

OPEXA THERAPEUTICS, INC.

FORM 8-K (Current report filing)

Filed 07/26/12 for the Period Ending 07/25/12

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

**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): July 25, 2012

OPEXA THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Texas
(State or other jurisdiction of
incorporation)

001-33004
(Commission File Number)

76-0333165
(IRS Employer Identification
No.)

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

77381
(Zip Code)

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

(Former name or former address, if changed since last report)

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

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

On July 25, 2012, Opexa Therapeutics, Inc. (the “**Company**”) closed a private offering (the “**Note Offering**”) of convertible secured promissory notes (the “**Notes**”) and warrants to purchase shares of common stock (the “**Warrants**”) pursuant to a Note Purchase Agreement (the “**Purchase Agreement**”) dated July 25, 2012 entered into by and among the Company and the investors signatory thereto. The form of Purchase Agreement is attached hereto as Exhibit 10.1 and incorporated herein. The Company raised initial gross proceeds of \$4,085,000 in principal amount from the Note Offering. The form of Note issued to the investors is attached hereto as Exhibit 10.2 and the form of Warrant issued to the investors is attached hereto as Exhibit 4.1, each of which is incorporated herein by reference.

The Notes mature on July 25, 2014 and accrue interest at the rate of 12% per annum, compounded annually. Interest is payable semi-annually on June 30 and December 31 in either cash or registered shares of common stock, at the Company’s election. The Notes are secured by substantially all of the Company’s tangible and intangible assets and are convertible into a new class of non-voting Series A Convertible Preferred Stock. The Notes can be converted into Series A Convertible Preferred Stock at the option of the investors at a price of \$100.00 per share, subject to certain limitations and adjustments. Additionally, the Company can elect to convert the Notes into Series A Convertible Preferred Stock if (i) the Company’s common stock closes at or above \$2.50 per share for 20 consecutive trading days or (ii) the Company achieves certain additional funding milestones to allow it to continue its clinical trial program. These milestones include (x) executing a strategic agreement with a partner or potential partner by which the Company will receive a minimum of \$5,000,000 to partially fund, or an option to partner with the Company for, its Phase II clinical trial for Tcelna in patients with secondary progressive multiple sclerosis and (y) receiving a minimum of \$25,000,000 in additional capital (including the Note Offering proceeds) from any partner, potential partner or any other source.

The powers, preferences, rights, qualifications, limitations and restrictions of the Series A Preferred Stock are set forth in the Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock (the “**Certificate of Designation**”), a copy of which is attached hereto as Exhibit 4.2 and incorporated herein by reference. The Series A Convertible Preferred Stock accrues dividends at the rate of 8% per annum, which are cumulative and payable semi-annually in either cash or registered shares of the common stock, at the Company’s election. The Series A Convertible Preferred Stock is convertible to shares of the Company’s common stock at the option of the investors at a price of \$0.80 per share, for a maximum issuance of 5,106,250 shares of common stock, subject to certain limitations and adjustments. Additionally, the Company can elect to convert the Series A Convertible Preferred Stock into common stock if the Company’s common stock closes at or above \$4.00 per share for 20 consecutive trading days.

The warrants have an exercise price of \$1.25 per share, a five-year term and are exercisable for 75% of the number of shares into which the notes are ultimately convertible, for a maximum issuance of 3,829,688 shares of common stock, subject to certain limitations and adjustments. The Company can redeem the warrants at \$0.01 per share if the Company’s common stock closes at or above \$2.50 per share for 20 consecutive trading days.

Pursuant to Nasdaq Stock Market rules, the Notes, the shares of Series A Preferred Stock and the Warrants contain a limitation on conversion or exercise, as applicable, such that the securities are not convertible or exercisable to the extent an investor would beneficially own in excess of 19.9% of the Company's common stock outstanding or control in excess of 19.9% of the total voting power of the outstanding securities, unless and until the Company obtains shareholder approval permitting such issuance of shares. Similarly, the Notes, the shares of Series A Preferred Stock and the Warrants have a conversion price floor and an exercise price floor, as applicable, preventing any adjustment to cause the conversion prices or exercise price to be less than the market price at issuance (plus, in the instance of conversion prices, a premium as specified by Nasdaq Stock Market rules) unless and until the Company obtains shareholder approval permitting such reduction. The number of underlying warrants shares may be adjusted in certain circumstances, subject to a cap of no more than 50% of the shares for which the warrant was initially exercisable.

The investors were granted a security interest in all assets of the Company, pursuant to a Security Agreement entered into between the Company and the investors signatory thereto, the form of which is attached hereto as Exhibit 10.3. In addition, \$1,000,000 of the proceeds from the Note Offering is being held in a controlled account as part of the security interest granted by the Company to the investors, pursuant to the terms of a Deposit Account Control Agreement, a copy of which is attached hereto as Exhibit 10.4. The investors were granted certain registration rights for the shares of common stock underlying the Series A Preferred Stock and the Warrants, pursuant to a Registration Rights Agreement entered into between the Company and the investors signatory thereto, the form of which is attached hereto as Exhibit 10.5.

The Purchase Agreement contains an expansion option whereby the Company may request, upon certain conditions, that the investors purchase additional Notes and Warrants to bring the total offering to an aggregate of \$8.0 million in principal amount. However, any exercise of this expansion option will require the consent of holders of at least 75% of the issued Notes, among other conditions.

Investors in the Note Offering included several existing large shareholders of the Company as well as three members of the Company's Board of Directors. Entities affiliated with director Scott B. Seaman invested an aggregate of \$1.3 million in the Note Offering, director David E. Jorden invested \$115,000 in the Note Offering, and director and President & Chief Executive Officer Neil K. Warma invested \$15,000 in the Note Offering. An independent special committee of the Company's Board of Directors reviewed and negotiated the terms of the Note Offering and recommended that the Note Offering be approved on behalf of the Company and its Board of Directors.

The Purchase Agreement is attached hereto as an exhibit to provide security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Purchase Agreement.

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

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

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

Item 3.02 Unregistered Sales of Equity Securities

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

Item 3.03 Material Modification to Rights of Security Holders

The disclosure in Item 1.01 above is incorporated herein by reference. On July 25, 2012, the Company filed the Certificate of Designation with the Secretary of State of the State of Texas setting forth the powers, preferences, rights, qualifications, limitations and restrictions of the Series A Preferred Stock. An aggregate of 80,000 shares of the Company’s blank check preferred stock have been designated as Series A Preferred Stock. A copy of the Certificate of Designation is attached hereto as Exhibit 4.2 and incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year

On July 20, 2012, the Company filed a Restated Certificate of Formation with the Secretary of State of the State of Texas to restate its charter, as previously amended, restated and corrected to date and currently in effect prior to the filing. A copy of the Restated Certificate of Formation is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 8.01 Other Events.

On July 26, 2012, the Company issued a press release announcing the closing of the Note Offering described above in Item 1.01. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Restated Certificate of Formation of Opexa Therapeutics, Inc.
4.1	Form of Series I Warrant issued to investors.
4.2	Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock of Opexa Therapeutics, Inc.
10.1	Form of Note Purchase Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc. and the investors signatory thereto.
10.2	Form of 12% Convertible Secured Promissory Note issued to investors.
10.3	Form of Security Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc., the investors signatory thereto, and Alkek & Williams Ventures, Ltd. as collateral agent for the investors.
10.4	Deposit Account Control Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc., Alkek & Williams Ventures, Ltd. as collateral agent for the investors, and Wells Fargo Bank, National Association.
10.5	Form of Registration Rights Agreement, dated July 25, 2012, by and among Opexa Therapeutics, Inc. and the investors signatory thereto.
99.1	Press Release issued by Opexa Therapeutics, Inc. on July 26, 2012.

SIGNATURES

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

Dated: July 26, 2012

OPEXA THERAPEUTICS, INC.

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

EXHIBIT INDEX

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**Form 415
(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709

Filing Fee: See instructions



**Restated Certificate of Formation
Without Further Amendments**

This space reserved for
office use.

FILED
In the Office of the
Secretary of State of Texas

JUL 20 2012

Corporations Section

Entity Information

The name of the filing entity is:

Opexa Therapeutics, Inc.

State the name of the entity as currently shown in the records of the secretary of state.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|--|---|
| ☒ For-profit Corporation | ☐ Professional Corporation |
| ☐ Nonprofit Corporation | ☐ Professional Limited Liability Company |
| ☐ Cooperative Association | ☐ Professional Association |
| ☐ Limited Liability Company | ☐ Limited Partnership |

The file number issued to the filing entity by the secretary of state is: 118585600

The date of formation of the filing entity is: March 15, 1991

Required Statements

This restated certificate of formation does not make any new amendments to the certificate of formation being restated. The restated certificate of formation, which is attached to this form, accurately states the text of the certificate of formation being restated, as amended, restated, and corrected, except for the information permitted to be omitted by the provisions of the Texas Business Organizations Code applicable to the filing entity. The restated certificate of formation has been approved in the manner required by the Code and by the governing documents of the entity

Effectiveness of Filing (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent in the restated certificate of formation has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: July 20, 2012

By: OPEXA THERAPEUTICS, INC.

Signature of authorized person

Neil K. Warma, President & Chief Executive Officer
Printed or typed name of authorized person (see instructions)

Attach the text of the restated certificate of formation to the completed statement form. Identify the attachment as "Restated Certificate of Formation of [Name of Entity]."

**RESTATED CERTIFICATE OF FORMATION
OF
OPEXA THERAPEUTICS, INC.
a Texas corporation**

ARTICLE I.

The name of the Corporation is Opexa Therapeutics, Inc.

ARTICLE II.

The period of duration of the Corporation is perpetual.

ARTICLE III.

The purpose or purposes for which the Corporation is organized is the transaction of any and all lawful business for which corporations may be incorporated under the Texas Business Corporation act.

ARTICLE IV.

The aggregate number of shares which the corporation shall have authority to issue is one hundred ten million (110,000,000), consisting of one hundred million (100,000,000) shares of common stock having \$0.01 par value "Common Stock", and ten million (10,000,000) shares of preferred stock having no par value ("Preferred Stock").

Shares of Preferred Stock of the Corporation may be issued from time to time in one or more classes or series, each of which class or series shall have such distinctive designation or title as shall be determined by the Board of Directors of the Corporation ("Board of Directors") prior to the issuance of any shares thereof. Each such class or series of Preferred Stock shall have such voting powers, full or limited, or no voting powers, and such preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, shall be stated in such resolution or resolutions providing for the issue of such class or series of Preferred Stock as may be adopted from time to time by the Board of Directors prior to the issuance of any shares thereof pursuant to the authority hereby expressly vested in it, all in accordance with the laws of the State of Texas.

ARTICLE V.

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of at least of one thousand dollars (\$1,000), consisting of money, labor done or property actually received.

ARTICLE VI.

The street address of the registered office is 2635 Technology Forest Blvd., The Woodlands, Texas 77381, and the name of the registered agent is Neil K. Warma.

ARTICLE VII.

The number of directors who shall constitute the Board shall equal not less than two nor more than 10, as the Board may determine by resolution from time to time. The current Board of Directors, and the names and addresses of each, are as follows:

<u>Name</u>	<u>Address</u>
David E. Jorden	2635 Technology Forest Blvd. The Woodlands, Texas 77381
Gail J. Maderis	2635 Technology Forest Blvd. The Woodlands, Texas 77381
Michael S. Richman	2635 Technology Forest Blvd. The Woodlands, Texas 77381
Scott B. Seaman	2635 Technology Forest Blvd. The Woodlands, Texas 77381
Neil K. Warma	2635 Technology Forest Blvd. The Woodlands, Texas 77381

ARTICLE VIII.

No director of the Corporation shall be liable to the Corporation or its shareholders or members for monetary damages for any act or omission in such director's capacity as a director, except for (i) a breach of such director's duty of loyalty to the Corporation or its shareholders or to the Corporation, (ii) an act or omission not in good faith that constitutes a breach of duty of the director to the Corporation, or an act or omission that involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or (iv) an act or omission for which the liability of a director is expressly provided by an applicable statute.

ARTICLE IX.

The Corporation shall indemnify all current and former directors and officers of the Corporation to the fullest extent of the applicable law, including, without limitation, Article 2.02-1 of the Texas Business Corporation Act.

ARTICLE X.

Shareholders of the Corporation shall not have cumulative voting rights nor preemptive rights.

ARTICLE XI.

If the Texas Business Corporation Act ("TBCA") requires that the shareholders vote for any of the following actions: (a) the approval of any amendment of the articles of incorporation pursuant to Article 4 of the TBCA (or any successor statute), (b) the approval of a plan of merger or exchange pursuant to Section 5.03 of the TBCA (or any successor statute thereto), (c) the approval of a sale, lease, exchange or other disposition of assets pursuant to Section 5.10 of the TBCA (or any successor statute thereto), or (d) the approval of a voluntary dissolution of the Company under Section 6.03 or the revocation of such voluntary dissolution pursuant to Section 6.05(A) of the TBCA (or any successor statutes), then the vote of shareholders required for such actions shall be (in lieu of any greater vote required by the TBCA) the affirmative vote of the holders of a majority of the outstanding shares entitled to vote thereon, unless any class or series of shares is entitled to vote as a class thereon, in which event the vote outstanding shares within each class or series of shares entitled to vote thereon as a class and at least a majority of the outstanding shares otherwise entitled to vote thereon.

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

SUBJECT TO THE PROVISIONS OF SECTION 11 HEREOF, THIS WARRANT SHALL BE VOID AFTER 5:00 P.M. CENTRAL TIME ON JULY 25, 2017, (THE "EXPIRATION DATE").

No. I-_____

July 25, 2012

OPEXA THERAPEUTICS, INC.

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

For VALUE RECEIVED, _____ (" **Warrantholder** "), is entitled to purchase, subject to the provisions of this Series I Warrant (the " **Warrant** "), from Opexa Therapeutics, Inc., a Texas corporation (" **Company** "), at any time from and after the date six months after the date hereof (the " **Initial Exercise Date** ") and not later than 5:00 P.M., Central time, on the Expiration Date (as defined above), at an exercise price per share equal to One Dollar and 25/100 (\$ 1.25) (the exercise price in effect being herein called the " **Warrant Price** "), _____ shares (" **Warrant Shares** ") of the Company's Common Stock, par value \$0.01 per share (" **Common Stock** "). The number of Warrant Shares purchasable upon exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time as described herein. This Warrant is one of a series of Series I Warrants of like tenor issued by the Company pursuant to that certain Note Purchase Agreement entered into contemporaneously herewith among the Company and the Investors named therein (the " **Purchase Agreement** "). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

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

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

3. Exercise of Warrant.

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

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

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

where:

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

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

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

B = the Exercise Price.

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

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

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

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

4. Company Call Right; Redemption. Notwithstanding any other provision contained in this Warrant to the contrary, if the shares of Common Stock trade on the Nasdaq Capital Market, or any other trading market on which the shares of Common Stock are then traded, with a per share closing price on the trading day of at least \$2.50 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock) for at least twenty (20) consecutive trading days, then the Company, upon thirty (30) days prior written notice (the “**Notice Period**”) given to the Warrantholders within thirty (30) days of the occurrence of the triggering event, may call the Warrants, in whole or in part, at a redemption price equal to \$0.01 per share of Common Stock then purchasable pursuant to the Warrants called for redemption. The Warrantholder shall have the right to exercise the Warrants prior to the end of the Notice Period. As of the last day of the Notice Period, any Warrants timely and validly called for redemption by the Company shall terminate and permanently cease to be exercisable and the Warrantholders shall then be entitled only to receive the redemption price.

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

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

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

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

9. Adjustments.

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

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

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

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

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

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

(g) If the Company at any time this Warrant is outstanding shall issue shares of Common Stock or “ **Common Stock Equivalents**, ” as defined below, entitling any person to acquire shares of Common Stock at a price per share (determined in accordance with this Section 9(g) below) less than the then current Warrant Price in an instance which is not otherwise addressed by the provisions of this Section 9, then the Warrant Price shall be reduced to the price at which the Company issued such shares of Common Stock or Common Stock Equivalents, but no lower than the Warrant Price Floor, as defined below.

“ **Common Stock Equivalents** ” means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

The Company shall notify the Holder in writing, no later than three (3) business days following the issuance of any Common Stock or Common Stock Equivalent subject to this Section 9(g), indicating therein the applicable issuance price, or of the applicable reset price, exchange price, conversion price and other pricing terms.

If any shares of Common Stock or any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called “ **Options** ” and such convertible or exchangeable stock or securities being called “ **Convertible Securities** ”) shall be issued or issuable for cash, the consideration received therefor shall be deemed to be the gross proceeds therefor. If any shares of Common Stock, Options or Convertible Securities shall be issued or issuable for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair market value of such consideration as determined in good faith by the Board of Directors. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors. If Common Stock, Options or Convertible Securities shall be issued or sold by the Company and, in connection therewith, other Options or Convertible Securities (the “ **Additional Rights** ”) are issued, then the consideration received or deemed to be received by the Company shall be reduced by the fair market value of the Additional Rights (as determined in good faith by the Board of Directors).

Notwithstanding the foregoing, no adjustment will be made under this Section 9(g) in respect of: (i) the issuance of securities upon the exercise or conversion of any Common Stock Equivalents issued by the Company prior to the date of the Purchase Agreement; (ii) securities issued with approval of a majority of the members of the Board of Directors or a majority of the members of a committee of directors established for such purpose, pursuant to options, stock or similar awards to employees, directors, and consultants; (iii) securities issued to any bank or equipment lessor in connection with a financing or equipment lease; or (iv) securities issued pursuant to a “ **Strategic Transaction** ” approved by a majority of the Board of Directors. A “ **Strategic Transaction** ” shall mean any transaction with an acquiror, acquisition target company or merger partner, or a joint venture, corporate alliance, research agreement or licensing transaction, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital.

(h) In any instance where the provisions of Section 9(g) would apply (disregarding, for this purpose, the existence of the Warrant Price Floor and the provisions of Section 9(i)) and the sale of shares of Common Stock or Common Stock Equivalents at issue occurs at a price per share, as determined in accordance with Section 9(g) (the “ **Actual Price** ”), which is less than the Warrant Price Floor (as defined below), then the number of Warrant Shares for which this Warrant is exercisable shall be increased to equal the product of the then effective number of Warrant Shares for which this Warrant is exercisable times a fraction determined as follows:

- (i) the numerator of which shall be the Warrant Price Floor, and
- (ii) the denominator of which shall be the Actual Price;

provided, however, that the cumulative effect of this Section 9(h) shall be capped at an increase in the number of Warrants Shares for which this Warrant is exercisable of no more than 50% (as compared with the number of Warrant Shares for which this Warrant is initially exercisable).

(i) Warrant Price Floor . Notwithstanding anything herein to the contrary, unless and until the Company obtains shareholder approval in accordance with applicable rules of the NASDAQ Stock Market in order to allow the Warrant Price to be less than the Warrant Price Floor (as defined below), no adjustment pursuant to this Section 9 shall cause the Warrant Price to be less than the most recent consolidated closing bid price of the Company’s Common Stock on the NASDAQ Stock Market of \$0.64, as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction (the “ **Warrant Price Floor** ”).

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

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

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

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

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

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

15. Registration Rights. The Warrantholder is entitled to the benefit of certain registration rights with respect to the shares of Common Stock issuable upon the exercise of this Warrant as provided in the Registration Rights Agreement (as defined in the Purchase Agreement).

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

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

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

19. Amendment; Waiver. Any term or provision of this Warrant may be amended or waived upon the written consent of the Company and the holders of Series I Warrants representing at least two thirds (66-2/3%) of the number of shares of Common Stock then subject to all outstanding Series I Warrants; provided, that any such amendment or waiver must apply to all such Series I Warrants, and further provided, that terms and provisions regarding the number of Warrant Shares subject to this Warrant, the Warrant Price and the Expiration Date require the written consent of holders of Series I Warrants representing at least three-quarters (75%) of the number of shares of Common Stock then subject to all outstanding Series I Warrants.

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

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

[signature page follows]

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

OPEXA THERAPEUTICS, INC.

By: _____

Name: Neil K. Warma

Title: President and Chief Executive Officer

[signature Page to Series I Warrant]

APPENDIX A

**EXERCISE NOTICE
OPEXA THERAPEUTICS, INC.**

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

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

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

_____ a “ Cashless Exercise ” with respect to _____ Warrant Shares.

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

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

Date: _____, 20____

Name of Registered Holder

By: _____
Printed
Name: _____
Title (if applicable): _____
Entity Name (if applicable): _____

**CERTIFICATE OF DESIGNATION OF PREFERENCES, RIGHTS
AND LIMITATIONS OF
SERIES A CONVERTIBLE PREFERRED STOCK OF
OPEXA THERAPEUTICS, INC.**

Pursuant to Sections 21.155 and 21.156 of the
Texas Business Organizations Code

Opexa Therapeutics, Inc. (the “ **Company** ”), a corporation organized and existing under the Texas Business Organizations Code (the “ **Code** ”),

HEREBY CERTIFIES:

A. That, pursuant to the authority expressly vested in the Board of Directors of the Company (the “ **Board of Directors** ”) by Article IV of the Certificate of Formation of the Company, as amended (the “ **Certificate of Formation** ”), the Board of Directors duly adopted by all necessary action by written consent dated as of July 24, 2012, a resolution providing for the creation of a series of preferred stock, having no par value, consisting of 80,000 shares, which resolution is as follows:

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors of the Company by the provisions of Article IV of the Company’s Certificate of Formation, as amended (the “ **Charter** ”), the Board of Directors hereby creates a series of preferred stock, having no par value, of the Company, and hereby fixes the designation, powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions thereon, of the shares of such series, in addition to those set forth in the Charter, as set forth in the Certificate of Designation of Preferences, Rights and Limitations attached hereto (the “ **Series A Certificate** ”) designating 80,000 shares of the Company’s preferred stock as Series A Convertible Preferred Stock (the “ **Series A Preferred Stock** ”) and setting forth the powers, preferences, rights, qualifications, limitations and restrictions of the Series A Preferred Stock, including provisions for the conversion of shares of Series A Preferred Stock into shares of the Company’s common stock, par value \$0.01 per share.

B. That the designation, powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations or restrictions thereon, of the shares of such series of preferred stock are as follows:

1) Designation, Amount and Rank.

- a) *Series A Preferred Stock* . The shares of the series of preferred stock shall be designated as “Series A Convertible Preferred Stock” (the “ **Series A Preferred Stock** ”) and the number of shares constituting the Series A Preferred Stock shall be 80,000. Such number of shares may be increased or decreased by resolution of the Board of Directors of the Company (the “ **Board of Directors** ”); provided, however, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Company convertible into Series A Preferred Stock.
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- b) *Rank* . Notwithstanding any provision herein to the contrary: (i) the rights of the shares of the Company's common stock, par value \$0.01 per share (the “ **Common Stock** ”), and any other equity securities of the Company designated as ranking junior to the Series A Preferred Stock shall be subject to the preferences and relative rights of the Series A Preferred Stock; and (ii) without limiting the provisions of Section 4(b), the rights of the Series A Preferred Stock shall be subject to the preferences and relative rights of any other equity securities of the Company designated by the Company as ranking senior to or pari passu with the Series A Preferred Stock.

2) Dividends; Share Repurchases .

- a) *Accruing Dividends* . From and after the date of the issuance of any shares of Series A Preferred Stock, but terminating as of the Dividend Termination (as defined below), a dividend at the rate per annum of eight percent (8%) of the Series A Original Issue Price (as defined below) for each share of Series A Preferred Stock shall accrue on such outstanding shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) (the “ **Accruing Dividends** ”). The “ **Dividend Termination** ” is the earlier of (i) the Automatic Conversion (as defined below), regardless of whether all shares of Series A Preferred Stock are converted (*i.e.*, due to Section 5(b)), (ii) any Liquidation (as defined below) or (iii) any Deemed Liquidation Event (as defined below). Accruing Dividends shall be cumulative and shall accrue from day to day whether or not earned or declared, and whether or not there are profits, surplus or other funds legally available for the payment of dividends, and shall be paid semi-annually on the 30th day of June and the 31st day of December of each year (with the first payment of Accruing Dividends on a semi-annual payment date to be prorated based on the number of days occurring between the date on which each share of Series A Preferred Stock was issued and such semi-annual payment date), although if any such payment date is not a Trading Day (as defined below), then the actual payment date shall be the next Trading Day. The Accruing Dividends may be paid either in cash or in shares of Common Stock, as determined in the sole discretion of the Board of Directors, provided that, if paid in Common Stock, (a) there is an effective registration statement under the Securities Act of 1933 for the resale of such shares and (b) the shares of Common Stock are then traded upon the NASDAQ Capital Market. For purposes of the payment of the Accruing Dividends in shares of Common Stock, each share of Common Stock shall be deemed to have a value equal to the volume weighted average price for the Common Stock on the Trading Market for the five (5) Trading Days ending three (3) Trading Days prior to any payment date at issue, where “ **Trading Day** ” means a day on which the Common Stock is traded on the Trading Market, and “ **Trading Market** ” means the NASDAQ Capital Market (or, if the NASDAQ Capital Market is not the primary market on which the Common Stock is then traded, such other market or exchange on which the Common Stock is then primarily listed or quoted or quoted for trading).

- b) *Other Dividends* . The Company shall not declare, pay or set aside any dividends or other distributions on shares of Common Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (i) all Accruing Dividends have been fully paid to date (*i.e.* , through the most recent payment date pursuant to Section 2(a)) and (ii) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend or distribution on each outstanding share of Series A Preferred Stock in an amount equal to the product of (A) the dividend or distribution payable on each share of Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or distribution.
- c) *Share Repurchases* . The Company may not purchase any shares of Common Stock or any other equity securities of the Company designated as ranking junior to the Series A Preferred Stock unless the holders of at least two thirds (66-2/3%) of the outstanding shares of Series A Preferred Stock approve otherwise (by written consent or affirmative vote), other than repurchases of stock from former employees, officers, directors or consultants who performed services for the Company pursuant to any agreement under which the Company has the option or right to repurchase such shares in connection with the cessation of such employment or service.

3) **Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales** .

- a) *Liquidation* . In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (a “ **Liquidation** ”), the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its shareholders, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) \$100.00, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock (the “ **Series A Original Issue Price** ”), plus any Accruing Dividends accrued but unpaid thereon together with any other dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 5 immediately prior to such Liquidation (the amount payable pursuant to this sentence is hereinafter referred to as the “ **Series A Liquidation Amount** ”); provided, however, that following the Automatic Conversion, the Series A Liquidation Amount shall be solely as provided in the foregoing clause (ii). Following payment to the holders of Series A Preferred Stock of the Series A Liquidation Amount, such holders shall not be entitled to any further payment. If upon any Liquidation the assets of the Company available for distribution to the holders of Series A Preferred Stock shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Section 3(a) , the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution to the holders of Series A Preferred Stock in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

- b) *Deemed Liquidation Event* . Each of the following events shall be considered a “ **Deemed Liquidation Event** ” unless the holders of at least two thirds (66-2/3%) of the outstanding shares of Series A Preferred Stock approve otherwise (by written consent or affirmative vote):
- i) a merger or consolidation in which the Company or a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation, except that any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (A) the surviving or resulting corporation or (B) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation (provided that, for the purpose of this Section 3(b)(i), all shares of Common Stock issuable upon (x) exercise of rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities (as defined below) (“ **Options** ”) outstanding immediately prior to such merger or consolidation, or (y) conversion of any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options (“ **Convertible Securities** ”) outstanding immediately prior to such merger or consolidation, shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of Common Stock are converted or exchanged); or
 - ii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Company shall not have the power to effect a Deemed Liquidation Event in which the holders of Common Stock will receive any assets in respect of such shares, or to distribute to the holders of Common Stock in respect of such shares any assets resulting from a Deemed Liquidation Event, unless the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, the Series A Liquidation Amount.

- c) *Amount Deemed Paid* . The amount deemed paid or distributed to the holders of capital stock of the Company upon any Liquidation or Deemed Liquidation Event shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Company or the acquiring person, firm or other entity. If the amount deemed paid or distributed under this Section 3(c) is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:
- i) For securities not subject to investment letters or other similar restrictions on free marketability: (A) if traded on the NASDAQ Capital Market or other securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the thirty (30) day period ending three (3) days prior to the closing of such transaction; (B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing of such transaction; or (C) if there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors.
 - ii) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors) from the market value as determined pursuant to clause (i) above so as to reflect the approximate fair market value thereof. The value of such property, rights or securities shall be determined in good faith by the Board of Directors.
- d) *Allocation of Escrow* . In the event of a Deemed Liquidation Event, if any portion of the consideration payable to the shareholders of the Company is placed into escrow and/or is payable to the shareholders of the Company subject to contingencies, the relevant agreement shall provide that (i) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “ **Initial Consideration** ”) shall be allocated among the shareholders of the Company in accordance with this Section 3) as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event and (ii) any additional consideration which becomes payable to the shareholders of the Company upon release from escrow or satisfaction of contingencies shall be allocated among the shareholders of the Company in accordance with this Section 3) after taking into account the previous payment of the Initial Consideration as part of the same transaction.

4) Voting .

- a) *Non-Voting* . The holders of Series A Preferred Stock shall not be entitled to vote on any matter except as otherwise expressly provided for in Section 4(b) or required by applicable law.

- b) *Protective Provision* . At any time when the number of shares of Series A Preferred Stock outstanding is equal to or greater than 50% of the total number of shares of Series A Preferred Stock ever issued by the Company (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock), the Company shall not, directly or indirectly by amendment, merger, consolidation or otherwise, (i) amend, alter or repeal any provision of the Certificate of Formation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock, (ii) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock unless the same ranks junior or pari passu to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company, the payment of dividends and rights of redemption, or (iii) increase the authorized number of shares of any additional class or series of capital stock unless the same ranks junior or pari passu to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Company, the payment of dividends and rights of redemption, unless the holders of at least two thirds (66-2/3%) of the outstanding shares of Series A Preferred Stock approve (by written consent or affirmative vote).

5) Conversion .

- a) *Events of Conversion* . Subject to the limitation set forth in Section 5(b), each share of Series A Preferred Stock shall be convertible, without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Series A Original Issue Price for such share of Series A Preferred Stock by the Series A Conversion Price (as defined below) in effect at the time of conversion, as follows:
- i) As to the shares of Series A Preferred Stock of any holder, at the option and at the sole discretion of such holder so long as notice is delivered by such holder to the Company (pursuant to Section 5(e)) prior to the day which is five (5) days prior to the Redemption Date (as defined below);
 - ii) As to all shares of Series A Preferred Stock, upon the earlier of the following (the “ **Automatic Conversion** ”): (A) such time, at any time following the Series A Designation Date (defined below), as the shares of Common Stock trade on the Trading Market with a per share closing price on the Trading Day of at least \$4.00 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock) for at least twenty (20) consecutive Trading Days [note: since this clause is measured from the Series A Designation Date, it is possible that shares of Series A Preferred Stock will be deemed converted immediately upon issuance if the requirements of this clause have been satisfied prior to such issuance]; or (B) the date and time, or the occurrence of an event, approved (by written consent or affirmative vote) by the holders of at least two thirds (66-2/3%) of the then outstanding shares of Series A Preferred Stock.

- b) *Limitation on Conversion* . Shares of Series A Preferred Stock held by each holder thereof shall not be converted pursuant to Section 5(a) to the extent that, after giving effect to such conversion, such holder (together with any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such holder, as such terms are used in and construed under Rule 144 under the Securities Act of 1933 and the rules and regulations promulgated thereunder - each an “ **Affiliate** ”) would (i) beneficially own shares of Common Stock in excess of 19.9% of the shares of Common Stock outstanding (immediately after giving effect to the issuance of shares of Common Stock upon conversion of the shares of Series A Preferred Stock then subject to, or with respect to which a request has been made for, conversion pursuant to Section 5(a)) or (ii) control in excess of 19.9% of the total voting power of the Company’s securities outstanding (immediately after giving effect to the issuance of shares of Common Stock upon conversion of the shares of Series A Preferred Stock then subject to, or with respect to which a request has been made for, conversion pursuant to Section 5(a)) that are entitled to vote on a matter being voted on by holders of Common Stock, unless and until the Company obtains shareholder approval permitting such issuances in accordance with applicable rules of the NASDAQ Stock Market; provided, however, that such limitations on conversion shall not apply to any conversion in connection with and subject to completion of the following if, upon completion, the subject holder and its Affiliates would not exceed the specified limits: (i) any offering of securities by the Company or its shareholders (including, without limitation, the subject holder); and (ii) a *bona fide* third party tender offer for the Company securities. For purposes of this Section 5(b), beneficial ownership shall (x) exclude such number of shares of Common Stock that would be issuable upon exercise or conversion of the unexercised or non-converted portion of any securities of the Company (including, without limitation, options, warrants, shares of Series A Preferred Stock and other convertible securities such as convertible promissory notes) except for a limitation on conversion or exercise analogous to the limitation contained in the first sentence of this Section 5(b) and (y) otherwise be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934 (and the rules promulgated thereunder). [Note: If the limitation contained in the first sentence of this Section 5(b) applies to any conversion, then the Company shall nonetheless issue to any holder at issue such number of shares of Common Stock as may be issued below the limitation.] Upon the written request of any holder of shares of the Series A Preferred Stock, the Company shall within two (2) Trading Days confirm in writing to such holder the number of shares of Common Stock then outstanding.
- c) *Conversion Price* . The “ **Series A Conversion Price** ” shall initially be \$0.80, but the Series A Conversion Price, and the rate at which shares of Series A Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

- d) *No Fractional Shares* . No fractional shares of Common Stock shall be issued upon conversion of the Series A Preferred Stock. In lieu of any fractional shares to which a holder would otherwise be entitled, the Company shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock a holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.
- e) *Mechanics for Optional Conversion* . Before any holder of shares of Series A Preferred Stock shall be entitled to convert such shares pursuant to the provisions of Section 5(a)(i) and receive a certificate or certificates evidencing the shares of Common Stock into which such shares of Series A Preferred Stock are convertible, such holder shall give written notice of the same to the Company at its principal executive offices and shall surrender the certificate or certificates evidencing such shares, duly endorsed, at such offices of the Company. The Company shall, as soon as practicable thereafter, issue and deliver at such offices to such holder a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled. Any such conversion shall be deemed to have been made immediately prior to the close of business on the date of the holder's surrender of the certificate or certificates evidencing such holder's shares of Series A Preferred Stock to be converted, and such holder shall be treated for all purposes as the holder of the shares of Common Stock issuable upon such conversion as of such date.
- f) *Mechanics for Automatic Conversion* . Upon the Automatic Conversion (or, as applicable, as soon thereafter as and to the extent that the limitation set forth in Section 5(b) does not apply), the outstanding shares of Series A Preferred Stock at issue shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock are delivered to the Company at its principal executive offices, or the holder notifies the Company that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the outstanding shares of Series A Preferred Stock at issue, the holders of such shares of Series A Preferred Stock shall surrender the certificates representing such shares to the Company at its principal executive offices. Thereupon, there shall be issued and delivered to each such holder promptly at such office and in each such holder's name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.
- g) *Reserved Shares* . The Company shall at all times when the Series A Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to the Certificate of Formation.

- h) *Issue Taxes* . The Company shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock pursuant to this Section 5 ; 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 shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Company the amount of any such tax or has established, to the satisfaction of the Company, that such tax has been paid.
- i) *Adjustments to Series A Conversion Price* .
- i) If the Company shall at any time or from time to time after the filing of this Certificate (the “ **Series A Designation Date** ”) effect a subdivision of the outstanding Common Stock, the Series A Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Company shall at any time or from time to time after the Series A Designation Date combine the outstanding shares of Common Stock, the Series A Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.
- ii) In the event the Company at any time or from time to time after the Series A Designation Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Series A Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Series A Conversion Price then in effect by a fraction:

- a. the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and
- b. the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing: (x) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series A Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series A Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (y) no such adjustment shall be made if the holders of Series A Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.

- iii) If, as of the close of business on December 31, 2012, the Company has not entered into an agreement with a partner or potential partner pursuant to which the Company has received, or will receive, at least \$5 million in funding (x) for use toward the clinical development of Tcelna TM or (y) in return for granting a license, other rights, or an option to license or otherwise acquire rights with respect to Tcelna TM (as determined in the reasonable discretion of the Board of Directors), then the then applicable Series A Conversion Price shall be adjusted, in the event of the closing of a Down Financing (as defined below), to be the Down Financing Per Share Price (as defined below) or, if higher, \$0.780625 (as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction affecting the Common Stock after the Series A Designation Date). A “**Down Financing**” is the first issuance of securities by the Company (other than any financing involving the issuance of Series A Preferred Stock or securities convertible into Series A Preferred Stock) primarily for the purpose of raising capital which occurs following the Series A Designation Date and in which the Company issues shares of Common Stock or Common Stock Equivalents (as defined below) entitling any person to acquire shares of Common Stock at a price per share (determined in the reasonable discretion of the Board of Directors and in accordance with this Section 5(i)(iii)) less than the then applicable Series A Conversion Price (such lower price, the “**Down Financing Per Share Price**”). “**Common Stock Equivalents**” mean any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock. If any shares of Common Stock or any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called “**Options**” and such convertible or exchangeable stock or securities being called “**Convertible Securities**”) shall be issued or issuable for cash, the consideration received therefor shall be deemed to be the gross proceeds therefor. If any shares of Common Stock, Options or Convertible Securities shall be issued or issuable for a consideration other than cash, the amount of the consideration other than cash received by the Company shall be deemed to be the fair market value of such consideration as determined in good faith by the Board of Directors. In case any Options shall be issued in connection with the issue and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors. If Common Stock, Options or Convertible Securities shall be issued or sold by the Company and, in connection therewith, other Options or Convertible Securities (the “**Additional Rights**”) are issued, then the consideration received or deemed to be received by the Company shall be reduced by the fair market value of the Additional Rights (as determined in good faith by the Board of Directors). Notwithstanding the foregoing, and without limitation, the following activities are deemed not to be eligible for consideration as an issuance of securities by the Company primarily for the purpose of raising capital: (1) the issuance of securities upon the exercise or conversion of any Common Stock Equivalents issued by the Company prior to the Series A Designation Date; (2) securities issued with approval of a majority of the members of the Board of Directors or a majority of the members of a committee of directors established for such purpose, pursuant to options, stock or similar awards to employees, directors, and consultants; (3) securities issued to any bank or equipment lessor in connection with a financing or equipment lease; or (4) securities issued pursuant to a “**Strategic Transaction**” approved by a majority of the Board of Directors. A “**Strategic Transaction**” shall mean any transaction with an acquiror, acquisition target company or merger partner, or a joint venture, corporate alliance, research agreement or licensing transaction, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital.

- iv) Upon the occurrence of each adjustment or readjustment of the Series A Conversion Price pursuant to this Section 5, the Company at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Company shall, as promptly as reasonably practicable after the written request at any time of any holder of Series A Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Series A Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Series A Preferred Stock.

j) Other Adjustments.

- i) In the event the Company at any time or from time to time after the initial issuance of the Series A Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Company (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 2(b) do not apply to such dividend or distribution, then and in each such event the holders of Series A Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Series A Preferred Stock had been converted into Common Stock on the date of such event.
 - ii) If after the Series A Designation Date there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Company in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Section 3(a) or Section 3(b)), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Series A Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock issuable upon conversion of one share of Series A Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 5 with respect to the rights and interests thereafter of the holders of the Series A Preferred Stock, to the end that the provisions set forth in this Section 5 (including provisions with respect to changes in and other adjustments of the Series A Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.
- 6) **Acquired Shares**. Any shares of Series A Preferred Stock that are acquired by the Company or any of its subsidiaries shall automatically and immediately be (i) retired as shares of Series A Preferred Stock and (ii) resume their status as authorized but unissued shares of the Company's preferred stock.

- 7) **Waiver**. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock (both present and future) by the approval (by written consent or affirmative vote) of the holders of at least two thirds (66-2/3%) of the shares of Series A Preferred Stock then outstanding.
- 8) **Notices**. Any notice required or permitted by the provisions of this Certificate to be given to a holder of shares of Series A Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Company, or given by electronic communication in compliance with the provisions of applicable law, and shall be deemed sent upon such mailing or electronic transmission.

IN WITNESS WHEREOF , the Company has caused this Certificate to be executed on behalf of the Company by its Chief Executive Officer on this 25 day of July, 2012.

/s/ Neil K. Warma
Neil K. Warma
Chief Executive Officer

NOTE PURCHASE AGREEMENT

THIS NOTE PURCHASE AGREEMENT (“**Agreement**”) is made effective as of July 25, 2012, by and among Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and each of the persons executing a copy of this Agreement (each an “**Investor**” and, collectively, the “**Investors**”).

Recitals

A. **WHEREAS**, each Investor wishes to purchase from the Company, and the Company wishes to sell and issue to each Investor, upon the terms and conditions stated in this Agreement, (i) a convertible secured promissory note in the form attached hereto as **Exhibit A** (individually, a “**Note**” and, collectively, the “**Notes**”), which is convertible, upon the occurrence of certain events, into shares of the Company’s Series A Convertible Preferred Stock, no par value per share, having the rights, restrictions, preferences and privileges set forth in the Certificate of Designation in the form attached hereto as **Exhibit B** (the “**Certificate of Designation**”); and (ii) a warrant to purchase shares of the Company’s Common Stock, \$0.01 par value per share (the “**Common Stock**”), in the form attached hereto as **Exhibit C**, identified by the Company as its “Series I Warrants” (individually, a “**Warrant**” and, collectively, the “**Warrants**”);

WHEREAS, the initial principal amount of each Note and the number of shares of Common Stock subject to each Warrant are set forth on Schedule I attached hereto;

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

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

WHEREAS, contemporaneous with the execution of this Agreement, the Company and Alkek & Williams Ventures, Ltd., a Texas limited partnership (as collateral agent for the Investors - the “**Collateral Agent**”), will execute and deliver a Depository Account Control Agreement, in the form attached hereby as **Exhibit F** (the “**DACA**”), pursuant to which the Company will agree to grant the Investors (including through the Collateral Agent) certain control rights relating to certain of the Company’s bank accounts; and

WHEREAS, contemporaneous with the execution of this Agreement, the Company and the Collateral Agent will execute and deliver a Patent and Trademark Security Agreement, in the form attached hereto as **Exhibit G** (the “**Patent Security Agreement**”), pursuant to which the Company will issue to the Collateral Agent for the benefit of the Investors a security interest in substantially all of the Company’s intellectual property.

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

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

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

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

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

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

“ **Certificate of Designation** ” means the Certificate of Designation of Preferences, Rights and Limitations of Series A Convertible Preferred Stock filed with the Secretary of State of the State of Texas prior to the Initial Closing Date by which the Company (i) designated 80,000 shares of the Company’s authorized but unissued preferred stock, no par value, as Series A Preferred Stock and (ii) established the rights, restrictions, preferences and privileges of such Series A Preferred Stock, including the right to convert such Series A Preferred Stock into shares of Company’s Common Stock upon the occurrence of certain events.

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

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

“ **Collateral Agent** ” has the meaning set forth in the recitals.

“ **Common Stock** ” has the meaning set forth in the recitals.

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

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

“ **Conversion Shares** ” means the shares of Series A Preferred Stock issuable upon conversion of the Notes, together with the shares of Common Stock issuable upon conversion of the Series A Preferred Stock.

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

“ **Disclosure Schedules** ” has the meaning set forth in Section 4.

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

“ **Evaluation Date** ” has the meaning set forth in Section 4.16.

“ **Expansion Option** ” has the meaning set forth in Section 3.3.

“ **GAAP** ” has the meaning set forth in Section 4.12.

“ **HSR Act** ” has the meaning set forth in Section 7.10.

“ **HSR Act Restrictions** ” has the meaning set forth in Section 7.10.

“ **Indemnified Persons** ” has the meaning set forth in Section 8.2.

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

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

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

“ **Non-Participating Investor** ” has the meaning set forth in Section 3.3.

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

“ **Obligations** ” means all liabilities, responsibilities and other obligations of any name or nature under any of the Transaction Documents.

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

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

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

“ **Purchase Price** ” means the amount paid by the Investors for each Note and Warrant.

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

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

“ **Series A Preferred Stock** ” means the Company’s Series A Convertible Preferred Stock, no par value, having the rights, restrictions, preferences and privileges set forth in the Certificate of Designation, and which is convertible, as stated in the Certificate of Designation, into shares of the Company’s Common Stock.

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

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

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

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

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

“ **Transaction Documents** ” means this Agreement, the Notes, the Warrants, the Registration Rights Agreement, the Security Agreement, the DACA, the Patent Security Agreement and the Certificate of Designation.

“ **Transfer Agent** ” has the meaning set forth in Section 7.9.

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

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

2. Purchase and Issuance of the Notes and Warrants. Subject to the terms and conditions of this Agreement, each of the Investors shall severally, and not jointly, purchase, and the Company shall sell and issue to the Investors, the Notes and the Warrants, each in the respective amounts set forth opposite the Investors’ names on Schedule I attached hereto in exchange for the applicable Purchase Price.

3. Closing.

3.1 Upon the satisfaction or waiver of the conditions herein, the initial purchase and sale of the Notes and Warrants shall take place remotely via the exchange of documents and signatures, on or before July 25, 2012, or at such other time and place as the Company and the Investors mutually agree upon, orally or in writing (which time and place are designated as the “ **Closing** ”). In the event there is more than one closing, the term “ **Closing** ” shall mean the initial Closing and each such subsequent Closing unless otherwise specified.

3.2 At the Closing, the Company shall deliver, or cause to be delivered, to each Investor (i) a convertible secured promissory note, representing the Note purchased by such Investor, and (ii) a warrant, representing the Warrant purchased by such Investor, against delivery to the Company by the Investor of payment of the Purchase Price for such Note and Warrant, by check or in immediately available funds by wire transfer to an account designated by the Company; provided, however, that in respect of the initial Closing and at the sole discretion of the Company upon written notice to each Investor participating in the initial Closing, the Company may elect to issue the Notes in initial principal amounts equal to 50% of the initial principal amounts otherwise issuable for which the Investors have subscribed and, in such an event, the following shall ensue: (x) the Purchase Price otherwise payable by each Investor participating in the initial Closing shall be reduced by 50%; (y) all Warrants for which the Investors have subscribed shall be issued at the initial Closing regardless of the Company's election to reduce the issuance of the Notes, and (z) the Company may call for the balance (i.e. , 50%) of the full Purchase Price from each Investor participating in the initial Closing, in exchange for the 50% of the initial principal amount of the Notes not issued at the initial Closing, at any time within six (6) months of the initial Closing by written notice to each Investor, in which event the obligation of each Investor to pay such balance of the full Purchase Price promptly upon receipt of such notice (and thereupon to receive additional Notes in aggregate initial principal amounts equal to the balance (i.e. , 50%) of the full Purchase Price) shall be absolute and unconditional. The Company and the Investors shall also deliver such other documents as are called for herein.

3.3 On only one occasion, after the initial Closing, the Company may request that the Investors purchase, on the same terms and conditions as those contained in this Agreement and, except as otherwise provided below, for the same price as in the initial Closing (but without the scenario reflected in the proviso in Section 3.2), additional Notes and Warrants in aggregate initial principal amounts up to an amount which, when added to the principal amount of the Notes sold at the initial Closing, equals \$8,000,000 (the “ **Expansion Option** ”). If Investors holding Notes, Warrants and/or shares of Series A Preferred Stock representing at least 75% of the Common Stock issuable upon the conversion and/or exercise of all outstanding Notes, Warrants and shares of Series A Preferred Stock consent to the Expansion Option, then: (i) the closing of such Expansion Option shall occur on or before the date which is one hundred and twenty (120) days after the Initial Closing Date; (ii) each Investor may elect, in its sole discretion, whether or not to participate in the Expansion Option, (iii) the additional Notes shall first be offered to the existing Investors on a *pro rata* basis (based upon the principal amount of the Notes previously purchased); and (iv) each new Investor shall become a party to the Transaction Documents, as applicable, by executing and delivering a counterpart signature page to each of the Transaction Documents. If any Investor elects not to purchase its *pro rata* amount of the additional Notes and Warrants (a “ **Non-Participating Investor** ”), the Investors that do elect to purchase additional Notes and Warrants shall be permitted to elect to purchase the Notes and Warrants otherwise allocable to the Non-Participating Investor on a *pro rata* basis, and such process shall be repeated, if necessary, until each Investor has been allocated the full amount of Notes and Warrants that such Investor elects to purchase. Notwithstanding any provision herein to the contrary, the Expansion Option may not be consummated if, on the closing date for such consummation, either (x) the Series A Conversion Price (as defined in the Certificate of Designation), as adjusted to such closing date, is less than the sum of (A) the consolidated closing bid price of the Company's Common Stock on the NASDAQ Stock Market on such closing date plus (B) \$0.140625 (based upon \$0.09375 per share of Common Stock for 75% warrant coverage plus \$0.046875 for a potential 50% increase in warrant coverage in certain circumstances pursuant to the terms of the Warrants) or (y) the Warrant Exercise Price (as defined in the Warrants), as adjusted to such closing date, is less than the consolidated closing bid price of the Company's Common Stock on the NASDAQ Stock Market on such closing date.

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

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

4.2 Authorization. The Company has full power and authority and has taken all requisite action on the part of the Company, its officers, directors and shareholders necessary for (i) the authorization, execution and delivery of the Transaction Documents, (ii) the authorization of the performance of all obligations of the Company hereunder or thereunder, and (iii) the authorization, issuance (or reservation for issuance) and delivery of the Securities. The Transaction Documents constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability, relating to or affecting creditors’ rights generally.

4.3 Capitalization. Schedule 4.3 sets forth (immediately prior to the initial Closing) (a) the authorized capital stock of the Company on the date hereof, (b) the number of shares of capital stock issued and outstanding, (c) the number of shares of capital stock issuable pursuant to the Company’s stock plans, and (d) the number of shares of capital stock issuable and reserved for issuance pursuant to securities (other than the Notes or the Warrants) exercisable for, or convertible into or exchangeable for any shares of capital stock of the Company. The Certificate of Designation designates 80,000 shares of the Company’s preferred stock as Series A Preferred Stock, and no such shares are currently issued or outstanding. The rights, restrictions, preferences and privileges of the Series A Preferred Stock are as stated in the Certificate of Designation.

All of the issued and outstanding shares of the Company’s capital stock have been duly authorized and validly issued and are fully paid, nonassessable and free of pre-emptive rights and were issued in full compliance with applicable state and federal securities law and any rights of third parties. Except as described on Schedule 4.3, no Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company. Except as described on Schedule 4.3 or as contemplated by this Agreement, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which the Company is or may be obligated to issue any equity securities of any kind. Except as described on Schedule 4.3, and for the Registration Rights Agreement or as contemplated by this Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. Except as described on Schedule 4.3 and except as provided in the Registration Rights Agreement, no Person has the right to require the Company to register any securities of the Company under the 1933 Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person.

The issuance and sale of the Securities hereunder will not obligate the Company to issue shares of Common Stock or other securities to any other Person (other than the Investors) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security, including with respect to any of the outstanding warrants and options listed on Schedule 4.3. The Company does not have outstanding shareholder purchase rights, a “poison pill” or any similar arrangement.

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

4.5 Consents. Except as described on Schedule 4.5, the execution, delivery and performance by the Company of the Transaction Documents and the offer, issuance and sale of the Securities require no consent of, action by or in respect of, or filing with, any Person, governmental body, agency, or official other than such filings as shall have been made prior to and shall be effective on and as of the Closing and such filings required to be made after the Closing pursuant to applicable state and federal securities laws which the Company undertakes to file within the applicable time periods. Subject to the accuracy of the representations and warranties of each Investor set forth in Section 5 hereof, the Company has taken all action necessary to exempt from the registration requirements of the applicable state and federal securities laws (i) the issuance and sale of the Securities, (ii) the issuance of the Conversion Shares upon due conversion of the Notes and the Series A Preferred Stock, and (iii) the issuance of the Warrant Shares upon due exercise of the Warrants.

4.6 Delivery of SEC Filings; Business. The Company has made available to the Investors through the EDGAR system, true and complete copies of the Company’s (i) Annual Report on Form 10-K for the fiscal year ended December 31, 2011, (ii) Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2012 and (iii) Current Reports on Form 8-K filed since the most recent Annual Report on Form 10-K and prior to the date hereof (collectively, the “**SEC Filings**”). The SEC Filings are the only filings required of the Company pursuant to the 1934 Act for such periods. The Company is engaged in all material respects only in the business described in the SEC Filings and the SEC Filings contain a complete and accurate description in all material respects of the business of the Company, taken as a whole.

4.7 Use of Proceeds. The net proceeds of the issuance and sale of the Notes and the Warrants hereunder shall be used by the Company (i) to proceed directly in a commercially reasonable manner to commencement of a Phase IIb clinical trial of Tcelna™ in Secondary Progressive MS patients, (ii) for the conduct of such trial and (iii) for working capital and corporate expenses while the Company is preparing to conduct and during the pendency of such trial. The Company will, at all times while the Notes are outstanding, maintain a cash balance (inclusive of cash and cash equivalents) of no less than \$ 1,000,000, subject to the DACA.

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

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

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

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

4.12 Financial Statements. The financial statements included in each SEC Filing present fairly, in all material respects, the consolidated financial position of the Company as of the dates shown and its consolidated results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with United States generally accepted accounting principles applied on a consistent basis (“**GAAP**”) (except as may be disclosed therein or in the notes thereto). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof or as described on Schedule 4.12, the Company has not incurred any liabilities, contingent or otherwise, except those incurred in the ordinary course of business, consistent (as to amount and nature) with past practices since the date of such financial statements, none of which, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect.

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

4.14 No Integrated Offering. Neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by the Company on Section 4(2) of the 1933 Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the 1933 Act.

4.15 Private Placement. Assuming the accuracy of the representations set forth in Section 5, the offer and sale of the Securities to the Investors as contemplated hereby is exempt from the registration requirements of the 1933 Act.

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

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

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

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

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

5.4 Investment Experience. Such Investor acknowledges that it can bear the economic risk and complete loss of its investment in the Securities and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

5.5 Disclosure of Information . Such Investor has had an opportunity to receive all information related to the Company requested by it and to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Securities. Such Investor acknowledges receipt of copies of the SEC Filings. Neither such inquiries nor any other due diligence investigation conducted by such Investor shall modify, amend or affect such Investor's right to rely on the Company's representations and warranties contained in this Agreement.

5.6 Restricted Securities . Such Investor understands that the Securities are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the 1933 Act only in certain limited circumstances. Such Investor represents that it is familiar with Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. Such Investor acknowledges that the Securities have not been registered under the 1933 Act or registration or qualified under any applicable blue sky laws in reliance, in part, on the representations and warranties herein.

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

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

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

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

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

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

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

5.12 Financial Condition. Such Investor has received and reviewed such information as the Investor deems necessary in order to make an informed investment decision, including, without limitation, relating to the Company's current assets, liabilities, cash position, burn rate and liquidity position.

5.13 Limitation on Conversion or Exercise. Such Investor understands and acknowledges that, unless and until the Company obtains shareholder approval in accordance with applicable rules of the NASDAQ Stock Market permitting the issuance of shares which would result in an Investor beneficially owning in excess of 20% of the Common Stock or the voting power of the Company's securities (with respect to matters on which the Common Stock votes) as the result of any conversion of Notes (as well as the underlying Series A Preferred Stock) or exercise of Warrants, each of the Notes, the Warrants and the Certificate of Designation will include certain limitations on a holder's ability to convert Notes, convert shares of Series A Preferred Stock and/or exercise Warrants.

6. Conditions to Closing.

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

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

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

(c) The Certificate of Designation shall have been duly filed with the Secretary of State of the State of Texas and shall be in full force and effect as of the Closing Date.

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

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

(f) The Company shall have executed and delivered the DACA.

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

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

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

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

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

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

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

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

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

(d) The Collateral Agent shall have executed and delivered the DACA.

(e) The Collateral Agent shall have executed and delivered the Patent Security Agreement.

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

6.3 Termination of Obligations to Effect Initial Closing; Effects.

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

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

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

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

(iv) By either the Company or any Investor (with respect to itself only) if the initial Closing has not occurred on or prior to 5:00 p.m., Houston time, on July 25, 2012; provided, however, that, except in the case of clause (i) above, the party seeking to terminate its obligation to effect the initial Closing shall not then be in breach of any of its representations, warranties, covenants or agreements contained in this Agreement or the other Transaction Documents if such breach has resulted in the circumstances giving rise to such party's seeking to terminate its obligation to effect the initial Closing.

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

7. Covenants and Agreements of the Company.

7.1 Reservation of Preferred Stock and Common Stock. The Company shall at all times reserve and keep available the following: (i) out of its authorized but unissued shares of Preferred Stock, solely for the purpose of providing for the conversion of the Notes, such number of shares of Series A Preferred Stock as shall from time to time equal the number of shares sufficient to permit the conversion of the Notes; (ii) out of its authorized but unissued shares of Common Stock, solely for the purpose of providing for the conversion of the Series A Preferred Stock, such number of shares of Common Stock as shall from time to time equal the number of shares sufficient to permit the conversion of the Series A Preferred Stock; and (iii) out of its authorized but unissued shares of Common Stock, solely for the purpose of providing for the exercise of the Warrants, such number of shares of Common Stock as shall from time to time equal the number of shares sufficient to permit the exercise of the Warrants, issued pursuant to this Agreement in accordance with their respective terms.

7.2 Reports. The Company will furnish to the Collateral Agent, promptly after the end of each calendar month, the following: (a) all SEC Filings made by the Company during such calendar month, and (b) all of the information set forth on Schedule II attached hereto.

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

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

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

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

7.7 DACA. The Company shall, immediately upon the receipt of Purchase Price proceeds totaling at least \$1,000,000 in the aggregate (and in any event not later than 5:00 p.m., Houston, Texas time on the date of Closing), cause an account subject to the DACA to be funded with at least \$1,000,000 in immediately available funds.

7.8 Termination of Covenants. The provisions of Sections 7.2, 7.3 and 7.7 shall terminate and be of no further force and effect on the date on which the Company's obligations under the Convertible Notes have been paid in full or otherwise discharged.

7.9 Removal of Legends. Upon the registration for resale pursuant to the Registration Rights Agreement with respect to the applicable Securities then held by such Investor, the Company shall (A) deliver to the transfer agent for the Common Stock (the "**Transfer Agent**") irrevocable instructions that the Transfer Agent shall reissue a certificate representing shares of Common Stock without legends upon receipt by such Transfer Agent of the legended certificates for such shares, together with a statement by the Investor or the Investor's broker that such Investor has sold the shares of Common Stock represented thereby in accordance with the Plan of Distribution contained in the Registration Statement and, if applicable, in accordance with any prospectus delivery requirements, and (B) cause its counsel to deliver to the Transfer Agent one or more blanket opinions to the effect that the removal of such legends in such circumstances may be effected under the 1933 Act.

7.10 HSR Compliance. The Company acknowledges that issuance of the Warrant Shares, Notes, Series A Preferred Stock, or Common Stock underlying the Series A Preferred Stock issuable upon conversion of the Notes to an Investor may subject such Investor to the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “**HSR Act**”). As a result, such issuance may be subject to compliance by the Investors with all applicable filing requirements and the expiration of all waiting periods under the HSR Act (the “**HSR Act Restrictions**”). If, on or before the expiration of any period of time for an Investor to exercise any right or comply with any obligation with respect to the Warrant Shares, Notes, Series A Preferred Stock, or Common Stock underlying the Series A Preferred Stock issuable upon conversion of the Notes under any Transaction Document or otherwise, such Investor has notified the Company of its inability to exercise such right or comply with such obligation prior to the expiration of such period because of HSR Act Restrictions, such Investor shall be entitled to exercise such right or comply with such obligation without waiver or breach of any Transaction Document, notwithstanding the fact that the exercise of such right or compliance with such obligation would occur after expiration of such period, so long as such Investor uses its reasonable best efforts to comply with the filing requirements of the HSR Act (including its waiting periods) until such time as such Investor exercises such right or complies with such obligation. The Company will cooperate with each Investor in making all applicable filings under the HSR Act.

8. Survival and Indemnification.

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

8.2 Indemnification. The Company agrees to indemnify and hold harmless each Investor and its Affiliates and their respective directors, officers, employees and agents (collectively, “**Indemnified Persons**”) from and against any and all losses, claims, damages, liabilities, expenses, penalties, actions, judgments, suits, claims, and disbursements of any kind or nature whatsoever (including without limitation reasonable attorney fees and disbursements and other expenses reasonably incurred in connection with investigating, preparing or defending any action, claim or proceeding, pending or threatened and the costs of enforcement thereof) (collectively, “**Losses**”) (a) arising out of or related to any breach, inaccuracy or non-fulfillment, as applicable, of any representation, warranty, covenant or agreement made by or to be performed on the part of the Company under the Transaction Documents, or (b) incurred in connection with any action or proceeding against the Company or any Indemnified Person arising out of or in connection with the Transaction Documents (or any other document or instrument executed pursuant to the Transaction Documents) or the transactions contemplated in any Transaction Document, other than Losses that are finally determined in such action or proceeding to be primarily or directly a result of (i) the gross negligence of such Indemnified Person; (ii) a breach of a fiduciary duty, if any, owed by such Indemnified Person to the Company; (iii) the willful misconduct or a knowing violation of applicable law by such Indemnified Person; or (iv) a transaction from which such Indemnified Person received an improper personal benefit. The Company will reimburse any such Indemnified Person for all such amounts as they are incurred by such Person.

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

9. Miscellaneous.

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

9.2 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

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

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

If to the Company:

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

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, California 92130
Attention: Mike Hird, Esq.
Facsimile: (858) 509-4010

If to the Investors:

to the addresses set forth on the signature pages hereto.

Each of the Investors agrees to provide prompt written notice to the Collateral Agent and the Company of any change to its applicable notice information set forth on the signature pages hereto.

9.5 Expenses. The parties hereto shall pay their own costs and expenses in connection herewith; provided, however, that immediately following the initial Closing, the Company shall reimburse Alkek & Williams Ventures, Ltd. (as the lead Investor) for its legal fees and expenses incurred in connection with negotiation the Transaction Documents. In the event that legal proceedings are commenced by any party to this Agreement against another party to this Agreement in connection with this Agreement or the other Transaction Documents, the party or parties which do not prevail in such proceedings shall severally, but not jointly, pay their *pro rata* share of the reasonable attorneys' fees (based upon the relative number of Notes and Warrants purchased hereunder by each Investor) and other reasonable out-of-pocket costs and expenses incurred by the prevailing party in such proceedings.

9.6 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and Investors holding Notes, Warrants and/or shares of Series A Preferred Stock representing at two thirds (66-2/3%) of the Common Stock issuable upon the conversion and/or exercise of all outstanding Notes, Warrants and shares of Series A Preferred Stock. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Securities purchased under this Agreement at the time outstanding, each future holder of all such Securities, and the Company.

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

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

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

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

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

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

[signature pages follow]

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

THE COMPANY :

OPEXA THERAPEUTICS, INC.

By: _____

Name: Neil K. Warma

Title: President and Chief Executive Officer

[signature page to Note Purchase Agreement]

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

THE INVESTORS:

By: _____
Printed _____
Name: _____
Title (if applicable): _____
Entity Name (if applicable): _____

Aggregate Purchase Price: \$ _____
Closing Date (if multiple tranches): _____

Address for Notices: _____

Attention: _____
Facsimile: _____
Email: _____

[signature page to Note Purchase Agreement]

SCHEDULE I

Investor	Principal amount of Note	Number of shares subject to Warrant
Alkek & Williams Ventures Ltd.	\$ 500,000	468,750
Albert and Margaret Alkek Foundation	\$ 300,000	281,250
DLD Family Investments, LLC	\$ 500,000	468,750
Charles E. Sheedy	\$ 250,000	234,375
George McDaniel	\$ 200,000	187,500
Robert & Susan deRose Family Trust 11/16/86	\$ 100,000	93,750
David L. Anderson	\$ 75,000	70,313
The Arnold Corporation	\$ 200,000	187,500
Paul Anthony Jacobs & Nancy E. Jacobs Joint Trust U/A dated 10/16/97	\$ 100,000	93,750
J.R. Seward Revocable Trust DTD 11/05/97	\$ 100,000	93,750
Mossman Partners LP	\$ 50,000	46,875
Arrow Realty, LLC	\$ 200,000	187,500
William F. Miller III	\$ 50,000	46,875
Tom Juda and Nancy Juda Living Trust	\$ 300,000	281,250
JMJ Financial	\$ 500,000	468,750
Neil K. Warma	\$ 15,000	14,063
David E. Jorden	\$ 115,000	107,813
DIT Equity Holdings, LLC	\$ 100,000	93,750
Brio Capital L.P.	\$ 300,000	281,250
The James P Miscoll Bypass Trust	\$ 30,000	28,125
Iroquois Master Fund Ltd.	\$ 100,000	93,750
Total	\$ 4,085,000	3,829,688

SCHEDULE II

MONTHLY REPORTING OBLIGATIONS

In accordance with Section 7.2 (b) of the Agreement, the Company will furnish to Alkek & Williams Ventures, Ltd., a Texas limited partnership (as collateral agent for the Investors), promptly after the end of each calendar month, the following information:

1. Unaudited monthly income statements comparing the Company's actual performance to its budgeted performance;
 2. A bank statement pertaining to the Company's segregated cash account (minimum \$1,000,000), which the Company will use its commercially reasonable efforts to cause the bank to send directly to the Investors;
 3. Borrower's Certificate that includes:
 - a. A representation from the Company's Chief Financial Officer that the Company (i) is meeting all of its financial obligations on a timely basis, and (ii) that the Company is not past due on its rent payable under the terms of its real property lease(s), payroll, taxes, insurance, utilities, licensing fees (if any), accounts payable to any of its major suppliers, and equipment leases; and
 - b. A list of any accounts payable for which the Company is then currently more than thirty (30) days past due.
 4. A list of the Company's non-segregated cash balances.
-

EXHIBIT A

Form of Note

(to be attached)

EXHIBIT B

Form of Certificate of Designation

(to be attached)

EXHIBIT C

Form of Series I Warrant

(to be attached)

EXHIBIT D

Form of Registration Rights Agreement

(to be attached)

EXHIBIT E

Form of Security Agreement

(to be attached)

EXHIBIT F

Form of Deposit Account Control Agreement

(to be attached)

EXHIBIT G

Form of Patent and Trademark Security Agreement

(to be attached)

OPEXA THERAPEUTICS, INC.

12% CONVERTIBLE SECURED PROMISSORY NOTE

\$ _____

July 25, 2012

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

OPEXA THERAPEUTICS, INC., a Texas corporation (the "**Company**"), for value received, hereby promises to pay to the order of _____ ("**Investor**"), whose address is _____, at said address or such other addresses as may be designated in writing by Investor from time to time, or Investor's registered assigns, the principal amount of _____ and No/100 Dollars (\$ _____), together with interest thereon from the date of issuance of this 12% Convertible Secured Promissory Note (the "**Note**") on the unpaid principal balance at an annual rate of interest equal to twelve percent (12%) per annum, compounded annually (on the basis of a 360-day year) until converted or paid in full, such principal (to the extent unpaid or unconverted as provided herein) and any accrued and unpaid interest to be payable as provided below on July 25, 2014 (the "**Maturity Date**"). This Note is one of a series of Notes of like tenor issued by the Company pursuant to that certain Note Purchase Agreement entered into contemporaneously herewith by and among the Company and the Investors named therein (the "**Purchase Agreement**").

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

1. Payment.

(a) Principal. Subject to the provisions of Section 2 hereof relating to the conversion of this Note, the Company shall make payment of principal when due in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts ("**Legal Tender**").

(b) Interest. Subject to the provisions of Section 2 hereof relating to the conversion of this Note, the Company shall make payment of all accrued interest when due (in the sole discretion of the Company's Board of Directors) in either (i) Legal Tender or (ii) if there is an effective registration statement under the Securities Act of 1933 (the "**Securities Act**") for the resale of such shares, no Event of Default then exists or would result therefrom, and such shares are then traded upon the NASDAQ Capital Market, then in shares of the Company's Common Stock, par value \$0.01 per share (the "**Common Stock**"). If paid by shares of Common Stock, such shares shall be deemed to have a value equal to the volume weighted average price for the Common Stock on the Trading Market for the five (5) Trading Days ending three (3) Trading Days prior to any payment date at issue, where "**Trading Day**" means a day on which the Common Stock is traded on the Trading Market, and "**Trading Market**" means the NASDAQ Capital Market. Interest shall be paid semi-annually on June 30 and December 31, beginning on December 31, 2012, and on the day when this Note is due (as stated or by acceleration), and any unpaid interest accrued on any principal amount of this Note which is converted or repaid pursuant to this Note shall be paid concurrent with such conversion or repayment.

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

2. Conversion.

(a) Investor Conversion Rights. Subject to Section 2(c), the Investor may elect to convert all or part of the unpaid principal amount of this Note (such unpaid principal amount referred to as the “**Outstanding Balance**”) into shares of the Company’s Series A Convertible Preferred Stock, no par value (the “**Series A Preferred Stock**”), subject to adjustment as provided herein. The number of shares of Series A Preferred Stock into which the Outstanding Balance is convertible (the “**Conversion Shares**”) shall be determined by dividing (i) the Outstanding Balance by (ii) the “**Conversion Price**” of One Hundred Dollars (\$100.00) (subject to adjustment as provided herein). The Investor shall effect such conversion by sending written notice (“**Notice of Conversion**”) to the Company. For the purposes of this Section 2(a), conversion shall be deemed to occur on the date that the Company receives the Notice of Conversion from the Investor. The Company will, as soon as practicable but in no event later than three (3) business days after receipt of the Notice of Conversion issue and deliver to the Investor a certificate or certificates for the number of shares of Series A Preferred Stock to which the Investor will be entitled on conversion, and if applicable, a promissory note in form substantially the same as this Note in the amount of any unconverted principal and interest.

(b) Company Conversion Rights. Subject to Section 2(c), upon the occurrence of any of the following events, the Company may elect at any time thereafter, so long as such event continues or during the forty-five (45) business days thereafter, to convert all the Outstanding Balance into shares of Series A Preferred Stock: (i) such time as the shares of Common Stock trade on the Trading Market with a per share closing price on the Trading Day of at least \$2.50 (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock) for at least twenty (20) consecutive Trading Days; or (ii) the Company does both of the following (as determined in the reasonable discretion of the Company’s Board of Directors): (x) executes a strategic agreement with a partner or potential partner by which the Company will receive a minimum of \$5,000,000 either (a) to partially fund a Phase II clinical trial for Tcelna™ in patients with Secondary Progressive Multiple Sclerosis (SPMS) or (b) in return for granting an option to partner with the Company to conduct a clinical trial in patients with SPMS; and (y) receives a gross aggregate minimum of \$25,000,000 in additional capital (including, for this purpose and without limitation, the capital raised under the offering pursuant to which this Note was issued, any new or additional capital received from any partner or potential partner, and any new or additional capital received from any other source). The number of shares of Series A Preferred Stock into which this Note shall be convertible shall be determined by dividing (i) the Outstanding Balance by (ii) the Conversion Price. The Company shall effect such conversion by sending a Notice of Conversion to the Investor at its address on the Company’s books. For the purposes of this Section 2(b), conversion shall be deemed to occur on the date that the Company sends such Notice of Conversion to the Investor. The Company will, as soon as practicable but in no event later than three (3) business days after sending the Notice of Conversion, issue and deliver to the Investor a certificate or certificates for the number of securities to which the Investor will be entitled on conversion, and if applicable, a promissory note in form substantially the same as this Note in the amount of any unconverted principal.

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

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

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

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

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

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

4. Security. To secure the full and prompt payment to the Investor of the Company’s obligations and liabilities under this Note, the Company hereby grants to the Investor and the other holders of Convertible Notes a continuing security interest in the Collateral (as such term is defined in the Security Agreement (as defined in the Purchase Agreement) entered into contemporaneously herewith) as more fully set forth in the Security Agreement. In addition to the rights and remedies set forth in this Note, and subject to the other provisions of this Note, the Investor shall have all of the rights and remedies available to the Investor under the Purchase Agreement, the Security Agreement and as a secured party under the Texas Uniform Commercial Code. The Company will, from time to time, execute and deliver to the Investor such documents, and take such further action, as the holders of at least two thirds (66-2/3%) in principal amount of the then outstanding Convertible Notes may reasonably request in order to further carry out the intent and purpose of this Section 4 and to protect the security interests created or intended to be created hereby and in the Security Agreement.

5. Adjustments. Subject and pursuant to the provisions of this Section 5, the Conversion Price and the Conversion Shares shall be subject to adjustment from time to time as set forth hereinafter.

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

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

(c) In the event of a conversion of all shares of Series A Preferred Stock to Common Stock as contemplated by the Certificate of Designation (as defined in the Purchase Agreement), as it may be amended from time to time, this Note shall thereafter be convertible into shares of Common Stock (*i.e.* , Common Stock shall be the Conversion Shares instead of Series A Preferred Stock) and the Conversion Price shall be adjusted to reflect the ratio upon which the shares of Series A Preferred Stock converted to Common Stock; provided , however , that any duplicative or overlapping adjustments with respect to the effective conversion ratio of the Outstanding Balance into shares of Common Stock which may occur as a result of the foregoing provision shall be eliminated.

(d) In case the Company shall fix a payment date for the making of a distribution to all holders of Common Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness or assets (other than cash dividends or cash distributions payable out of consolidated earnings or earned surplus or dividends or distributions referred to in Section 5(a)), or subscription rights or warrants, the Conversion Price to be in effect after such payment date shall be determined by multiplying the Conversion Price in effect immediately prior to such payment date by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding multiplied by the closing price of the Common Stock as listed on the NASDAQ Stock Market immediately prior to such payment date (the “ **Market Price** ”), less the fair market value (as determined by the Company’s Board of Directors in good faith) of said assets or evidences of indebtedness so distributed, or of such subscription rights or warrants, and the denominator of which shall be the total number of shares of Common Stock outstanding multiplied by such Market Price.

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

(f) In the event that, as a result of an adjustment made pursuant to this Section 5 , the Investor shall become entitled to receive any shares of capital stock of the Company other than shares of Series A Preferred Stock, the number of such other shares so receivable upon conversion of this Note shall be subject thereafter to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Conversion Shares.

(g) To the extent permitted by applicable law and the listing requirements of any stock exchange on which the Common Stock is then listed, the Company from time to time may decrease the Conversion Price by any amount for any period of time if the period is at least twenty (20) days, the decrease is irrevocable during the period and the Company’s Board of Directors shall have made a determination that such decrease would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Price is decreased pursuant to the preceding sentence, the Company shall provide written notice thereof to the Investor at least five (5) days prior to the date the decreased Conversion Price takes effect, and such notice shall state the decreased Conversion Price and the period during which it will be in effect. Notwithstanding the foregoing, the Company shall treat all holders of the Notes equally in this respect.

(h) Conversion Price Floor . Notwithstanding anything herein to the contrary, until such time as the Company obtains shareholder approval in accordance with applicable rules of the NASDAQ Stock Market in order to allow the Conversion Price to be less than the Conversion Price Floor (as defined below), no adjustment pursuant to this Section 5 (except for Section 5(c) , as applicable) shall cause the Conversion Price to be less than \$97.578125 (i.e., the number of shares of Common Stock initially issuable upon conversion of one (1) share of Series A Preferred Stock pursuant to the Certificate of Designation (as defined in the Purchase Agreement) as of the Series A Designation Date (as defined in the Certificate of Designation) (i.e. , 125) *multiplied* by the sum of (i) the most recent consolidated closing bid price of the Company's Common Stock on the NASDAQ Stock Market of \$0.64 *plus* (ii) \$0.140625 (based upon \$0.09375 per share of Common Stock for 75% warrant coverage plus \$0.046875 for a potential 50% increase in warrant coverage in certain circumstances pursuant to the terms of the warrants issued in tandem with the Notes pursuant to the Purchase Agreement), as adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction (the "**Conversion Price Floor** ").

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

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

8. Maximum Rate of Interest . Notwithstanding any provisions to the contrary in this Note, or in any of the documents relating hereto, in no event shall this Note or such documents require the payment or permit the charging or collection of interest in excess of the maximum amount or highest lawful rate permitted by the applicable usury laws. It is the intention of the Company and the Investor to comply in all respects with applicable usury laws, and in no event shall the Company pay, for the use, forbearance or detention of money, interest at a rate or in an amount in excess of the highest lawful rate permitted by applicable law. If any such excess interest is contracted for, charged or received under this Note or under the terms of any of the documents relating hereto, or in the event the maturity of the indebtedness evidenced by this Note is accelerated in whole or in part, or in the event that all or part of the principal or accrued unpaid interest of this Note shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Note or under any of the documents relating hereto, on the amount of principal actually outstanding from time to time under this Note, shall exceed the maximum amount of interest permitted by the applicable usury laws, then in any such event (a) the provisions of this Section 8 shall govern and control, (b) neither the Company nor any other person or entity now or hereafter liable for the payment hereof, shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by the applicable usury laws, (c) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal amount hereof or refunded to the Company, at the holder's option, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful rate of interest allowed under the applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Note or under such other documents which are made for the purpose of determining whether such rate exceeds the maximum lawful rate of interest, shall be made, to the extent permitted by the applicable usury laws, by amortizing, prorating, allocating and spreading during the period of the full stated term of the indebtedness evidenced hereby, all interest at any time contracted for, charged or received from the Company or otherwise by the holder or holders hereof in connection with such indebtedness.

9. Certain Events. The Outstanding Balance of this Note shall become immediately due and payable upon any of the following events: (i) the admission in writing by the Company of its insolvency; (ii) the commission of any voluntary act of bankruptcy by the Company; (iii) the execution by the Company of a general assignment for the benefit of creditors; (iv) the filing by or against the Company of any petition in bankruptcy or any petition for relief under the provisions of the federal bankruptcy act or any other state or federal law for the relief of debtors and the continuation of such petition without dismissal for a period of sixty (60) days or more; (v) the failure of Company to perform any of its obligations under this Note, including the failure to pay any principal or accrued interest under the terms of this Note when due and payable; (vi) the failure of the Company to perform any obligation under the other Transaction Documents (as defined in the Purchase Agreement) or any document, instrument or agreement executed in connection therewith, after written notice to the Company of such alleged failure to perform and a 5-business day opportunity to cure; (vii) the appointment of a receiver or trustee to take possession of the property or assets of the Company; (viii) any dissolution of the Company; (ix) the adoption by the Company of any plan of liquidation; (x) the sale by the Company of all or substantially all of its assets; (xi) the commencement against the Company of any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; (xii) the Company fails to maintain a cash balance (inclusive of cash and cash equivalents) of at least \$1,000,000 in an account subject to a deposit account control agreement in favor of Alkek & Williams Ventures, Ltd., a Texas limited partnership (as collateral agent for the Investors); or (xiii) any challenge or contest by the Company in any action, suit or proceeding of the validity or enforceability of this Note or the warrants issued on even date herewith by the Company to Investor (each, individually, an “**Event of Default**”).

10. Amendments and Waivers. Any term or provision of this Note may be waived or amended in any respect with the written consent of the Company and the holders of at least two thirds (66-2/3%) in principal amount of the then outstanding Convertible Notes; provided, that any such amendment or waiver must apply to all Convertible Notes, and further provided, that terms and provisions regarding payment or conversion require the written consent of holders of at least three-quarters (75%) in principal amount of the then outstanding Convertible Notes.

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

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

[signature page follows]

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

OPEXA THERAPEUTICS, INC.

By: _____

Name: Neil K. Warma

Title: President and Chief Executive Officer

[signature page to Convertible Secured Promissory Note]

SECURITY AGREEMENT

This SECURITY AGREEMENT (“ **Agreement** ”), is made effective as of July 25, 2012 (this “ **Agreement** ”), by and among Opexa Therapeutics, Inc., a Texas corporation (the “ **Company** ”), each of the persons executing a copy of this Agreement, and their respective successors and assigns (each an “ **Investor** ” and, collectively, the “ **Investors** ”), and Alkek & Williams Ventures, Ltd., a Texas limited partnership, as collateral agent for the Investors (in such capacity, the “ **Collateral Agent** ”).

1. Purpose. This Agreement is granted by the Company in favor of the Collateral Agent for the benefit of the Investors under (i) that certain Note Purchase Agreement, effective as of the date hereof, by and among the Company and the Investors (the “ **Purchase Agreement** ”), and (ii) the convertible secured promissory notes issued to Investors by the Company under the Purchase Agreement (as may be amended, restated, modified or replaced from time to time, the “ **Notes** ”). Under the Purchase Agreement and the Notes, Investors may loan the Company up to the aggregate sum of Eight Million Dollars (\$8,000,000). The Company has agreed to secure all Liabilities (as hereinafter defined) of the Company to Investors in accordance with the terms and conditions of this Agreement.

2. Defined Terms. Capitalized terms not defined in this Agreement have the meaning set forth under the Purchase Agreement, and the following terms as well as all uncapitalized terms which are defined in the Texas Uniform Commercial Code (as amended, revised or replaced, the “ **Texas UCC** ”) have the meaning set forth therein: Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Investment Property, Letter-of-Credit Rights, Payment Intangibles, Proceeds, Supporting Obligations, and Tangible Chattel Paper. In addition, the following terms have the meanings specified below:

“ Intellectual Property ” means, collectively, the Copyright Collateral, the Patent Collateral, the Trademark Collateral, and the Trade Secrets Collateral.

“ Copyright Collateral ” means all copyrights of the Company, registered or unregistered and whether published or unpublished, now or hereafter in force throughout the world including all of the Company’s rights, titles and interests in and to all copyrights registered in the United States Copyright Office or anywhere else in the world, and registrations and recordings thereof and all applications for registration thereof, whether pending or in preparation, all copyright licenses, the right to sue for past, present and future infringements of any of the foregoing, all rights corresponding thereto, all extensions and renewals of any thereof and all proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and Proceeds of suit, which are owned or licensed by the Company.

“ Patent Collateral ” means (a) all inventions and discoveries, whether patentable or not, all letters patent and applications for letters patent throughout the world, and any patent applications in preparation for filing, (b) all reissues, divisions, continuations, continuations in part, extensions, renewals and reexaminations of any of the items described in clause (a), (c) all patent licenses, and other agreements providing the Company with the right to use any items of the type referred to in clauses (a) and (b) above, and (d) all proceeds of, and rights associated with, the foregoing (including licenses, royalties income, payments, claims, damages and proceeds of infringement suits), the right to sue third parties for past, present or future infringements of any patent or patent application, and for breach or enforcement of any patent license.

“ Trademark Collateral ” means (a) (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos and other source or business identifiers, and all goodwill of the business associated therewith, now existing or hereafter adopted or acquired by the Company, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including further registrations, recordings and applications in the United States Patent and Trademark Office or in any office or agency of the United States of America, or any State thereof or any other country or political subdivision thereof or otherwise, and all common law rights relating to the foregoing, and (ii) the right to obtain all reissues, extensions or renewals of the foregoing (the subject matter of clause (a) is collectively referred to as the “Trademark”), (b) all trademark licenses for the grant by or to the Company of any right to use any trademark, (c) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clause (a), and to the extent applicable clause (b), (d) the right to sue third parties for past, present and future infringements of any Trademark Collateral described in clause (a) and, to the extent applicable, clause (b), and (e) all Proceeds of, and rights associated with, the foregoing, including any claim by the Company against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration, or Trademark license, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license and all rights corresponding thereto throughout the world.

“ Trade Secrets Collateral ” means all common law and statutory trade secrets and all other confidential, proprietary or useful information and all know how obtained by or used in or contemplated at any time for use in the business of the Company, (all of the foregoing being collectively called a “Trade Secret”), including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licenses, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

“ Vehicles ” shall mean all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state.

3. Grant of Security Interest . The Company hereby grants to Collateral Agent, for the ratable benefit of the Investors, a continuing security interest in and continuing lien on the “**Collateral**” described in Section 4 below to secure the prompt and complete payment of the Obligations, including all amounts due under the Notes plus all interest, costs, expenses, and reasonable attorneys’ fees, which may be made or incurred by the Collateral Agent and/or Investors in the disbursement, administration, and collection of such amounts, and in the protection, maintenance, and liquidation of the Collateral (collectively, “**Liabilities**”). This Agreement shall be and become effective when, and continue in effect, as long as any Liabilities of the Company to Investors are outstanding and unpaid, and except as expressly permitted herein, the Company will not sell, assign, transfer, pledge or otherwise dispose of or encumber any Collateral to any third party while this Agreement is in effect without the prior written consent of the Collateral Agent and Investors holding Notes representing at least two thirds (66-2/3%) of the unpaid principal under all outstanding Notes (the “ **Required Holders** ”).

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

- (1) all Accounts;
- (2) all Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper);
- (3) all Commercial Tort Claims;
- (4) all Deposit Accounts other than payroll, withholding tax and other fiduciary Deposit Accounts;
- (5) all Documents;
- (6) all General Intangibles;
- (7) all Goods (including, without limitation, all Inventory, Equipment and Fixtures);
- (8) all Instruments;
- (9) all Investment Property;
- (10) all Letter-of-Credit Rights (whether or not the letter of credit is evidenced by a writing);
- (11) all Intellectual Property;
- (12) all Supporting Obligations;
- (13) all Vehicles;

(14) medical, scientific or research-related assets of every kind or nature, including without limitation, blood samples, databases, research materials, and medical research and data; all books and records pertaining to the Collateral; and

(15) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security, guarantees and other Supporting Obligations given with respect to any of the foregoing.

5. Purchase Money Liens. The Company hereby agrees not to acquire any Equipment or Fixtures subject to a purchase money lien unless it obtains the prior written consent of the Required Holders. Any Equipment or Fixtures acquired pursuant to this section and subject to a purchase money lien shall not be a part of the Collateral so long as the liens created hereunder are specifically prohibited by the terms of such purchase money lien; *provided* that this exclusion shall only apply to the specific Equipment and/or Fixtures acquired with the proceeds of such purchase money lien.

6. Perfection of Security Interest. The Company shall execute and deliver to the Collateral Agent, concurrently with the Company's execution of this Agreement and at any time or times hereafter (and pay the cost of filing or recording same in all public offices deemed necessary by Collateral Agent), all financing statements, assignments, certificates of title, applications for vehicle titles, affidavits, reports, notices, schedules of Accounts, designations of inventory, letters of authority and all other documents that Collateral Agent may reasonably request, in form satisfactory to the Collateral Agent, to perfect and maintain the Collateral Agent's perfected security interests in the Collateral. The Company further agrees, from time to time as requested by the Collateral Agent, to execute and deliver to the Collateral Agent any Patent Security Agreements, Trademark Security Agreements or any other documents necessary or advisable to perfect the Collateral Agent's security interest in any Intellectual Property, and further authorizes Collateral Agent, its agents, attorneys, and representatives, to file such agreements or documents, and amendments thereto, at the Company's expense, in the office of the appropriate governmental agency. In addition, the Company irrevocably authorizes Collateral Agent, its agents, attorneys, and representatives, to file financing statements, and amendments thereto, at the Company's expense, necessary to establish and maintain Collateral Agent's perfected security interest in the Collateral. Any such financing statement to be filed may describe the assets and property to be encumbered hereby in a generic description such as "all assets of the debtor," or words of similar effect. In order to fully consummate all of the transactions contemplated hereunder, the Company shall make appropriate entries on its books and records disclosing Collateral Agent's security interests in the Collateral. The Company and the Collateral Agent shall execute and deliver, within thirty (30) days of closing, a Deposit Account Control Agreement in such form as shall be mutually acceptable, pursuant to which the Company will agree to grant the Investors certain control rights relating to certain of the Company's bank accounts.

7. Warranties. The Company warrants and agrees that, except as set forth on SCHEDULE 7, while any of the Liabilities remain unperformed and unpaid: (a) the Company is the owner of the Collateral free and clear of all liens or security interests and all chattel paper constituting Collateral evidences a perfected security interest in the goods covered by it, free from all other liens and security interests, and no financing statement other than that of Collateral Agent's is on file covering the Collateral or any of it and if Inventory is represented or covered by documents of title, the Company is the owner of the documents, free of all liens and security interest other than Collateral Agent's security interest; (b) the Company's exact legal name is as set forth above; (c) the Company is an organization of the type and organized in the jurisdiction set forth above; (d) the address of the Company's principal office is as set forth below, while the addresses of the Company's other places of business where Collateral is now or may in the future be located, and the Company's business locations shall not be changed without the prior written consent of Collateral Agent, and the Company further warrants that the Collateral, wherever located, is covered by this Agreement; (e) the Collateral will not be used, nor will the Company permit the Collateral to be used, for any unlawful purpose, whatever; (f) the Company shall at all times maintain the Collateral in first class condition and repair; (g) the Company will indemnify and hold Collateral Agent and Investors harmless against claims of any persons or entities not party to this Agreement concerning disputes arising over the Collateral; and (h) the Collateral is or will be located at the following address: 2635 Technology Forest Blvd., The Woodlands, Texas 77381.

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

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

10. Sale, Collections, Etc.

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

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

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

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

13. Event of Default.

13.1 An “**Event of Default**” shall exist as and when provided under the Notes.

13.2 Upon the occurrence of an Event of Default, the Notes and all other Liabilities may (notwithstanding any provisions thereof) at the option of the Collateral Agent, and without demand or notice of any kind, be declared, and thereupon immediately shall become due and payable, and the Collateral Agent may exercise from time to time any rights and remedies, including the right to immediate possession of the Collateral, available to the Collateral Agent and/or Investors under the Texas UCC or otherwise applicable Texas law. The Company agrees, in case of an Event of Default, to assemble, at its expense, all the Collateral at a convenient place acceptable to the Collateral Agent and to pay all costs of Collateral Agent and Investors of collection of the Notes and all other Liabilities, and enforcement of rights hereunder, including attorneys’ fees and legal expenses, participation in bankruptcy proceedings, expense of locating the Collateral and expenses of any repairs to any realty or other property to which any of the Collateral may be affixed or be a part. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if sent at least seven days before such disposition, postage prepaid, addressed to the undersigned either at the address shown below, or at any other address of the undersigned appearing on the records of the Collateral Agent. Notwithstanding the foregoing, the Collateral Agent shall not be obligated to declare the Notes and other Liabilities due or, having done so, to take any action authorized hereunder or by law with respect to the Collateral. If the Collateral Agent fails to take any action pursuant to this Section 13.2 within sixty (60) days of being notified in writing of an Event of Default, any Investor may, at its option, exercise the rights granted to the Collateral Agent under this Section 13.2 or by law (the “**Substitute Collateral Agent**”). *Provided, however*, that any amounts realized from the sale of Collateral or otherwise hereunder shall first be distributed to reimburse the costs and expenses, including but not limited to legal expenses and commissions, of the Collateral Agent and the Substitute Collateral Agent in enforcing the rights hereunder and, second, to all Investors pro-rata based upon the amount owed to each Investor pursuant to the Notes or other Obligations held by the Investor. Except as provided in the immediately preceding sentence with respect to proceeds of sale, the Collateral Agent and any Investor exercising rights pursuant to this Section 13.2 shall not be liable to the Company or other Investors for any action taken or not taken with respect to the Collateral other than willful misconduct.

14. Collateral Agent.

14.1 Appointment, Duties. Each Investor hereby appoints and authorizes the Collateral Agent to take such action as the Collateral Agent on its behalf and to exercise such powers under this Agreement and the other Transaction Documents as are delegated to the Collateral Agent by the terms hereof and thereof, together with such other powers as are incidental thereto or as the Collateral Agent and the Investors may agree. The Collateral Agent will have no duties, responsibilities, obligations or liabilities other than those expressly set forth in this agreement and the other Transaction Documents, and no additional duties, responsibilities, obligations or liabilities will be inferred from the provisions of this Agreement or the Transaction Documents or imposed on the Collateral Agent. As to actions that the Collateral Agent is not expressly required to take pursuant to the provisions of this Agreement or the other Transaction Documents (including enforcement or collection of the Notes), the Collateral Agent will not exercise any discretion or take any action, but will be required to act or to refrain from acting (and will be fully protected in so acting or refraining from acting) solely upon the written instructions of the Required Holders, and such instructions will be binding upon all of the Investors, *provided* that the Collateral Agent will in no event be required to take any action which exposes the Collateral Agent to personal liability for which it is not indemnified hereunder, or which is contrary to the Transaction Documents or law or with respect to which the Collateral Agent does not receive adequate instructions from the Required Holders. The Collateral Agent has no duties or relationship of trust or agency with or to the Company or any of its Affiliates.

14.2 Exercise of Rights and Remedies.

(a) The Collateral Agent shall administer the Collateral in the manner contemplated by this Agreement and the other Transaction Documents, and exercise, but, only upon the written instruction of, and on behalf of, the Required Holders in accordance with this Agreement, such rights and remedies with respect to the Collateral as are granted to it under this Agreement and applicable law.

(b) Upon the request of the Collateral Agent or any other Investor, each Investor will provide the Collateral Agent and each other Investor notice of the amount of outstanding Liabilities owed by the Company to such Investor under the Transaction Documents. In addition, each Investor shall provide the Collateral Agent any other information that the Collateral Agent may reasonably request in connection with the Collateral Agent's duties and responsibilities hereunder.

(c) The Collateral Agent shall take any and all actions and shall exercise such rights, remedies and options which it may have under this Agreement and the Transaction Documents as and to the extent directed from time to time by the Required Holders, including realization and foreclosure on all or any portion of the Collateral.

(d) The proceeds of any sale, disposition or other realization or foreclosure by the Collateral Agent upon the Collateral or any portion thereof pursuant to this Agreement shall be governed by this Section 14.2(d). Any non-cash proceeds resulting from any such sale, disposition or other realization or foreclosure shall, unless otherwise directed by the Required Holders, be held by the Collateral Agent for the benefit of the Investors until later sold or otherwise converted into cash at the written direction of the Required Holders, at which time the Collateral Agent shall apply such cash in accordance with this Section 14.2(d). The Collateral Agent shall distribute any cash proceeds net of expenses resulting from any sale, disposition or other realization or foreclosure of the Collateral to the Investors, promptly after receipt thereof, on a pro rata basis in accordance with the respective outstanding amounts of the Liabilities owed to each.

(e) The Investors and the Collateral Agent hereby agree that if, at any time during the term of this Agreement, any Investor or the Collateral Agent receives any payment or distribution of assets of the Company of any kind or character, including monies or cash proceeds resulting from liquidation of the Collateral, other than in accordance with the terms of this Agreement, such Investor or the Collateral Agent shall hold such payment or distribution in trust for the benefit of the Investors and shall immediately remit such payment or distribution to the Collateral Agent for application or distribution, as the case may be, in accordance with the terms of this Agreement.

14.3 Rights of Collateral Agent.

(a) The Collateral Agent may delegate any of its responsibilities or duties under this Agreement or the Transaction Documents to one or more agents or attorneys and the Collateral Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(b) None of the Collateral Agent, its agents, its attorneys or any of their respective Affiliates will be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or the Transaction Documents, except that each will be liable for its own gross negligence, willful misconduct or a material breach of the Collateral Agent's obligations under this Agreement. Without limiting the generality of the foregoing, the Collateral Agent: (i) may treat the payee of any Note as the holder thereof until the Collateral Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel of its selection, independent public accountants and other experts selected by it and will not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (iii) makes no representation or warranty to any Investor and will not be responsible to any Investor for any statements, representations or warranties made in or in connection with the Transaction Documents; (iv) will not, except to the extent directed and indemnified by the Required Holders, have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of the Transaction Documents or to inspect the Collateral or the books and records or any other properties of the Company; (v) will not be responsible to any Investor for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Transaction Document or any other document or instrument furnished pursuant thereto, or for the failure of any Person (other than the Collateral Agent) to perform its obligations under any Transaction Document; and (vi) will incur no liability under or in respect of this Agreement or any other Transaction Document or otherwise by acting upon any notice, consent, waiver, certificate or other writing or instrument (including facsimiles, telexes, telegrams and cables) believed by it to be genuine and signed or sent by the proper Person or Persons.

(c) The Collateral Agent will not be deemed to have knowledge or notice of any Default or Event of Default unless and until it has received written notice from the Company or an Investor referring to the Notes and this Agreement, describing the Default or Event of Default and stating that such notice is a “notice of default.”

(d) In the event not otherwise paid by the Company pursuant to Section 15 of this Agreement, each Investor agrees to pay the Collateral Agent, upon demand, its pro-rata share of the Collateral Agent’s documented out-of-pocket expenses, including the fees and expenses of its counsel (and any local counsel) and of any experts and agents in connection with (i) the administration of this Agreement and the other Transaction Documents, (ii) the custody or preservation of, or the sale of, collection from or other realization upon, any of the Collateral, (iii) the exercise or enforcement (whether through negotiations, legal proceedings or otherwise) of any of the rights of the Collateral Agent or the Investors hereunder or under the Transaction Documents or (vi) the failure by the Company to perform or observe any of the provisions hereof or of any of the Transaction Documents. In the event the Investors have made payments pursuant to this Section 14.3(d), any corresponding amounts subsequently paid by the Company to the Collateral Agent pursuant to Section 15 shall be returned to the Investors on a pro-rata basis. The agreements in this Section 14.3(d) shall survive the later of (i) payment and satisfaction in full of the Liabilities, (ii) the resignation or removal of the Collateral Agent, and (iii) the termination of this Agreement.

(e) No provision of this Agreement shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(f) The Collateral Agent shall be provided executed or true and correct copies of each amendment, notice, waiver, consent or certificate made or delivered with respect to this Agreement or any of the other Transaction Documents sufficiently far in advance of the Collateral Agent being required to take action under this Agreement or any other Transaction Document or in respect of any such notice, waiver, consent or other certificate delivered in connection therewith so as to allow the Collateral Agent to take any such action.

14.4 No Reliance . Each Investor acknowledges that neither the Collateral Agent nor any of its Affiliates has made any representations or warranties with respect to the Company or any other matter, and agrees that no review or other action by the Collateral Agent or any of its Affiliates will be deemed to constitute any such representation or warranty. Each Investor acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Investor, and based on the documentation and information referred to in the Purchase Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Transaction Documents to which it is party. Each Investor also acknowledges and agrees that it will, independently and without reliance upon the Collateral Agent or any other Investor, and based on such documents and information as it will deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Transaction Documents. The Collateral Agent will provide to any Investor any information or documents concerning or relating to the Company or any other Person or matter that may come into the Collateral Agent’s possession.

14.5 Indemnification, Bankruptcy.

(a) Each Investor, by its consent hereto, hereby agrees to indemnify the Collateral Agent, in its capacity as such, its officers, directors, shareholders, controlling persons, employees, agents and servants (each “ **Indemnified Party** ”) from and against any and all claims, damages, losses, liabilities, obligations, penalties, actions, causes of action, judgments, suits, costs, expenses or disbursements (including, without limitation, reasonable attorneys’ and consultants’ fees and expenses) (collectively “ **Damages** ”) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnified Party (or which may be claimed against any Indemnified Party by any Person) by reason of, in connection with or in any way relating to or arising out of, (i) any Transaction Document, (ii) any action taken or omitted by the Collateral Agent in compliance with the provisions of this Agreement and the Transaction Documents or (iii) any claim based on any misstatement, inaccuracy or omission in any oral or written information provided by the Collateral Agent or any of its representatives in connection with this Agreement, the Collateral, the Notes or the other Transaction Documents, *provided* that each Investor will not be liable to any Indemnified Party for any portion of such claims, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses or disbursements resulting from such Indemnified Party’s gross negligence or willful misconduct as determined in a final, non-appealable judgment by a court of competent jurisdiction.

(b) Nothing contained herein shall limit or restrict the independent right of any Investor to initiate an action or actions in any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar proceeding in its individual capacity and to appear or be heard on any matter before the bankruptcy or other applicable court in any such proceeding, including, without limitation, with respect to any question concerning post-petition financing arrangements. The Collateral Agent is not entitled to initiate such actions on behalf of any Investor or to appear and be heard on any matter before the bankruptcy or other applicable court in any such proceeding as the representative of any Investor. The Collateral Agent is not authorized in any such proceeding to enter into any agreement for, or give any authorization or consent with respect to, the post-petition usage of the Collateral, unless such agreement, authorization or consent has been approved in writing by the Required Holders. This Agreement shall survive the commencement of any such bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar proceeding.

14.6 Resignation and Removal of the Collateral Agent. The Collateral Agent may resign at any time by giving at least sixty (60) days' prior written notice thereof to the Investors and the Company and may be removed at any time by the Required Holders, with any such resignation or removal to become effective only upon the appointment of a successor Collateral Agent under this Section 14.6. Upon any such resignation or removal, (i) the Required Holders will have the right to appoint a successor Collateral Agent, and (ii) unless a Default or Event of Default shall have occurred and be continuing, the Company shall have the right to approve such appointed successor Collateral Agent, such approval not to be unreasonably withheld. If no successor Collateral Agent will have been so appointed by the Required Holders and will have accepted its appointment within forty-five (45) days after the resignation or removal of the retiring Collateral Agent, the retiring Collateral Agent or the Required Holders may, at the expense of the Company, petition a court of competent jurisdiction for the appointment of a successor Collateral Agent. Upon the acceptance of its appointment as Collateral Agent, the successor Collateral Agent will thereupon succeed to and be vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent will be discharged from its duties and obligations under the Security Documents. After any retiring Collateral Agent's resignation or removal, the provisions of this Agreement will inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent.

15. Expenses. The Company agrees to pay or promptly reimburse the Collateral Agent and any Investor for all advances, charges, costs and expenses (including, without limitation, all costs and expenses of holding, preparing for sale and selling, collecting or otherwise realizing upon the Collateral and all attorneys' fees, legal expenses and court costs) incurred by any Investor in connection with the exercise of its respective rights and remedies under this Agreement, including, without limitation, any advances, charges, costs and expenses that may be incurred in any effort to enforce any of the provisions of this Agreement or any obligation of the Company in respect of the Collateral or in connection with (i) the preservation of the liens in favor of, or the rights of the Collateral Agent or any other Investor under this Agreement or (ii) any actual or attempted sale, lease, disposition, exchange, collection, compromise, settlement or other realization in respect of, or care of, the Collateral, including all such costs and expenses incurred in any bankruptcy, reorganization, workout or other similar proceeding. All amounts for which the Company is liable pursuant to this Section 15 shall be due and payable by the Company to the Collateral Agent or the Investors upon demand.

16. General. The Company hereby irrevocably appoints the Collateral Agent (and, as applicable, the Substitute Collateral Agent) as the Company's attorney-in-fact, with full authority in the place and stead of the Company and in the name of the Company, from time to time in its discretion to take any action and to execute any instrument that it may deem reasonably necessary or advisable to accomplish the purposes of this Agreement.

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

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Texas without regard to the choice of law principles thereof. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Texas located in Harris County and the United States District Court for the Southern District of Texas for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. **EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER**. Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The rights and privileges of Collateral Agent, Substitute Collateral Agent or Investors hereunder shall inure to the benefit of their successors and assigns and this Agreement shall be binding on all heirs, executors, administrators, assigns and successors of the Company.

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

This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior written and oral communications or understandings. This Agreement may be amended or supplemented, and any provision or term hereof may be waived, by a writing signed on behalf of each of (i) the Company, (ii) the Collateral Agent and (iii) the Required Holders. The Company acknowledges receipt of a true and complete copy of this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

[*signature page follows*]

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

THE COMPANY:

OPEXA THERAPEUTICS, INC.

By: _____
Name: Neil K. Warma
Title: President and Chief Executive Officer

COLLATERAL AGENT AND INVESTOR:

ALKEK & WILLIAMS VENTURES, LTD.,
a Texas limited partnership

By: _____
Name: _____
Title: _____

[signature page to Security Agreement]

THE INVESTORS:

By: _____
Printed
Name: _____
Title (if applicable): _____
Entity Name (if applicable): _____

[*signature page to Security Agreement*]

SCHEDULE 7

None



DEPOSIT ACCOUNT CONTROL AGREEMENT

(Access Restricted Immediately)

This **Deposit Account Control Agreement** (the “Agreement”), dated as of the date specified on the initial signature page of this Agreement, is entered into by and among **Opexa Therapeutics, Inc.**, a Texas corporation (“Company”), **Alkek & Williams Ventures, Ltd.**, a Texas limited partnership, as collateral agent (“Secured Party”) and **Wells Fargo Bank, National Association** (“Bank”), and sets forth the rights of Secured Party and the obligations of Bank with respect to the deposit accounts of Company at Bank identified at the end of this Agreement as the Collateral Accounts (each hereinafter referred to individually as a “Collateral Account” and collectively as the “Collateral Accounts”). Each account designated as a Collateral Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for deposit reporting purposes and integrated with the Collateral Account by an arrangement in which deposits made through subaccounts are posted only to the Collateral Account.

1. **Secured Party’s Interest in Collateral Accounts.** Secured Party represents that it is either (i) an investor who has extended credit to Company and has been granted a security interest in the Collateral Accounts or (ii) such an investor and the agent for a group of such investors. Company hereby confirms the security interest granted by Company to Secured Party in all of Company’s right, title and interest in and to the Collateral Accounts and all sums now or hereafter on deposit in or payable or withdrawable from the Collateral Accounts (the “Collateral Account Funds”). In furtherance of the intentions of the parties hereto, this Agreement constitutes written notice by Secured Party to Bank of Secured Party’s security interest in the Collateral Accounts.
2. **Secured Party Control.** Bank, Secured Party and Company each agree that Bank will comply with instructions given to Bank by Secured Party directing disposition of funds in the Collateral Accounts (“Disposition Instructions”) without further consent by Company. Except as otherwise required by law, Bank will not agree with any third party to comply with instructions for disposition of funds in the Collateral Accounts originated by such third party.
3. **No Company Access to Collateral Accounts.** Unless separately agreed to in writing by Secured Party, Company agrees that it will not be able to make debits or withdrawals from or otherwise have access to the Collateral Accounts or any Collateral Account Funds, and that Secured Party will have exclusive access to the Collateral Accounts and Collateral Account Funds.

4. **Transfers in Response to Disposition Instructions.** Notwithstanding the provisions of the “Secured Party Control” section of this Agreement, unless Bank separately agrees in writing to the contrary, Bank will have no obligation to disburse funds in response to Disposition Instructions other than by the appropriate disbursement method expressly set forth in this Section 4. If at the time this Agreement is originally executed, Secured Party has fully completed wire transfer instructions for a transfer destination account (“Destination Account”) on the initial signature page of this Agreement, including the Destination Account number and the name and ABA number of the financial institution at which the Destination Account is maintained, then Bank agrees, on each day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday (each a “Business Day”) during the term of this Agreement, to transfer to the Destination Account by standing wire (or alternative funds transfer method acceptable to Bank in its sole discretion) the full amount of the collected and available balance in the Collateral Accounts at the beginning of such Business Day. Secured Party may at any time instruct Bank to discontinue transferring funds to the original Destination Account and begin transferring funds to a new Destination Account, in accordance with the notice provisions of this Agreement. Bank will comply with such notice within a reasonable period of time not to exceed two (2) Business Days. Except as otherwise expressly set forth in this Section 4, Bank will have no obligation to disburse funds in response to Disposition Instructions other than by cashier’s check payable to Secured Party. Any disposition of funds which Bank makes under this Section 4 or otherwise in response to Disposition Instructions is subject to Bank’s standard policies, procedures and documentation governing the type of disposition made; provided, however, that in no circumstances will any such disposition require Company’s consent. To the extent any Collateral Account is a certificate of deposit or time deposit, Bank will be entitled to deduct any applicable early withdrawal penalty prior to disbursing funds from such account in response to Disposition Instructions. To the extent Secured Party requests that funds be transferred from any Collateral Account in a currency different from the currency denomination of the Collateral Account, the funds transfer will be made after currency conversion at Bank’s then current buying rate for exchange applicable to the new currency.
5. **Lockboxes.** To the extent items deposited to a Collateral Account have been received in one or more post office lockboxes maintained for Company by Bank (each a “Lockbox”) and processed by Bank for deposit, Company acknowledges that Company has granted Secured Party a security interest in all such items (the “Remittances”). During the term of this Agreement, Company will have no right or ability to instruct Bank regarding the receipt, processing or deposit of Remittances, and Secured Party alone will have the right and ability to so instruct Bank. Company and Secured Party acknowledge and agree that Bank’s operation of each Lockbox, and the receipt, retrieval, processing and deposit of Remittances, will at all times be governed by Bank’s Master Agreement for Treasury Management Services or other applicable treasury management services agreement, and by Bank’s applicable standard lockbox Service Description.
6. **Balance Reports and Bank Statements.** Bank agrees, at the request of Secured Party on any Business Day, to make available to Secured Party a report (“Balance Report”) showing the opening available balance in the Collateral Accounts as of the beginning of such Business Day, by a transmission method determined by Bank, in Bank’s sole discretion. Company expressly consents to this transmission of information. Bank will, on receiving a written request from Secured Party, send to Secured Party by United States mail, at the address indicated for Secured Party after its signature to this Agreement, duplicate copies of all periodic statements on the Collateral Accounts which are subsequently sent to Company.
7. **Returned Items.** Secured Party and Company understand and agree that the face amount (“Returned Item Amount”) of each Returned Item will be paid by Bank debiting the Collateral Account to which the Returned Item was originally credited, without prior notice to Secured Party or Company. As used in this Agreement, the term “Returned Item” means (i) any item deposited to a Collateral Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or the occurrence or timeliness of any drawee’s notice of non-payment; (ii) any item subject to a claim against Bank of breach of transfer or presentment warranty under the Uniform Commercial Code (as adopted in the applicable state) or Regulation CC (12 C.F.R. §229), as in effect from time to time; (iii) any automated clearing house (“ACH”) entry credited to a Collateral Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or adjustment; (iv) any credit to a Collateral Account from a merchant card transaction, against which a contractual demand for chargeback has been made; and (v) any credit to a Collateral Account made in error. Company agrees to pay all Returned Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Collateral Account to cover the Returned Item Amounts on the day Bank attempts to debit them from the Collateral Account. Secured Party agrees to pay all Returned Item Amounts within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent that (i) the Returned Item Amounts are not paid in full by Company within five (5) calendar days after demand on Company by Bank, and (ii) Secured Party has received proceeds from the corresponding Returned Items under this Agreement.

8. **[Reserved.]**
9. **Bank Fees.** Company agrees to pay all Bank's fees and charges for the maintenance and administration of the Collateral Accounts and for the treasury management and other account services provided with respect to the Collateral Accounts and any Lockboxes (collectively "Bank Fees"), including, but not limited to, the fees for (a) Balance Reports provided on the Collateral Accounts, (b) funds transfer services received with respect to the Collateral Accounts, (c) lockbox processing services, (d) Returned Items, (e) funds advanced to cover overdrafts in the Collateral Accounts (but without Bank being in any way obligated to make any such advances), and (f) duplicate bank statements. The Bank Fees will be paid by Bank debiting one or more of the Collateral Accounts on the Business Day that the Bank Fees are due, without notice to Secured Party or Company. If there are not sufficient funds in the Collateral Accounts to cover fully the Bank Fees on the Business Day Bank attempts to debit them from the Collateral Accounts, such shortfall or the amount of such Bank Fees will be paid by Company to Bank, without setoff or counterclaim, within five (5) calendar days after demand from Bank. Secured Party agrees to pay any Bank Fees within fifteen (15) calendar days after demand, without setoff or counterclaim, to the extent such Bank Fees are not paid in full by Company within five (5) calendar days after demand on Company by Bank.
10. **Account Documentation.** Except as specifically provided in this Agreement, Secured Party and Company agree that the Collateral Accounts will be subject to, and Bank's operation of the Collateral Accounts will be in accordance with, the terms of Bank's applicable deposit account agreement governing the Collateral Accounts ("Account Agreement"). In addition to the Account Agreement, each Collateral Account operated as a "Multi-Currency Account" will be governed by Bank's Master Agreement for Treasury Management Services or other applicable treasury management services agreement, and by Bank's Multi-Currency Account Service Description in effect from time to time. All documentation referenced in this Agreement as governing any Collateral Account or the processing of any Remittances is hereinafter collectively referred to as the "Account Documentation".
11. **Partial Subordination of Bank's Rights.** Bank hereby subordinates to the security interest of Secured Party in the Collateral Accounts (i) any security interest which Bank may have or acquire in the Collateral Accounts, and (ii) any right which Bank may have or acquire to set off or otherwise apply any Collateral Account Funds against the payment of any indebtedness from time to time owing to Bank from Company, except for debits to the Collateral Accounts permitted under this Agreement for the payment of Returned Item Amounts or Bank Fees.
12. **Bankruptcy Notice; Effect of Filing.** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company, Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency. With respect to any obligation of Secured Party hereunder which requires prior demand on Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company will automatically eliminate the necessity of such demand on Company by Bank, and will immediately entitle Bank to make demand on Secured Party with the same effect as if demand had been made on Company and the time for Company's performance had expired.

13. **Legal Process, Legal Notices and Court Orders.** Bank will comply with any legal process, legal notice or court order it receives in relation to a Collateral Account if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.
14. **Indemnification.** Company will indemnify, defend and hold harmless Bank, its officers, directors, employees, and agents (collectively, the “Indemnified Parties”) from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees) (collectively “Losses and Liabilities”) Bank may suffer or incur as a result of or in connection with (a) Bank complying with any binding legal process, legal notice or court order referred to in the immediately preceding section of this Agreement, (b) Bank following any instruction or request of Secured Party, including but not limited to any Disposition Instructions, or (c) Bank complying with its obligations under this Agreement, except to the extent such Losses and Liabilities are caused by Bank’s gross negligence or willful misconduct. To the extent such obligations of indemnity are not satisfied by Company within five (5) days after demand on Company by Bank, Secured Party will indemnify, defend and hold harmless Bank and the other Indemnified Parties against any and all Losses and Liabilities Bank may suffer or incur as a result of or in connection with Bank following any instruction or request of Secured Party, except to the extent such Losses and Liabilities are caused by Bank’s gross negligence or willful misconduct.
15. **Bank’s Responsibility.** This Agreement does not create any obligations of Bank, and Bank makes no express or implied representations or warranties with respect to its obligations under this Agreement, except for those expressly set forth herein. In particular, Bank need not investigate whether Secured Party is entitled under Secured Party’s agreements with Company to give Disposition Instructions. Bank may rely on any and all notices and communications it believes are given by the appropriate party. Bank will not be liable to Company, Secured Party or any other party for any Losses and Liabilities caused by (i) circumstances beyond Bank’s reasonable control (including, without limitation, computer malfunctions, interruptions of communication facilities, labor difficulties, acts of God, wars, or terrorist attacks) or (ii) any other circumstances, except to the extent such Losses and Liabilities are directly caused by Bank’s gross negligence or willful misconduct. In no event will Bank be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to Bank, and regardless of the form of the claim or action, or the legal theory on which it is based. Any action against Bank by Company or Secured Party under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.
16. **Termination.** This Agreement may be terminated by Secured Party or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated immediately upon written notice (i) from Bank to Company and Secured Party should Company or Secured Party fail to make any payment when due to Bank from Company or Secured Party under the terms of this Agreement, or (ii) from Secured Party to Bank on termination or release of Secured Party’s security interest in the Collateral Accounts; provided that any notice from Secured Party under clause (ii) of this sentence must contain Secured Party’s acknowledgement of the termination or release of its security interest in the Collateral Accounts. Company’s and Secured Party’s respective obligations to report errors in funds transfers and bank statements and to pay Returned Item Amounts and Bank Fees, as well as the indemnifications made, and the limitations on the liability of Bank accepted, by Company and Secured Party under this Agreement will continue after the termination of this Agreement with respect to all the circumstances to which they are applicable, existing or occurring before such termination, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination will also survive such termination. Upon any termination of this Agreement, (i) Bank will transfer all collected and available balances in the Collateral Accounts on the date of such termination in accordance with Secured Party’s written instructions, and (ii) Bank will close any Lockbox and forward any mail received at the Lockbox unopened to such address as is communicated to Bank by Secured Party under the notice provisions of this Agreement for a period of three (3) months after the effective termination date, unless otherwise arranged between Secured Party and Bank, provided that Bank’s fees with respect to such disposition must be prepaid directly to Bank at the time of termination by cashier’s check payable to Bank or other payment method acceptable to Bank in its sole discretion.

17. **Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement.
18. **Notices.** All notices from one party to another must be in writing, must be delivered to Company, Secured Party and/or Bank at their contact addresses specified after their signatures to this Agreement, or any other address of any party communicated to the other parties in writing, and will be effective on receipt. Any notice sent by a party to this Agreement to another party must also be sent to all other parties to this Agreement. Bank is authorized by Company and Secured Party to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Secured Party, (b) Bank reasonably believes that they are so made, and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order.
19. **Successors and Assigns.** Neither Company nor Secured Party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Secured Party may transfer its rights and duties under this Agreement to (i) a transferee to which, by contract or operation of law, Secured Party transfers substantially all of its rights and duties under the financing or other arrangements between Secured Party and Company, or (ii) if Secured Party is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative; provided that as between Bank and Secured Party, Secured Party will not be released from its obligations under this Agreement unless and until Bank receives any such transferee's binding written agreement to assume all of Secured Party's obligations hereunder. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Secured Party, which consent will not be unreasonably withheld or delayed; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.
20. **Governing Law.** This Agreement will be governed by and be construed in accordance with the laws of the state in which the office of Bank that maintains the Collateral Accounts is located, without regard to conflict of laws principles. This state will also be deemed to be Bank's jurisdiction, for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.

21. **Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.
22. **Counterparts.** This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures were on the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a “pdf” file) will be effective as delivery of a manually executed counterpart of the Agreement.
23. **Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company, on the one hand, and Bank and Secured Party, on the other hand, with respect to (a) the interest of Secured Party in the Collateral Accounts and Collateral Account Funds, and (b) Bank’s obligations to Secured Party in connection with the Collateral Accounts and Collateral Account Funds.

[SIGNATURE PAGES FOLLOW]

This Agreement has been signed by the duly authorized officers or representatives of Company, Secured Party and Bank on the date specified below.

Date: July 25, 2012

Collateral Account Numbers:

Destination Account Number:

Bank of Destination Account:

Account name:

Reference Data:

Frequency (Daily or Weekly):

Balance (Intraday or Start of Day):

OPEXA THERAPEUTICS, INC.

By: /s/ Neil K. Warma

Name: Neil K. Warma

Title: President and Chief Executive Officer

ALKEK & WILLIAMS VENTURES, LTD.

By: /s/ Scott B. Seaman

Name: Scott B. Seaman

Title: Attorney In Fact

Address for Notices:

2635 Technology Forest Boulevard

The Woodlands, TX 77381

Attention: Neil K. Warma, President and Chief Executive Officer

Address for Notices:

1100 Louisiana – Suite 5250

Houston, TX 77002

Attention: Scott B. Seaman, Attorney In Fact

[SIGNATURE PAGES CONTINUE]

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: /s/ John Whisnant

Name: John Whisnant

Title: Business Banking Manager

Address for Notices:

1000 Louisiana Street – 7th Floor

Houston, TX 77002

Attention: John Whisnant, Business Banking Manager

with copy to:

J. Michael Wright
Sr. Business Relationship Manager
21 Waterway - Suite 600
The Woodlands, TX 77380

Sandy Thomas
Business Associate
17317 North Freeway – 1st Floor
Houston, TX 77090

Rebecca Arseneau
Business Banking Manager
21 Waterway - Suite 600
The Woodlands, TX 77380

Glenn V. Godkin
Regional President
1000 Louisiana Street – 7th Floor
Houston, TX 77002

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (the “**Agreement**”) is made effective as of July 25, 2012, by and among Opexa Therapeutics, Inc., a Texas corporation (the “**Company**”), and each of the persons executing a copy of this Agreement (each an “**Investor**” and, collectively, the “**Investors**”).

The parties hereby agree as follows:

1. Certain Definitions.

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

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

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

“**Common Stock**” shall mean the Company’s common stock, par value \$0.01 per share, and any securities into which such shares may hereinafter be reclassified.

“**Investor**” or “**Investors**” shall mean a person or the persons executing a copy of this Agreement and the Purchase Agreement and any Affiliate of any Investor who is a subsequent holder of any Registrable Securities.

“**Issuable Shares**” shall mean the shares of Common Stock issuable upon (i) the conversion of the Series A Preferred Stock and upon the exercise of the Warrants, or (ii) as payment for any dividend or interest on the Series A Preferred Stock or the Notes.

“**Notes**” shall mean the 12% Convertible Secured Promissory Notes issued to the Investors pursuant to the Purchase Agreement, a form of which is attached to the Purchase Agreement as Exhibit A, which are convertible, upon the occurrence of certain events, into shares of the Series A Preferred Stock.

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

“**Purchase Agreement**” shall mean that certain Note Purchase Agreement by and among the Company and the Investors entered into contemporaneously with this Agreement.

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

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

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

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

“ **Series A Preferred Stock** ” shall mean the Company’s Series A Convertible Preferred Stock, no par value, which is convertible, upon the occurrence of certain events, into shares of the Company’s Common Stock.

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

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

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

2. Registration.

(a) Registration Statement. The Company shall prepare and file a Registration Statement on Form S-3, including the prospectus to be used in connection therewith, covering the resale of the Registrable Securities by the Investors (or, if Form S-3 is not then available to the Company, on such form of registration statement as is then available to effect a registration for resale of the Registrable Securities, subject to the prior written consent of the Investors) as promptly as practicable, but not later than one hundred twenty (120) days after the date of this Agreement (the “ **Filing Deadline** ”). Subject to any SEC comments, such Registration Statement shall include the plan of distribution attached hereto as Exhibit A (the “ **Plan of Distribution** ”). Such Registration Statement also shall cover, to the extent allowable under the 1933 Act (including Rule 416), such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions with respect to the Registrable Securities. Such Registration Statement shall not include any shares of Common Stock or other securities for the account of any other holder without the prior written consent of the Investors. The Registration Statement (and each amendment or supplement thereto, and any request for acceleration of effectiveness thereof) shall be provided in accordance with Section 2(c) to the Investors and their counsel prior to its filing or other submission. If a Registration Statement covering the Registrable Securities is not filed with the SEC on or prior to the Filing Deadline, the Company will make pro rata payments to each Investor, as liquidated damages and not as a penalty, in an amount equal to 1.0% of the aggregate amount invested by such Investor for each 30-day period or pro rata for any portion thereof following the Filing Deadline for which no Registration Statement is filed with respect to the Registrable Securities. Provided, however, in no event shall such liquidated damages exceed 6% of the aggregate amount invested by the Investor. Such payments shall constitute the Investors’ exclusive monetary remedy for such events, but shall not affect the right of the Investors to seek injunctive relief. Such payments shall be made to each Investor in cash and shall be paid monthly within three (3) Business Days of the end of the month for which such payment is accrued.

(b) Expenses. The Company will pay all expenses associated with the registration, including filing and printing fees, the Company's counsel and accounting fees and expenses, costs associated with clearing the Registrable Securities for sale under applicable state securities laws, listing fees, reasonable fees and expenses of one counsel to the Investors and the Investors' reasonable expenses in connection with the registration, but excluding discounts, commissions, fees of underwriters, selling brokers, dealer managers or similar securities industry professionals with respect to the Registrable Securities being sold.

(c) Effectiveness.

(i) The Company shall use its commercially reasonable efforts to cause such Registration Statement to be declared effective under the 1933 Act as promptly as reasonably practicable after the filing thereof. Any request for acceleration of the Registration Statement shall seek effectiveness at 5:00 p.m., New York time, or as soon thereafter as practicable. The Company shall notify the Investors by facsimile or e-mail as promptly as practicable, and in any event, prior to 9:00 a.m., New York time, on the day after any Registration Statement is declared effective, shall file with the SEC under Rule 424 a final Prospectus as promptly as practicable, and in any event, prior to 9:00 a.m., New York time, on the day after any Registration Statement is declared effective, and shall advise the Investors in writing that either (i) it has complied with the requirements of Rule 172 or (ii) it is unable to satisfy the conditions of Rule 172 and, as a result, Investors are required to deliver a copy of the Prospectus in connection with any sales of Registrable Securities (in which case, the Company shall deliver to the Investors a copy of the Prospectus to be used in connection with the sale or other disposition of the securities covered thereby). Notwithstanding the foregoing, there shall be no monetary penalty or liquidated damages imposed upon the Company if the Registration Statement is not declared effective by the SEC.

(ii) For not more than ninety (90) consecutive days or for a total of not more than one hundred eighty (180) days in any twelve (12) month period, the Company may delay the disclosure of material non-public information concerning the Company, by suspending the use of any Prospectus included in any registration contemplated by this Section containing such information, the disclosure of which at the time is not, in the good faith opinion of the Company, in the best interests of the Company (an "**Allowed Delay**"); provided, that the Company shall promptly (a) notify the Investors in writing of the existence of (but in no event, without the prior written consent of an Investor, shall the Company disclose to such Investor any of the facts or circumstances regarding) material non-public information giving rise to an Allowed Delay, (b) advise the Investors in writing to cease all sales under the Registration Statement until the end of the Allowed Delay and (c) use reasonable best efforts to terminate an Allowed Delay as promptly as practicable.

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

(a) use its commercially reasonable efforts to cause such Registration Statement to become effective as provided herein and to remain continuously effective for a period that will terminate upon the earlier of (i) the date on which all Registrable Securities covered by such Registration Statement as amended from time to time, have been sold, and (ii) the date on which all Registrable Securities covered by such Registration Statement may be sold pursuant to Rule 144 of the 1933 Act without regard to any volume limitation requirements under Rule 144 of the 1933 Act (the “**Effectiveness Period**”) and advise the Investors in writing when the Effectiveness Period has expired;

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

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

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

(e) prior to any public offering of Registrable Securities, use commercially reasonable efforts to (i) register or qualify or cooperate with the Investors and their counsel in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or blue sky laws of such jurisdictions requested by the Investors and (ii) do any and all other acts or things necessary or advisable to enable the distribution in such jurisdictions of the Registrable Securities covered by the Registration Statement; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 3(e), (ii) subject itself to general taxation in any jurisdiction where it would not otherwise be so subject but for this Section 3(e), or (iii) file a general consent to service of process in any such jurisdiction;

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

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

(h) otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the SEC under the 1933 Act and the 1934 Act, including, without limitation, Rule 172 under the 1933 Act, file any final Prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the 1933 Act, promptly inform the Investors in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Investors are required to deliver a Prospectus in connection with any disposition of Registrable Securities, and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder; and make available to its security holders, as soon as reasonably practicable, but not later than the Availability Date (as defined below), an earnings statement covering a period of at least twelve (12) months, beginning after the effective date of each Registration Statement, which earnings statement shall satisfy the provisions of Section 11(a) of the 1933 Act, including Rule 158 promulgated thereunder (for the purpose of this subsection 3(h), “**Availability Date**” means the 45th day following the end of the fourth fiscal quarter that includes the effective date of such Registration Statement, except that, if such fourth fiscal quarter is the last quarter of the Company’s fiscal year, “**Availability Date**” means the 90th day after the end of such fourth fiscal quarter).

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

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

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

5. Obligations of the Investors.

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

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

(c) Each Investor agrees that, upon receipt of any notice from the Company of either (i) the commencement of an Allowed Delay pursuant to Section 2(c)(ii) or (ii) the happening of an event pursuant to Section 3(g) hereof, such Investor will immediately discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities, until the Investor is advised by the Company that such dispositions may again be made.

6. Indemnification.

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

(b) Indemnification by the Investors. Each Investor agrees, severally but not jointly, to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors, officers, employees, stockholders and each person who controls the Company (within the meaning of the 1933 Act) against any losses, claims, damages, liabilities and expense (including reasonable attorney fees) resulting from any untrue statement of a material fact or any omission of a material fact required to be stated in the Registration Statement or Prospectus or preliminary Prospectus or amendment or supplement thereto or necessary to make the statements therein not misleading, to the extent, but only to the extent that such untrue statement or omission is contained in any information furnished in writing by such Investor or any controlling person of such Investor to the Company specifically for inclusion in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of an Investor be greater in amount than the dollar amount of the proceeds (net of all expense paid by such Investor in connection with any claim relating to this Section 6 and the amount of any damages such Investor has otherwise been required to pay by reason of such untrue statement or omission) received by such Investor upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation. In addition, an Investor shall not be liable hereunder to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of the Company's, or any underwriter's, or their representatives' failure to send or give a copy of a final Prospectus, as the same may be then supplemented or amended, to the person or entity asserting an untrue statement or alleged untrue statement or omission or alleged omission at or prior to the written confirmation of the sale of securities to such person or entity if such statement or omission was corrected in such final Prospectus.

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

(d) Contribution. If for any reason the indemnification provided for in the preceding paragraphs (a) and (b) is unavailable to an indemnified party or insufficient to hold it harmless, other than as expressly specified therein, then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the indemnified party and the indemnifying party, as well as any other relevant equitable considerations. No person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the 1933 Act shall be entitled to contribution from any person not guilty of such fraudulent misrepresentation. In no event shall the contribution obligation of a holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such holder in connection with any claim relating to this Section 6 and the amount of any damages such holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

7. Miscellaneous.

(a) Amendments and Waivers. This Agreement may be amended or waived only by a writing signed by (i) the Company and (ii) the Investors holding two thirds (66-2/3%) of the Issuable Shares (assuming conversion of the Notes and Series A Preferred Stock and exercise of the Warrants). The Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained the written consent to such amendment, action or omission to act, of the Investors holding two thirds (66-2/3%) of the Issuable Shares (assuming conversion of the Notes and Series A Preferred Stock and exercise of the Warrants).

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

(c) Assignments and Transfers by Investors. The provisions of this Agreement shall be binding upon and inure to the benefit of the Investors and their respective successors and assigns. An Investor may transfer or assign, in whole or from time to time in part, to one or more persons its rights hereunder in connection with the transfer of Registrable Securities by such Investor to such person, provided that such transferee or assignee shall execute a copy of this Agreement and that such Investor complies with all laws applicable thereto and provides written notice of assignment to the Company promptly after such assignment is effected.

(d) Assignments and Transfers by the Company. This Agreement may not be assigned by the Company (whether by operation of law or otherwise) without the prior written consent of the Investors holding two thirds (66-2/3%) of the Issuable Shares (assuming conversion of the Notes and Series A Preferred Stock and exercise of the Warrants), provided, however, that the Company may assign its rights and delegate its duties hereunder to any surviving or successor corporation in connection with a merger or consolidation of the Company with another corporation, or a sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation, without the prior written consent of the Investors holding two thirds (66-2/3%) of the Issuable Shares (assuming conversion of the Notes and Series A Preferred Stock and exercise of the Warrants), after notice duly given by the Company to each Investor.

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

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

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

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

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

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

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

[signature pages follows]

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

THE COMPANY:

OPEXA THERAPEUTICS, INC.

By: _____

Name: Neil K. Warma

Title: President and Chief Executive Officer

[signature page to Registration Rights Agreement]

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

THE INVESTORS:

By: _____
Printed
Name: _____
Title (if applicable): _____
Entity Name (if applicable): _____

[signature page to Registration Rights Agreement]

Exhibit A

Plan of Distribution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B

SELLING SHAREHOLDERS QUESTIONNAIRE

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

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

As used herein, “ *Fiscal Year* ” refers to the Company’s fiscal year ended December 31, 2011, and for previous fiscal years. Other *italicized* terms are defined in Appendix A to this Questionnaire.

If at any time prior to the effectiveness of the Registration Statement you discover that your answer to any question was inaccurate, or if any event occurring subsequent to your completion hereof and prior to the effectiveness of the Registration Statement would require a change in your answers to any questions, please contact **Neil Warma** by telephone at (281) 719-3437 immediately.

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

THE INVESTORS:

By: _____
Printed
Name: _____
Title (if applicable): _____
Entity Name (if applicable): _____

Dated: _____

I
GENERAL INFORMATION

Question 1(a) :

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

Answer:

Question 1(b) :

If the Selling Shareholder is not a natural *person* , please indicate whether the Selling Shareholder is one of the following (and circle as appropriate):

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

Yes _____ No _____

Question 1(c) :

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

Answer:

Question 1(d) :

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

Yes _____ No _____

Question 2 :

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

Answer:

Question 3 :

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

Yes ____ No ____

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

Yes ____ No ____

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

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

Yes ____ No ____

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

Yes ____ No ____

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

Question 4 :

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

Yes ____ No ____

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

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

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

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

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

Yes ____ No ____

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

Question 5 :

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

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

Yes ____ No ____

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

Yes ____ No ____

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

Yes ____ No ____

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

Yes ____ No ____

II
SECURITY OWNERSHIP

Question 6 : Your Securities Holdings.

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

Title of Equity Security (include warrants, options and convertible debt)	Number of Shares Beneficially Owned

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

Vesting Schedule(s):

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

Answer:

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

Answer:

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

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

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

Yes ____ No ____

If so, attach a copy.

Question 7 : Disclaimer of Beneficial Ownership.

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

Answer:

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

Yes ____ No ____

Question 8 :

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

Answer:

**III
CERTAIN TRANSACTIONS AND RELATIONSHIPS**

Question 9 :

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

Description of Transaction	Persons Involved	Nature of Interest	Amount of Transaction	Amount of Interest

Question 10 :

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

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

Answer:

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

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

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

3. “**Beneficially Owned**” or “**Beneficial Ownership** .”

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

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

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

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

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

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

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

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

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

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

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

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

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

Opexa Therapeutics Closes Secured Note Financing

Focuses on Initiation of Phase IIb Trial in SP-MS

THE WOODLANDS, Texas--(BUSINESS WIRE)--July 26, 2012-- **Opexa Therapeutics, Inc. (NASDAQ:OPXA)**, a biotechnology company developing a novel T-cell therapy for multiple sclerosis (MS), today announced the closing of a private offering of convertible secured promissory notes and warrants to purchase shares of common stock for gross proceeds of approximately \$4 million. Opexa expects to use proceeds from the financing to commence its planned Phase IIb clinical study of Tcelna™ in patients with Secondary Progressive MS (SP-MS). Participating in the financing were new investors and existing shareholders, including members of Opexa's Board of Directors.

"We are grateful for the support of our existing shareholders and their continued belief in the Company, along with the new investors who have joined this offering," commented Neil K. Warma, Opexa's President and CEO. "This capital should allow us to commence our planned Phase IIb clinical trial in SP-MS patients following the final review of our CMC submission by the FDA, which is expected shortly. The enthusiasm that has been generated by the MS community anticipating the start of this trial has been remarkable. It is a testament to what we believe is the true potential of the novel therapy we are developing and the impact it could have in addressing the significant unmet need of MS patients."

Mr. Warma added, "Initiating the trial will be a key milestone for the Company, allowing us to implement the many improvements we have made to the manufacturing process and clinical trial design. This financing should allow us to make meaningful progress with patient recruitment as well as continue to advance ongoing discussions with potential partners. Our planned clinical trial is expected to involve 180 patients, each receiving two annual courses of Tcelna treatment, with each course consisting of five subcutaneous injections per year. In order to continue the clinical study once commenced, we will need to secure a substantial amount of additional financing through a potential partnership or additional capital raises, or both."

The notes mature on July 25, 2014 and accrue interest at the rate of 12% per annum, compounded annually. Interest is payable semi-annually in either cash or registered shares of common stock at the Company's election. The notes are secured by substantially all of the Company's assets and are convertible into a new series of non-voting Convertible Preferred Stock. The notes can be converted at the option of the investors, subject to certain limitations and adjustments. Additionally, the Company can elect to convert the notes if (i) the Company's common stock closes at or above \$2.50 per share for 20 consecutive trading days or (ii) the Company achieves certain additional funding milestones to continue its clinical trial program.

The Convertible Preferred Stock accrues dividends at the rate of 8% per annum, which are cumulative and payable semi-annually in either cash or registered shares of the common stock at the Company's election. The Convertible Preferred Stock is convertible into shares of the Company's common stock at the option of the investors at a price of \$0.80 per share, subject to certain limitations and adjustments. Additionally, the Company can elect to convert the Convertible Preferred Stock if Opexa's common stock closes at or above \$4.00 per share for 20 consecutive trading days.

The warrants have an exercise price of \$1.25 per share, a five-year term, and are exercisable for 75% of the number of shares of common stock into which the notes are ultimately convertible, subject to certain limitations and adjustments. The Company can redeem the warrants at \$0.01 per share if the Company's common stock closes at or above \$2.50 per share for 20 consecutive trading days.

A portion of the funds will be maintained in a controlled account as part of the security interest granted by the Company to the investors. The Company committed to file a registration statement to register the underlying shares of common stock as soon as practicable.

About Opexa

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

For more information, visit the Company's website at www.opexatherapeutics.com.

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

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

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