

# OPEXA THERAPEUTICS, INC.

## **FORM 8-K** (Current report filing)

Filed 01/23/13 for the Period Ending 01/23/13

|             |                                                         |
|-------------|---------------------------------------------------------|
| Address     | 2635 TECHNOLOGY FOREST BLVD.<br>THE WOODLANDS, TX 77381 |
| Telephone   | (281) 272-9331                                          |
| CIK         | 0001069308                                              |
| Symbol      | OPXA                                                    |
| SIC Code    | 2834 - Pharmaceutical Preparations                      |
| Industry    | Biotechnology & Drugs                                   |
| Sector      | Healthcare                                              |
| Fiscal Year | 12/31                                                   |

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

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (date of earliest event reported): January 23, 2013**

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**OPEXA THERAPEUTICS, INC.**  
(Exact name of registrant as specified in its charter)

**Texas**  
(State or other jurisdiction of  
incorporation)

**001-33004**  
(Commission File Number)

**76-0333165**  
(IRS Employer Identification No.)

**2635 Technology Forest Blvd., The Woodlands, Texas**  
(Address of principal executive offices)

**77381**  
(Zip Code)

Registrant's telephone number, including area code: **(281) 272-9331**

**N/A**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### **Item 1.01. Entry into a Material Definitive Agreement**

On January 23, 2013, Opexa Therapeutics, Inc. (the “**Company**”) closed a private offering (the “**Note Offering**”) of unsecured convertible promissory notes (the “**Notes**”) and warrants to purchase shares of common stock (the “**Warrants**”) to certain accredited investors. The Company raised gross proceeds of \$650,000 in principal amount from the Note Offering. The form of Note issued to the investors is attached hereto as Exhibit 10.1 and the form of Warrant issued to the investors is attached hereto as Exhibit 4.1, each of which is incorporated herein by reference.

The Notes mature on January 23, 2014 and accrue interest at the rate of 12% per annum, compounded annually. Interest is payable quarterly beginning March 31, 2013 in cash. The Notes can be converted into common stock at the option of the investors at a price of \$1.298125 per share, subject to certain limitations. Fifty percent of the initial principal amount (less any amount of such principal that has otherwise been prepaid or converted) is payable by the Company five business days following receipt by the Company of an aggregate of at least \$5,000,000 in proceeds from the sale of its equity securities and/or as payments from one or more partners or potential partners in return for granting a license, other rights, or an option to license or otherwise acquire rights with respect to Tcelna<sup>TM</sup> (the Company’s product development candidate). The remaining principal is payable five business days following receipt by the Company of an aggregate of at least \$7,500,000 in proceeds from the sale of its equity securities and/or as payments from one or more partners or potential partners in return for granting a license, other rights, or an option to license or otherwise acquire rights with respect to Tcelna. Any remaining unpaid or unconverted principal is due on January 23, 2014.

The warrants have an exercise price of \$1.24 per share, a five-year term and are exercisable for a maximum of 243,750 shares of common stock, subject to certain limitations. The Company can redeem the warrants at \$0.01 per share if the Company’s common stock closes at or above \$10.00 per share for 20 consecutive trading days.

Pursuant to NASDAQ Stock Market rules, the Notes and the Warrants contain a limitation on conversion or exercise, as applicable, such that the securities are not convertible or exercisable to the extent an investor would beneficially own in excess of 19.9% of the Company’s common stock outstanding or control in excess of 19.9% of the total voting power of the outstanding securities, unless and until the Company obtains shareholder approval permitting such issuance of shares.

Investors in the Note Offering included existing shareholders of the Company as well as new investors. David E. Jorden, a member of the Company’s Board of Directors and Acting Chief Financial Officer, invested \$100,000 in the Note Offering.

The form of Note is attached hereto as an exhibit to provide security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations and warranties contained in the Note were made only for purposes of the Note Offering and as of a specific date and were solely for the benefit of the parties to the Note Offering.

The foregoing description of the Note Offering by the Company and the documentation related thereto does not purport to be complete and is qualified in its entirety by reference to such Exhibits.

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**Item 2.03            Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The disclosure in Item 1.01 above is incorporated herein by reference.

**Item 3.02            Unregistered Sales of Equity Securities**

The disclosure in Item 1.01 above is incorporated herein by reference. The offers and sales of the Notes and Warrants were made without registration under the Securities Act of 1933, as amended (the “**Act**”), or the securities laws of applicable states, in reliance on the exemptions provided by Section 4(2) of the Act and Regulation D under the Act and in reliance on similar exemptions under applicable state laws, based upon representations made by the investors (each of whom is an “accredited investor” as such term is defined in Rule 501(a) of Regulation D).

**Item 8.01            Other Events**

On January 23, 2013, the Company issued a press release announcing the closing of the Note Offering described above in Item 1.01. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01            Financial Statements and Exhibits**

(d) Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--------------------|
|--------------------|--------------------|

|      |                                                                       |
|------|-----------------------------------------------------------------------|
| 4.1  | Form of Series J Warrant issued to investors.                         |
| 10.1 | Form of 12% Convertible Promissory Note issued to investors.          |
| 99.1 | Press Release issued by Opexa Therapeutics, Inc. on January 23, 2013. |

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## SIGNATURES

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

Dated: January 23, 2013

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma

Neil K. Warma

President & Chief Executive Officer

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## **EXHIBIT INDEX**

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THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (THE “ACT”), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT.

THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. CENTRAL TIME ON JANUARY 23, 2018 (THE “EXPIRATION DATE”).

J-\_\_\_\_

January 23, 2013

OPEXA THERAPEUTICS, INC.

**SERIES J WARRANT TO PURCHASE SHARES  
OF COMMON STOCK, PAR VALUE \$0.01 PER SHARE**

For VALUE RECEIVED, \_\_\_\_\_ (“**Warrantholder**”) is entitled to purchase, subject to the provisions of this Series J Warrant (this “**Warrant**”), from Opexa Therapeutics, Inc., a Texas corporation (“**Company**”), at any time after the date hereof (the “**Initial Exercise Date**”) and not later than 5:00 P.M., Central time, on the Expiration Date (as defined above), at an exercise price per share equal to \$1.24 (the exercise price in effect being herein called the “**Warrant Price**”), \_\_\_\_\_ (\_\_\_\_\_) shares (“**Warrant Shares**”) of the Company’s Common Stock, par value \$0.01 per share (“**Common Stock**”). The number of Warrant Shares purchasable upon exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time as described herein.

1. Registration. The Company shall maintain books for the transfer and registration of the Warrant. Upon the initial issuance of this Warrant, the Company shall issue and register the Warrant in the name of the Warrantholder.

2. Transfers. This Warrant may be transferred only pursuant to a registration statement filed under the Securities Act of 1933, as amended (the “**Securities Act**”), or an exemption from such registration. Subject to such restrictions, the Company shall transfer this Warrant from time to time upon the books to be maintained by the Company for that purpose, upon surrender hereof for transfer, properly endorsed or accompanied by appropriate instructions for transfer and such other documents as may be reasonably required by the Company, including, if required by the Company, an opinion of counsel to the effect that such transfer is exempt from the registration requirements of the Securities Act, to establish that such transfer is being made in accordance with the terms hereof, and a new Warrant shall be issued to the transferee (who shall thereafter be the Warrantholder hereunder) and the surrendered Warrant shall be canceled by the Company.

3. Exercise of Warrant.

(a) Subject to the provisions hereof, including Section 3(c), the Warrantholder may exercise this Warrant, in whole or in part, at any time after the Initial Exercise Date and prior to 5:00 p.m. Central Time on the Expiration Date upon (i) written notice, in the form attached hereto as **APPENDIX A** (the “ **Exercise Notice** ”), of the Warrantholder’s election to exercise this Warrant, and (ii) payment by cash, certified check or wire transfer of funds, or pursuant to a cashless exercise pursuant to Section 3(b) below, of the aggregate Warrant Price for that number of Warrant Shares then being purchased, to the Company during normal business hours on any business day at the Company’s principal executive offices (or such other office or agency of the Company as it may designate by notice to the Warrantholder). The Warrant Shares so purchased shall be deemed to be issued to the Warrantholder or the Warrantholder’s designee, as the record owner of such shares, as of the close of business on the date on which the Warrant Price shall have been paid and the completed Exercise Notice shall have been delivered. The Warrantholder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Certificates for the Warrant Shares so purchased shall be delivered to the Warrantholder within a reasonable time, not exceeding three (3) business days, after this Warrant shall have been so exercised. The certificates so delivered shall be in such denominations as may be requested by the Warrantholder and shall be registered in the name of the Warrantholder or such other name as shall be designated by the Warrantholder, as specified in the Exercise Notice. If this Warrant shall have been exercised only in part, then, unless this Warrant has expired, the Company shall, at its expense, at the time of delivery of such certificates, deliver to the Warrantholder a new Warrant representing the right to purchase the number of shares with respect to which this Warrant shall not then have been exercised. As used herein, “business day” means a day, other than a Saturday or Sunday, on which banks in Houston, Texas are open for the general transaction of business. The Warrantholder’s acceptance of this Warrant as well as each exercise hereof shall each constitute the affirmation by the Warrantholder that the representations and warranties contained in **APPENDIX B** attached hereto are true and correct in all material respects with respect to the Warrantholder as of the time of such acceptance and as of the time of each exercise. The Warrantholder shall promptly physically surrender this Warrant to the Company in the event the Warrant is exercised. The Warrantholder and the Company shall maintain records showing the amount exercised and the dates of such exercise. The Warrantholder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provision of this paragraph, following exercise of a portion of the Warrant, the number of Warrant Shares of this Warrant may be less than the amount stated on the face hereof.

(b) Subject to the provisions hereof, the Warrantholder may effect one or more cashless exercises by surrendering Warrants to the Company and giving written notice that the Warrantholder wishes to effect a cashless exercise by surrendering some Warrants without exercise, upon which the Company shall issue, or cause to be issued, to the Warrantholder up to the number of Warrant Shares determined as follows:

$$X = Y \times (A-B)/A$$

where:

X = the maximum number of Warrant Shares that may be issued to the Warrantholder;

Y = the number of Warrant Shares with respect to which the Warrant is being exercised;

A = the Market Price as of the Date of Exercise; and

B = the Exercise Price.

“ **Market Price** ” of a share of Common Stock on any date shall mean, (i) if the shares of Common Stock are listed on the NASDAQ Stock Market, the official closing price reported on that date; (ii) if the shares of Common Stock are no longer listed on the NASDAQ Stock Market and are listed on any other national securities exchange, the last sale price of the Common Stock reported by such exchange on that date; (iii) if the shares of Common Stock are not listed on any such exchange and the shares of Common Stock are traded in the over-the-counter market, the last price reported on such day by the OTC Bulletin Board; (iv) if the shares of Common Stock are not listed on any such exchange or quoted on the OTC Bulletin Board, then the last price quoted on such day in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding its functions of reporting prices); or (v) if none of clauses (i)-(iv) are applicable, then as determined in good faith by the Company’s Board of Directors (the “ **Board of Directors** ”).

“ **Date of Exercise** ” means the date on which the Company has received from Warrantholder the completed and executed Exercise Notice.

(c) Limitations on the Number of Shares Issuable. Notwithstanding anything herein to the contrary, the Company shall not issue to the Warrantholder any Warrant Shares to the extent that, after giving effect to such issuance, the Warrantholder (together with any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Warrantholder, as such terms are used in and construed under Rule 144 under the Securities Act and the rules and regulations promulgated thereunder - each an “ **Affiliate** ”) would (i) beneficially own shares of Common Stock in excess of 19.9% of the shares of Common Stock outstanding (immediately after giving effect to such issuance) or (ii) control in excess of 19.9% of the total voting power of the Company’s securities outstanding (immediately after giving effect to such issuance) that are entitled to vote on a matter being voted on by holders of Common Stock, unless and until the Company obtains shareholder approval permitting such issuances in accordance with applicable rules of the NASDAQ Stock Market; provided, however, that such limitations on issuance shall not apply to any exercise of this Warrant in connection with and subject to completion of the following if, upon completion, the Warrantholder and its Affiliates would not exceed the specified limits: (i) any offering of securities by the Company or its shareholders (including, without limitation, the Warrantholder); and (ii) a *bona fide* third party tender offer for the Company securities. For purposes of this Section 3(c), beneficial ownership shall (x) exclude such number of shares of Common Stock that would be issuable upon exercise or conversion of the unexercised or non-converted portion of any securities of the Company (including, without limitation, options, warrants and convertible securities such as convertible promissory notes) except for a limitation on conversion or exercise analogous to the limitation contained in the first sentence of this Section 3(c) and (y) otherwise be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934 (and the rules promulgated thereunder). [Note: If the limitation contained in the first sentence of this Section 3(c) applies to any exercise of this Warrant, then the Company shall nonetheless issue to the Warrantholder such securities as may be issued below the limitation.] Upon the written request of the Warrantholder, the Company shall within two (2) business days confirm in writing to the Warrantholder the number of shares of Common Stock then outstanding.

4. Company Call Right; Redemption. Notwithstanding any other provision contained in this Warrant to the contrary, if the shares of Common Stock trade on the Nasdaq Capital Market, or any other trading market on which the shares of Common Stock are then traded, with a per share closing price on the trading day of at least \$10.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock) for at least twenty (20) consecutive trading days, then the Company, upon thirty (30) days prior written notice (the “**Notice Period**”) given to the Warrantholders within thirty (30) days of the occurrence of the triggering event, may call the Warrants, in whole or in part, at a redemption price equal to \$0.01 per share of Common Stock then purchasable pursuant to the Warrants called for redemption. The Warrantholder shall have the right to exercise the Warrants prior to the end of the Notice Period. As of the last day of the Notice Period, any Warrants timely and validly called for redemption by the Company shall terminate and permanently cease to be exercisable and the Warrantholders shall then be entitled only to receive the redemption price.

5. Compliance with Securities Laws. This Warrant may only be exercised by the Warrantholder in accordance with applicable securities laws. The Company may cause the legend set forth on the first page of this Warrant to be set forth on each Warrant, and a similar legend on any security issued or issuable upon exercise of this Warrant, unless counsel for the Company is of the opinion as to any such security that such legend is unnecessary.

6. Payment of Taxes. The Company will pay any documentary stamp taxes attributable to the initial issuance of Warrant Shares issuable upon the exercise of the Warrant; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for Warrant Shares in a name other than that of the Warrantholder in respect of which such shares are issued, and in such case, the Company shall not be required to issue or deliver any certificate for Warrant Shares or any Warrant until the person requesting the same has paid to the Company the amount of such tax or has established to the Company’s reasonable satisfaction that such tax has been paid. The Warrantholder shall be responsible for income taxes due under federal, state or other law, if any such tax is due.

7. Mutilated or Missing Warrants. In case this Warrant shall be mutilated, lost, stolen, or destroyed, the Company shall issue in exchange and substitution of and upon surrender and cancellation of the mutilated Warrant, or in lieu of and substitution for the Warrant lost, stolen or destroyed, a new Warrant of like tenor and for the purchase of a like number of Warrant Shares, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of the Warrant, and with respect to a lost, stolen or destroyed Warrant, reasonable indemnity or bond with respect thereto, if requested by the Company.

8. Reservation of Common Stock. At any time when this Warrant is exercisable, the Company shall at all applicable times keep reserved until issued (if necessary) as contemplated by this Section 8, out of the authorized and unissued shares of Common Stock, at least a number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of this Warrant then outstanding. The Company agrees that all Warrant Shares issued upon due exercise of the Warrant shall be, at the time of delivery of the certificates for such Warrant Shares, duly authorized, validly issued, fully paid and non-assessable shares of Common Stock of the Company.

9. Adjustments.

(a) If the Company shall, at any time or from time to time while this Warrant is outstanding, pay a dividend or make a distribution on its Common Stock in shares of Common Stock, subdivide its outstanding shares of Common Stock into a greater number of shares or combine its outstanding shares of Common Stock into a smaller number of shares, then (i) the Warrant Price in effect immediately prior to the date on which such change shall become effective shall be adjusted by multiplying such Warrant Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such change and the denominator of which shall be the number of shares of Common Stock outstanding immediately after giving effect to such change and (ii) the number of Warrant Shares purchasable upon exercise of this Warrant shall be adjusted by multiplying the number of Warrant Shares purchasable upon exercise of this Warrant immediately prior to the date on which such change shall become effective by a fraction, the numerator of which is shall be the Warrant Price in effect immediately prior to the date on which such change shall become effective and the denominator of which shall be the Warrant Price in effect immediately after giving effect to such change, calculated in accordance with clause (i) above. Such adjustments shall be made successively whenever any event listed above shall occur.

(b) If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another corporation in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation shall be effected, then, as a condition of such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition, lawful and adequate provision shall be made whereby each Warrantholder shall thereafter have the right to purchase and receive upon the basis and upon the terms and conditions herein specified and in lieu of the Warrant Shares immediately theretofore issuable upon exercise of the Warrant, such shares of stock, securities or assets as would have been issuable or payable with respect to or in exchange for a number of Warrant Shares equal to the number of Warrant Shares immediately theretofore issuable upon exercise of the Warrant, had such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of each Warrantholder to the end that the provisions hereof (including, without limitation, provision for adjustment of the Warrant Price) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any shares of stock, securities or assets thereafter deliverable upon the exercise hereof. The Company shall not effect any such consolidation, merger, sale, transfer or other disposition unless prior to or simultaneously with the consummation thereof the successor corporation (if other than the Company) resulting from such consolidation or merger, or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Warrantholder, at the last address of the Warrantholder appearing on the books of the Company, such shares of stock, securities or assets as, in accordance with the foregoing provisions, the Warrantholder may be entitled to purchase, and the other obligations under this Warrant. The provisions of this paragraph (b) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales, transfers or other dispositions.

(c) In case the Company shall fix a payment date for the making of a distribution to all holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness or assets (other than cash dividends or cash distributions payable out of consolidated earnings or earned surplus or dividends or distributions referred to in Section 9(a)), or subscription rights or warrants, the Warrant Price to be in effect after such payment date shall be determined by multiplying the Warrant Price in effect immediately prior to such payment date by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding multiplied by the Market Price per share of Common Stock immediately prior to such payment date, less the fair market value (as determined by the Board of Directors in good faith) of said assets or evidences of indebtedness so distributed, or of such subscription rights or warrants, and the denominator of which shall be the total number of shares of Common Stock outstanding multiplied by such Market Price per share of Common Stock immediately prior to such payment date.

(d) An adjustment to the Warrant Price shall become effective immediately after the payment date in the case of each dividend or distribution and immediately after the effective date of each other event which requires an adjustment.

(e) In the event that, as a result of an adjustment made pursuant to this Section 9, the Warrantholder shall become entitled to receive any shares of capital stock of the Company other than shares of Common Stock, the number of such other shares so receivable upon exercise of this Warrant shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Warrant Shares contained in this Warrant.

10. Fractional Interest. The Company shall not be required to issue fractions of Warrant Shares upon the exercise of this Warrant. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Section 10, be deliverable upon such exercise, the Company, in lieu of delivering such fractional share, shall pay to the exercising Warrantholder an amount in cash equal to the Market Price (determined in accordance with Section 3(b)) of such fractional share of Common Stock on the date of exercise.

11. Benefits. Nothing in this Warrant shall be construed to give any person, firm or corporation (other than the Company and the Warrantholder) any legal or equitable right, remedy or claim, it being agreed that this Warrant shall be for the sole and exclusive benefit of the Company and the Warrantholder.

12. Notices to Warrantholder .

(a) Upon the happening of any event requiring an adjustment of the Warrant Price, the Company shall promptly give written notice thereof to the Warrantholder at the address appearing in the records of the Company, stating the adjusted Warrant Price and the adjusted number of Warrant Shares resulting from such event and setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based. Failure to give such notice to the Warrantholder or any defect therein shall not affect the legality or validity of the subject adjustment.

(b) The Company hereby covenants to the Warrantholder that, from the date hereof and for so long as this Warrant remains not fully exercised, it shall give written notice promptly to the Warrantholder upon the happening of any of the following events: (i) the admission in writing by the Company of its insolvency; (ii) the commission of any voluntary act of bankruptcy by the Company; (iii) the execution by the Company of a general assignment for the benefit of creditors; (iv) the filing by or against the Company of any petition in bankruptcy or any petition for relief under the provisions of the federal bankruptcy act or any other state or federal law for the relief of debtors and the continuation of such petition without dismissal for a period of sixty (60) days or more; (v) the appointment of a receiver or trustee to take possession of the property or assets of the Company; (vi) any dissolution of the Company; (vii) the adoption by the Company of any plan of liquidation; (viii) the sale by the Company of all or substantially all of its assets; or (ix) the commencement against the Company of any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof.

13. Identity of Transfer Agent . The Transfer Agent for the Common Stock is Continental Stock Transfer & Trust, 17 Battery Place, New York, New York 10004. Upon the appointment of any subsequent transfer agent for the Common Stock or other shares of the Company's capital stock issuable upon the exercise of the rights of purchase represented by the Warrant, the Company will mail to the Warrantholder a statement setting forth the name and address of such transfer agent.

14. Notices . Unless otherwise provided, any notice required or permitted under this Warrant shall be given in writing and shall be deemed effectively given and received as hereinafter described (i) if given by personal delivery, then such notice shall be deemed received upon such delivery, (ii) if given by telex or facsimile, then such notice shall be deemed received upon receipt of confirmation of complete transmittal, (iii) if given by certified mail return receipt requested, then such notice shall be deemed received upon the day such return receipt is signed, and (iv) if given by an internationally recognized overnight air courier, then such notice shall be deemed given one business day after delivery to such carrier. Copies of such notices shall also be transmitted by email. All notices shall be addressed as follows: if to the Warrantholder, at the address as follows, or at such other address as the Warrantholder may designate by ten days' advance written notice to the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

if to the Company, at the address as follows, or at such other address as the Company may designate by ten days' advance written notice to the Warrantholder:

Opexa Therapeutics, Inc.  
2635 Technology Forest Blvd.  
The Woodlands, Texas 77381  
Attention: President  
Fax: (281) 872-8585

15. Successors. All the covenants and provisions hereof by or for the benefit of the Warrantholder shall bind and inure to the benefit of its respective successors and permitted assigns hereunder.

16. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Warrant shall be governed by, and construed in accordance with, the internal laws of the State of Texas, without reference to the choice of law provisions thereof. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably submits to the exclusive jurisdiction of the courts of the State of Texas located in Harris County and the United States District Court for the Southern District of Texas for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Warrant and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Warrant. The Company and, by accepting this Warrant, the Warrantholder, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE WARRANTHOLDER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS WARRANT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

17. No Rights as Shareholder. Prior to the exercise of this Warrant, the Warrantholder shall not have or exercise any rights as a shareholder of the Company by virtue of its ownership of this Warrant.

18. Amendment; Waiver. Any term or provision of this Warrant may be amended or waived upon the written consent of the Company and the Warrantholder.

19. Remedies; Other Obligations; Breaches and Injunctive Relief. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Warrantholder right to pursue actual damages for any failure by the Company to comply with the terms of this Warrant. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Warrantholder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Warrantholder shall be entitled, in addition to all other available remedies, an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

20. Section Headings. The section headings in this Warrant are for the convenience of the Company and the Warrantholder and in no way alter, modify, amend, limit or restrict the provisions hereof.

*[signature page follows]*

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the date first written above.

OPEXA THERAPEUTICS, INC.

By: \_\_\_\_\_

Name: Neil K. Warma

Title: President and Chief Executive Officer

*[signature Page to Warrant]*

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**APPENDIX A**

**EXERCISE NOTICE  
OPEXA THERAPEUTICS, INC.**

The undersigned holder hereby exercises the right to purchase \_\_\_\_\_ of the shares of Common Stock (“ **Warrant Shares** ”) of Opexa Therapeutics, Inc, a Texas corporation (the “ **Company** ”), evidenced by the attached Series J Warrant (the “ **Warrant** ”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the aggregate Warrant Price shall be made as:

\_\_\_\_\_ a “ Cash Exercise ” with respect to \_\_\_\_\_ Warrant Shares; and/or

\_\_\_\_\_ a “ Cashless Exercise ” with respect to \_\_\_\_\_ Warrant Shares.

2. Payment of Warrant Price. In the event that the holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the holder shall pay the aggregate Warrant Price in the sum of \$ \_\_\_\_\_ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares. The holder requests that the Company deliver the Warrant Shares in the name of the undersigned holder (or in the name of \_\_\_\_\_ in accordance with the terms of the Warrant) by physical delivery of a certificate to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Name of Registered Holder

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title (if applicable): \_\_\_\_\_  
Entity Name (if applicable): \_\_\_\_\_

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## APPENDIX B

### Representations and Warranties

The Warrantholder represents and warrants to the Company that:

- Purchase Entirely for Own Account. The Warrant and the securities to be received by the Warrantholder pursuant to the Warrant (the “**Securities**”) is being/will be acquired for the Warrantholder’s own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, and the Warrantholder has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act without prejudice, however, to the Warrantholder’s right at all times to sell or otherwise dispose of all or any part of the Securities in compliance with applicable federal and state securities laws.
  - Investment Experience. The Warrantholder acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of an investment in the Securities.
  - Disclosure of Information. The Warrantholder has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the Securities.
  - Restricted Securities. The Warrantholder understands that the Securities are characterized as “restricted securities” under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. The Warrantholder represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The Warrantholder acknowledges that the Securities have not been registered under the Securities Act or registration or qualified under any applicable blue sky laws in reliance, in part, on the representations and warranties herein.
  - Legends. The Warrantholder understands that certificates evidencing the Securities may bear the following or any similar legend:
  - **“ THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (THE “ ACT ”), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT. ”**
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- If required by the authorities of any state in connection with the issuance of sale of the Securities, the legend required by such state authority.
- Accredited Investor. The Warrantholder is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the Securities Act.
- No General Advertisement. The Warrantholder did not learn of the investment in the Securities as a result of any public solicitation or advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television, radio or internet or presented at any seminar or other general advertisement.
- Brokers and Finders. No person or entity will have any valid right, interest or claim against or upon the Company or the Warrantholder for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Warrantholder.

## OPEXA THERAPEUTICS, INC.

## 12% CONVERTIBLE PROMISSORY NOTE

\$ \_\_\_\_\_

January 23, 2013

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT.

OPEXA THERAPEUTICS, INC., a Texas corporation (the "**Company**"), for value received, hereby promises to pay to the order of \_\_\_\_\_ ("**Investor**"), whose address is \_\_\_\_\_, at said address or such other addresses as may be designated in writing by Investor from time to time, or Investor's registered assigns, the principal amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), together with interest thereon from the date of issuance of this 12% Convertible Promissory Note (this "**Note**") on the unpaid or unconverted principal balance at an annual rate of interest equal to twelve percent (12%) per annum, compounded annually (on the basis of a 360-day year) until paid or converted in full, such principal (to the extent unpaid or unconverted) and any accrued and unpaid interest to be payable (subject to the Investor's right of conversation as set forth in Section 2 below) as follows:

- Fifty percent (50%) of the initial principal amount (less any amount of such principal that has otherwise been prepaid or converted) shall be repaid five (5) business days following delivery by the Company to the Investor of notice (which the Company shall deliver within five (5) business days of such event) that the Company shall have received, measured from and after the date hereof, an aggregate of at least Five Million Dollars (\$ 5,000,000) in proceeds from the sale of its equity securities and/or as payments from one or more partners or potential partners in return for granting a license, other rights, or an option to license or otherwise acquire rights with respect to Tcelna™ (the Company's product development candidate);
  - One hundred percent (100%) of the then unpaid or unconverted principal shall be repaid five (5) business days following delivery by the Company to the Investor of notice (which the Company shall deliver within five (5) business days of such event) that the Company shall have received, measured from and after the date hereof, an aggregate of at least Seven Million Five Hundred Thousand Dollars (\$ 7,500,000) in proceeds from the sale of its equity securities and/or as payments from one or more partners or potential partners in return for granting a license, other rights, or an option to license or otherwise acquire rights with respect to Tcelna™ (the Company's product development candidate); and
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- Any remaining unpaid or unconverted principal shall be repaid on January 23, 2014.

The Company's delivery of this Note shall constitute the affirmation by the Company that the representations and warranties contained in Section 1 of **APPENDIX A** attached hereto are true and correct in all material respects as of the time of such delivery.

The Investor's acceptance of this Note shall constitute the affirmation by the Investor that the representations and warranties contained in Section 2 of **APPENDIX A** attached hereto are true and correct in all material respects with respect to the Investor as of the time of such acceptance.

The following is a statement of rights of the Investor and the conditions to which this Note is subject, to which the Investor, by the acceptance of this Note, assents:

1. Payment.

(a) Principal. The Company shall make payment of principal when due in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts ("**Legal Tender**").

(b) Interest. Notwithstanding the foregoing, the Company shall make payment of accrued interest on a quarterly basis beginning March 31, 2013, and any unpaid interest accrued on any principal amount of this Note which is repaid or converted pursuant to this Note (as stated or by acceleration) shall be paid concurrent with such repayment or conversion. Unless such interest is converted as provided herein, the Company shall make payment of all interest hereunder in Legal Tender.

2. Conversion.

(a) Election and Conversion Price. The Investor may elect, at a per share price equal to the minimum price (\$1.298125) required in order for the conversion right represented hereby (measured as of the date hereof and inclusive of the premium required by the NASDAQ Capital Market in respect of the accompanying Warrant issued on even date herewith by the Company to the Investor (the "**Warrant**")) to reflect an above-market offering price for purposes of the rules of the NASDAQ Capital Market (as determined by the Board of Directors in good faith), to convert any portion of the unpaid principal, and any accrued but unpaid interest on such principal, into shares (the "**Conversion Shares**") of the Company's Common Stock, par value \$0.01 per share ("**Common Stock**"); provided, however, that (i) in lieu of converting amounts in respect of unpaid interest, the Company may, in its sole discretion, elect to pay such amounts in cash to the Investor and (ii) for clarity, all conversion rights shall cease with respect to any portion of this Note which is repaid.

(b) Exercise. The Investor may exercise this conversion right, in whole or in part, upon delivery to the Company of (i) written notice of the Investor's election, stating the portion of the unpaid principal (which shall be deemed to include any accrued but unpaid interest on such principal) which the Investor is electing to convert, and (ii) this Note. The applicable Conversion Shares shall be deemed to be issued to the Investor, as the record owner of such shares, as of the close of business on the date on which the Company receives such notice and this Note. If the unpaid principal under this Note shall have been converted only in part, then the Company shall deliver to the Investor a new Note representing the old Note as adjusted to reflect a reduction in principal in respect of the conversion at issue. Any exercise by the Investor of this conversion right shall constitute the affirmation by the Investor that the representations and warranties contained in Section 2 of **APPENDIX A** attached hereto are true and correct in all material respects with respect to the Investor as of the time of such conversion.

(c) Compliance with Securities Laws. This Note may only be converted by the Investor in accordance with applicable securities laws. The Company may cause the legend set forth on the first page of this Note to be set forth on each Note, and a similar legend on any security issued or issuable upon conversion of this Note, unless counsel for the Company is of the opinion as to any such security that such legend is unnecessary.

(d) Payment of Taxes. The Company will pay any documentary stamp taxes attributable to the issuance of Conversion Shares hereunder; provided, however, that the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issuance or delivery of any certificates for Conversion Shares in a name other than that of the Investor, and in such case, the Company shall not be required to issue or deliver any certificate for Conversion Shares until the person requesting the same has paid to the Company the amount of such tax or has established to the Company's reasonable satisfaction that such tax has been paid. The Investor shall be responsible for income taxes due under federal, state or other law, if any such tax is due.

(e) Reservation of Common Stock. At any time when this Note is convertible, the Company shall at all applicable times keep reserved until issued (if necessary) as contemplated by this Section 2, out of the authorized and unissued shares of Common Stock, at least a number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of this Note then outstanding. The Company agrees that all Conversion Shares issued upon conversion of the Note shall be, at the time of delivery of the certificates for such Conversion Shares, duly authorized, validly issued, fully paid and non-assessable shares of Common Stock.

(f) Adjustments.

(i) If the Company shall, at any time or from time to time while this Note is outstanding, pay a dividend or make a distribution on its Common Stock in shares of Common Stock, subdivide its outstanding shares of Common Stock into a greater number of shares or combine its outstanding shares of Common Stock into a smaller number of shares, then (i) the Conversion Price in effect immediately prior to the date on which such change shall become effective shall be adjusted by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such change and the denominator of which shall be the number of shares of Common Stock outstanding immediately after giving effect to such change and (ii) the number of Conversion Shares issuable upon conversion of this Note shall be adjusted by multiplying the number of Conversion Shares issuable upon conversion of this Note immediately prior to the date on which such change shall become effective by a fraction, the numerator of which shall be the Conversion Price in effect immediately prior to the date on which such change shall become effective and the denominator of which shall be the Conversion Price in effect immediately after giving effect to such change, calculated in accordance with clause (i) above. Such adjustments shall be made successively whenever any event listed above shall occur.

(ii) If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another corporation in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation shall be effected, then, as a condition of such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition, lawful and adequate provision shall be made whereby the Investor shall thereafter have the right to receive upon the basis and upon the terms and conditions herein specified and in lieu of the Conversion Shares immediately theretofore issuable upon conversion of this Note, such shares of stock, securities or assets as would have been issuable or payable with respect to or in exchange for a number of Conversion Shares equal to the number of Conversion Shares immediately theretofore issuable upon conversion of this Note, had such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the Investor to the end that the provisions hereof (including, without limitation, provision for adjustment of the Conversion Price) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any shares of stock, securities or assets thereafter deliverable upon the conversion hereof. The Company shall not effect any such consolidation, merger, sale, transfer or other disposition unless prior to or simultaneously with the consummation thereof the successor corporation (if other than the Company) resulting from such consolidation or merger, or the corporation purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Investor, at the last address of the Investor appearing on the books of the Company, such shares of stock, securities or assets as, in accordance with the foregoing provisions, the Investor may be entitled to purchase, and the other obligations under this Note. The provisions of this subparagraph (ii) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales, transfers or other dispositions.

(iii) In case the Company shall fix a payment date for the making of a distribution to all holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness or assets (other than cash dividends or cash distributions payable out of consolidated earnings or earned surplus or dividends or distributions referred to in subparagraph (i) above), or subscription rights or warrants, the Conversion Price to be in effect after such payment date shall be determined by multiplying the Conversion Price in effect immediately prior to such payment date by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding multiplied by the Market Price (as defined in the Warrant) per share of Common Stock immediately prior to such payment date, less the fair market value (as determined by the Board of Directors in good faith) of said assets or evidences of indebtedness so distributed, or of such subscription rights or warrants, and the denominator of which shall be the total number of shares of Common Stock outstanding multiplied by such Market Price per share of Common Stock immediately prior to such payment date.

(iv) An adjustment to the Conversion Price shall become effective immediately after the payment date in the case of each dividend or distribution and immediately after the effective date of each other event which requires an adjustment.

(v) In the event that, as a result of an adjustment made pursuant to this Section 2(f), the Investor shall become entitled to receive any shares of capital stock of the Company other than shares of Common Stock, the number of such other shares so receivable upon conversion of this Note shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Conversion Shares contained in this Note.

(g) Limitation on the Number of Shares Issuable. Notwithstanding anything herein to the contrary, the unpaid principal amount of this Note and accrued but unpaid interest shall not be converted pursuant to this Section 2 to the extent that, after giving effect to such conversion, the Investor (together with any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Investor, as such terms are used in and construed under Rule 144 under the Securities Act and the rules and regulations promulgated thereunder - each an “**Affiliate**”) would (i) beneficially own shares of Common Stock in excess of 19.9% of the shares of Common Stock outstanding (immediately after giving effect to any conversion pursuant to this Section 2) or (ii) control in excess of 19.9% of the total voting power of the Company’s securities outstanding (immediately after giving effect to any conversion pursuant to this Section 2) that are entitled to vote on a matter being voted on by holders of Common Stock, unless and until the Company obtains shareholder approval permitting such issuances in accordance with applicable rules of the NASDAQ Stock Market; provided, however, that such limitations on conversion shall not apply to any conversion in connection with and subject to completion of the following if, upon completion, the Investor and its Affiliates would not exceed the specified limits: (i) any offering of securities by the Company or its shareholders (including, without limitation, the Investor); and (ii) a *bona fide* third party tender offer for the Company securities. For purposes of this Section 2(g), beneficial ownership shall (x) exclude such number of shares of Common Stock that would be issuable upon exercise or conversion of the unexercised or non-converted portion of any securities of the Company (including, without limitation, options, warrants and convertible securities such as this Note) except for a limitation on conversion or exercise analogous to the limitation contained in the first sentence of this Section 2(g) and (y) otherwise be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934 (and the rules promulgated thereunder). [Note: If the limitation contained in the first sentence of this Section 2(g) applies to any conversion, then the Company shall nonetheless issue to the Investor such securities as may be issued below the limitation.] Upon the written request of the Investor, the Company shall within two (2) business days confirm in writing to the Investor the number of shares of Common Stock then outstanding.

(h) No Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of this Note. With respect to any fraction of a share called for upon the conversion of this Note, an amount equal to such fraction multiplied by the then current price at which each share may be purchased hereunder shall be paid in cash to the Investor.

(i) No Rights as Shareholder. Prior to the conversion of this Note, the Investor shall not have or exercise any rights as a shareholder of the Company by virtue of its ownership of this Note.

(j) General. The foregoing conversion rights are subject in all respects to compliance by the Company with all applicable laws, rules and regulations.

3. Negative Covenant. Excluding security interests granted by the Company prior to the date hereof, while the principal amount of this Note remains unpaid the Company will not grant any further security interests in its assets to secure the obligations of the Company pursuant any indebtedness of the Company issued by the Company after the date hereof.

4. Collection Fees; Waiver. In the event of default hereunder and if this Note is placed in the hands of an attorney for collection (whether or not suit is filed), or if this Note is collected by suit or legal proceedings or through bankruptcy proceedings, the Company agrees to pay in addition to all sums then due hereunder, including outstanding principal and accrued unpaid interest, all attorneys' fees. The Company hereby waives demand and presentment for payment, notice of nonpayment, protest, notice of protests, notice of dishonor, notice of intention to accelerate and notice of acceleration, bringing of suit and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith. In addition, the Company is and shall be directly and primarily liable for the payment of all sums owing and to be owing hereon, regardless of and without any notice, diligence, act or omission as or with respect to the collection of any amount called for hereunder.

5. Maximum Rate of Interest. Notwithstanding any provisions to the contrary in this Note, or in any of the documents relating hereto, in no event shall this Note or such documents require the payment or permit the charging or collection of interest in excess of the maximum amount or highest lawful rate permitted by the applicable usury laws. It is the intention of the Company and the Investor to comply in all respects with applicable usury laws, and in no event shall the Company pay, for the use, forbearance or detention of money, interest at a rate or in an amount in excess of the highest lawful rate permitted by applicable law. If any such excess interest is contracted for, charged or received under this Note or under the terms of any of the documents relating hereto, or in the event the maturity of the indebtedness evidenced by this Note is accelerated in whole or in part, or in the event that all or part of the principal or accrued unpaid interest of this Note shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Note or under any of the documents relating hereto, on the amount of principal actually outstanding from time to time under this Note, shall exceed the maximum amount of interest permitted by the applicable usury laws, then in any such event (a) the provisions of this Section 4 shall govern and control, (b) neither the Company nor any other person or entity now or hereafter liable for the payment hereof, shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by the applicable usury laws, (c) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to the Company, at the Investor's option, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful rate of interest allowed under the applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Note or under such other documents which are made for the purpose of determining whether such rate exceeds the maximum lawful rate of interest, shall be made, to the extent permitted by the applicable usury laws, by amortizing, prorating, allocating and spreading during the period of the full stated term of the indebtedness evidenced hereby, all interest at any time contracted for, charged or received from the Company or otherwise by the Investor in connection with such indebtedness.

6. Events of Default. The entire unpaid principal amount of this Note and all accrued but unpaid interest shall become immediately due and payable upon any of the following events: (i) the admission in writing by the Company of its insolvency; (ii) the commission of any voluntary act of bankruptcy by the Company; (iii) the execution by the Company of a general assignment for the benefit of creditors; (iv) the filing by or against the Company of any petition in bankruptcy or any petition for relief under the provisions of the federal bankruptcy act or any other state or federal law for the relief of debtors and the continuation of such petition without dismissal for a period of sixty (60) days or more; (v) material breach of any representation or warranty of the Company (as set forth in Section 1 of **APPENDIX A** attached hereto) which remains uncured following 10 days' notice to the Company; (vi) the failure of Company to perform any of its obligations under this Note, including the failure to pay any principal or accrued interest under the terms of this Note when due and payable; (vii) the appointment of a receiver or trustee to take possession of the property or assets of the Company; (viii) any dissolution of the Company; (ix) the adoption by the Company of any plan of liquidation; (x) the sale by the Company of all or substantially all of its assets; (xi) the commencement against the Company of any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (xii) any challenge or contest by the Company in any action, suit or proceeding of the validity or enforceability of this Note; or (xiii) the failure to perform or observe any term, covenant, condition, obligation or agreement set forth in the Warrant (each, individually, an “**Event of Default**”).

7. Amendments and Waivers. Any term or provision of this Note may be waived or amended in any respect with the written consent of the Company and the Investor.

8. Transfers. This Note may be transferred only pursuant to a registration statement filed under the Securities Act of 1933 (the “**Securities Act**”) or an exemption from such registration. Subject to such restrictions, the Company shall transfer this Note from time to time upon the books to be maintained by the Company for that purpose, upon surrender hereof for transfer, properly endorsed or accompanied by appropriate instructions for transfer and such other documents as may be reasonably required by the Company, including, if required by the Company, an opinion of counsel to the effect that such transfer is exempt from the registration requirements of the Securities Act, to establish that such transfer is being made in accordance with the terms hereof, and a new Note shall be issued to the transferee (who shall thereafter be the Investor hereunder) and the surrendered Note shall be canceled by the Company.

9. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Note shall be governed by, and construed in accordance with, the internal laws of the State of Texas, without reference to the choice of law provisions thereof. The Company and, by accepting this Note, the Investor, each irrevocably submits to the exclusive jurisdiction of the courts of the State of Texas located in Harris County and the United States District Court for the Southern District of Texas for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Note and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Note. The Company and, by accepting this Note, the Investor, each irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE COMPANY AND, BY ITS ACCEPTANCE HEREOF, THE INVESTOR HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS NOTE AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

*[signature page follows]*

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the date first written above.

OPEXA THERAPEUTICS, INC.

By: \_\_\_\_\_

Name: Neil K. Warma

Title: President and Chief Executive Officer

*[signature page to Promissory Note]*

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## APPENDIX A

### Representations and Warranties

1. The Company hereby represents and warrants to the Investor that:

(a) Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and authority to carry on its business as now conducted and to own its properties. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification or leasing necessary unless the failure to so qualify has not had and could not reasonably be expected to have a material adverse effect on the Company. The Company does not have any Subsidiaries.

(b) Authorization. The Company has full power and authority and has taken all requisite action on the part of the Company, its officers, directors and shareholders necessary for (i) the authorization, execution and delivery of the Note and the Warrant (collectively, the “**Transaction Documents**”), (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Conversion Shares as well as the shares of the Company’s Common Stock issuable upon an exercise of the Warrant (the “**Warrant Shares**”). The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally.

(c) Capitalization. All of the issued and outstanding shares of the Company’s capital stock have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable state and federal securities law and any rights of third parties. The issuance and sale of the Note and Warrant will not obligate the Company to issue shares of Common Stock or other securities to any other person and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security. The Company does not have outstanding shareholder purchase rights, a “poison pill” or any similar arrangement.

(d) Valid Issuance. The Note and Warrant have been duly and validly authorized. Upon the conversion of the Note or the exercise of the Warrant, the Conversion Shares or the Warrant Shares, as applicable, will be validly issued, fully paid and non-assessable free and clear of all encumbrances and restrictions, except for restrictions on transfer imposed by applicable securities laws or created by the Investor. The Company has reserved a sufficient number of shares of Common Stock for issuance upon conversion of the Note and exercise of the Warrant.

(e) Consents. The execution, delivery and performance by the Company of the Note and Warrant and the offer, issuance and sale of the Note and Warrant require no consent of, action by or in respect of, or filing with, any person, governmental body, agency, or official other than such filings as shall have been made prior to or concurrent with the issuance of the Note or such filings required to be made after such issuance pursuant to applicable state and federal securities laws which the Company undertakes to file within the applicable time periods. Subject to the accuracy of the representations and warranties of the Investor set forth in Section 2 below, the Company has taken all action necessary to exempt from the registration requirements of the applicable state and federal securities laws (i) the issuance and sale of the Note, (ii) the issuance of the Conversion Shares upon due conversion of the Note and (iii) the issuance of the Warrant Shares upon due exercise of the Warrant.

(f) Delivery of SEC Filings; Business. The Company has made available to the Investors through the EDGAR system, true and complete copies of the Company's (i) Annual Report on Form 10-K for the fiscal year ended December 31, 2011, (ii) Quarterly Report on Form 10-Q for the fiscal quarters ended March 31, 2012, June 30, 2012, and September 30, 2012 and (iii) Current Reports on Form 8-K filed since the most recent Annual Report on Form 10-K and prior to the date hereof (collectively, the "**SEC Filings**"). The Company is engaged in all material respects only in the business described in the SEC Filings and the SEC Filings contain a complete and accurate description in all material respects of the business of the Company, taken as a whole.

(g) Use of Proceeds. The net proceeds of the issuance and sale of the Note shall be used by the Company for working capital and general corporate expenses.

(h) SEC Filings. At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of the Securities Exchange Act of 1934 (the "**1934 Act**") and did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(i) No Conflict, Breach, Violation or Default. The execution, delivery and performance of the Note and Warrant by the Company and the issuance and sale of the Note will not conflict with or result in a breach or violation of any of the terms and provisions of, or constitute a default under (i) the Company's Certificate of Formation or the Company's Bylaws, both as in effect on the date hereof (true and complete copies of which have been made available to the Investors through the EDGAR system), (ii) any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company or any of its assets or properties (except in the case of this clause (ii) for such breaches, violations or defaults which would not, individually or in the aggregate, have a material adverse effect on the Company) or (iii) any agreement or instrument to which the Company is a party or by which the Company is bound (except in the case of this clause (iii) for such breaches, violations or defaults which would not, individually or in the aggregate, have a material adverse effect on the Company).

(j) Tax Matters. The Company has timely prepared and filed all tax returns required to have been filed by the Company with all appropriate governmental agencies and timely paid all taxes shown thereon or otherwise owed by it. The charges, accruals and reserves on the books of the Company in respect of taxes for all fiscal periods are adequate in all material respects, and there are no material unpaid assessments against the Company nor, to the Company's knowledge, any basis for the assessment of any additional taxes, penalties or interest for any fiscal period or audits by any federal, state or local taxing authority except for any assessment which is not material to the Company, taken as a whole. All taxes and other assessments and levies that the Company is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper governmental entity or third party when due. There are no tax liens or claims pending or, to the Company's knowledge, threatened against the Company or any of its assets or property. There are no outstanding tax sharing agreements or other such arrangements between the Company and any other corporation or entity.

(k) Title to Properties. Except as disclosed in the SEC Filings, the Company has good and marketable title to all real properties and all other properties and assets owned by it, in each case free from liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or currently planned to be made thereof by them or as disclosed in the SEC Filings; and except as disclosed in the SEC Filings, the Company holds any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or currently planned to be made thereof by them.

(l) Financial Statements. The financial statements included in each SEC Filing present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis (“**GAAP**”) (except as may be disclosed therein or in the notes thereto). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof, the Company has not incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or could reasonably be expected to have a material adverse effect on the Company.

(m) No Directed Selling Efforts or General Solicitation. Neither the Company nor any person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D of the Securities Act) in connection with the offer or sale of the Note or Warrant.

(n) No Integrated Offering. Neither the Company nor any of its affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by the Company on Section 4(2) of the Securities Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Note or Warrant under the Securities Act.

(o) Private Placement. Assuming the accuracy of the representations set forth in Section 2 below, the offer and sale of the Note and Warrant to the Investor as contemplated hereby is exempt from the registration requirements of the Securities Act.

(p) Internal Controls. The Company is in material compliance with the provisions of the Sarbanes-Oxley Act of 2002 currently applicable to the Company. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in 1934 Act Rules 13a-14 and 15d-14) for the Company and designed such disclosure controls and procedures to ensure that material information relating to the Company is made known to the certifying officers by others within those entities, particularly during the period in which the Company's most recently filed period report under the 1934 Act, as the case may be, is being prepared. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of the end of the period covered by the most recently filed periodic report under the 1934 Act (such date, the "**Evaluation Date**"). The Company presented in its most recently filed periodic report under the 1934 Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no significant changes in the Company's internal controls (as such term is defined in Item 308 of Regulation S-K) or, to the Company's knowledge, in other factors that could significantly affect the Company's internal controls. The Company maintains and will continue to maintain a standard system of accounting established and administered in accordance with GAAP and the applicable requirements of the 1934 Act.

2. The Investor represents and warrants to the Company that:

(a) Purchase Entirely for Own Account. The Note, the Warrant and any securities to be received by the Investor pursuant to the Note or the Warrant (the "**Securities**") are being/will be acquired for the Investor's own account, not as nominee or agent, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act without prejudice, however, to the Investor's right at all times to sell or otherwise dispose of all or any part of the Securities in compliance with applicable federal and state securities laws.

(b) Investment Experience. The Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of an investment in the Securities.

(c) Disclosure of Information. The Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the Securities.

(d) Restricted Securities. The Investor understands that the Securities are characterized as “restricted securities” under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. The Investor represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The Investor acknowledges that the Securities have not been registered under the Securities Act or registration or qualified under any applicable blue sky laws in reliance, in part, on the representations and warranties herein.

(e) Legends. The Investor understands that certificates evidencing the Securities may bear the following or any similar legend:

**“ THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED (THE “ ACT ”), OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL (WHICH MAY BE COUNSEL FOR THE COMPANY) IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE ACT. ”**

If required by the authorities of any state in connection with the issuance or sale of the Securities, the legend required by such state authority.

(f) Accredited Investor. The Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the Securities Act.

(g) No General Advertisement. The Investor did not learn of the investment in the Securities as a result of any public solicitation or advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television, radio or internet or presented at any seminar or other general advertisement.

(h) Brokers and Finders. No person or entity will have any valid right, interest or claim against or upon the Company or the Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of the Investor.

## Opexa Therapeutics Closes Private Note Offering

**THE WOODLANDS, Texas** --(BUSINESS WIRE)--(January 23, 2013)-- **Opexa Therapeutics, Inc. (NASDAQ: OPXA)** , a biotechnology company developing a novel T-cell therapy for multiple sclerosis (MS), today announced the closing of a private offering of unsecured convertible promissory notes and warrants to purchase shares of common stock for gross proceeds of \$650,000. Opexa expects to use proceeds from the financing to continue its Phase IIb clinical study of Tcelna™ in patients with Secondary Progressive MS (SP-MS) and general corporate purposes. Participating in the financing were new investors and existing shareholders, including a member of Opexa's Board of Directors.

The notes mature on January 23, 2014 and accrue interest at the rate of 12% per annum, compounded annually. Interest is payable quarterly in cash beginning March 31, 2013. Fifty percent of the initial principal amount of the notes is payable by the Company to the investors following the receipt of an aggregate of at least \$5 million in proceeds from the sale of the Company's equity securities and/or the Company achieves certain strategic funding milestones to allow the Company to continue its clinical trial program. The remaining balance of the notes is payable by the Company to the investors following the receipt of an aggregate of at least \$7.5 million in proceeds from the same sources as described above. The notes can be converted into common stock at any time at the option of the investors at a price of approximately \$1.30, subject to certain limitations.

The warrants have an exercise price of \$1.24 per share, a five-year term and are exercisable for an aggregate of 243,750 shares of the Company's common stock, subject to certain limitations. The Company can redeem the warrants at \$0.01 per share if the Company's common stock closes at or above \$10.00 per share for 20 consecutive trading days.

### About Opexa

Opexa Therapeutics, Inc. is dedicated to the development of patient-specific cellular therapies for the treatment of autoimmune diseases such as MS. The Company's leading therapy, Tcelna™, a personalized cellular immunotherapy treatment, is in clinical development targeting both SP-MS and Relapsing Remitting MS. Tcelna is derived from T-cells isolated from peripheral blood, expanded ex vivo and reintroduced into the patients via subcutaneous injections. This process triggers a potent immune response against specific subsets of autoreactive T-cells known to attack myelin and, thereby, reduces the risk of relapse over time.

For more information, visit the Company's website at [www.opexatherapeutics.com](http://www.opexatherapeutics.com).

**Cautionary Statement Relating to Forward - Looking Information for the Purpose of "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995**

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*This press release contains forward-looking statements which are made pursuant to the safe harbor provisions of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The words “expects,” “believes,” “hopes,” “anticipates,” “estimates,” “may,” “could,” “intends,” “exploring,” “enable,” “enhance,” “evaluating,” “progressing,” “proceeding” and similar expressions are intended to identify forward-looking statements. The forward-looking statements in this release do not constitute guarantees of future performance. Investors are cautioned that statements in this press release which are not strictly historical statements, including, without limitation, statements regarding the development of the Company’s product candidate, Tcelna, constitute forward-looking statements. Such forward-looking statements are subject to a number of risks and uncertainties that could cause actual results to differ materially from those anticipated, including, without limitation, risks associated with: our capital position, the rights and preferences provided to the Series A Convertible Preferred Stock and investors in the convertible secured notes issued by the Company in July 20 12 (including a secured interest in all of our assets), the ability of the Company to enter into and benefit from a partnering arrangement for the Company’s product candidate, Tcelna, on reasonably satisfactory terms (if at all), our dependence (if partnered) on the resources and abilities of any partner for the further development of Tcelna, our ability to compete with larger, better financed pharmaceutical and biotechnology companies, new approaches to the treatment of our targeted diseases, our expectation of incurring continued losses, our uncertainty of developing a marketable product, our ability to raise additional capital to continue our development programs (including to undertake and complete any ongoing or further clinical studies for Tcelna) including in this regard our ability to satisfy various conditions required to access the financing potentially available under the purchase agreements with Lincoln Park (such as the minimum closing price for our common stock, the registration of the underlying shares of common stock under the Securities Act of 1933, as amended, and the requirement for an ongoing trading market for our stock), our ability to regain and maintain compliance with NASDAQ listing standards, the success of our clinical trials, the efficacy of Tcelna for any particular indication, such as for relapsing remitting MS or secondary progressive MS, our ability to develop and commercialize products, our ability to obtain required regulatory approvals, our compliance with all Food and Drug Administration regulations, our ability to obtain, maintain and protect intellectual property rights (including for Tcelna), the risk of litigation regarding our intellectual property rights or the rights of third parties, the success of third party development and commercialization efforts with respect to products covered by intellectual property rights that the Company may license or transfer, our limited manufacturing capabilities, our dependence on third-party manufacturers, our ability to hire and retain skilled personnel, our volatile stock price, and other risks detailed in our filings with the Securities and Exchange Commission. These forward-looking statements speak only as of the date made. We assume no obligation or undertaking to update any forward-looking statements to reflect any changes in expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. You should, however, review additional disclosures we make in our reports filed with the Securities and Exchange Commission, including our Annual Report on Form 10-K for the year ended December 31, 2011.*

**CONTACT:**

Neil K. Warma

Opexa Therapeutics, Inc.

President & CEO

281-775-0600

[nwarma@opexatherapeutics.com](mailto:nwarma@opexatherapeutics.com)