

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

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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): February 13, 2008



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
(ZipCode)

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 communication 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 communication pursuant to Rule 144d-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 8.01 Other Events

On February 13, 2008 Opexa Therapeutics, Inc. (the “Company”) entered into an Underwriting Agreement with MDB Capital Group LLC, for itself and as representative of the several underwriters, relating to the public offering of 3,500,000 shares of the Company’s common stock and 3,500,000 Series E warrants, each warrant to purchase one share of common stock at an exercise price of \$2.00 per share. Pursuant to the Underwriting Agreement, the Company granted the underwriters an option to purchase up to an additional 525,000 shares of common stock and 525,000 warrants to cover over-allotments, if any. The offering is being made pursuant to the Company’s effective registration statement on Form SB-2 (File No. 333-147167) filed with the Securities and Exchange Commission on November 6, 2007, and the final prospectus supplement to the Registration Statement dated February 13, 2008.

The public offering price for each share is \$2.00, and the public offering price for each warrant is \$0.15. Each share and each warrant will be sold to the underwriters at the public offering price of each security less an underwriting discount of 10%. The Company expects to receive approximately \$7.5 million (approximately \$8.7 million if the underwriter’s over-allotment option is exercised in full) in gross proceeds from the offering, which is subject to closing conditions. The Company paid the underwriters a non-accountable expense allowance of 1% of the gross proceeds of the offering (excluding the over-allotment option). As additional compensation, the Company issued warrants to the underwriter to purchase 350,000 shares of common stock at a price of \$2.40 per share and to acquire 350,000 Series E warrants at a price of \$0.18 per Series E warrant.

In connection with this offering of the Company’s common stock and Series E warrants, the Company is filing Exhibits 1.1, 4.3, 4.4, and 4.5 as part of this Current Report on Form 8-K to be incorporated by reference in their entirety into the Company’s Registration Statement on Form SB-2.

Item 9.01 Financial Statements and Exhibits

(c) Exhibits:

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|------|---|
| 1.1 | Underwriting Agreement dated February 13, 2008, between Opexa Therapeutics, Inc. and MDB Capital Group LLC, as representatives of the underwriters named therein. |
| 4.3 | Warrant Agent Agreement for Series E Warrant. |
| 4.4 | Form of Underwriters’ Warrant Agreement |
| 4.5 | Form of Underwriters’ Warrant to Acquire Warrants Agreement |
| 99.1 | Press Release dated February 13, 2008 |

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.

DATE: February 13, 2008

By: /s/ David B. McWilliams

David B. McWilliams
President and Chief Executive Officer

3,500,000 Shares and 3,500,000 Warrants

OPEXA THERAPEUTICS, INC.

Common Stock and Common Stock Purchase Warrants

UNDERWRITING AGREEMENT

February 13, 2008

MDB Capital Group LLC

As Representative of the Several Underwriters named in Schedule I hereto

401 Wilshire Boulevard

Santa Monica, CA 90401

Ladies and Gentlemen:

Opexa Therapeutics, Inc., a Texas corporation (“ **Company** ”), proposes to issue and sell to the several Underwriters (as defined below) an aggregate of 3,500,000 shares of its common stock, \$0.50 par value per share (the “ **Common Stock** ”) and an aggregate of 3,500,000 common stock purchase warrants, each warrant to purchase one share of common stock for an exercise period of five years commencing the date of issuance (the “ **Public Series E Warrants** ”).

It is understood that, subject to the conditions hereinafter stated, an aggregate of 3,500,000 shares of the Common Stock (the “ **Firm Shares** ”) and an aggregate of 3,500,000 Public Series E Warrants (the “ **Firm Warrants** ”) (together the Firm Shares and the Firm Warrants are referred to as the “ **Firm Securities** ”) will be sold to the several Underwriters named in Schedule I hereto (the “ **Underwriters** ”) in connection with the offering (the “ **Offering** ”) and sale of such Firm Securities. MDB Capital Group LLC shall act as the representative (the “ **Representative** ”) of the several Underwriters. In addition, as set forth below the Company proposes to issue and sell to the Underwriters, upon the terms and conditions set forth in Section 2, an aggregate of up to 525,000 additional shares of the Common Stock (the “ **Optional Shares** ”) and an aggregate of up to 525,000 additional Series E Warrants (the “ **Optional Warrants** ”) (together the Optional Shares and Optional Warrants are referred to as the “ **Optional Securities** ”). The Firm Securities and the Optional Securities are hereinafter called the “ **Securities** .”

This is to confirm the agreement concerning the purchase of the Securities from the Company by the Underwriters.

- 1. Representations and Warranties.** The Company represents and warrants to, and agrees with, each Underwriter that:
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(a) The Company has prepared and filed with the Securities and Exchange Commission (the “ **Commission** ”) a registration statement on Form SB-2 (File No. 333-147167), which contains a form of prospectus to be used in connection with the public offering and sale of the Securities. Such registration statement, as amended, including the financial statements, exhibits and schedules thereto, in the form in which it was declared effective by the Commission under the Securities Act of 1933, as amended (the “ **Securities Act** ”) and the rules and regulations promulgated thereunder (the “ **Rules and Regulations** ”), including any required information deemed to be a part thereof at the time of effectiveness pursuant to Rule 430A under the Securities Act, is called the “ **Registration Statement**. ” Any registration statement filed by the Company pursuant to Rule 462(b) under the Securities Act is called the “ **Rule 462(b) Registration Statement** ”, and from and after the date and time of filing of the Rule 462(b) Registration Statement the term “ **Registration Statement** ” shall include the Rule 462(b) Registration Statement. Any preliminary prospectus included in the Registration Statement is hereinafter called a “ **preliminary prospectus**. ” The term “ **Prospectus** ” shall mean the final prospectus relating to the Securities that is first filed pursuant to Rule 424(b) after the date and time that this Agreement is executed and delivered by the parties hereto (the “ **Execution Time** ”) or, if no filing pursuant to Rule 424(b) is required, shall mean the form of final prospectus relating to the Securities included in the Registration Statement at the time it became effective. All references in this Agreement to the Registration Statement, the Rule 462(b) Registration Statement, a preliminary prospectus, the Prospectus, or any amendments or supplements to any of the foregoing, shall include any copy thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System (“ **EDGAR** ”).

(b) The Registration Statement and any Rule 462(b) Registration Statement have been declared effective by the Commission under the Securities Act. The Company has complied, to the Commission’s satisfaction, with all requests of the Commission for additional or supplemental information. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement is in effect and no proceedings for such purpose have been instituted or are pending or, to the best knowledge of the Company, are contemplated or threatened by the Commission.

The final preliminary prospectus, as supplemented on January 23, 2008, included in the Disclosure Package (as defined below) and the Prospectus when filed complied in all material respects with the Securities Act and the rules thereunder and, if filed by electronic transmission pursuant to EDGAR (except as may be permitted by Regulation S-T under the Securities Act), was identical to the copy thereof delivered to the Underwriters for use in connection with the offer and sale of the Securities. Each of the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendment thereto, at the time it became effective and at the date hereof, the Closing Date and any Subsequent Closing Date, complied and will comply in all material respects with the Securities Act and did not and will not contain any 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. The Prospectus (including any Prospectus wrapper), as amended or supplemented, as of its date and at the date hereof, the Closing Date and any Option Closing Date, did not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The representations and warranties set forth in the two immediately preceding sentences do not apply to statements in or omissions from the Registration Statement, any Rule 462(b) Registration Statement, or any post-effective amendment thereto, or the Prospectus, or any amendments or supplements thereto, made in reliance upon and in conformity with information relating to any Underwriter furnished to the Company in writing by the Representative expressly for use therein, it being understood and agreed that the only such information furnished by the Representative consists of the information described as such in Section 11 hereof. There are no contracts or other documents required to be described in the Prospectus or to be filed as exhibits to the Registration Statement which have not been described or filed as required.

(c) The term “ **Disclosure Package** ” shall mean, collectively, (i) the preliminary prospectus that is included in the Registration Statement immediately prior to the Initial Sale Time (as defined below), if any, as amended or supplemented, (ii) the issuer free writing prospectuses as defined in Rule 433 of the Securities Act (each, an “ **Issuer Free Writing Prospectus** ”) identified in Schedule III hereto, and (iii) any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package. As of 10:00A.M. (Eastern time) on the date of this Agreement (the “ **Initial Sale Time** ”), the Disclosure Package did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by the Representative specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Underwriter consists of the information described as such in Section 11 hereof.

(d) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the Offering or until any earlier date that the Company notified or notifies the Representative as described in the next sentence, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Representative specifically for use therein, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 11 hereof.

(e) The Company has delivered to the Representative one complete manually signed copy of the Registration Statement and of each consent and certificate of experts filed as a part thereof, and conformed copies of the Registration Statement (without exhibits) and preliminary prospectuses and the Prospectus, as amended or supplemented, in such quantities and at such places as the Representative have reasonably requested for each of the Underwriters.

(f) The Company has not distributed and will not distribute, prior to the later of the Option Closing Date (as defined in Section 3 below) and the completion of the Underwriters' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than any preliminary prospectus, the Prospectus, any Issuer Free Writing Prospectus reviewed and consented to by the Representative or included in Schedule III hereto or the Registration Statement.

(g) Malone & Bailey, PC, whose report appears in the Registration Statement, and included in the Disclosure Package and the Prospectus, are independent certified public accountants as required by the Securities Act and the Rules and Regulations. The financial statements and schedules (including the related notes) included in the Registration Statement, and included in the Disclosure Package and the Prospectus, present fairly the financial condition, the results of the operations and changes in financial condition of the entities purported to be shown thereby at the dates or for the periods indicated and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated. All adjustments necessary for a fair presentation of results for such periods have been made. The selected financial, operating and statistical data set forth in any preliminary prospectus included in the Disclosure Package and the Prospectus under the captions “Prospectus Summary,” “Selected Consolidated Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” fairly present, when read in conjunction with the Company’s financial statements and the related notes and schedules and on the basis stated in the Registration Statement, the information set forth therein.

(h) Each of the Company and its Subsidiaries (as defined in Section 13 hereof) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its organization, with full power and authority (corporate and other) to own or lease its properties and conduct its business as described in the Disclosure Package and Prospectus, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the character of the business conducted by it or the location of the properties owned or leased by it makes such qualification necessary; each of the Company and its Subsidiaries is in possession of and operating in compliance with all franchises, grants, authorizations, licenses, permits, easements, consents, certificates and orders required for the conduct of its business, all of which are valid and in full force and effect (except with respect to each of the foregoing representations, where any failure to do so would not result in a material adverse change in the condition (financial or otherwise), business, prospects, properties or results of operations of the Company and its subsidiaries considered as a whole) (“**Material Adverse Effect**”); and neither the Company nor any of its Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such franchise, grant, authorization, license, permit, easement, consent, certificate or order which, individually or in the aggregate, if the subject of an unfavorable decision, would result, individually or in the aggregate, in having a Material Adverse Effect.

(i) The capitalization of the Company is as set forth in the Disclosure Package and Prospectus, and the Common Stock and Warrants conform to the descriptions thereof contained under the caption “Description of Securities” in the Disclosure Package and Prospectus; the outstanding shares of capital stock have been duly authorized, validly issued, fully paid and nonassessable and have been issued in compliance with federal and state securities laws. There are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of capital stock pursuant to the Company’s certificate of incorporation, by-laws or other governing documents or any agreement or other instrument to which the Company or any of its Subsidiaries is a party or by which any of them may be bound. None of the outstanding shares of capital stock were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company other than those accurately described in the Disclosure Package and the Prospectus. The description of the Company’s stock option, stock bonus and other stock plans or arrangements, and the options or other rights granted thereunder, set forth in the Disclosure Package and the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights. Neither the filing of the Registration Statement nor the offering or sale of the Securities as contemplated by this Agreement gives rise to any rights, other than those which have been waived or satisfied, for or relating to the registration of any shares of Common Stock. All of the outstanding shares of capital stock of each Subsidiary of the Company have been duly authorized and validly issued, are fully paid and nonassessable and are owned directly or indirectly by the Company, free and clear of any claim, lien, encumbrance or security interest. Except as disclosed in the Disclosure Package, there are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of any Subsidiary.

(j) Subsequent to the respective dates as of which information is given in the Disclosure Package and the Prospectus, and except as described or contemplated in the Disclosure Package and the Prospectus: neither the Company nor any of its Subsidiaries has incurred any liabilities or obligations, direct or contingent, nor entered into any transactions not in the ordinary course of business, which in either case are material to the Company or such Subsidiary, as the case may be; there has not been any Material Adverse Effect; and there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(k) Neither the Company nor any of its Subsidiaries is, or with the giving of notice or lapse of time or both would be, in violation of or in default under, nor will the execution or delivery hereof or consummation of the transactions contemplated hereby result in a violation of, or constitute a default under, the certificate of incorporation, bylaws or other governing documents of the Company or any of its Subsidiaries, or any agreement, contract, mortgage, deed of trust, loan agreement, note, lease, indenture or other instrument, to which the Company or any of its Subsidiaries is a party or by which any of them is bound, or to which any of their properties is subject, nor will the performance by the Company of its obligations hereunder violate any law, rule, administrative regulation or decree of any court, or any governmental agency or body having jurisdiction over the Company, its Subsidiaries or any of their properties, or result in the creation or imposition of any lien, charge, claim or encumbrance upon any property or asset of the Company or any of its Subsidiaries (except with respect to each of the foregoing, where any such default or violation would not result in a Material Adverse Effect). Except for permits and similar authorizations required under the Securities Act and the securities or “Blue Sky” laws of certain jurisdictions and for such permits and authorizations which have been obtained, no consent, approval, authorization or order of any court, governmental agency or body or financial institution is required in connection with the consummation of the transactions contemplated by this Agreement (except where such failure would not have a Material Adverse Effect).

(l) This Agreement has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms.

(m) The Securities to be purchased by the Underwriters from the Company have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement, will be validly issued, fully paid and nonassessable. The issuance of the Securities pursuant to this Agreement will not be subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no restrictions upon the voting or transfer of the Securities under the Company’s certificate of incorporation or by laws or any agreement or other instrument to which the Company is a party or otherwise filed as an exhibit to the Registration Statement.

(n) The warrants to purchase Common Stock and warrants to purchase Series E Warrants to be issued to the Underwriters (the “**Underwriter Warrants**”) pursuant to Section 4(k) have been duly authorized for issuance. The Company has reserved 700,000 shares of its Common Stock for issuance upon exercise of the Underwriter Warrants and when issued and paid for in accordance with the terms of the Underwriter Warrants and the underlying Series E Warrants, such Common Stock issuable thereunder will be validly issued, fully paid and nonassessable. The issuance of the Common Stock pursuant to the Underwriter Warrants and the underlying Series E Warrants will not be subject to any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There will be no restrictions upon the voting or transfer of the Common Stock issuable pursuant to the Underwriter Warrants and the underlying Series E Warrants under the Company’s certificate of incorporation or bylaws or any agreement or other instrument to which the Company is a party or otherwise filed as an exhibit to the Registration Statement.

(o) The Company and its Subsidiaries have good and marketable title in fee simple to all items of real property and good and marketable title to all personal property owned by them, in each case clear of all liens, encumbrances and defects except such as are described or referred to in the Disclosure Package and Prospectus or such as do not materially affect the value of such property and do not interfere with the use made or proposed to be made of such property by the Company or such Subsidiaries; and any real property and buildings held under lease by the Company and its Subsidiaries are held by them under valid, existing and enforceable leases with such exceptions as are not material and do not interfere with the use made or proposed to be made of such property and buildings by the Company or such Subsidiaries.

(p) Except as described in the Disclosure Package and the Prospectus, there is no litigation or governmental proceeding to which the Company or any of its Subsidiaries is a party or to which any property of the Company or any of its Subsidiaries is subject or which is pending or, to the knowledge of the Company, threatened against the Company which individually or in the aggregate might result in any Material Adverse Effect, which would materially and adversely affect the consummation of this Agreement or the transactions contemplated hereby or which is required to be disclosed in the Disclosure Package and the Prospectus.

(q) Neither the Company nor any Subsidiary is in violation of any law, ordinance, governmental rule or regulation or court decree to which it may be subject which violation might have a Material Adverse Effect.

(r) The Company has not taken and may not take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the shares of Common Stock to facilitate the sale or resale of the Securities.

(s) The Company and its Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns, and all such tax returns are complete and correct in all material respects, and the Company and its Subsidiaries have not failed to pay any taxes which were payable pursuant to said returns or any assessments with respect thereto. The Company has no knowledge of any tax deficiency which has been or is likely to be threatened or asserted against the Company or its Subsidiaries.

(t) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles in the United States and to maintain accountability for assets; (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 existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, since the date of the most recent evaluation of such system of internal accounting controls, there has been no material change in internal control over financial reporting, including any corrective actions with regard to significant deficiencies or material weaknesses.

(u) The Company and its Subsidiaries maintain insurance of the types and in the amounts its Board of Director has determined reasonable for its business, including, but not limited to, directors' and officers' insurance, insurance covering real and personal property owned or leased by the Company and its Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against by companies of similar size and stage of development, all of which insurance is in full force and effect. The Company has not been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

(v) Neither the Company nor any of its Subsidiaries nor, to the best of the Company's knowledge, any of its employees or agents has at any time during the last five years (i) made any unlawful contribution to any candidate for foreign office, or failed to disclose fully any contribution in violation of law, or (ii) made any payment to any foreign, federal or state governmental officer or official or other person charged with similar public or quasi-public duties, other than payments required or permitted by the laws of the United States or any jurisdiction thereof.

(w) The Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described under the caption "Use of Proceeds" in the Disclosure Package or the Prospectus, will not be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(x) Except as disclosed in the Disclosure Package or the Prospectus, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or any Underwriter for a brokerage commission, finder's fee or other like payment in connection with the Offering.

(y) Except as disclosed in the Company's reports under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned or to be owned by such person or to require the Company to include such securities in the securities registered pursuant to a Registration Statement or in any securities being registered pursuant to any other registration statement filed by the Company under the Securities Act.

(z) The Securities and the Common Stock and Series E Warrants reserved for issuance under the Underwriter Warrants and Common Stock reserved for issuance under the underlying Series E Warrants have been approved for listing on The Nasdaq Capital Market subject only to official notice of issuance. The Common Stock and the Series E Warrants of the Company have been registered under Section 12(b) of the Exchange Act.

(aa) The Company is in material compliance with all applicable provisions of the Sarbanes-Oxley Act of 2002 that are currently effective and the rules and regulations promulgated in connection therewith.

(bb) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required for the consummation of the transactions contemplated by this Agreement in connection with the issuance and sale of the Securities by the Company, except such as have been obtained and made under the Securities Act and such as may be required by the National Association of Securities Dealers, Inc. (the “**NASD**”) or under state securities laws or the laws of any foreign jurisdiction.

(cc) The execution, delivery and performance of this Agreement, and the issuance and sale of the Securities will not result in a breach or violation of any of the terms and provisions of, or constitute a default under, (i) any statute, any rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the Company, 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 (ii) 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 (ii) for such breaches, violations or defaults which would not, individually or in the aggregate, have a Material Adverse Effect, or (iii) the charter or by-laws of the Company, and the Company has full power and authority to authorize, issue and sell the Securities as contemplated by this Agreement.

(dd) The Company is not presently doing business with the government of Cuba or with any person or affiliate located in Cuba.

(ee) No labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company, is imminent that might have a Material Adverse Effect.

(ff) To the Company’s knowledge, the Company and its Subsidiaries own or possess the right to use sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets, inventions, technology, know-how and other similar rights (collectively, “**Intellectual Property Rights**”) as are (i) necessary or material to conduct its business as now conducted and as described in the Disclosure Package and the Prospectus and as are (ii) necessary or material for the commercialization of the products described in the Disclosure Package and the Prospectus as being under development. Except as set forth in the Disclosure Package and the Prospectus, (a) there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding, or claim by others challenging the rights of the Company or any of its Subsidiaries in or to any such Intellectual Property Rights that, if decided adversely to the Company would, individually or in the aggregate, have a Material Adverse Effect, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (b) there is no pending, or to the Company’s knowledge, threatened action, suit, proceeding, or claim by others that the Company or any of its Subsidiaries infringes, misappropriates, or otherwise violates any Intellectual Property Rights, of others that, if decided adversely to the Company would, individually or in the aggregate, have a Material Adverse Effect, and the Company is unaware of any facts which would form a reasonable basis for any such claim; (c) there is no pending or, to the Company’s knowledge, threatened action, suit, proceeding, or claim by others challenging the validity, scope, or enforceability of any such Intellectual Property Rights owned by the Company or its Subsidiaries and the Company is unaware of any facts which would form a reasonable basis for any such claim; (d) to the Company’s knowledge, the operation of the business of the Company and its Subsidiaries as now conducted, and as described in the Disclosure Package and the Prospectus, and in connection with the development and commercialization of the products described in the Disclosure Package and the Prospectus does not infringe any claim of any patent or published patent application; (e) there is no prior art of which the Company is aware that may render any patent owned or licensed by the Company or its Subsidiaries invalid or any patent application owned or licensed by the Company unpatentable which has not been disclosed to the applicable government patent office; and (f) the Company’s granted or issued patents, registered trademarks, and registered copyrights have been duly maintained and are in full force and in effect, and none of the patents, trademarks and copyrights have been adjudged invalid or unenforceable in whole or in part. Neither the Company nor any of its Subsidiaries is a party to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the Disclosure Package and the Prospectus and are not described therein in all material respects. None of the technology or intellectual property used by the Company and its Subsidiaries in its business has been obtained or is being used by the Company or its Subsidiaries in violation of any contractual obligation binding on the Company or its Subsidiaries, or, to the Company’s knowledge, any of its officers, directors, or employees or otherwise in violation of the rights of any persons. No third party has been granted by the Company or its Subsidiaries rights to the Intellectual Property Rights of the Company or its Subsidiaries that, if exercised, could enable such party to develop products competitive to those of the Company as described in the Disclosure Package and the Prospectus.

(gg) The Company has duly and properly filed or caused to be filed with the U.S. Patent and Trademark Office (the “ **PTO** ”) and applicable foreign and international patent authorities all patent applications owned by the Company and its Subsidiaries (the “ **Company Patent Applications** ”). To the knowledge of the Company, the Company has complied with the PTO’s duty of candor and disclosure for the Company Patent Applications and has made no material misrepresentation in the Company Patent Applications. To the Company’s knowledge, the Company Patent Applications disclose patentable subject matters. The Company has not been notified of any inventorship challenges nor has any interference been declared or provoked nor is any material fact known by the Company that would preclude the issuance of patents with respect to the Company Patent Applications or would render such patents, if issued, invalid or unenforceable.

(hh) Neither the Company or any of its Subsidiaries has breached and is currently in breach of any provision of any license, contract or other agreement governing the use by the Company or its Subsidiaries of Intellectual Property Rights owned by third parties (collectively, the “ **Licenses** ”) and, except as described in the Disclosure Package and the Prospectus, no third party has alleged any such breach and the Company is unaware of any facts that would form a reasonable basis for such a claim. To the Company’s knowledge, no other party to the Licenses has breached or is currently in breach of any provision of the Licenses. Each of the Licenses is in full force and effect and constitutes a valid and binding agreement between the parties thereto, enforceable in accordance with its terms, and there has not occurred any breach or default under any such Licenses or any event that with the giving of notice or lapse of time would constitute a breach or default thereunder. Except as would not have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has been and is currently involved in any disputes regarding the Licenses. To the Company’s knowledge, all patents licensed to the Company pursuant to the Licenses are valid, enforceable and being duly maintained. To the Company’s knowledge, all patent applications licensed to the Company pursuant to the Licenses are being duly prosecuted.

(ii) The studies that are referred to in the Disclosure Package and the Prospectus and their protocols were, to the Company’s knowledge, independently developed, analyzed and reported by the persons or entities conducting the clinical studies. The prospective studies that are referred to in the Disclosure Package and the Prospectus were, to the Company’s knowledge, conducted in all material respects in accordance with experimental protocols, procedures and controls consistent with the standards applied in other studies in the industry. The retrospective studies that are referred to in the Disclosure Package and the Prospectus were, to the Company’s knowledge, statistically analyzed to ensure the results presented therein are accurate in all material respects. The descriptions of such clinical studies contained in the Disclosure Package and the Prospectus are accurate in all material respects. The Company has not received any notices or correspondence from the U.S. Food and Drug Administration (the “ **FDA** ”) or any foreign, state or local governmental or self-regulatory body exercising comparable authority requiring the termination, suspension or material modification of any such clinical studies, which termination, suspension or material modification would reasonably be expected to result in a Material Adverse Effect.

(jj) The Company and its Subsidiaries are in compliance in all material respects with all applicable rules and regulations of the FDA, or any foreign, state or local governmental or self-regulatory body exercising comparable authority, and all related applicable laws, statutes, ordinances, rules or regulations (including, without limitation, the Federal Food, Drug and Cosmetic Act, as amended, the Good Manufacturing Practice regulations and similar foreign laws and regulations), the enforcement of which, individually or in the aggregate, would be expected to result in a Material Adverse Effect.

(kk) To the Company's knowledge, there are no rulemaking or similar proceedings before the FDA, PTO, or any foreign, state or local governmental or self-regulatory body exercising comparable authority, which affect or involve the Company, its Subsidiaries, or any of the products that the Company has developed, is developing or proposes to develop or uses or proposes to use which, if the subject of an action unfavorable to the Company, would result in a Material Adverse Effect.

(ll) The Company and each Subsidiary possess such valid and current certificates, authorizations, approvals or permits issued by the appropriate state, federal, foreign regulatory agencies or bodies necessary to conduct their respective businesses as currently conducted and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Effect.

(mm) There are no business relationships or related-party transactions involving the Company or any Subsidiary or any other person required to be described in the Disclosure Package and the Prospectus that have not been described as required.

(nn) Except as would not, individually or in the aggregate, result in a Material Adverse Effect (i) neither the Company nor any of its Subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "**Materials of Environmental Concern**"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (collectively, "**Environmental Laws**"), which violation includes, but is not limited to, noncompliance with any permits or other governmental authorizations required for the operation of the business of the Company under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company or any of its Subsidiaries received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company or any of its Subsidiaries is in violation of any Environmental Law; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company or any of its Subsidiaries has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental responses costs, natural resources damages, property damages, personal injuries, attorneys' fees or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Material of Environmental Concern at any location owned, leased or operated by the Company or any of its Subsidiaries, now or in the past (collectively, "**Environmental Claims**"), pending or, to the best of the Company's knowledge, threatened against the Company, any of its Subsidiaries, or any person or entity whose liability for any Environmental Claim the Company or any of its Subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the Company's knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that reasonably could result in a violation of any Environmental Law or form the basis of a potential Environmental Claim against the Company, any of its Subsidiaries, or against any person or entity whose liability for any Environmental Claim the Company or any of its Subsidiaries has retained or assumed either contractually or by operation of law.

(oo) The Company and any “employee benefit plan” (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, “**ERISA** ”)) established or maintained by the Company, or its “ERISA Affiliates” (as defined below) are in compliance in all material respects with ERISA. “**ERISA Affiliates** ” means, with respect to the Company, any member of any group of organizations described in Sections 414(b), (c),(m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the “**Code** ”) of which the Company is a member. No “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any “employee benefit plan” established or maintained by the Company, or any of its ERISA Affiliates. No “employee benefit plan” established or maintained by the Company or any of its ERISA Affiliates, if such “employee benefit plan” were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA). Neither the Company, nor any of its ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “employee benefit plan” or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each “employee benefit plan” established or maintained by the Company or any of its ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(pp) There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company to or for the benefit of any of the officers or directors of the Company or any of the members of any of them, except as disclosed in the Disclosure Package and the Prospectus.

(qq) The market data and industry forecasts included in the Registration Statement and the Disclosure Package and the Prospectus were obtained or derived from industry publications that are and were not at any time under the Company's control which the Company reasonably and in good faith believes are reliable and accurate, and such data agree with the sources from which they are derived.

(rr) Except as disclosed in the Disclosure Package and the Prospectus, since the date of the latest audited financial statements included in the Disclosure Package and the Prospectus there has been no Material Adverse Effect, nor any development or event involving a prospective Material Adverse Effect, in the condition (financial or other), business, properties or results of operations of the Company and its Subsidiaries taken as a whole.

Any certificate signed by an officer of the Company and delivered to the Representative or to counsel for the Underwriters shall be deemed to be a representation and warranty by the Company to each Underwriter as to the matters set forth therein.

The Company acknowledges that the Underwriters and, for purposes of the opinions to be delivered pursuant to Section 5 hereof, counsels to the Company and counsel to the Underwriters, will rely upon the accuracy and truthfulness of the foregoing representations and hereby consents to such reliance.

2. Purchase of the Securities by the Underwriters.

(a) Subject to the terms and conditions and upon the basis of the representations, warranties and agreements herein set forth, the Company agrees to issue and sell to the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase at a price of \$1.80 per share and \$.135 per Public Warrant, the number of Firm Securities set forth opposite such Underwriter's name in Schedule I hereto, subject to adjustment in accordance with Section 7 hereof. The Underwriters agree to offer the Firm Securities to the public as set forth in the Prospectus.

(b) The Company hereby grants to the Underwriters an option to purchase from the Company, solely for the purpose of covering over-allotments in connection with the distribution and sale of the Firm Securities, all or any portion of the Optional Securities for a period of forty five (45) days from the date hereof at the purchase price per Share set forth above. The Optional Securities shall be purchased from the Company, severally and not jointly, for the accounts of the several Underwriters in proportion to the number of Firm Securities set forth opposite such Underwriter's name in Schedule I hereto, except that the respective purchase obligations of each Underwriter shall be adjusted by the Representative so that no Underwriter shall be obligated to purchase fractional Optional Securities. No Optional Securities shall be sold and delivered unless the Firm Securities previously have been, or simultaneously are, sold and delivered.

3. Delivery of and Payment for Securities. Delivery of certificates for the Firm Securities to be purchased by the Underwriters from the Company and payments therefor shall be made at the offices of MDB Capital Group LLC (or such other place as mutually may be agreed upon), on the third full Business Day following the date hereof or, if the pricing of the Firm Securities occurs after 4:30 p.m., New York City time, on the fourth full Business Day thereafter, or at such other date as shall be determined by the Representative and the Company (the "**First Closing Date**").

The option to purchase the Optional Securities granted in Section 2 hereof may be exercised during the term thereof by written notice to the Company from the Representative. The exercise for the Optional Securities may be for either or both the Optional Shares and Optional Warrants, in whole or in part, and on more than one occasion. Such notice shall set forth the aggregate number of Optional Securities as to which the option is being exercised and the time and date, not earlier than either the First Closing Date or the second Business Day after the date on which the option shall have been exercised nor later than the fifth Business Day after the date of such exercise, as determined by the Representative, when the Optional Securities are to be delivered (the “**Option Closing Date**”). Delivery and payment for such Optional Securities is to be at the offices set forth above for delivery and payment of the Firm Securities. (The First Closing Date and the Option Closing Date are herein individually referred to as the “**Closing Date**” and collectively referred to as the “**Closing Dates**”).

Delivery of certificates for the Securities shall be made by or on behalf of the Company to the Representative, for the respective accounts of the Underwriters, against payment by the Representative, for the several accounts of the Underwriters, of the purchase price therefor by (i) Federal funds wire transfer or (ii) certified or official bank check payable in next day funds to the order of the Company. The certificates for the Securities shall be registered in such names and denominations as the Representative shall have requested at least two full Business Days prior to the applicable Closing Date, and shall be made available for checking and packaging at a location in New York, New York as may be designated by the Representative at least one full Business Day prior to such Closing Date. Time shall be of the essence and delivery at the time and place specified in this Agreement is a further condition to the obligations of each Underwriter.

4. Covenants. The Company covenants and agrees with each Underwriter that:

(a) During such period beginning on the Initial Sale Time and ending on the later of the Closing Date or such date, as in the opinion of counsel for the Underwriters, the Prospectus is no longer required by law to be delivered in connection with sales as contemplated by this Agreement by an Underwriter or dealer, including in circumstances where such requirement may be satisfied pursuant to Rule 172 (the “**Prospectus Delivery Period**”), prior to amending or supplementing the Registration Statement (including any registration statement filed under Rule 462(b) under the Securities Act), the Disclosure Package or the Prospectus, the Company shall furnish to the Representative for review a copy of each such proposed amendment or supplement and the Company shall not file any such proposed amendment or supplement to which the Representative reasonably objects.

(b) After the date of this Agreement, the Company shall promptly advise the Representative in writing (i) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (ii) of the receipt of any comments of, or requests for additional or supplemental information from, the Commission, (iii) of the time and date of any filing of any post-effective amendment to the Registration Statement or any amendment or supplement to any preliminary prospectus or the Prospectus, (iv) of the time and date that any post-effective amendment to the Registration Statement becomes effective and (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto or of any order or notice preventing or suspending the use of the Registration Statement, any preliminary prospectus or the Prospectus, or of any proceedings to remove, suspend or terminate from listing or quotation the Common Stock from any securities exchange upon which it is listed for trading or included or designated for quotation, or of the threatening or initiation of any proceedings for any of such purposes. The Company shall use its best efforts to prevent the issuance of any such stop order or prevention or suspension of such use. If the Commission shall enter any such stop order or order or notice of prevention or suspension at any time, the Company will use its best efforts to obtain the lifting of such order at the earliest possible moment, or will file a new registration statement and use its best efforts to have such new registration statement declared effective as soon as practicable. Additionally, the Company agrees that it shall comply with the provisions of Rules 424 (b) and 434, as applicable, under the Securities Act, including with respect to the timely filing of documents thereunder, and will use its reasonable efforts to confirm that any filings made by the Company under such Rule 424(b) were received in a timely manner by the Commission.

(c) (i) If the preliminary prospectus included in the Disclosure Package is being used to solicit offers to buy the Securities and any event or development shall occur or condition exist as a result of which it is necessary to amend or supplement the Disclosure Package in order to make the statements therein, in the light of the circumstances under which they were made or then prevailing, as the case may be, not misleading (in which case the Company agrees to notify the Representative of any such event or condition), or if in the reasonable opinion of the Representative it is otherwise necessary to amend or supplement the Disclosure Package to comply with law, the Company agrees to promptly prepare, file with the Commission and furnish to the Underwriters and to dealers, at its own expense, amendments or supplements to the Disclosure Package so that the statements in the Disclosure Package as so amended or supplemented will not be, in the light of the circumstances under which they were made or then prevailing, as the case may be, misleading or so that the Disclosure Package, as amended or supplemented, will comply with law; (ii) if, during the Prospectus Delivery Period, any event or development shall occur or condition exist as a result of which it is necessary to amend or supplement the Registration Statement or the Prospectus in order to make the statements therein, in the light of the circumstances under which they were made or then prevailing, as the case may be, not misleading (in which case the Company agrees to notify the Representative of any such event or condition), or if in the reasonable opinion of the Representative it is otherwise necessary to amend or supplement the Registration Statement or the Prospectus to comply with law, including in connection with the delivery of the Prospectus, the Company agrees to promptly prepare, file with the Commission (and use its best efforts to have any amendment to the Registration Statement or any new registration statement to be declared effective) and furnish to the Underwriters and to dealers, amendments or supplements to the Registration Statement or the Prospectus, or any new registration statement so that the statements in the Registration Statement or the Prospectus as so amended or supplemented will not be, in the light of the circumstances under which they were made or then prevailing, as the case may be, misleading or so that the Registration Statement or the Prospectus, as amended or supplemented, will comply with law.

(d) The Company agrees that, unless it obtains the prior written consent of the Representative, it will not make any offer relating to the Common Stock that would constitute an Issuer Free Writing Prospectus or that would otherwise constitute a “free writing prospectus” (as defined in Rule 405 of the Securities Act) required to be filed by the Company with the Commission or retained by the Company under Rule 433 of the Securities Act; provided that the prior written consent of the Representative hereto shall be deemed to have been given in respect of the Free Writing Prospectuses included in Schedule III hereto. Any such free writing prospectus consented to by the Representative is hereinafter referred to as a “**Permitted Free Writing Prospectus**”. The Company agrees that (i) it has treated and will treat, as the case may be, each Permitted Free Writing Prospectus as an Issuer Free Writing Prospectus, and (ii) has complied and will comply, as the case may be, with the requirements of Rules 164 and 433 of the Securities Act applicable to any Permitted Free Writing Prospectus, including in respect of timely filing with the Commission, legending and record keeping.

(e) The Company shall furnish to the Underwriters, from time to time and without charge, copies of the Registration Statement of which three shall be signed and shall include exhibits and all amendments and supplements to any of such Registration Statement, in each case as soon as available and in such quantities as the Representative may from time to time reasonably request.

(f) The Company shall take or cause to be taken all necessary action and furnish to whomever the Representative may direct such information as may be required in qualifying the Securities for sale under the laws of such jurisdictions which the Representative shall designate and to continue such qualifications in effect for as long as may be necessary for the distribution of the Securities; except that in no event shall the Company be obligated in connection therewith to qualify as a foreign corporation, or to execute a general consent for service of process.

(g) The Company shall make generally available to its securityholders, in the manner contemplated by Rule 158(b) under the Securities Act, as soon as practicable but in any event not later than 60 days after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earning statement which will comply with Section 11(a) of the Securities Act covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement.

(h) The Company will not, without the prior written consent of the Representative (which consent may be withheld in the Representative's sole discretion), directly or indirectly, issue, sell, offer, agree to sell, contract or grant any option to sell (including, without limitation, pursuant to any short sale), pledge, make any short sale of, maintain any short position with respect to, transfer, establish or maintain an open "put equivalent position" within the meaning of Rule 16a-1(h) under the Exchange Act, enter into any swap, derivative transaction or other arrangement (whether such transaction is to be settled by delivery of common stock, other securities, cash or other consideration) that transfers to another, in whole or in part, any of the economic consequences of ownership, or otherwise dispose of any shares of Common Stock, options or warrants to acquire shares of Common Stock, or securities exchangeable or exercisable for or convertible into shares of Common Stock, or publicly announce an intention to do any of the foregoing, for a period commencing on the date hereof and continuing through the close of trading on the date 180 days after the date of the Prospectus (the "**Lock-Up Period**").

Notwithstanding the foregoing, for the purpose of allowing the Underwriters to comply with NASD Rule 2711(f)(4), if (1) during the last 17 days of the initial Lock-Up Period, the Company releases earnings results or material news or a material event relating to us occurs or (2) prior to the expiration of the initial Lock-Up Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the initial Lock-Up Period, then in each case the Lock-Up Period will be extended until the expiration of the 18-day period beginning on the date of release of the earnings results or material news, as applicable, unless the Representative waives, in writing, such extension.

(i) The Company shall cause each officer and director of the Company holding shares of Common Stock or any securities convertible into, or exercisable or exchangeable for, shares of Common Stock, to furnish to the Representative, on or prior to the date of this Agreement, a letter or letters, in form and substance satisfactory to counsel for the Underwriters, pursuant to which each such person shall agree not to offer for sale, contract to sell, sell, distribute, grant any option, right or warrant to purchase, pledge, hypothecate or otherwise dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, or exercisable or exchangeable for, shares of Common Stock during the 180 days (subject to an additional extension to accommodate for earnings or material news releases) following the effective date of the Registration Statement, except with the Representative's prior written consent.

(j) The Company will use its best efforts to have the Securities and the Common Stock and Series E Warrants reserved for issuance under the Underwriter Warrants listed on the Nasdaq Capital Market.

(k) On the First Closing Date, the Company shall issue to the Underwriters the Underwriter Warrants to purchase that number of shares of Common Stock and that number of Series E Warrants equal to ten percent of the Firm Securities (adjusted upward to the nearest whole share). The Underwriter Warrants shall be in the form of Exhibit A attached hereto. The Underwriter Warrants shall be purchased from the Company, severally and not jointly, for the accounts of the several Underwriters in proportion to the number of Firm Securities set forth opposite such Underwriter's name in Schedule I hereto, except that the respective purchase obligations of each Underwriter shall be adjusted by the Representative so that no Underwriter Warrants to be purchased by an Underwriter shall represent the right to purchase a fractional share of Common Stock or fractional Public Warrant. The aggregate purchase price for the Underwriter Warrants will be \$100.00.

(l) Whether or not this Agreement becomes effective or is terminated or the sale of the Securities to the Underwriters is consummated, the Company shall pay or cause to be paid (A) all expenses (including stock transfer taxes) incurred in connection with the delivery to the several Underwriters of the Securities, (B) all fees and expenses (including, without limitation, fees and expenses of the Company's accountants and counsel, but excluding fees and expenses of counsel for the Underwriters) in connection with the preparation, printing, filing, delivery and shipping of the Registration Statement (including the financial statements therein and all amendments and exhibits thereto), each preliminary prospectus, the Disclosure Package and the Prospectus as amended or supplemented and the printing, delivery and shipping of this Agreement and other underwriting documents, including Underwriters' Questionnaires, Underwriters' Powers of Attorney, Blue Sky Memoranda, the Agreement Among Underwriters and Selected Dealer Agreements, (C) all filing fees and fees and disbursements of counsel to the Underwriters incurred in connection with the qualification of the Securities for sale under state securities laws as provided in Section 4(f) hereof, (D) the filing fee of FINRA, (E) any applicable listing fees, (F) the cost of printing certificates representing the Securities, (G) the cost and charges of any transfer agent or registrar, (H) a non-accountable expense allowance equal to one percent (1%) of the gross proceeds received by the Company from the sale of the Securities of which non-accountable expense allowance shall be paid to the Representative and (I) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise provided for in this Section. It is understood, however, that, except as provided in this Section, Section 6 and Section 8 hereof, the Underwriters shall pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Securities by them and any advertising expenses connected with any offers they may make. If the sale of the Securities provided for herein is not consummated by reason of acts of the Company pursuant to Section 8(a) hereof which prevent this Agreement from becoming effective, or by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed or because any other condition of the Underwriters' obligations hereunder is not fulfilled, unless the failure to perform the agreement or fulfill the condition is due to the default or omission of any Underwriter, the Company shall reimburse the several Underwriters for all reasonable out-of-pocket disbursements (including fees and disbursements of counsel) incurred by the Underwriters in connection with their investigation, preparing to market and marketing the Securities or in contemplation of performing their obligations hereunder. The Company shall not in any event be liable to any of the Underwriters for loss of anticipated profits from the transactions covered by this Agreement.

5. Conditions of Underwriters' Obligations. The respective obligations of the several Underwriters hereunder are subject to the accuracy, at and as of the date hereof and the First Closing Date (as if made at the First Closing Date) and, with respect to the Optional Securities, the Option Closing Date (as if made at the Option Closing Date), of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Registration Statement shall have become effective not later than 10:00 A.M., Eastern time, on the date of this Agreement, or such later time and date as the Representative shall approve and all filings required by Rules 424, 430A and 433 under the Securities Act shall have been timely made; no stop order suspending the effectiveness of the Registration Statement or any amendment thereof shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; and any request of the Commission for additional information (to be included in the Registration Statement, the Disclosure Package, the Prospectus, any Issuer Free Writing Prospectus or otherwise) shall have been complied with to the Representative's satisfaction.

(b) No Underwriter shall have advised the Company that the Registration Statement, the Disclosure Package or the Prospectus, or any amendment thereof or supplement thereto, contains an untrue statement of fact which, in the Representative's opinion, is material, or omits to state a fact which, in the Representative's opinion, is material and is required to be stated therein or is necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) On each Closing Date, the Representative shall have received the favorable opinion of Vinson & Elkins L.L.P., counsel for the Company, dated as of such Closing Date, the form of which is attached as Exhibit B.

(d) On each Closing Date, the Representative shall have received the favorable opinion of Polsmelli Shalton Welte Seulthaus PC, special intellectual property/patent counsel for the Company, dated as of such Closing Date, the form of which is attached hereto as Exhibit C.

(e) On each Closing Date the Representative shall have received the favorable opinion of DLA Piper US LLP, special regulatory counsel for the Company, dated as of such Closing Date, the form of which is attached hereto Exhibit D.

(f) On each Closing Date the Representative shall have received the favorable opinion of Golenbock Eiseman Assor Bell & Peskoe LLP, counsel for the Underwriters, dated as of such Closing Date, in form and substance satisfactory to the Representative.

(g) There shall have been furnished to the Representative a certificate of the Company, dated as of each Closing Date and addressed to the Representative, signed by the Chief Executive Officer and by the Chief Financial Officer of the Company to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct, as if made at and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date;

(ii) No stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for that purpose have been initiated or are pending or, to their knowledge, contemplated;

(iii) Any and all filings required by Rules 424, 430A, 430B and 430C under the Securities Act have been timely made;

(iv) The signers of said certificate have carefully examined the Registration Statement and the Disclosure Package and the Prospectus, and any amendments or supplements thereto, and such documents contain all statements and information required to be included therein; the Registration Statement or any amendment thereto does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading; and the Disclosure Package and the Prospectus or any supplements thereto do not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(v) Since the effective date of the Registration Statement, there has occurred no event required to be set forth in an amendment or supplement to the Registration Statement or the Disclosure Package and the Prospectus which has not been so set forth; and

(vi) Since the effective date of the Registration Statement, neither the Company nor any of its Subsidiaries shall have sustained any loss by strike, fire, flood, accident or other calamity (whether or not insured), or shall have become a party to or the subject of any litigation, which is material to the Company or its Subsidiaries taken as a whole, nor shall there have been a material adverse change in the general affairs, business, key personnel, capitalization, financial position, earnings or net worth of the Company and its Subsidiaries, whether or not arising in the ordinary course of business, which loss, litigation or change, in the Representative's judgment, shall render it inadvisable to proceed with the delivery of the Securities.

(h) On the date hereof, and on each Closing Date, the Representative shall have received from Malone & Bailey, PC, independent public or certified public accountants for the Company, a letter dated the date hereof addressed to the Representative, on behalf of the several Underwriters, in form and substance satisfactory to the Representative, containing statements and information of the type ordinarily included in accountant's "comfort letters" to underwriters, delivered according to Statement of Auditing Standards No. 100 (or any successor bulletin), with respect to the audited and unaudited financial statements and certain financial information contained in the Registration Statement and the Prospectus (and the Representative shall have received an additional five conformed copies of such accountants' letter for each of the several Underwriters).

(i) The Securities and the Common Stock and the Series E Warrants reserved for issuance under the Underwriter Warrants shall have been duly authorized for listing on the Nasdaq Capital Market.

(j) The “lock-up” agreements between the Representatives and the officers and directors of the Company listed on Schedule II, delivered to the Representative on or before the date hereof, shall be in full force and effect on each Closing Date.

(k) On or before each Closing Date, the Representative and counsel for the Underwriters shall have received such information, certificates, agreements, opinions and other documents as they may reasonably require.

All such opinions, certificates, letters and documents shall be in compliance with the provisions hereof only if they are satisfactory in form and substance to the Representative and to counsel for the Underwriters. The Company shall furnish the Representative with such conformed copies of such opinions, certificates, letters and other documents as the Representative shall reasonably request. If any of the conditions specified in this Section 5 shall not have been fulfilled when and as required by this Agreement, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the First Closing Date or the Option Closing Date, as the case may be, by the Representative. Any such cancellation shall be without liability of the Underwriters to the Company. Notice of such cancellation shall be given to the Company in writing, or by telegraph or telephone and confirmed in writing.

6. Indemnification and Contribution.

(a) The Company shall indemnify and hold harmless each Underwriter, its directors, officers, employees and agents and each person, if any, who controls any Underwriter within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage or liability, joint or several, as incurred, to which such Underwriter or such controlling person may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage or liability (or action in respect thereof) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, or any amendment thereto, including any information deemed to be a part thereof pursuant to Rule 430A, Rule 430B or Rule 430C under the Securities Act, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading; or (ii) upon any untrue statement or alleged untrue statement of a material fact contained in any Issuer Free Writing Prospectus, any preliminary prospectus, the Prospectus (or any amendment or supplement thereto) or any “issuer information” filed or required to be filed pursuant to Rule 433 under the Securities Act or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and to reimburse each Underwriter, its officers, directors, employees, agents and each such controlling person for any and all expenses (including the fees and disbursements of one counsel chosen by the Representative) as such expenses are reasonably incurred by such Underwriter, its officers, directors, employees and agents or such controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by the Representative expressly for use in the Registration Statement, any Issuer Free Writing Prospectus, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto). The indemnity agreement set forth in this Section 6(a) shall be in addition to any liabilities that the Company may otherwise have.

(b) Each Underwriter severally, but not jointly, shall indemnify and hold harmless the Company, its directors, officers, employees and each person, if any who controls the Company within the meaning of the Securities Act or the Exchange Act against any loss, claim, damage or liability, joint or several, as incurred, to which the Company may become subject, under the Securities Act or otherwise, insofar as such loss, claim, damage or liability (or action in respect thereof) arises out of or is based upon any untrue or alleged untrue statement of a material fact contained in the Registration Statement, any Issuer Free Writing Prospectus, any preliminary prospectus or the Prospectus (or any amendment or supplement thereto), or arises out of or is based upon 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, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Issuer Free Writing Prospectus, any preliminary prospectus, the Prospectus (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company by the Representative expressly for use therein; and to reimburse the Company, or any such director, officer, employee or controlling person for any legal and other expense reasonably incurred by the Company, or any such director, officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. The indemnity agreement set forth in this Section 6(b) shall be in addition to any liabilities that each Underwriter may otherwise have.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of any claim or the commencement of any action, the indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the claim or the commencement of that action; the failure to notify the indemnifying party shall not relieve it from any liability which it may have to an indemnified party otherwise than under such subsection. If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, the indemnifying party shall not be liable to the indemnified party under such subsection for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation; except that the Representative shall have the right to employ counsel to represent it and those other Underwriters who may be subject to liability arising out of any claim in respect of which indemnity may be sought by the Underwriters against the Company under such subsection if, in the Representative's reasonable judgment, based upon the advice of counsel, it is advisable for the Representative and those Underwriters to be represented by separate counsel, and in that event the fees and expenses of such separate counsel shall be paid by the Company.

(d) If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering of the Securities (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. Relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this subsection (d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to in the first sentence of this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (d) to contribute are several in proportion to their respective underwriting obligations and not joint. Each party entitled to contribution agrees that upon the service of a summons or other initial legal process upon it in any action instituted against it in respect of which contribution may be sought, it shall promptly give written notice of such service to the party or parties from whom contribution may be sought, but the omission so to notify such party or parties of any such service shall not relieve the party from whom contribution may be sought from any obligation it may have hereunder or otherwise (except as specifically provided in subsection (c) hereof).

(e) The obligations of the Company under this Section 6 shall be in addition to any liability which the Company may otherwise have; and the obligations of the Underwriters under this Section 6 shall be in addition to any liability that the respective Underwriters may otherwise have, and shall extend, upon the same terms and conditions, to each director of the Company (including any person who, with his consent, is named in the Registration Statement as about to become a director of the Company), to each officer of the Company who has signed the Registration Statement and to each person, if any, who controls the Company within the meaning of the Securities Act, in either case, whether or not such person is a party to any action or proceeding.

7. Substitution of Underwriters. If any Underwriter defaults in its obligation to purchase the number of Securities which it has agreed to purchase under this Agreement, the non-defaulting Underwriters shall be obligated to purchase (in the respective proportions which the number of Securities set forth opposite the name of each non-defaulting Underwriter in Schedule I hereto bears to the total number of Securities set forth opposite the names of all the non-defaulting Underwriters in Schedule I hereto) the Securities which the defaulting Underwriter agreed but failed to purchase; except that the non-defaulting Underwriters shall not be obligated to purchase any of the Securities if the total number of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase exceeds 10% of the total number of Firm Securities, and any non-defaulting Underwriter shall not be obligated to purchase more than 110% of the number of Securities set forth opposite its name in Schedule I hereto purchasable by it pursuant to the terms of Section 2. If the foregoing maximums are exceeded, (i) the non-defaulting Underwriters, and any other underwriters satisfactory to the Representative who so agree, shall have the right, but shall not be obligated, to purchase (in such proportions as may be agreed upon among them) all the Securities. If the non-defaulting Underwriters or the other underwriters satisfactory to the Representative do not elect to purchase the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company except for the payment of expenses to be borne by the Company and the Underwriters as provided in Section (4)(l) and the indemnity and contribution agreements of the Company and the Underwriters contained in Section 6 hereof.

Nothing contained herein shall relieve a defaulting Underwriter of any liability it may have for damages caused by its default. If the other underwriters satisfactory to the Representative are obligated or agree to purchase the Securities of a defaulting Underwriter, either the Representative or the Company may postpone the First Closing Date for up to five full Business Days in order to effect any changes that may be necessary in the Registration Statement, the Disclosure Package or the Prospectus or in any other document or agreement, and to file promptly any amendments or any supplements to the Registration Statement or the Disclosure Package or the Prospectus which in the Representative's opinion may thereby be made necessary.

8. Effective Date and Termination.

(a) This Agreement shall become effective at 12:00 Noon, New York City time, on the first full Business Day following the earlier of (i) the date hereof, or (ii) the day on which the Representative release the initial public offering of the Firm Securities for sale to the public. The Representative shall notify the Company immediately after the Representative has taken any action which causes this Agreement to become effective. Until this Agreement is effective, it may be terminated by the Company or by the Representative by giving notice as hereinafter provided to the Representative or by the Representative by giving notice as hereinafter provided to the Company, except that the provisions of Sections 4(l) and 6 shall at all times be effective. For the purpose of this Section, the Securities shall be deemed to have been released for sale to the public upon release by the Representative of an electronic communication authorizing commencement of the offering the Securities for sale by the Underwriters or other securities dealers.

(b) Until the First Closing Date, this Agreement may be terminated by the Representative by giving notice as hereinafter provided to the Company, if (i) the Company shall have failed, refused or been unable, at or prior to the First Closing Date, to perform any agreement on its part to be performed hereunder unless the failure to perform any agreement is due to the default or omission by any Underwriter, (ii) any other condition of the obligations of the Underwriters hereunder is not fulfilled; (iii) trading in securities generally on the New York Stock Exchange, American Stock Exchange or the Nasdaq Capital Market shall have been suspended or minimum or maximum prices shall have been established on either of such exchanges or such market by the Commission or by such exchange or other regulatory body or governmental authority having jurisdiction; (iv) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by the Nasdaq Capital Market or other regulatory body of governmental authority having jurisdiction; (v) a general banking moratorium shall have been declared by Federal or state authorities; (vi) a material disruption in securities settlement, payment or clearance services in the United States shall have occurred; (vii) there shall have been any material adverse change in general economic, political or financial conditions or if the effect of international conditions on the financial markets in the United States shall be such as, in the Representative's judgment, makes it inadvisable to proceed with the delivery of the Securities; or (viii) any attack on, outbreak or escalation of hostilities, declaration of war or act of terrorism involving the United States or any other national or international calamity or emergency if, in the Representative's judgment, the effect of any such attack, outbreak, escalation, declaration, act, calamity or emergency makes it impractical or inadvisable to proceed with the completion of the public offering or the delivery of the Securities. Any termination of this Agreement pursuant to this Section 8 shall be without liability on the part of the Company or any Underwriter, except as otherwise provided in Sections 4(l) or 6 hereof.

Any notice referred to above may be given at the address specified in Section 10 hereof in writing or by telegraph or telephone, and if by telegraph or telephone, shall be immediately confirmed in writing.

(c) This Agreement may also be terminated as provided in Section 7 hereof.

9. Survival of Indemnities, Contribution, Warranties and Representations. All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, and the agreements of the several Underwriters and the Company contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder.

10. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Representative:

MDB Capital Group LLC
401 Wilshire Boulevard
Santa Monica, California 90401
Facsimile: (310) 526- 5020
Attention: Christopher A. Marlett

with a copy to:

Andrew D. Hudders, Esq.
Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue – 40th Floor
New York, New York 10022
Facsimile (212) 907-0330

If to the Company:

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

with a copy to:

Michael C. Blaney, Esq.
Vinson & Elkins L.L.P.
1001 Fannin, Suite 2300
Houston, Texas, 77002
Facsimile (713) 615-5487

11. Information Furnished by Underwriters. The statements set forth under the caption “Underwriting” in the table in the first paragraph concerning the number of shares each Underwriter has agreed to purchase and in the paragraphs concerning sales by Underwriters to the public at the offering price and to dealers at such price less a concession and sales by Underwriters to discretionary accounts in any preliminary prospectus and the Prospectus, constitute the only written information furnished by or on behalf of any Underwriter referred to in paragraphs (b) and (c) of Section 1 hereof and in paragraphs (a) and (b) of Section 6 hereof.

12. Parties. This Agreement is made solely for the benefit of the several Underwriters, the Company, any officer, director or controlling person referred to in Section 6 hereof, and their respective successors and assigns, and no other person shall acquire or have any right by virtue of this Agreement. The term “successors and assigns,” as used in this Agreement, shall not include any purchaser of any of the Securities from any of the Underwriters merely by reason of such purchase.

13. Definition of “Business Day” and “Subsidiary”. For purposes of this Agreement, (a) “Business Day” means any day on which the New York Stock Exchange, Inc. is open for trading, and (b) “Subsidiary” has the meaning set forth in Rule 405 under the Securities Act.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to the choice of law or conflict of laws principles thereof.

15. Partial Unenforceability . The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

16. General Provisions . This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

Please confirm, by signing and returning to us two (2) counterparts of this Agreement, that the Representative is acting on behalf of itself and the several Underwriters and that the foregoing correctly sets forth the agreement among the Company and the several Underwriters.

Very truly yours,

OPEXA THERAPEUTICS, INC.

By: /s/David B. McWilliams
Name: David B. McWilliams
Title: President and CEO

CONFIRMED AND ACCEPTED

as of the date first above mentioned:

MDB CAPITAL GROUP LLC,
as Representative of the Several Underwriters named in Schedule I hereto

By: /s/ Christopher A. Marlett
Christopher A. Marlett,
Authorized Signatory

SCHEDULE I

Underwriting Agreement dated February 13, 2008

Underwriter	Number of Firm Securities to be Purchased
MDB Capital Group LLC	2,250,000
GunnAllen Financial, Inc.	1,250,000
	<u>3,500,000</u>

Schedule I

SCHEDULE II

Lock-Up Agreements

Schedule II

SCHEDULE III

Issuer Free Writing Prospectus

Schedule III

EXHIBIT A
Form of Underwriter Warrants

Exhibit A

EXHIBIT B

Form of Opinion of Company Counsel

Exhibit B

EXHIBIT C

Form of Opinion of Special Intellectual Property Counsel of the Company

Exhibit C

EXHIBIT D

Form of Opinion of Special Regulatory Counsel of the Company

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WARRANT AGREEMENT

THIS WARRANT AGREEMENT (the “Agreement”) is dated February 13, 2008, between Opexa Therapeutics, Inc., a Delaware corporation (the “Company”) and Continental Stock Transfer & Trust Company, acting as warrant agent (the “Warrant Agent”).

WHEREAS, the Company proposes to issue warrants (collectively with any Additional Warrants, the “Series E Warrants”) to acquire up to 4,375,000 shares, subject to adjustment as provided herein, of common stock, \$.50 par value (“Common Stock”), of the Company (collectively, the “Warrant Shares”);

WHEREAS, each Series E Warrant shall represent the right to purchase from the Company, at an initial price of \$2.00 per share (the “Exercise Price”), the number of shares specified on the certificates evidencing the Series E Warrants (the “Warrant Certificates”); and

WHEREAS, Continental Stock Transfer & Trust Company is willing to serve as the Warrant Agent in connection with the issuance of Warrant Certificates and the other matters as provided herein.

NOW, THEREFORE, in consideration of the foregoing and for the purpose of defining the terms and provisions of the Series E Warrants and the respective rights and obligations thereunder of the Company, the Warrant Agent and the record holders from time to time of the Series E Warrants (the “Holders”), the parties hereby agree as follows:

1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

“Business Day” means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which banking institutions in The City of New York are authorized or required by law or other government action to close.

“Date of Exercise” means the date on which the Holder shall have delivered to the Company (i) a Warrant Certificate, (ii) the Form of Election to Purchase attached thereto (with the Warrant Shares Exercise Log attached to it), appropriately completed and duly signed, and (iii) in the case of a Cash Exercise, payment of the Exercise Price in accordance with Section 9 for the number of Warrant Shares so indicated by the Holder to be purchased.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

“Expiration Date” means the date five years after the Initial Issuance Date.

“Initial Issuance Date” means February 19, 2008.

“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 Global Market or Nasdaq Capital Market, the last bid price reported on that date; (ii) if the shares of Common Stock are no longer quoted on Nasdaq 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, in good faith, by the Board of Directors of the Company.

“Person” means a corporation, association, partnership, limited liability corporation, organization, business, individual, government or political subdivision thereof or governmental agency.

“Trading Day” means (i) a day on which the shares of Common Stock are traded on the Nasdaq Global Market, Nasdaq Capital Market, New York Stock Exchange or American Stock Exchange on which the shares of Common Stock are then listed or quoted, or (ii) if the shares of Common Stock are not listed on a any such exchange or market, a day on which the shares of Common Stock are traded in the over-the-counter market, as reported by the OTC Bulletin Board, or (iii) if the shares of Common Stock are not quoted on the OTC Bulletin Board, a day on which the shares of Common Stock are quoted 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); provided, that in the event that the shares of Common Stock are not listed or quoted as set forth in clause (i), (ii) or (iii) hereof, then Trading Day shall mean a Business Day.

2. Form of Warrant Certificates.

(a) *Form* . The Warrant Certificates shall be issued in registered form only as definitive Warrant Certificates and shall be substantially in the form attached hereto as Exhibit A, shall be dated the date of issuance thereof (whether upon initial issuance, register of transfer, exchange or replacement) and shall bear such legends and endorsements typed, stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement. Warrant Certificates evidencing Series E Warrants to purchase the number of shares of Common Stock specified on each Warrant Certificate shall be signed by, or bear the facsimile signature of, the Chairman of the Board, Chief Executive Officer, President, any Vice President, Treasurer or Secretary of the Company. In the event the person whose facsimile signature has been placed upon any Warrant Certificate shall have ceased to serve in the capacity in which such person signed the Warrant Certificate before such Warrant Certificate is issued, it may be issued with the same effect as if he or she had not ceased to be such at the date of issuance.

(b) *Effect of Countersignature* . Unless and until countersigned by the Warrant Agent pursuant to this Agreement, a Warrant Certificate shall be invalid and of no effect and may not be exercised by the holder thereof. Such signature by the Warrant Agent upon any Warrant Certificate executed by the Company shall be conclusive evidence that such Warrant Certificate has been duly issued under the terms of this Agreement.

(c) *Warrant Register* . The Warrant Agent shall maintain books (the “Warrant Register”), for the registration of original issuance and the registration of transfer of Warrant Certificates. Upon the initial issuance of the Warrant Certificates, the Warrant Agent shall issue and register the Warrant Certificates in the names of the respective holders thereof in such denominations and otherwise in accordance with instructions delivered to the Warrant Agent by the Company. The Company and the Warrant Agent may deem and treat the registered Holder of each Warrant Certificate as the absolute owner of the Series E Warrants represented thereby for the purpose of any exercise thereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) *Registration of Transfers* . The Warrant Agent shall register the transfer of any portion of a Warrant Certificate in the Warrant Register, upon surrender of the Warrant Certificate, with the Form of Assignment attached thereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant Certificate substantially in the form attached hereto as Exhibit A (any such new Warrant Certificate, a “New Warrant Certificate”), evidencing the portion of the Warrant Certificate so transferred shall be issued to the transferee and a New Warrant Certificate evidencing the remaining portion of the Warrant Certificate not so transferred, if any, shall be issued to the transferring Holder. The delivery of the New Warrant Certificate by the Company to the transferee thereof shall be deemed to constitute acceptance by such transferee of all of the rights and obligations of a holder of a Warrant Certificate.

3. Term of Series E Warrants . Subject to the terms of Section 4, Series E Warrants shall be exercisable by the registered Holder at any time and from time to time on or after the Initial Issuance Date to and including the Expiration Date. At 5:00 p.m., Houston time on the Expiration Date, any portion of a Series E Warrant not exercised prior thereto shall be and become void and of no value.

4. Exercise of Series E Warrants and Delivery of Warrant Shares .

(a) If an effective registration statement is then available for the issuance of the Warrant Shares and the exercise is permitted in the state of the residence of the registered Holder, a registered Holder may only exercise the Series E Warrants through a cash exercise (a “Cash Exercise”). If an effective registration statement is not then available for the issuance of the Warrant Shares under the Federal securities laws or the state “blue sky” laws of the state of the residence of the registered Holder, then a registered Holder may exercise the Series E Warrants through either (i) through a cashless exercise (a “Cashless Exercise”) pursuant to Section 4(b) below or (ii) through a Cash Exercise after making customary representations requested by the Company regarding investment intent and accredited status and agreeing to customary transfer restrictions requested by the Company to ensure compliance by the Company with applicable securities laws.

(b) The Holder shall effect a Cashless Exercise by surrendering Warrant Certificates to the Warrant Agent and noting on the Form of Election to Purchase that the Holder wishes to effect a Cashless Exercise, upon which the Company shall issue, or cause to be issued, to the Holder the number of Warrant Shares determined as follows:

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

where:

X = the number of Warrant Shares to be issued to the Holder;

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.

(c) At such times, and upon such representations and agreements, if applicable, upon surrender of a Warrant Certificate and delivery of the Form of Election to Purchase (with the Warrant Shares Exercise Log attached) to the Warrant Agent at its address for notice set forth in Section 14, and, in the case of a Cash Exercise, upon payment of the Exercise Price multiplied by the number of Warrant Shares that the Holder intends to purchase thereunder (which must be a whole number) in accordance with Section 9 (the "Aggregate Exercise Price"), the Company shall promptly issue and deliver to the Holder a certificate for the Warrant Shares issuable upon such exercise. Any Person so designated by the Holder to receive Warrant Shares shall be deemed to have become holder of record of such Warrant Shares as of the Date of Exercise of the relevant Warrant Certificate. For so long as there is a then effective registration statement covering the issuance of the Warrant Shares or if a Holder effects a Cashless Exercise, the Warrant Shares shall be issued free of all restrictive legends, and the Company shall, upon request of the Holder, if available, use commercially reasonable efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions. If there is not a then effective registration statement covering the issuance of the Warrant Shares and a Holder effects a Cash Exercise, the Warrant Shares shall be issued in certificated form and include customary legends regarding transfer restrictions deemed appropriate by the Company. If fewer than all Warrant Shares issuable upon exercise of the relevant Warrant Certificate are purchased on such Date of Exercise, then the Company will execute and deliver to the Holder or its assigns a New Warrant Certificate (dated the date thereof) evidencing the unexercised portion of the relevant Warrant Certificate.

5. Charges, Taxes and Expenses. Issuance and delivery of certificates for Warrant Shares shall be made without charge to the Holder for any issue or transfer tax, or transfer agent fee in respect of the issuance of such certificates, all of which taxes shall be paid by the Company; provided, however, that the Company shall not be obligated to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Series E Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liabilities that may arise as a result of holding or transferring any Warrant Certificate or receiving Warrant Shares upon exercise thereof.

6. Replacement of Warrant Certificate . If any Warrant Certificate is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof, or in lieu of and substitution for such Warrant Certificate, a New Warrant Certificate, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity, if requested. Applicants for a New Warrant Certificate under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe.

7. Reservation of Warrant Shares . The Company covenants that it will at all times reserve and keep available out of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of all outstanding Series E Warrants as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of all outstanding Series E Warrants (taking into account the adjustments and restrictions of Section 8). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized and issued, and be fully paid and nonassessable.

8. Certain Adjustments . The Exercise Price and number of Warrant Shares issuable upon exercise of each Series E Warrant then outstanding are subject to adjustment from time to time as set forth in this Section 8.

(a) Stock Dividends and Splits . If the Company, (i) pays a stock dividend on its Common Stock, (ii) subdivides outstanding shares of Common Stock into a greater number of shares, or (iii) combines outstanding shares of Common Stock into a lesser number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Extraordinary Transactions . If, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer by the Company is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, an "Extraordinary Transaction"), then each Holder's Series E Warrants will become the right thereafter to receive, upon exercise of his or her Series E Warrants, the same amount and kind of securities, cash or property as such Holder would have been entitled to receive upon the occurrence of such Extraordinary Transaction if it had been, immediately prior to such Extraordinary Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of the relevant Series E Warrant (the "Alternate Consideration") in lieu of Common Stock. The aggregate Exercise Price for each Series E Warrant will not be affected by any such Extraordinary Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Extraordinary Transaction, then each Holder, to the extent practicable, shall be given the same choice as to the Alternate Consideration it receives upon any exercise of his or her Series E Warrant following such Extraordinary Transaction. In addition, at the request of each Holder, upon surrender of such Holder's Series E Warrant, any successor to the Company or surviving entity in such Extraordinary Transaction shall issue to such Holder a new warrant consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. Each Series E Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Extraordinary Transaction.

(c) *Number of Warrant Shares* . Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares that may be purchased upon exercise of each Series E Warrant shall be increased or decreased proportionately, as the case may be, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) *Calculations* . All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable.

(e) *Notice of Adjustments* . Upon the occurrence of each adjustment pursuant to this Section 8, the Company at its expense will promptly calculate such adjustment in accordance with the terms of this Agreement and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number of Warrant Shares or type of Alternate Consideration issuable upon exercise of each Series E Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. The Company will promptly deliver to each Holder who makes a request in writing and to the Warrant Agent, a copy of each such certificate.

(f) *Notice of Corporate Events* . If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock (other than a dividend payable solely in shares of Common Stock) or (ii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to each Holder a notice describing the material terms and conditions of such dividend, distribution or transaction. Notwithstanding anything to the contrary in this Section 8(f), the failure to deliver any notice under this Section 8(f) or any defect therein shall not affect the validity of the corporate action required to be described in such notice. Until the exercise of its, his or her Series E Warrant or any portion of such Series E Warrant, a Holder shall not have nor exercise any rights by virtue of ownership of a Series E Warrant as a shareholder of the Company (including without limitation the right to notification of shareholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company other than as provided in this Section 8(f)).

9. Payment of Exercise Price. The Holder shall pay the Aggregate Exercise Price by paying, in lawful money of the United States, in cash, certified check or bank draft payable to the order of the Company (or as otherwise agreed to by the Company) delivered to the Warrant Agent together with the Warrant Certificate and Form of Election to Purchase.

10. Company Call Right. Notwithstanding any other provision contained in this Warrant Agreement to the contrary, in the event that the average closing bid prices per share of Common Stock, as quoted on the Nasdaq Global Market (or such other exchange or stock market on which the Common Stock may then be listed or quoted) over a period of 20 consecutive Trading Days, equals or exceeds 200% of the Exercise Price (appropriately adjusted for any stock split, reverse stock split, stock dividend or other reclassification or combination of the Common Stock occurring after the date hereof), the Company, upon thirty (30) calendar days prior written notice (the "Notice Period") given to the Holder within 10 Business Days of the end of such 20 consecutive Trading Day period, may call the Series E Warrants, in whole and not in part, at a redemption price equal to \$0.01 per share of Common Stock then purchasable pursuant to the Series E Warrants called for redemption. The Holder shall have the right to exercise the Series E Warrants prior to the end of the Notice Period. As of the last day of the Notice Period, any Series E Warrants timely and validly called for redemption by the Company shall terminate and permanently cease to be exercisable and the Holders shall then be entitled only to receive the redemption price.

Notwithstanding the ability of the Company to call the Series E Warrants for redemption, the Company agrees that the Series E Warrants underlying any warrant agreement issued to the underwriters and their designees and transferees in connection with the public offering in which the Series E Warrants were issued will not be subject to the call right and redemption set forth herein.

11. Holder not Deemed a Stockholder. Except as otherwise specifically provided herein, the Holder, solely in such Person's capacity as a Holder, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in the Series E Warrants be construed to confer upon the Holder, solely in such Person's capacity as a Holder, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares to which Person is then entitled to receive upon the due exercise of the Series E Warrants.

12. No Fractional Shares. No fractional shares will be issued in connection with any exercise of a Series E Warrant. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the Market Price on the Date of Exercise.

13. Exchange Act Filings. The Holder agrees and acknowledges that it shall have sole responsibility for making any applicable filings with the U.S. Securities and Exchange Commission pursuant to Sections 13 and 16 of the Exchange Act as a result of its acquisition of any Series E Warrant and the Warrant Shares and any future retention or transfer thereof.

14. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 5:00 p.m. (Houston time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a Trading Day or later than 5:00 p.m. (Houston time) on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be:

if to the Company:

Opexa Therapeutics, Inc.
2635 North Crescent Ridge Drive
The Woodlands, Texas 77381
Attn: Chief Financial Officer
Facsimile No.: (281) 872-8585

if to the Warrant Agent:

Continental Stock Transfer & Trust Company
17 Battery Place, 8th Floor
New York, New York 10004
Attention: Office of General Counsel

if to the Holder:

to the address or facsimile number appearing on the Warrant Register or such other address or facsimile number as the Holder may provide to the Company in accordance with this Section 14.

15. Warrant Agent.

- (a) The Company and the Warrant Agent hereby agree that the Warrant Agent will serve as an agent of the Company as set forth in this Agreement.
- (b) The Warrant Agent shall not by any act hereunder be deemed to make any representation as to validity or authorization of the Series E Warrants or the Warrant Certificates (except as to its countersignature thereon) or of any securities or other property delivered upon exercise of any Series E Warrant, or as to the number or kind or amount of securities or other property deliverable upon exercise of any Series E Warrant or the correctness of the representations of the Company made in such certificates that the Warrant Agent receives.
- (c) The Warrant Agent shall not have any duty to calculate or determine any required adjustments with respect to the Exercise Price or the kind and amount of securities or other property receivable by Holders upon the exercise of Series E Warrants, nor to determine the accuracy or correctness of any such calculation.
- (d) The Warrant Agent shall not (i) be liable for any recital or statement of fact contained herein or in the Warrant Certificates or for any action taken, suffered or omitted by it in good faith in the belief that any Warrant Certificate or any other document or any signature is genuine or properly authorized, (ii) be responsible for any failure by the Company to comply with any of its obligations contained in this Agreement or in the Warrant Certificates, (iii) be liable for any act or omission in connection with this Agreement except for its own gross negligence or willful misconduct or (iv) have any responsibility to determine whether a transfer of a Series E Warrant complies with applicable securities laws.
- (e) The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, the President, any Vice President, the Treasurer, or the Secretary or any Assistant Secretary of the Company and to apply to any such officer for written instructions (which will then be promptly given) and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with the instructions of any such officer, except for its own gross negligence or willful misconduct, but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such or may require such further or additional evidence as it may deem reasonable.
- (f) The Warrant Agent may exercise any of the rights and powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys, agents or employees, provided reasonable care has been exercised in the selection and in the continued employment of any persons. The Warrant Agent shall not be under any obligation or duty to institute, appear in or defend any action, suit or legal proceeding in respect hereof, unless first indemnified to its satisfaction. The Warrant Agent shall promptly notify the Company in writing of any claim made or action, suit or proceeding instituted against or arising out of or in connection with this Agreement.

(g) The Company will take such action as may reasonably be required by the Warrant Agent in order to enable it to carry out or perform its duties under this Agreement.

(h) The Warrant Agent shall act solely as agent of the Company hereunder. The Warrant Agent shall only be liable for the failure to perform such duties as are specifically set forth herein.

(i) The Warrant Agent may consult with legal counsel satisfactory to it (who may be legal counsel for the Company), and the Warrant Agent shall incur no liability or responsibility to the Company or to any Holder for any action taken, suffered or omitted by it in good faith in accordance with the opinion or advice of such counsel.

(j) The Company agrees to pay to the Warrant Agent compensation for all services rendered by the Warrant Agent hereunder as the Company and the Warrant Agent may agree from time to time, and to reimburse the Warrant Agent for reasonable expenses incurred in connection with the execution and administration of this Agreement (including the reasonable compensation and expenses of its counsel), and further agrees to indemnify the Warrant Agent for, and hold it harmless against, any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance and administration of this Agreement.

(k) The Warrant Agent, and any shareholder, director, officer or employee of the Warrant Agent, may buy, sell or deal in any of the Series E Warrants or other securities of the Company or its Affiliates or become pecuniarily interested in transactions in which the Company or its Affiliates may be interested, or contract with or lend money to the Company or its Affiliates or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other Person.

(l) No resignation or removal of the Warrant Agent and no appointment of a successor warrant agent shall become effective until the acceptance of appointment by the successor warrant agent as provided herein. The Warrant Agent may resign its duties and be discharged from all further duties and liability hereunder (except liability arising as a result of the Warrant Agent's own gross negligence or willful misconduct) after giving written notice to the Company. The Company may remove the Warrant Agent upon written notice, and the Warrant Agent shall thereupon in like manner be discharged from all further duties and liabilities hereunder, except as aforesaid. The Warrant Agent shall, at the Company's expense, cause to be mailed (by first class mail, postage prepaid) to each Holder of a Series E Warrant at such Holder's last address as shown on the register of the Company maintained by the Warrant Agent a copy of said notice of resignation or notice of removal, as the case may be. Upon such resignation or removal, the Company shall appoint in writing a new warrant agent. If the Company fails to do so within a period of 30 days after it has been notified in writing of such resignation by the resigning Warrant Agent or after such removal, then the resigning Warrant Agent or the Holder of any Series E Warrant may apply to any court of competent jurisdiction for the appointment of a new warrant agent. After acceptance in writing of such appointment by the new warrant agent, it shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as the Warrant Agent. Not later than the effective date of any such appointment, the Company shall give notice thereof to the resigning or removed Warrant Agent. Failure to give any notice provided for in this Section 15(l), however, or any defect therein, shall not affect the legality or validity of the resignation of the Warrant Agent or the appointment of a new warrant agent, as the case may be.

(m) Any corporation into which the Warrant Agent or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Warrant Agent or any new warrant agent shall be a party or any corporation to which the Warrant Agent transfers substantially all of its corporate trust business shall be a successor Warrant Agent under this Agreement without any further act, provided that such corporation (i) would be eligible for appointment as successor to the Warrant Agent under the provisions of Section 15(l) or (ii) is a wholly owned subsidiary of the Warrant Agent. Any such successor Warrant Agent shall promptly cause notice of its succession as Warrant Agent to be mailed (by first class mail, postage prepaid) to each Holder in accordance with Section 14.

16. Miscellaneous .

(a) *Successors and Assigns* . This Agreement shall be binding on and inure to the benefit of the Company, the Warrant Agent and the Holders, and their respective successors and assigns. Subject to the preceding sentence, nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the Holders any legal or equitable right, remedy or cause of action under this Agreement.

(b) *Amendments and Waivers* . The Company may, without the consent of the Holders, by supplemental agreement or otherwise, (i) make any changes or corrections in this Agreement that are required to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or (ii) add to the covenants and agreements of the Company for the benefit of the Holders, or surrender any rights or power reserved to or conferred upon the Company in this Agreement; provided that, in the case of (i) or (ii), such changes or corrections shall not adversely affect the interests of Holders of then outstanding Series E Warrants in any material respect. The Company may, with the consent, in writing or at a meeting, of the Holders of outstanding Series E Warrants exercisable for two-thirds of the Warrant Shares, amend in any way, by supplemental agreement or otherwise, this Agreement and/or all of the outstanding Warrant Certificates; provided, however, that no such amendment shall adversely affect any Series E Warrant differently than it affects all other Series E Warrants, unless the Holder thereof consents thereto. The Warrant Agent shall at the request of the Company, and without need of independent inquiry as to whether such supplemental agreement is permitted by the terms of this Section 16(b), join with the Company in the execution and delivery of any such supplemental agreements, but shall not be required to join in such execution and delivery for such supplemental agreement to become effective.

(c) *Choice of Law, etc.* . All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(d) *Interpretation* . The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(e) *Severability* . In case any one or more of the provisions of this Agreement shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Agreement.

(f) *Additional Series E Warrants* . The Company may from time to time issue additional warrants (the "Additional Warrants") under this Warrant Agreement, without requiring the consent of any Holder, with the same terms as the warrants initially issued hereunder.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF , the parties has caused this Agreement to be duly executed by its authorized officer as of the date first indicated above.

OPEXA THERAPEUTICS, INC.

By:

Name: David B. McWilliams
Title: President

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By:

Name: John W. Comer, Jr.
Title: Vice President

Signature page to Warrant Agreement

Exhibit A

EXERCISABLE ON OR AFTER FEBRUARY 19, 2008
AND ON OR BEFORE FEBRUARY 19, 2013

No. _____

Series E Warrant to Purchase _____ Shares

Series E Warrant Certificate

WARRANTS TO ACQUIRE COMMON STOCK OF OPEXA THERAPEUTICS, INC.

This Series E Warrant Certificate certifies that, _____, or registered assigns, is the registered holder of a Series E Warrant (the "Warrant") to acquire from Opexa Therapeutics, Inc., a Delaware corporation (the "Company"), the number of fully paid and non-assessable shares of Common Stock, \$.50 par value, of the Company (the "Common Stock") specified above for consideration equal to \$ 2.00 (the "Exercise Price") per share of Common Stock. The Series E Warrant evidenced by this Series E Warrant Certificate shall not be exercisable after and shall terminate and become void as of 5:00 P.M., Houston time, on February 19, 2013 (the "Expiration Date").

The Series E Warrant evidenced by this Series E Warrant Certificate is part of a duly authorized issue of warrants expiring on the Expiration Date entitling the Holder hereof to receive shares of Common Stock, and is issued or to be issued pursuant to a Warrant Agreement dated February 19, 2008 (the "Warrant Agreement"), duly executed and delivered by the Company to Continental Stock Transfer & Trust Company, as warrant agent (the "Warrant Agent", which term includes any successor Warrant Agent under the Warrant Agreement), which Warrant Agreement is hereby incorporated by reference in and made a part of this instrument and is hereby referred to for a description of the rights, limitation of rights, obligations, duties and immunities thereunder of the Warrant Agent, the Company and the Holders ("Holders" meaning, from time to time, the registered holders of the warrant issued thereunder). To the extent any provisions of this Series E Warrant Certificate conflicts with any provision of the Warrant Agreement, the provisions of the Warrant Agreement shall apply. A copy of the Warrant Agreement may be obtained by the Holder hereof upon written request to the Company at 2635 North Crescent Ridge Drive, The Woodlands, Texas 77381 Attention: Investor Relations. Capitalized terms not defined herein have the meanings ascribed thereto in the Warrant Agreement.

This Series E Warrant may be exercised, in whole or in part, at any time on or after February 19, 2008 and on or before the Expiration Date, subject to the terms of the Warrant Agreement, by surrendering this Warrant Certificate, with the Form of Election to Purchase set forth hereon properly completed and executed, together with payment of the Aggregate Exercise Price in accordance with Section 9 of the Warrant Agreement in the case of a Cash Exercise. Each exercise must be for a whole number of Warrant Shares. In the event that upon any exercise of the Series E Warrant evidenced hereby the number of shares of Common Stock acquired shall be less than the total number of shares of Common Stock which may be purchased pursuant to this Series E Warrant, there shall be issued to the Holder hereof or such Holder's assignee a new Series E Warrant Certificate evidencing the unexercised portion of this Series E Warrant.

The Warrant Agreement provides that upon the occurrence of certain events the Exercise Price set forth on this Series E Warrant Certificate may, subject to certain conditions, be adjusted, and that upon the occurrence of certain events the number of shares of Common Stock and/or the type of securities or other property issuable upon the exercise of this Series E Warrant shall be adjusted. No fractions of a share of Common Stock will be issued upon the exercise of this Series E Warrant, but the Company will pay the cash value thereof determined as provided in the Warrant Agreement.

The Warrant Agreement provides in certain circumstances for a call right on the part of the Company, pursuant to which this Series E Warrant may be terminated.

Series E Warrant Certificates, when surrendered at the office of the Warrant Agent by the registered Holder thereof in person or by such Holder's legal representative or attorney duly appointed and authorized in writing, may be exchanged, in the manner and subject to the limitations provided in the Warrant Agreement, but without payment of any service charge, for another Series E Warrant Certificate or Series E Warrant Certificates of like tenor evidencing in the aggregate the right to purchase a like number of Warrant Shares.

Each taker and holder of this Series E Warrant Certificate, by taking or holding the same, consents and agrees that the holder of this Series E Warrant Certificate when duly endorsed in blank may be treated by the Company, the Warrant Agent and all other persons dealing with this Series E Warrant Certificate as the absolute owner hereof for any purpose and as the person entitled to exercise the rights represented hereby or the person entitled to the transfer hereof on the register of the Company maintained by the Warrant Agent, any notice to the contrary notwithstanding, provided that until such transfer on such register, the Company and the Warrant Agent may treat the registered Holder hereof as the owner for all purposes.

This Series E Warrant does not entitle any Holder to any of the rights of a shareholder of the Company.

This Series E Warrant Certificate and the Warrant Agreement are subject to amendment as provided in the Warrant Agreement.

This Series E Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF , the undersigned have caused this Series E Warrant Certificate to be executed as of the date set forth below.

OPEXA THERAPEUTICS, INC.

By:

Name: David B. McWilliams
Title: President

By:

Name: Lynne Hohlfeld
Title: Chief Financial Officer

Dated:

Countersigned:

CONTINENTAL STOCK TRANSFER & TRUST COMPANY,
as Warrant Agent

By:

Name:
Title:

FORM OF ELECTION TO PURCHASE

To Opexa Therapeutics, Inc.:

In accordance with the Series E Warrant Certificate enclosed with this Form of Election to Purchase, the undersigned hereby irrevocably elects to exercise the Series E Warrant with respect to Warrant Shares in accordance with the terms of the Warrant Agreement.

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

a Cash Exercise;

a Cashless Exercise; or

The Holder understands that any Cashless Exercise is subject to compliance with all the terms of the Warrant Agreement.

2. Payment of Exercise Price. If the Holder has elected a Cash Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder shall send via wire transfer to the account of the Company the sum of \$ _____ in immediately available funds, which sum represents the Aggregate Exercise Price (as defined in the Warrant Agreement) for the number of shares of Common Stock to which this Form of Election to Purchase relates, together with any applicable taxes payable by the undersigned pursuant to the Series E Warrant.

The undersigned requests that certificates for the shares of Common Stock issuable upon this exercise be issued in the name of

Name: _____

Address: _____

Social Security or Tax I.D. No.: _____

Form of Election to Purchase

WARRANT SHARES EXERCISE LOG

Date	Number of Warrant Shares Available to be Exercised	Number of Warrant Shares Exercised	Number of Warrant Shares Remaining to be Exercised
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Warrant Shares Exercise Log

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the within Series E Warrant Certificate to purchase _____ shares of Common Stock of Opexa Therapeutics, Inc. to which the within Series E Warrant Certificate relates and appoints _____ attorney to transfer said right on the books of Opexa Therapeutics, Inc. with full power of substitution in the premises.

Dated: _____, 20____

(Signature must conform in all respects to name of holder as specified on the front page of the Series E Warrant Certificate)

Address of Transferee:

In the presence of:

Form of Assignment

FORM OF
UNDERWRITER'S WARRANT AGREEMENT

Underwriter's Warrant Agreement (the "Agreement"), dated as of February 19, 2008, between Opexa Therapeutics, Inc. (the "Company") and _____ (the "Holder").

WITNESSETH:

WHEREAS, the Company and MDB Capital Group LLC and certain other persons (collectively, the "Underwriters") have entered into an underwriting agreement dated February 13, 2008 (the "Underwriting Agreement") whereby the Company has agreed to issue and sell to Underwriters an aggregate of 3,500,000 shares of common stock of the Company (the "Firm Shares" or in the singular a "Firm Share") and an aggregate of 3,500,000 Series E warrants (The "Firm Warrants" or in the singular a "Firm Warrant");

WHEREAS, the underwriters have agreed to make a public offering of the Firm Shares and the Firm Warrants, as those terms are described within the Underwriting Agreement (the "Offering");

WHEREAS, pursuant to Section 4(k) of the Underwriting Agreement the Company is obligated to issue to the Underwriters as of the date hereof a warrant for the purchase of up to 350,000 shares of Common Stock (the "Warrants") equal to ten percent (10%) of the Firm Shares sold in the Offering at a price per share of \$2.40;

WHEREAS, pursuant to Section 4(k) of the Underwriting Agreement, the Company is also obligated to issue to the Underwriters as of the date hereof warrants (the "Warrants") to acquire an aggregate of 350,000 warrants identical to the Firm Warrants sold in the Offering; and

WHEREAS, the Warrants may only be issued to the Underwriters and/or member firms of FINRA that may participate in the Offering and the bona fide officers and partners thereof as permitted by Rule 2710(c)(7)(A) and (B) (the "Rule") of the FINRA Conduct Rules including the Holder.

NOW, THEREFORE, in consideration of the premises contained herein, the payment to the Company of \$50, the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant and Period.

1.1 Recitals. The above recitals are true and correct. The Offering has been registered under a registration statement on Form SB-2 (File No. 333-147167) which was declared effective by the Securities and Exchange Commission (the "Commission") on February 13, 2008 (the "Effective Date").

1.2 Grant. The Holder is hereby granted the right to purchase from the Company, at any time during the period commencing on February 19, 2009 and expiring on February 19, 2013 (the "Expiration Time"), up to 350,000 shares of Common Stock of the Company at an initial exercise price (subject to adjustment as provided in Section 5 hereof) of \$2.40 per share (the "Exercise Price" or "Purchase Price"), subject to the terms and conditions of this Agreement.

2. Exercise of Warrant.

2.1 Full Exercise. Except as provided in Section 2.3 below, the Holder shall effect an exercise of the Warrants by surrendering to the Company this Agreement together with a Subscription in the form of Exhibit A attached thereto, duly executed by such Holder, at any time prior to the Expiration Time, at the Company's principal office, accompanied by payment in cash or by certified or official bank check payable to the order of the Company in the amount of the aggregate purchase price (the "Aggregate Price"), subject to any adjustments provided for in this Agreement. The Aggregate Price shall be the amount that is the result of the Exercise Price multiplied by the number of shares of Common Stock that are the subject of each Holder's Warrant (as adjusted as hereinafter provided).

2.2 Partial Exercise. The Warrants may also be exercised from time to time in part by surrendering this Agreement in the manner specified in Sections 2.1 or 2.3 hereof, except that the Purchase Price payable shall be the amount that is the result of the number of shares of Common Stock being purchased hereunder multiplied by the Exercise Price, subject to any adjustments provided for in this Agreement. Upon any such partial exercise, the Company, at its expense, will forthwith issue to the Holder a new Agreement of like tenor calling in the aggregate for the number of securities (as constituted as of the date hereof) for which this Agreement shall not have been exercised, issued in the name of the Holder or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct.

2.3 Cashless Exercise. The Holder may effect an exercise of the Warrants and pay the Exercise Price through a cashless exercise (a "Cashless Exercise"), as hereinafter provided, in its sole discretion. The Holder may effect a Cashless Exercise of the Warrants by surrendering to the Company this Agreement, together with a Subscription in the form of Exhibit B attached hereto, duly executed by such Holder, at any time prior to the Expiration Time, at the Company's principal office, upon which the Company shall issue to the Holder the number of shares of Common Stock determined as follows:

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

where X = the number of shares of Common Stock to be issued to the Holder;

Y = the number of shares of Common Stock with respect to which this Warrant is being exercised;

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

B = the Exercise Price.

"Market Price" of a share of Common Stock on any date shall mean, (i) if the shares of Common Stock are traded on the Nasdaq Global Market, Nasdaq Global Select Market or the Nasdaq Capital Market, the last bid price reported on that date; (ii) if the shares of Common Stock are no longer quoted on a Nasdaq 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 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, in good faith, by the Board of Directors of the Company and the Holders. "Date of Exercise" means the date on which the Holder shall have delivered to the Company (i) this Warrant, (ii) the applicable Form of Subscription attached thereto, appropriately completed and duly signed, and (iii) if applicable, payment of the Exercise Price.

2.4 Restrictions on Exercise. If for any reason a registration statement for the issuance of the shares is not effective at the time of exercise, Holder will make customary representations to Company as may be required to qualify the issuance for exemption from the registration requirements of the Securities Act of 1933.

3. Issuance of Certificates. Upon the exercise of the Warrants, the issuance of certificates for shares of Common Stock shall be made promptly (and, in any event within three business days thereafter) without charge to the Holder thereof including, without limitation, any tax which may be payable in respect of the issuance thereof, and such certificates shall (subject to the provisions of Section 4 and Section 5 hereof) be issued in the name of, or in such names as may be directed by, the Holder thereof; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificates in a name other than that of the Holder and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

4. Restriction on Transfer of Warrants. The Holder of a Warrant, by acceptance thereof, covenants and agrees that the Warrants may not be sold, transferred, assigned, pledged or hypothecated, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the securities underlying the Warrants, in whole or in part, for a period of one year from the effectiveness of the Offering, except (a) to a NASD member firm that participated in the Offering and the bona fide officers or partners thereof, (b) by operation of law, or (c) by reason of reorganization of the Company.

5. Adjustments to Exercise Price and Number of Securities.

5.1 Stock Dividends and Splits. If the Company, (i) pays a stock dividend on its Common Stock, (ii) subdivides outstanding shares of Common Stock into a greater number of shares, or (iii) combines outstanding shares of Common Stock into a lesser number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

5.2 Extraordinary Transactions. If, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer by the Company is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (iv) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, an "Extraordinary Transaction"), then each Holder's Warrants will become the right thereafter to receive, upon exercise of his or her Warrants, the same amount and kind of securities, cash or property as such Holder would have been entitled to receive upon the occurrence of such Extraordinary Transaction if it had been, immediately prior to such Extraordinary Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of the relevant Warrant (the "Alternate Consideration") in lieu of Common Stock. The aggregate Exercise Price for each Warrant will not be affected by any such Extraordinary Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Extraordinary Transaction, then each Holder, to the extent practicable, shall be given the same choice as to the Alternate Consideration it receives upon any exercise of his or her Warrant following such Extraordinary Transaction. In addition, at the request of each Holder, upon surrender of such Holder's Warrant, any successor to the Company or surviving entity in such Extraordinary Transaction shall issue to such Holder a new warrant consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. Each Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Extraordinary Transaction.

5.3 Adjustment in Number of Securities. Upon each adjustment of the Exercise Price pursuant to the provisions of this Section 5, the number of securities issuable upon the exercise of each Warrant shall be adjusted to the nearest full amount by multiplying a number equal to the Exercise Price in effect immediately prior to such adjustment by the number of securities issuable upon exercise of the Warrants immediately prior to such adjustment and dividing the product so obtained by the adjusted Exercise Price.

5.4 No Adjustment of Exercise Price in Certain Cases. No adjustment of the Exercise Price shall be made if the amount of said adjustment shall be less than \$.01 per Share; provided, however, that in such case any adjustment that would otherwise be required then to be made shall be carried forward and shall be made at the time of and together with the next subsequent adjustment which, together with any adjustment so carried forward, shall amount to at least \$.01 per Share.

5.5 Notice of Adjustment. In each case of an adjustment or readjustment of the Exercise Price or the number of any securities issuable upon exercise of the Warrants, the Company at its expense will promptly calculate such adjustment in accordance with the terms of this Agreement and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number of shares of Common Stock or type of Alternate Consideration issuable upon exercise of each Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. The Company will promptly deliver to each Holder who makes a request in writing, a copy of each such certificate.

6. Registration Rights.

6.1 Demand Registration.

6.1.1 Grant of Right. The Company, upon written demand ("Initial Demand Notice") of the Holder(s) of at least 51% of the Warrants and/or the underlying Common Stock and/or the underlying securities ("Majority Holders"), agrees to register on one occasion, all or any portion of the Warrants requested by the Majority Holders in the Initial Demand Notice and all of the securities underlying such Warrants, including the Common Stock (collectively, the "Registrable Securities"). On such occasion, the Company will file a registration statement or a post-effective amendment to the Registration Statement covering the Registrable Securities within thirty days after receipt of the Initial Demand Notice and use its best efforts to have such registration statement or post-effective amendment declared effective as soon as possible thereafter. The demand for registration may be made at any time during a period of five years beginning on the Effective Date. The Company covenants and agrees to give written notice of its receipt of any Initial Demand Notice by any Holder(s) to all other registered Holders of the Warrants and/or the Registrable Securities within ten days from the date of the receipt of any such Initial Demand Notice.

6.1.2 Terms. The Company shall bear all fees and expenses attendant to registering the Registrable Securities, including the expenses of any one legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities, but the Holders shall pay any and all underwriting commissions. The Company agrees to use its reasonable best efforts to qualify or register the Registrable Securities in such states as are reasonably requested by the Majority Holder(s); provided, however, that in no event shall the Company be required to register the Registrable Securities in a state in which such registration would cause (i) the Company to be obligated to qualify to do business in such state, or would subject the Company to taxation as a foreign corporation doing business in such jurisdiction or (ii) the principal stockholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Company shall cause any registration statement or post-effective amendment filed pursuant to the demand rights granted under Section 6.1.1 to remain effective for a period of nine consecutive months from the effective date of such registration statement or post-effective amendment.

6.2 “Piggy-Back” Registration.

6.2.1 Grant of Right. In addition to the demand right of registration, the Holders of the Warrants shall have the right for a period of seven years commencing on the Effective Date, to include the Registrable Securities as part of any other registration of securities filed by the Company (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Act or pursuant to Form S-8); provided, however, that if, in the written opinion of the Company’s managing underwriter or underwriters, if any, for such offering, the inclusion of the Registrable Securities, when added to the securities being registered by the Company or the selling stockholder(s), will exceed the maximum amount of the Company’s securities which can be marketed (i) at a price reasonably related to their then current market value, and (ii) without materially and adversely affecting the entire offering, then the Company will still be required to include the Registrable Securities, but may require the Holders to agree, in writing, to delay the sale of all or any portion of the Registrable Securities for a period of 90 days from the effective date of the offering, provided, further, that if the sale of any Registrable Securities is so delayed, then the number of securities to be sold by all stockholders in such public offering during such 90 day period shall be apportioned pro rata among all such selling stockholders, including all holders of the Registrable Securities, according to the total amount of securities of the Company owned by said selling stockholders, including all holders of the Registrable Securities.

6.2.2 Terms. The Company shall bear all fees and expenses attendant to registering the Registrable Securities, including the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities but the Holders shall pay any and all underwriting commissions related to the Registrable Securities. In the event of such a proposed registration, the Company shall furnish the then Holders of outstanding Registrable Securities with not less than fifteen days written notice prior to the proposed date of filing of such registration statement. Such notice to the Holders shall continue to be given for each applicable registration statement filed (during the period in which the Warrant is exercisable) by the Company until such time as all of the Registrable Securities have been registered and sold. The holders of the Registrable Securities shall exercise the “piggy back” rights provided for herein by giving written notice, within ten (10) days of the receipt of the Company’s notice of its intention to file a registration statement. The Company shall cause any registration statement filed pursuant to the above “piggyback” rights to remain effective for at least nine months from the date that the Holders of the Registrable Securities are first given the opportunity to sell all of such securities.

6.3 Damages. Should the registration or the effectiveness thereof required by Sections 6.1 and 6.2 hereof be delayed by the Company or the Company otherwise fails to comply with such provisions, the Company shall, in addition to any other equitable or other relief available to the Holder(s), be liable for any and all incidental, special and consequential damages sustained by the Holder(s), including, but not limited to, the loss of any profits that might have been received by the holder upon the sale of the Warrants or the Common Stock underlying this Warrant.

6.4 General Terms.

6.4.1 Indemnification. The Company shall indemnify the Holder(s) of the Registrable Securities to be sold pursuant to any registration statement hereunder and each person, if any, who controls such Holders within the meaning of Section 15 of the Act or Section 20(a) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against litigation, commenced or threatened, or any claim whatsoever whether arising out of any action between the underwriter and the Company or between the underwriter and any third party or otherwise) to which any of them may become subject under the Act, the Exchange Act or otherwise, arising from such registration statement but only to the same extent and with the same effect as the provisions pursuant to which the Company has agreed to indemnify the underwriters contained in Section 6 of the Underwriting Agreement between the Company, MDB Capital Group LLC and the other underwriters named therein dated the Effective Date. The Holder(s) of the Registrable Securities to be sold pursuant to such registration statement, and their successors and assigns, shall severally, and not jointly, indemnify the Company, its officers and directors and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, against all loss, claim, damage, expense or liability (including all reasonable attorneys' fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which they may become subject under the Act, the Exchange Act or otherwise, arising from information furnished by or on behalf of such Holders, or their successors or assigns, in writing, for specific inclusion in such registration statement to the same extent and with the same effect as the provisions contained in Section 6 of the Underwriting Agreement pursuant to which the underwriters have agreed to indemnify the Company.

6.4.2 Exercise of Warrant. Nothing contained in this Warrant shall be construed as requiring the Holder(s) to exercise their Warrant prior to or after the initial filing of any registration statement or the effectiveness thereof.

6.4.3 Documents Delivered to Holders. The Company shall furnish MDB Capital Group LLC, as representative of the Holders participating in any of the foregoing offerings, a signed counterpart, addressed to the participating Holders, of (i) an opinion of counsel to the Company, dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, an opinion dated the date of the closing under any underwriting agreement related thereto), and (ii) a "cold comfort" letter dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, a letter dated the date of the closing under the underwriting agreement) signed by the independent public accountants who have issued a report on the Company's financial statements included in such registration statement, in each case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of such accountants' letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer's counsel and in accountants' letters delivered to underwriters in underwritten public offerings of securities. The Company shall also deliver promptly to MDB Capital Group LLC, as representative of the Holders participating in the offering, the correspondence and memoranda described below and copies of all correspondence between the Commission and the Company, its counsel or auditors and all memoranda relating to discussions with the Commission or its staff with respect to the registration statement and permit MDB Capital Group LLC, as representative of the Holders, to do such investigation, upon reasonable advance notice, with respect to information contained in or omitted from the registration statement as it deems reasonably necessary to comply with applicable securities laws or rules of FINRA. Such investigation shall include access to books, records and properties and opportunities to discuss the business of the Company with its officers and independent auditors, all to such reasonable extent and at such reasonable times and as often as MDB Capital Group LLC, as representative of the Holders, shall reasonably request. The Company shall not be required to disclose any confidential information or other records to MDB Capital Group LLC, as representative of the Holders, or to any other person, until and unless such persons shall have entered into reasonable confidentiality agreements (in form and substance reasonably satisfactory to the Company), with the Company with respect thereto.

6.4.4 Underwriting Agreement. The Company shall enter into an underwriting agreement with the managing underwriter(s), if any, selected by any Holders whose Registrable Securities are being registered pursuant to this Section 6, which managing underwriter shall be reasonably acceptable to the Company. Such agreement shall be reasonably satisfactory in form and substance to the Company, each Holder and such managing underwriters, and shall contain such representations, warranties and covenants by the Company and such other terms as are customarily contained in agreements of that type used by the managing underwriter. The Holders shall be parties to any underwriting agreement relating to an underwritten sale of their Registrable Securities and may, at their option, require that any or all the representations, warranties and covenants of the Company to or for the benefit of such underwriters shall also be made to and for the benefit of such Holders. Such Holders shall not be required to make any representations or warranties to or agreements with the Company or the underwriters except as they may relate to such Holders and their intended methods of distribution. Such Holders, however, shall agree to such covenants and indemnification and contribution obligations for selling stockholders as are customarily contained in agreements of that type used by the managing underwriter. Further, such Holders shall execute appropriate custody agreements and otherwise cooperate fully in the preparation of the registration statement and other documents relating to any offering in which they include securities pursuant to this Section 6. Each Holder shall also furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of the Registrable Securities.

6.4.5 Rule 144 Sale. Notwithstanding anything contained in this Section 6 to the contrary, the Company shall have no obligation pursuant to Sections 6.1 or 6.2 for the registration of Registrable Securities held by any Holder (i) where such Holder would then be entitled to sell under Rule 144 within any three-month period (or such other period prescribed under Rule 144 as may be provided by amendment thereof) all of the Registrable Securities then held by such Holder, and (ii) where the number of Registrable Securities held by such Holder is within the volume limitations under paragraph (e) of Rule 144 (calculated as if such Holder were an affiliate within the meaning of Rule 144).

6.4.6 Supplemental Prospectus. Each Holder agrees, that upon receipt of any notice from the Company of the happening of any event as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits 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, such Holder will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Holder's receipt of the copies of a supplemental or amended prospectus, and, if so desired by the Company, such Holder shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of such destruction) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

7. Elimination of Fractional Interest. The Company shall not be required to issue certificates representing fractions of shares of Common Stock upon the exercise of the Warrants, nor shall it be required to issue script or pay cash in lieu of fractional interests, it being the intent of the parties that all fractional interests may be eliminated, at the Company's option, by rounding any fraction up to the nearest whole number of shares of Common Stock or other securities, properties or rights, or in lieu thereof paying cash equal to such fractional interest.

8. Reservation, Validity and Listing. The Company covenants and agrees that during the exercise period, the Company shall at all times reserve and keep available out of its authorized shares of Common Stock, solely for the purpose of issuance upon the exercise of the Warrants, such number of shares of Common Stock or other securities, properties or rights as shall be issuable upon the exercise under this Warrant Certificate. The Company covenants and agrees that, upon exercise of the Warrants, and payment of the Exercise Price therefor, all shares of Common Stock and other securities issuable upon such exercise shall be duly authorized, validly issued, fully paid, non-assessable and not subject to the preemptive rights of any shareholder. As long as the Warrants shall be outstanding, the Company shall use its commercially reasonable efforts to cause all shares of Common Stock issuable upon the exercise of the Warrants to be listed and quoted (subject to official notice of issuance) on all securities exchanges and systems on which the Common Stock are then listed and/or quoted, including Nasdaq and the American Stock Exchange.

9. Notices to Warrant Holder. Nothing contained in this Agreement shall be construed as conferring upon the Holder of the Warrants the right to vote or to consent or to receive notice as a shareholder in respect of any meetings of shareholders for the election of directors or any other matter, or as having any rights whatsoever as a shareholder of the Company. If, however, at any time prior to the expiration of the Warrants and their exercise, any of the following events shall occur:

(a) the Company shall take a record of the holders of its shares of Common Stock for the purpose of entitling them to receive a dividend or distribution payable otherwise than in cash, or a cash dividend or distribution payable otherwise than out of current or retained earnings, as indicated by the accounting treatment of such dividend or distribution on the books of the Company; or

(b) the Company shall offer to all the holders of its Common Stock any additional shares of capital stock of the Company or securities convertible into or exchangeable for shares of capital stock of the Company, or any option, right or warrant to subscribe therefor; or

(c) a dissolution, liquidation or winding up of the Company (other than in connection with a consolidation or merger) or a sale of all or substantially all of its property, assets and business as an entirety shall be proposed;

then, in any one or more of said events, the Company shall give to the extent practicable written notice of such event at least 15 days prior to the date fixed as a record date of the date of closing the transfer books for the determination of the shareholders entitled to such dividend, distribution, convertible or exchangeable securities or subscription rights, or entitled to vote on such proposed dissolution, liquidation, winding up or sale. Such notices shall specify such record date or the date of closing the transfer books, as the case may be.

10. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by (i) facsimile; or (ii) delivered personally or by overnight courier or mailed by registered or certified mail, return receipt requested:

- (a) If to the registered Holder, to the address of such Holder as shown on the books of the Company.

With a copy to:

Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue
New York, NY 10022
Attn: Andrew D. Hudders, Esq.
Fax: (212) 754-0330
Tel: (212) 907-7300

- (b) If to the Company, to the address set forth below or to such other address as the Company may designate by notice to the Holders.

Opexa Therapeutics, Inc.
2635 North Crescent Ridge Prime
The Woodlands, Texas 77381
Attn: Chief Financial Officer
Fax: (281) 872-8585

With a copy to:

Vinson & Elkins LLP
1001 Fannin, Suite 2300
Houston, Texas 77002
Attn: Michael C. Blaney
Tel: (713) 758-3487
Fax: (713) 615-5487

11. Entire Agreement : Modification. This Agreement (and the Underwriting Agreement to the extent applicable) contains the entire understanding between the parties hereto with respect to the subject matter hereof, and the terms and provisions of this Agreement may only be modified, waived or amended in writing. Any modification, waiver or amendment executed by the Company and a majority of Holders shall be binding on all Holders. Notice of any modification, waiver or amendment shall be promptly provided to any Holder not consenting to such modification, waiver or amendment.

12. Successors. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the Company, the Holders and their respective successors and assigns hereunder.

13. Governing Law; Submissi on to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without regard to the conflicts of laws principles thereof. The parties hereto hereby irrevocably agree that any suit or proceeding arising directly and/or indirectly pursuant to or under this Agreement, shall be brought solely in a federal or state court located in the City, County and State of New York. By its execution hereof, the parties hereby covenant and irrevocably submit to the in personam jurisdiction of the federal and state courts located in the City, County and State of New York and agree that any process in any such action may be served upon any of them personally, or by certified mail or registered mail upon them or their agent, return receipt requested, with the same full force and effect as if personally served upon them in New York City. The parties hereto waive any claim that any such jurisdiction is not a convenient forum for any such suit or proceeding and any defense or lack of in personam jurisdiction with respect thereto. In the event of any such action or proceeding, the party prevailing therein shall be entitled to payment from the other party hereto of its reasonable counsel fees and disbursements in an amount judicially determined.

14. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement.

15. Captions. The caption headings of the sections of this Agreement are for convenience of reference only and are not intended, nor should they be construed as, a part of this Agreement and shall be given no substantive effect.

16. Benefits of This Agreement. Nothing in this Agreement shall be construed to give to any person or corporation other than the Company and any registered Holder(s) of the Warrant Certificates any legal or equitable right, remedy or claim under this Agreement; and this Agreement shall be for the sole and exclusive benefit of the Company and any Holder(s) of the Warrant Certificates.

17. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

Date

Opexa Therapeutics, Inc.
By: _____
David B. McWilliams
Chief Executive Officer

Holder

Date

By: _____
Name:
Title:

EXHIBIT A

FORM OF SUBSCRIPTION (CASH EXERCISE)

(To be signed only upon exercise of Warrant)

TO: Opexa Therapeutics, Inc.
2635 North Crescent Rope Prime
The Woodlands, Texas 77381
Fax: (281) 872-8585

The undersigned holder of Warrant Certificate Number _____ (the "Warrant Certificate"), representing Warrants (as defined in the Warrant Certificate) of Opexa Therapeutics, Inc. (the "Company"), which Warrant Certificate is being delivered herewith, hereby irrevocably elects to purchase _____ Shares (as defined in the Warrant Certificate), and herewith makes payment of \$ _____ therefor, all in accordance with the Warrant Certificate and the Warrant Agreement referred to in the Warrant Certificate. Certificates for the Shares shall be issued in the name of _____ and delivered to the following address:

By: _____
Name: _____
Social Security
Number or Tax
Identification
Number: _____
Date: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Address

Social Security Number or
Tax Identification Number

EXHIBIT B

FORM OF SUBSCRIPTION (CASHLESS EXERCISE)

TO: Opexa Therapeutics, Inc.
2635 North Crescent Rope Prime
The Woodlands, Texas 77381
Fax: (281) 872-8585

The undersigned holder of Warrant Certificate number _____ (the "Warrant Certificate"), representing _____ Warrants (as defined in the Warrant Certificate) of Opexa Therapeutics, Inc. (the "Company"), which Warrant Certificate is being delivered herewith, hereby irrevocably elects to exercise (on a cashless exercise basis in accordance with the formula set forth in Section 2.3 of the Warrant Agreement referred to in the Warrant Certificate (the "Warrant Agreement")) the Warrant Certificate with respect to _____ Shares (as defined in the Warrant Certificate), all in accordance with the Warrant Certificate and the Warrant Agreement. Certificates for the Shares shall be issued in the name of _____ and delivered to the following address:

By: _____
Name: _____
Social Security
Number or Tax
Identification
Number: _____
Date: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Address

Social Security Number or
Tax Identification Number

FORM OF ASSIGNMENT

(To be exercised by the registered holder if such Holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto:

Print Name of Transferee

Address

City State Zip Code

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Warrant Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____

Signature: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Social Security Number or Other Identifying Number of Assignee

**FORM OF
UNDERWRITER'S WARRANT TO ACQUIRE WARRANTS AGREEMENT**

Underwriter's Warrant To Acquire Warrants Agreement (the "Agreement"), dated as of February 19, 2008, between Opexa Therapeutics, Inc. (the "Company") and _____ (the "Holder").

WITNESSETH:

WHEREAS, the Company and MDB Capital Group, LLC and the other parties named therein (collectively, the "Underwriters") have entered into an underwriting agreement dated February 13, 2008 (the "Underwriting Agreement") whereby the Company has agreed to issue and sell to the Underwriters an aggregate of 3,500,000 shares of common stock of the Company (the "Firm Shares" or in the singular a "Firm Share") and an aggregate of 3,500,000 Series E warrants (The "Firm Warrants" or in the singular a "Firm Warrant");

WHEREAS, the Underwriters have agreed to make a public offering of the Firm Shares and the Firm Warrants, as those terms are described within the Underwriting Agreement (the "Offering");

WHEREAS, pursuant to Section 4(k) of the Underwriting Agreement, the Company is obligated to issue to the Underwriters as of the date hereof a warrant for the purchase of an aggregate of 350,000 shares of Common Stock, equal to ten percent (10%) of the Firm Shares sold in the Offering, at a price per share of \$2.40;

WHEREAS, pursuant to Section 4(k) of the Underwriting Agreement, the Company is also obligated to issue to the Underwriters as of the date hereof warrants (the "Warrants") to acquire an aggregate of 350,000 Series E warrants identical to the Series E warrants sold in the Offering (the "Public Warrants" or in the singular a "Public Warrant");

WHEREAS, the exercise price for each Warrant for a Public Warrant is \$.18, a price that is equal to 120% of the price per Public Warrant in the Offering;

WHEREAS the Company has entered into a Warrant Agreement dated February 19, 2008 with Continental Stock Transfer & Trust Company, acting as warrant agent for the Series E Warrants;

WHEREAS, the Warrants may only be issued to the Underwriters and/or member firms of FINRA that may participate in the Offering and the bona fide officers and partners thereof as permitted by Rule 2710(c)(7)(A) and (B) (the "Rule") of FINRA Conduct Rules (each and each permitted transferee hereunder, a "Holder," and collectively, the "Holders").

NOW, THEREFORE, in consideration of the premises contained herein, the payment to the Company of \$50, the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant and Period.

1.1 Recital. The above recitals are true and correct. The Offering has been registered under a registration statement on Form SB-2 (File No. 333-147167) ("Registration Statement") which was declared effective by the Securities and Exchange Commission (the "Commission") on February 13, 2008 (the "Effective Date").

1.2 Grant. The Holder is hereby granted the right to purchase from the Company, at any time during the period commencing on February 19, 2009 and expiring on February 19, 2013 (the "Expiration Time"), 350,000 Public Warrants at an exercise price of \$.18 per Public Warrant (the "Exercise Price" or "Purchase Price"), subject to the terms and conditions of this Agreement.

1.3 Redemption It is agreed by the Company that its right to call the Public Warrants for redemption shall not apply to the Public Warrants for which this Warrant may be exercised. If the Public Warrants have been redeemed, then the Company will issue warrants equivalent to the Public Warrant in lieu thereof.

2. Exercise of Warrant.

2.1 Full Exercise. Except as provided in Section 2.3 below, the Holder shall effect an exercise of the Warrants by surrendering to the Company this Agreement, together with a Subscription in the form of Exhibit A attached hereto, duly executed by such Holder, at any time prior to the Expiration Time, at the Company's principal office, accompanied by payment in cash or by certified or official bank check payable to the order of the Company in the amount of the aggregate purchase price (the "Aggregate Price"), subject to any adjustments provided for in this Agreement. The Aggregate Price shall be an amount that is the result of the Exercise Price multiplied by the number of Public Warrants that are the subject of each Holder's Agreement (as adjusted as hereinafter provided).

2.2 Partial Exercise. The Warrants may also be exercised from time to time in part by surrendering this Agreement in the manner specified in Sections 2.1 or 2.3 hereof, except that the Purchase Price payable shall be an amount that is the result of the number of Public Warrants being purchased hereunder multiplied by the Exercise Price, subject to any adjustments provided for in this Agreement. Upon any such partial exercise, the Company, at its expense, will forthwith issue to the Holder a new Agreement of like tenor calling in the aggregate for the number of securities (as constituted as of the date hereof) for which this Agreement shall not have been exercised, issued in the name of the Holder or as such Holder (upon payment by such Holder of any applicable transfer taxes) may direct.

2.3 Cashless Exercise. The Holder may pay the Exercise Price through a cashless exercise (a "Cashless Exercise"), as hereinafter provided, in its sole discretion. The Holder may effect a Cashless Exercise of the Warrants by surrendering to the Company this Agreement, together with a Subscription in the form of Exhibit B attached hereto, duly executed by such Holder, at any time prior to the Expiration Time, at the Company's principal office, upon which the Company shall issue to the Holder the number of Public Warrants determined as follows:

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

where

X	=	the number of Public Warrants to be issued to the Holder;
Y	=	the number of Public Warrants with respect to which the Warrant is being exercised;
A	=	the Market Price as of the Date of Exercise; and
B	=	the Exercise Price.

“Market Price” of a Public Warrant on any date shall mean, (i) if the Public Warrants are traded on the Nasdaq Global Market, Nasdaq Global Select Market or the Nasdaq Capital Market, the last bid price reported on that date; (ii) if the Public Warrants are no longer quoted on a Nasdaq market and are listed on any other national securities exchange, the last sale price of the Public Warrants reported by such exchange on that date; (iii) if the Public Warrants are not quoted on a any such market or listed on any such exchange and the Public Warrants are traded in the over-the-counter market, the last price reported on such day by the OTC Bulletin Board; (iv) if the Public Warrants are not quoted on 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 taking the Market Price of a share of Common Stock as determined in the same manner as clauses (i) – (iv) and subtracting from that per share amount (y) the then exercise price of a Warrant and (z) the exercise price of the Public Warrant for a share of Common Stock. In the event that a Market Price may not be determined using any of the foregoing, then the Market Price will be determined, in good faith, by the Board of Directors and the Holders of the Warrant. “Date of Exercise” means the date on which the Holder shall have delivered to the Company (i) this Warrant, (ii) the applicable Form of Subscription attached thereto, appropriately completed and duly signed, and (iii) if applicable, payment of the Exercise Price.

2.4 Restrictions on Exercise. If for any reason a registration statement for the issuance of the Series E Warrants is not effective at the time of exercise, Holder will make customary representations to Company as may be required to qualify the issuance for exemption from the registration requirements of the Securities Act of 1933.

3. Issuance of Certificates. Upon the exercise of the Warrants, the issuance of warrant certificates for the Public Warrants shall be made promptly (and, in any event within three business days thereafter) without charge to the Holder thereof including, without limitation, any tax which may be payable in respect of the issuance thereof, and such certificates shall (subject to the provisions of Section 4 and Section 5 hereof) be issued in the name of, or in such names as may be directed by, the Holder thereof; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificates in a name other than that of the Holder and the Company shall not be required to issue or deliver such certificates unless or until the person or persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

4. Restriction on Transfer of Warrant. The Holder of a Warrant, by acceptance thereof, covenants and agrees that the Warrants may not be sold, transferred, assigned, pledged or hypothecated, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the securities underlying the Warrants, in whole or in part, for a period of one year from the effectiveness of the Offering, except (a) to a FINRA member firm that participated in the Offering and the bona fide officers or partners thereof, (b) by operation of law, or (c) by reason of reorganization of the Company.

5. Certain Events.

5.1 Amendments. If the Company amends the class of Public Warrants or the number of Public Warrants and exercise price thereof are adjusted, then this Warrant will become exercisable for such Public Warrants, as amended and/or adjusted.

5.2 Extraordinary Transactions. If, (i) the Company effects any merger or consolidation of the Company with or into another Person, (ii) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (iii) any tender offer or exchange offer by the Company is completed pursuant to which holders of Public Warrants are permitted to tender or exchange their Public Warrants for other securities, cash or property, or (iv) the Company effects any reclassification of the Public Warrants or any compulsory exchange pursuant to which the Public Warrants are effectively converted into or exchanged for other securities, cash or property (in any such case, an “Extraordinary Transaction”), then each Holder’s Warrants will become the right thereafter to receive, upon exercise of his or her Warrants, the same amount and kind of securities, cash or property as such Holder would have been entitled to receive upon the occurrence of such Extraordinary Transaction if it had been, immediately prior to such Extraordinary Transaction, the holder of the number of Public Warrants then issuable upon exercise in full of the relevant Warrant (the “Alternate Consideration”) in lieu of Public Warrants. The aggregate Exercise Price for each Warrant will not be affected by any such Extraordinary Transaction, but the Company shall apportion such aggregate Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Public Warrants are given any choice as to the securities, cash or property to be received in a Extraordinary Transaction, then each Holder, to the extent practicable, shall be given the same choice as to the Alternate Consideration it receives upon any exercise of his or her Warrant following such Extraordinary Transaction. In addition, at the request of each Holder, upon surrender of such Holder’s Warrant, any successor to the Company or surviving entity in such Extraordinary Transaction shall issue to such Holder a new warrant consistent with the foregoing provisions and evidencing the Holder’s right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof. Each Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Extraordinary Transaction.

5.3 Notice of Adjustment. In each case of an adjustment or readjustment of the type of securities issuable upon exercise of the Warrants pursuant to Section 6.2, the Company shall promptly give written notice of such adjustment or readjustment.

6. Registration Rights.

6.1 Demand Registration.

6.1.1 Grant of Right. The Company, upon written demand (“Initial Demand Notice”) of the Holder(s) of at least 51% of the Warrants and/or the underlying Public Warrants and/or the underlying securities (“Majority Holders”), agrees to register on one occasion, all or any portion of the Warrants requested by the Majority Holders in the Initial Demand Notice and all of the securities underlying such Warrants, including the Public Warrants and Common Stock, the Warrants, the Public Warrants and the Common Stock underlying the Public Warrants (collectively, the “Registrable Securities”). On such occasion, the Company will file a registration statement or a post-effective amendment to the Registration Statement covering the Registrable Securities within thirty days after receipt of the Initial Demand Notice and use its best efforts to have such registration statement or post-effective amendment declared effective as soon as possible thereafter. The demand for registration may be made at any time during a period of five years beginning on the Effective Date. The Company covenants and agrees to give written notice of its receipt of any Initial Demand Notice by any Holder(s) to all other registered Holders of the Warrants and/or the Registrable Securities within ten days from the date of the receipt of any such Initial Demand Notice.

6.1.2 Terms. The Company shall bear all fees and expenses attendant to registering the Registrable Securities, including the expenses of any one legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities, but the Holders shall pay any and all underwriting commissions. The Company agrees to use its reasonable best efforts to qualify or register the Registrable Securities in such states as are reasonably requested by the Majority Holder(s); provided, however, that in no event shall the Company be required to register the Registrable Securities in a state in which such registration would cause (i) the Company to be obligated to qualify to do business in such state, or would subject the Company to taxation as a foreign corporation doing business in such jurisdiction or (ii) the principal stockholders of the Company to be obligated to escrow their shares of capital stock of the Company. The Company shall cause any registration statement or post-effective amendment filed pursuant to the demand rights granted under Section 6.1.1 to remain effective for a period of nine consecutive months from the effective date of such registration statement or post-effective amendment.

6.2 “Piggy-Back” Registration.

6.2.1 Grant of Right. In addition to the demand right of registration, the Holders of the Warrants shall have the right for a period of seven years commencing on the Effective Date, to include the Registrable Securities as part of any other registration of securities filed by the Company (other than in connection with a transaction contemplated by Rule 145(a) promulgated under the Act or pursuant to Form S-8); provided, however, that if, in the written opinion of the Company’s managing underwriter or underwriters, if any, for such offering, the inclusion of the Registrable Securities, when added to the securities being registered by the Company or the selling stockholder(s), will exceed the maximum amount of the Company’s securities which can be marketed (i) at a price reasonably related to their then current market value, and (ii) without materially and adversely affecting the entire offering, then the Company will still be required to include the Registrable Securities, but may require the Holders to agree, in writing, to delay the sale of all or any portion of the Registrable Securities for a period of 90 days from the effective date of the offering, provided, further, that if the sale of any Registrable Securities is so delayed, then the number of securities to be sold by all stockholders in such public offering during such 90 day period shall be apportioned pro rata among all such selling stockholders, including all holders of the Registrable Securities, according to the total amount of securities of the Company owned by said selling stockholders, including all holders of the Registrable Securities.

6.2.2 Terms. The Company shall bear all fees and expenses attendant to registering the Registrable Securities, including the expenses of any legal counsel selected by the Holders to represent them in connection with the sale of the Registrable Securities but the Holders shall pay any and all underwriting commissions related to the Registrable Securities. In the event of such a proposed registration, the Company shall furnish the then Holders of outstanding Registrable Securities with not less than fifteen days written notice prior to the proposed date of filing of such registration statement. Such notice to the Holders shall continue to be given for each applicable registration statement filed (during the period in which the Warrant is exercisable) by the Company until such time as all of the Registrable Securities have been registered and sold. The holders of the Registrable Securities shall exercise the “piggy back” rights provided for herein by giving written notice, within ten (10) days of the receipt of the Company’s notice of its intention to file a registration statement. The Company shall cause any registration statement filed pursuant to the above “piggyback” rights to remain effective for at least nine months from the date that the Holders of the Registrable Securities are first given the opportunity to sell all of such securities.

6.3 Damages. Should the registration or the effectiveness thereof required by Sections 6.1 and 6.2 hereof be delayed by the Company or the Company otherwise fails to comply with such provisions, the Company shall, in addition to any other equitable or other relief available to the Holder(s), be liable for any and all incidental, special and consequential damages sustained by the Holder(s), including, but not limited to, the loss of any profits that might have been received by the holder upon the sale of shares of Warrants, Common Stock or Public Warrants (and shares of Common Stock underlying the Public Warrants) underlying this Warrant.

6.4 General Terms

6.4.1 Indemnification. The Company shall indemnify the Holder(s) of the Registrable Securities to be sold pursuant to any registration statement hereunder and each person, if any, who controls such Holders within the meaning of Section 15 of the Act or Section 20(a) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), against all loss, claim, damage, expense or liability (including all reasonable attorneys’ fees and other expenses reasonably incurred in investigating, preparing or defending against litigation, commenced or threatened, or any claim whatsoever whether arising out of any action between the underwriter and the Company or between the underwriter and any third party or otherwise) to which any of them may become subject under the Act, the Exchange Act or otherwise, arising from such registration statement but only to the same extent and with the same effect as the provisions pursuant to which the Company has agreed to indemnify the underwriters contained in Section 6 of the Underwriting Agreement between the Company, MDB Capital Group LLC and the other underwriters named therein dated the Effective Date. The Holder(s) of the Registrable Securities to be sold pursuant to such registration statement, and their successors and assigns, shall severally, and not jointly, indemnify the Company, its officers and directors and each person, if any, who controls the Company within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act, against all loss, claim, damage, expense or liability (including all reasonable attorneys’ fees and other expenses reasonably incurred in investigating, preparing or defending against any claim whatsoever) to which they may become subject under the Act, the Exchange Act or otherwise, arising from information furnished by or on behalf of such Holders, or their successors or assigns, in writing, for specific inclusion in such registration statement to the same extent and with the same effect as the provisions contained in Section 6 of the Underwriting Agreement pursuant to which the underwriters have agreed to indemnify the Company.

6.4.2 Exercise of Warrant. Nothing contained in this Warrant shall be construed as requiring the Holder(s) to exercise their Warrant or Public Warrants underlying such Warrant prior to or after the initial filing of any registration statement or the effectiveness thereof.

6.4.3 Documents Delivered to Holders. The Company shall furnish MDB Capital Group LLC, as representative of the Holders participating in any of the foregoing offerings, a signed counterpart, addressed to the participating Holders, of (i) an opinion of counsel to the Company, dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, an opinion dated the date of the closing under any underwriting agreement related thereto), and (ii) a “cold comfort” letter dated the effective date of such registration statement (and, if such registration includes an underwritten public offering, a letter dated the date of the closing under the underwriting agreement) signed by the independent public accountants who have issued a report on the Company’s financial statements included in such registration statement, in each case covering substantially the same matters with respect to such registration statement (and the prospectus included therein) and, in the case of such accountants’ letter, with respect to events subsequent to the date of such financial statements, as are customarily covered in opinions of issuer’s counsel and in accountants’ letters delivered to underwriters in underwritten public offerings of securities. The Company shall also deliver promptly to MDB Capital Group LLC, as representative of the Holders participating in the offering, the correspondence and memoranda described below and copies of all correspondence between the Commission and the Company, its counsel or auditors and all memoranda relating to discussions with the Commission or its staff with respect to the registration statement and permit MDB Capital Group LLC, as representative of the Holders, to do such investigation, upon reasonable advance notice, with respect to information contained in or omitted from the registration statement as it deems reasonably necessary to comply with applicable securities laws or rules of FINRA. Such investigation shall include access to books, records and properties and opportunities to discuss the business of the Company with its officers and independent auditors, all to such reasonable extent and at such reasonable times and as often as MDB Capital Group LLC, as representative of the Holders, shall reasonably request. The Company shall not be required to disclose any confidential information or other records to MDB Capital Group LLC, as representative of the Holders, or to any other person, until and unless such persons shall have entered into reasonable confidentiality agreements (in form and substance reasonably satisfactory to the Company), with the Company with respect thereto.

6.4.4 Underwriting Agreement. The Company shall enter into an underwriting agreement with the managing underwriter(s), if any, selected by any Holders whose Registrable Securities are being registered pursuant to this Section 7, which managing underwriter shall be reasonably acceptable to the Company. Such agreement shall be reasonably satisfactory in form and substance to the Company, each Holder and such managing underwriters, and shall contain such representations, warranties and covenants by the Company and such other terms as are customarily contained in agreements of that type used by the managing underwriter. The Holders shall be parties to any underwriting agreement relating to an underwritten sale of their Registrable Securities and may, at their option, require that any or all the representations, warranties and covenants of the Company to or for the benefit of such underwriters shall also be made to and for the benefit of such Holders. Such Holders shall not be required to make any representations or warranties to or agreements with the Company or the underwriters except as they may relate to such Holders and their intended methods of distribution. Such Holders, however, shall agree to such covenants and indemnification and contribution obligations for selling stockholders as are customarily contained in agreements of that type used by the managing underwriter. Further, such Holders shall execute appropriate custody agreements and otherwise cooperate fully in the preparation of the registration statement and other documents relating to any offering in which they include securities pursuant to this Section 7. Each Holder shall also furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of the Registrable Securities.

6.4.5 Rule 144 Sale. Notwithstanding anything contained in this Section 6 to the contrary, the Company shall have no obligation pursuant to Sections 6.1 or 6.2 for the registration of Registrable Securities held by any Holder (i) where such Holder would then be entitled to sell under Rule 144 within any three-month period (or such other period prescribed under Rule 144 as may be provided by amendment thereof) all of the Registrable Securities then held by such Holder, and (ii) where the number of Registrable Securities held by such Holder is within the volume limitations under paragraph (e) of Rule 144 (calculated as if such Holder were an affiliate within the meaning of Rule 144).

6.4.6 Supplemental Prospectus. Each Holder agrees, that upon receipt of any notice from the Company of the happening of any event as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits 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, such Holder will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Holder's receipt of the copies of a supplemental or amended prospectus, and, if so desired by the Company, such Holder shall deliver to the Company (at the expense of the Company) or destroy (and deliver to the Company a certificate of such destruction) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

7. Elimination of Fractional Interest. The Company shall not be required to issue certificates representing fractions of Public Warrants upon the exercise of the Warrants, nor shall it be required to issue script or pay cash in lieu of fractional interests, it being the intent of the parties that all fractional interests may be eliminated by rounding any fraction up to the nearest whole number of Public Warrants or other securities, properties or rights, or in lieu thereof paying cash equal to such fractional interest.

8. Reservation, Validity and Listing. The Company covenants and agrees that during the exercise period, the Company shall at all times reserve and keep available out of its authorized shares of Common Stock, solely for the purpose of issuance upon the exercise of the Public Warrants that are issuable under the Warrants, such number of shares of Common Stock or other securities, properties or rights as shall be issuable upon the exercise of the Public Warrants that are issuable under the Warrants. The Company covenants and agrees that, upon exercise of the Warrants, and payment of the Exercise Price therefor, all Public Warrants and other securities issuable upon such exercise shall be duly authorized, validly issued and not subject to the preemptive rights of any shareholder. As long as the Warrants shall be outstanding, the Company shall use its commercially reasonable efforts to cause all Public Warrants issuable upon the exercise of the Warrants to be listed and quoted (subject to official notice of issuance) on all securities exchanges and systems on which the Public Warrants are then listed and/or quoted, including Nasdaq.

9. Notices to Holders. Nothing contained in this Agreement shall be construed as conferring upon the Holders the right to vote or to consent or to receive notice as a shareholder in respect of any meetings of shareholders for the election of directors or any other matter, or as having any rights whatsoever as a shareholder of the Company. If, however, at any time prior to the expiration of the Warrants and their exercise, any of the following events shall occur:

(a) the Company shall take a record of the holders of its shares of Common Stock for the purpose of entitling them to receive a dividend or distribution payable otherwise than in cash, or a cash dividend or distribution payable otherwise than out of current or retained earnings, as indicated by the accounting treatment of such dividend or distribution on the books of the Company; or

(b) the Company shall offer to all the holders of its Common Stock any additional shares of capital stock of the Company or securities convertible into or exchangeable for shares of capital stock of the Company, or any option, right or warrant to subscribe therefor; or

(c) a dissolution, liquidation or winding up of the Company (other than in connection with a consolidation or merger) or a sale of all or substantially all of its property, assets and business as an entirety shall be proposed;

then, in any one or more of said events, the Company shall give to the extent practicable written notice of such event at least 15 days prior to the date fixed as a record date of the date of closing the transfer books for the determination of the shareholders entitled to such dividend, distribution, convertible or exchangeable securities or subscription rights, or entitled to vote on such proposed dissolution, liquidation, winding up or sale. Such notices shall specify such record date or the date of closing the transfer books, as the case may be.

10. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by (i) facsimile; or (ii) delivered personally or by overnight courier or mailed by registered or certified mail, return receipt requested:

(a) If to the registered Holder, to the address of such Holder as shown on the books of the Company.

With a copy to:

Andrew D. Hudders, Esq.
Golenbock Eiseman Assor Bell & Peskoe LLP
437 Madison Avenue
New York, New York 10022
Fax: (212) 754-0330

- (b) If to the Company, to the address set forth below or to such other address as the Company may designate by notice to the Holders.

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

With a copy to:

Vinson & Elkins, LLP
1001 Fannin, Suite 2300
Houston, Texas 77002
Tel: (713) 758-3487
Fax: (713) 615-5487
Attention: Michael C. Blaney

11. Entire Agreement; Modification. This Agreement (and the Underwriting Agreement to the extent applicable) contains the entire understanding between the parties hereto with respect to the subject matter hereof, and the terms and provisions of this Agreement may only be modified, waived or amended in writing. Any modification, waiver or amendment executed by the Company and a majority of Holders shall be binding on all Holders. Notice of any modification, waiver or amendment shall be promptly provided to any Holder not consenting to such modification, waiver or amendment.

12. Successors. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of the Company, the Holders and their respective successors and assigns hereunder.

13. Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without regard to the conflicts of laws principles thereof. The parties hereto hereby irrevocably agree that any suit or proceeding arising directly and/or indirectly pursuant to or under this Agreement, shall be brought solely in a federal or state court located in the City, County and State of New York. By its execution hereof, the parties hereby covenant and irrevocably submit to the in personam jurisdiction of the federal and state courts located in the City, County and State of New York and agree that any process in any such action may be served upon any of them personally, or by certified mail or registered mail upon them or their agent, return receipt requested, with the same full force and effect as if personally served upon them in New York City. The parties hereto waive any claim that any such jurisdiction is not a convenient forum for any such suit or proceeding and any defense or lack of in personam jurisdiction with respect thereto. In the event of any such action or proceeding, the party prevailing therein shall be entitled to payment from the other party hereto of its reasonable counsel fees and disbursements in an amount judicially determined.

14. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement.

15. Captions. The caption headings of the sections of this Agreement are for convenience of reference only and are not intended, nor should they be construed as, a part of this Agreement and shall be given no substantive effect.

16. Benefits of This Agreement. Nothing in this Agreement shall be construed to give to any person or corporation other than the Company and any registered Holder(s) of the Warrant Certificates any legal or equitable right, remedy or claim under this Agreement; and this Agreement shall be for the sole and exclusive benefit of the Company and any Holder(s) of the Warrant Certificates.

17. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS HEREOF , the parties hereto have caused this Agreement to be duly executed, as of the day and year first above written.

OPEXA THERAPEUTICS, INC.

By:

David B. McWilliams
Chief Executive Officer

HOLDER

By:

Title

EXHIBIT A
FORM OF SUBSCRIPTION (CASH EXERCISE)
(To be signed only upon exercise of Warrants)

TO: Opexa Therapeutics, Inc.
2635 North Crescent Ridge Drive
The Woodlands, Texas 77381

The undersigned holder of Warrant Certificate Number _____ (the "Warrant Certificate"), representing the right to acquire _____ Public Warrants (as defined in the Warrant Agreement referred to in the Warrant Certificate) of Opexa Therapeutics, Inc. (the "Company"), which Warrant Certificate is being delivered herewith, hereby irrevocably elects to purchase _____ Public Warrants, and herewith makes payment of \$_____ therefor, all in accordance with the Warrant Certificate and the Warrant Agreement referred to in the Warrant Certificate. Certificates for the Public Warrants shall be issued in the name of _____ and delivered to the following address:

By: _____
Name: _____
Social Security Number or Tax Identification Number: _____
Date: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Address

Social Security Number or
Tax Identification Number

EXHIBIT B
FORM OF SUBSCRIPTION (CASHLESS EXERCISE)

TO: Opexa Therapeutics, Inc.
2635 North Crescent Ridge Drive
The Woodlands, Texas 77381

The undersigned holder of Warrant Certificate Number _____ (the "Warrant Certificate"), representing the right to acquire _____ Public Warrants (as defined in the Warrant Agreement referred to in the Warrant Certificate) of Opexa Therapeutics, Inc. (the "Company"), which Warrant Certificate is being delivered herewith, hereby irrevocably elects to exercise (on a cashless exercise basis in accordance with the formula set forth in Section 2.3 of the Warrant Agreement referred to in the Warrant Certificate) the Warrant Certificate with respect to _____ Public Warrants, all in accordance with the Warrant Certificate and the Warrant Agreement referred to in the Warrant Certificate. Certificates for the Public Warrants shall be issued in the name of _____ and delivered to the following address:

By: _____
Name: _____
Social Security Number or Tax Identification
Number: _____
Date: _____

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Address

Social Security Number or
Tax Identification Number

FORM OF ASSIGNMENT

(To be exercised by the registered holder if such Holder desires to transfer the Warrant Certificate)

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto:

Print Name of Transferee

Address

City State Zip Code

this Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Warrant Certificate on the books of the within-named Company, with full power of substitution.

Dated: _____

Signature:

(Signature must conform in all respects to name of Holder as specified on the face of the Warrant Certificate)

Social Security Number or Other Identifying Number of Assignee



OPEXA THERAPEUTICS

Company Contact:

Opexa Therapeutics, Inc.

Lynne Hohlfeld

(281) 719-3421

(lhohlfeld@opexatherapeutics.com)**OPEXA THERAPEUTICS ANNOUNCES THE PRICING OF PUBLIC OFFERING OF SHARES OF COMMON STOCK AND SERIES E WARRANTS**

THE WOODLANDS, Texas (February 13, 2008) – Opexa Therapeutics, Inc. (NASDAQ: OPXA) today announced that it has priced a public offering of 3,500,000 shares of common stock at a price to the public of \$2.00 per share and 3,500,000 Series E warrants to purchase shares of common stock exercisable at \$2.00 per share at a price of \$0.15 per warrant. The Company has granted a 30-day option to the underwriters to purchase up to an additional 15% of the offering to cover over-allotments. The Company expects to receive approximately \$7.5 million (approximately \$8.7 million if the underwriter's over-allotment option is exercised in full) in gross proceeds from the offering, which is subject to closing conditions.

MDB Capital Group LLC acted as sole managing underwriter for this offering. GunnAllen Financial, Inc. was a co-underwriter in the offering.

These shares were issued pursuant to an effective registration statement. This press release shall not constitute an offer to sell or a solicitation of an offer to buy nor will there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction. The offering of common stock was made only by means of a prospectus, including a prospectus supplement, forming a part of the effective registration statement. Copies of the final prospectus may be obtained from: MDB Capital Group LLC, Attn: Prospectus Delivery Department, 401 Wilshire Boulevard, Suite 1020, Santa Monica, CA 90401 Telephone: (310) 526-5000. A prospectus supplement relating to the offering has been filed with the SEC, and is available along with the base prospectus filed with the SEC in connection with the registration, on the SEC's website at <http://www.sec.gov/>.

About Opexa Therapeutics

Opexa Therapeutics develops and commercializes cell therapies to treat autoimmune diseases such as multiple sclerosis (MS), rheumatoid arthritis, 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, Tovaxin®, a T-cell therapy for MS is in 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.

Safe Harbor Statement

This press release contains "forward-looking statements," including statements about Opexa Therapeutics' growth and future operating results, discovery and development of products, strategic alliances and intellectual property, as well as other matters that are not historical facts or information. These forward-looking statements are based on management's current assumptions and expectations and involve risks, uncertainties and other important factors, specifically including those relating to Opexa Therapeutics' ability to obtain additional funding, develop its stem cell technologies, achieve its operational objectives, and obtain patent protection for its discoveries, that may cause Opexa Therapeutics' actual results to be materially different from any future results expressed or implied by such forward-looking statements. Opexa Therapeutics undertakes no obligation to update or revise any such forward-looking statements, whether as a result of new information, future events or otherwise.

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