

OPEXA THERAPEUTICS, INC.

FORM 10-Q (Quarterly Report)

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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the Quarterly Period Ended September 30, 2011

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934**

For the Transition Period from _____ to _____

Commission File Number: 001-33004



Opexa Therapeutics, Inc.

(Exact name of registrant as specified in its charter)

Texas
(State or other jurisdiction of
Incorporation or organization)

2635 Technology Forest Blvd.
The Woodlands, Texas 77381
(Address of principal executive
offices and zip code)

76-0333165
(I.R.S. Employer
Identification No.)

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Accelerated filer ☐
Smaller reporting company ☒

As of October 31, 2011, there were 23,048,488 shares of the issuer's Common Stock outstanding.

OPEXA THERAPEUTICS, INC.
(a development stage company)
For the Quarter Ended September 30, 2011

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements.

OPEXA THERAPEUTICS, INC. **(a development stage company)** **BALANCE SHEETS** **(unaudited)**

	<u>September 30,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 8,639,856	\$ 3,812,535
Other current assets	<u>105,645</u>	<u>85,525</u>
Total current assets	8,745,501	3,898,060
Property & equipment, net of accumulated depreciation of \$1,222,758 and \$1,109,558, respectively	<u>953,219</u>	<u>815,958</u>
Total assets	<u>\$ 9,698,720</u>	<u>\$ 4,714,018</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 429,565	\$ 358,837
Accounts payable - related parties	15,000	15,000
Accrued expenses	285,885	335,861
Current maturity of loan payable	<u>-</u>	<u>35,607</u>
Total current liabilities	730,450	745,305
Commitments and contingencies	-	-
Stockholders' equity:		
Preferred stock, no par value, 10,000,000 shares authorized, none issued and outstanding	-	-
Common stock, \$0.01 par value, 100,000,000 shares authorized, 23,048,488 and 18,466,924 shares issued and outstanding	230,485	184,670
Additional paid in capital	107,541,563	98,496,382
Deficit accumulated during the development stage	<u>(98,803,778)</u>	<u>(94,712,339)</u>
Total stockholders' equity	8,968,270	3,968,713
Total liabilities and stockholders' equity	<u>\$ 9,698,720</u>	<u>\$ 4,714,018</u>

See accompanying notes to unaudited financial statements

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

	Three Months Ended September 30, 2011	Three Months Ended September 30, 2010	Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010	Inception through September 30, 2011
Research and development	\$ 654,772	\$ 625,282	\$ 2,194,141	\$ 2,193,919	\$ 69,032,978
General and administrative	584,794	626,697	1,737,686	1,706,546	26,940,492
Depreciation and amortization	56,888	37,647	157,254	136,022	1,293,483
Loss on disposal of assets	413	-	413	-	500,975
Operating loss	(1,296,867)	(1,289,626)	(4,089,494)	(4,036,487)	(97,767,928)
Interest income	227	815	698	1,395	1,358,183
Other income and expense, net	-	-	-	-	661,146
Gain on extinguishment of debt	-	-	-	-	1,612,440
Gain (loss) on derivative instruments	-	-	-	-	1,388,848
Gain on sale of technology	-	-	-	-	3,000,000
Interest expense	(638)	(2,004)	(2,643)	(499,200)	(9,056,467)
Net loss	<u>\$ (1,297,278)</u>	<u>\$ (1,290,815)</u>	<u>\$ (4,091,439)</u>	<u>\$ (4,534,292)</u>	<u>\$ (98,803,778)</u>
Basic and diluted loss per share	\$ (0.06)	\$ (0.07)	\$ (0.18)	\$ (0.27)	N/A
Weighted average shares outstanding	23,048,488	18,421,600	22,358,611	16,601,503	N/A

See accompanying notes to unaudited financial statements

OPEXA THERAPEUTICS, INC.
(a development stage company)
STATEMENTS OF CASH FLOWS
(unaudited)

	Nine Months Ended September 30,		Inception through September 30, 2011
	2011	2010	
Cash flows from operating activities			
Net loss	\$ (4,091,439)	\$ (4,534,292)	\$ (98,803,778)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock payable for acquired research and development	-	-	112,440
Stock issued for acquired research and development	-	-	26,286,589
Stock issued for services	87,028	64,350	2,061,743
Stock issued for debt in excess of principal	-	-	109,070
Amortization of discount on notes payable due to warrants and beneficial conversion feature	-	314,749	6,752,698
Gain on extinguishment of debt	-	-	(1,612,440)
Depreciation	157,254	136,022	1,293,483
Amortization of debt financing costs	-	108,117	524,378
Option expense	385,811	414,753	15,471,104
Gain on derivative instruments	-	-	(1,388,848)
Loss on disposition of fixed assets	413	-	500,975
Changes in:			
Other current assets	(20,120)	33,498	(522,318)
Accounts payable - third parties and related parties	59,817	(140,280)	(16,396)
Accrued expenses	(49,976)	95,316	237,321
Net cash used in operating activities	<u>(3,471,212)</u>	<u>(3,507,767)</u>	<u>(48,993,979)</u>
Cash flows from investing activities			
Purchase of property & equipment	(284,017)	-	(1,658,878)
Net cash used in investing activities	<u>(284,017)</u>	<u>-</u>	<u>(1,658,878)</u>
Cash flows from financing activities			
Common stock and warrants sold for cash, net of offering costs	8,618,157	-	49,072,488
Common stock repurchased and canceled	-	-	(325)
Proceeds from exercise of warrants and options	-	109,641	1,248,588
Proceeds from debt	-	-	9,283,184
Repayments on notes payable	(35,607)	(50,011)	(311,222)
Net cash provided by financing activities	<u>8,582,550</u>	<u>59,630</u>	<u>59,292,713</u>
Net change in cash and cash equivalents	4,827,321	(3,448,137)	8,639,856
Cash and cash equivalents at beginning of period	3,812,535	8,181,582	-
Cash and cash equivalents at end of period	<u>\$ 8,639,856</u>	<u>\$ 4,733,445</u>	<u>\$ 8,639,856</u>
Cash paid for:			
Income tax	\$ -	\$ -	\$ -
Interest	2,643	85,043	152,033
NON-CASH TRANSACTIONS			
Issuance of common stock to Sportan shareholders	-	-	147,733
Issuance of common stock for accrued interest	-	78,091	603,604
Issuance of warrants to placement agent	-	-	37,453
Conversion of notes payable to common stock	-	1,302,000	7,709,980
Conversion of accrued liabilities to common stock	-	-	197,176
Conversion of accounts payable to note payable	-	-	93,364
Discount on convertible notes relating to:	-	-	
Warrants	-	-	3,659,737
Beneficial conversion feature	-	-	1,805,519
Stock attached to notes	-	-	1,287,440
Fair value of derivative instrument	-	-	4,680,220
Derivative reclassified to equity	-	-	587,609

Unpaid additions to property and equipment	10,911	-	10,911
See accompanying notes to unaudited financial statements			

OPEXA THERAPEUTICS, INC.
(a development stage company)
NOTES TO FINANCIAL STATEMENTS
(unaudited)

Note 1. Basis of Presentation

The accompanying unaudited interim financial statements of Opexa Therapeutics, Inc. ("Opexa"), a development stage company, have been prepared in accordance with accounting principles generally accepted in the United States of America and the rules of the Securities and Exchange Commission and should be read in conjunction with the audited financial statements and notes thereto contained in Opexa's latest Annual Report on Form 10-K filed with the SEC. In the opinion of management, all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of financial position and the results of operations for the interim periods presented have been reflected herein. The results of operations for interim periods are not necessarily indicative of the results to be expected for the full year. Notes to the financial statements that would substantially duplicate the disclosure contained in the audited financial statements for the most recent fiscal year as reported in Form 10-K, have been omitted.

Recently Issued Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board (FASB) or other standard setting bodies that are adopted by Opexa as of the specified effective date. Unless otherwise discussed, Opexa believes that the impact of recently issued accounting pronouncements that are not yet effective will not have a material impact on their financial position or results of operations upon adoption.

Note 2. Cash and Cash Equivalents

Opexa considers all highly liquid investments with an original maturity of three months or less, when purchased, to be cash equivalents. Investments with maturities in excess of three months but less than one year are classified as short-term investments and are stated at fair market value.

At September 30, 2011, Opexa invested approximately \$8.2 million in a money market fund investing exclusively in high-quality, short-term money market instruments consisting of U.S. government obligations and repurchase agreements collateralized by the U.S. Government. While this fund seeks current income while preserving capital and liquidity, the fund is subject to risk, including U.S. government obligations risk, and is not federally insured or guaranteed by or obligations of the Federal Deposit Insurance Corporation or any other agency. For the nine months ended September 30, 2011, the money market fund recognized an average market yield of 0.01%. Interest income of \$227 and \$698 was recognized for the three and nine months ended September 30, 2011, respectively, in the statements of expenses.

Note 3. Commitments and Contingencies

Stem Cell Technology Agreement

In 2009, Novartis Pharmaceuticals acquired Opexa's stem cell technology platform, which had been in early preclinical development, and took over all future responsibilities and opportunities for this technology, although Opexa retained an option on certain manufacturing rights. As part of the transaction, Opexa was paid an upfront fee of \$3 million and a milestone payment of \$500,000 for certain technology transfer activities. Opexa remained eligible to receive a second technology transfer milestone fee in addition to potential clinical and commercial milestones and royalty payments from the sale of any products resulting from the use of the technology.

As further described below in Note 6 (Subsequent Events), on November 2, 2011, Opexa re-acquired the stem cell assets transferred to Novartis in exchange for a release with respect to any further payment obligations owed to Opexa by Novartis, including the remaining \$500,000 technology transfer milestone payment. A related license agreement with the University of Chicago was also assigned back to Opexa.

Note 4. Equity

In January 2011, Opexa sold an aggregate of 384,759 shares of common stock under the Continuous Offering Program Agreement dated May 14, 2010 (the "ATM Agreement") for net proceeds of \$1,033,994. Opexa paid compensation and fees totaling \$10,826 to the placement agent with respect to the shares sold. The ATM Agreement was subsequently terminated by Opexa on February 7, 2011.

In February 2011, Opexa sold an aggregate of 4,146,500 units in a public offering, with each unit consisting of one share of common stock and a warrant to purchase four-tenths (0.40) of a share of common stock, at a price to the public of \$2.05 per unit, for gross proceeds of \$8,500,325. The shares of common stock and warrants were immediately separable and were issued separately such that no units were issued. The warrants were exercisable immediately upon issuance, having a five-year term and an exercise price of \$2.61 per share. The warrants have a fair value of \$3,236,584 that was calculated using the Black-Scholes valuation model with the following assumptions: (1) discount rate of 2.38%, (2) term of 5 years, (3) expected volatility of 197.60% and (4) zero expected dividends. The net proceeds to Opexa from this offering were approximately \$7,584,163, after deducting underwriting discounts and commissions and other offering expenses. The offering closed on February 11, 2011.

Note 5. Stock-Based Compensation

Restricted Shares

Pursuant to an agreement with a consultant for professional services, Opexa granted 50,305 restricted shares of common stock which were accounted for on March 19, 2011 pursuant to the relevant accounting rules. These shares vested immediately and were issued on April 8, 2011 and have a fair value of \$87,028 based on the share price at the grant date, which was recognized as share-based compensation expense for the nine months ended September 30, 2011.

Stock Options

The 2010 Stock Incentive Plan (the “2010 Plan”) provides for the grant of equity incentive awards to employees, directors and consultants of Opexa in the form of incentive stock options or nonqualified stock options, as well as restricted stock, stock appreciation rights, restricted stock units and performance awards that may be settled in cash, stock or other property. The 2010 Plan is the successor to and continuation of Opexa’s June 2004 Compensatory Stock Option Plan (the “2004 Plan”). A total of 2,500,000 shares of common stock are authorized to be issued for awards made under the 2010 Plan through September 2020, plus (i) the number of shares subject to stock options outstanding under the 2004 Plan that are forfeited or terminate prior to exercise and would otherwise be returned to the share reserves under the 2004 Plan and (ii) any reserved shares under the 2004 Plan that were not issued or subject to outstanding grants. In addition, shares subject to awards granted under the 2010 Plan that terminate or expire before being exercised or settled will become available for grant under the 2010 Plan. As of September 30, 2011, options to purchase an aggregate of 1,739,072 shares were issued and outstanding.

Opexa accounts for share-based compensation, including options and nonvested shares, according to the provisions of FASB Accounting Standards Codification (“ASC”) 718, “Share Based Payment.” During the nine months ended September 30, 2011, Opexa recognized option expense of \$385,811. Unamortized stock compensation expense as of September 30, 2011 amounted to \$457,009.

Stock Option Activity

A summary of stock option activity for the nine months ended September 30, 2011 is presented below:

	Number of Shares	Wtd. Avg. Exercise Price	Wtd. Avg. Remaining Contract Term (# years)	Intrinsic Value
Outstanding at January 1, 2011	1,542,072	\$ 2.15		
Granted	272,000	1.64		
Exercised	-	-		
Forfeited and canceled	(75,000)	5.00		
Outstanding at September 30, 2011	1,739,072	\$ 1.94	7.4	\$ 324,513
Exercisable at September 30, 2011	1,419,739	\$ 1.98	7.0	\$ 324,513

Option awards are granted with an exercise price equal to the market price of Opexa’s stock at the date of issuance, generally have a ten-year life, and have various vesting dates that range from no vesting or partial vesting upon date of grant to full vesting on a specified date. Opexa estimates the fair value of stock options using the Black-Scholes option-pricing model and records the compensation expense ratably over the service period.

Employee Options

During the nine months ended September 30, 2011, options to purchase an aggregate of 175,000 shares were granted to employees, based on 2010 performance objectives, at an exercise price of \$1.56. These options have terms of 10 years and have a vesting schedule of three years. Fair value of \$268,451 was calculated using the Black-Scholes option-pricing model. Variables used in the Black-Scholes option-pricing model for the options issued during the nine month period ended September 30, 2011 include (1) discount rate of 3.36%, (2) expected term of 6 years, (3) expected volatility of 192.44% and (4) zero expected dividends.

Non-Employee Options

During the nine months ended September 30, 2011, options to purchase an aggregate of 82,000 shares were granted to non-employee directors for service on Opexa's Board at an exercise price of \$1.78. Options to purchase an aggregate of 40,000 shares have terms of 10 years, with 50% of the shares vesting immediately and 50% vesting in one year from the date of grant. Options to purchase the remaining 42,000 shares will expire on the earlier of 10 years or a change in control of the Company, with 50% of the shares vesting immediately and 50% vesting on December 31, 2011. Fair value of \$142,877 was calculated using the Black-Scholes option-pricing model.

During the nine months ended September 30, 2011, an option to purchase 15,000 shares was granted to a consultant at an exercise price of \$1.78. This option has a term of 10 years, with 50% of the shares vesting immediately and 50% vesting on December 31, 2011. Fair value of \$26,136 was calculated using the Black-Scholes option-pricing model.

Variables used in the Black-Scholes option-pricing model for the non-employee options issued during the nine months ended September 30, 2011 include (1) discount rate of 3.50%, (2) expected term of 5.3 years, (3) expected volatility of 198.22% and (4) zero expected dividends.

Warrant Activity

A summary of warrant activity for the nine months ended September 30, 2011 is presented below:

	Number of Shares	Wtd. Avg. Exercise Price	Wtd. Avg. Remaining Contract Term (# years)	Intrinsic Value
Outstanding at January 1, 2011	11,459,576	\$ 2.75		
Granted	1,658,600	2.61		
Exercised	-	-		
Forfeited and canceled	(2,687,890)	5.93		
Outstanding at September 30, 2011	10,430,286	\$ 1.90	2.0	\$ 733,987
Exercisable at September 30, 2011	10,430,286	\$ 1.90	2.0	\$ 733,987

In connection with Opexa's February 2011 public offering, as disclosed in Note 4, Opexa issued warrants to purchase an aggregate of 1,658,600 shares of common stock to the investors at an exercise price of \$2.61 per share. These warrants have a term of five years and are immediately exercisable.

Note 6. Subsequent Events

On October 27, 2011, Opexa granted ten-year options to a non-employee director to purchase an aggregate of 23,423 shares of common stock at an exercise price of \$1.05. Of such options, 20,000 shares vest one-third immediately and the remaining two-thirds on the first and second anniversary of the grant date, and 1,667 shares vest one-half immediately and one-half on April 5, 2011. The remaining 1,756 option shares vest one-half immediately and one-half on December 31, 2011, and the options expire on the earlier of ten years or a change in control of the Company.

On November 2, 2011, Opexa entered into an Assignment Agreement and General Release with Novartis by which Opexa re-acquired certain novel stem cell technology assets previously transferred to Novartis pursuant to an Asset Purchase Agreement dated August 6, 2009. Novartis recently advised Opexa that the advancement of the stem cell program was no longer a priority for Novartis, and that Novartis was willing to transfer the assets back to Opexa in exchange for a release with respect to any further payment obligations owed to Opexa by Novartis, including the remaining \$500,000 technology transfer milestone payment. In connection with the re-acquisition of the stem cell assets from Novartis, a related license agreement with the University of Chicago was assigned back to Opexa.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis of our financial condition is as of September 30, 2011. Our results of operations and cash flows should be read in conjunction with our unaudited financial statements and notes thereto included elsewhere in this report and the audited financial statements and the notes thereto included in our Form 10-K for the year ended December 31, 2010.

Forward-Looking Statements

This Quarterly Report on Form 10-Q 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. Statements contained in this report, other than statements of historical fact, constitute "forward-looking statements." The words "expects," "believes," "anticipates," "estimates," "may," "could," "intends," and similar expressions are intended to identify forward-looking statements. In particular, these forward-looking statements may be found, among other places, under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." These forward-looking statements do not constitute guarantees of future performance. Investors are cautioned that statements which are not strictly historical statements, including, without limitation, statements regarding current or future financial payments, returns, royalties, performance and position, management's strategy, plans and objectives for future operations, plans and objectives for product development, plans and objectives for present and future clinical trials and results of such trials, plans and objectives for regulatory approval, litigation, intellectual property, product development, manufacturing plans and performance, and management's initiatives and strategies, 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. These risks and uncertainties include, but are not limited to, those risks discussed in "Risk Factors," as well as, without limitation, risks associated with: our capital position; our ability to enter into and benefit from a partnering arrangement for our product candidate, Tovaxin, on reasonably satisfactory terms (if at all), and our dependence (if partnered) on the resources and abilities of any partner for the further development of Tovaxin; 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 program and to undertake and complete any further clinical studies of Tovaxin; the success of our clinical trials; the efficacy of Tovaxin for any particular indication, such as for RR-MS or SP-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 Tovaxin); 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 transferred by us; 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 of this report. We assume no obligation or undertaking to update any forward-looking statements contained herein 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 the reports we file with the Securities and Exchange Commission.

Business Overview

Unless otherwise indicated, we use "Opexa," "the Company," "we," "our" and "us" in this quarterly report to refer to the businesses of Opexa Therapeutics, Inc.

We are a biopharmaceutical company developing personalized cellular therapies with the potential to treat major illnesses, including multiple sclerosis (MS). These therapies are based on our proprietary T-cell technology. The information discussed related to our product candidates is preliminary and investigative. Our product candidates are not approved by the Food and Drug Administration (FDA).

Our lead product candidate, Tovaxin ®, is a personalized T-cell therapeutic vaccine licensed from Baylor College of Medicine, which is in late-stage clinical development for the treatment of MS.

T-Cell Therapy

Tovaxin ® is a novel T-cell immunotherapy in clinical development for the treatment of patients with relapsing remitting MS (RR-MS) and secondary progressive MS (SP-MS). It is a personalized therapy that is specifically tailored to each patient's disease profile. Tovaxin is manufactured using our proprietary method for the production of a patient-specific T-cell immunotherapy, which encompasses the collection of blood from the MS patient, isolation of peripheral blood mononuclear cells, generation of an autologous pool of myelin-reactive T-cells (MRTCs) raised against selected peptides from myelin basic protein (MBP), myelin oligodendrocyte glycoprotein (MOG) and proteolipid protein (PLP), and the return of these expanded, irradiated T-cells back to the patient. These attenuated T-cells are reintroduced into the patient via subcutaneous injection to trigger a therapeutic immune system response.

Summary of TERMS Phase IIb Clinical Trial Data

Tovaxin for Early Relapsing Multiple Sclerosis (TERMS) was a Phase IIb clinical study of Tovaxin in RR-MS patients. Although the study did not show statistical significance in its primary endpoint (the cumulative number of gadolinium-enhanced brain lesions using MRI scans summed at various points in the study), the study showed compelling evidence of efficacy in various clinical and other MRI endpoints.

The TERMS study was a multi-center, randomized, double blind, placebo-controlled trial in 150 patients with RR-MS or high risk Clinically Isolated Syndrome. Patients received a total of five subcutaneous injections at weeks 0, 4, 8, 12 and 24. Key results from the TERMS trial include:

- In the modified intent to treat patient population (n=142), the annualized relapse rate (ARR) for Tovaxin-treated patients was 0.214 as compared to 0.339 for placebo-treated patients, which represented a 37% decrease in ARR for Tovaxin as compared to placebo in the general population;
- In a prospective group of patients with more active disease (ARR>1, n=50), Tovaxin demonstrated a 55% reduction in ARR as compared to placebo, and a 73% reduction in relapse rate was observed in Tovaxin patients in this population compared to placebo during the 24-week period following the administration of the full course of treatment; and
- In a retrospective analysis in patients naïve to previous disease modifying treatment (*i.e.*, patients who had not previously used any drugs other than steroids to treat their disease), the results showed that patients, when treated with Tovaxin, had a 64% reduction in ARR versus placebo (p=0.046, n=70).

Tovaxin has demonstrated a favorable side effect profile throughout the clinical development program. In four clinical trials to date, including the Phase IIb TERMS trial, there have been no serious adverse events associated with Tovaxin treatment. The most common side effect is mild to moderate irritation at the site of injection, which is typically resolved in 24 hours. We believe the favorable safety profile of Tovaxin is a key differentiator when compared to marketed or other developmental MS drugs.

T-Cell Therapy Regulatory and Development Status

During 2010, we continued to analyze the data from the 2008 TERMS Phase IIb study and we evaluated options for the further clinical development of Tovaxin. In late 2010, we completed face-to-face discussions with the FDA regarding our planned development program for Tovaxin. Based on positive feedback from the FDA, we believe that we are now positioned from a regulatory perspective to advance with a pivotal Phase III clinical study of Tovaxin in RR-MS, subject to securing the appropriate financing to conduct such a study.

Our late-2010 discussions with the FDA consisted of two separate meetings to review both the complete Tovaxin manufacturing process as well as the prospective clinical trial plan for Tovaxin. The first meeting focused on the improvements and modifications we have incorporated into Tovaxin's manufacturing and CMC (chemistry, manufacturing and control) process in an effort to improve efficiency, reduce overall costs and implement commercial stage requirements. As part of this meeting, we presented data and details supporting an optimized manufacturing process, including a transition to fewer process steps, comparability plans and complete reagent profiles. The FDA agreed that the optimized Tovaxin manufacturing process would meet the requirements for a pivotal Phase III clinical trial, although additional supporting data is expected to be submitted to the FDA prior to initiating such a study.

The second meeting was an "end of Phase II" clinical meeting in which we presented our rationale and trial design for a Phase III pivotal study with Tovaxin in RR-MS patients. The FDA concurred in general with our proposed clinical trial protocol, including the patient population, end points, patient numbers and overall trial design. The FDA also offered several recommendations to further enhance such a Phase III trial.

We are currently advancing with necessary preparations to be able to initiate pivotal trials in RR-MS and are exploring trial designs for a potential Phase II clinical study in SP-MS. As there remain very limited treatment options for patients with progressive forms of MS, the substantial unmet medical need has increased the urgency to develop new treatments for these patients and, subsequently, our interest in advancing Tovaxin in SP-MS. We believe Tovaxin is well positioned in both RR-MS and SP-MS indications, with demonstrated safety and promising clinical efficacy across a broad spectrum of MS patients. Prior to initiating any clinical study, however, we will need to secure additional resources. Unless we are able to secure at least a substantial portion of the resources necessary to complete a clinical study and support our operations during the pendency of such study, or we are reasonably confident that such resources will be secured, we will likely not proceed with the initiation of any such study.

Given our need for substantial amounts of capital to conduct a clinical study, we are continuing to explore potential opportunities and alternatives to obtain the significant additional resources that will be necessary to fund such a study and to support our operations during the pendency of such study. In addition to one or more additional financings, these opportunities and alternatives may include a partnering arrangement with a large biotech or pharmaceutical company. There can be no assurance that any such financing or partnering arrangement can be consummated on acceptable terms, if at all.

Other Opportunities

Our proprietary T-cell technology has enabled us to develop intellectual property and a comprehensive sample database that may enable discovery of novel biomarkers and other relevant peptides to be used to treat MS patients.

Stem Cell Therapy

In 2009, Novartis Pharmaceuticals acquired our stem cell technology platform, which had been in early preclinical development, and took over all future responsibilities and opportunities for this technology, although we retained an option on certain manufacturing rights. As part of the transaction, we were paid an upfront fee of \$3 million and a milestone payment of \$500,000 for certain technology transfer activities. We remained eligible to receive a second technology transfer milestone fee in addition to potential clinical and commercial milestones and royalty payments from the sale of any products resulting from the use of the technology.

On November 2, 2011, we entered into an Assignment Agreement and General Release with Novartis by which we re-acquired certain novel stem cell technology assets previously transferred to Novartis pursuant to an Asset Purchase Agreement dated August 6, 2009. Novartis recently advised us that the advancement of the stem cell program was no longer a priority for Novartis, and that Novartis was willing to transfer the assets back to us in exchange for a release with respect to any further payment obligations owed to us by Novartis, including the remaining \$500,000 technology transfer milestone payment. In connection with the re-acquisition of the stem cell assets from Novartis, a related license agreement with the University of Chicago was assigned back to us. Opexa and the University of Chicago entered into a Fourth Amended and Restated License Agreement in connection with such assignment to Opexa.

Preliminary data for this technology, which had been in early preclinical development at Opexa prior to the 2009 sale, showed the potential to generate monocyte derived islet cells from peripheral blood mononuclear cells.

Critical Accounting Policies

General. Our discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies affect our most significant judgments and estimates used in preparation of our financial statements.

Stock-Based Compensation. We adopted the provisions of FASB ASC 718 which establishes accounting for equity instruments exchanged for employee service. We utilize the Black-Scholes option pricing model to estimate the fair value of employee stock based compensation at the date of grant, which requires the input of highly subjective assumptions, including expected volatility and expected life. Changes in these inputs and assumptions can materially affect the measure of estimated fair value of our share-based compensation. These assumptions are subjective and generally require significant analysis and judgment to develop. When estimating fair value, some of the assumptions will be based on, or determined from, external data and other assumptions may be derived from our historical experience with stock-based payment arrangements. The appropriate weight to place on historical experience is a matter of judgment, based on relevant facts and circumstances.

We estimated volatility by considering historical stock volatility. We have opted to use the simplified method for estimating expected term of options as equal to the midpoint between the vesting period and the contractual term.

Research and Development. The costs of materials and equipment or facilities that are acquired or constructed for research and development activities and that have alternative future uses are capitalized as tangible assets when acquired or constructed. The cost of such materials consumed in research and development activities and the depreciation of such equipment or facilities used in those activities are research and development costs. However, the costs of materials, equipment, or facilities acquired or constructed for research and development activities that have no alternative future uses are considered research and development costs and are expensed at the time the costs are incurred.

Results of Operations and Financial Condition

Comparison of the Three Months Ended September 30, 2011 with the Three Months Ended September 30, 2010

Net Sales. We recorded no commercial revenues for the three months ended September 30, 2011 and 2010.

Research and Development Expenses. Research and development expenses were \$654,772 for the three months ended September 30, 2011, compared with \$625,282 for the three months ended September 30, 2010. The increase in expenses is primarily related to an increase of staff to conduct increased development activities, an increase in the procurement and use of supplies used in our laboratory and an increase in maintenance and utilities costs due to increased activity in our laboratory, and was partially offset by a decrease in the engagement of consultants and a write-off of certain legal fees related to intellectual property matters.

General and Administrative Expenses. General and administrative expenses for the three months ended September 30, 2011 were \$584,794, compared with \$626,697 for the three months ended September 30, 2010. The decrease in expense is due to a decrease in compensation expense, and was partially offset by an increase in business development expenses.

Depreciation and Amortization Expenses. Depreciation and amortization expenses for the three months ended September 30, 2011 were \$56,888, compared with \$37,647 for the three months ended September 30, 2010. The increase in expense is due to an increase in depreciation for facility build-out costs incurred during the first half of 2011, an increase in depreciation for laboratory and manufacturing equipment acquired during 2011 to support increased development activities and an increase in depreciation for information technology equipment to replace and upgrade obsolete equipment.

Interest Expense. Interest expense was \$638 for the three months ended September 30, 2011, compared to \$2,004 for the three months ended September 30, 2010.

Interest Income. Interest income was \$227 for the three months ended September 30, 2011, compared to \$815 for the three months ended September 30, 2010.

Net loss. We had a net loss for the three months ended September 30, 2011 of approximately \$1.30 million, or \$0.06 per share (basic and diluted), compared with a net loss of approximately \$1.29 million or \$0.07 per share (basic and diluted) for the three months ended September 30, 2010. The increase in net loss is primarily due to an increase of staff, lab supplies and maintenance and utilities costs to support increased development activities, an increase in business development expenses, and an increase in depreciation for facility build-out costs and lab, manufacturing and information technology equipment, which was partially offset by a decrease in the engagement of consultants, a write-off of certain legal fees and a decrease in compensation expense.

Comparison of the Nine Months Ended September 30, 2011 with the Nine Months Ended September 30, 2010

Net Sales. We recorded no commercial revenues for the nine months ended September 30, 2011 and 2010.

Research and Development Expenses. Research and development expenses were \$2,194,141 for the nine months ended September 30, 2011, compared with \$2,193,919 for the nine months ended September 30, 2010. The increase in expenses is primarily related to an increase of staff to conduct increased development activities and an increase in maintenance and utilities costs due to increased activity in our laboratory, and was partially offset by a decrease in the engagement of consultants.

General and Administrative Expenses. General and administrative expenses for the nine months ended September 30, 2011 were \$1,737,686, compared with \$1,706,546 for the nine months ended September 30, 2010. The increase in expense is due to costs associated with increased investor relations outreach, an increase in business development costs and an increase in stock compensation expense, and was partially offset by a decrease in legal costs.

Depreciation and Amortization Expenses. Depreciation and amortization expenses for the nine months ended September 30, 2011 were \$157,254, compared with \$136,022 for the nine months ended September 30, 2010. The increase in expense is due to an increase in depreciation for facility build-out costs incurred during the first half of 2011, an increase in depreciation for laboratory and manufacturing equipment acquired during 2011 to support increased development activities and an increase in depreciation for information technology equipment to replace and upgrade obsolete equipment.

Interest Expense. Interest expense was \$2,643 for the nine months ended September 30, 2011, compared to \$499,200 for the nine months ended September 30, 2010. The decrease in interest expense is primarily related to the amortized interest incurred during the first half of 2010 and the amortization of the remaining discount and deferred financing fees in conjunction with the June 23, 2010 conversion of the 10% Convertible Promissory Notes (these notes were converted to common stock in June 2010). Interest expense for the nine months ended September 30, 2011 related solely to the financing costs on insurance policies and the loan payable on an equipment line.

Interest Income. Interest income was \$698 for the nine months ended September 30, 2011, compared to \$1,395 for the nine months ended September 30, 2010.

Net loss. We had a net loss for the nine months ended September 30, 2011 of approximately \$4.09 million, or \$0.18 per share (basic and diluted), compared with a net loss of approximately \$4.53 million, or \$0.27 per share (basic and diluted), for the nine months ended September 30, 2010. The decrease in net loss is primarily due to a decrease in interest expense, a decrease in professional fees, and was partially offset by an increase in staff, maintenance, and utilities costs for increased development activities, an increase in business development and investor outreach activity costs, an increase in stock compensation expense and an increase in depreciation expense.

Liquidity and Capital Resources

Historically, we have financed our operations primarily from the sale of debt and equity securities. As of September 30, 2011, we had cash and cash equivalents of approximately \$8.6 million. Our financing activities generated \$8.6 million for the nine months ended September 30, 2011, compared to \$59,630 for the same period of 2010. The cash generated in the first nine months of 2011 was proceeds from the sale of our securities in two separate offerings. During January 2011, we sold an aggregate of 384,759 shares of our common stock for net proceeds of \$1,033,994 under an “at the market” continuous offering program pursuant to a prospectus supplement dated May 17, 2010. During February 2011, we raised net proceeds of \$7,584,163 through a public offering of common stock and warrants pursuant to a prospectus supplement dated February 8, 2011.

Our current burn rate, which is in the absence of any clinical trial but includes some preparation for initiation of a trial, is approximately \$450,000 per month. While we believe we have sufficient liquidity to support our operations through 2012, we will need to raise additional capital in the future to fund our current business plan and support our operations.

We are currently advancing with necessary preparations to be able to initiate pivotal trials in RR-MS and are exploring trial designs for a potential Phase II clinical study in SP-MS. As there remain very limited treatment options for patients with progressive forms of MS, the substantial unmet medical need has increased the urgency to develop new treatments for these patients and, subsequently, our interest in advancing Tovaxin in SP-MS. We believe Tovaxin is well positioned in both RR-MS and SP-MS indications, with demonstrated safety and promising clinical efficacy across a broad spectrum of MS patients. Prior to initiating any clinical study, however, we will need to secure additional resources. Unless we are able to secure at least a substantial portion of the resources necessary to complete a clinical study and support our operations during the pendency of such study, or we are reasonably confident that such resources will be secured, we will likely not proceed with the initiation of any such study. Given our need for substantial amounts of capital to conduct a clinical study, we are continuing to explore potential opportunities and alternatives to obtain the significant additional resources that will be necessary to fund such a study and to support our operations during the pendency of such study. In addition to one or more additional financings, these opportunities and alternatives may include a partnering arrangement with a large biotech or pharmaceutical company. There can be no assurance that any such financing or partnering arrangement can be consummated on acceptable terms, if at all.

We do not maintain any external lines of credit, or have commitments for equity funds, and should we need any additional capital in the future, management will be reliant upon “best efforts” debt or equity financings. As our prospects for funding, if any, develop, we will assess our business plan and make adjustments accordingly. Although we have successfully funded our operations to date by attracting additional investors in our equity and debt securities, there is no assurance that our capital raising efforts will be able to attract additional necessary capital for our operations in the future. If we are unable to obtain additional funding for operations in the future, we may not be able to continue operations as proposed, requiring us to modify our business plan, curtail various aspects of our operations or cease operations.

Off-Balance Sheet Arrangements

None.

Recent Accounting Pronouncements

For the nine months ended September, 2011, there were no accounting standards or interpretations issued that are expected to have a material impact on our financial position, operations or cash flows.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not Applicable.

Item 4. Controls and Procedures.**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit to the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized, and reported within the time periods specified by the Securities and Exchange Commission's rules and forms, and that information is accumulated and communicated to our management, including our principal executive and principal financial officer (whom we refer to in this periodic report as our Certifying Officer), as appropriate to allow timely decisions regarding required disclosure. Our management evaluated, with the participation of our Certifying Officer, the effectiveness of our disclosure controls and procedures as of September 30, 2011, pursuant to Rule 13a-15(b) under the Securities Exchange Act. Based upon that evaluation, our Certifying Officer concluded that, as of September 30, 2011, our disclosure controls and procedures were effective.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II
OTHER INFORMATION

Item 1. Legal Proceedings.

We are not currently a party to any material legal proceedings.

Item 1A. Risk Factors.

Reference is made to “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Forward-Looking Statements” in Part I, Item 2 of this report. This Item 1A should be read in conjunction with Part I, Item 1A. “Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed with the Securities and Exchange Commission, which is incorporated herein by reference. Although we believe that the expectations reflected in any forward-looking statements we make are reasonable, we caution you that these expectations or predictions may not prove to be correct or we may not achieve the financial or operations results or other benefits anticipated in the forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties, which could cause our actual results to vary materially from those suggested by the forward-looking statements, such as:

- Our business is at an early stage of development. We are largely dependent on the success of our lead product candidate, Tovaxin, and we cannot be certain that Tovaxin will receive regulatory approval or be successfully commercialized.
- We have a history of operating losses and do not expect to be profitable in the near future.
- We will be required to raise significant additional capital, or secure a development partner, in the near-term, and our ability to obtain funding is uncertain. If sufficient capital is not available, we may not be able to continue our operations as proposed (including any clinical trial for Tovaxin), which may require us to modify our business plan, curtail various aspects of our operations, cease operations or seek relief under applicable bankruptcy laws.
- We will depend on strategic collaborations with third parties to develop and commercialize product candidates, such as Tovaxin, and we may not have control over a number of key elements relating to the development and commercialization of any such product candidate.
- We will need regulatory approvals for any product candidate, including Tovaxin, prior to introduction to the market, which will require successful testing in clinical trials. Clinical trials are subject to extensive regulatory requirements, and are very expensive, time-consuming and difficult to design and implement. Any product candidate, such as Tovaxin, may fail to achieve necessary safety and efficacy endpoints during clinical trials in which case we will be unable to generate revenue from the commercialization and sale of our products.
- We will rely on third parties to conduct our clinical trials and perform data collection and analysis, which may result in costs and delays that may hamper our ability to successfully develop and commercialize any product candidate, including Tovaxin.
- If we fail to identify and license or acquire other product candidates, we will not be able to expand our business over the long term.
- We are dependent upon our management team and a small number of employees.
- If we fail to meet our obligations under our license agreements, we may lose our rights to key technologies on which our business depends.
- Our current research and manufacturing facility is not large enough to manufacture product candidates, such as Tovaxin, for clinical trials or, if such clinical trials are successful, commercial applications.
- If any product we may eventually have is not accepted by the market or if users of any such product are unable to obtain adequate coverage of and reimbursement for such product from government and other third-party payors, our revenues and profitability will suffer.
- Any product candidate that we develop, such as Tovaxin, if approved for sale, may not gain acceptance among physicians, patients and the medical community, thereby limiting our potential to generate revenues.
- We have incurred, and expect to continue to incur, increased costs and risks as a result of being a public company.

- Patents obtained by other persons may result in infringement claims against us that are costly to defend and which may limit our ability to use the disputed technologies and prevent us from pursuing research and development or commercialization of potential products, such as Tovaxin.
- If we are unable to obtain patent protection and other proprietary rights, our operations will be significantly harmed.
- Confidentiality agreements with employees and others may not adequately prevent disclosure of our trade secrets and other proprietary information and may not adequately protect our intellectual property, which could limit our ability to compete.
- A dispute concerning the infringement or misappropriation of our proprietary rights or the proprietary rights of others could be time consuming and costly, and an unfavorable outcome could harm our business.
- We are subject to stringent regulation of our product candidates, such as Tovaxin, which could delay development and commercialization.
- We may need to change our business practices to comply with health care fraud and abuse regulations, and our failure to comply with such laws could adversely affect our business, financial condition and results of operations.
- If our competitors develop and market products that are more effective than our product candidates, they may reduce or eliminate our commercial opportunities.
- Rapid technological change could make our products obsolete.
- Consumers may sue us for product liability, which could result in substantial liabilities that exceed our available resources and damage our reputation.
- Health care reform measures could adversely affect our business.
- There is currently a limited market for our securities, and any trading market that exists in our securities may be highly illiquid and may not reflect the underlying value of our net assets or business prospects.
- Our stock may be delisted from NASDAQ, which could affect its market price and liquidity.
- As our share price is volatile, holders may not be able to resell our shares at a profit or at all.
- We may be or become the target of securities litigation, which is costly and time-consuming to defend.
- Our “blank check” preferred stock could be issued to prevent a business combination not desired by management or our current majority stockholders.
- Future sales of our common stock in the public market could lower our stock price.
- We presently do not intend to pay cash dividends on our common stock.
- Our stockholders may experience substantial dilution in the value of their investment if we issue additional shares of our capital stock.
- We may issue debt and equity securities or securities convertible into equity securities, any of which may be senior to our common stock as to distributions and in liquidation, which could negatively affect the value of our common stock.
- Our management has significant flexibility in using the net proceeds of the February 2011 public offering.

The risks described in this report and in our Annual Report on Form 10-K are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None

Item 3. Defaults Upon Senior Securities.

None.

Item 4. [Removed and Reserved]

Item 5. Other Information.

On November 2, 2011, we entered into an Assignment Agreement and General Release with Novartis by which we re-acquired certain novel stem cell technology assets previously transferred to Novartis pursuant to an Asset Purchase Agreement dated August 6, 2009. Preliminary data for this technology, which had been in early preclinical development at Opexa prior to the 2009 sale, showed the potential to generate monocyte derived islet cells from peripheral blood mononuclear cells. Under the terms of the 2009 agreement with Novartis: (i) Novartis acquired the stem cell technology platform including all future responsibilities and opportunities for this technology, although we retained an option on certain manufacturing rights; (ii) we were paid an upfront fee of \$3 million and a milestone payment of \$500,000 for certain technology transfer activities; and (iii) we remained eligible to receive a second technology transfer milestone fee in addition to potential clinical and commercial milestones and royalty payments from the sale of any products resulting from the use of the technology.

Novartis recently advised us that the advancement of the stem cell program was no longer a priority for Novartis, and that Novartis was willing to transfer the assets back to us in exchange for a release with respect to any further payment obligations owed to us by Novartis, including the remaining \$500,000 technology transfer milestone payment. In connection with the re-acquisition of the stem cell assets, a related license agreement with the University of Chicago was assigned back to us. Opexa and the University of Chicago entered into a Fourth Amended and Restated License Agreement in connection with such assignment to Opexa.

The foregoing description is qualified in its entirety by reference to the terms and conditions of the (i) Assignment Agreement and General Release and (ii) Fourth Amended and Restated License Agreement, copies of which are filed as exhibits hereto and incorporated herein by reference.

Item 6. Exhibits.

Exhibit	
No.	Description
10.1*	Assignment Agreement and General Release, dated November 2, 2011, by and between Opexa Therapeutics, Inc. and Novartis Institutes for BioMedical Research, Inc.
10.2*	Fourth Amended and Restated License Agreement, dated November 2, 2011, by and between Opexa Therapeutics, Inc. and the University of Chicago.
31.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101+	Financial statements from the Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2011, formatted in Extensible Business Reporting Language (XBRL): (i) Balance Sheets; (ii) Statements of Expenses; (iii) Statements of Cash Flows; and (iv) Notes to Financial Statements.

* Filed herewith

+ In accordance with Rule 406T under Regulation S-T, the XBRL-related information in Exhibit 101 shall be deemed to be “furnished” and not “filed.”

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.

OPEXA THERAPEUTICS, INC.

Date : November 4, 2011

By: /s/ Neil K. Warma

Neil K. Warma
President and Chief Executive Officer
(Principal Executive Officer)
Acting Chief Financial Officer
(Principal Financial and Accounting Officer)

EXHIBIT INDEX

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* Filed herewith

+ In accordance with Rule 406T under Regulation S-T, the XBRL-related information in Exhibit 101 shall be deemed to be “furnished” and not “filed.”

ASSIGNMENT AGREEMENT AND GENERAL RELEASE

This Assignment Agreement and General Release is dated as of November 2, 2011, by and between Novartis Institutes for BioMedical Research, Inc., a Delaware corporation (“Novartis”) and Opexa Therapeutics, Inc., a Texas corporation (“Opexa”).

Whereas, Novartis and Opexa are parties to that certain Asset Purchase Agreement dated as of August 6, 2009 (the “Asset Purchase Agreement”);

Whereas, Novartis, Opexa and the University of Chicago (the “University”) are parties to that certain Assignment, Assumption and Amendment Agreement dated as of August 6, 2009 pursuant to which the Third Amended Restated License Agreement by and between University and Opexa dated as of August 6, 2009 (the “University License”) was amended and assigned to Novartis;

Whereas, Novartis wishes to assign and Opexa wishes to have assigned to it the Acquired Patents (as defined in the Asset Purchase Agreement) and the University License;

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement, the parties agree as follows:

1. Novartis hereby assigns to Opexa: (a) the Acquired Patents (a complete list of which is set forth in Exhibit A hereto); and (b) the University License (subject to the consent of the University pursuant to Section 16A of the University License). Novartis hereby confirms that it has not encumbered the Acquired Patents with liens or otherwise.
2. Each party hereby agrees that the other party shall have no past, present or future obligations to it or its Affiliates pursuant to either the Asset Purchase Agreement or the University License, including, without limitation, the following obligations, which are hereby terminated:
 - a. Novartis’ obligation to pay Opexa \$500,000 pursuant to Section 6.1(c) of the Asset Purchase Agreement; and
 - b. Opexa’s obligations of confidentiality under Section 6.4 of the Asset Purchase Agreement; and
 - c. Opexa’s non-compete obligations to not research, develop, manufacture or commercialize any products using or derived from MDSCs under Section 6.5 of the of the Asset Purchase Agreement.
3. Each party hereby releases and forever discharges the other and its Affiliates, predecessors, successors, officers, directors, employees, and agents from all claims, demands or causes of action whatsoever arising from or connected in any way with the subject matter of the Asset Purchase Agreement or the University License, whether presently known or unknown.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment Agreement and General Release.

Novartis Institutes for BioMedical Research, Inc.

Opexa Therapeutics, Inc.

By: /s/ Benjamin Thorner

By: /s/ Neil K. Warma

Name: Benjamin Thorner

Name: Neil K. Warma

Title: Head of Transactions, Strategic Alliances

Title: CEO

Exhibit A
Acquired Patents

1. WO2007/131200 (Opexa Therapeutics) – PCT/US07/68291
Monocyte-Derived Stem Cells.
International filing date – 4 May 2007

US priority – 60/746,609 filed 5 May 2006

Status

Entered national/regional phase:

US 12/299,588

CA 2,651,331

2. WO2007/131209 (Opexa Therapeutics) – PCT/US07/68303
Pancreatic Islet-Like Cells.
International filing date – 4 May 2007

US priority – 60/746,584 filed 5 May 2006

Status

Entered national/regional phase:

CA 2,651,326

EP 07761927.8 (EP 2,019,862)

US 12/299,590

JP 2009510113

FOURTH AMENDED AND RESTATED LICENSE AGREEMENT

This Fourth Amended and Restated License Agreement (“Agreement”), effective this 2nd day of November, 2011 is between the University of Chicago, an Illinois not-for-profit corporation (“UNIVERSITY”), having its principal office at 6030 S. Ellis Avenue Suite 2S, Chicago, IL 60637 and Opexa Therapeutics, Inc., a Texas corporation (“LICENSEE”), having its principal office at 2635 Technology Forest Blvd., The Woodlands, Texas 77381. Each hereunder may be referred to separately as the (“Party”), or together as the (“Parties”). The Parties agree:

1. RECITALS

- A. To the best of the UNIVERSITY’s knowledge at the date of execution of this Agreement, the inventions identified in Schedule A were conceived or first reduced to practice by the UNIVERSITY as Operator of Argonne National Laboratory (ANL) in the performance of work under its U.S. Department of Energy (DOE) Prime Contract No. W-31-109-ENG-38. Pursuant to terms of the DOE Contract and 35 USC 200 et seq., UNIVERSITY has acquired certain rights in and to said inventions.
- B. LICENSEE, a business entity specializing in the development of therapeutic products, is interested in acquiring certain rights to said inventions.
- C. UNIVERSITY is willing to grant such rights so that said inventions may be developed and used to the fullest extent for the benefit of the U.S. economy and the general public.
- D. Immediately prior to execution of this Agreement by UNIVERSITY and LICENSEE, Novartis Institutes for BioMedical Research, Inc. (“Novartis”) assigned its rights under the Third Amended and Restated License Agreement, executed on November 20, 2009 by and between the UNIVERSITY and Novartis (the “Third Amended and Restated License Agreement”), which is the predecessor to this Agreement, to LICENSEE, and LICENSEE assumed the obligations thereunder, pursuant to that certain Assignment Agreement and General Release dated November 2, 2011.
- E. In connection with the assignment from Novartis, the Parties desire to amend and restate their agreement, and the Parties agree and acknowledge that this Agreement is the entire understanding between the Parties and supersedes all previous understandings and agreements, including the Third Amended and Restated License Agreement.

2. DEFINITIONS

The following capitalized terms used in this Agreement shall mean:

- A. “Affiliate” means, as to any person or entity, any other person or entity, which directly or indirectly controls, is controlled by or is under common control with the Party. Control shall mean the right to control, or actual control of, management of such other entity, whether by ownership of voting securities, by agreement, or otherwise, or the direct or indirect ownership of the maximum percentage of such stock permitted under local laws or regulations in those countries where fifty percent (50%) ownership by a foreign entity is not permitted.

- B. “Calendar Quarter” means each of the four, three-month periods ending on March 31st, June 30th, September 30th, and December 31st.
- C. “Calendar Year” means the twelve-month period ending on December 31st.
- D. “Commercially Reasonable Efforts” means the expenditure of those efforts and resources used consistent with the usual practice of LICENSEE and its Affiliates in pursuing development or commercialization of its other similar pharmaceutical products with similar market potential and at a similar stage in development.
- E. “Effective Date” means the date appearing in line 1 of this Agreement.
- F. “EU Regulatory Approval” means (a) marketing authorization approval from the EMEA and pricing and reimbursement approval in any three of France, Germany, Italy, Spain or the United Kingdom or (b) national marketing authorization approval and pricing and reimbursement approval in any three of France, Germany, Italy, Spain or the United Kingdom.
- G. “Field” means all fields of use within the diagnosis of, production of therapeutics for, or treatment of diseases and/or disorders in humans and the use in animals only for the development of such products or applications in humans. The Field includes making stem cells and banking of stem cells for such purpose and diagnostics, drug testing, therapeutics and screening of small molecules, proteins, and/or peptides that may cause differentiation of stem cells *in vitro* and/or *in vivo* and the stem cells themselves.
- H. “FPFV” shall mean, with respect to a Product or Method, the administration of the first dose of such Product or first administration of such Method to the first patient at his first visit in a Phase IIb Clinical Trial, as applicable.
- I. “Licensed Patents” means the patents and patent applications listed on Schedule A and attached hereto, including all continuations, divisionals, and corresponding foreign patent applications and any patents that may issue therefrom and any reissues, renewals, reexaminations, substitutions, or extensions of or to any such patents or patent applications.
- J. “Licensed Product(s)” means any product covered by the scope of any Valid Claim contained in any Licensed Patent or a product made by a process, method or technique covered by the scope of any Valid Claim in any Licensed Patent or methods of using any product covered by the scope of any Valid Claim contained in any Licensed Patent.

- K. “Licensed Method(s)” means any method, procedure or process whose use or practice is within the scope of any Valid Claim of any Licensed Patents including but not limited to any service or part of selling a service, licensing a method of use or other means of deriving commercial benefit from Licensed Products.
- L. “Net Sales” means the gross sales of Licensed Product(s) and Licensed Method(s) sold or otherwise distributed in the Territory, less the following amounts directly chargeable to such sales as indicated on individual invoices:
- Customary trade, quantity or cash discounts and rebates actually allowed and taken;
 - Amounts repaid or credited to customers on account of rejections or returns; and
 - Freight and other transportation costs, including insurance charges, and duties, tariffs, sales and excise taxes and other governmental charges based directly on Sales, turnover or delivery of such Licensed Products and actually paid of allowed by LICENSEE and its Affiliates.

Net Sales shall be determined in accordance with generally accepted accounting principles consistently applied.

- M. “Phase IIb Clinical Trial” means a controlled human clinical trial of a Licensed Product or Licensed Method in any country that is conducted in accordance with current Good Clinical Practices (cGCPs) intended to evaluate the effectiveness of such Licensed Product or Licensed Method in human patients for purposes of identifying the appropriate dose for a Phase III Clinical Trial, or that would otherwise satisfy the requirements of 21 CFR §312.21(b) or any successor regulation thereto or foreign equivalents.
- N. “Regulatory Approval” means, with respect to a Licensed Product or Licensed Method in any country or jurisdiction, approval (including where required, pricing and reimbursement approvals), registration, license or authorization from a governmental authority in a country or other jurisdiction that is necessary to market and sell such product in such country or jurisdiction.
- O. “Regulatory Filing” means, with respect to a Licensed Product or Licensed Method, any submission to a governmental authority of any appropriate regulatory application to conduct clinical trials or market a product, and shall include any submission to a regulatory advisory board, marketing authorization application, and any supplement or amendment thereto. For the avoidance of doubt, Regulatory Filings shall include any Investigational New Drug Application, New Drug Application (“NDA”), Biologics License Application or the corresponding application in any other country or group of countries.

- P. "Research Compositions" means stem cells created under the Licensed Patents and differentiated cells prepared from such stem cells.
- Q. "Royalties" means all amounts payable under Section 4.D and 4.E of this Agreement.
- R. "Sale" means any transaction in which a Licensed Product(s) and/or Licensed Method(s) is placed with a third party for the benefit of LICENSEE or a third party; provided "Sale" shall not include placement or use of a Licensed Product(s) and/or Licensed Method(s) with or by a third party which is for testing or experimental purposes, including any animal or clinical trials so long as such placements are reported to the UNIVERSITY and for which no Compensation is received.
- S. "Sales Report" means a written report or reports showing each of: (a) the Net Sales of each Licensed Product and/or Licensed Method in each country during the reporting period by LICENSEE, its Affiliates and Sublicensees; and (b) the Royalties payable, in United States dollars, which shall have accrued hereunder with respect to such Net Sales.
- T. "Sublicensee" shall mean any person, company or other entity granted a Sublicense by LICENSEE, including Affiliates of the Sublicensee.
- U. "Sublicense" shall mean any agreement entered into by LICENSEE with any person, company or other entity pursuant to which any of the rights granted to LICENSEE to the Licensed Patents are exercised.
- V. "Tangible Materials" shall mean Research Compositions, Licensed Product(s) remaining in inventory six (6) months after termination of this Agreement, all materials created in support of the marketing and sale of Licensed Product(s) and/or Licensed Method(s), and confidential documents related to the Licensed Patents.
- W. "Territory" means worldwide.
- X. "Valid Claim" means an issued claim of any unexpired Licensed Patent or a claim of any pending patent application which has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, in a ruling that is unappealable or unappealed within the time allowed for appeal; which has not been rendered unenforceable through disclaimer or otherwise; and which has not been lost through an interference proceeding or irrecoverable failure to pay a maintenance fee.

3. GRANT OF RIGHTS

- A. Grant of Rights. Subject to the reservation described in Section 3.D below, UNIVERSITY hereby grants to LICENSEE and its Affiliates, an exclusive, non-transferable license, to make, have made, use, have used, import, offer to sell, sell and/or have sold Licensed Products and/or Licensed Method(s) within the Field and within the Territory during the term of this Agreement.

- B. Sublicense. LICENSEE shall have the exclusive right to grant Sublicenses to and under the Licensed Patents to third parties limited to and consistent with the rights granted LICENSEE under Section 3.A within the Field and within the Territory. LICENSEE shall provide UNIVERSITY with a copy of each Sublicense within sixty (60) days of the execution of the Sublicense. UNIVERSITY shall treat all such Sublicenses as confidential pursuant to Section 8.B.
- C. No Other Rights. No rights in and to the Licensed Patents other than those provided in Sections 3.A. and 3.B., above, express or implied, are conveyed by UNIVERSITY.
- D. Reservation of Non-Commercial Rights. UNIVERSITY reserves for itself the worldwide right to use the Licensed Patents and to practice the inventions claimed in the Licensed Patents for any educational and/or non-commercial research purpose it may choose at its own discretion and without any payment therefore. UNIVERSITY shall have the right to grant non-exclusive Licenses to third parties to practice the inventions claimed in the Licensed Patents for non-commercial research purposes only. If tangible property is provided by UNIVERSITY to LICENSEE, UNIVERSITY reserves the right to make, use and provide tangible property and to grant nonexclusive licenses to make and use such tangible property to third parties for noncommercial research purposes only. In addition, the inventions claimed in the Licensed Patents were made with the use of funds from the United States government. Therefore, the U.S. Government has a paid-up, royalty-free, nontransferable, worldwide, irrevocable license for government use to practice or have practiced by or on behalf of the U.S. Government the Licensed Patents. The U.S. Government has certain other rights under 35 USC 200 et seq. and applicable regulations.

4. LICENSE FEES, ROYALTIES, AND OTHER PAYMENTS

- A. Upfront Fee. As partial consideration for the license granted in Section 3 of this Agreement, LICENSEE made a payment in full in December, 2004, for one hundred and seventy-five thousand U.S. dollars (\$175,000). LICENSEE is not obligated to make any further payment upon execution of this Agreement.
- i. Equity. As partial consideration for the license granted in Section 3 of this Agreement, LICENSEE previously issued 53,462 shares of Opexa common stock to UNIVERSITY. LICENSEE is not obligated to issue any additional shares or any other securities to UNIVERSITY.
- B. License Maintenance Fees. LICENSEE shall pay UNIVERSITY twenty thousand U.S. dollars (\$20,000) as a maintenance fee on December 31, 2011.

C. Milestone Payments. LICENSEE shall immediately notify UNIVERSITY when the following events are accomplished by either LICENSEE, Sublicensee and/or Affiliates of either, upon which LICENSEE will pay to UNIVERSITY the following amounts:

- i. One-hundred thousand U.S. dollars (\$100,000) upon FPFV of a Phase IIb Clinical Trial of a Licensed Product or Licensed Method.
- ii. Two-hundred and fifty thousand U.S. dollars (\$250,000) upon first Regulatory Filing seeking Regulatory Approval for a Licensed Product or Licensed Method.
- iii. Upon first Regulatory Approval in the U.S. of a Licensed Product or Licensed Method, one million U.S. dollars (\$1,000,000).
- iv. Upon first EU Regulatory Approval of a Licensed Product or Licensed Method, one hundred fifty thousand U.S. dollars (\$150,000).

For the avoidance of doubt: (i) each milestone payment shall become payable only upon the first occurrence of the corresponding milestone event; (ii) none of the milestone payments shall be payable more than once regardless of how many times the corresponding milestone event is achieved and (iii) no additional milestone payments shall be due for milestone events completed for the development and commercialization of any or all of the Licensed Product(s) and/or Licensed Method(s) for additional indications or otherwise.

The sums due and payable under this Section are nonrefundable and noncreditable against Royalties except that if LICENSEE makes its first Sale of an FDA-approved Licensed Product or Licensed Method prior to December 31, 2014, two-hundred-fifty thousand U.S. dollars (\$250,000) of the one million U.S. dollars (\$1,000,000) Milestone Payment in Section 4.C.iii shall be creditable against Royalties.

- D. Royalties. As partial consideration for the license granted in Section 3 of this Agreement, LICENSEE shall pay UNIVERSITY a Royalty of one and one-half percent (1.5%) of Net Sales of Licensed Product(s) and/or Licensed Method(s) by LICENSEE, its Sublicensee(s) and Affiliate(s) of either. The Royalty obligation under this Section shall apply upon first Sale of a Licensed Product(s) and/or Licensed Method(s) whether by LICENSEE or Sublicensee or Affiliates of either. Royalty payments shall be due quarterly and payable within sixty (60) days of the end of each Calendar Quarter beginning with the period in which the first Sale occurs.
- E. Minimum Royalties. If the total Royalties for any Calendar Year, beginning with the first full Calendar Year following the first Sale of Licensed Product(s) and/or Licensed Method(s) by LICENSEE, Sublicensee(s), or Affiliate(s), are less than:

- i. fifty-thousand U.S. dollars (\$50,000) for the first two years,
- ii. and one-hundred thousand U.S. dollars (\$100,000) for each year thereafter for the life of the Agreement

LICENSEE shall pay UNIVERSITY the difference between such amount and the actual Royalties due. Such payment shall be made at the same time payment for Royalties for the fourth quarter for such year is due.

- F. Royalty Offset. In the event that, with respect to Net Sales of Licensed Products and/or Licensed Methods, LICENSEE is paying royalties to unaffiliated third parties for patent rights to make, use or sell Licensed Product(s) and/or Licensed Method(s), the Royalties due and payable to UNIVERSITY hereunder shall be proportionally reduced by amounts paid to third parties for licenses. In no event shall the Royalty payable to UNIVERSITY be less than three quarters of one percent (0.75%). A Sublicensee shall not be entitled to a Royalty Offset under this Section 4.F for any third party licenses it requires.
- G. Calculation of Royalties. Calculation of Royalties. Royalties shall be payable in U.S. currency within sixty (60) days after the end of each Calendar Quarter for the Term of the Agreement, beginning with the Calendar Quarter in which the first Sale of a Licensed Product(s) and/or Licensed Method(s) occurs. A royalty statement showing Net Sales for each country and a calculation of the Royalties due shall accompany each payment. Any necessary conversion of currency into United States dollar shall be at the applicable rate of exchange of as published in the Wall Street Journal on the last day of the Calendar Quarter in which such transaction occurred. Each payment shall be accompanied by a Sales Report, verified and signed by the President or Chief Financial Officer of LICENSEE and certified as accurate.
- H. Sublicense Revenue. For each sublicense granted by LICENSEE, LICENSEE shall pay to UNIVERSITY five percent (5%) of all compensation of any type received by LICENSEE in consideration of sublicense. For the purpose of this Section, the term "compensation" shall not include (i) Royalties; (ii) payments corresponding to Milestone Payments under Section 4.C; (iii) payments and contributions of equipment, materials, and/or services for research, (iv) reimbursement of expenses in connection with the prosecution, maintenance or defense of patents or other intellectual property, or (v) payments for capital stock or other securities up to the fair market value of such stock or securities; any amounts in excess of fair market value will be deemed to constitute "compensation" under this Section 4.H.
- I. Overdue Payment. Payments due to UNIVERSITY under this Agreement shall, if not paid when due under the terms of this Agreement, bear simple interest at the prime rate of interest (as published by Citibank, N.A. on the date such payment is due) plus five percent (5%), calculated on the basis of a three hundred sixty (360) day year for the number of days actually elapsed, beginning on the due date and ending on the day prior to the day on which payment is made in full. Interest accruing under this Section shall be due UNIVERSITY on demand or upon payment of past due amounts, whichever is sooner. The accrual or receipt by UNIVERSITY of interest under this Section shall not constitute a waiver by UNIVERSITY of any right it may otherwise have to declare a default under this Agreement or to terminate this Agreement. Time is of the essence with respect to all payments made by LICENSEE to UNIVERSITY.

- J. Licensee Enforcement of Sublicenses. LICENSEE shall use commercially reasonable efforts to enforce the terms of its Sublicense agreements including terminating Sublicenses for default in payment of Royalties.
- K. Full and Accurate Records.
- i. LICENSEE shall keep complete, true and accurate books and records in relation to this Agreement in accordance with its usual and customary accounting methods, which are in accordance with the International Financial Reporting Standards (IFRS) as consistently applied at LICENSEE. Each Party will keep such books and records for at least three (3) years following the Calendar Quarter to which they pertain.
 - ii. UNIVERSITY shall have the right for a period of three (3) years after receiving any Sales Report pursuant to Section 4.G to appoint an internationally-recognized independent accounting firm (which is reasonably acceptable to LICENSEE) (the "Auditor") to inspect the relevant records of LICENSEE to verify the amounts reported in such Sales Report. Before beginning its audit, the Auditor shall execute an undertaking acceptable to LICENSEE by which the Auditor shall keep confidential all information reviewed during such audit. Such undertaking shall be reviewed, executed and approved in a timely manner by LICENSEE. The Auditor shall have the right to disclose to UNIVERSITY only its conclusions regarding any payments owed under this Agreement.
 - iii. LICENSEE shall make its records available for inspection by such Auditor during regular business hours at such place or places where such records are customarily kept, upon receipt of reasonable advance notice from UNIVERSITY, solely to verify the accuracy of the Sales Report received pursuant to Section 4.G. Such inspection right shall not be exercised more than once in any Calendar Year and not more frequently than once with respect to records covering any specific period of time. UNIVERSITY agrees to hold in strict confidence all information received and all information learned in the course of any audit or inspection, except to the extent necessary to enforce its rights under this Agreement or if disclosure is required by law, regulation or judicial order.

- iv. UNIVERSITY shall pay for such audits, as well as its own expenses associated with enforcing its rights with respect to any payments hereunder, except that in the event there is any upward adjustment in aggregate amounts payable for any year shown by such audit of more than five percent (5%) of the amount paid, LICENSEE shall pay for such audit. LICENSEE agrees to pay any such upward adjustment amounts, including any deficiencies identified for periods prior to the period under audit.

5. DILIGENCE EFFORTS A.

- A. Development Plan. LICENSEE shall use Commercially Reasonable Efforts to carry out research, development and commercialization activities with respect to the Licensed Product(s) and/or the Licensed Method(s), and, by December 31st of each year, provide the UNIVERSITY with a report detailing such activities. Such report shall be approximately one or two pages and shall include the status of research and/or development activities, as relevant, for Licensed Products and/or Licensed Methods, including the completion or initiation of any clinical studies, any significant regulatory submissions or decisions, and any sublicensing activity.
- B. Notification of First Sale. LICENSEE agrees to immediately notify UNIVERSITY in writing when Sales of Licensed Product(s) and/or Licensed Method(s) first occur, at which time LICENSEE'S obligation to make Royalty payments begins.
- C. Commercialization Plan. LICENSEE agrees to use its Commercially Reasonable Efforts to prepare for the launch of Licensed Product(s) and/or Licensed Method(s). No less than twelve (12) months prior to the projected launch of Licensed Product(s) and/or Licensed Method(s) and by December 31 of the first three full years following first Sale, LICENSEE agrees to provide UNIVERSITY a commercial plan for the marketing and sale of Licensed Product(s) and/or Licensed Method(s). UNIVERSITY shall keep all commercialization plans and related documents confidential pursuant to Section 8 hereof.

6. PATENT PROSECUTION AND MAINTENANCE

- A. Prosecution and Maintenance. UNIVERSITY shall be solely responsible for the preparation, filing, prosecution and maintenance of the Licensed Patents. LICENSEE agrees to cooperate, and agrees to cause its Sublicensees and Affiliates of either to cooperate, with UNIVERSITY in preparation, filing, prosecution and maintenance of the Licensed Patents by disclosing such information as may be necessary for the same and by promptly executing such documents as UNIVERSITY may reasonably request in connection therewith. LICENSEE and its Sublicensees and Affiliates of either shall bear their own costs in connection with their cooperation with UNIVERSITY under this Section. UNIVERSITY will provide LICENSEE copies of all material documents received or prepared by UNIVERSITY in prosecution and maintenance of Licensed Patents. UNIVERSITY shall provide copies in a timely manner to allow LICENSEE an opportunity to comment and request changes. UNIVERSITY shall reasonably include comments of LICENSEE in the prosecution of Licensed Patents.

- B. Patent Costs. LICENSEE agrees to pay all necessary and reasonable third party fees and expenses incurred by UNIVERSITY in obtaining and maintaining the Licensed Patents, including those incurred by UNIVERSITY prior to the Effective Date of this Agreement. Payment for fees and expenses incurred after the Effective Date shall be invoiced to LICENSEE on a monthly basis and LICENSEE agrees to pay such invoices within sixty (60) days of receipt. LICENSEE shall raise any objections to such amounts invoiced within the sixty (60) day time period for payment.
- C. Election Not to Pay Patent Costs. If LICENSEE decides to no longer support patent costs for a specific Licensed Patent listed in Schedule A, or a particular jurisdiction for a specific Licensed Patent listed in Schedule A, or a particular issued or pending patent application claiming priority to a Licensed Patent listed in Schedule A, LICENSEE shall notify UNIVERSITY in writing. Upon receipt of such notice, the patent rights at issue will thereafter be excluded from the license granted hereunder, and UNIVERSITY shall be free to license such rights to third parties, without any further obligation to LICENSEE. LICENSEE shall continue to reimburse UNIVERSITY for all costs incurred up to the date fourteen (14) days after the date of receipt of notice that UNIVERSITY cannot reasonably avoid.
- D. Failure to Pay Patent Costs. If LICENSEE declines or fails to make advance payments or pay or reimburse UNIVERSITY for all or any portion of the patent fees and expenses as required by Section 6.B for any Licensed Patent, LICENSEE's rights with respect to all such applications and patents for which LICENSEE fails to make advance payments or does not reimburse UNIVERSITY shall terminate effectively thirty (30) days after written notice from UNIVERSITY requesting such payment, unless payment is made in full within such time. Upon such termination of patent rights, the patent rights at issue will thereafter be excluded from the license granted hereunder, and UNIVERSITY shall be free to license such rights to third parties, without any further obligation to LICENSEE. Notwithstanding the foregoing, failure to pay patent costs hereunder is a material breach of this Agreement and the UNIVERSITY has the right to terminate the Agreement as defined in Section 11.B.

7. WARRANTIES; INDEMNIFICATION, ASSUMPTION OF RISK; INSURANCE

- A. Disclaimers of Warranties. UNIVERSITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. IN PARTICULAR, UNIVERSITY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE INVENTION(S) CLAIMED IN LICENSED PATENTS OR WITH RESPECT TO THE LICENSED PATENTS THEMSELVES, INCLUDING BUT NOT LIMITED TO, ANY REPRESENTATIONS OR WARRANTIES ABOUT (i) THE VALIDITY, SCOPE OR ENFORCEABILITY OF ANY OF THE LICENSED PATENTS; (ii) THE ACCURACY, SAFETY OR USEFULNESS FOR ANY PURPOSE OF ANY INFORMATION PROVIDED BY UNIVERSITY TO LICENSEE, ITS SUBLICENSEES OR AFFILIATES OF EITHER, WITH RESPECT TO THE INVENTION(S) CLAIMED IN THE LICENSED PATENTS OR WITH RESPECT TO THE LICENSED PATENTS THEMSELVES AND ANY PRODUCTS DEVELOPED FROM OR COVERED BY THEM; (iii) WHETHER THE PRACTICE OF ANY CLAIM CONTAINED IN ANY OF THE LICENSED PATENTS WILL OR MIGHT INFRINGE A PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OWNED OR LICENSED BY A THIRD PARTY; (iv) THE PATENTABILITY OF ANY INVENTION CLAIMED IN THE LICENSED PATENTS; OR (v) THE ACCURACY, SAFETY OR USEFULNESS FOR ANY PURPOSE OF ANY PROCESS MADE OR CARRIED OUT IN ACCORDANCE WITH OR THROUGH THE USE OF LICENSED PATENTS. IN ADDITION, UNIVERSITY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- B. Indemnification. LICENSEE agrees, and agrees to cause any Sublicensee and Affiliates of either to, indemnify, defend and hold harmless UNIVERSITY, Affiliates, and all trustees, directors, officers, employees, fellows and agents of any of the foregoing (collectively the "Indemnified Persons") from and against any and all claims, demands, loss, damage, penalty, cost or expense (including attorneys' and witnesses' fees and costs) of any kind or nature, arising out of, or otherwise relating to this Agreement, including without limitation (i) any claims arising from the development, production, use, sale, license or other disposition of Licensed Product(s) and/or Licensed Method(s) and all activities associated therewith, or (ii) any use of information provided by UNIVERSITY to LICENSEE, its Sublicensees or Affiliates of either. UNIVERSITY shall be entitled to participate at their option and expense through counsel of their own selection, and may join in any legal actions related to any such claims, demands, losses, damages, costs, expenses and penalties. LICENSEE, its Sublicensees and Affiliates of either, shall not enter into any settlement affecting any rights or obligations of any Indemnified Person or which includes an express or implied admission of liability, negligence or wrongdoing by any Indemnified Person, without prior written consent of such Indemnified Person.
- C. Assumption of Risk. The entire risk as to the performance, safety, and efficacy of Licensed Products, Licensed Methods, or any invention claimed in the Licensed Patents is assumed by LICENSEE, its Sublicensees and Affiliates of either. Indemnified Persons shall not, except for their intentional misconduct or gross negligence, be responsible or liable for any injury, loss, or damage of any kind, including but not limited to direct, indirect, any Sublicensee, Affiliates of either or customers or any person or entity, regardless of legal theory for any activity undertaken in connection with this Agreement, Licensed Patents, Licensed Methods, or Licensed Products and all activities associated therewith. The above limitations on liability apply even though the Indemnified Person may have been advised of the possibility of such injury, loss or damage. LICENSEE shall not and shall cause its Sublicensees and Affiliates of either to not, make any agreements, statements, representations or warranties or accept any liabilities or responsibilities whatsoever with regard to any person or entity, which are inconsistent with this Section 7.C.

- D. Insurance. LICENSEE agrees, and agrees to cause its Sublicensees and Affiliates of either to agree, to maintain liability insurance that shall cover any claims from bodily injury, property, or other damage alleged to relate to Licensed Products, Licensed Methods, or activities undertaken in connection with this Agreement, Licensed Patents, Licensed Methods, or Licensed Products, including the development, manufacture, use, sale or other disposition of Licensed Products and/or Licensed Methods and all activities associated therewith. LICENSEE, Sublicensees or Affiliates of either will list UNIVERSITY and its Affiliates, at LICENSEE'S, Sublicensees' or Affiliates of either's expense, whichever is relevant, as additional named insureds under each liability insurance policy (including excess or umbrella liability policies) that LICENSEE, Sublicensees and Affiliates of either have or shall obtain that includes any coverage of claims relating to Licensed Products and/or Licensed Methods. Such insurance shall be primary and noncontributory to any insurance UNIVERSITY and its Affiliates may have. At UNIVERSITY's request, LICENSEE, Sublicensees or Affiliates of either will supply UNIVERSITY in writing at least thirty (30) days prior to any termination of or change in coverage under any such policies.

8. CONFIDENTIAL INFORMATION AND PUBLICATION

- A. All information submitted by one Party to the other concerning Licensed Product(s), Licensed Method(s), and/or the invention(s) claimed in the Licensed Patents shall be considered confidential ("Confidential Information") and shall be utilized by the receiving Party only pursuant to the licenses granted hereunder. During the term of this Agreement and for a period of five (5) years thereafter, neither Party shall disclose to any third party any Confidential Information received from the other Party without the specific written consent of such Party. The foregoing shall not apply where Confidential Information a) was or becomes public through no fault of the receiving Party, b) was, at the time of receipt, already in the possession of the receiving Party as evidenced by its written records, c) was obtained from a third party legally entitled to use and disclose the same, or d) is required by law to be disclosed to a governmental agency.

- B. UNIVERSITY agrees to preserve as confidential any and all trade secrets, privileged records or other proprietary information belonging to LICENSEE or its Affiliates or Sublicensees marked as Confidential and disclosed to the UNIVERSITY. For disclosure of confidential or proprietary information belonging to LICENSEE or its Affiliates or Sublicensees by oral communication, such disclosure will be reduced to writing, marked as Confidential, and sent to UNIVERSITY within two (2) weeks of such disclosure to UNIVERSITY.
- C. LICENSEE acknowledges the UNIVERSITY's strong institutional policy favoring the retention of public rights and dependence upon publication as essential means of exchange. UNIVERSITY shall have the right to publish the results of and disseminate information to the extent that proprietary trade secrets or confidential information provided by LICENSEE or its Affiliates or Sublicensees to UNIVERSITY are not disclosed.

9. MARKETING AND ADVERTISING. Each Party agrees not to use the name of the other Party in any commercial activity, press releases, marketing, advertising or sales brochures except with the prior written consent of the other Party, which consent may be granted or withheld in such Party's sole discretion. LICENSEE further agrees not to use and shall prohibit its Sublicensees and Affiliates of either from using the name of the University of Chicago or Argonne National Labs, in any commercial activity without the prior written consent of the UNIVERSITY. LICENSEE may, upon receiving approval from UNIVERSITY, apply such approval to subsequent iterations of the same activity provided that the content and presentation of the approved material is not changed in terms of scope, scale, or purpose. For additional clarification by example, it is intended that for approved material used in presenting to potential investors of LICENSEE the approved material may be presented to several investors at different times without need for approval of each presentation.

10. INFRINGEMENT

- A. Notice of Infringement. In the event of an infringement of a Licensed Patent, each Party shall give the other written notice if one of them becomes aware of any infringement by a third party of any Licensed Patent. Upon notice of any such infringement, the parties shall promptly consult with one another with a view toward reaching the agreement on a course of action to be pursued.
- B. LICENSEE's Right to Bring Infringement Action. If a third party infringes any patent included in Licensed Patents within the Field, LICENSEE shall have the right to institute and prosecute an action or proceeding to abate such infringement and to resolve such matter by settlement or otherwise with the permission of UNIVERSITY. Before LICENSEE commences an action with respect to an infringement of such patents, LICENSEE shall give careful consideration to the views of UNIVERSITY and to potential effects on the public interest in making its decision whether or not to sue. LICENSEE agrees to notify UNIVERSITY of its intention to bring an action or proceeding prior to filing the same within sixty (60) days after notification under Section 10.A. LICENSEE agrees to hire counsel reasonably acceptable to UNIVERSITY. LICENSEE shall keep UNIVERSITY timely informed of material developments in the prosecution or settlement of such action or proceeding. LICENSEE shall be responsible for all costs and expenses of any action or proceeding against infringers, which LICENSEE initiates. UNIVERSITY may be represented by counsel in any such legal proceedings acting in an advisory but not controlling capacity, the expense of which shall be subject to reimbursement by LICENSEE. UNIVERSITY shall cooperate fully by joining as a party plaintiff if required to do so by law to maintain such action or proceeding and by executing and making available such documents as LICENSEE may reasonably request. LICENSEE agrees to promptly reimburse UNIVERSITY for its reasonable third party out-of-pocket fees and expenses incurred in joining an action or proceeding or cooperating with LICENSEE. All amounts of every kind and nature recovered from an action or proceeding of infringement by LICENSEE shall belong to LICENSEE. After deduction of fees and expenses of both parties to this Agreement, any remaining amounts recovered shall be considered Net Sales under this Agreement and subject to Royalty payments in accordance with Section 4.D.

- C. LICENSEE Discretion. The prosecution, settlement, or abandonment of any action or proceeding under Section 10.B shall be at LICENSEE's reasonable discretion provided that LICENSEE has timely informed UNIVERSITY of material developments of such action. LICENSEE shall not have any right to surrender any of UNIVERSITY's rights to the Licensed Patents or Licensed Methods, or to grant any infringer any of UNIVERSITY's rights to the Licensed Patents or Licensed Methods without UNIVERSITY's written consent.
- D. UNIVERSITY's Right to Bring Infringement Action. If LICENSEE declines or fails to take action to abate an infringement within sixty (60) days of notification under Section 10.A, UNIVERSITY shall have the right, at its sole discretion, to take action, including to institute and prosecute an action or proceeding, to abate such alleged infringement and to resolve such matter by settlement or otherwise. LICENSEE shall cooperate fully by joining as a party plaintiff if required to do so by law to maintain such action and by executing and making available such documents as UNIVERSITY may reasonably request. If the amounts recovered by UNIVERSITY exceed its reasonable third party fees and expenses, UNIVERSITY agrees to pay LICENSEE for its reasonable third party expenses incurred by it in cooperating in the action or proceeding. Except as specifically provided in this Section 10.D, UNIVERSITY shall have the right to retain all amounts recovered of every kind and nature. Amounts recovered by UNIVERSITY shall not be considered Net Sales under this Agreement and shall not be construed to affect LICENSEE's rights under this Agreement to sublicense the Licensed Patents and/or Licensed Methods provided, however, that once the UNIVERSITY has instituted legal proceedings against, or settlement discussions with, an alleged infringer under this Section 10.D, LICENSEE shall not grant a sublicense to such alleged infringer without the prior written consent of UNIVERSITY.

11. TERM AND TERMINATION

- A. Term. Unless terminated earlier pursuant to Section 11.B or 11.C of this Agreement, this Agreement shall terminate on the date of expiration of the last to expire of the Licensed Patents.
- B. UNIVERSITY's Right to Terminate. UNIVERSITY shall have the right to terminate this Agreement as follows, in addition to all other available remedies:
- i. If LICENSEE fails to pay any Royalties, Patent Costs or other payment when due, this Agreement shall terminate effective ninety (90) days after UNIVERSITY's written notice to LICENSEE to such effect, unless LICENSEE makes such payment within the ninety (90) days or has cured such failure to the satisfaction of the UNIVERSITY.
 - ii. If LICENSEE fails to comply with any material obligation of this Agreement other than an obligation to make a Royalty or other payment when due, the UNIVERSITY may at its sole discretion terminate the Agreement effective ninety (90) days after UNIVERSITY's written notice to LICENSEE describing such failure, unless LICENSEE cures such failure to the satisfaction of UNIVERSITY within the ninety (90) days.
 - iii. If LICENSEE shall have filed by or against it a petition under any bankruptcy or insolvency law and such petition is not dismissed within ninety (90) days of its filing, or if LICENSEE makes an assignment of all or substantially all of its assets for the benefit of its creditors UNIVERSITY may terminate this Agreement by written notice effective as of the (i) date of filing by LICENSEE of any such petition, (ii) date of any such assignment to creditors, or (iii) end of the ninety (90) days if a petition is filed against it and not dismissed by such time, whichever is applicable.
 - iv. If LICENSEE shall be dissolved, liquidated or otherwise ceases to exist, other than for reasons specified in this Section 11, this Agreement shall automatically terminate as of (i) the date articles of dissolution or a similar document is filed on behalf of LICENSEE with the appropriate government authority or (ii) the date of establishment of a liquidating trust or other arrangement for the winding up of the affairs of LICENSEE. Any previous waiver by the UNIVERSITY, of the UNIVERSITY's right to terminate this Agreement, shall not constitute a waiver on any subsequent right of the UNIVERSITY to terminate under this Section 11.

- v. UNIVERSITY shall have the right to immediately terminate this Agreement in the event that LICENSEE challenges, directly or indirectly, the validity or enforceability of any of the Licensed Patents before any court, arbitrator, or other tribunal or administrative agency in any jurisdiction. Notwithstanding the foregoing, UNIVERSITY will not have the right to terminate this Agreement on account of any action taken by LICENSEE in connection with its prosecution or defense of (i) LICENSEE's owned intellectual property or (ii) third-party intellectual property controlled by LICENSEE.
- C. LICENSEE's Right to Terminate. LICENSEE may terminate this Agreement at any time by giving UNIVERSITY ninety (90) days, prior written notice.
- D. Post Termination Obligations of LICENSEE. Upon the termination of this Agreement pursuant to Section 11.B or 11.C, all rights of LICENSEE to use the Licensed Patent(s) and Licensed Method(s), and any other rights conferred to LICENSEE by this Agreement, shall immediately thereafter cease. Upon such termination, and upon request of UNIVERSITY, all Tangible Materials shall be either transferred to UNIVERSITY or destroyed in part or in whole by LICENSEE; provided LICENSEE may elect to destroy biological materials in lieu of transferring them to UNIVERSITY. LICENSEE shall provide to the UNIVERSITY a certification that such partial or complete destruction has been completed. LICENSEE shall not thereafter operate or conduct business under any name or mark and in any manner in the Territory that might tend to create the impression that this Agreement is still in force, or that LICENSEE has any right to use any Licensed Patent(s), Licensed Method(s), any trademark or servicemark of UNIVERSITY, and/or any Tangible Material. All payments including fees and costs due under this Agreement and not paid yet shall become immediately due and payable. Upon expiration or termination, LICENSEE shall cease using UNIVERSITY's name.
- E. Survival. All causes of action accruing to either party under this Agreement shall survive termination for any reason, as well as (1) LICENSEE'S obligation to pay Royalties, Patent Costs, fees and other payments accrued prior to the date of termination and which were not paid or payable before termination, and (2) LICENSEE's obligation to report Net Sales and to keep records as set forth in this Agreement, and (3) all provisions inclusive from Section 7 to Section 8 survive termination or expiration of the Agreement. During the six (6) month period following termination of this Agreement, LICENSEE may sell inventory existing or in the process at the time of termination. Such Sales shall be subject to the Royalty obligations under Section 4.D.
- F. Termination and Sublicenses. If this Agreement is terminated for any reason, UNIVERSITY agrees that upon the Sublicensee's notice as described below and provided the Sublicensee is not in breach of its Sublicense, UNIVERSITY shall grant to such Sublicensee license rights and terms equivalent to the Sublicense rights and terms which the Sublicense shall have granted to the Sublicensee; provided that Sublicensees within sixty (60) days of receiving the notice of termination provides to UNIVERSITY written notice wherein the Sublicensee: (i) agrees to abide by the terms and conditions of this Agreement applicable to LICENSEE and to discharge directly all pertinent obligations of LICENSEE hereunder; provided that if the payments of Sublicensee pursuant to the terms of the Sublicense are greater than the payments owed under this Agreement, Sublicensee's royalty and other payment obligations shall be modified to match those of the Sublicense, and (ii) acknowledges that UNIVERSITY shall have no obligations to the Sublicensee other than its obligations set forth in this Agreement with regard to LICENSEE.

12. EXPORT REGULATIONS . Licensed Products, Licensed Methods, and technical data and information delivered under this Agreement may be subject to United States export control laws and may also be subject to export or import regulations in other countries. LICENSEE agrees to comply strictly with all such laws and regulations and acknowledges that LICENSEE has the responsibility to obtain such licenses to export, re-export, or import Licensed Products, Licensed Methods, or other technical data and information delivered under this Agreement as may be required by applicable laws or regulations. To the extent that the United States Export Control Regulations are applicable, neither LICENSEE nor UNIVERSITY shall, without having first fully complied with such regulations, (i) knowingly transfer, directly or indirectly, any unpublished technical data obtained or to be obtained from the other party hereto to any destination, or (ii) knowingly ship, directly or indirectly, any product produced using such unpublished technical data to any destination. LICENSEE acknowledges that the export of any products and/or technical data from the United States may require export control licenses by LICENSEE, and may result in LICENSEE subjecting itself to criminal liability under U.S. laws.

13. U.S. COMPETITIVENESS . LICENSEE agrees that any Licensed Product(s) and/or Licensed Method(s) for use or sale in the United States shall be manufactured substantially in the United States to the extent required by 35 United States Code Section 204 and nothing here shall limit or restrict LICENSEE's right to file and obtain a waiver of such manufacturing requirement in accordance with applicable laws and regulations.

14. ENTIRE AGREEMENT, AMENDMENT, WAIVER . The Agreement together with the Schedule attached hereto constitute the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior written or oral agreements or understandings (express or implied) between them concerning the same subject matter. The Agreement may not be amended or modified except in writing signed by duly authorized representatives of each Party. No waiver of any default hereunder by either Party or any failure to enforce any rights hereunder shall be deemed to constitute a waiver of any subsequent default with respect to the same or any other provision hereof.

15. NOTICE . Any notice required or otherwise made pursuant to this Agreement shall be in writing, sent by registered or certified mail properly addressed, or by facsimile with confirmed answer-back, to the other Party at the address set forth below or at such other address as may be designated by written notice to the other Party. Notice shall be deemed effective three (3) business days following the date of sending such notice if by mail, on the day following deposit with an overnight courier, or upon confirmed answer-back if by facsimile.

IF to UNIVERSITY:

University of Chicago
UChicagoTech, Attn: Director
6030 S. Ellis Avenue
Suite 2S
Chicago, IL 60637

IF to LICENSEE:

Opexa Therapeutics, Inc.
Attn: Neil K. Warma, President & Chief
Executive Officer
2635 Technology Forest Blvd.
The Woodlands, Texas 77381

16. ASSIGNMENT . This Agreement shall be binding on the Parties hereto and upon their respective successors and assigns. Notwithstanding Section 3.A, either Party may at any time, upon written notice to the other Party, assign or delegate to a successor to all or substantially all of its business or an Affiliate of such Party any of its rights and obligations hereunder, provided that any such assignment or delegation shall in no event relieve either Party of its primary responsibility for the same. Except as provided in the preceding sentence, and except as provided in Section 11.B(3), LICENSEE may not assign this Agreement without the prior written consent of UNIVERSITY, which consent shall not be unreasonably withheld, and any attempted assignment in violation thereof shall be void. UNIVERSITY may assign this Agreement at any time to any third party on written notice to LICENSEE. In such event, the assignee shall be substituted for UNIVERSITY as a party hereto, and UNIVERSITY shall no longer be bound hereby.

17. GOVERNING LAW . To the extent there is no applicable federal law, the interpretation and performance of this Agreement shall be governed by the laws of the State of Illinois applicable to contracts made and to be fully performed in that state.

18. COUNTERPARTS . This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers or representatives and signed below,

University of Chicago

Opexa Therapeutics, Inc.

By: /s/ Alan Thomas

Name: Alan Thomas

Title: Director, UChicagoTech

Date: November 2, 2011

By: /s/ Neil K. Warma

Name: Neil K. Warma

Title: President & Chief Executive
Officer

Date: November 2, 2011

SCHEDULE A

UChicagoTech Case #ANL-02-021

US Patent Application – 12/954,200, title “Human stem cell materials and methods”

Nationalized PCT applications: 11152200.9EPO; 03781813.5EPO; 2,505,394 CA

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT**

I, Neil K. Warma, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Opexa Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2011

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

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Opexa Therapeutics, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2011 (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, I, Neil K. Warma, President, Chief Executive Officer and Acting Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 4, 2011

By: /s/ Neil K. Warma
Neil K. Warma
President and Chief Executive Officer
(Principal Executive Officer)
Acting Chief Financial Officer
(Principal Financial and Accounting Officer)