunX fiscal calendar quarter of continuous employment of Optionee by XsunX.

(b) This Option may not be exercised for a fraction of a Share.

(c) In the event of Optionee's death, disability or other termination of employment, the exercisability of the Option is governed by Sections 7, 8 and 9 below, subject to the limitations contained in subsection 3(i)(d) below.

(d) In no event may the Option be exercised after the date of expiration of the term of the Option as set forth in Section 11 below.

(ii) **Method of Exercise** . The Option shall be exercisable by written notice which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered in person or by certified mail to the President, Secretary or Chief Financial Officer of the Company. The written notice shall be accompanied by payment of the exercise price.

(iii) **Compliance with Law** . No Shares will be issued pursuant to the exercise of an Option unless such issuance and such exercise shall comply with all relevant provisions of law and the requirements of any stock exchange or quotation medium upon which the Shares may then be listed or quoted. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

(iv) **Adjustments, Merger, etc.** The number and class of the Shares and/or the exercise price specified above are subject to appropriate adjustment in the event of changes in the capital stock of the Company by reason of stock dividends, stock splits, combination or recombination of shares, reclassifications, mergers, consolidations, reorganizations or liquidations. Subject to any required action of the stockholders of the Company, if the Company shall be the surviving corporation in any merger or consolidation, the Option (to the extent that it is still outstanding) shall pertain to and apply to the securities to which a holder of the same number of shares of Common Stock that are then subject to the Option would have been entitled. A dissolution or liquidation of the Company, or a merger or consolidation in which the Company is not the surviving corporation, will cause the Option to terminate, unless such dissolution or liquidation of the Company, or a merger or consolidation shall otherwise provide. Prior to the termination of the Option the Company shall provide Optionee a notice of the intent to terminate the Option fifteen days prior to a dissolution or liquidation of the Company, or a merger or consolidation in which the Company is not the surviving corporation, and Optionee shall have the right under such notice to exercise this Option in whole or part (to the extent that the Option is still outstanding) during a ten-day period ending on the fifth day prior to such dissolution or liquidation of the Company, or a merger or consolidation. To the extent that the foregoing adjustments relate to stock or securities of the Company, such adjustments shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

4. **Optionee's Representations** . By receipt of the Option, by its execution, and by its exercise in whole or in part, Optionee represents to the Company that Optionee understands that:

(i) Both the Option and any Shares purchased upon its exercise are securities, the issuance by the Company of which requires compliance with federal and state securities laws;

(ii) These securities are made available to Optionee only on the condition that Optionee makes the representations contained in this Section 4 to the Company;

(iii) Optionee has made a reasonable investigation of the affairs of the Company sufficient to be well informed as to the rights and the value of these securities;

(iv) Optionee understands that the securities have not been registered under the Securities Act of 1933, as amended (the "Act") in reliance upon one or more specific exemptions contained in the Act, which may include reliance on Rule 701 promulgated under the Act, if available, or which may depend upon: (a) Optionee's bona fide investment intention in acquiring these securities; (b) Optionee's intention to hold these securities in compliance with federal and state securities laws; (c) Optionee having no present intention of selling or transferring any part thereof (recognizing that the Option is not transferable) in violation of applicable federal and state securities laws; and (d) there being certain restrictions on transfer of the Shares subject to the Option;

(v) Optionee understands that the Shares subject to the Option, in addition to other restrictions on transfer, must be held indefinitely unless subsequently registered under the Act, or unless an exemption from registration is available; that Rule 144, the usual exemption from registration, is only available after the satisfaction of certain holding periods and in the presence of a public market for the Shares; that there is no certainty that a public market for the Shares will exist, and that otherwise it will be necessary that the Shares be sold pursuant to another exemption from registration which may be difficult to satisfy; and,

(vi) Optionee understands that the certificate representing the Shares will bear a legend prohibiting their transfer in the absence of their registration or the opinion of counsel for the Company that registration is not required, and a legend prohibiting their transfer in compliance with applicable state securities laws unless otherwise exempted.

5. **Method of Payment** . Payment of the purchase price may be made subject to the terms of Section 14 herein, or by cash, check or, in the sole discretion of the Board at the time of exercise, promissory notes or other Shares of Common Stock having a fair market value on the date of surrender equal to the aggregate purchase price of the Shares being purchased.

6. **Restrictions on Exercise** . The Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such Shares would constitute a violation of any applicable federal or state securities or other law or regulation. As a condition to the exercise of the Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation.

7. **Termination of Status as an Employee or Consultant** . In the event of termination of Optionee's continuous status as an Employee or Consultant, as such status may be determined and construed by the Company in its sole discretion (“Continuous Status”), for any reason other than death or disability or the completed term and performance under any consulting or employment agreement between the Optionee and the Company, Optionee may, but only within thirty (30) days after the date of such termination (but in no event later than the date of expiration of the term of the Option as set forth in Section 11 below), exercise the Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of such termination, or if Optionee does not exercise the Option within the time specified herein, the Option shall terminate.

8. **Disability of Optionee** . In the event of termination of Optionee's Continuous Status as an Employee or Consultant as a result of Optionee's disability, Optionee may, but only within six (6) months from the date of termination of employment or consulting relationship (but in no event later than the date of expiration of the term of the Option as set forth in Section 11 below), exercise the Option to the extent Optionee was entitled to exercise it at the date of such termination; provided, however that if the disability is not total and permanent (as defined in Section 22(e)(3) of the Code) and the Optionee exercises the option within the period provided above but more than three months after the date of termination, the Option shall automatically be deemed to be a Nonstatutory Stock Option and not an Incentive Stock Option; and provided, further, that if the disability is total and permanent (as defined in Section 22(e)(3) of the Code), then the Optionee may, but only within one (1) year from the date of termination of employment or consulting relationship (but in no event later than the date of expiration of the term of the Option as set forth in Section 11 below), exercise the Option to the extent Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of termination, or if Optionee does not exercise such Option (which Optionee was entitled to exercise) within the time periods specified herein, the Option shall terminate.

9. **Death of Optionee** . In the event of the death of Optionee:

(i) During the term of the Option while an Employee or Consultant of the Company and having been in Continuous Status as an Employee or Consultant since the date of grant of the Option, the Option may be exercised, at any time within one (1) year following the date of death (but, in the case of an Incentive Stock Option, in no event later than the date of expiration of the term of the Option as set forth in Section 11 below), by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the time of death of the Optionee. To the extent that such Employee or Consultant was not entitled to exercise the Option at the date of death, or if such Employee, Consultant, estate or other person does not exercise such Option (which such Employee, Consultant, estate or person was entitled to exercise) within the one (1) year time period specified herein, the Option shall terminate; or,

(ii) During the thirty (30) day period specified in Section 7 or the one (1) year period specified in Section 8, after the termination of Optionee's Continuous Status as an Employee or Consultant, the Option may be exercised, at any time within one (1) year following the date of death (but, in the case of an Incentive Stock Option, in no event later than the date of expiration of the term of the Option as set forth in Section 11 below), by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination. To the extent that such Employee or Consultant was not entitled to exercise the Option at the date of death, or if such Employee, Consultant, estate or other person does not exercise such Option (which such Employee, Consultant, estate or person was entitled to exercise) within the one (1) year time period specified herein, the Option shall terminate.

10. **Non-Transferability of Option** . The Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee, only by Optionee. The terms of the Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

11. **Term of Option** . The Option may not be exercised more than five (5) years from the date of grant of the Option, and may be exercised during such term only in accordance with the Plan and terms of the Option; provided, however, that the term of this option, if it is a Nonstatutory Stock Option, may be extended for the period set forth in Section 9(i) or Section 9(ii) in the circumstances set forth in such Sections.

12. **Early Disposition of Stock; Taxation Upon Exercise of Option** . If Optionee is an Employee and the Option qualifies as an ISO, Optionee understands that, if Optionee disposes of any Shares received under the Option within two (2) years after the date of this Agreement or within one (1) year after such Shares were transferred to Optionee, Optionee may be treated for federal income tax purposes as having received ordinary income at the time of such disposition in any amount generally measured as the difference between the price paid for the Shares and the lower of the fair market value of the Shares at the date of exercise or the fair market value of the Shares at the of disposition. Any gain recognized on such premature sale of the Shares in excess of the amount treated as ordinary income may be characterized as capital gain. Optionee hereby agrees to notify the Company in writing within thirty (30) days after the date of any such disposition. Optionee understands that if Optionee disposes of such Shares at any time after the expiration of such two-year and one-year holding periods, any gain on such sale may be treated as long-term capital gain laws subject to meeting various qualifications. If Optionee is a Consultant or this is a Nonstatutory Stock Option, Optionee understands that, upon exercise of the Option, Optionee may recognize income for tax purposes in an amount equal to the excess of the then fair market value of the Shares over the exercise price. Upon a resale of such shares by the Optionee, any difference between the sale price and the fair market value of the Shares on the date of exercise of the Option may be treated as capital gain or loss. Optionee understands that the Company may be required to withhold tax from Optionee's current compensation in some of the circumstances described above (and Optionee hereby so authorizes the Company); to the extent that Optionee's current compensation is insufficient to satisfy the withholding tax liability, the Company may require the Optionee to make a cash payment to cover such liability as a condition to exercise of the Option.

13. **Tax Consequences** . The Optionee understands that any of the foregoing references to taxation are based on federal income tax laws and regulations now in effect, and may not be applicable to the Optionee under certain circumstances. The Optionee may also have adverse tax consequences under state or local law. The Optionee has reviewed with the Optionee's own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement. The Optionee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Optionee understands that the Optionee (and not the Company) shall be responsible for the Optionee's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

14. **Net Issue Exercise.** Notwithstanding any provisions herein to the contrary, if the fair market value of one share of the Company's Common Stock is greater than the Per Share Exercise Price (at the date of calculation as set forth below), in lieu of exercising the Option for cash, the Optionee may elect to receive shares equal to the value (as determined below) of the Option (or the portion thereof being canceled) by surrender of the Option at the principal office of the Company together with the properly endorsed Notice of Exercise and Subscription Form and notice of such election, in which event the Company will issue to the Optionee a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y\ (A-B)}{A}$$

Where X = the number of shares of Common Stock to be issued to the Optionee

Y = the number of shares of Common Stock purchasable under the Option or, if only a portion of the Option is being exercised, the portion of the Option being canceled (at the date of such calculation)

A = the fair market value of one share of the Company's Common Stock (at the date of such calculation)

B = Per Share Exercise Price (as adjusted to the date of such calculation)

For purposes of the above calculation, fair market value of one share of the Company's Stock will be the average of the closing prices of the Company's shares of Common Stock as quoted on the OTC Bulletin Board (the "OTCBB") (or on such other United States stock exchange or public trading market or quotation medium on or by which the shares of the Company trade or are quoted if, at the time of the election, they are not trading or being quoted on the OTCBB), for the five (5) consecutive trading days immediately preceding the date of the date the completed, executed Notice of Exercise and Subscription Form is received.

15. **Damages** . The parties agree that any violation of the Option (other than a default in the payment of money) cannot be compensated for by damages, and any aggrieved party shall have the right, and is hereby granted the privilege, of obtaining specific performance of the Option in any court of competent jurisdiction in the event of any breach hereunder.

16. **Delay** . No delay or failure on the part of the Company or the Optionee in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

17. **Restrictions** . Notwithstanding anything herein to the contrary, Optionee understands and agrees that Optionee shall not dispose of any of the Shares, whether by sale, exchange, assignment, transfer, gift, devise, bequest, mortgage, pledge, encumbrance or otherwise, except in accordance with the terms and conditions of this Agreement, and Optionee shall not take or omit any action which will impair the absolute and unrestricted right, power, authority and capacity of Optionee to sell Shares in accordance with the terms and conditions hereof.

Any purported transfer of Shares by Optionee that violates any provision of this Section 17 shall be wholly void and ineffectual and shall give to the Company or its designee the right to purchase from Optionee all but not less than all of the Shares then owned by Optionee for a period of ninety (90) days from the date the Company first learns of the purported transfer at the Agreement Price and on the Agreement Terms (as those terms are defined in subsections (iv) and (v), respectively, of this Section 17).

The Company shall not cause or permit the transfer of any Shares to be made on its books except in accordance with the terms hereof.

(i) **Permitted Transfers** .

(a) Optionee may sell, assign or transfer any Shares held by the Optionee but only by complying with the provisions of this Section 17.

(b) Upon the death of Optionee, Shares held by the Optionee may be transferred to the personal representative of the Optionee's estate. Shares so transferred shall be subject to the provisions of the Option and this Agreement.

(ii) **Stock Certificate Legend** . Each stock certificate for Shares issued to the Optionee shall have conspicuously written, printed, typed or stamped upon the face thereof, or upon the reverse thereof with a conspicuous reference on the face thereof, one or both of the following legends:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ISSUED WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE TRANSFERRED IN THE ABSENCE OF REGISTRATION THEREUNDER OR AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT. SUCH SHARES MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, OR OTHERWISE DISPOSED OF IN ANY MANNER EXCEPT IN ACCORDANCE WITH AND SUBJECT TO THE TERMS OF THE STOCK OPTION AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. EVERY CREDITOR OF THE HOLDER HEREOF AND ANY PERSON ACQUIRING OR PURPORTING TO ACQUIRE THIS CERTIFICATE OR THE SHARES HEREBY EVIDENCED OR ANY INTEREST THEREIN IS HEREBY NOTIFIED OF THE EXISTENCE OF SUCH STOCK OPTION AGREEMENT, AND ANY ACQUISITION OR PURPORTED ACQUISITION OF THIS CERTIFICATE OR THE SHARES HEREBY EVIDENCED OR ANY INTEREST THEREIN SHALL BE SUBJECT TO ALL RIGHTS AND OBLIGATIONS OF THE PARTIES TO SUCH STOCK OPTION AGREEMENT AS THEREIN SET FORTH.

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES.

(iii) **Manner of Exercise** . Any right to purchase hereunder shall be exercised by giving written notice of election to the Optionee, the Optionee's personal representative or any other selling person, as the case may be, prior to the expiration of such right to purchase.

(iv) **Agreement Price** . The "Agreement Price" shall be the higher of (a) the fair market value of the Shares to be purchased determined in good faith by the Board of Directors of the Company and (b) the original exercise price of the Shares to be purchased.

(v) **Agreement Terms** . "Agreement Terms" shall mean and include the following:

(a) Delivery of Shares and Closing Date. At the closing, the Optionee, the Optionee's personal representative or such other selling person, as the case may be, shall deliver certificates representing the Shares, properly endorsed for transfer, and with the necessary documentary and transfer tax stamps, if any, affixed, to the purchaser of such Shares. Payment of the purchase price therefore shall concurrently be made to the Optionee, the Optionee's personal representative or such other selling person, as provided in subsection (b) of this subsection (v). Such delivery and payment shall be made at the principal office of the Company or at such other place as the parties mutually agree.

(b) Payment of Purchase Price. The Company shall pay the purchase price to the Optionee at the closing.

(vi) **Right to Purchase Upon Certain Events** . The Company or its designee shall have the right to purchase all, but not less than all, of the Shares held by the Optionee at the Agreement Price and on the Agreement Terms for a period of ninety (90) days after any of the following events:

(a) An attempt by a creditor to levy upon or sell any of the Optionee's Shares;

(b) The filing of a petition by the Optionee under the U.S. Bankruptcy Code or any insolvency laws;

(c) The filing of a petition against Optionee under any insolvency or bankruptcy laws by any creditor of the Optionee if such petition is not dismissed within thirty (30) days of filing;

(d) The entry of a decree of divorce between the Optionee and the Optionee's spouse; or,

(e) The termination of Optionee's services as an employee or consultant with the Company.

The Optionee shall provide the Company written notice of the occurrence of any such event within 30 days of such event.

(vii) **Termination** . The provisions of this Section 17 shall terminate and all rights of each such party hereunder shall cease except for those which shall have theretofore accrued upon the occurrence of any of the following events:

(a) Cessation of the Company's business;

(b) Bankruptcy, receivership or dissolution of the Company;

(c) Written consent or agreement of the shareholders of the Company holding Fifty Percent (50%) of the then issued and outstanding shares of the Company (determined on a fully diluted basis);

(d) Consent or agreement of a majority of the members of the Board of Directors of the Company; or,

(e) Registration of any class of equity securities of the Company pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.

(viii) **Amendment** . This Section 17 may be modified or amended in whole or in part by a written instrument signed by shareholders of the Company holding 50% of the outstanding shares of Common Stock (determined on a fully diluted basis) or a majority of the members of the Board of Directors of the Company.

18. **Market Standoff** . Unless the Board of Directors otherwise consents, Optionee agrees hereby not to sell or otherwise transfer any Shares or other securities of the Company during the 180-day period following the effective date of a registration statement of the Company filed under the Act; provided, however, that such restriction shall apply only to the first two registration statements of the Company to become effective under the Act which includes securities to be sold on behalf of the Company to the public in an underwritten public offering under the Act. The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such 180-day period.

19. **Rule 144.** Optionee acknowledges and understands that the Shares may be subject to transfer and sale restrictions imposed pursuant to SEC Rule 144 of the Rules promulgated under the Securities Act of 1933 ("Act") and the regulations promulgated thereunder. Optionee shall comply with Rule 144 and with all policies and procedures established by the Company with regard to Rule 144 matters. Optionee acknowledged that the Company or its attorneys or transfer agent may require a restrictive legend on the certificate or certificates representing the Shares pursuant to the restrictions on transfer of the Shares imposed by Rule 144.

20. **No Distribution** . Notwithstanding anything in this Agreement to the contrary, Optionee acknowledges that: (i) the Option, and the Shares upon exercise, is and are being acquired in a private transaction which is not part of a distribution of the Option or Shares; (ii) the Optionee intends to hold the Option and Shares for the account of the Optionee and does not intend to sell the Option or Shares as a part of a distribution or otherwise; and (iii) neither the Optionee nor the Company is an underwriter with regard to the Option or the Shares for purposes of Rule 144.

21. **Securities Compliance** . Optionee understands that the Option and the Shares may be offered and sold in reliance on one or more exemptions from the registration requirements of federal and state securities laws, which exemptions may include, without limitation, Regulation D promulgated under the Securities Act, and that the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of Optionee set forth herein in order to determine the applicability of such exemptions and the suitability of Optionee to acquire the Option and the Shares. The representations, warranties and agreements contained herein are true and correct as of the date hereof and may be relied upon by the Company and Optionee will notify the Company immediately of any adverse change in any such representations and warranties which may occur prior to the issuance of Shares. The representations, warranties and agreements of Optionee contained herein shall survive the execution and delivery of this Agreement and the exercise of the Option and the issuance of the Shares.

22. **Complete Agreement** . This Agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all other prior or contemporaneous agreements and understandings both oral or written; subject, however, that in the event of any conflict between this Agreement and the Plan, the Plan shall govern. This Agreement may only be amended in a writing signed by the Company and the Optionee.

23. **Privileges of Stock Ownership** . Optionee shall not have any of the rights of a shareholder with respect to any Shares until Optionee exercises the Option and pays the Exercise Price, Shares are issued and delivered to Optionee, and Optionee is shown as a shareholder of record on the books and records of the Company.

24. **Further Acts** . The parties hereto shall cooperate with each other and execute such additional documents or instruments and perform such further acts as may be reasonably necessary to affect the purpose and intent of the Agreement.

25. **Effect of Headings** . The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

26. **Notices** . Any notice required to be given or delivered to the Company under the terms of this Agreement shall be in writing and addressed to the Corporate Secretary of the Company at its principal corporate offices. Any notice required to be given or delivered to Optionee shall be in writing and addressed to Optionee at the address indicated herein or to such other address as such party may designate in writing from time to time to the Company. All notices shall be deemed to have been given or delivered upon actual personal delivery; three (3) days after deposit in the United States mail by certified or registered mail (return receipt requested); one (1) business day after deposit with any return receipt express courier (prepaid); or one (1) business day after transmission by facsimile with a corresponding facsimile transmission confirmation sheet.

27. **Counterparts** . This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exhibits attached hereto and initialed by the parties are made a part hereof and incorporated herein by this reference.

28. **Parties in Interest** . Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

29. **Recovery of Litigation Costs** . If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover as an element of their damages, reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.

30. **Severability; Construction** . In the event that any provision in this Agreement shall be invalid or unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement. This Agreement shall be construed as to its fair meaning and not for or against either party.

31. **Survival of Representations and Obligations** . All representations, warranties and agreements of the parties contained in this Agreement, or in any instrument, certificate, opinion or other writing provided for in it, shall survive the exercise of the Option and the issuance of the Shares.

32. **Specific Performance** . Each party's obligations under this Agreement are unique. If any party should default in its obligations under this Agreement, the parties each acknowledge that it would be extremely impracticable to measure the resulting damages; accordingly, the nondefaulting party, in addition to any other available rights or remedies, may sue in equity for specific performance without the necessity of posting a bond or other security, and the parties each expressly waive the defense that a remedy in damages will be adequate.

33. **Gender; Number** . Whenever the context of this Agreement requires, the masculine gender includes the feminine or neuter gender, and the singular number includes the plural.

34. **Governing Law and Venue** . This Agreement will be construed and enforced in accordance with, and the rights of the parties will be governed by, the laws of the State of California without regard to conflict of laws principles. Venue in any action arising by reason of this Agreement shall lie exclusively in Orange County, California.

35. **Employment Agreement or Memorandum of Understanding** . This Option is issued pursuant to that certain Employment Agreement or Memorandum of Understanding effective _____, and any amendments thereto, between the Optionee and the Company. The terms of the Employment Agreement or Memorandum of Understanding shall control over any conflicting terms in this Option. Any breach under the Employment Agreement or Memorandum of Understanding shall constitute a breach under this Option and allows the Company to terminate this Option in whole or in part.

IN WITNESS WHEREOF , this Agreement is made effective on the date first set forth above at Orange County, California.

Company : XSUNX, INC, a Colorado Corporation

By: _____

Name: Tom M. Djokovich
Title: CEO

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO SECTION 3 HEREOF IS EARNED ONLY BY CONTINUING SERVICE AS AN EMPLOYEE OR CONSULTANT OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS OPTION, THE COMPANY'S PLAN WHICH IS INCORPORATED HEREIN BY REFERENCE, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE OR CONSULTANT FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S EMPLOYMENT OR CONSULTING RELATIONSHIP AT ANY TIME, WITH OR WITHOUT CAUSE.

Optionee acknowledges receipt of a copy of the Plan, represents that Optionee is familiar with the terms and provisions thereof, and hereby accepts the Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of the Plan and this Agreement. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board or of the Committee upon any questions arising under the Plan.

IN WITNESS WHEREOF , this Agreement is made effective on the date first set forth above at _____, _____.

OPTIONEE

_____

Name:

CONSENT OF SPOUSE

The undersigned spouse of the Optionee to the foregoing Stock Option Agreement acknowledges on his or her own behalf that: I have read the foregoing Stock Option Agreement and I know its contents. I hereby consent to and approve of the provisions of the Stock Option Agreement, and agree that the Shares issued upon exercise of the Option covered thereby and my interest in them shall be subject to the provisions of the Stock Option Agreement and that I will take no action at any time to hinder operation of the Stock Option Agreement as to the Shares or my interest in the Shares.

IN WITNESS WHEREOF , this Agreement is made effective on the date first set forth above at _____, _____.

_____

Name:

EXHIBIT TO OPTION

SUBSCRIPTION FORM AND NOTICE OF EXERCISE

Xsunx, Inc.
Attn: President
65 Enterprise
Aliso Viejo, CA 92656

Date:

Ladies and Gentlemen:

The undersigned, the holder of the enclosed Option, hereby irrevocably elects to exercise the purchase rights represented by the Option and to purchase there under _____ shares of Common Stock of XSUNX, INC. (the " **Company** "), and herewith encloses payment of $_____ and/or _____ shares of the Company's common stock, (the "Purchase Price") in full payment of the Purchase Price of such shares being purchased.

Exercise of the Option shall not be deemed effective unless and until good and immediately available funds in the full amount of the Purchase Price have been confirmed in the account of the Company.The original Option shall be presented with this Subscription Form and Notice of Exercise.

The Company may, in its discretion, withhold a portion of some or all of the exercised shares or other amounts for the payment of taxes or other items. Holder represents that Holder is not subject to any backup withholding requirements. Holder acknowledges that the shares of stock of the Company issued upon exercise will not be entitled to any dividend declared upon such stock prior to the effective date of exercise of the Option.

Holder hereby constitutes this Subscription Form and Notice of Exercise as an assignment, deposit tender, and transfer in blank of the Option as set forth therein. Holder hereby irrevocably constitutes and appoints the secretary of the Company as Holder's attorney in fact to issue shares upon the exercise of the Option and reflect the same on the books and records of the Company, cancel the Option, issue a new Option, if applicable, and perform any necessary act on behalf of Holder, with full power substitution.

Very truly yours,

_____

By: _____

Title: _____

LEASE TERMINATION AND MUTUAL RELEASE OF CLAIMS

THIS LEASE TERMINATION AND MUTUAL RELEASE OF CLAIMS (this "Agreement") is entered into this 27th day of August, 2009, by and between Merix Corporation ("MERIX") and XSUNX, Inc. ("XSUNX"). Reference is made to that certain Sublease Agreement dated as of April 1, 2008 (the "Sublease"), by and between MERIX as Sublandlord and XSUNX as Subtenant concerning certain real property and improvements located at 23365 NE Halsey St. in the City of Wood Village, County of Multnomah and State of Oregon (the "Premises").

RECITALS

A. On or around May 19, 2008, MERIX sold certain equipment more particularly described on Exhibit A attached hereto (the "Equipment") to XSUNX for $111,620.00.

B. Now and at all times since such sale, the Equipment has been located on the Premises.

C. As security for its performance under the Sublease and pursuant to Section 3.3 of the Sublease, XSUNX caused Wells Fargo Bank, N.A. to issue its Irrevocable Letter of Credit No. NZS904387 (the "Letter of Credit") in favor of MERIX in the amount of $106,000.00.

D. XSUNX is in default under the Sublease for nonpayment of rent. As of this date, such default is in the amount of $433,568.62. Extending out its obligations until the expiration of the Sublease, such default would total $1,614,512.25.

E. MERIX has retaken possession of the Premises, drawn the full amount under the Letter of Credit and asserted its statutory landlord's lien against the Equipment.

F. XSUNX and MERIX desire to permit XSUNX to vacate the Premises in an orderly fashion and to fix its obligations under the Sublease at a reduced amount pursuant to a promissory note and the sale back to MERIX of the Equipment, all on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MERIX and XSUNX agree as follows.

AGREEMENT

1. Lease Termination; Vacation of Premises. XSUNX shall vacate the Premises in accordance with the terms of the Sublease, under the supervision of MERIX, on or before September 1st, 2009. All of the Equipment shall remain on the Premises at all times. Upon such vacation, the return of all keys to MERIX and MERIX's approval of the condition of the Premises, the Sublease shall be deemed terminated and of no further force or effect, with such date memorialized by e-mail from MERIX to XSUNX.

2. Sale of the Equipment. XSUNX hereby sells to MERIX, as a bulk sale and in accordance with all of the terms of the prior sale of the Equipment by MERIX to XSUNX, including price (but with the parties reversed as appropriate). XSUNX covenants and agrees to promptly execute and deliver any and all documentation necessary or desirable in order to effectuate, consummate or memorialize such sale as and when requested by MERIX.

3. Letter of Credit. XSUNX acknowledges and confirms its acceptance and approval of the full drawdown of the Letter of Credit by MERIX and the release of all such funds to MERIX as partial payment of past due rent.

4. Promissory Note. Simultaneously with the execution and delivery of this Agreement, XSUNX shall and has made and delivered a promissory note to MERIX as Holder in the amount of $456,920.66 and on the terms and conditions set forth therein, in form and substance satisfactory to MERIX.

5. Mutual Release. Except for the obligations of the parties under this Agreement and as of the date hereof, MERIX and XSUNX, on behalf of each of their officers, employees, directors, shareholders, agents, attorneys, successors and assigns (collectively, "Affiliates"), hereby unconditionally releases, acquits and forever discharges the other and its Affiliates from any and all claims, demands, damages, liabilities and causes of action of any kind or nature arising out of or related to the Sublease.

6. Miscellaneous Provisions. (a) This Agreement contains the entire understanding of the parties and is intended to integrate all prior negotiations, discussions, proposals or understandings, either oral or written, with respect to its subject matter. (b) Time is of the essence of this Agreement. (c) This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of laws principles. (d) This Agreement shall to the benefit of and be binding upon the parties hereto and their respective successors and assigns. (e) Any amendment, waiver or modification of this Agreement may be made only with the written consent of the parties hereto. (f) Any provision of this Agreement that is deemed invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement. (g) In the event of litigation concerning this Agreement or its enforcement, the prevailing party shall be entitled to recover all costs and expenses of any such action, including reasonable attorneys' fees, from the other party, including in bankruptcy and on appeal.

IN WITNESS WHEREOF, MERIX and XSUNX have executed this Agreement as of the date first above written.

MERIX CORPORATION

By: _____
Name: Kelly Lang
Title: EVP/CFO Merix Corporation

XSUNX, INC.

By: _____
Name: Tom Djokovich
Title: CEO XsunX, Inc.

Merix Corporation

15725 SW Greystone Court, Suite 200
Beaverton, OR 97006
Tel: 866-613-8304

INVOICE

Invoice No.: WV051408
Invoice Date: 5/19/2008

Ship To: WoodVillage, OR
(DO NOT MOVE EQUIPMENT)

ANY CLAIMS OR COMPLAINTS REGARDING THE BELOW DELIVERED GOODS MUST BE REPORTED TO OUR MARKETING DEPARTMENT WITHIN 14 DAYS FROM THE DATE OF SHIPMENT, OTHERWISE NO ADJUSTMENTS WHATSOEVER WOULD BE ALLOWED.

Bill To: XsunX, Inc
65 ENTERPRISE
ALISO VIEJO, CA 92656
USA

Please send your check crossed and payable to: Merix Corporation
Bank of America Lockbox Serivet
14479 Collections Center Drive
Chicago IL 60693

Questions concerning this invoice, please contact John R Johnston (JJ) 503-992-4280

Mode of Transport:	Customer Purchase Order No.: 002-2089	Country of Origin:	Country of Destination: USA
ICC Shipping (/Inco) Terms (e.g., FOB, C&F):	Sales Order:	Payment Terms - 2% For Overdue Balances: NET DUE UPON RECEIPT	Shipping Date:

	Discription of Goods:	Tax	UM	Qty		Unit Price		Amount
1	Merix Asset Bulk Purchase	N/A	LOT	1	USD	111,620.00	USD	111,620.00

Please see attached Spreadsheet for itemized list of BULK PURCHASE.

Comments:

Item Subtotal:	USD	111,620.00
Shipping / handling:	USD	
Tax:	USD	
Total:	USD	111,620.00

Equipment				Retention by	Demo		Merix Price
Equipment Description	System / Service	Loc	Manufacturer / M	XSunX	Y/N	Remark	
Proj. Screen	A/V			X	N		$100.00
Fire Man Doors (6)	Arch					See Plans for Quantity to be retained	$120.00
Roll up Fire rated Doors (6)	Arch					See Plans for Quantity to be retained	$1,800.00
View Windows	Arch					See Plans for Quantity to be retained	$0.00
Air Handlers	Class 10K CR	Roof	Huntair	X	N		$0.00
Air Handlers	Class 10K CR	Roof	Huntair	X	N		$0.00
Allied Telesyn Switches	Communications			X	N	No value unless used as remote for base system	$0.00
Comp Terminal Conn and Telephone system	Communications			X	N		$0.00
Compressor/Dryer/Reciever	Comp. Air	RM 102	Kobelco KNW Series Oil-free	X	N		$10,000.00
Cooling Tower	Condenser Water		Evapco Cooling Tower,	X	N		$0.00
Pump	Condenser Water		600 GPM, 50 TDH, 150 HP	X	N		$0.00
Pump	Condenser Water		600 GPM, 50 TDH, 150 HP	X	N		$0.00
AHU Control Pnls	Controls		visalia	X	N		$500.00
Humidity Sensors	Controls			X	N	Remove Undamaged and Surrender to XSunX	$0.00
T Sensors	Controls			X	N	Remove Undamaged and Surrender to XSunX	$0.00
Water Heater	DHW	RM 145	AO Smith, 74.5 Gal Gas Hot Water	X	N		$0.00
Tempered Water System (Eye Wash/E.Shower)	E Shower			X	N		$100.00
Tempered Water System Heater	E. Showers	Mez abv 149	AO Smith Model BTP 140-199 Gas	X	N		$0.00
Disconnects	Electrical			X	N		$0.00
Lighting Control Panels	Electrical			X	N		$1,000.00
Light fixtures	Electrical			X	N		$0.00
Panelboards	Electrical			X	N		$2,500.00
Switchboards (2)	Electrical			X	N		$4,000.00
Enclosed circuit breakers	Electrical			X	N		$1,000.00
Transformers	Electrical			X	N		$1,000.00

Starters	Electrical			X	N		$0.00
Cable Tray	Electrical			X	N		$500.00
Feeder and branch conduit/wire	Electrical			X	N		$0.00
Bus Duct and plug in units	Electrical			X	N		$1,000.00
Fire Alarm System/controls	Electrical			X	N		$1,000.00
Security System	Electrical			X	N		$1,000.00
Receptacles, wall switches	Electrical			X	N		$0.00
Smoking Shelter	FFE			X	N		$0.00
Steel Case Workstations	FFE			X	N		$5,000.00
Fire Exfinguisher recessed cabinets	Fire Prot			X	N	Remove Undamaged and Surrender to XSunX	$0.00
Fire Sprink System	Fire Prot			X	N		$0.00
Hot Water Heater	IHW	RM 104	30 Gal Hot Water Heater		Y	See Plans for extent of Demo	$0.00
Unit Heaters (12)	Mech			X	N		$1,000.00
Air Handlers (12)	Mech	Roof	Carrier	X	N		$0.00
Exhaust Fans (21)	Mech	Roof	ACME	X	N		$0.00
Chillers 130T	PCW	Roof	Carrier	X	N		$20,000.00
Chillers 105T	PCW	Roof	Carrier	X	N		$10,000.00
Pumps (6)	PCW	rm 145	Paco Pumps 2- 270 GPM, 70 TDH, 10	X	N		$0.00
RO Unit/tank/UV/Distribution	RO Water	RM 102	80 GPM Reverse Osmosis Unit	X	N		$10,000.00
Badge Reader System	Security	rm 116	Complete Badge Reader	X	N		$0.00
Sec. Camera Base Unit and monitor	Security			X	N		$0.00
SITE SECURITY LIGHTING	Security			X	N		$0.00
Boiler - Steam (2) System	Steam	102	Cleaver Brooks Boiler Model FLX,	X	N		$10,000.00
Emergency Generator 150kw				X			$20,000.00
Vacuum Pump System w collector	Vacuum	RM 101	Spencer Vucuum Pump, 75	X	N		$10,000.00
Dehumidifier		Mez abv 113	Desiccant Dehumidifier, Kathabar	X	N		$0.00

$111,620.00

PROMISSORY NOTE

August 27, 2009

$ 456,920.66

FOR VALUE RECEIVED, the undersigned makers (herein collectively referred to as "Maker," whether one or more parties) promise to pay to the order of MERIX CORPORATION (herein "Holder") at 15725 SW Greystone Court, Suite 200, Beaverton, Oregon, 97006 or such other place as Holder may direct, the principal sum of FOUR HUNDRED FIFTY SIX THOUSAND NINE HUNDRED TWENTY AND 66/100 DOLLARS ($456,920.66), together with interest as provided herein.

1. **Interest and Payment** .

1.1 **Interest Rate** . Maker promises to pay interest from and including the date of this Note until maturity on the unpaid principal of this Note at the rate of ten percent (10%) per annum.

1.2 **Payments** . Maker will pay to Holder all sums due under this Note, including all principal and accrued interest thereon no later than September 1, 2011 (the "Maturity Date"), provided that this Note may be prepaid by the Maker at any time prior to the Maturity Date in whole or in part without premium or penalty.

1.3 **Default; Default Interest Rate** . If the Maker fails to make a payment when due or fails to comply with any other term of this promissory note, the loan will be considered in default. After default or maturity, any principal not paid shall bear interest at the annual rate of eighteen percent (18%) per annum.

1.4 **Place and Time of Payment** . All payments shall be made to Holder at its address set forth above, and shall be made without prior notice or demand.

1.5 **Form and Application of Payments** . Payments shall be in lawful money of the United States of America and when received by Holder shall be applied first to accrued interest, second to principal.

2. **Attorneys' Fees** .

In the event litigation is commenced by a party hereto to enforce or interpret any provision of this Note, or to collect any amount due hereunder, the prevailing party in such litigation shall be entitled to receive, in addition to all other sums and relief, its reasonable costs and attorneys' fees, incurred both at and in preparation for trial and any appeal or review, such amount to be set by the courts before which the matter is heard.

3. **Governing Law, Severability** .

This Note shall be construed and enforced in accordance with the laws of the State of Oregon. If any provision of this Note is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties agree that (a) such provision be enforceable to the full extent permitted by law, and (b) the invalidity or unenforceability of such provision shall not affect the validity and enforceability of the remainder of this Note.

4. **Amendment** .

This Note may not be amended, modified or changed, nor shall any provision of this Note be deemed waived, other than by an instrument in writing signed by the party against whom enforcement of any such waiver, amendment, change, or modification is sought.

5. **Notices** .

Any notice required or permitted to be given under this Note may be given by depositing the same in the United States Mail, postage prepaid, by certified mail, return receipt requested, addressed to the Maker or Holder, as the case may be, at their respective addresses set forth in this Note. Any notice given in the manner set forth above shall be effective upon the expiration of two (2) business days after deposit in the United States Mail; notice given in any other manner shall be effective only upon receipt by the party for whom the same is intended.

This Promissory Note has been executed as of the date and year first above written.

MAKER:

XSUNX, INC., a Colorado corporation

By: _____

Name: Tom M. Djokovich

Its: Chief Executive Officer

Maker's Address:

65 Enterprise, Aliso Viejo, CA 92656

CONSULTING AND ADVISORY AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement"), made effective as of the 9th day of March 2009, is entered into by and between Xsunx, Inc., a Colorado corporation ("Company"), and Orion Business Services, LLC, 10651 West 34 th Place, Wheat Ridge, CO 80033 ("Consultant"). The Company and Consultant are sometimes herein referred to individually as a "party" and collectively as the "Parties".

RECITALS

WHEREAS , Consultant has developed an expertise in the areas of strategic financial and accounting services similar to those of a Chief Financial Officer as well as maintenance of the Company's books and records and financial regulatory compliance which is of interest to the Company;

WHEREAS , the Company desires to obtain the services of Consultant and Consultant desires to provide the Company with consultancy and advisory services as contemplated pursuant to the terms and conditions contained herein; and

WHEREAS , the undersigned Parties desire to formalize such consultancy relationship;

NOW, THEREFORE , in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Definitions

1.1 "XsunX Field of Use" means the business of developing, manufacturing, and marketing semi-transparent and opaque solar cells and photovoltaic technologies, solar cell panels, and methods of manufacture.

1.2 "Business of XsunX" means the business of developing and commercializing semi-transparent and opaque solar cells and photovoltaic technologies, solar cell panels, and methods of manufacture.

2. Engagement of Services. The Company hereby engages Consultant as an independent contractor to provide consulting and advisory services as set forth herein. All such consulting and services shall be performed in accordance with the terms and conditions contained herein. Consultant shall report to the Chief Executive Officer, or in their absence, the Board of Directors of the Company. Consultant hereby accepts such engagement in accordance with such terms and conditions.

3. Services of Consultant . Consultant shall, in its sole discretion, provide consultancy and advisory services and shall remain an independent contractor. Attached hereto as Exhibit "A", and incorporated herein by reference, is a service request form specifying the initial scope of work to be rendered by Consultant. The Company may, but is not obligated to, provide additional project and/or service requests to Consultant. Any subsequent service request will be governed by this Agreement. Consultant shall provide such services incident thereto as may be necessary from time to time which services shall include, without limitation, providing the Company with his best efforts and technical expertise in advising the Company in the areas of strategic financial and accounting services similar to those of a Chief Financial Officer as well as maintenance of the Company's books and records and financial regulatory compliance which is of interest to the Company.

3.1. Consultant shall provide such other related services as may be requested of Consultant by the Company and as are not inconsistent with the provisions of this Agreement. Consultant agrees to devote Consultant's best efforts, skills, and technical expertise to the business of the Company, to do Consultant's utmost to further enhance and develop the interests and welfare of the Company, and to devote necessary time and attention to the business of the Company, while recognizing Consultant's duties to its other professional responsibilities.

3.2. Consultant shall truthfully and accurately make, maintain and preserve all records and reports that the Company may, from time to time, request or require, and shall fully account for all money, records, equipment, materials or other property belonging to the Company of which Consultant may have custody and shall pay over and deliver same promptly whenever and however Consultant may be directed to do so.

3.3. Consultant shall make available to the Company any and all information of which Consultant has knowledge that is relevant to the Company's business, but is not otherwise prohibited from disclosing, and make all suggestions and recommendations which Consultant believes will be of benefit to the Company.

3.4. Consultant shall, at his own cost, prepare for such meetings as may be reasonably requested by the Company, provided, however, that the Company shall pay for the reasonable travel and lodging costs incurred by Consultant in regard to the foregoing. The Company may request at least one meeting per calendar month for the purpose of discussion of the development matters referenced hereinabove, and the conformance or variance of the foregoing to or with the Business of XsunX.

4. Duty to Other Parties. The parties recognize that Consultant may provide consultancy or be employed by other parties, and that as such, Consultant may devote time and effort to the business of other parties. Notwithstanding the same, Consultant shall conform Consultants' conduct to the fiduciary duties of confidentiality and loyalty owed to the Company. In that regard, Consultant shall inform the Company at the earliest opportunity at such time as Consultant may perceive a potential conflict of interest with regard to Consultant's duties to other parties and Consultant's duties to the Company. Consultant shall not make any unauthorized disclosure of the confidential information of other parties to the Company. Consultant shall not make any unauthorized disclosure of the confidential information of the Company to other parties (or any other party not permitted to receive such information).

5. Compensation . For and in consideration of the performance by Consultant of the services, terms, conditions, covenants and promises herein recited, the Company agrees and promises to pay to Consultant at the times and in the manner herein stated and as set forth below:

5.2. Consultant shall be entitled to the "Base Compensation" of $10,000.00 Dollars per month.

5.2. Consultant shall bill the Company weekly for services rendered based on work product provided or delivered as a result of Company authorized projects or service requests. Except as otherwise set forth herein, the payment of invoices shall constitute the sole compensation of Consultant hereunder.

5.3. The Company shall reimburse Consultant, from time to time, upon Consultant's submission of expense account and supporting documents as required by the Internal Revenue Service, for all reasonable out of town travel, entertainment, long distance telephone charges, mailing, and other ordinary, reasonable and necessary business expenses incurred by Consultant as part of and in connection with the direct performance of duties specified herein.

6. Relationship of the Parties

6.1 Legal Status. Consultant shall be an independent contractor of the Company in accordance with the provisions of Sections 2750.5 and 3353 of the California Labor Code, or any other corresponding provision of the Colorado Statutes, and not an employee, agent, or partner. It is expressly declared that such independent contractor status is bona fide and not a subterfuge to avoid employee status. This Agreement shall not create an employer-employee relationship and shall not constitute a hiring of such nature by either party.

6.2. Items Furnished to Consultant. Unless expressly agreed in writing otherwise by the parties, the Company shall not provide any telephone equipment or services, office equipment, stationery, secretarial or office support services or other items or services for the benefit of Consultant. Consultant shall, at its own expense, provide and make arrangement for all equipment, stationery, secretarial and office support services. Through the period of the lease for 500 Corporate Circle, Suite J, Golden, Colorado 80401, the Consultant shall use those office facilities and equipment.

6.3. Consent of Company. Consultant shall have no right or authority at any time to make any contract or binding promise of any nature on behalf of the Company, whether oral or written, without the express prior written consent of the Company.

6.4. Manner of Performing Services. Consultant shall retain all discretion and judgment in regard to the manner and means of carrying out its duties hereunder subject, however, to the reasonable requests of the Company. Consultant shall have the right to control and discretion as to the manner of performance of its services hereunder in that the result of the work and not the means by which it is accomplished shall be the primary factor for which the parties have bargained hereunder in accordance with Sections 2750.5 and 3353 of the California Labor Code or any corresponding provision in the Colorado Statutes. Consultant's obligations for performance of services hereunder shall be limited to the completion of the consultation and services described above in accordance with the Business of XsunX and the XsunX Field of Use. Consultant shall have no obligation to work any particular hours or days or any particular number of hours or days. The Company shall have no right to control or direct the details, manner or means by which Consultant accomplishes the results of the services performed hereunder.

6.5. Payment of Taxes. Consultant shall be responsible for and pay Consultant's own employment taxes, estimated tax liabilities, business equipment or personal property taxes and other similar obligations, whether federal, state or local. The Company shall not pay or withhold any FICA, SDI, federal or state income tax or unemployment insurance or tax or any other amounts because the relationship of the parties hereto is not that of employer-employee, but that of independent contractor. Consultant shall be solely responsible for the payment of all taxes, withholdings and other amounts due in regard to Consultant's own employees.

6.6. Employees of Consultant. Consultant may subcontract with and/or employ such parties upon such terms and conditions as it may deem proper or necessary.

7. Warranties and Indemnification

7.1. Warranties. Consultant warrants and represents that the services of Consultant's subcontractors or employees shall be performed in full compliance with the terms and conditions of this Agreement, and, that all services performed hereunder shall be performed in accordance with all federal, state and local laws, rules or regulations.

7.2. Indemnification by Consultant. Consultant shall indemnify, defend and hold the Company and the property of the Company, free and harmless from any and all claims, losses, damages, injuries, and liabilities, including the Company's reasonable attorney fees and costs (the Company may choose its own counsel when defended hereunder), arising from or in any way connected with the performance of services under this Agreement or any other act or omission by Consultant, its agents, subcontractors, or employees.

7.3. Indemnification by the Company. The Company shall indemnify, defend and hold Consultant and the property of Consultant, free and harmless from any and all claims, losses, damages, injuries, and liabilities, including Consultant's reasonable attorney fees and costs, arising from or in any way connected with any act or omission on the part of the Company, its constituent partners, agents, subcontractors, or employees.

8. **Term** . Consultant's engagement pursuant to this Agreement shall be month to month and project based and shall commence upon the date of execution hereof (the "Commencement Date").

9. **Termination** . Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement at any time upon ten (10) days prior written notice to the other. This Agreement may also be terminated by the Company, at its option, at any time during the term of this Agreement without notice, for good cause. Termination for good cause shall include, but not be limited to, any of the following:

9.1. The commission by Consultant or the Company or the officers of the Company of an act of fraud or other act materially evidencing bad faith or dishonesty;

9.2. The misappropriation by Consultant of any funds or property or other rights of the Company;

9.3. The suspension or removal or termination of Consultant by or at the request or requirement of any governmental authority having jurisdiction over the Company;

9.4. The breach by Consultant of any material terms of this Agreement or any other agreement between Consultant on the one hand and the Company, or any affiliate of the Company, on the other hand, including, but not limited to, the Technology Agreement;

9.5. Upon the death of the Consultant.

10. Confidentiality . All information derived or provided to Consultant under the terms and specific to the performance of this Agreement, including lists and databases, and any part of such lists, databases, or information, pertaining to customers, merchants, salespersons, financial records, computer software programs, strategic plans, contracts, agreements, literature, manuals, brochures, books, records, correspondence, computer programs, software, source codes, computations, data files, algorithms, techniques, processes, designs, specifications, drawings, charts, plans, schematics, computer disks, magnetic tapes, books, files, records, reports, documents, Instruments, agreements, contracts, correspondence, letters, memoranda, financial, accounting, sales, purchase and consultant data, capital structure information, corporate organizational information, identities, names and address of, and any information pertaining to, shareholders, directors, officers, consultants, contractors, vendors, suppliers, customers, clients, lenders, financing and business participants, and all persons associated with the Company, information pertaining to business models, business plans, projections, assumptions and analyses, particular projects, and all other data and information and similar items relating to the business of the Company and all other data and information and similar items relating to the Company of whatever kind or nature and whether or not prepared or compiled by the Company and all other materials furnished or made available to Consultant by the Company or any of its affiliates (as hereinafter defined) relating to the business conducted by the Company ("Confidential Information"), is and are proprietary and confidential and are and shall remain the sole property of the Company. Affiliate as used in this section shall mean the Company, any entity in which Company owns a majority ownership (directly or indirectly), or any entity which owns a majority ownership of Company (directly or indirectly). Consultant acknowledges that the Confidential Information derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use and that this confidentiality provision constitutes efforts that are reasonable under the circumstances to maintain the secrecy thereof. Consultant further acknowledges that the Confidential Information constitutes trade secrets pursuant to California Civil Code §3426.1. Consultant shall not, directly or indirectly, at any time during or after termination of consultant use or reveal, divulge, disclose, disseminate, distribute, license, sell, transfer, assign or otherwise make known, directly or indirectly, the Confidential Information to any person or entity not expressly authorized by the Company to receive such Confidential Information.

10.1 Consultant shall exercise the highest degree of care and discretion in accordance with the duty of Consultant hereunder to prevent improper use or disclosure of the Confidential Information and will retain all such Confidential Information in trust in a fiduciary capacity unless: (i) such use or disclosure has been authorized in writing by the Company through an officer or director, or (ii) is required to be disclosed by law, a court of competent jurisdiction or a governmental or regulatory agency. Further, Consultant shall return and deliver all such materials, including all copies, remnants, or derivatives thereof to the Company upon the termination of consultant with the Company or at any other time upon request by the Company.

11. Patents and Inventions . Any interest in patents, patent applications, inventions, technological innovations, copyrights, copyrightable works, developments, discoveries, designs, and processes ("Inventions") which Consultant hereafter during the period Consultant is retained by the Company under this Agreement or otherwise and for three (3) years thereafter may own, conceive of, or develop shall belong to the Company to the extent that the same: (1) relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or demonstrably anticipated research or development of the Company; (2) result from any work performed by Consultant for the Company; or (3) have otherwise been developed by Consultant using the Company's equipment, supplies, facilities, or trade secret information. As soon as Consultant owns, conceives of, or develops any such Invention, Consultant agrees immediately to communicate such fact in writing to the Secretary of the Company, and without further compensation, but at the Company's expense, immediately upon request of the Company, Consultant shall execute all such assignments and other documents (including applications for patents, copyrights, trademarks, and assignments thereof) and perform any and all acts as the Company may reasonably request in order (a) to vest in the Company all Consultant's right, title, and interest in and to such Inventions, free and clear of liens, mortgages, security interests, pledges, charges, and encumbrances arising from the acts of Consultant and (b), if patentable or copyrightable, to obtain patents or copyrights (including extensions and renewals) therefore in any and all countries in such name as the Company shall determine. Notwithstanding the foregoing, pursuant to Section 2872 of the California Labor Code, this Agreement shall not apply to any Invention which qualifies fully under the provisions of Section 2870 of the California Labor Code. Consultant acknowledges receipt of a copy of 2870 of the California Labor Code.

11.1 Derivative Works. All derivative works of the parties resulting from research or work funded by, or Confidential Information provided by, the Company associated with any subsequent research by any party, development, or combination of technologies of the parties after the Commencement Date, which are useful or specific to the XsunX Field of Use or the Business of XsunX, shall become the property of the Company.

12. Assignment . The obligations of Consultant under this Agreement are unique and may not be assigned.

13. Amendments . This Agreement may be amended only in writing executed by Consultant and Company and approved in writing by the majority vote of the Board of Directors of the Company.

14. Effect of Headings . The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

15. Parties in Interest . Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Contract, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

16. Recovery of Litigation Costs . If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover as an element of their damages, reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.

17. **Gender; Number** . Whenever the context of this Contract requires, the masculine gender includes the feminine or neuter gender, and the singular number includes the plural.

18. **Time of Essence** . Time shall be of the essence in all things pertaining to the performance of this Agreement unless waived in writing by the undersigned parties.

19. **Authority** . The parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacitates herein stated and on behalf of any entities, persons or firms represented or purported to be represented by each respective party.

20. **Waiver** . A Waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to a waiver of such terms of condition for the future, or of any subsequent breach thereof, or of any other term and condition of this Agreement. All waivers must be made in writing executed by the waiving party.

21. **Entire Agreement** . This Agreement constitutes the entire agreement between the parties respecting the subject matter hereof, and there are no other representations, warranties, agreements or commitments between the parties hereto except as set forth herein. This Agreement cancels and shall supersede and control any previous agreements between the Parties. This Agreement shall control over any and all provisions or guidelines contained in any Consultant Manual, Consultant Handbook, Company Policy Manual or other similar document. Consultant expressly acknowledges that no Consultant Manual, Consultant Handbook, Company Policy Manual or other similar document is or shall become a contract between the Company and Consultant.

22. **Notices** . Any notice, request, demand or other communication permitted to be given hereunder shall be in writing and shall be deemed to be duly given when personally delivered to an Consultant officer of the Company or to Consultant, as the case may be, or when deposited in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, at the respective addresses of the Company and Consultant as shown on the signature page hereto. Either party may change by notice the address to which notices are to be sent.

23. **Severability** . If any provision of this Agreement shall, for any reason, be held unenforceable, such provision shall be severed from the contract. The invalidity of such specific provision, however, shall not affect the enforceability of any other provision herein, and the remaining provision shall remain in full force and effect.

24. **Choice of Law and Venue** . This Agreement shall, to the fullest extent allowed by law, be construed, interpreted and enforced in accordance with the laws of the State of Colorado, without regard to or application of conflict of law rules, and the venue in regard to any disputes arising hereunder shall, to the fullest extent allowed by law, be in Orange County, California.

27. **Press Releases.** Any press release, company disclosures and advertisement made by the Company relating to Consultant shall be subject to the approval of Consultant prior to public release. Consultant will not unreasonably withhold such approval and agrees to respond to such requests for approval within two (2) business days.

IN WITNESS WHEREOF , this Agreement is made effective by Consultant and the Company on the date set first forth above.

COMPANY :	**CONSULTANT** :
Xsunx, Inc., a Colorado corporation	Orion Business Services, LLC
By: _____ Tom M. Djokovich, as CEO	By: _____ Jeff Huitt, as Member

“EXIBIT A”

The contract CFO is responsible for the finance and accounting operations of an organization, including financial reporting, and compliance with accepted finance and accounting standards and regulatory requirements.

The possible duties of the contract CFO may include:

- Participating in the organization's strategic business and financial planning processes
- Setting financial goals in support of business operations and strategic directions
- Planning and managing the finances of the entire organization
- Managing securities and cash portfolios, other liquid assets, and debt
- Assisting in obtaining financing for major initiatives or acquisitions
- Providing financial due-diligence for any merger and acquisition activities
- Managing business and financial operations
- Researching and staying abreast of the latest regulatory trends
- Researching and staying abreast of the latest financial accounting reporting trends
- Monitoring financial processes, policies, systems and personnel
- Assuring compliance with accepted financial accounting standards
- Assuring compliance with the recently enacted Sarbanes-Oxley legislation and other SEC regulations, in public companies
- Reporting on the financial well-being of their organization to the CEO, board of directors, stock holders, and regulatory bodies such as the Securities and Exchange Commission (SEC)

EXHIBIT 31.1

OFFICER'S CERTIFICATE
PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Tom Djokovich, certify that:

1. I have reviewed this Form 10-K for the fiscal year ended September 30, 2009 of XsunX, Inc.;

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

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

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

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

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

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

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

5. The registrant's other certifying officer (s) 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: January 12, 2010

/s/ Tom Djokovich
Name: Tom Djokovich
Titles: Chief Executive Officer, Principal Executive Officer, and Principal Financial and Accounting Officer, and Director

EXHIBIT 31.2

OFFICER'S CERTIFICATE
PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Joe Grimes, certify that:

1. I have reviewed this Form 10-K for the fiscal year ended September 30, 2009 of XsunX, Inc.;

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

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

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

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

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

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

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

5. The registrant's other certifying officer (s) 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: January 12, 2010

/s/ Joe Grimes
Name: Joe Grimes
Titles: President, Chief Operating Officer, and Director

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of XsunX, Inc. (the "Company") on Form 10-K for the fiscal year ended September 30, 2009 as filed with the U.S. Securities and Exchange Commission on the date himself (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his 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 operation of the Company.

Date: January 12, 2010

/s/ Tom Djokovich
Name: Tom Djokovich
Title: Chief Executive Officer, Principal Executive Officer, and Principal Financial and Accounting Officer, and Director

A signed original of this written statement required by Section 906, or other document authentications, 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 the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of XsunX, Inc. (the "Company") on Form 10-K for the fiscal year ended September 30, 2009 as filed with the U.S. Securities and Exchange Commission on the date himself (the "Report"), the undersigned hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his 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 operation of the Company.

Date: January 12, 2010

/s/ Joe Grimes
Name: Joe Grimes
Titles: President, Chief Operating Officer, and Director

A signed original of this written statement required by Section 906, or other document authentications, 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 the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.