

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 04/16/09 for the Period Ending 04/14/09

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): April 14, 2009



Opexa Therapeutics, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Texas

(State or Other Jurisdiction of Incorporation)

001-33004

(Commission File Number)

**2635 N. Crescent Ridge Drive
The Woodlands, Texas**

(Address of Principal Executive Office)

76-0333165

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

77381

(Zip Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions (see General Instruction A.2 below) :

- ☐ 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

Effective April 14, 2009, the Company closed on an initial tranche of a private offering of secured convertible notes and warrants (the “Units”) for gross proceeds of \$1,101,000. The notes mature April 14, 2011 and are secured by all of the Company’s tangible and intangible assets excluding those particular fixed assets securing the Company’s equipment line with Wells Fargo, N.A. The notes accrue interest at a 10% rate, compounded annually, and the interest is payable at maturity in either cash or common stock (at the same conversion price as described below) at the Company’s option. The notes are convertible into common stock, at the option of the holders, at a price of \$0.50 per share. Additionally, subject to the satisfaction of certain conditions, the notes are mandatorily convertible at the Company’s option, during their term at a conversion rate of \$0.50 per share. The required conditions are: (1) the Company enters into an agreement that will fund a Phase IIb or Phase III clinical trial for the further development of Tovaxin; (2) the Company’s common stock trades at a price greater than or equal to \$1.00 per share for twenty consecutive trading days; and (3) the Company has an effective registration statement on file with the Securities and Exchange Commission for the re-sale of the shares of common stock issuable upon conversion of the notes. The warrants expire on April 14, 2013 and are exercisable to purchase 1,101,000 shares of common stock at an exercise price of \$ 0.75 per share. The Company additionally granted demand registration rights to the investors in this offering. In connection with the offering, the Company will pay Cambria Capital, LLC \$41,600 in sales commissions, reimburse for costs associated with the placement of the Units and issue four-year warrants to acquire 87,360 shares of common stock exercisable at \$0.75 per share.

In connection with this offering of the convertible promissory notes and series G warrants, the Company is filing Exhibits 10.1, 10.2, 10.3, 10.4, 10.5 and 99.2 as part of this Current Report on Form 8-K.

Item 2.02 Results of Operations and Financial Condition

The Company intends to use the net proceeds of this transaction for working capital purposes. Management believes that these proceeds will be sufficient to meet projected operating and capital expenditures through August 2009.

On April 15, 2009 Registrant filed its Annual Report on Form 10-K for the fiscal year ended December 31, 2008. On April 16, 2009, Registrant announced its results of operations in a press release. A copy of the press release announcing the results is filed as Exhibit 99.1 to this Form 8-K and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

As more fully described in Item 1.01, the Company issued a principal amount of \$1,101,000 of secured convertible notes and warrants to purchase 1,101,000 shares of Company common stock to an aggregate of 28 “accredited investors” as such term is defined in Rule 501 under the Securities Act of 1933 (the “Act”). The Company received gross proceeds of \$1,101,000 (net proceeds of \$1,059,400, after deducting sales commissions) from the private placement.

The offers and sales were made without registration under the Act, or the securities laws of certain states, in reliance on the exemptions provided by Section 4(2) of Act and Regulation D under the Act and in reliance on similar exemptions under applicable state laws. The issuance of the Company’s secured convertible notes and the warrants did not involve any public offering; each investor made representations regarding its investment intent, experience and sophistication; each investor either received or had access to adequate information about us in order to make an informed investment decision; having received representations to this effect, we believe that each investor is an “accredited investor” as that term is defined under Rule 501(a) of Regulation D; and no advertising or general solicitation was made in connection with the sale and issuance of the Company’s secured convertible notes and warrants.

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

On April 14, 2009 Opexa Therapeutics, Inc (“Company”) entered into a one year employment agreement effective April 1, 2009, with Donna R. Rill pursuant to which she will serve as Senior Vice President of Operations (“Employment Agreement”) replacing the prior year Employment Agreement which expired on March 31, 2009. Pursuant to the Employment Agreement, Ms. Rill will be paid as compensation an annual salary of \$200,000. In addition, the Company is providing Ms. Rill with the Company’s standard benefits and insurance coverage as generally provided to its employees.

Item 9.01. Financial Statements and Exhibits

(c) Exhibits

The following exhibits are to be filed as part of this 8-K:

Exhibit No. Identification of Exhibit

10.1	Unit Purchase Agreement dated April 14, 2009
10.2	10% Convertible Promissory Note dated April 14, 2009
10.3	Registration Rights Agreement dated April 14, 2009
10.4	Form of Series G Warrant dated April 14, 2009
10.5	Security Agreement dated April 14, 2009
10.6	Employment Agreement dated April 14, 2009, between the Company and Donna R. Rill
99.1	Press Release dated April 16, 2009
99.2	Press Release dated April 16, 2009

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 hereto duly authorized.

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma
Neil K. Warma
President and Chief Executive Officer

DATE: April 15, 2009

EXHIBIT INDEX

Exhibit No.	Exhibit Title
10.1	Unit Purchase Agreement dated April 14, 2009
10.2	10% Convertible Promissory Note dated April 14, 2009
10.3	Registration Rights Agreement dated April 14, 2009
10.4	Form of Series G Warrant dated April 14, 2009
10.5	Security Agreement dated April 14, 2009
10.6	Employment Agreement dated April 14, 2009, between the Company and Donna R. Rill
99.1	Press Release dated April 16, 2009
99.2	Press Release dated April 16, 2009

UNIT PURCHASE AGREEMENT

THIS UNIT PURCHASE AGREEMENT (“**Agreement**”) is made effective as of the 14th day of April, 2009, by and among Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and each of the persons executing a copy of this Agreement (each an “**Investor**” and, collectively, the “**Investors**”).

Recitals

A. **WHEREAS**, the Investors wish to purchase from the Company, and the Company wishes to sell and issue to the Investors, upon the terms and conditions stated in this Agreement, up to Two Hundred (200) investment units (the “**Units**”) each composed of (i) a \$10,000 secured promissory note in the form attached hereto as **Exhibit A** (individually, a “**Note**” and, collectively, the “**Notes**”) and (ii) a warrant to purchase the number shares of the Company’s Common Stock, par value \$0.50 per share (the “**Common Stock**”), equal to 5,000 divided by the greater of (i) \$0.50 or (ii) the NASDAQ Official Closing Price of the Common Stock on April 14, 2009 plus \$0.0625 in the form attached hereto as **Exhibit B** (individually, a “**Series G Warrant**” and, collectively, the “**Series G Warrants**”);

WHEREAS, contemporaneous with the execution of this Agreement, the parties hereto will execute and deliver a Registration Rights Agreement, in the form attached hereto as **Exhibit C** (the “**Registration Rights Agreement**”), pursuant to which the Company will agree to provide certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and applicable state securities laws; and

WHEREAS, contemporaneous with the execution of this Agreement, the parties hereto will execute and deliver a Security Agreement, in the form attached hereto as **Exhibit D** (the “**Security Agreement**”), pursuant to which the Company will issue a security interest in substantially all of the Company’s assets in favor of the Investors.

NOW, THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to those terms defined above and elsewhere in this Agreement, for the purposes of this Agreement, the following terms shall have the meanings set forth below:

“**SEC Filings**” has the meaning set forth in Section 4.6.

“**1933 Act**” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“**1934 Act**” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“ **Affiliate** ” means, with respect to any Person, any other Person which directly or indirectly through one or more intermediaries Controls, is controlled by, or is under common control with, such Person.

“ **Business Day** ” means a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“ **Cambria** ” means Cambria Capital, LLC.

“ **Cambria Notes** ” means those Notes which are issued as part of the Cambria Units.

“ **Cambria Units** ” means those Units purchased by those Investors whom Cambria solicited for the purpose of entering into this Agreement.

“ **Cambria Warrant Shares** ” means the Warrant Shares issuable upon the exercise of those Series G Warrants which are issued as part of the Cambria Units.

“ **Closing** ” has the meaning set forth in Section 3.

“ **Closing Date** ” means the date of the Closing. In the event there is more than one Closing, the term “ **Closing Date** ” shall mean, with respect to each Investor, the date of the Closing set forth next to the signature of each Investor.

“ **Common Stock** ” means the Company’s Common Stock.

“ **Company’s Knowledge** ” means the actual knowledge of the executive officers (as defined in Rule 405 under the 1933 Act) of the Company, after due inquiry.

“ **Confidential Information** ” means trade secrets, confidential information and know-how (including but not limited to ideas, formulae, compositions, processes, procedures and techniques, research and development information, computer program code, performance specifications, support documentation, drawings, specifications, designs, business and marketing plans, and customer and supplier lists and related information).

“ **Control** ” (including the terms “controlling”, “controlled by” or “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“ **Effective Date** ” means the date on which the initial Registration Statement is declared effective by the SEC.

“ **Effectiveness Deadline** ” means the date on which the initial Registration Statement is required to be declared effective by the SEC under the terms of the Registration Rights Agreement.

“ **Evaluation Date** ” has the meaning set forth in Section 4.14.

“ **GAAP** ” has the meaning set forth in Section 4.13.

“ **Initial Closing Date** ” means the date of the first Closing.

“ **Investor** ” has the meaning set forth in the Preamble.

“ **Material Adverse Effect** ” means a material adverse effect on (i) the assets, liabilities, results of operations, condition (financial or otherwise), business, or prospects of the Company, taken as a whole, or (ii) the ability of the Company to perform its obligations under the Transaction Documents.

“ **Notes** ” has the meaning set forth in the recitals.

“ **Person** ” means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, sole proprietorship, unincorporated organization, governmental authority or any other form of entity not specifically listed herein.

“ **Prohibited Transaction** ” has the meaning set forth in Section 5.11.

“ **Purchase Price** ” means \$10,000 for each Unit.

“ **Registration Rights Agreement** ” has the meaning set forth in the recitals.

“ **Registration Statement** ” has the meaning set forth in the Registration Rights Agreement.

“ **SEC** ” means the Securities and Exchange Commission.

“ **SEC Filings** ” has the meaning set forth in Section 4.6.

“ **Securities** ” means the Notes, the Series G Warrants and the Warrant Shares.

“ **Security Agreement** ” has the meaning set forth in the Recitals.

“ **Subsidiary** ” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person.

“ **Trading Affiliates** ” has the meaning set forth in Section 5.11.

“ **Transaction Documents** ” means this Agreement, the Notes, the Series G Warrants, the Registration Rights Agreement and the Security Agreement.

“ **Transfer Agent** ” has the meaning set forth in Section 7.7.

“ **Unit** ” has the meaning set forth in the recitals.

“ **Warrants** ” has the meaning set forth in the recitals.

“ **Warrant Exercise Price** ” means, with respect to each investor, 1.5 times the greater of (i) \$0.50 or (ii) the closing bid price for a share of Common Stock as quoted on the NASDAQ Stock Market on the date of each Closing for such Investor plus \$0.0625.

“ **Warrant Shares** ” means the shares of Common Stock issuable upon the exercise of the Series G Warrants.

2. Purchase and Issuance of the Units. Subject to the terms and conditions of this Agreement, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the number of Units set forth opposite the Investors' names on the signature pages attached hereto in exchange for the Purchase Price.

3. Closing.

3.1. Upon the satisfaction or waiver of the conditions herein, the initial purchase and sale of the Units shall take place remotely via the exchange of documents and signatures, on or before April 14, 2009, or at such other time and place as the Company and the Investors mutually agree upon, orally or in writing (which time and place are designated as the “ **Closing** ”). In the event there is more than one closing, the term “ **Closing** ” shall mean the initial Closing and each such subsequent closing unless otherwise specified.

3.2. At each Closing, the Company shall deliver, or cause to be delivered, to each Investor (i) a secured promissory note, representing the Notes in the Units purchased by such Investor and (ii) a Series G Warrant representing the Series G Warrants in the Units purchased by such Investor, against delivery to the Company by the Investor of payment therefor in immediately available funds by wire transfer to an account designated by the Company. The Company shall also deliver such other documents as are called for herein.

3.3. After the initial Closing, the Company may sell, on the same terms and conditions as those contained in this Agreement but for the same price as in the initial Closing, additional Units so that as a result of all sales hereunder the Company receives gross proceeds of no more than Two Million Dollars (\$2,000,000); provided that any such subsequent sale is consummated on or before thirty (30) days after Closing or, at the sole discretion of the Company, sixty (60) days after Closing and (ii) each additional Investor shall become a party to the Transaction Agreements by executing and delivering a counterpart signature page to each of the Transaction Agreements

4. Representations and Warranties of the Company. The Company hereby represents and warrants to the Investors that as of the initial Closing Date, except as set forth in the schedules delivered herewith (collectively, the “ **Disclosure Schedules** ”):

4.1. 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. The Company does not have any Subsidiaries.

4.2. Authorization. The Company has full power and authority and has taken all requisite action on the part of the Company, its officers, directors and stockholders necessary for (i) the authorization, execution and delivery of 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 Securities. 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.

4.3. Capitalization. Schedule 4.3 sets forth (a) the authorized capital stock of the Company on the date hereof; (b) the number of shares of capital stock issued and outstanding; (c) the number of shares of capital stock issuable pursuant to the Company's stock plans; and (d) the number of shares of capital stock issuable and reserved for issuance pursuant to securities (other than the Series G Warrants) exercisable for, or convertible into or exchangeable for any shares of capital stock of the Company. 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. Except as described on Schedule 4.3, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company. Except as described on Schedule 4.3, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company is or may be obligated to issue any equity securities of any kind and except as contemplated by this Agreement, the Company is not currently in negotiations for the issuance of any equity securities of any kind. Except as described on Schedule 4.3 and except for the Registration Rights Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as described on Schedule 4.3 and except as provided in the Registration Rights Agreement, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

Except as described on Schedule 4.3, the issuance and sale of the Securities hereunder will not obligate the Company to issue shares of Common Stock or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security.

Except as described on Schedule 4.3, the Company does not have outstanding stockholder purchase rights or "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.4. Valid Issuance . The Series G Warrants have been duly and validly authorized. Upon the due exercise of the Series G Warrants, the Warrant Shares will be validly issued, fully paid and non-assessable free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws and except for those created by the Investors. The Company has reserved a sufficient number of shares of Common Stock for issuance upon the exercise of the Series G Warrants, free and clear of all encumbrances and restrictions, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws and except for those created by the Investors.

4.5. Consents . The execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than filings that have been made pursuant to applicable state securities laws and post-sale filings 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 each Investor set forth in Section 5 hereof, the Company has taken all action necessary to exempt (i) the issuance and sale of the Securities, (ii) the issuance of the Warrant Shares upon due exercise of the Series G Warrants, and (iii) the other transactions contemplated by the Transaction Documents from any provision of the Company's Articles of Incorporation or Bylaws that is or could reasonably be expected to become applicable to the Investors as a result of the transactions contemplated hereby.

4.6. 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 most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2007 and the Company's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, and all other reports filed by the Company pursuant to the 1934 Act since the filing of the Company's most recent Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2008 and prior to the date hereof (collectively, the "**SEC Filings**"). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such period. 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.

4.7. Use of Proceeds . The net proceeds of the issuance and sale of the Notes and the Series G Warrants hereunder shall be used by the Company for working capital and general corporate purposes.

4.8. SEC Filings . At the time of filing thereof, the SEC Filings complied as to form in all material respects with the requirements of 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.

4.9. No Conflict, Breach, Violation or Default . The execution, delivery and performance of the Transaction Documents by the Company and the issuance and sale of the Securities 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 Articles of Incorporation 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), or (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 (i) for such breaches, violations or defaults which would not, individually or in the aggregate, have a Material Adverse Effect 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.

4.10. 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.

4.11. 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.

4.12. 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 or as described on Schedule 4.18 , 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.

4.13. 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) in connection with the offer or sale of any of the Securities.

4.14. 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) for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.15. Private Placement . The offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act.

4.16. 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.

5. Representations and Warranties of the Investors . Each of the Investors hereby severally, and not jointly, represents and warrants to the Company that:

5.1. Organization and Existence . Such Investor is either an individual or a validly existing corporation, limited partnership or limited liability company and has all requisite corporate, partnership or limited liability company power and authority to invest in the Securities pursuant to this Agreement.

5.2. Authorization . The execution, delivery and performance by such Investor of the Transaction Documents to which such Investor is a party have been duly authorized and will each constitute the valid and legally binding obligation of such Investor, enforceable against such Investor in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors' rights generally.

5.3. Purchase Entirely for Own Account . The Securities to be received by such Investor hereunder will be acquired for such 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 1933 Act, and such Investor has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the 1933 Act without prejudice, however, to such Investor's right at all times to sell or otherwise dispose of all or any part of such Securities in compliance with applicable federal and state securities laws. Nothing contained herein shall be deemed a representation or warranty by such Investor to hold the Securities for any period of time. Such Investor is not a broker-dealer registered with the SEC under the 1934 Act or an entity engaged in a business that would require it to be so registered.

5.4. Investment Experience . Such 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 the investment contemplated hereby.

5.5. Disclosure of Information . Such 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 offering of the Securities. Such Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.6. Restricted Securities . Such 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 1933 Act only in certain limited circumstances.

5.7. Legends . It is understood that, except as provided below, certificates evidencing the Securities may bear the following or any similar legend:

(a) " **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. "**

(b) 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.

5.8. Accredited Investor . Such Investor is an accredited investor as defined in Rule 501(a) of Regulation D, as amended, under the 1933 Act.

5.9. No General Advertisement . Such Investor did not learn of the investment in the Securities as a result of any public 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.

5.10. Brokers and Finders . No Person will have, as a result of the transactions contemplated by the Transaction Documents, any valid right, interest or claim against or upon the Company or an Investor for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of such Investor.

5.11. Prohibited Transactions . During the last thirty (30) days prior to the date hereof, neither such Investor nor any Affiliate of such Investor which (x) had knowledge of the transactions contemplated hereby, (y) has or shares discretion relating to such Investor's investments or trading or information concerning such Investor's investments, including in respect of the Securities, or (z) is subject to such Investor's review or input concerning such Affiliate's investments or trading (collectively, "**Trading Affiliates** ") has, directly or indirectly, effected or agreed to effect any short sale, whether or not against the box, established any "put equivalent position" (as defined in Rule 16a-1(h) under the 1934 Act) with respect to the Common Stock, granted any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derived any significant part of its value from the Common Stock or otherwise sought to hedge its position in the Securities (each, a "**Prohibited Transaction** "). Prior to the earliest to occur of (i) the termination of this Agreement, (ii) the Effective Date or (iii) the Effectiveness Deadline, such Investor shall not, and shall cause its Trading Affiliates not to, engage, directly or indirectly, in a Prohibited Transaction. Such Investor acknowledges that the representations, warranties and covenants contained in this Section 5.11 are being made for the benefit of the Investors as well as the Company and that each of the other Investors shall have an independent right to assert any claims against such Investor arising out of any breach or violation of the provisions of this Section 5.11.

5.12. Financial Condition . Investor acknowledges:

(a) that the Company has current assets of less than \$594,029 and that it is currently spending approximately \$300,000 per month; and

(b) that the sale of the Units will result in an adjustment of the Series F Warrants pursuant to Section 8(b) of the Series F Warrant, a copy of which is on file with the SEC; assuming the sale of \$2,000,000 of Notes with a \$0.50 conversion price, such adjustment will make each Series F Warrant exercisable for 1.16 shares of Common Stock.

5.13. Transaction Fees. The Investor acknowledges and understands that the Company (i) will pay commissions equal to 10% of the gross sales price of the Cambria Units sold pursuant to this Agreement, (ii) will also issue Series G Warrants to Cambria to acquire the number of shares of the Company's Common Stock equal to 7% of the aggregate number of Cambria Warrant Shares and the shares of Common Stock issuable upon conversion of the Cambria Notes and (iii) will also pay the Cambria's costs related to the placement of the Cambria Units, including fees of the Cambria's attorneys, costs of complying with federal and state securities laws and regulations and all miscellaneous expenses.

6. Conditions to Closing.

6.1. Conditions to the Investors' Obligations. The obligation of each Investor to purchase the Notes and the Series G Warrants at the Closing is subject to the fulfillment to such Investor's satisfaction, on or prior to the Closing Date, of the following conditions, any of which may be waived by such Investor (as to itself only):

(a) The representations and warranties made by the Company in Section 4 hereof qualified as to materiality shall be true and correct at all times prior to and on the Initial Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and, the representations and warranties made by the Company in Section 4 hereof not qualified as to materiality shall be true and correct in all material respects at all times prior to and on the Initial Closing Date, except to the extent any such representation or warranty expressly speaks as of an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date. The Company shall have performed in all material respects all obligations and covenants herein required to be performed by it on or prior to the Initial Closing Date.

(b) The Company shall have obtained any and all consents, permits, approvals, registrations and waivers necessary or appropriate for consummation of the purchase and sale of the Securities and the consummation of the other transactions contemplated by the Transaction Documents, all of which shall be in full force and effect.

(c) The Company shall have executed and delivered the Registration Rights Agreement.

(d) The Company shall have executed and delivered the Security Agreement.

(e) No judgment, writ, order, injunction, award or decree of or by any court, or judge, justice or magistrate, including any bankruptcy court or judge, or any order of or by any governmental authority, shall have been issued, and no action or proceeding shall have been instituted by any governmental authority, enjoining or preventing the consummation of the transactions contemplated hereby or in the other Transaction Documents.

(f) The Company shall have delivered a Certificate, executed on behalf of the Company by its Chief Executive Officer, dated as of the Closing Date, certifying to the fulfillment of the conditions specified in subsections (a), (b), (e) and (h) of this Section 6.1.

(g) The Company shall have delivered a Certificate, executed on behalf of the Company by its Secretary, dated as of the Closing Date, certifying the resolutions adopted by the Board of Directors of the Company approving the transactions contemplated by this Agreement and the other Transaction Documents and the issuance of the Securities, certifying the current versions of the Articles of Incorporation and Bylaws of the Company and certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company.

(h) No stop order or suspension of trading shall have been imposed by the SEC or any other governmental or regulatory body with respect to public trading in the Common Stock.

6.2. Conditions to Obligations of the Company. The Company's obligation to sell and issue the Shares and the Series G Warrants at the Closing is subject to the fulfillment to the satisfaction of the Company on or prior to the Closing Date of the following conditions, any of which may be waived by the Company:

(a) The representations and warranties made by the Investors in Section 5 hereof (the “**Investor Representations**”), shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date. The Investment Representations shall be true and correct in all respects when made, and shall be true and correct in all respects on the Closing Date with the same force and effect as if they had been made on and as of said date. The Investors shall have performed in all material respects all obligations and covenants herein required to be performed by them on or prior to the Closing Date.

(b) The Investors shall have executed and delivered the Registration Rights Agreement.

(c) The Investors shall have executed and delivered the Security Agreement.

(d) The Investors shall have delivered the Purchase Price to the Company.

6.3. Termination of Obligations to Effect Closing; Effects.

(a) The obligations of the Company, on the one hand, and the Investors, on the other hand, to effect the Closing shall terminate as follows:

(i) Upon the mutual written consent of the Company and the Investors;

(ii) By the Company if any of the conditions set forth in Section 6.2 shall have become incapable of fulfillment, and shall not have been waived by the Company;

(iii) By an Investor (with respect to itself only) if any of the conditions set forth in Section 6.1 shall have become incapable of fulfillment, and shall not have been waived by the Investor; or

(iv) By either the Company or any Investor (with respect to itself only) if the Closing has not occurred on or prior to 5:00 p.m., Houston time, on May 30, 2009;

provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect the Closing.

(b) In the event of termination by the Company or any Investor of its obligations to effect the Closing pursuant to this Section 6.3, written notice thereof shall forthwith be given to the other Investors and the other Investors shall have the right to terminate their obligations to effect the Closing upon written notice to the Company and the other Investors. Nothing in this Section 6.3 shall be deemed to release any party from any liability for any breach by such party of the terms and provisions of this Agreement or the other Transaction Documents or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement or the other Transaction Documents.

7. Covenants and Agreements of the Company .

7.1. Reservation of Common Stock . The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of providing for the exercise of the Series G Warrants, such number of shares of Common Stock as shall from time to time equal the number of shares sufficient to permit the exercise of the Series G Warrants issued pursuant to this Agreement in accordance with their respective terms.

7.2. Reports . The Company will furnish to the Investors and/or their assignees such information relating to the Company and any Subsidiaries as from time to time may reasonably be requested by the Investors and/or their assignees; provided, however, that the Company shall not disclose material nonpublic information to the Investors, or to advisors to or representatives of the Investors, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Investors, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Investor wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7.3. No Conflicting Agreements . The Company will not take any action, enter into any agreement or make any commitment that would conflict or interfere in any material respect with the Company's obligations to the Investors under the Transaction Documents.

7.4. Compliance with Laws . The Company will comply in all material respects with all applicable laws, rules, regulations, orders and decrees of all governmental authorities.

7.5. Listing of Underlying Shares and Related Matters . Promptly following the Closing, the Company shall take all necessary action to cause the Warrant Shares to be listed on the NASDAQ Stock Market as soon as practicable after the Closing Date. Further, if the Company applies to have its Common Stock or other securities traded on any other principal stock exchange or market, it shall include in such application the Warrant Shares and will take such other action as is necessary to cause such Common Stock to be so listed. Once approved for listing, the Company will use commercially reasonable efforts to continue the listing and trading of its Common Stock on the NASDAQ Stock Market and, in accordance, therewith, will use commercially reasonable efforts to comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

7.6. Termination of Covenants . The provisions of Sections 7.2 through 7.5 shall terminate and be of no further force and effect on the date on which the Company's obligations under the Registration Rights Agreement to register or maintain the effectiveness of any registration covering the Registrable Securities (as such term is defined in the Registration Rights Agreement) shall terminate.

7.7. Removal of Legends . Upon the earlier of (i) registration for resale pursuant to the Registration Rights Agreement or (ii) Rule 144 becoming available to the applicable Investor with respect to the resale of the applicable Securities then held by such Investor, the Company shall (A) deliver to the transfer agent for the Common Stock (the "**Transfer Agent**") irrevocable instructions that the Transfer Agent shall reissue a certificate representing shares of Common Stock without legends upon receipt by such Transfer Agent of the legended certificates for such shares, together with either (1) a customary representation by the Investor that Rule 144 applies to the shares of Common Stock represented thereby or (2) a statement by the Investor that such Investor has sold the shares of Common Stock represented thereby in accordance with the Plan of Distribution contained in the Registration Statement and, if applicable, in accordance with any prospectus delivery requirements, and (B) cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act. From and after the earlier of such dates, upon an Investor's written request, the Company shall promptly cause certificates evidencing the Investor's Securities to be replaced with certificates which do not bear such restrictive legends, and Warrant Shares subsequently issued upon due exercise of the Series G Warrants shall not bear such restrictive legends provided the provisions of either clause (i) or clause (ii) above, as applicable, are satisfied with respect to such Warrant Shares.

8. Survival and Indemnification.

8.1. Survival. The representations, warranties, covenants and agreements contained in this Agreement shall survive the Closing of the transactions contemplated by this Agreement.

8.2. Indemnification. The Company agrees to indemnify and hold harmless each Investor and its Affiliates and their respective directors, officers, employees and agents from and against any and all losses, claims, damages, liabilities and expenses (including without limitation reasonable attorney fees and disbursements and other expenses incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, “**Losses**”) to which such Person may become subject as a result of any breach of representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, and will reimburse any such Person for all such amounts as they are incurred by such Person.

8.3. Conduct of Indemnification Proceedings. Promptly after receipt by any Person (the “**Indemnified Person**”) of notice of any demand, claim or circumstances which would or might give rise to a claim or the commencement of any action, proceeding or investigation in respect of which indemnity may be sought pursuant to Section 8.2, such Indemnified Person shall promptly notify the Company in writing and the Company shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Person, and shall assume the payment of all fees and expenses; provided, however, that the failure of any Indemnified Person so to notify the Company shall not relieve the Company of its obligations hereunder except to the extent that the Company is materially prejudiced by such failure to notify. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Company and the Indemnified Person shall have mutually agreed to the retention of such counsel; or (ii) in the reasonable judgment of counsel to such Indemnified Person representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. The Company shall not be liable for any settlement of any proceeding effected without its written consent, which consent shall not be unreasonably withheld, but if settled with such consent, or if there be a final judgment for the plaintiff, the Company shall indemnify and hold harmless such Indemnified Person from and against any loss or liability (to the extent stated above) by reason of such settlement or judgment. Without the prior written consent of the Indemnified Person, which consent shall not be unreasonably withheld, the Company shall not effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Party, unless such settlement includes an unconditional release of such Indemnified Person from all liability arising out of such proceeding.

9. Miscellaneous.

9.1. Successors and Assigns. This Agreement may not be assigned by a party hereto without the prior written consent of the Company or the Investors, as applicable, provided, however, that an Investor may assign its rights and delegate its duties hereunder in whole or in part to an Affiliate or to a third party acquiring some or all of its Securities in a private transaction without the prior written consent of the Company or the other Investors, after notice duly given by such Investor to the Company provided, that no such assignment or obligation shall affect the obligations of such Investor hereunder. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.2. Counterparts; Faxes . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

9.3. Titles and Subtitles . The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

9.4. Notices . Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given as hereinafter described (i) if given by personal delivery, then such notice shall be deemed given upon such delivery, (ii) if given by telex or telecopier, then such notice shall be deemed given upon receipt of confirmation of complete transmittal, (iii) if given by mail, then such notice shall be deemed given upon the earlier of (A) receipt of such notice by the recipient or (B) three days after such notice is deposited in first class mail, postage prepaid, 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. All notices shall be addressed to the party to be notified at the address as follows, or at such other address as such party may designate by ten days' advance written notice to the other party:

If to the Company:

Opexa Therapeutics, Inc.
2635 Crescent Ridge Drive
The Woodlands, Texas 77381
Attention: President
Facsimile: (281) 872-8585

With a copy to:

Vinson & Elkins, LLP
1001 Fannin, Suite 2500
Houston, Texas 77002
Attention: Michael C. Blaney
Facsimile: (713) 758-3487

If to the Investors:

to the addresses set forth on the signature pages hereto.

9.5. Expenses. The parties hereto shall pay their own costs and expenses in connection herewith. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their pro rata share of the reasonable attorneys' fees (based upon the relative number of Units purchased hereunder by each Investor) and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

9.7. Publicity. Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Investors without the prior consent of the Company (in the case of a release or announcement by the Investors) or the Investors (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Investors, as the case may be, shall allow the Investors or the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on such release or announcement in advance of such issuance. In addition, the Company will make such other filings and notices in the manner and time required by the SEC. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Investor, or include the name of any Investor in any filing with the SEC (other than the Registration Statement and any exhibits to filings made in respect of this transaction in accordance with periodic filing requirements under the 1934 Act) or any regulatory agency, without the prior written consent of such Investor, except to the extent such disclosure is required by law or trading market regulations, in which case the Company shall provide the Investors with prior notice of such disclosure.

9.8. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

9.9. Entire Agreement. This Agreement, including the Exhibits and the Disclosure Schedules, and the other Transaction Documents constitute the entire agreement among the parties hereof with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof and thereof.

9.10. Further Assurances . The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

9.11. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial . This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Texas without regard to the choice of law principles thereof. Each of the parties hereto 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 Agreement 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 Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto 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 PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER .**

9.12. Independent Nature of Investors' Obligations and Rights . The obligations of each Investor under any Transaction Document are several and not joint with the obligations of any other Investor, and no Investor shall be responsible in any way for the performance of the obligations of any other Investor under any Transaction Document. The decision of each Investor to purchase Securities pursuant to the Transaction Documents has been made by such Investor independently of any other Investor. Nothing contained herein or in any Transaction Document, and no action taken by any Investor pursuant thereto, shall be deemed to constitute the Investors as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Investors are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. Each Investor acknowledges that no other Investor has acted as agent for such Investor in connection with making its investment hereunder and that no Investor will be acting as agent of such Investor in connection with monitoring its investment in the Securities or enforcing its rights under the Transaction Documents. Each Investor shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of the other Transaction Documents, and it shall not be necessary for any other Investor to be joined as an additional party in any proceeding for such purpose. The Company acknowledges that each of the Investors has been provided with the same Transaction Documents for the purpose of closing a transaction with multiple Investors and not because it was required or requested to do so by any Investor.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company:

OPEXA THERAPEUTICS, INC.

By: /S/ NEIL K. WARMA
Neil K. Warma
President and Chief Executive Officer

*Company Signature Page
to Unit Purchase Agreement*

The Investors:

By:

Name:

Title:

Aggregate Purchase Price:

\$

Number of Units:

Date:

Address for Notices:

Attention:

Facsimile:

Email:

EXHIBIT A

Form of Note

(to be attached)

EXHIBIT A
to Unit Purchase Agreement

EXHIBIT B

Form of Series G Warrant

(to be attached)

EXHIBIT B
to Unit Purchase Agreement

EXHIBIT C

Form of Registration Rights Agreement

(to be attached)

EXHIBIT C
to Unit Purchase Agreement

EXHIBIT D

Form of Security Agreement

(to be attached)

EXHIBIT D
to Unit Purchase Agreement

OPEXA THERAPEUTICS, INC.

10% CONVERTIBLE PROMISSORY NOTE

\$ _____

April 14, 2009

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 _____ and No/100 Dollars (\$ _____), together with interest thereon from the date of issuance of this 10% Convertible Promissory Note (the "**Note**") on the unpaid principal balance at an annual rate of interest equal to ten percent (10%) per annum, compounded annually (on the basis of a 360-day year), such principal and interest to be payable as provided below on April 14, 2011 (the "**Maturity Date**").

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

1. **Payment.**

(A) **Principal.** Subject to the provisions of Section 2 hereof relating to the conversion of this Note, 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.** Subject to the provisions of Section 2 hereof relating to the conversion of this Note, the Company shall make payment of all accrued interest when due in either (i) Legal Tender or (ii) shares of the Company's Common Stock, par value \$0.50 per share (the "**Common Stock**"). If paid by shares of Common Stock, the number of shares shall equal the interest due divided by the "**Conversion Price**." The Conversion Price equals \$0.50.

(C) **Pre-Payment.** Notwithstanding the foregoing, the Company may prepay all or any portion of the principal sum of and/or interest on this Note without penalty upon 15 days prior written notice to the Investor, subject to the provisions of Section 2 hereof.

2. Conversion.

(A) Investor Conversion Rights. At any time prior to the Maturity Date, the Investor may elect to convert all or part of the unpaid principal amount of this Note and any unpaid interest accrued thereon (the sum of such principal and accrued interest being hereinafter collectively referred to as the “ **Outstanding Balance** ”), into shares of Common Stock. The number of shares of Common Stock into which this Note shall be convertible shall be determined by dividing (i) the Outstanding Balance by (ii) the Conversion Price. Any failure by the Investor to provide such notice shall be deemed to be an election not to convert any portion of the Investor’s Outstanding Balance. For the purposes of this Section 2(A), conversion shall be deemed to occur on the date that the Company receives written notice from the Investor of such conversion.

(B) Company Conversion Rights. If (i) the NASDAQ Official Closing Price of the Company’s common stock equals or exceeds \$1.00 per share (as adjusted for any stock splits, stock dividends or stock combinations) for twenty (20) consecutive trading days, (ii) the Company has an effective registration statement on file with the Securities and Exchange Commission that permits the immediate resale of the Common Stock into which this Note shall be convertible or all shares of such Common Stock are freely tradable by the holders thereof under applicable securities laws and the Company shall not have imposed any stop-order or other restriction in the sale thereof; and (iii) the Company enters into an agreement that will fund a Phase IIb or Phase III clinical trial for the further development of the Company’s product known as Tovaxin, the Company may elect at any time thereafter to convert all or part of the Outstanding Balance, into shares of Common Stock. The number of shares of Common Stock into which this Note shall be convertible shall be determined by dividing (i) the Outstanding Balance by (ii) the Conversion Price. The Company shall effect such conversion by sending written notice to the Investor at its address on the Company’s books. Any failure by the Company to provide such notice shall be deemed to be an election not to convert any portion of the Outstanding Balance. For the purposes of this Section 2(B), conversion shall be deemed to occur on the date that the Company sends such written notice to the Investor of such conversion.

(C) Surrender of Note. Upon conversion of this Note into Common Stock as provided in this Section 2, the Investor shall surrender this Note at the offices of the Company at 2635 North Crescent Ridge Drive, The Woodlands, Texas 77381 and the Company shall, at its expense, deliver to the Investor as soon as practicable a certificate representing the number of shares of Common Stock provided in Section 2(A) or Section 2(B), as applicable. The Company will place on each certificate a legend substantially the same as that appearing on this Note, in addition to any legend required by any applicable state or federal law. Irrespective of the date of issuance and delivery of any certificates with respect thereto, shares of Common Stock purchased by conversion under this Section 2 shall be, and be deemed to be, issued to the Investor as the record owner of such shares as of the close of business on the deemed date of conversion as provided in Section 2(A) and Section 2(B).

(D) 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 exercise 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.

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

3. **Pari Passu** . This Note is one of several convertible promissory notes of the Company issued contemporaneously herewith (the “**April 2009 Notes**”) evidencing indebtedness incurred by the Company for interim financing provided to the Company. This Note and the other April 2009 Notes shall rank *pari passu* as to the payment of principal and interest. The Investor agrees that any payments or prepayments to Investor and to the holders of the other April 2009 Notes, whether principal, interest or otherwise, shall be made pro rata among the Investor and the holders of the other April 2009 Notes based upon the aggregate unpaid principal amount of this Note and the other April 2009 Notes. By accepting this Note, the Investor agrees that if the Investor or any other holder of a April 2009 Note obtains any payments (whether voluntary, involuntary, by prepayment, set-off or otherwise) of the principal or interest on this Note or any other April 2009 Note in excess of such holder’s pro rata share of payments received by all holders of the April 2009 Notes, such holder shall purchase from the other holders of this Note and the other April 2009 Notes such participation in such promissory notes held by them as is necessary to cause all such holders to share the excess payment ratably among each of them as provided in this Section 3.

4. **Adjustments** . Subject and pursuant to the provisions of this Section 4, the Conversion Price shall be subject to adjustment from time to time as set forth hereinafter.

(A) 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 or issue by reclassification of its outstanding shares of Common Stock any shares of its capital stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), then 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. Such adjustments shall be made successively whenever any event listed above shall occur.

(B) 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 4(A)), 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 closing bid price of the Common Stock as listed on the NASDAQ Stock Market immediately prior to such payment date (the “**Market Price**”), less the fair market value (as determined by the Company’s 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.

(C) 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.

(D) In the event that, as a result of an adjustment made pursuant to this Section 4, 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.

5. **Default Interest; Collection Fees; Waiver**. All past due principal and interest on this Note shall accrue interest at the highest lawful rate. 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 reasonable 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.

6. **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 6 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 holder'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 holder or holders hereof in connection with such indebtedness.

7. **Certain Events** . The Outstanding Balance of this Note 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) the failure of Company to perform any of its material obligations under this Note or any document, instrument or agreement executed in connection herewith, (vi) the appointment of a receiver or trustee to take possession of the property or assets of the Company, (vii) any dissolution of the Company, (viii) the adoption by the Company of any plan of liquidation, (ix) the sale by the Company in bulk of any of its assets pursuant to a plan of liquidation or for the purpose of liquidating its business, (x) the redemption or acquisition by the Company of any of its outstanding stock other than pursuant to a stock purchase agreement or stock repurchase agreements which may currently or hereafter exist between the Company and certain of its employees, consultants or directors, (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) the cash or cash equivalents of the Company fall below \$200,000, or (xiii) any challenge or contest by the Company or any affiliate of the Company in any action, suit or proceeding of the validity or enforceability of this Note or the warrants issued on even date herewith by the Company to Investor (each, individually, an "**Event of Default** ").

8. **Amendments and Waivers.** No provision of this Note may be waived or amended in any respect except by the written consent of the Company and the Investor; provided, however, that if holders of fifty-one percent (51%) or more in principal amount of the outstanding April 2009 Notes agree in writing to waive any provision of or otherwise amend such April 2009 Notes, then in such instance the provisions of this Note shall be so waived or amended; provided, further that no such waiver or amendment may reduce the principal amount of or interest on this Note or change the stated Maturity Date of this Note or reduce the percentage of holders of April 2009 Notes necessary to waive or amend the provisions of this Note, without the written consent of Investor. Notwithstanding the foregoing, holders of sixty-six and two-thirds percent (66 2/3%) or more in principal amount of the outstanding April 2009 Notes shall be required to waive or amend the provisions of Section 2(B) hereof.

9. **Miscellaneous.** The Company hereby waives to the full extent permitted by law all rights to plead any statute of limitations or laches as a defense to any action hereunder. This Note cannot be changed orally, but only by an agreement in writing signed by holders of at least a majority of the outstanding principal balance of all then-outstanding April 2009 Notes. This Note shall be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made to be performed in Texas, without reference to any principles of choice of law or conflicts of law.

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

OPEXA THERAPEUTICS, INC.

By: /S/ NEIL K. WARMA

Name: Neil K. Warma

Title: President and Chief Executive Officer

ATTEST:

/S/ NEIL K. WARMA

Neil K. Warma, Secretary

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (the “**Agreement**”) is made and entered into as of this 14th day of April, 2009, by and among Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and the “**Investors**” named in that certain Unit Purchase Agreement by and among the Company and the Investors (the “**Purchase Agreement**”).

The parties hereby agree as follows:

1. Certain Definitions.

As used in this Agreement, the following terms shall have the following meanings:

“**Affiliate**” shall mean, with respect to any person, any other person which directly or indirectly controls, is controlled by, or is under common control with, such person.

“**Business Day**” shall mean a day, other than a Saturday or Sunday, on which banks in New York City are open for the general transaction of business.

“**Common Stock**” shall mean the Company’s common stock, par value \$0.50 per share, and any securities into which such shares may hereinafter be reclassified.

“**Investors**” shall mean the Investors identified in the Purchase Agreement and any Affiliate of any Investor who is a subsequent holder of any Registrable Securities.

“**Issuable Shares**” shall mean the shares of Common Stock issuable upon the conversion of the Notes and upon the exercise of the Warrants.

“**Notes**” shall mean the Convertible Secured Promissory Notes issued to the Investors pursuant to the Purchase Agreement, a form of which is attached to the Purchase Agreement as Exhibit A.

“**Prospectus**” shall mean (i) the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus, and (ii) any “free writing prospectus” as defined in Rule 405 under the 1933 Act.

“**Register**,” “**registered**” and “**registration**” refer to a registration made by preparing and filing a Registration Statement or similar document in compliance with the 1933 Act (as defined below), and the declaration or ordering of effectiveness of such Registration Statement or document.

“**Registrable Securities**” shall mean (i) the Issuable Shares and (ii) any other securities issued or issuable with respect to or in exchange for Registrable Securities; provided, that, a security shall cease to be a Registrable Security upon (a) a Registration Statement with respect to the sale of such securities shall have become effective under the 1933 Act and such securities shall have been sold, transferred, disposed of or exchanged pursuant to such Registration Statement, (b) such securities shall have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration under the 1933 Act, (c) such securities shall have ceased to be outstanding, or (d) such securities are saleable under Rule 144 of the 1933 Act without regard to any volume limitation requirements under Rule 144 of the 1933 Act.

“ **Registration Statement** ” shall mean any registration statement of the Company filed under the 1933 Act that covers the resale of any of the Registrable Securities pursuant to the provisions of this Agreement, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all material incorporated by reference in such Registration Statement.

“ **Rights Holder** ” shall mean any Investor.

“ **SEC** ” shall mean the U.S. Securities and Exchange Commission.

“ **Warrants** ” shall mean, the Series G Warrants to purchase shares of Common Stock issued to the Investors pursuant to the Purchase Agreement, a form of which is attached to the Purchase Agreement as Exhibit B.

“ **1933 Act** ” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ **1934 Act** ” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

2. Demand Registration.

(a) Subject to the limits set forth below, at any time after September 27, 2009, one or more Rights Holders holding at least forty (40) percent of the Registrable Securities (collectively, the “ **Required Holders** ”) shall have the right, by delivering written notice to the Company (a “ **Demand Notice** ”), to require the Company to register, pursuant to the terms of Section 4 under and in accordance with the provisions of the 1934 Act, the number of Registrable Securities requested to be so registered pursuant to the terms of this Agreement (a “ **Demand Registration** ”). Within ten (10) days after receipt by the Company of a Demand Notice, the Company shall give written notice (the “ **Notice** ”) of such Demand Notice to all other Rights Holders and shall include in such registration all Registrable Securities with respect to which the Company received written requests from such Rights Holders for inclusion therein within ten (10) days after such Notice is given by the Company to the Rights Holders. A Demand Notice shall only be binding on the Company if the sale of all Registrable Securities requested to be registered (pursuant to such Demand Notice and in response to the Notice) is reasonably expected to result in aggregate gross proceeds in excess of \$750,000.

(b) Following the receipt of a Demand Notice for a Demand Registration, the Company shall use its best efforts to file a Registration Statement as promptly as practicable, but not later than forty-five (45) days after such Demand Notice, and shall use its best efforts to cause such Registration Statement to be declared effective under the 1933 Act as promptly as practicable after the filing thereof.

(c) The Required Holders shall be entitled to two (2) Demand Registrations; *provided , however ,* that there shall be no limit to the number of Demand Registrations by Rights Holders that constitute “shelf” registrations as contemplated by the next succeeding sentence. At such time when the Company is eligible to use Form S-3 (or comparable form) for the registration under the 1933 Act of any of its securities, the Required Holders shall be entitled to request that any Demand Registration be a “shelf” registration pursuant to Rule 415 under the 1933 Act, and the Required Holders shall be entitled to an unlimited number of Demand Registrations that constitute “shelf” registrations. Notwithstanding any other provisions of this Section 2, in no event shall more than one Demand Registration occur within any six-month period from the effective date of any Registration Statement filed pursuant to a prior Demand Notice or within 120 days after the effective date of a Registration Statement filed by the Company; *provided , however ,* that no Demand registration may be prohibited for such 120-day period more often than once in a 12-month period.

(d) No Demand Registration shall be deemed to have occurred for purposes of this Section 2 if the Registration Statement relating thereto: (i) does not become effective, (ii) is not maintained effective for the period required pursuant to this Section 2 or (iii) the offering of the Registrable Securities pursuant to such Registration Statement is subject to a stop order, injunction or similar order or requirement of the SEC during such period. In the case of each of clauses (i), (ii) and (iii), such requesting Rights Holders shall be entitled to an additional Demand Registration.

3. Piggy-Back Registration.

(a) Whenever the Company proposes to file a Registration Statement (other than in connection with a Demand Registration as provided in Section 2), at any time and from time to time, it will, prior to such filing, give written notice to all Rights Holders of its intention to do so. Upon the written request of a Rights Holder given within ten (10) days after the Company provides such notice (which request shall state the intended method of disposition of such Registrable Securities), the Company shall use its best efforts to cause all Registrable Securities which the Company has been requested by such Rights Holder to register to be registered under the 1933 Act to the extent necessary to permit their sale or other disposition in accordance with the intended methods of distribution specified in the request of such Rights Holder; provided that the Company shall have the right to postpone or withdraw any registration effected pursuant to this Section 3 without obligation to any Rights Holder.

(b) If the registration for which the Company gives notice pursuant to Section 3(a) is a registered public offering involving an underwriting, the Company shall so advise the Rights Holders as part of the written notice given pursuant to Section 3(a). In such an event, the right of any Rights Holder to include its Registrable Securities in such registration pursuant to this Section 3 shall be conditioned upon such Rights Holder's participation in such underwriting on the terms set forth herein. All Rights Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for the underwriting by the Company. Notwithstanding any other provision of this Section 3, if the managing underwriter determines that marketing factors require a limitation of the number of Shares to be underwritten, the Company may limit the number of Registrable Securities to be included in such registration and underwriting to not less than thirty (30) percent of the aggregate number of Shares to be underwritten. The Company shall so advise all Rights Holders requesting registration, and the number of shares that are entitled to be included in the registration and underwriting shall be allocated in the following manner. The number of shares that may be included in such registration and underwriting shall be allocated among all Rights Holders requesting registration in proportion, as nearly as practicable, to the respective number of Registrable Securities which they held at the time the Company gives the notice specified in Section 3 (a). If any Rights Holder would thus be entitled to include more securities than such Rights Holder requested to be registered, the excess shall be allocated among the other requesting Rights Holders pro-rata in the manner described in the preceding sentence. If any Rights Holder disapproves of the terms of any such underwriting, such person may elect to withdraw therefrom by written notice to the Company, and any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

4. Registration.

(a) Registration Statements. If and whenever the Company is required by the provisions of this Agreement to use its best efforts to effect the registration of any Registrable Securities under the 1933 Act, the Company shall prepare and file with the SEC one Registration Statement on Form S-3 (or, if Form S-3 is not then available to the Company, on such form of registration statement as is then available to effect a registration for resale of the Registrable Securities, subject to the prior written consent of the Required Holders), covering the resale of securities equaling (a) 100% of the Registrable Securities. Subject to any SEC comments, such Registration Statement shall include the plan of distribution attached hereto as **Exhibit A** (the "**Plan of Distribution**"). Such Registration Statement also shall cover, to the extent allowable under the 1933 Act (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. Such Registration Statement shall not include any shares of Common Stock or other securities for the account of any other holder without the prior written consent of the Required Holders. The Registration Statement (and each amendment or supplement thereto, and each request for acceleration of effectiveness thereof) shall be provided in accordance with Section 4(c) to the Rights Holders and their counsel prior to its filing or other submission.

(b) Expenses. The Company will pay all expenses associated with each registration, including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws, listing fees, fees and expenses of one counsel to the Rights Holders (not to exceed \$15,000) and the Rights Holders' reasonable expenses in connection with the registration, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use reasonable best efforts to have the Registration Statement declared effective as soon as practicable. Any request for acceleration of the Registration Statement shall seek effectiveness at 5:00 p.m., New York time, or as soon thereafter as practicable. The Company shall notify the Rights Holders by facsimile or e-mail as promptly as practicable, and in any event, prior to 9:00 a.m., New York time, on the day after any Registration Statement is declared effective, shall file with the SEC under Rule 424 a final Prospectus as promptly as practicable, and in any event, prior to 9:00 a.m., New York time, on the day after any Registration Statement is declared effective, and shall advise the Rights Holders in writing that either (i) it has complied with the requirements of Rule 172 or (ii) it is unable to satisfy the conditions of Rule 172 and, as a result, Rights Holders are required to deliver a copy of the Prospectus in connection with any sales of Registrable Securities (in which case, the Company shall deliver to the Rights Holders a copy of the Prospectus to be used in connection with the sale or other disposition of the securities covered thereby). If a Registration Statement covering the Registrable Securities is not declared effective by the SEC prior to the earlier of (A) five (5) Business Days after the SEC shall have informed the Company that no review of the Registration Statement will be made or that the SEC has no further comments on the Registration Statement or (B) the 120th day after the Closing Date (the 150th day after the Closing Date if the SEC comments on the Registration Statement) then the Company will make pro-rata payments to each Rights Holder, as liquidated damages and not as a penalty, in an amount equal to 1.0% of the aggregate amount invested by such Rights Holder for each 30-day period or pro-rata for any portion thereof following the date by which such Registration Statement should have been effective (the “**Blackout Period**”). Such payments shall constitute the Rights Holders’ exclusive monetary remedy for such events, but shall not affect the right of the Rights Holders to seek injunctive relief. The amounts payable as liquidated damages pursuant to this paragraph shall be paid monthly within three (3) Business Days of the last day of each month. Provided, however, in no event shall such liquidated damages exceed 6% of the aggregate amount invested by the Rights Holder. Such payments shall constitute the Rights Holders’ exclusive monetary remedy for such events, but shall not affect the right of the Rights Holders to seek injunctive relief. Such payments shall be made to each Rights Holder in cash.

(ii) For not more than twenty (20) consecutive days or for a total of not more than forty-five (45) days in any twelve (12) month period, the Company may delay the disclosure of material non-public information concerning the Company, by suspending the use of any Prospectus included in any registration contemplated by this Section containing such information, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company (an “**Allowed Delay**”); provided, that the Company shall promptly (a) notify the Rights Holders in writing of the existence of (but in no event, without the prior written consent of an Rights Holder, shall the Company disclose to such Rights Holder any of the facts or circumstances regarding) material non-public information giving rise to an Allowed Delay, (b) advise the Rights Holders in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use reasonable best efforts to terminate an Allowed Delay as promptly as practicable.

(d) Limitation on Liquidated Damages. Notwithstanding the other provisions of this Section 4, in no event shall the Company be liable for liquidated damages in excess of an aggregate of 6.0% of the aggregate amount invested by the Rights Holders pursuant to the Purchase Agreement.

5. Company Obligations. The Company will use its best efforts to effect the registration of the Registrable Securities in accordance with the terms hereof, and pursuant thereto the Company will, as expeditiously as possible:

(a) use its best efforts to cause such Registration Statement to become effective at 5:00 p.m., New York time, or as soon thereafter as practicable and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Registration Statement as amended from time to time, have been sold, and (ii) the date on which all Registrable Securities covered by such Registration Statement may be sold pursuant to Rule 144 of the 1933 Act without regard to any volume limitation requirements under Rule 144 of the 1933 Act (the “**Effectiveness Period**”) and advise the Rights Holders in writing when the Effectiveness Period has expired;

(b) prepare and file with the SEC such amendments and post-effective amendments to the Registration Statement and the Prospectus as may be necessary to keep the Registration Statement effective for the Effectiveness Period and to comply with the provisions of the 1933 Act and the 1934 Act with respect to the distribution of all of the Registrable Securities covered thereby;

(c) furnish to each of the Rights Holders and their single designated legal counsel (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company (but not later than two (2) Business Days after the filing date, receipt date or sending date, as the case may be) one (1) copy of any Registration Statement and any amendment thereto, each preliminary prospectus and Prospectus and each amendment or supplement thereto, and each letter written by or on behalf of the Company to the SEC or the staff of the SEC, and each item of correspondence from the SEC or the staff of the SEC, in each case relating to such Registration Statement (other than any portion of any thereof which contains information for which the Company has sought confidential treatment), and (ii) such number of copies of a Prospectus, including a preliminary prospectus, and all amendments and supplements thereto and such other documents as each Rights Holder may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Rights Holder that are covered by the related Registration Statement;

(d) use reasonable best efforts to (i) prevent the issuance of any stop order or other suspension of effectiveness and, (ii) if such order is issued, obtain the withdrawal of any such order at the earliest possible moment;

(e) prior to any public offering of Registrable Securities, use best efforts to (i) register or qualify or cooperate with the Rights Holders and their counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions requested by the Rights Holders and (ii) do any and all other acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 4(e), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 4(e), or (iii) file a general consent to service of process in any such jurisdiction;

(f) use reasonable best efforts to cause all Registrable Securities covered by a Registration Statement to be listed on each securities exchange, interdealer quotation system or other market on which similar securities issued by the Company are then listed;

(g) immediately notify the Rights Holders, at any time prior to the end of the Effectiveness Period, upon discovery that, or upon the happening of any event as a result of which, the Prospectus includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, and promptly prepare, file with the SEC and furnish to such holder a supplement to or an amendment of such Prospectus as may be necessary so that such Prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing; and

(h) otherwise use best efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Rights Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Rights Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 4(h), “ **Availability Date** ” means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company’s fiscal year, “ **Availability Date** ” means the 90th day after the end of such fourth fiscal quarter).

(i) With a view to making available to the Rights Holders the benefits of Rule 144 of the 1933 Act (or its successor rule) and any other rule or regulation of the SEC that may at any time permit the Rights Holders to sell shares of Common Stock to the public without registration, the Company covenants and agrees to: (i) use its best efforts to make and keep public information available, as those terms are understood and defined in Rule 144, until the earlier of (A) six months after such date as all of the Registrable Securities may be resold pursuant to Rule 144 without regard to any volume limitation requirements under Rule 144 or (B) such date as all of the Registrable Securities shall have been resold; (ii) use its best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the 1934 Act; and (iii) furnish to each Rights Holder upon request, as long as such Rights Holder owns any Registrable Securities, (A) a written statement by the Company that it has complied with the reporting requirements of the 1934 Act, (B) a copy of the Company’s most recent Annual Report on Form 10-K or Quarterly Report on Form 10-Q, and (C) such other information as may be reasonably requested in order to avail such Rights Holder of any rule or regulation of the SEC that permits the selling of any such Registrable Securities without registration.

6. Due Diligence Review; Information . The Company shall make available, during normal business hours, for inspection and review by the Rights Holders, advisors to and representatives of the Rights Holders (who may or may not be affiliated with the Rights Holders and who are reasonably acceptable to the Company), all financial and other records, all SEC Filings (as defined in the Purchase Agreement) and other filings with the SEC, and all other corporate documents and properties of the Company as may be reasonably necessary for the purpose of such review, and cause the Company's officers, directors and employees, within a reasonable time period, to supply all such information reasonably requested by the Rights Holders or any such representative, advisor or underwriter in connection with such Registration Statement (including, without limitation, in response to all questions and other inquiries reasonably made or submitted by any of them), prior to and from time to time after the filing and effectiveness of the Registration Statement for the sole purpose of enabling the Rights Holders and such representatives, advisors and underwriters and their respective accountants and attorneys to conduct initial and ongoing due diligence with respect to the Company and the accuracy of such Registration Statement.

The Company shall not disclose material nonpublic information to the Rights Holders, or to advisors to or representatives of the Rights Holders, unless prior to disclosure of such information the Company identifies such information as being material nonpublic information and provides the Rights Holders, such advisors and representatives with the opportunity to accept or refuse to accept such material nonpublic information for review and any Rights Holder wishing to obtain such information enters into an appropriate confidentiality agreement with the Company with respect thereto.

7. Obligations of the Rights Holders .

(a) Each Rights Holder shall furnish in writing to the Company such information regarding itself, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities held by it, as shall be reasonably required by the provisions of this Agreement to effect the registration of such Registrable Securities and shall execute such documents in connection with such registration as the Company may reasonably request, including a completed questionnaire in the form attached hereto as **Exhibit B** . At least ten (10) Business Days prior to the first anticipated filing date of any Registration Statement, the Company shall notify each Rights Holder of the information the Company requires from such Rights Holder if such Rights Holder elects to have any of the Registrable Securities included in the Registration Statement. An Rights Holder shall provide such information to the Company at least two (2) Business Days prior to the first anticipated filing date of such Registration Statement if such Rights Holder elects to have any of the Registrable Securities included in the Registration Statement.

(b) Each Rights Holder, by its acceptance of the Registrable Securities agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of a Registration Statement hereunder, unless such Rights Holder has notified the Company in writing of its election to exclude all of its Registrable Securities from such Registration Statement.

(c) Each Rights Holder agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 4(c)(ii) or (ii) the happening of an event pursuant to Section 4(g) hereof, such Rights Holder will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities, until the Rights Holder is advised by the Company that such dispositions may again be made.

8. Indemnification.

(a) Indemnification by the Company. The Company will indemnify and hold harmless each Rights Holder and its officers, directors, members, employees and agents, successors and assigns, and each other person, if any, who controls such Rights Holder within the meaning of the 1933 Act, against any losses, claims, damages or liabilities, joint or several, to which they may become subject under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement, any preliminary Prospectus or final Prospectus, or any amendment or supplement thereof; (ii) any blue sky application or other document executed by the Company specifically for that purpose or based upon written information furnished by the Company filed in any state or other jurisdiction in order to qualify any or all of the Registrable Securities under the securities laws thereof (any such application, document or information herein called a “**Blue Sky Application** ”); (iii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (iv) any violation by the Company or its agents of any rule or regulation promulgated under the 1933 Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with such registration; or (v) any failure to register or qualify the Registrable Securities included in any such Registration in any state where the Company or its agents has affirmatively undertaken or agreed in writing that the Company will undertake such registration or qualification on an Rights Holder’s behalf and will reimburse such Rights Holder, and each such officer, director, member, employee, agent, successor and assign, and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided , however* , that the Company will not be liable in any such case if and to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission so made in conformity with information furnished by such Rights Holder or any such controlling person in writing specifically for use in such Registration Statement or Prospectus.

(b) Indemnification by the Rights Holders. Each Rights Holder agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Rights Holder to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Rights Holder be greater in amount than the dollar amount of the proceeds (net of all expense paid by such Rights Holder in connection with any claim relating to this Section 8 and the amount of any damages such Rights Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Rights Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation. In addition, an Rights Holder shall not be liable hereunder to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of the Company's, or any underwriter's, or their representatives' failure to send or give a copy of a final Prospectus, as the same may be then supplemented or amended, to the person or entity asserting an untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of securities to such person or entity if such statement or omission was corrected in such final Prospectus.

(c) Conduct of Indemnification Proceedings. Any person entitled to indemnification hereunder shall (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; *provided* that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such person unless (a) the indemnifying party has agreed to pay such fees or expenses, (b) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person or (c) in the reasonable judgment of any such person, based upon written advice of its counsel, a conflict of interest exists between such person and the indemnifying party with respect to such claims (in which case, if the person notifies the indemnifying party in writing that such person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such person); and *provided, further*, that the failure of any indemnified party to give notice as provided herein shall not relieve the indemnifying party of its obligations hereunder, except to the extent that such failure to give notice shall materially adversely affect the indemnifying party in the defense of any such claim or litigation. It is understood that the indemnifying party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate firm of attorneys at any time for all such indemnified parties. No indemnifying party will, except with the consent of the indemnified party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation.

(d) Contribution . If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 8 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

9. Miscellaneous .

(a) Amendments and Waivers . This Agreement may be amended only by a writing signed by the Company and the Required Holders. The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Required Holders.

(b) Notices . All notices and other communications provided for or permitted hereunder shall be made as set forth in Section 9.4 of the Purchase Agreement.

(c) Assignments and Transfers by Rights Holders . The provisions of this Agreement shall be binding upon and inure to the benefit of the Rights Holders and their respective successors and permitted assigns. A Rights Holder may transfer or assign, in whole or from time to time in part, its rights hereunder in connection with the transfer of Registrable Securities by such Rights Holder only if such transferee or assignee receives at least 25,000 Registrable Securities (adjusted for stock splits, stock dividends, stock combinations and similar corporate actions); *provided, further* , that such transferee or assignee shall execute a copy of this Agreement and that such Rights Holder complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected.

(d) Assignments and Transfers by the Company . This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Required Holders, provided, however, that the Company may assign its rights and delegate its duties hereunder to any surviving or successor corporation in connection with a merger or consolidation of the Company with another corporation, or a sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation, without the prior written consent of the Required Holders, after notice duly given by the Company to each Rights Holder.

(e) Benefits of the Agreement . The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(f) Counterparts; Faxes . This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be executed via facsimile, which shall be deemed an original.

(g) Titles and Subtitles . The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability . Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof but shall be interpreted as if it were written so as to be enforceable to the maximum extent permitted by applicable law, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

(i) Further Assurances . The parties shall execute and deliver all such further instruments and documents and take all such other actions as may reasonably be required to carry out the transactions contemplated hereby and to evidence the fulfillment of the agreements herein contained.

(j) Entire Agreement . This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

(k) Governing Law; Consent to Jurisdiction; Waiver of Jury Trial . This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Texas without regard to the choice of law principles thereof. Each of the parties hereto 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 and the courts of the State of New York in the City of New York, Borough of Manhattan, and the United States District Court for the Southern District of New York for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement 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 Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto 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 PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER.**

IN WITNESS WHEREOF, the parties have executed this Agreement or caused their duly authorized officers to execute this Agreement as of the date first above written.

The Company: **OPEXA THERAPEUTICS, INC.**

By: /S/ NEIL K. WARMA
Neil K. Warma
President and Chief Executive Officer

*Signature Page to
Registration Rights Agreement*

The Investor:

[Print Investor's Name]

By: _____
Name: _____
Title: _____

[Print Investor's Name]

By: _____
Name: _____
Title: _____

*Signature Page to
Registration Rights Agreement*

Plan of Distribution

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date the registration statement of which this prospectus is a part is declared effective by the SEC;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted by law.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out their short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders also may resell all or a portion of the shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, provided that they meet the criteria and conform to the requirements of that rule.

The selling stockholders and any underwriters, broker-dealers or agents that participate in the sale of the common stock or interests therein may be "underwriters" within the meaning of Section 2(11) of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders will be subject to the prospectus delivery requirements of the Securities Act, unless an exemption therefrom is available.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

In order to comply with the securities laws of some states, if applicable, the common stock may be sold in these jurisdictions only through registered or licensed brokers or dealers. In addition, in some states the common stock may not be sold unless it has been registered or qualified for sale or an exemption from registration or qualification requirements is available and is complied with.

There can be no assurance that any selling shareholder will sell any or all of the shares of common stock registered pursuant to the shelf registration statement, of which this prospectus forms a part.

We have advised the selling stockholders that the anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of shares in the market and to the activities of the selling stockholders and their affiliates. In addition, to the extent applicable we will make copies of this prospectus (as it may be supplemented or amended from time to time) available to the selling stockholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act. The selling stockholders may indemnify any broker-dealer that participates in transactions involving the sale of the shares against certain liabilities, including liabilities arising under the Securities Act.

We have agreed to indemnify the selling stockholders against liabilities, including liabilities under the Securities Act and state securities laws, relating to the registration of the shares offered by this prospectus.

We will pay all our expenses of the registration of the shares of common stock pursuant to the registration rights agreement, estimated to be \$[] in total, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or "blue sky" laws and up to \$15,000 of the selling stockholders expenses; provided, however, that a selling shareholder will pay all underwriting discounts and selling commissions, if any.

We have agreed with the selling stockholders to keep the registration statement of which this prospectus constitutes a part effective until the earlier of (1) such time as all of the shares covered by this prospectus have been disposed of pursuant to and in accordance with the registration statement or (2) the date on which the shares may be sold pursuant to Rule 144 of the Securities Act without regard to any volume limitation requirements under Rule 144 of the Securities Act.

**SELLING SHAREHOLDERS
QUESTIONNAIRE**

In connection with the preparation of the Registration Statement on Form S-3 of Opexa Therapeutics, Inc. (the “ ***Company*** ”), it is necessary that the Company obtain from you (“ ***Selling Shareholder*** ”) written verification of certain information required to be disclosed in the Registration Statement.

Please use the utmost care in responding to this Questionnaire. You should be aware that if the Registration Statement contains any false or misleading statements which are material, under certain circumstances the Company and those in control of the Company, including officers and directors, could be subject to liability. **If the answer to any of the questions is “no,” “none” or “not applicable,” please so indicate. Please do not leave any questions unanswered .**

As used herein, “Fiscal Year” refers to the Company’s fiscal year ended **December 31, 2008** , and for previous fiscal years. Other ***italicized*** terms are defined in Appendix A to this Questionnaire.

If at any time prior to the effectiveness of the Registration Statement you discover that your answer to any question was inaccurate, or if any event occurring subsequent to your completion hereof and prior to the effectiveness of the Registration Statement would require a change in your answers to any questions, please contact **Neil Warma** by telephone at (281) 719-3421 immediately.

I hereby acknowledge, by my execution and dating of this Questionnaire in the places indicated below, that my answers to the following questions are true and correct to the best of my information and belief.

INVESTOR

By:

(Signature)

(Dated)

Printed Name:

Office:

I

GENERAL INFORMATION

Question 1(a):

Name: Please set forth the full name of the Selling Shareholder.

Answer:

Question 1(b):

If the Selling Shareholder is not a natural person, please indicate whether the Selling Shareholder is one of the following:

- a reporting company under the Exchange Act
- a majority owned subsidiary of a reporting company under the Exchange Act,
- a registered investment fund under the 1940 Act.

Yes _____ No _____

Question 1(c):

If the Selling Shareholder is not one of the three above, identify those persons that have voting and investment control over the Company.

Answer:

Question 1(d):

Is the Selling Shareholder an executive officer or director of the Company or 5% or more holder of Company shares of common stock.

Yes _____ No _____

Question 2:

Family Relationships . If you have any family relationship, by blood, marriage or adoption not more remote than first cousin, with any director, executive *officer* , or nominee to become a director or executive *officer* of the Company, its parent, any of its subsidiaries, or other *affiliates* , or any individual who has been employed by the Company in the past three years as an *executive officer* , please identify such relative and describe the nature of the relationship.

Answer:

Question 3:

Is the Selling Shareholder a broker dealer and/or member of the Financial Industry Regulatory Authority (“ **FINRA** ”) or a broker dealer’s affiliate and/or member of FINRA?

Yes ____ No ____

If a Selling Shareholder is a broker dealer and/or member of the FINRA, please indicate whether the Selling Shareholder acquired its securities as compensation for underwriting activities or investment purposes.

Yes ____ No ____

If a Selling Shareholder is an affiliate of a broker dealer and/or member of the FINRA, please indicate whether this broker dealer’s affiliate:

- purchased the securities to be resold in the ordinary course of business; and
- had no agreements or understandings, directly or indirectly, with any person to distribute the securities at the time of their purchase.

Yes ____ No ____

Is any member of your Immediate Family (by blood, marriage or adoption) a member of the FINRA.

Yes ____ No ____

If you marked “Yes” to any of the questions above, please briefly describe the facts below, giving the names of the broker dealer and/or member of the FINRA to which your answer refers (including, for example, percentage of ownership, amount of loan and interest payable, applicable dates, names of Affiliates, family, etc).

Question 4:

State whether you provide any consulting or other services to the Company.

Yes ____ No ____

(a) If you marked “Yes”, please briefly describe such services, including cash and non-cash compensation received and attach copies of written agreements or correspondence describing such services.

(b) Please identify any of the following relationships you have with any Member of the FINRA.

- None☐
- Advisor☐
- Officer☐
- Director☐
- Trustee☐
- Founder☐
- Registered Representative☐
- 5% Stockholder☐
- Employee☐
- Immediate Family☐
- Broker/Dealer☐
- Promoter☐
- Consultant☐
- Finder☐
- Bridge Lender☐
- General Partner☐
- Limited Partner☐
- Equity Investor☐
- Client or Customer☐
- Subordinated Debt Holder☐
- Other☐

(c) Please describe the nature of any relationship identified above. For example, if you are an advisor, promoter, consultant or finder, describe the compensation you received; if you are an equity investor, state the class of securities and percentage interest you hold; and if you are an Immediate Family Member, describe the exact relationship, including the name of the person to whom you are related and the position such person holds with any Member of the FINRA. Identify the Member of the FINRA:

(d) State whether you have any oral and/or written agreements with any Member of the FINRA or Person Associated with a Member of FINRA concerning the disposition of your securities of the Company.

Yes ____ No ____

(e) If you marked "Yes", please briefly describe such agreement and attach copies of written agreements or correspondence describing such arrangement.

Question 5:

Involvement in Certain Legal Proceedings . Have any of the following events occurred during the last five years:

(a) Were you the subject of any order, judgment or decree of any court (not subsequently reversed, suspended or vacated by any court) permanently or temporarily enjoining you (i) from acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission (" *CFTC* "), or an associated person of any of the foregoing; or as an investment advisor, underwriter, broker or dealer in securities; or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company; or from engaging in or continuing any conduct or practice in connection with such activity; or (ii) from engaging in any type of business practice; or (iii) from engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of federal or state securities laws or federal commodities laws?

YES _____ NO _____

(b) Were you the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (a) above, or to be associated with persons engaged in any such activity?

YES _____ NO _____

(c) Has any court, the SEC, CFTC, NYSE, American Stock Exchange, FINRA or any commodity exchange or NASDAQ imposed a sanction against you or found you to have violated any federal or state securities or commodities laws?

YES _____ NO _____

(d) Do you or any of your associates have any claims against the Company or any of its subsidiaries; or are you or any of your associates a party adverse to the Company or any of its subsidiaries in any legal proceeding; or do you or any of your associates have a material interest adverse to the Company or any of its subsidiaries in any legal proceeding?

YES _____ NO _____

II
SECURITY OWNERSHIP

Question 6: Your Securities Holdings.

(a) As to each class of *equity securities* of the Company, its parent or any subsidiary, state the total number of shares or other units *beneficially owned* by you as of the date hereof.

TITLE OF EQUITY SECURITY (Include warrant, options and convertible debt)	NUMBER OF SHARES BENEFICIALLY OWNED
_____	_____
_____	_____
_____	_____
_____	_____

If you listed any warrants, options, convertible debt or other derivative securities that are not fully vested, please set forth the vesting schedule below.

Vesting Schedule(s):

(b) If, as a result of applying the rules regarding *beneficial ownership* summarized in the Appendix to this Questionnaire, you have included in the amount stated in answer to Question 6(a) above under “Number of Shares Beneficially Owned” shares not issued in your name, please provide details as to the nature of such beneficial ownership of such shares or other units and state the amount of shares or units so owned;

Answer:

(c) If, as a result of applying the rules regarding beneficial ownership summarized in the Appendix to this Questionnaire, you have excluded from the amount stated in the answer to Question 6(a) above under “Number of Shares Beneficially Owned” shares or units which are issued in your name, please state the amount so excluded and explain why you are not the beneficial owner of such shares or units.

Answer:

(d) Of the total number of shares or units *beneficially owned* by you, as reported in answer to Question 6(a), indicate below the amounts as to which you have sole or shared voting or investment power.

	Common Stock	Other (i.e. warrants, options or convertible debt)
Sole voting power		
Shared voting power		
Sole investment power		
Shared investment power		

(e) Does the Selling Shareholder have a registration rights agreement with the Company other than as described in the Purchase Agreement entered into in connection with this questionnaire?

Yes _____ No _____

If so, attach a copy.

Question 7: Disclaimer of Beneficial Ownership.

(a) If you wish to disclaim *beneficial ownership* of any securities referred to above, please set forth the number of such shares or units, the circumstances upon which the disclaimer of *beneficial ownership* is based, the name of the person or persons who should be shown as the beneficial owner(s) of such shares or units, and your relationship to that person or those persons.

Answer:

(b) Do you or any of your *affiliates* or *associates* participate in investment decisions made by any nonprofit entity that owns Company securities? If yes, please provide details and indicate whether you disclaim *beneficial ownership* of such Company securities.

YES _____ NO _____

Question 8:

Securities Holdings of Your Relatives . If any *equity securities* of the Company, its parent or any subsidiary are *beneficially owned* by any relative of yours (by blood, marriage or adoption) who shares your home, please indicate below the name of each such relative, your relationship with him or her, and the amount of shares so owned.

Answer:

III

CERTAIN TRANSACTIONS AND RELATIONSHIPS

Question 9:

Transactions with Management . In the table on the following page, describe any *transaction* (or series of similar *transactions*), during the Company's last three Fiscal Years, or any currently proposed *transaction* (or series of similar *transactions*), to which the Company or any of its subsidiaries was or is to be a party, and in which you had or anyone in your immediate family has, a material direct or indirect financial interest. Identify the person(s) involved and state the nature of your or their interest in the *transaction* , the amount of the *transaction* and the amount of your or their interest in the *transaction* . (Attach a supplemental page if necessary.)

Description of Transaction	Persons Involved	Nature of Interest	Amount of Transaction	Amount of Interest
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Question 10:

Indebtedness of Management . If you or any *associate* of yours has been indebted to the Company or any of its subsidiaries at any time during the Company’s last three Fiscal Years, state: (a) the name of the indebted person; (b) if the indebted person is an *associate* , the nature of your relationship to that person; (c) the largest aggregate amount of indebtedness outstanding at any time during the Company’s last three Fiscal Years; (d) the nature of the indebtedness and of the transaction in which it was incurred; (e) the amount of indebtedness outstanding as of the latest practicable date (indicating that date); and (f) the rate of interest paid or charged thereon, if any.

Include (with respect to yourself only) any instances where the Company, either directly or indirectly (including through a subsidiary), extended or maintained credit for you, arranged for the extension of credit, or renewed any extension of credit, in the form of a personal loan to or for you.

Answer:

APPENDIX A
DEFINITIONS OF CERTAIN TERMS
IN QUESTIONNAIRE
(Arranged alphabetically)

1. “**Affiliate** .” An “affiliate” of any entity is a person that, directly or indirectly, through one or more intermediaries, *controls* , is *controlled* by or is under common *control* with such person (for example, a parent subsidiary or sister corporation).

2. “**Associate** .” “Associate” for the purpose of Question 4 means (1) any corporation or organization (other than the Company or a majority-owned subsidiary of the Company) of which you are an **officer** or partner or are, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities; (2) any trust or other estate in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar fiduciary capacity; and (3) any member of your *immediate family* . “Associate” for the purpose of Question 13 means the same as the foregoing, except that subsection (1) shall state “any corporation or organization ... of which you are an **executive officer** ...”

3. “**Beneficial Ownership** .”

a. General Rule. Under the rules of the SEC, you are deemed to “beneficially own” or be the “beneficial owner” of any security with respect to which you have or share, directly or indirectly, through any contract, arrangement, understanding, relationship, agreement or otherwise: (1) Voting Power (which includes the power to vote, or to direct the voting of, such security); and/or (2) Investment Power (which includes the power to dispose, or to direct the disposition of, such security). You are also the beneficial owner of a security if you, directly or indirectly, create or use a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting yourself of beneficial ownership of a security or preventing the vesting of such beneficial ownership.

Some specific applications of the above definition of beneficial ownership are:

(i) Family situations. Although the determination of beneficial ownership of securities is necessarily a question to be determined in light of the facts of each particular case, family relationships may result in your having, or sharing, the power to vote, or direct the voting of, or dispose, or direct the disposition of, shares held by your family members. In view of the broad definition of “Beneficial Ownership,” it may be prudent to include such shares in your beneficial ownership disclosure and then disclaim beneficial ownership of such securities pursuant to Question 6.

(ii) Shares held by others for your benefit. There are numerous instances in which you may have, or share, voting or investment power (as defined above) over securities, although the securities are held by another person or entity. For example, you may have or share such power in securities held for you or your family members living with you by custodians, brokers, relatives, executors, administrators or trustees; securities held for your account by pledgees; securities owned by a partnership in which you are a member; and securities owned by a corporation which is or should be regarded as a personal holding company of yours or is controlled by you.

(iii) Shares held by you for the benefit of others. Beneficial ownership of securities also includes securities held in your name as a trustee, custodian or other fiduciary where you have, or share, voting or investment power with respect to such securities.

b. Options and other rights to acquire securities. In addition to being beneficial owner of securities over which you have, or share, voting or investment power, the SEC has determined that you are deemed to be the beneficial owner of a security if you have a right to acquire beneficial ownership of (i.e., the right to obtain or share voting or investment power over) such security at any time within sixty days. Examples of such rights would include the right to acquire: (i) through the exercise of any option, warrant or similar right; (ii) through conversion of any security; or (iii) pursuant to the power to revoke, or the provision for automatic termination of, a trust, discretionary account or similar arrangement. Also, if you have acquired or hold any options, convertible securities or power to revoke such a trust with the “purpose or effect” of changing or influencing control of the Company, you are deemed the beneficial owner of the underlying securities upon such acquisition, without regard to the sixty-day rule stated above.

4. “ **Control** .” The term “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the Company, whether through the ownership of voting securities, by contract or otherwise. An *executive officer* or director of a company generally is considered to control that company. It is suggested that, if you are in doubt as to the meaning of “control” in a particular context, you communicate with counsel.

5. “ **Equity Security** .” The definition of “equity security” encompasses more than common and preferred stock. It includes for instance convertible debt instruments as well as warrants and options to acquire stock or similar securities. If you have a question as to the proper characterization of your holdings you should consult with the Company’s legal counsel.

6. “ **Executive Officer** .” “Executive officer” for the purpose of this Questionnaire means the president of a company, any vice president of it in charge of a principal business unit, division or function (such as sales, administration or finance), any other *officer* who performs a policy-making function or any other person who performs similar policy-making functions for the company. Executive officers of subsidiaries may be deemed executive officers of a company if they perform such policy-making functions for the company.

7. “ **Group** .” A “group” exists when two or more persons act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of any issuer.

8. “ **Immediate Family** .” “Immediate family” for the purpose of this Questionnaire includes your spouse, parents, children, siblings, mothers-and fathers-in-law, sons- and daughters-in-law, and brothers- and sisters-in-law.

9. “ **Officer** .” “Officer” means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

10. “ **Person** .” “Person” for the purpose of this Questionnaire means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, an unincorporated organization, or any other entity.

11. “ **Personal Benefits** .” The SEC’s prior interpretive releases on what the SEC views as a personal benefit or a “perk,” were previously rescinded by Item 402 and as most recently revised, Item 402 does not specifically define “personal benefit.” Item 402, however, does not require disclosure of personal benefits for any individual if the aggregate amount paid to that individual is less than the lesser of (i) \$50,000 or (ii) 10% of that individual's compensation. In general, the position of the SEC has been that benefits which are directly related to job performance, as well as benefits provided to broad categories of employees and which do not discriminate in scope or terms of operation in favor of *officers* and directors, may be omitted from the calculation of total compensation, while benefits not so related should be disclosed as compensation. If you have any questions, please resolve the issue in favor of disclosure. The Company will review the necessity for disclosure in the proxy statement with its counsel.

12. “ **Transaction or Transactions** .” “Transaction” or “transactions” is to be understood in its broadest sense, and includes the direct or indirect receipt of anything of value. No transaction or interest therein need be disclosed where: (a) the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier or public utility at rates or charges fixed in conformity with law or governmental authority; (b) the transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture or similar services; or (c) the interest in question arises solely from the ownership of securities of the Company and the interested party receives no extra or special benefit not shared on a pro-rata basis by all shareholders.

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.

SUBJECT TO THE PROVISIONS OF SECTION 10 HEREOF, THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. EASTERN TIME ON APRIL 14, 2013, (THE “ EXPIRATION DATE ”).

No. G-_____

April 14, 2009

OPEXA THERAPEUTICS, INC.

SERIES G WARRANT TO PURCHASE ____ SHARES OF COMMON STOCK, PAR VALUE \$0.50 PER SHARE

For VALUE RECEIVED, _____ (“ **Warrantholder** ”), is entitled to purchase, subject to the provisions of this Series G Warrant (the “ **Warrant** ”), from Opexa Therapeutics, Inc., a Texas corporation (“ **Company** ”), at any time from and after the date six months after the date hereof (the “ **Initial Exercise Date** ”) and not later than 5:00 P.M., Eastern time, on the Expiration Date (as defined above), at an exercise price per share equal to \$0.75 (the exercise price in effect being herein called the “ **Warrant Price** ”), _____ shares (“ **Warrant Shares** ”) of the Company’s Common Stock, par value \$0.50 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.

This Warrant is one of a series of Series G Warrants of like tenor issued by the Company pursuant to that certain Unit Purchase Agreement dated April 14, 2009, among the Company and the Investors named therein (the “ **Purchase Agreement** ”), and initially covering an aggregate of up to 10,000 shares of Common Stock (collectively, the “ **Company Warrants** ”).

Section 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.

Section 2. Transfers. As provided herein, 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 its 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 and the surrendered Warrant shall be canceled by the Company.

Section 3. Exercise of Warrant .

(a) Subject to the provisions hereof, the Warrantholder may exercise this Warrant, in whole or in part, at any time after the Initial Exercise Date and prior to its expiration upon surrender of the Warrant, together with delivery of a duly executed Warrant exercise form, in the form attached hereto as Appendix A (the “**Exercise Agreement**”) and 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 this Warrant shall have been surrendered (or the date evidence of loss, theft or destruction thereof and security or indemnity satisfactory to the Company has been provided to the Company), the Warrant Price shall have been paid and the completed Exercise Agreement shall have been delivered. 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 Agreement. 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. Each exercise hereof shall constitute the re-affirmation by the Warrantholder that the representations and warranties contained in Section 5 of the Purchase Agreement are true and correct in all material respects with respect to the Warrantholder as of the time of such exercise. Notwithstanding the foregoing, to effect the exercise of the Warrant hereunder, the Warrantholder shall not be required to physically surrender this Warrant to the Company unless the entire 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 the 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 Warrant Agent 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 Certificates are 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 traded on the NASDAQ Stock Market, the last bid price reported on that date; (ii) if the shares of Common Stock are no longer quoted 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 quoted on a any such market or 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 quoted on a any such market, 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 by mutual agreement of the Company and the Warrantholder; or if the Company and the Warrantholder are unable to agree on a Market Price, either party may submit the matter to arbitration as provided in Section 17.

“ **Date of Exercise** ” means the date on which the Company has received from Warrantholder (i) the Warrant, and (ii) a written notice of election to exercise signed by Warrantholder and indicating the number of Warrant Shares to be purchased.

This rights granted herein shall not in any way limit any other remedies that a Warrantholder may have under the Registration Rights Agreement (the “ **Registration Rights Agreement** ”) or in any other agreement or any other remedies that may be available pursuant to applicable law for breach by the Company of the Registration Rights Agreement.

(c) Company's Failure to Timely Deliver Securities. If within three (3) Trading Days after the Company's receipt of the facsimile copy of an Exercise Notice the Company shall fail to issue and deliver a certificate to the Warrantholder and register such shares of Common Stock on the Company's share register or credit the Warrantholder's balance account with the Depository Trust & Clearing Corporation for the number of shares of Common Stock to which the Warrantholder is entitled upon the Warrantholder's exercise hereunder or pursuant to the Company's obligation set forth in clause (ii) below, and if on or after such Trading Day the Warrantholder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Warrantholder of shares of Common Stock issuable upon such exercise that the Warrantholder anticipated receiving from the Company (a "**Buy-In**"), then the Company shall, within three (3) Business Days after the Warrantholder's request and in the Warrantholder's discretion, either (i) pay cash to the Warrantholder in an amount equal to the Warrantholder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such shares of Common Stock) or credit such Warrantholder's balance account with DTC shall terminate, or (ii) promptly honor its obligation to deliver to the Warrantholder a certificate or certificates representing such shares of Common Stock or credit such Warrantholder's balance account with DTC and pay cash to the Warrantholder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Market Price on the date of exercise.

Section 4. Compliance with the Securities Act of 1933. This Warrant may only be exercised by the Warrantholder if the Warrantholder is an "accredited investor" as defined by Rule 501 of Regulation D. 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.

Section 5. 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.

Section 6. 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.

Section 7. 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 7, out of the authorized and unissued shares of Common Stock, at least a number of shares of Common Stock equal to 120% of the 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.

Section 8. 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 or issue by reclassification of its outstanding shares of Common Stock any shares of its capital stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing corporation), 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 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 8(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 Company's 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 8, 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.

(f) To the extent permitted by applicable law and the listing requirements of any stock market or exchange on which the Common Stock is then listed, the Company from time to time may decrease the Warrant Price by any amount for any period of time if the period is at least twenty (20) days, the decrease is irrevocable during the period and the Board shall have made a determination that such decrease would be in the best interests of the Company, which determination shall be conclusive provided however, that the Warrant Price may not be decreased below the Market Price on the date of the execution of Purchase Agreement. Whenever the Warrant Price is decreased pursuant to the preceding sentence, the Company shall provide written notice thereof to the Warrantholder at least five (5) days prior to the date the decreased Warrant Price takes effect, and such notice shall state the decreased Warrant Price and the period during which it will be in effect. Notwithstanding the foregoing, the Company shall treat all holders of the Company Warrants equally.

Section 9. 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 9, 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.

Section 10. 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.

Section 11. Notices to Warrantholder . 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.

Section 12. 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.

Section 13. 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 to the email address provided for on the signature page of the Purchase Agreement. All notices shall be addressed as follows: if to the Warrantholder, at its address as set forth in the Company's books and records and, if to the Company, at the address as follows, or at such other address as the Warrantholder or the Company may designate by ten days' advance written notice to the other:

If to the Company:

Opexa Therapeutics, Inc.
2635 Crescent Ridge Drive
The Woodlands, Texas 77381
Attention: President
Fax: (281) 872-8585

With a copy to:

Vinson & Elkins, LLP
First City Tower, 1001 Fannin Street, Suite 2500
Houston, Texas 77002
Attention: Michael C. Blaney
Fax: (713) 758-2222

Section 14. Registration Rights. The initial Warrantholder (and its applicable assignees as provided in the Registration Rights Agreement) is entitled to the benefit of certain registration rights with respect to the shares of Common Stock issuable upon the exercise of this Warrant as provided in the Registration Rights Agreement.

Section 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 assigns hereunder.

Section 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 [and the courts of the State of New York, Borough of Manhattan and the United States District Court for the Southern District of New York] 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 consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. 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 .**

Section 17. Dispute Resolution. In the case of a dispute as to the determination of the Market Price, the Company shall submit the disputed determinations via facsimile to the Warrantholder. If the Warrantholder and the Company are unable to agree upon such determination of the Market Price within three business days of such disputed determination being submitted to the Warrantholder, then the Company shall, within two business days, submit via facsimile the disputed determination of the Market Price to an independent, reputable investment bank selected by the Company and approved by the Warrantholder. The Company shall cause at its expense the investment bank to perform the determinations and notify the Company and the Warrantholder of the results no later than ten business days from the time it receives the disputed determinations or calculations. Such investment bank's determination shall be binding upon all parties absent demonstrable error.

Section 18. No Rights as Stockholder. Prior to the exercise of this Warrant, the Warrantholder shall not have or exercise any rights as a stockholder of the Company by virtue of its ownership of this Warrant.

Section 19. Amendment; Waiver. Any term of this Warrant may be amended or waived (including the adjustment provisions included in Section 8 of this Warrant) upon the written consent of the Company and the holders of Series G Warrants representing at least 50% of the number of shares of Common Stock then subject to all outstanding Series G Warrants (the “**Majority Holders**”); provided, that (x) any such amendment or waiver must apply to all Series G Warrants; and (y) the number of Warrant Shares subject to this Warrant, the Warrant Price and the Expiration Date may not be amended, and the right to exercise this Warrant may not be altered or waived, without the written consent of the Warrantholder.

Section 20. 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 and the other Transaction Documents, 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.

Section 21. 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 14th day of April, 2009.

OPEXA THERAPEUTICS, INC.

By: /S/ NEIL K. WARMA
Neil K. Warma
President and Chief Executive Officer

*Signature Page to
Series G Warrant to Purchase _____ Shares of
Common Stock, Par Value \$0.50 Per Share*

APPENDIX A

OPEXA THERAPEUTICS, INC. WARRANT EXERCISE FORM

To Opexa Therapeutics, Inc.:

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the within Warrant (“ **Warrant** ”) for, and to purchase thereunder by the payment of the Warrant Price and surrender of the Warrant, _____ shares of Common Stock (“ **Warrant Shares** ”) provided for therein, and requests that certificates for the Warrant Shares be issued as follows:

Name

Address

Federal Tax ID or Social Security No.

and delivered by (certified mail to the above address, or (electronically (provide DWAC Instructions: _____), or (other (specify): _____).

and, if the number of Warrant Shares shall not be all the Warrant Shares purchasable upon exercise of the Warrant, that a new Warrant for the balance of the Warrant Shares purchasable upon exercise of this Warrant be registered in the name of the undersigned Warrantholder or the undersigned’s Assignee as below indicated and delivered to the address stated below.

Note: The signature must correspond with the name of the Warrantholder as written on the first page of the Warrant in every particular, without alteration or enlargement or any change whatever, unless the Warrant has been assigned.

Signature:

Name (please print)

Address

Federal Identification or Social Security No.

Assignee:

Appendix A
Warrant Exercise Form

SECURITY AGREEMENT

This SECURITY AGREEMENT (“**Agreement**”), is effective as of April 14, 2009 (this “**Agreement**”), between Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and the Investors on the signature pages hereto, and their respective successors and assigns (the “**Investors**”).

1. **Purpose.** This Agreement is granted by the Company in favor of the Investors under the Unit Purchase Agreement, effective as of the date hereof (the “**Purchase Agreement**”), and the convertible secured promissory notes issued to Investors by the Company under the Purchase Agreement (as may be amended, restated, modified or replaced from time to time, the “**Notes**”). Under the Purchase Agreement and the Notes, Investors may loan the Company up to the sum of \$2,000,000. The Company has agreed to secure all debt of the Company to Investors in accordance with the terms and conditions of this Agreement. Capitalized terms not defined in this Agreement have the meaning set forth under the Purchase Agreement.

2. **Grant of Security Interest.** The Company hereby grants to Investors a continuing security interest in and continuing lien on the “**Collateral**” described in Section 3 below to secure the prompt and complete payment of all amounts due under the Notes and all other loans and advances (including all renewals, modifications and extensions thereof) from Investors to the Company, the obligations under the Purchase Agreement, and all obligations of any and every kind and nature, whether arising prior to, under or after this Agreement, however incurred or evidenced, whether primary, secondary, contingent or otherwise, whether arising under this Agreement, under any other security agreements, mortgages, leases, instruments, documents, contracts, or similar agreements, or by oral agreement or created by operation of law plus all interest, costs, expenses, and reasonable attorneys’ fees, which may be made or incurred by Investors in the disbursement, administration, and collection of such amounts, and in the protection, maintenance, and liquidation of the Collateral (collectively, “**Liabilities**”). This Agreement shall be and become effective when, and continue in effect, as long as any Liabilities of the Company to Investors are outstanding and unpaid, and the Company will not sell, assign, transfer, pledge or otherwise dispose of or encumber any Collateral to any third party while this Agreement is in effect without the prior written consent of Investors.

3. **Collateral.** The “**Collateral**” covered by this Agreement is all of the Company’s right, title and interest in, to and under all assets of the Company, real and personal, tangible and intangible, which it now owns or shall hereafter acquire or create, immediately upon the acquisition or creation thereof, and includes, but is not limited to, the following:

3.1. **Accounts.** Accounts, documents, money, instruments, policies and certificates of insurance, chattel paper, rights to payment evidenced by chattel paper, health-care insurance receivables, deposit accounts, commercial tort claims, investment property, letter of credit rights, contract rights, general intangibles, intellectual property (including, without limitation, all US and foreign patents, patent applications, copyrights, trademarks, trademark applications, service marks, inventions, and discoveries), choses in action, including any right to any refund of any taxes heretofore or hereafter paid to any governmental authority (collectively, the “**Accounts**”).

3.2. Inventory. All inventory and goods, now owned or hereafter acquired, including but not limited to, raw materials, work in process, finished goods, leased goods, tangible property, stock in trade, wares, and merchandise used in or sold in the ordinary course of business, including goods whose sale, lease or other disposition by the Company has given rise to any Accounts and which goods have been returned to, or repossessed by, or stopped in transit by the Company.

3.3. Equipment. All equipment and fixtures, including all machinery, furniture, furnishings, and vehicles, together with all accessions, parts, attachments, accessories, tools and dies, or appurtenances thereto, or appertaining, attached, kept, used, or intended for use in connection therewith, and all substitutions, improvements and replacements thereof and additions thereto.

3.4. Fixtures. All fixtures, whether now or to be hereafter attached, to any real property in which the Company has an interest.

3.5. Software. All computer programs and supporting information provided in connection with a transaction relating to such program(s).

3.6. Intellectual Property. All patents, patent applications, inventions, disclosures, tradenames, registered trademarks or registered service marks, applications for registrations therefore, and registered copyrights and applications therefore, in which the Company has an interest.

3.7. Proceeds, Etc. Proceeds, and proceeds of hazard insurance and eminent domain or condemnation awards of all of the foregoing described properties or interests in properties, including all products of, and accessions to, such properties or interests in properties, and all cash or other property which were proceeds and are received by a bankruptcy trustee or otherwise as a preferential transfer to the Company.

3.8. Exceptions. Notwithstanding the foregoing, any equipment or fixtures subject to a lien in favor of Wells Fargo Bank, N.A. existing as of the date hereof and any equipment or fixtures acquired in the future and subject to a purchase lien, shall not be a part of the Collateral so long as such other liens are in effect.

4. **Perfection of Security Interest**. The Company shall execute and deliver to Investors at the request of Investors, concurrently with the Company's execution of this Agreement and at any time or times hereafter (and pay the cost of filing or recording same in all public offices deemed necessary by Investors), all financing statements, assignments, certificates of title, applications for vehicle titles, affidavits, reports, notices, schedules of Accounts, designations of inventory, letters of authority and all other documents that Investors may reasonably request, in form satisfactory to Investors, to perfect and maintain perfected Investors' security interests in the Collateral. In addition, the Company irrevocably authorizes Investors, their agents, attorneys, and representatives, to file financing statements, and amendments thereto, at the Company's expense, necessary to establish and maintain Investors' perfected security interest in the Collateral. Any such financing statement to be filed may describe the assets and property to be encumbered hereby in a generic description such as "all assets of the debtor," or words of similar effect. In order to fully consummate all of the transactions contemplated hereunder, the Company shall make appropriate entries on its books and records disclosing Investors' security interests in the Collateral.

5. **Warranties.** The Company warrants and agrees that, except as set forth on Schedule 5, while any of the Liabilities remain unperformed and unpaid: (a) the Company is the owner of the Collateral free and clear of all liens or security interests except Permitted Liens and all chattel paper constituting Collateral evidences a perfected security interest in the goods covered by it, free from all other liens and security interests except for Permitted Liens, and no financing statement other than that of Investors is on file covering the Collateral or any of it and if Inventory is represented or covered by documents of title, the Company is the owner of the documents, free of all liens and security interest other than Investors' security interest; (b) the Company's exact legal name is as set forth above; (c) the Company is an organization of the type and organized in the jurisdiction set forth above, (d) the address of the Company's principal office is as set forth above, while the addresses of the Company's other places of business where Collateral is now or may in the future be located, and the Company's business locations shall not be changed without the prior written consent of Investors, and the Company further warrants that the Collateral, wherever located, is covered by this Agreement; (e) the Collateral will not be used, nor will the Company permit the Collateral to be used, for any unlawful purpose, whatever; (f) the Company shall at all times maintain the Collateral in first class condition and repair; (g) the Company will indemnify and hold Investors harmless against claims of any persons or entities not party to this Agreement concerning disputes arising over the Collateral; and (h) the Collateral is or will be located at the following address: 2635 North Crescent Ridge Drive, The Woodlands, Texas 77381.

6. **Covenants Concerning the Company's Legal Status.** The Company covenants with the Investors as follows: (a) without providing at least thirty (30) days prior written notice to the Investors, the Company will not change its name, its place of business or, if more than one, chief executive office, or its mailing address or organizational identification number if it has one, (b) if the Company does not have an organizational identification number and later obtains one, the Company shall forthwith notify the Investors of such organizational identification number, and (c) the Company will not change its type of organization, jurisdiction of organization or other legal structure. The Company agrees that all documents, instruments and agreements demanded by Investors in response to any of the changes described in this Section shall be prepared, filed and recorded at the Company's expense prior to the effective date of such change.

7. **Insurance, Taxes, Etc.** The Company shall (a) pay all taxes, levies, assessments, judgments and charges of any kind upon or relating to the Collateral, to the Company's business, and to the Company's ownership or use of any of its assets, income or gross receipts; (b) at its own expense, keep and maintain all of the Collateral insured against loss or damage by fire, theft, explosion and other risks in such amounts, with such companies, under such policies and in such form as determined by the Company's Board of Directors, which policies shall expressly provide that loss thereunder shall be payable to Investors as their interest may appear (and Investors shall have a security interest in the proceeds of such insurance and may apply any such proceeds which may be received by them toward payment of the Liabilities, whether or not due, in such order of application as Investors may determine); (c) maintain at its own expense public liability and property damage insurance in such amounts with such companies, under such policies and in such form as determined by the Company's Board of Directors; and, upon Investors' request, shall furnish Investors with such policies and evidence of payment of premiums thereon. If the Company at any time hereafter should fail to obtain or maintain any of the policies required above or pay any premium in whole or in part relating thereto, or shall fail to pay any such tax, assessment, levy, or charge or to discharge any such lien or encumbrance, then Investors, without waiving or releasing any obligation or default of the Company hereunder, may at any time hereafter (but shall be under no obligation to do so) make such payment or obtain such discharge or obtain and maintain such policies of insurance and pay such premiums, and take such action with respect thereto as Investors deems advisable. All sums so disbursed by Investors, including reasonable attorneys' fees, court costs, expenses, and other charges relating thereto, shall be part of the Company's Liabilities, secured hereby, and payable on demand.

8. Sale, Collections, Etc.

8.1. Until an Event of Default (as that term is defined below), each Investor authorizes and permits the Company to collect Accounts from Account debtors. This privilege may be terminated by Investors at any time upon the occurrence of an Event of Default as set forth in this Agreement, and Investors thereupon shall be entitled to and have all of the ownership, title, rights, securities and guarantees of the Company in respect of Accounts, and in respect to the property evidenced thereby, including the right of stoppage in transit, and Investors may notify any Account debtor of the assignment of Accounts and collect the same; thereafter the Company will receive all payments on Account as agent of and for Investors and will transmit to Investors, on the day of receipt thereof, all original checks, drafts, acceptances, notes and other evidence of payment received in payment of or on account of Accounts, including all cash monies, similarly received by the Company. Until such delivery, the Company shall keep all such remittances separate and apart from the Company's own funds, capable of identification as the property of Investors, and shall hold the same in trust for Investors.

8.2. Until an Event of Default and until such time as Investors have notified the Company of the revocation of such power and authority the Company may (i) only in the ordinary course of its business, at its own expense, sell, lease or furnish under contracts of service any of the Inventory normally held by the Company for such purpose; (ii) use and consume any raw materials, work in process or materials, the use and consumption of which is necessary in order to carry on the Company's business; and the Company shall, at its own expense, endeavor to collect, as and when due all amounts due with respect to any of the Collateral, including the taking of such action with respect to such collection as Investors may reasonably request or, in the absence of such request, as the Company may deem advisable. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

9. **Waiver**. The Company waives all defenses and setoffs which could hinder or reduce the obligations of the Company under this Agreement. In addition, except as expressly prohibited by law, the Company waives any right it has to require Investors to give notice of the details of any public or private sale of personal property security held from the Company or pursue any remedy available to Investors.

10. **Information.** The Company shall permit Investors or their agents upon reasonable request to have access to and to inspect all the Collateral and from time to time verify Accounts and chattel paper, inspect, check, make copies of or extracts from the books, records and files of the Company, and the Company will make same available at any time for such purposes. In addition, the Company shall promptly supply Investors with financial and such other information concerning its affairs and assets as Investors may request from time to time.

11. **Event of Default.**

11.1. An Event of Default shall exist as and when provided under the Notes.

11.2. Upon the occurrence of an Event of Default, the Notes and all other Liabilities may (notwithstanding any provisions thereof) at the option of the Investor holding the Notes with the largest aggregate principal (the "Lead Note Holder") and without demand or notice of any kind, be declared, and thereupon immediately shall become due and payable, and the Lead Note Holder may exercise from time to time any rights and remedies, including the right to immediate possession of the Collateral, available to the Investors under applicable law. The Company agrees, in case of an Event of Default, to assemble, at its expense, all the Collateral at a convenient place acceptable to the Lead Note Holder and to pay all costs of Investors of collection of the Notes and all other Liabilities, and enforcement of rights hereunder, including reasonable attorneys' fees and legal expenses, including participation in bankruptcy proceedings, and expense of locating the Collateral and expenses of any repairs to any realty or other property to which any of the Collateral may be affixed or be a part. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if sent at least seven days before such disposition, postage prepaid, addressed to the undersigned either at the address shown below, or at any other address of the undersigned appearing on the records of the Lead Note Holder. Notwithstanding the foregoing, the Lead Note Holder shall not be obligated to declare the Notes and other Liabilities due or, having done so, to take any action authorized hereunder or by law with respect to the collateral. If the Lead Note Holder fails to take any action pursuant to this Section 11.2 within sixty (60) days of being notified in writing of an Event of Default, any Investor may, at its option, exercise the rights granted to the Lead Note Holder under this Section 11.2 or by law. *Provided, however*, that any amounts realized from the sale of Collateral or otherwise hereunder shall first be distributed to reimburse the costs and expenses, including but not limited to legal expenses and commissions, of the Lead Note Holder and the Investors in enforcing the rights hereunder and, second, to all Investors pro-rata based upon the amount owed to each Investor pursuant to the Notes held by the Investor. Except as provided in the immediately preceding sentence with respect to proceeds of sale, the Lead Note Holder and any Investor exercising rights pursuant to this Section 11.2 shall not be liable to the Company or other Investors for any action taken or not taken with respect to the Collateral other than willful misconduct.

11.3. THE COMPANY AGREES THAT INVESTORS SHALL, IN THE EVENT OF ANY DEFAULT, HAVE THE RIGHT TO PEACEFULLY TAKE POSSESSION OF ANY OF THE COLLATERAL. THE COMPANY WAIVES ANY RIGHT IT MAY HAVE, IN SUCH INSTANCE, TO A JUDICIAL HEARING PRIOR TO SUCH RETAKING.

12. **General.** The Company hereby irrevocably appoints the Investors as the Company's attorney-in-fact, with full authority in the place and stead of the Company and in the name of the Company, the Investors, from time to time in the Investors' discretion to take any action and to execute any instrument that the Investors may deem reasonably necessary or advisable to accomplish the purposes of this Agreement.

Time shall be deemed of the very essence of this Agreement. Except as otherwise defined in this Agreement, all terms in this Agreement shall have the meanings provided by the Delaware UCC, as amended, revised or replaced or any successor laws hereafter enacted ("**Delaware Uniform Commercial Code**"). Investors shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in their possession if they take such action for that purpose as the Company requests in writing, but failure of Investors to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and failure of Investors to preserve or protect any rights with respect to such Collateral against any prior parties or to do any act with respect to the preservation of such Collateral not so requested by the Company shall not be deemed a failure to exercise reasonable care in the custody and preservation of such Collateral. Any delay on the part of Investors in exercising any power, privilege or right hereunder, or under any other instrument executed by the Company to Investors in connection herewith shall not operate as a waiver thereof, and no single or partial exercise thereof, or the exercise of any other power, privilege or right shall preclude other or further exercise thereof, or the exercise of any other power, privilege or right. The waiver by Investors of any Event of Default by the Company shall not constitute a waiver of any subsequent Events of Default, but shall be restricted to the Event of Default so waived. All rights, remedies and powers of Investors hereunder are irrevocable and cumulative, and not alternative or exclusive, and shall be in addition to all rights, remedies and powers given hereunder or in or by any other instruments or by the Delaware Uniform Commercial Code, or any laws now existing or hereafter enacted.

This Agreement shall be construed in accordance with the laws of the State of Texas without giving effect to any applicable principles of conflicts of laws. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The rights and privileges of Investors hereunder shall inure to the benefit of their successors and assigns and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of the Company.

Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient if given in accordance with section 9.4 of the Purchase Agreement.

This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior written and oral communications or understandings. This Agreement may be amended or supplemented only by a writing signed on behalf of both parties. The Company acknowledges receipt of a true and complete copy of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

INVESTORS AND THE COMPANY ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT ONE THAT MAY BE WAIVED. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, PURCHASER AND THE COMPANY WAIVE ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

[*Signature Page Follows*]

The parties have executed this Security Agreement as of the date first written above.

COMPANY:

OPEXA THERAPEUTICS, INC.

By: /S/ NEIL K. WARMA
Name: Neil K. Warma
Title: President and Chief Executive Officer

Company Signature Page to Security Agreement

THE INVESTORS:

By: _____
Name: _____
Title: _____
Date: _____

Investor Signature Page to Security Agreement

SCHEDULE 5

- a) \$250,000 Non-Revolving Term Loan dated December 8, 2006 (the “**Loan**”) between Wells Fargo Bank, N.A. (the “**Lender**”) and Opexa Therapeutics, Inc. (the “**Company**”) pursuant to which the Company granted a first priority security interest in the Company’s furniture, fixtures and equipment acquired using the proceeds of the Loan and all proceeds of such furniture, fixtures and equipment (including insurance) in favor of the Lender.

Schedule 5

EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is entered into this 14th day of April, 2009 and shall be effective as of the 1st day of April, 2009, by and between Donna R. Rill (hereinafter referred to as “Employee”) and Opexa Therapeutics, Inc. (hereinafter referred to as “Opexa”).

W I T N E S S E T H:

WHEREAS , Employee is employed by Opexa;

WHEREAS , Opexa desires to retain key executives and promote their dedication;

WHEREAS , Opexa’s success requires the protection of its intellectual property, proprietary information and goodwill and Opexa is willing to enter into an employment agreement with Employee, subject to the terms and conditions below; and

WHEREAS , the Employee and Opexa jointly wish to document their employment understanding.

NOW, THEREFORE , for and in consideration of the employment by Opexa, the compensation and other remuneration paid and to be paid by Opexa and received and to be received by the Employee for such employment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Employee, it is agreed by and between the parties hereto as follows:

1. Employment

Opexa agrees to employ the Employee, and Employee agrees that Employee will devote Employee’s full productive time, skill, and best efforts during Employee’s employment to such duties as may be reasonably assigned to Employee. Employee will faithfully and diligently endeavor to further the best interests of Opexa during Employee’s employment. The foregoing, however, shall not preclude the Employee from (i) engaging in appropriate civic, charitable, professional or trade association activities or (ii) subject to Board of Director written approval, serving on one or more other boards of directors of public or private companies, as long as such activities and services do not conflict with the responsibilities to Opexa.

2. Duties and Title

Employee shall continue to have the title of and shall act as the Senior Vice President of Operations of Opexa. Employee shall have the following responsibilities and duties as Senior Vice President of Operations: Employee shall report to Opexa’s chief executive officer and will have such other duties and responsibilities consistent with her position as Senior Vice President of Operations, as may reasonably be assigned to Employee by Opexa’s chief executive officer from time to time.

3. Term of Employment

The term of employment of Employee is for the one year period April 1, 2009 through March 31, 2010, subject to termination pursuant to Section 6.

4. Compensation

As compensation, Opexa shall pay Employee a salary of a minimum of \$200,000 per year, paid consistent with the then payroll practices of Opexa.

5. Benefits

Opexa will provide Employee with the benefits and insurance coverage as generally provided by Opexa to its management employees, but only if and when such benefits and/or coverage are provided. If provided, such benefits and insurance coverages may be changed by Opexa from time to time.

6. Termination

The Employee's employment hereunder may be terminated prior to the term provided for in Section 3 only under the following circumstances:

6.1 Death. The Employee's employment shall terminate automatically on the date of her death.

6.2 Disability. If a Disability (as defined below) occurs and is continuing, the Employee's employment shall terminate 180 days after Opexa gives the Employee written notice that it intends to terminate her Employment on account of that Disability, or on such later date as Opexa specifies in such notice. If the Employee resumes the performance of substantially all of her duties under this Agreement before the termination becomes effective, the notice of intent to terminate shall be deemed to have been revoked. Disability of Employee shall not prevent Opexa from making necessary changes during the period of Employee's Disability to conduct its affairs. "Disability" shall mean that the Employee, with reasonable accommodation, has been unable to perform her essential duties under this Agreement for a period of at least six consecutive months as a result of her incapacity due to injury or physical or mental illness, any disability as defined in a disability insurance policy which provides coverage for the Employee, or any disability as defined by the Americans with Disabilities Act of 1990, Public Law 101_336, 42 U.S.C.A. § 12101 *et seq.*

6.3 Employee's Voluntary Termination. The Employee may terminate her employment at any time upon 30 days' prior written notice to Opexa.

6.4 Termination by Opexa Without Cause. Upon written notice by Opexa, a majority of the Board of Directors of Opexa may terminate Employee's employment without Cause (as defined below). Upon termination without Cause the Employee shall be entitled to the following severance:

- (i) six months base salary at the rate in effect (as provided for by Section 4 of this Agreement) at the time of such termination, to be paid monthly;
- (ii) any annual bonus earned but not yet paid as of the date of termination;
- (iii) any accrued vacation pay;
- (iv) reimbursement for expenses incurred but not yet paid prior to such termination of employment;
- (v) any other compensation and benefits, including deferred compensation, as may be provided in accordance with the terms and provisions of any applicable plans and programs of Opexa; and
- (vi) any and all stock options granted to Employee prior to termination shall provide that (a) all vesting schedules shall accelerate for a 12 month period and (b) Employee shall have one year from termination to exercise any such stock options or other derivative securities granted pursuant to any then existing stock compensation plan.

6.5 Termination by Opexa With Cause. Upon written notice by Opexa, a majority of the Board of Directors of Opexa may terminate Employee's employment with Cause. Upon termination with Cause, Employee shall not be entitled to any severance described in Section 6.4(i)-(vi). Any written notice of termination for Cause shall specify the particular act or acts, or failure to act, which is or are the basis for the decision to so terminate the Employee's employment for Cause. "Cause" as used herein shall be limited to (i) the conviction of the Employee for a felony; or (ii) a finding of fact in a civil judgment, binding arbitration award or binding mediation award that the Employee breached the then existing Opexa's Code of Ethics. If such conviction or finding of fact is overturned on appeal, the Employee shall be entitled to the payments and the economic equivalent of the benefits that the Employee would have received as a result of a termination of the Employee's employment by Opexa without Cause and shall be reimbursed all legal fees and expenses incurred by Employee in her defense of her actions that constituted the lawsuit, arbitration, mediation and/or appeal.

6.6 Defacto Termination. Opexa shall be deemed to have terminated Employee without Cause upon: (i) Opexa requiring Employee to move her principal place of residence from the Houston, Texas metropolitan area or to perform regular duties that could reasonably be expected to require either such move against her wish or to spend amounts of time each week outside of the Houston, Texas area which are unreasonable in relation to the duties and responsibilities of the Employee hereunder; (ii) any reduction in Employee's duties or titles as set forth in Section 2 above; or (iii) any reduction in Employee's salary as set forth in Section 4.

6.7 Change of Control . The effectiveness of a Change of Control (as defined below) shall be deemed a termination without cause. Upon the effectiveness of a Change of Control, Opexa shall pay the Employee severance awarded pursuant to Section 6.4(i)-(v) above and any and all stock options granted to Employee prior to the Change of Control shall vest immediately upon the effectiveness of the Change of Control with a one-year period from the effective Change of Control date to exercise any such stock options or other derivative securities granted pursuant to any then existing stock compensation plan.

“Change of Control” as used herein shall mean the occurrence of the following events:

- (i) A sale, transfer, or other disposition by Opexa through a single transaction or a series of transactions occurring within a 90-day period of securities of Opexa representing Beneficial Ownership (as defined below) of fifty (50%) percent or more of the combined voting power of Opexa then outstanding securities to any “Unrelated Person” or “Unrelated Persons” acting in concert with one another. For purposes of this definition, the term “Person” shall mean and include any individual, partnership, joint venture, association, trust corporation, or other entity [including a “group” as referred to in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (“1934 Act”)]. For purposes of this definition, the term “Unrelated Person” shall mean and include any Person other than the Employee, Opexa, a wholly-owned subsidiary of Opexa, an existing shareholder, or an employee benefit plan of Opexa; provided however, a sale of Opexa’s securities in a capital raising transaction shall not be a Change of Control.
- (ii) A sale, transfer, or other disposition through a single transaction or a series of transactions occurring within a 90-day period of all or substantially all of the assets of Opexa to an Unrelated Person or Unrelated Persons acting in concert with one another.
- (iii) A change in the ownership of Opexa through a single transaction or a series of transactions occurring within a 90-day period such that any Unrelated Person or Unrelated Persons acting in concert with one another become the “Beneficial Owner,” directly or indirectly, of securities of Opexa representing at least fifty-one (51%) percent of the combined voting power of Opexa then outstanding securities. For purposes of this Agreement, the term “Beneficial Owner” shall have the same meaning as given to that term in Rule 13d-3 promulgated under the 1934 Act, provided that any pledgee of voting securities is not deemed to be the Beneficial Owner of the securities prior to its acquisition of voting rights with respect to the securities.

- (iv) Any consolidation or merger of Opexa with or into an Unrelated Person, unless (i) immediately after the consolidation or merger the holders of the common stock of Opexa immediately prior to the consolidation or merger are the beneficial owners of securities of the surviving corporation representing at least fifty-one (51%) percent of the combined voting power of the surviving corporation's then outstanding securities

6.8 **Retirement Termination.** Upon Employee reaching the age of 65, Employee shall then have the right to terminate this Agreement without cause, effective a date six months from the date she provides Opexa with written notice of her decision to terminate for retirement purposes. Upon the effective date of such termination, Opexa shall pay Employee severance awarded pursuant to Section 6.4 (ii)-(iv) above, provided that any and all stock options granted to Employee prior to the effective date of such termination shall vest immediately with a one-year period from the effective date of termination hereunder to exercise any such stock options or other derivative securities granted pursuant to any then existing stock compensation plan.

7. Confidential and Proprietary Information; Documents

7.1 Opexa shall provide Employee with information deemed secret and confidential by Opexa. Such secret or confidential information or know-how of Opexa (referred to collectively as "Confidential Information") shall include, without limitation, the following: the status and plans for research and development; materials, cells, tissues, and other biological samples and specimens; cell banking methods, apparatus, and services; pending and planned patent applications (until published by the Patent Office); invention disclosures; research and technical data and information; methods of creating, preparing, and using stem cells and other biological materials; license, sublicense, and other agreements relating to intellectual property rights; Opexa's plans; customer or contact information; contributor information; strategies, costs, prices, uses, applications of products and services; results of and data from investigations or experiments; all apparatus, products, processes, compositions, samples, formulas, computer programs, pricing policy, financial information, and methods of doing business; policy and/or procedure manuals, training and recruiting procedures; accounting procedures; the status and content of Opexa's contracts with its contributors, clients, and customers; Opexa's business philosophy, and servicing methods and techniques; all at any time used, developed, or investigated by Opexa, before or during the Employee's tenure of employment, which are not generally available to the public or which are maintained as confidential by Opexa.

7.2 Employee recognizes and acknowledges that Employee will have access to certain information of Opexa that is confidential and proprietary and constitutes valuable and unique property of Opexa. Employee agrees that Employee will not at any time, either during or subsequent to Employee's employment, disclose to others, use, copy or permit to be copied, except in pursuance of Employee's duties on behalf of Opexa, its successors, assigns or nominees, any Confidential Information or know-how of Opexa (whether or not developed by the Employee) without Opexa's prior written consent. Employee further agrees to maintain in confidence any confidential information of third parties received as a result of Employee's employment with Opexa.

7.3 Employee further agrees to deliver to Opexa at the termination of Employee's employment all biological materials correspondence, memoranda, notes, records, drawings, sketches, plans, customer, client and/or contributor lists, product compositions, or other documents and all copies thereof (all of which are hereafter referred to as the "Documents"), made, composed or received by Employee, solely or jointly with others, and which are in Employee's possession, custody, or control at such date and which are related in any manner to the past, present, or anticipated business of Opexa. In this regard, Employee hereby grants and conveys to Opexa all right, title and interest in and to, including without limitation, the right to possess, print, copy, and sell or otherwise dispose of, any biological materials, reports, records, papers summaries, photographs, drawings or other documents, and writings, copies, abstracts or summaries thereof, or any other works of authorship, which may be prepared by Employee or under Employee's direction or which may come into Employee's possession in any way during the term of Employee's employment with Opexa which relate in any manner to the past, present or anticipated business of Opexa.

7.4 Employee further agrees that Employee will not, during Employee's employment, receive from persons not employed by Opexa, any confidential information not belonging to Opexa, unless a valid agreement is signed by both an officer of Opexa and by the disclosing party that states that Opexa will not be in a confidential relationship with the disclosing party. Employee further agrees that Employee will not use or disclose to other employees of Opexa, during Employee's employment with Opexa, confidential information belonging to Employee's former employers, or any other third parties unless written permission has been given by such persons to Opexa to use and/or disclose such information.

7.5 In the event of a breach or threatened breach of any of the provisions of Section 7, Opexa shall be entitled to an injunction ordering the return of such Documents and any and all copies thereof and restraining Employee from using or disclosing, for Employee's benefit or the benefit of others, in whole or in part, any Confidential Information, including but not limited to the Confidential Information which such Documents contain, constitute, or embody. Employee further agrees that any breach or threatened breach of any of the provisions of Section 7 would cause irreparable injury to Opexa for which it would have no adequate remedy at law. Nothing herein shall be construed as prohibiting Opexa from pursuing any other remedies available to it for any such breach or threatened breach, including the recovery of damages.

8. Noncompetition/No-Hire Agreement

8.1 Employee agrees that, from the date hereof until a period of six months following the date of the termination of Employee's employment (the "Noncompetition Period"), Employee will not directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, corporate officer, director, or in any other individual or representative capacity, engage or participate in any "Competitive Business" anywhere in the United States of America (the "Noncompetition Territory"). As used herein, a "Competitive Business" is defined as any business relating developing autologous cellular therapies to treat multiple sclerosis (MS).

8.2 Employee further agrees that from the date hereof until a period of one year following the date of the termination of Employee's employment (the "Nonsolicitation Period") and within the Noncompetition Territory Employee will not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, corporate officer, director, or in any other individual or representative capacity, call on, solicit, recruit, or attempt to call on, solicit, or recruit, or attempt to hire any of the employees of Opexa, regardless of whether for the benefit of the Employee or for any other person, firm, or corporation.

8.3 Employee shall not during the Nonsolicitation Period and within the Noncompetition Territory, either directly or indirectly (i) make known to any Competitive Business the names and addresses of any of Opexa's customers or contacts or any other information pertaining to such persons or businesses or (ii) call on, solicit, or take away, or attempt to call on, solicit or take away any of the customers of Opexa with whom Employee became acquainted during Employee's association with Opexa, regardless of whether for the benefit of the Employee or for any other person, firm or corporation.

8.4 Employee agrees that the restraints created by the covenants in Section 8 are no greater than necessary to protect Opexa's legitimate interests. Furthermore, Employee agrees that such covenants of Section 8 do not hinder, or otherwise cause hardship to Employee in finding and performing employment elsewhere upon termination of this Agreement. Similarly, Employee agrees that Opexa's need for the protection afforded by the covenants of Section 8 is not outweighed by either the hardship to Employee or any injury likely to the public.

8.5 Employee agrees that this Section 8 is ancillary to this Agreement, and independent of any other agreement related to Employee's employment with Opexa, and Employee acknowledges that the consideration given by Opexa for this Agreement includes Opexa's agreement to provide to the Employee access to the Confidential Information, as well as employment. Further, the existence of any claim or cause of action of Employee against Opexa or any officer, director, or employee of Opexa, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by Opexa of Employee's covenants contained in this Agreement. In addition, this Agreement shall continue to be binding upon Employee in accordance with its terms, notwithstanding the termination of Employee's employment.

8.6 Employee agrees that Employee's breach or violation, or threat thereof, of this covenant not to compete shall entitle Opexa, as a matter of right, to an injunction without the necessity of posting bond, issued by any court of competent jurisdiction, restraining any further or continued breach or violation of this covenant. Such right to an injunction shall be cumulative and in addition to, and not in lieu of, any other remedies to which Opexa may show itself justly entitled. Further, during any period in which Employee is in breach of this covenant not to compete, the time period of this covenant shall be extended for an amount of time that Employee is in breach.

9. Inventions and Other Intellectual Property

9.1 Employee agrees to hold in complete trust for the benefit of Opexa, and to disclose promptly and fully to Opexa in writing, and hereby assigns, and binds Employee's heirs, executors, administrators, and all legal representatives to assign, to Opexa any and all inventions, discoveries, ideas, concepts, improvements, copyrightable works, biological materials, and other developments (all of the above are collectively referred to as the "Developments") conceived, made, discovered or developed by him, solely or jointly with others, during Employee's employment by Opexa, whether during or outside of usual working hours and whether on Opexa's premises or not, which relate in any manner to the past, present or anticipated business of Opexa. Any and all such Developments shall be the sole and exclusive property of Opexa, whether patentable, copyrightable, or neither, and Employee agrees that Employee will assist and fully cooperate in every way, at Opexa's expense, in securing, maintaining, and enforcing, for the benefit of Opexa or its designee, patents, copyrights or other types of proprietary or intellectual property protection for such Developments in any and all countries. Employee acknowledges and agrees that any and all such Developments conceived, created, or authored by him within the scope of Employee's employment is a "work made for hire," as defined by the federal copyright laws, and therefore all copyrights in and to such works are and will be owned by Opexa. To the extent that Employee authors any copyrightable work in any medium during the Term of this Agreement which relates or pertains in any way to Opexa or any of the operations or activities of either and which was not prepared within the scope of Employee's employment, Employee hereby assigns all right, title, and interest, including but not limited to all rights of copyright, in and to such works to Opexa. Within six months following the termination of Employee's employment, and without limiting the generality of the foregoing, any Development of the Employee relating to any Opexa subject matter on which Employee worked or was informed during Employee's employment by Opexa shall be conclusively presumed to have been conceived and made prior to the termination of Employee's employment (unless the Employee clearly proves that such Development was conceived and made following the termination of Employee's employment), and shall accordingly belong, and be assigned, to Opexa and shall be subject to this Agreement.

9.2 Without limiting the foregoing, Employee agrees at the request of Opexa (but without additional compensation from Opexa during Employee's employment by Opexa) to execute any and all papers and perform all lawful acts which Opexa deems necessary for the preparation, filing, prosecution, and maintenance of applications for United States and foreign letters patent, or for United States and foreign copyrights, on the Developments, and to execute such instruments as are necessary or convenient to assign to Opexa, its successors, assigns or nominees, all of the Employee's right, title, and interest in the Developments and the like, so as to establish, maintain or perfect, in Opexa, its successors, assigns or nominees, the entire right, title, and interest to the Developments, and also to execute any instruments necessary or which Opexa may deem desirable in connection with any continuation, renewal or reissue thereof, or in the conduct of any proceedings or litigation in regard thereto.

9.3 All expenses incurred by the Employee by reason of the performance of any of the obligations set forth in this Section 9 on Inventions shall be borne by Opexa. Should the Employee's assistance be requested by Opexa after termination of employment, Opexa would compensate the Employee at a reasonable rate.

10. Conflicts of Interest

10.1 In keeping with Employee's fiduciary duties to Opexa, Employee agrees that Employee shall not, directly or indirectly, become involved in any conflict of interest with reference to any transaction or opportunity including Opexa ("Conflict"), or upon discovery thereof, allow such a Conflict to continue. Moreover, Employee agrees that Employee shall promptly disclose to the Board of Opexa any facts which might involve any reasonable possibility of a Conflict. Employee shall maintain the highest standards of conduct, and shall not do anything likely to injure the reputation or goodwill of Opexa, or embarrass or otherwise generate adverse publicity for or bring unwanted attention to Opexa.

10.2 It is agreed that any direct or indirect interest in, connection with, or benefit from any outside activities, particularly commercial activities, which interest might in any way adversely affect Opexa or any of its subsidiaries or affiliates, involves a possible Conflict. Circumstances in which a Conflict on the part of Employee would or might arise, and which should be reported immediately by Employee to an officer of Opexa, include, without limitation, the following: (a) ownership of a material interest in, acting in any capacity for, or accepting directly or indirectly any payments, services or loans from a supplier, contractor, subcontractor, customer or other entity with which Opexa does business; (b) misuse of information or facilities to which Employee has access in a manner which will be detrimental to Opexa's interest; (c) disclosure or other misuse of information of any kind obtained through the Employee's connection with Opexa; (d) acquiring or trading in, directly or indirectly, other properties or interests connected with the design, manufacture or marketing of products designed, manufactured or marketed by Opexa; (e) the appropriation to the Employee or the diversion to others, directly or indirectly, of any opportunity in which it is known or could reasonably be anticipated that Opexa would be interested; and (f) the ownership, directly or indirectly, of a material interest in an enterprise in competition with Opexa or its dealers and distributors or acting as a director, officer, partner, consultant, employee or agent of any enterprise which is in competition with Opexa or its dealers or distributors.

11. Activities Associated With Maintenance of Professional Status and Community Activities

Opexa will reimburse Employee for the costs of activities associated with the maintenance of the Employee's professional status, including the payment of licensing fees and required continuing education, expenses for professional/network meetings, as well as community activities.

12. Prior Discoveries

Employee does not have any unpatented inventions and discoveries made or conceived by Employee prior to Employee's employment with Opexa and which are to be excluded from this Agreement.

13. Publicity

13.1 Employee agrees that Opexa may use, and hereby grants Opexa the nonexclusive and worldwide right to use, Employee's name, picture, likeness, photograph, signature, or any other attribute of Employee's persona (all of such attributes are hereafter collectively referred to as "Persona") in any media for any advertising, publicity or other purpose at any time, either during or subsequent to Employee's employment by Opexa. Employee agrees that such use of Employee's Persona will not result in any invasion or violation of any privacy or property rights Employee may have; and Employee agrees that Employee will receive no additional compensation for the use of Employee's Persona. Employee further agrees that any negatives, prints or other material for printing or reproduction purposes prepared in connection with the use of Employee's Persona by Opexa shall be and are the sole property of Opexa.

13.2 Employee further agrees that at no time shall Employee write, author, publish, distribute, or cause to be published or distributed any pictorial, graphic, or literary works, such as but without limitation, books, articles, stories, or pamphlets, in any medium of expression, tangible or intangible, that relate, describe, or pertain in any way to Opexa or to the operations, activities, or employees of Opexa without first obtaining the prior written consent of the Board of Directors of Opexa to do so and also the prior written approval of the contents of any such work by the Board of Directors of Opexa.

14. Indemnification

Opexa shall, to the fullest extent permitted by the Texas Business Corporation Act, as amended, indemnify Employee if she is or was involved in any manner (including, but not limited to, as a party or a witness) in any threatened, pending, or completed investigation, claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative (including, but not limited to, any action, suit, or proceeding brought by or in the right of the corporation to procure a judgment in its favor) (a "Proceeding") by reason of the fact that the Employee is or was a director, officer, or employee of Opexa, against all liabilities and expenses actually and reasonably incurred by Employee in connection with such proceeding. Such indemnification shall include the right to receive payment in advance of any expenses incurred by Employee in connection with any proceeding, consistent with the provisions of the Texas Business Corporation Act, as amended. Notwithstanding the above, Employee shall not be indemnified in respect of:

- (i) a proceeding in which Employee is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity;
- (ii) a proceeding in which Employee is found liable to Opexa; or
- (iii) a finding of fact in a civil judgment, binding arbitration award or binding mediation award that the Employee breached the then existing Opexa's Code of Ethics.

15. Remedies

Employee and Opexa agree that, because damages at law for any breach or nonperformance of this Agreement by Employee, while recoverable, are and will be inadequate, this Agreement may be enforced in equity by specific performance, injunction, accounting or otherwise.

16. Miscellaneous

16.1 This Agreement is made and entered into as of the date hereof and the rights and obligations of the parties hereto shall be binding upon the heirs and legal representatives of the Employee and the successors and assigns of Opexa. This Agreement may be assigned by Opexa but is personal to the Employee and no rights, duties, and obligations of Employee hereunder may be assigned.

16.2 No waiver or non-action with respect to any breach by the other party of any provision of this Agreement, nor the waiver or non-action with respect to any breach of the provisions of similar agreements with other employees shall be construed to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself.

16.3 Should any portions hereof be held to be invalid or wholly or partially unenforceable, such holding shall not invalidate or void the remainder of this Agreement. The portions held to be invalid or unenforceable shall be revised and reduced in scope so as to be valid and enforceable, or, if such is not possible, then such portions shall be deemed to have been wholly excluded with the same force and effect as if it had never been included herein.

16.4 Employee's obligations under this Agreement to Opexa shall survive the termination, for whatever reason, of Employee's employment by Opexa.

16.5 This Agreement supersedes, replaces and merges any and all prior and contemporaneous understandings, representations, agreements and discussions relating to the same or similar subject matter as that of this Agreement between Employee and Opexa and constitutes the sole and entire agreement between the Employee and Opexa with respect to the subject matter of this Agreement.

16.6 The laws of the State of Texas, excluding any conflicts of law rule or principle that might otherwise refer to the substantive law of another jurisdiction, will govern the interpretation, validity and effect of this Agreement without regard to the place of execution or the place for performance thereof, and Opexa and Employee agree that the appropriate courts in Montgomery County, Texas, shall have personal jurisdiction and venue over Opexa and Employee to hear all disputes arising under this Agreement.

16.7 All notices and other communications required or permitted hereunder or necessary or convenient in connection herewith shall be in writing and shall be deemed to have been given when mailed by registered mail or certified mail, return receipt requested, as follows:

If to Opexa, to :
2635 N. Crescent Ridge Drive
The Woodlands, TX 77381
Attn: Neil K. Warma

If to Employee, to :
Ms. Donna R. Rill
91 E. Fairbranch Circle
The Woodlands, TX 77382

or to such other addresses as either party may designate by notice to the other party hereto in the manner specified in this section 16.

16.8 This Agreement may not be changed or terminated orally, and no change, termination or waiver of this Agreement or of any of the provisions herein contained shall be binding unless made in writing and signed by both parties, and in the case of Opexa, by an authorized officer of Opexa. Any change or changes, from time to time, in Employee's salary and/or duties shall not be, nor be deemed to be, a change, termination or waiver of this Agreement or of any of the provisions herein contained.

OPEXA THERAPEUTICS, INC.:

EMPLOYEE:

By: /s/ Neil K. Warma
Neil K. Warma
President and CEO

By: /s/ Donna R. Rill
Donna R. Rill

Opexa Therapeutics Reports Year End 2008 Financial Results

THE WOODLANDS, Texas--(BUSINESS WIRE)--April 16, 2009-- **Opexa Therapeutics, Inc.** (NASDAQ: OPXA), a company developing a novel T-cell therapy for multiple sclerosis (MS) and a stem cell therapy for diabetes, today reported financial results for the year ended December 31, 2008 and provided an update on its progress.

2008 highlights include:

- Successful completion of the 150 patient TERMS Phase IIb clinical study with Tovaxin® for patients with Relapsing Remitting Multiple Sclerosis (RRMS);
- Reporting on positive Phase IIb data in patients with RRMS and demonstrating that Tovaxin is a very safe and effective treatment, justifying the continued development of the product;
- Advancing the stem cell program in diabetes at the preclinical development stage;
- Recruitment of Neil K. Warma as President & Chief Executive Officer.

“We are pleased with our progress throughout 2008, especially in light of the difficult economic conditions the industry continues to face,” commented Neil K. Warma, president and chief executive officer of Opexa. “Particularly gratifying are the data from the TERMS Phase IIB clinical study which support those from our earlier clinical trials and demonstrate Tovaxin’s superior safety profile and potential to reduce clinical relapse rates and improve disability in MS patients. Additionally, our stem cell therapy advanced in preclinical development and continues to show promise in the treatment of diabetes. Discussions with potential partners were initiated in late 2008 and continue progressing with the aim of initiating strategic alliances with the T-cell and/or stem cell therapies.”

“We finished the year with approximately \$1.2 million in cash after completing two successful financings in February and August of 2008 which generated \$9.2 million in net proceeds. As announced concurrently today, we closed an initial tranche of a private offering of secured convertible notes and warrants on April 14, 2009 for gross proceeds of approximately \$1.1 million, which provides additional working capital through August 2009,” added Mr. Warma.

Year Ended December 31, 2008 Financial Results

Opexa reported no revenues in the year ended December 31, 2008 or in the comparable prior-year period.

Research and development expenses were \$8,388,734 for 2008, compared with \$13,071,856 for 2007. The decrease in expenses was primarily due to a decrease in activities related to the Phase IIb clinical trial for Tovaxin which was completed in 2008 as compared to 2007 and a reduction in stock compensation expense recorded in 2008.

General and administrative expenses for 2008 were \$3,341,415 compared with \$3,418,306 for 2007. The decrease in expenses is primarily due to a decrease in stock compensation expense and professional service fees.

Interest expense was \$19,983 for 2008, compared with \$16,103 for 2007. The increase in interest expense was primarily due to a loan payable consisting of an equipment line.

Interest income was \$100,235 for 2008, compared with \$477,605 for 2007. The decrease was due to the reduction in cash balances that were available for investment in cash equivalent investments and a reduction in interest rates.

Gain on Extinguishment of Debt was \$-0- for 2008, compared with a gain of \$1,612,440 for 2007.

Opexa reported a net loss for the year ended December 31, 2008 of \$11,852,152, or (\$1.12) per share, compared with a net loss for the year ended December 31, 2007 of \$14,667,367, or (\$2.19) per share.

Cash and cash equivalents and investments in marketable securities were \$1,243,187 as of December 31, 2008 compared to \$2,645,482 as of December 31, 2007.

The financial statements for the fiscal year ended December 31, 2008, included in the Company's Annual Report on Form 10-K filed on April 15, 2009, contains a 'going concern' explanatory statement from the independent public accounting firm Malone & Bailey, PC. This announcement is being made in compliance with NASDAQ Marketplace Rule 5250(b)(2) which requires separate disclosure of receipt of an audit opinion that contains a going concern statement.

About Opexa Therapeutics

Opexa Therapeutics develops and commercializes cell therapies to treat autoimmune diseases such as multiple sclerosis and diabetes. The Company is focused on autologous cellular therapy applications of its proprietary T-cell and stem cell therapies. The Company's lead product is Tovaxin, a T-cell therapy for multiple sclerosis that recently completed Phase IIb trials. The Company holds the exclusive worldwide license for adult multipotent stem cells derived from mononuclear cells of peripheral blood. The technology allows large quantities of monocyte-derived stem cells to be produced efficiently for use in autologous therapy, thus circumventing the threat of rejection. The Company is in preclinical development for diabetes mellitus. For more information visit the Opexa Therapeutics website at 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

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 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 current or future financial performance and position, management's strategy, plans and objectives for future operations, plans and objectives for product development, plans and objectives for present and future clinical trials and results of such trials, plans and objectives for regulatory approval, litigation, intellectual property, product development, manufacturing plans and performance, 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: the success of collaborative relationships, 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 treatment development programs, the success of our clinical trials, 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 for our products, the risk of litigation regarding our intellectual property rights, our limited manufacturing capabilities, our dependence on third-party manufacturers and value added resellers, 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. We assume no obligation to update any forward-looking information contained in this press release or with respect to the announcements described herein.

OPEXA THERAPEUTICS, INC.
(a development stage company)
STATEMENTS OF EXPENSES

	Twelve Months Ended December 31,	
	2008	2007
Research and development	\$ 8,388,734	\$ 13,071,856
General and administrative	3,341,415	3,418,306
Depreciation	234,325	232,955
Loss on disposal of assets	2,831	13,192
Operating loss	(11,967,305)	(16,736,309)
Interest income	100,235	477,605
Other income and expense, net	34,901	(5,000)
Gain on derivative liability	—	—
Gain on extinguishment of debt	—	1,612,440
Interest expense	(19,983)	(16,103)
Net loss	\$ (11,852,152)	\$ (14,667,367)
Basic and diluted loss per share	\$ (1.12)	\$ (2.19)
Weighted average shares outstanding	10,551,321	6,696,784

Selected Balance Sheet Data:

	2008	2007
Cash, cash equivalents and investments	\$ 1,243,187	\$ 2,645,482
Other current assets	86,705	355,266
Fixed assets (net)	1,166,530	1,370,647
Total assets	2,496,422	4,371,395
Total current liabilities	906,247	2,075,354
Total long term liabilities	102,778	162,456
Total stockholders' equity	1,487,397	2,133,585

CONTACT:

Opexa Therapeutics, Inc.
Neil K. Warma, 281-719-3437
nwarma@opexatherapeutics.com

Opexa Therapeutics Closes First Tranche of Additional Financing

Funding to Support Ongoing Partnering Discussions

THE WOODLANDS, Texas--(BUSINESS WIRE)--April 16, 2009-- **Opexa Therapeutics, Inc.** (NASDAQ:OPXA), a company developing a novel T-cell therapy for multiple sclerosis (MS) and a stem cell therapy for diabetes, today announced the closing of an initial tranche of a private offering of secured convertible notes and warrants for gross proceeds of approximately \$1.1 million. Opexa will use the proceeds from the financing to support the ongoing partnering discussions for both its Tovaxin® T-cell program and its stem cell platform. Participating in the financing were existing shareholders, consisting of institutional investors, private individuals and members of Opexa's Board of Directors.

The initial tranche of a private placement of \$1.1 million of secured convertible notes maturing in April 2011 closed on April 14, 2009. The notes accrue interest at a 10% rate, compounded annually, and the interest is payable at maturity in either cash or common stock at the Company's option. The notes are secured by substantially all of the Company's assets and are convertible into common stock, at the option of the holders, at a price of \$0.50 per share. Additionally, subject to the satisfaction of certain conditions, the notes are mandatorily convertible into common stock, at the Company's option, during their term also at \$0.50 per share. The warrants have a four year term and are exercisable for 50% of the number of shares that the note is convertible into at an exercise price of \$0.75 per share. Cambria Capital, LLC assisted with the placement of a portion of the private offering.

"We are grateful for the support of our shareholders and their continued belief in the company," commented Neil K. Warma, Opexa's President and CEO. "It is a testament to the true potential of the novel therapies we are developing, especially given the difficult and uncertain capital market conditions facing the industry. We have been advancing well with our partnering activities over the past several months and meaningful discussions are continuing on both the Tovaxin therapy for MS and the stem cell therapy for diabetes. This financing will allow us to extend our runway beyond August 2009, such that we can continue our dialogue with the aim of securing a partnership.

We are also grateful for all the patient support and testimonials that we have received over the past several months from patients enrolled in the TERMS IIb clinical study that was successfully completed in 2008. We remain determined to bringing safe and effective treatments rapidly to market," added Mr. Warma.

Further to this, Opexa has extended the employment agreement of Donna Rill, Senior Vice President of Operations through March 31, 2010. "Donna remains a pivotal member of the Opexa team and has done a remarkable job in building a world class cGMP manufacturing facility here at Opexa that supported our 150 patient IIb clinical trial for our T-cell therapy, Tovaxin and that can also meet the demands of our stem cell therapy. She is a leader in this field and we are pleased she and the company have made a longer term commitment to each other," stated Mr. Warma.

About Tovaxin (TERMS Phase IIB clinical study)

Data from the TERMS Phase IIB clinical study with Tovaxin in MS demonstrated the following:

Promising Efficacy in patients with more advanced disease

- 55% reduction in the Annualized Relapse Rate (ARR) observed in Tovaxin treated patients
- 87% reduction in ARR observed in Tovaxin patients after the full course of treatment was administered (p=0.039)
- Statistically significant improvement in disability (p=0.045) as measured by EDSS observed in Tovaxin treated patients (28.1% showing improvement with Tovaxin vs. 5.6% with placebo)
- 88% reduction in brain atrophy when treated with Tovaxin
- 59% reduction in absolute T-2 lesion volume

Excellent Safety

- No serious adverse events (SAEs) associated with Tovaxin treatment in the Phase IIB TERMS study
- No serious adverse events associated with Tovaxin in either of the previously conducted Phase I/II clinical studies

Ease of Administration

- Patient compliance may be improved with Tovaxin's treatment regimen of five subcutaneous injections per year

About Opexa's Stem Cell program for diabetes

The autologous adult stem cell research platform at Opexa Therapeutics has been focused on the development of monocyte derived stem cells (MDSC) which are converted to monocyte derived pancreatic-like islets (MDI) as a potential therapeutic transplantation product for the treatment of Type 1 and Type 2 diabetes. A proprietary *in vitro* process has been developed to derive MDSC from blood monocytes, expand them *ex vivo*, and then convert them to MDI for transplantation into the hepatic main portal vein of diabetic patients. Opexa has demonstrated that the MDSC are multipotent stem cells that may be cultured under defined conditions to convert them into several cellular lineages. The MDSCs have specific time-dependent expression of markers that distinguish them from other stem cells. MDSCs have the capacity to differentiate towards hematopoietic, epithelial, endothelial, endocrine and neuronal cells. Currently, Opexa's main focus is the development of MDSC technology as a platform for the *ex vivo* generation of MDI for potential application in autologous transplantation cell therapy for diabetes mellitus patients.

About Opexa

Opexa Therapeutics develops and commercializes cell therapies to treat autoimmune diseases such as multiple sclerosis and diabetes. The Company is focused on autologous cellular therapy applications of its proprietary T-cell and stem cell therapies. The Company's lead product is Tovaxin, a T-cell therapy for multiple sclerosis that recently completed Phase IIB trials. The Company holds the exclusive worldwide license for adult multipotent stem cells derived from mononuclear cells of peripheral blood. The technology allows large quantities of monocyte-derived stem cells to be produced efficiently for use in autologous therapy, thus circumventing the threat of rejection. The Company is in preclinical development for diabetes mellitus. For more information visit the Opexa Therapeutics website at 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

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 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 current or future financial performance and position, management's strategy, plans and objectives for future operations, plans and objectives for product development, plans and objectives for present and future clinical trials and results of such trials, plans and objectives for regulatory approval, litigation, intellectual property, product development, manufacturing plans and performance, 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: the success of collaborative relationships, 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 treatment development programs, the success of our clinical trials, 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 for our products, the risk of litigation regarding our intellectual property rights, our limited manufacturing capabilities, our dependence on third-party manufacturers and value

added resellers, 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. We assume no obligation to update any forward-looking information contained in this press release or with respect to the announcements described herein.

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