

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

**FORM S-8  
REGISTRATION STATEMENT**  
*Under  
The Securities Act of 1933*

**AVI BIOPHARMA, INC.**

(Exact name of registrant as specified in its charter)

**Oregon**  
(State or other jurisdiction of  
incorporation or organization)

**93-0797222**  
(I.R.S. Employer  
Identification No.)

3450 Monte Villa Parkway, Suite 101  
Bothell, WA 98021  
(425) 354-5038  
(Address of Principal Executive Offices)(Zip Code)

2011 EQUITY INCENTIVE PLAN  
STAND ALONE STOCK OPTION GRANT TO EFFIE TOSHAV  
STAND ALONE STOCK OPTION GRANT TO PETER LINSLEY  
STAND ALONE STOCK OPTION GRANT TO EDWARD KAYE  
(Full title of the plan(s))

Christopher Garabedian  
President and Chief Executive Officer  
AVI BioPharma, Inc.  
3450 Monte Villa Parkway, Suite 101  
Bothell, WA 98021  
(425) 354-5038

(Name, address, and telephone number, including area code, of agent for service)

*Copy to:*  
Michael Nordtvedt  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
701 Fifth Avenue, Suite 5100  
Seattle, Washington 98104  
(206) 883-2500

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

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be registered (1)(2)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock \$0.0001 par value per share				
— To be issued under the 2011 Equity Incentive Plan	13,000,000	\$1.39(3)	\$18,070,000	\$2,097.93
— To be issued under the 2011 Equity Incentive Plan	2,072,457(4)	\$1.39(3)	\$2,880,716	\$334.46
— To be issued under the 2011 Equity Incentive Plan	9,485,990(5)	\$1.39(3)	\$13,185,527	\$1,530.84
— Outstanding under the Stand Alone Stock Option Grant to Effie Toshav	650,000	\$2.58(6)	\$1,677,000	\$194.70
— Outstanding under the Stand Alone Stock Option Grant to Peter Linsley	800,000	\$1.76(6)	\$1,408,000	\$163.47

— Outstanding under the Stand Alone Stock Option Grant to Edward Kaye	850,000	\$1.38(6)	\$1,173,000	\$136.19
<b>Total</b>	<b>26,858,447</b>		<b>\$38,394,243</b>	<b>\$4,457.59</b>

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s common stock that become issuable under the 2011 Equity Incentive Plan, the Stand Alone Stock Option Grant to Effie Toshav, the Stand Alone Stock Option Grant to Peter Linsley or the Stand Alone Stock Option Grant to Edward Kaye by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of common stock.
- (2) For the sole purpose of calculating the registration fee, the number of shares to be registered under this Registration Statement has been broken down into six subtotals.
- (3) Offering prices of awards that have not yet been granted as of the date of this Registration Statement are computed in accordance with Rules 457(c) and 457(h) under the Securities Act solely for the purpose of calculating the registration fee based upon the price of \$1.39 per share, the average of the high and low prices of the common stock of the Registrant as reported on The NASDAQ Global Market on June 17, 2011.
- (4) This subtotal represents the registration of 2,072,457 shares reserved but not issued under the Registrant’s 2002 Equity Incentive Plan, which became issuable under the 2011 Equity Incentive Plan pursuant to its terms. No additional awards will be issued pursuant to the 2002 Equity Incentive Plan.
- (5) This subtotal represents the registration of up to a maximum of 9,485,990 shares subject to outstanding awards under the 2002 Equity Incentive Plan that expire or otherwise terminate without having been exercised in full, or are forfeited to or repurchased by the Registrant, which become issuable under the 2011 Equity Incentive Plan pursuant to its terms.
- (6) Calculated pursuant to Rule 457(h) under the Securities Act. The price of \$2.58 per share represents the exercise price per share for Ms. Toshav’s option grant, the price of \$1.76 per share represents the exercise price per share for Dr. Linsley’s option grant and the price of \$1.38 per share represents the exercise price per share for Dr. Kaye’s option grant.

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## PART I

### Information Required in the Section 10(a) Prospectus

The information specified in Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 424 under the Securities Act and the introductory note to Part I of Form S-8. The documents containing the information specified in Part I will be delivered to the participants in the equity benefit plans covered by this Registration Statement as required by Rule 428(b)(1).

## PART II

### Information Required in the Registration Statement

#### Item 3. Incorporation of Documents by Reference.

AVI BioPharma, Inc. (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "Commission"):

(a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed with the Commission on March 15, 2011, as amended by Amendment No. 1 to the Registrant's Annual Report on Form 10-K filed with the Commission on May 2, 2011.

(b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011 filed with the Commission on May 10, 2011.

(c) All other reports filed with the Commission pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") since the end of the fiscal year covered by the Registrant's Annual Report referred to in (a) above.

(d) The description of the Registrant's common stock contained in its registration statement on Form 8-A12G, filed May 29, 1997, pursuant to Section 12(g) of the Exchange Act.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities registered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

The Registrant is not incorporating any information from any filed documents furnished under either Item 2.02 or Item 7.01 of any Current Report on Form 8-K. Unless expressly incorporated into this Registration Statement, a Current Report furnished on Form 8-K subsequent to the date hereof shall not be incorporated by reference into this Registration Statement, except as to specific sections of such statements as set forth therein.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Under the Oregon Business Corporation Act (the "Oregon Act") and the Registrant's Articles of Incorporation, the Registrant has broad powers to indemnify directors and officers against liabilities that they may incur in such capacities.

Section 60.391 of the Oregon Act authorizes the indemnification of an individual made a party to a proceeding because the individual is or was an officer or director against certain liability incurred in the proceeding if:

- (a) the conduct of the individual was in good faith;
- (b) the individual reasonably believed that his or her conduct was in the best interests of the corporation or at least not opposed to its best interests;
- (c) in the case of any criminal proceeding, the individual had no reasonable cause to believe his or her conduct was unlawful;
- (d) in the case of any proceeding by or in the right of the corporation, the individual was not adjudged liable to the corporation; and

(e) in connection with any proceeding (other than a proceeding by or in the right of the corporation) charging improper personal benefit to the individual, the individual was not adjudged liable on the basis that he or she improperly received personal benefit.

Section 60.401 of the Oregon Act also authorizes a court to order indemnification, whether or not the above standards of conduct have been met, if the court determines that the officer or director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances. In addition, the Oregon Act provides that the indemnification described above is not exclusive of any other rights to which officers or directors may be entitled under the corporation's articles of incorporation or bylaws, or under any agreement, action of its board of directors, vote of shareholders or otherwise.

Section 60.047(2)(d) of the Oregon Act also authorizes a corporation to include in its articles of incorporation a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, except that such a provision cannot affect the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any unlawful corporate distribution as defined in the Oregon Act or (iv) for any transaction from which the director derived an improper personal benefit.

The Registrant's Articles of Incorporation provide that it is required to indemnify its directors and officers, in each case to the fullest extent permitted by Oregon law. No amendment to the Articles of Incorporation that limits the Registrant's obligation to indemnify any person shall have any effect for any act or omission that occurs prior to the later of the effective date of such amendment and the date notice of such amendment is given to the person.

The Registrant has entered into and expects to continue to enter into agreements to indemnify its executive officers and directors. With certain exceptions, these agreements require the Registrant to indemnify each indemnitee to the fullest extent permitted by applicable law, against all expenses, judgments, fines and amounts paid in settlement incurred by the indemnitee in connection with any proceeding, whether of a civil, criminal, administrative or investigative nature, in which the indemnitee may be or may have been involved as a party, witness or otherwise, by reason of the fact that the indemnitee was one of the Registrant's directors or officers, or by reason of any action or inaction on indemnitee's part while acting as one of the Registrant's directors or officers, or by reason of the fact that indemnitee was serving, at the Registrant's request, in certain capacities for other entities.

The Registrant believes that the provisions in the Articles of Incorporation and indemnification agreements are necessary to attract and retain qualified persons as directors and officers. The Registrant also maintains directors' and officers' liability insurance.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit Number</u>	<u>Description</u>
4.1	Fourth Restated and Amended Articles of Incorporation of AVI BioPharma, Inc.
4.2 (1)	Amended and Restated Bylaws of AVI BioPharma, Inc.
4.3 (2)	Form of Specimen Certificate for Common Stock.
4.4 (3)	AVI BioPharma, Inc. 2011 Equity Incentive Plan.
4.5 (4)	Form of Stock Option Award Agreement under the 2011 Equity Incentive Plan.
4.6 (5)	Form of Notice of Grant of Restricted Stock under the 2011 Equity Incentive Plan.
4.7 (6)	Stand Alone Stock Option Grant between the Registrant and Effie Toshav dated January 10, 2011.
4.8	Stand Alone Stock Option Grant between the Registrant and Peter Linsley dated May 16, 2011.
4.9	Stand Alone Stock Option Grant between the Registrant and Edward Kaye dated June 20, 2011.
5.1	Opinion of White & Lee LLP.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2	Consent of White & Lee LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).
(1)	Incorporated by reference to Exhibit 3.4 to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed on March 15, 2011.
(2)	Incorporated by reference to Exhibit 4.1 to Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2010, filed on March 15, 2011.
(3)	Incorporated by reference to Exhibit 10.1 to Registrant's Current Report on Form 8-K, filed on June 16, 2011.

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- (4) Incorporated by reference to Exhibit 10.2 to Registrant's Current Report on Form 8-K, filed on June 16, 2011.
  - (5) Incorporated by reference to Exhibit 10.3 to Registrant's Current Report on Form 8-K, filed on June 16, 2011.
  - (6) Incorporated by reference to Exhibit 10.2 to Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011, filed on May 10, 2011.

**Item 9. Undertakings.**

a. The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*Provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

b. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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- h. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.





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## INDEX TO EXHIBITS

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(6)	Incorporated by reference to Exhibit 10.2 to Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2011, filed on May 10, 2011.

**FOURTH RESTATED AND AMENDED  
ARTICLES OF INCORPORATION  
OF  
AVI BIOPHARMA, INC.**

Pursuant to ORS 60.437 and 60.451, the Board of Directors and the shareholders of AVI BioPharma, Inc. (the "Corporation") hereby restate and amend the Corporation's Third Restated and Amended Articles of Incorporation, as amended, dated January 20, 1997.

**ARTICLE I  
Name**

The name of the Corporation is AVI BioPharma, Inc.

**ARTICLE II  
Shares of Stock**

2.1 *Authorized Capital.* The Corporation is authorized to issue two classes of stock which are designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of stock which the Corporation shall have authority to issue shall be 320,000,000, consisting of 300,000,000 shares of Common Stock, having \$0.0001 par value per share, and 20,000,000 shares of Preferred Stock, having \$0.0001 par value per share.

2.2 *Common Stock.* Subject to any preferential or other rights granted to any series of Preferred Stock, the holders of shares of the Common Stock shall be entitled to receive dividends out of funds of the Corporation legally available therefor, at the rate and at the time or times as may be provided by the Board of Directors and shall be entitled to receive distributions legally payable to shareholders on the liquidation of the Corporation. The holders of shares of Common Stock, on the basis of one vote per share, shall have the right to vote for the election of members of the Board of Directors of the Corporation and the right to vote on all other matters, except where a separate class or series of the Corporation's shareholders vote by class or series is authorized by law or the Corporation's bylaws. Except as otherwise provided in authorizing preferred stock, holders of all shares, regardless of class, shall be entitled to receive the net assets of the Corporation upon dissolution on a pro rata basis.

2.3 *Preferred Stock.*

2.3.1 *Issuance of Preferred Stock in Series.* The shares of Preferred Stock may be issued from time to time in one or more series in any manner permitted by law and the provisions of the Articles of Incorporation of the Corporation, as determined from time to time by the Board of Directors and stated in the resolution or resolutions providing for the issuance thereof, prior to the issuance of any shares thereof. The Board of Directors shall have the authority to fix and determine, subject to the provisions hereof, the rights and

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preferences of the shares of any series so established, including, without limitation, the rate of dividend, whether the dividend shall be cumulative, whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption, the amount payable upon shares in the event of voluntary or involuntary liquidation, sinking fund provisions, if any, for the redemption or purchase of shares, the terms and conditions, if any, on which shares may be converted, and voting rights, if any.

2.3.2 *Dividends.* The holders of shares of the Preferred Stock shall be entitled to receive dividends, out of the funds of the Corporation legally available therefor, at the rate and at the time or times as may be provided by the Board of Directors in designating a particular series of Preferred Stock. If such dividends on the Preferred Stock shall be cumulative, and if dividends shall not have been paid, then the deficiency shall be fully paid or the dividends declared and set apart for payment at such rate, but without interest on cumulative dividends, before any dividends on the Common Stock shall be paid or declared and set apart for payment. Unless otherwise provided by the Board of Directors in designating a particular series of Preferred Stock, the holders of the Preferred Stock shall not be entitled to receive any dividends thereon other than the dividends referred to in this section.

2.3.3 *Redemption.* The Preferred Stock may be redeemed in such amount, and at such time or times as may be provided by the Board of Directors in designating a particular series of Preferred Stock. In any event, such Preferred Stock may be repurchased by the Corporation to the extent legally permissible.

2.3.4 *Liquidation.* In the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, then, before any distribution shall be made to the holders of the Common Stock, the holders of the Preferred Stock at the time outstanding shall be entitled to be paid the preferential amount or amounts as may be provided by the Board of Directors in designating a particular series of Preferred Stock per share and dividends accrued thereon to the date of such payment. The holders of the Preferred Stock shall not be entitled to receive any distributive amounts upon the liquidation, dissolution, or winding up of the affairs of the Corporation other than the distributive amounts referred to in this section, unless otherwise provided by the Board of Directors in designating a particular series of Preferred Stock.

2.3.5 *Conversion.* The Board of Directors may provide that shares of a particular series of Preferred Stock may be converted into Common Stock of the Corporation at the option of the holders of such Preferred Stock, at such rate and subject to such adjustments as may be provided by the Board of Directors.

2.3.6 *Voting Rights.* Holders of Preferred Stock shall have such voting rights as may be provided by the Board of Directors in designating a particular series of Preferred Stock.

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**ARTICLE III**  
**Staggered Terms of Directors**

3.1 When there are six or more positions on the Board of Directors, those positions shall be divided into two equal or nearly equal groups, denoted Group I and Group II. Beginning at the 1992 annual shareholders meeting, in even years shareholders will elect directors to fill all Group I positions and in odd years shareholders will elect directors to fill all Group II positions.

3.2 This Article may not be amended, altered, changed or repealed in any respect unless such action is approved by the affirmative vote of the holders of not less than 66-2/3 percent of the shares then entitled to vote at an election of directors.

**ARTICLE IV**  
**No Preemptive Rights**

The Corporation elects to waive preemptive rights.

**ARTICLE V**  
**Limitation on Liability**

No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages for conduct as a director, provided that this Article shall not eliminate the liability of a director for any act or omission for which such elimination of liability is not permitted under the Act. No amendment to the Act that further limits the acts or omissions for which elimination of liability is permitted shall affect the liability of a director for any act or omission which occurs prior to the effective date of the amendment.

**ARTICLE VI**  
**Indemnification**

The Corporation shall indemnify to the fullest extent not prohibited by law any current or former director of the Corporation who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative or other (including an action, suit or proceeding by or in the right of the Corporation), by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or a fiduciary within the meaning of the Employee Retirement Income Security Act of 1974 with respect to any employee benefit plan of the Corporation, or serves or served at the request of the Corporation as a director, officer, employee or agent, or as a fiduciary of an employee benefit plan, of another corporation, partnership, joint venture, trust or other enterprise. The Corporation shall pay for or reimburse the reasonable expenses incurred by any such current or former director in any such proceeding in advance of the final disposition of the proceeding if the person sets forth in writing (i) the person's good faith belief that the person is entitled to indemnification under this Article and (ii) the person's agreement to repay all advances if it is ultimately determined that the person is not entitled to indemnification under this Article. No amendment to this Article that limits the Corporation's obligation to indemnify any person shall have any effect on such obligation for any act or omission that occurs

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prior to the later of the effective date of the amendment or the date notice of the amendment is given to the person. This Article shall not be deemed exclusive of any other provisions for indemnification or advancement of expenses of directors, officers, employees, agents and fiduciaries that may be included in any statute, bylaw, agreement, general or specific action of the Board of Directors, vote of shareholders or other document or arrangement.

**ARTICLE VII**  
**Address for Notices**

The address of the registered office of the Corporation is 325 13th Street NE, Suite 501, Salem, OR 97301, and the name of its registered agent at such address is National Registered Agents, Inc. Any notices required by the Act to be sent to the Corporation may be sent to the registered agent at the above address.

DATED the 13<sup>th</sup> day of June, 2011.

/s/ Christopher Garabedian  
\_\_\_\_\_  
Christopher Garabedian  
President & Chief Executive Officer

**AVI BIOPHARMA, INC.**  
**STAND ALONE STOCK OPTION GRANT**  
**NOTICE OF GRANT OF STOCK OPTION**

This grant (the "Option") shall be governed by this Notice of Grant of Stock Option (the "Notice of Grant") and the Terms and Conditions of Stock Option Grant (the "Terms and Conditions"), attached hereto as Exhibit A (together, the "Agreement"). Terms not otherwise defined in the Notice of Grant shall be defined in the Terms and Conditions of Stock Option Grant.

**Participant:** Peter S. Linsley

**Address:** \_\_\_\_\_

Seattle, Washington

Participant has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of this Agreement, as follows:

Date of Grant	May 16, 2011
Vesting Commencement Date	May 1, 2011
Number of Shares Granted	800,000
Exercise Price per Share	\$1.76
Total Exercise Price	\$1,408,000.00
Type of Option	Nonstatutory Stock Option
Term/Expiration Date	10 years/May 16, 2021

Vesting Schedule:

Subject to accelerated vesting as set forth below or in the Agreement, this Option will be exercisable, in whole or in part, in accordance with the following schedule:

Twenty-five percent (25%) of the Shares subject to the Option will vest on the one (1) year anniversary of the Vesting Commencement Date, and one forty-eighth (1/48<sup>th</sup>) of the Shares subject to the Option will vest each month thereafter on the same day of the month as the Vesting Commencement Date (and if there is no corresponding day, on the last day of the month), subject to Participant continuing to be a Service Provider through each such date.

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Accelerated Vesting and Extended Post-Termination Exercise Period:

*Termination for other than Cause, Death or Disability Apart from a Change of Control.* If prior to a Change of Control or after twelve (12) months following a Change of Control, the Company (or any parent or subsidiary or successor of the Company) terminates Participant's employment with the Company other than for Cause, death or disability after providing at least thirty (30) days advance notice to Participant, then, subject to Section 10 of the Employment Agreement, Participant will be entitled to accelerated vesting as to 50% of any unvested Shares subject to the Option and an extension of the post-termination exercise period applicable to the Option to one hundred and eighty (180) days following the date of Participant's termination of employment (but in no event beyond the Term/Expiration Date).

*Termination for other than Cause, Death or Disability or Resignation by Participant for Good Reason upon or within Twelve Months Following a Change of Control.* If upon a Change of Control or within the Change of Control Period, the Company (or any parent or subsidiary or successor of the Company) terminates Participant's employment with the Company other than for Cause, death or disability after providing at least thirty (30) days advance notice to Participant, or Participant resigns from such employment for Good Reason, then, subject to Section 10 of the Employment Agreement, Participant will be entitled to accelerated vesting as to 100% of any unvested Shares subject to the Option and an extension of the post-termination exercise period applicable to the Option to one hundred and eighty (180) days following the date of Participant's termination of employment (but in no event beyond the Term/Expiration Date).

*Termination for Cause, Death or Disability; Resignation without Good Reason.* If Participant's employment with the Company (or any parent or subsidiary or successor of the Company) terminates voluntarily by Participant (except upon resignation for Good Reason during the Change of Control Period), for Cause by the Company or due to Participant's death or disability, then all vesting will terminate immediately with respect to the Option.

Termination Period:

This Option will be exercisable for three (3) months after Participant ceases to be a Service Provider, unless (i) such termination is due to Participant's death or Disability, in which case this Option will be exercisable for twelve (12) months after Participant ceases to be a Service Provider, or (ii) such termination is by the Company for Cause, in which case this Option will be exercisable for twenty-four (24) hours after Participant ceases to be a Service Provider. Notwithstanding the foregoing sentence, in no event may this Option be exercised after the Term/Expiration Date as provided above and may be subject to earlier termination as provided in Section 14(c) of the Terms and Conditions.

*[signature page to follow]*

By Participant's signature and the signature of the Company's representative below, Participant and the Company agree that this Option is granted under and governed by the terms and conditions of this Agreement. Participant has reviewed this Agreement in its entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Agreement. Participant further agrees to notify the Company upon any change in the residence address indicated below.

PARTICIPANT

/s/ Peter S. Linsley  
Signature

Peter S. Linsley  
Print Name

Address:  
\_\_\_\_\_  
\_\_\_\_\_

AVI BIOPHARMA, INC.

/s/ Christopher Garabedian  
By

President and Chief Executive Officer  
Title

*[signature page of the P. Linsley notice of stock option grant]*



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**EXHIBIT A**

**TERMS AND CONDITIONS OF STOCK OPTION GRANT**

1. Definitions. As used herein, the following definitions shall apply:

(a) “Administrator” means the Committee as will have administrative authority under this Agreement, in accordance with Section 4 of the Terms and Conditions.

(b) “Affiliate” means any corporation or any other entity (including, but not limited to, partnerships and joint ventures) controlling, controlled by, or under common control with the Company.

(c) “Applicable Laws” means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction that may apply to this Option.

(d) “Award Transfer Program” means any program instituted by the Administrator that would permit Participants the opportunity to transfer for value the Option to a financial institution or other person or entity approved by the Administrator.

(e) “Board” means the Board of Directors of the Company.

(f) “Cause” is defined as (i) an act of dishonesty made by Participant in connection with Participant’s responsibilities as an employee, (ii) Participant’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) Participant’s gross misconduct; (iv) Participant’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Participant owes an obligation of nondisclosure as a result of Participant’s relationship with the Company; (v) Participant’s willful breach of any obligations under any written agreement or covenant with the Company; or (vi) Participant’s continued failure to perform his employment duties after Participant has received a written demand of performance from the Company which specifically sets forth the factual basis for the Company’s belief that Participant has not substantially performed his duties and has failed to cure such non-performance to the Company’s satisfaction within ten (10) business days after receiving such notice.

(g) “Change of Control” means the occurrence of any of the following events:

(i) any “person” (as such term is used in Sections 12(d) and 13(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company’s then outstanding voting securities; or

(ii) the date of the consummation of a merger or consolidation of the Company with any other corporation that has been approved by the shareholders of the Company, other than a merger or consolidation which would result in the voting securities of the

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Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; or

(iii) the date of the consummation of the sale or disposition by the Company of all or substantially all the Company's assets.

For purposes of this definition, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction shall not be deemed a Change of Control unless the transaction qualifies as a "change in control event" within the meaning of Section 409A of the Code, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction shall not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that shall be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(h) "Change of Control Period" means the period of time within twelve (12) months following a Change of Control.

(i) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or Treasury Regulation thereunder will include such section or regulation, any valid regulation or other official applicable guidance promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(j) "Committee" means the Compensation Committee of the Board.

(k) "Common Stock" means the common stock of the Company.

(l) "Company" means AVI BioPharma, Inc., an Oregon corporation, or any successor thereto.

(m) "Consultant" means any person, including an advisor, engaged by the Company or a Parent or a Subsidiary to render services to such entity other than as an Employee.

(n) "Director" means a member of the Board.

(o) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

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(p) “Employee” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

(q) “Employment Agreement” means the Executive Employment Agreement by and between the Company and Participant, effective March 29, 2011.

(r) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(s) “Exchange Program” means a program under which (i) the Option is surrendered or cancelled in exchange another stock option (which may have higher or lower exercise prices and different terms), equity awards of a different type, and/or cash, (ii) Participant would have the opportunity to transfer for value the Option to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of the Option is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

(t) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Market, the Nasdaq Global Select Market or the Nasdaq Capital Market, its Fair Market Value shall be the closing sales price for such stock (or, if no closing sales price was reported on that date, as applicable, on the last trading date such closing sales price is reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks are reported); or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

(u) “Good Reason” means the termination by Participant upon the occurrence of any of the below described events. Participant must provide notice to the Company of the existence of such event within ninety (90) days of the first occurrence of such event, and the Company will have thirty (30) days to remedy the condition, in which case no Good Reason shall exist. If the Company fails to remedy the condition within such thirty (30) day period, Participant must terminate employment within two (2) years of the first occurrence of such event. The events which constitute a Good Reason termination are: (i) the assignment of a different title or change that results in a

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material reduction in Participant's duties or responsibilities; (ii) a material reduction by the Company in Participant's base compensation, other than a reduction in his base salary that is part of a general salary reduction affecting employees generally and provided the reduction is not greater, percentage-wise, than the reduction affecting other employees generally or failure to provide an annual increase in base compensation commensurate with other executives; provided, however, in determining whether to provide an annual increase in base compensation commensurate with an annual increase provided to other executives, the Company may take into account factors such as market levels of compensation, Participant's overall performance, and other factors reasonably considered by the Company's compensation committee and/or Board, so long as such determination is not made in bad faith with the intent to discriminate against Participant; or (iii) relocation of Participant's principal place of business of greater than seventy-five (75) miles from its then location.

(v) "Incentive Stock Option" means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(w) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(x) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(y) "Option" means the stock option set forth in the Notice of Grant.

(z) "Outside Director" means a Director who is not an Employee.

(aa) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(bb) "Participant" means the holder of the Option.

(cc) "Service Provider" means an Employee, Director or Consultant.

(dd) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14(a) of the Terms and Conditions.

(ee) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

2. Grant of Option. The Company hereby grants to the Participant named in the Notice of Grant the Option to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the "Exercise Price"), subject to all of the terms and conditions in this Agreement.

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3. Vesting Schedule. The Option awarded by this Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant. Shares scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Participant in accordance with any of the provisions of this Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

4. Authority of the Administrator.

(a) Powers of the Administrator. Subject to the provisions of this Agreement, the Administrator will have the authority, in its discretion:

- (i) to determine the terms and conditions of any, and to institute any Exchange Program;
- (ii) to construe and interpret the terms of the Agreement and the Option;
- (iii) to prescribe, amend and rescind rules and regulations relating to the Agreement, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;
- (iv) to modify or amend the Option (subject to Section(s) 4(d)(i) and 21 of the Terms and Conditions), including but not limited to the discretionary authority to extend the post-termination exercisability period of the Option and to extend the maximum term of the Option;
- (v) to allow Participant to satisfy withholding tax obligations in such manner as prescribed in Section 7 of the Terms and Conditions;
- (vi) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant under the Option pursuant to such procedures as the Administrator may determine; and
- (vii) to make all other determinations deemed necessary or advisable for administering the Agreement.

(b) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on the Participant and any other holders of Shares subject to the Option.

(c) No Liability. Under no circumstances shall the Company, its Affiliates, the Administrator, or the Board incur liability for any indirect, incidental, consequential or special damages (including lost profits) of any form incurred by any person, whether or not foreseeable and regardless of the form of the act in which such a claim may be brought, with respect to the Agreement or the Company's, its Affiliates', the Administrator's or the Board's roles in connection with the Agreement.

(d) Limitations.

(i) Prohibition Against Repricing. Notwithstanding Section 4(a)(iv), the Administrator may not modify or amend the Option to reduce the exercise price of the Option after it has been granted (except for adjustments made pursuant to Section 14), and neither may the Administrator cancel the outstanding Option and immediately replace it with any other award with a lower exercise price, unless such action is approved by shareholders prior to such action being taken.

(ii) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash an Option previously granted based on such terms and conditions as the Administrator will establish and communicate to the Participant at the time that such offer is made. Notwithstanding anything contained in this Section 4(d)(ii) to the contrary, the Administrator shall not be allowed to authorize the buyout of an underwater Option without the prior consent of the Company's shareholders.

#### 5. Exercise of Option.

(a) Right to Exercise. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the terms of this Agreement.

(b) Method of Exercise. This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit B (the "Exercise Notice") or in a manner and pursuant to such procedures as the Administrator may determine, which will state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Agreement. The Exercise Notice will be completed by Participant and delivered to the Company. The Exercise Notice will be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares together with any applicable tax withholding. This Option will be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

(c) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, the Participant may exercise his Option within such period of time as is specified in the Notice of Grant to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his entire Option, the Shares covered by the unvested portion of the Option will forfeit. If after termination the Participant does not exercise his Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will forfeit.

6. Method of Payment. Payment of the aggregate Exercise Price will be by any of the following, or a combination thereof, at the election of Participant:

- (a) cash;
- (b) check;

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(c) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Agreement; or

(d) surrender of other Shares which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares, provided that accepting such Shares, in the sole discretion of the Administrator, will not result in any adverse accounting consequences to the Company.

#### 7. Tax Obligations.

(a) Withholding of Taxes. Notwithstanding any contrary provision of this Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the payment of income, employment and other taxes which the Company determines must be withheld with respect to such Shares. To the extent determined appropriate by the Company in its discretion, it will have the right (but not the obligation) to satisfy any tax withholding obligations by reducing the number of Shares otherwise deliverable to Participant. If Participant fails to make satisfactory arrangements for the payment of any required tax withholding obligations hereunder at the time of the Option exercise, Participant acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver the Shares if such withholding amounts are not delivered at the time of exercise.

(b) Code Section 409A. Under Code Section 409A, an option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "Discount Option") may be considered "deferred compensation." A Discount Option may result in (i) income recognition by Participant prior to the exercise of the option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The Discount Option may also result in additional state income, penalty and interest charges to the Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the Date of Grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Participant will be solely responsible for Participant's costs related to such a determination.

8. Rights as Shareholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a shareholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a shareholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

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9. Compliance With Code Section 409A. The Option will be designed and operated in such a manner that it is either exempt from the application of, or comply with, the requirements of Code Section 409A such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A, except as otherwise determined in the sole discretion of the Administrator. The Agreement is intended to meet the requirements of Code Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that the Option or payment, or the settlement or deferral thereof, is subject to Code Section 409A the Option will be granted, paid, settled or deferred in a manner that will meet the requirements of Code Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A.

10. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise and except as required by Applicable Laws, vesting of the Option granted hereunder will be suspended during any unpaid leave of absence. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary.

11. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

12. Address for Notices. Any notice to be given to the Company under the terms of this Agreement will be addressed to the Company at AVI BioPharma, Inc., 3450 Monte Villa Parkway, Suite 101, Bothell, WA 98021, or at such other address as the Company may hereafter designate in writing.

13. Non-Transferability of Option.

(a) This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant.



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(b) Notwithstanding anything to the contrary in the Agreement, in no event will the Administrator have the right to determine and implement the terms and conditions of any Award Transfer Program without shareholder approval.

14. Adjustments; Dissolution or Liquidation; Merger or Change of Control.

(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Agreement, will adjust the number, class, and price of Shares covered by the Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, the Option will terminate immediately prior to the consummation of such proposed action.

(c) Change of Control. Subject to the terms of the Employment Agreement, in the event of a merger or Change of Control, the Option will be treated as the Administrator determines without a Participant's consent, including, without limitation, that (i) the Option will be assumed, or substantially equivalent awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices; (ii) upon written notice to a Participant, that the Participant's Option will terminate upon or immediately prior to the consummation of such merger or Change of Control; (iii) the Option will vest and become exercisable, realizable, or payable, in whole or in part prior to or upon consummation of such merger or Change of Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such merger or Change of Control; (iv) (A) the termination of the Option in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of the Option or realization of the Participant's rights as of the date of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of the Option or realization of the Participant's rights, then the Option may be terminated by the Company without payment), or (B) the replacement of the Option with other rights or property selected by the Administrator in its sole discretion; or (v) any combination of the foregoing.

In the event that the successor corporation does not assume or substitute for the Option (or portion thereof), the Participant will fully vest in and have the right to exercise all of his outstanding Options that are not assumed or substituted for, including Shares as to which the Option would not otherwise be vested or exercisable. In addition, if the Option is not assumed or substituted for in the event of a Change of Control, the Administrator will notify the Participant in writing or electronically that the Option will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the Option will terminate upon the expiration of such period.

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For the purposes of this subsection 14(c), the Option will be considered assumed if, following the merger or Change of Control, the Option confers the right to purchase or receive, for each Share subject to the Option immediately prior to the merger or Change of Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change of Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change of Control is not solely common stock of the successor corporation or its Parent, the Board may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, for each Share subject to the Option, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or Change of Control.

Notwithstanding anything in this subsection (c) to the contrary, if a payment under the Agreement is subject to Section 409A of the Code and if the change of control definition contained in the Agreement does not comply with the definition of "change in control" for purposes of a distribution under Section 409A of the Code, then any payment of an amount that is otherwise accelerated under this Section will be delayed until the earliest time that such payment would be permissible under Section 409A of the Code without triggering any penalties applicable under Section 409A of the Code.

15. Date of Grant. The date of grant of the Option will be, for all purposes, the date on which the Administrator makes the determination granting the Option, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

16. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

17. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration or qualification of the Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. The Company will make all reasonable efforts to meet the requirements of any such state or federal law or securities exchange and to obtain any such consent or approval of any such governmental authority. Assuming such compliance, for income tax purposes the Exercised Shares will be considered transferred to Participant on the date the Option is exercised with respect to such Exercised Shares.

18. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to Options awarded under the Agreement or future options that may be awarded under the Agreement by electronic means or request Participant's consent to participate by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to participate through any on-line or electronic system established and maintained by the Company or another third party designated by the Company.

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19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

20. Agreement Severable. In the event that any provision in this Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

21. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to Participant's interest except by means of a writing signed by the Company and Participant. Notwithstanding anything to the contrary in this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A of the Code in connection to this Option.

22. Acknowledgment. By accepting this Option, Participant expressly warrants that he or she has received an Option pursuant to this Agreement, and has received, read and understood a description of the Agreement.

23. Governing Law. This Agreement will be governed by the laws of the State of Oregon, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Option or this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Oregon, and agree that such litigation will be conducted in the state courts of Oregon, or the federal courts for the United States for the District of Oregon, and no other courts, where this Option is made and/or to be performed.

**EXHIBIT B**

**AVI BIOPHARMA, INC.**

**STAND-ALONE STOCK OPTION GRANT**

**EXERCISE NOTICE**

AVI BioPharma, Inc.  
3450 Monte Villa Parkway, Suite 101  
Bothell, WA 98021

Attention: \_\_\_\_\_

**Exercise of Option.** Effective as of today, \_\_\_\_\_, \_\_\_\_\_, the undersigned (“Purchaser”) hereby elects to purchase \_\_\_\_\_ shares (the “Shares”) of the Common Stock of AVI BioPharma, Inc. (the “Company”) under and pursuant to the Stand Alone Stock Option Agreement dated \_\_\_\_\_ (the “Agreement”). The purchase price for the Shares will be \$\_\_\_\_\_, as required by the Agreement.

**Delivery of Payment.** Purchaser herewith delivers to the Company the full purchase price of the Shares and any required tax withholding to be paid in connection with the exercise of the Option.

**Representations of Purchaser.** Purchaser acknowledges that Purchaser has received, read and understood the Agreement and agrees to abide by and be bound by their terms and conditions.

**Rights as Shareholder.** Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a shareholder will exist with respect to the Shares subject to the Option, notwithstanding the exercise of the Option. The Shares so acquired will be issued to Purchaser as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 14 of the Agreement.

**Tax Consultation.** Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser’s purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

**Entire Agreement; Governing Law.** The Agreement is incorporated herein by reference. This Exercise Notice and the Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the

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Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This Agreement is governed by the internal substantive laws, but not the choice of law rules, of Oregon.

Submitted by:

PURCHASER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Accepted by:

AVI BIOPHARMA, INC.

\_\_\_\_\_  
By

\_\_\_\_\_  
Its

\_\_\_\_\_  
Date Received

**AVI BIOPHARMA, INC.**  
**STAND ALONE STOCK OPTION GRANT**  
**NOTICE OF GRANT OF STOCK OPTION**

This grant (the "Option") shall be governed by this Notice of Grant of Stock Option (the "Notice of Grant") and the Terms and Conditions of Stock Option Grant (the "Terms and Conditions"), attached hereto as Exhibit A (together, the "Agreement"). Terms not otherwise defined in the Notice of Grant shall be defined in the Terms and Conditions of Stock Option Grant.

**Participant:** Edward M. Kaye

**Address:** \_\_\_\_\_  
 Sudbury, Massachusetts

Participant has been granted an Option to purchase Common Stock of the Company, subject to the terms and conditions of this Agreement, as follows:

Date of Grant	June 20, 2011
Vesting Commencement Date	June 20, 2011
Number of Shares Granted	850,000
Exercise Price per Share	\$1.38
Total Exercise Price	\$1,173,000.00
Type of Option	Nonstatutory Stock Option
Term/Expiration Date	10 years/June 20, 2021

**Vesting Schedule:**

Subject to accelerated vesting as set forth below or in the Agreement, this Option will be exercisable, in whole or in part, in accordance with the following schedule:

Twenty-five percent (25%) of the Shares subject to the Option will vest on the one (1) year anniversary of the Vesting Commencement Date, and one forty-eighth (1/48<sup>th</sup>) of the Shares subject to the Option will vest each month thereafter on the same day of the month as the Vesting Commencement Date (and if there is no corresponding day, on the last day of the month), subject to Participant continuing to be a Service Provider through each such date.

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Accelerated Vesting and Extended Post-Termination Exercise Period:

*Termination for other than Cause, Death or Disability Apart from a Change of Control.* If prior to a Change of Control or after twelve (12) months following a Change of Control, the Company (or any parent or subsidiary or successor of the Company) terminates Participant's employment with the Company other than for Cause, death or disability after providing at least thirty (30) days advance notice to Participant, then, subject to Section 10 of the Employment Agreement, Participant will be entitled to accelerated vesting as to 50% of any unvested Shares subject to the Option and an extension of the post-termination exercise period applicable to the Option to one hundred and eighty (180) days following the date of Participant's termination of employment (but in no event beyond the Term/Expiration Date).

*Termination for other than Cause, Death or Disability or Resignation by Participant for Good Reason upon or within Twelve Months Following a Change of Control.* If upon a Change of Control or within the Change of Control Period, the Company (or any parent or subsidiary or successor of the Company) terminates Participant's employment with the Company other than for Cause, death or disability after providing at least thirty (30) days advance notice to Participant, or Participant resigns from such employment for Good Reason, then, subject to Section 10 of the Employment Agreement, Participant will be entitled to accelerated vesting as to 100% of any unvested Shares subject to the Option and an extension of the post-termination exercise period applicable to the Option to one hundred and eighty (180) days following the date of Participant's termination of employment (but in no event beyond the Term/Expiration Date).

*Termination for Cause, Death or Disability; Resignation without Good Reason.* If Participant's employment with the Company (or any parent or subsidiary or successor of the Company) terminates voluntarily by Participant (except upon resignation for Good Reason during the Change of Control Period), for Cause by the Company or due to Participant's death or disability, then all vesting will terminate immediately with respect to the Option.

Termination Period:

This Option will be exercisable for three (3) months after Participant ceases to be a Service Provider, unless (i) such termination is due to Participant's death or Disability, in which case this Option will be exercisable for twelve (12) months after Participant ceases to be a Service Provider, or (ii) such termination is by the Company for Cause, in which case this Option will be exercisable for twenty-four (24) hours after Participant ceases to be a Service Provider. Notwithstanding the foregoing sentence, in no event may this Option be exercised after the Term/Expiration Date as provided above and may be subject to earlier termination as provided in Section 14(c) of the Terms and Conditions.

*[signature page to follow]*

By Participant's signature and the signature of the Company's representative below, Participant and the Company agree that this Option is granted under and governed by the terms and conditions of this Agreement. Participant has reviewed this Agreement in its entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of the Agreement. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Agreement. Participant further agrees to notify the Company upon any change in the residence address indicated below.

PARTICIPANT

AVI BIOPHARMA, INC.

/s/ Edward M. Kaye  
Signature

/s/ Christopher Garabedian  
By

Edward M. Kaye  
Print Name

President and Chief Executive Officer  
Title

Address:

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

*[signature page of the E. Kaye notice of stock option grant]*



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**EXHIBIT A**

**TERMS AND CONDITIONS OF STOCK OPTION GRANT**

1. **Definitions.** As used herein, the following definitions shall apply:

(a) “**Administrator**” means the Committee as will have administrative authority under this Agreement, in accordance with Section 4 of the Terms and Conditions.

(b) “**Affiliate**” means any corporation or any other entity (including, but not limited to, partnerships and joint ventures) controlling, controlled by, or under common control with the Company.

(c) “**Applicable Laws**” means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction that may apply to this Option.

(d) “**Award Transfer Program**” means any program instituted by the Administrator that would permit Participants the opportunity to transfer for value the Option to a financial institution or other person or entity approved by the Administrator.

(e) “**Board**” means the Board of Directors of the Company.

(f) “**Cause**” is defined as (i) an act of dishonesty made by Participant in connection with Participant’s responsibilities as an employee, (ii) Participant’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) Participant’s gross misconduct; (iv) Participant’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Participant owes an obligation of nondisclosure as a result of Participant’s relationship with the Company; (v) Participant’s willful breach of any obligations under any written agreement or covenant with the Company; or (vi) Participant’s continued failure to perform his employment duties after Participant has received a written demand of performance from the Company which specifically sets forth the factual basis for the Company’s belief that Participant has not substantially performed his duties and has failed to cure such non-performance to the Company’s satisfaction within ten (10) business days after receiving such notice.

(g) “**Change of Control**” means the occurrence of any of the following events:

(i) any “person” (as such term is used in Sections 12(d) and 13(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the total voting power represented by the Company’s then outstanding voting securities; or

(ii) the date of the consummation of a merger or consolidation of the Company with any other corporation that has been approved by the shareholders of the Company, other than a merger or consolidation which would result in the voting securities of the

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Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation; or

(iii) the date of the consummation of the sale or disposition by the Company of all or substantially all the Company's assets.

For purposes of this definition, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing, a transaction shall not be deemed a Change of Control unless the transaction qualifies as a "change in control event" within the meaning of Section 409A of the Code, as it has been and may be amended from time to time, and any proposed or final Treasury Regulations and Internal Revenue Service guidance that has been promulgated or may be promulgated thereunder from time to time.

Further and for the avoidance of doubt, a transaction shall not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that shall be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(h) "Change of Control Period" means the period of time within twelve (12) months following a Change of Control.

(i) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or Treasury Regulation thereunder will include such section or regulation, any valid regulation or other official applicable guidance promulgated under such section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

(j) "Committee" means the Compensation Committee of the Board.

(k) "Common Stock" means the common stock of the Company.

(l) "Company" means AVI BioPharma, Inc., an Oregon corporation, or any successor thereto.

(m) "Consultant" means any person, including an advisor, engaged by the Company or a Parent or a Subsidiary to render services to such entity other than as an Employee.

(n) "Director" means a member of the Board.

(o) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code, provided that the Administrator in its discretion may determine whether a permanent and total disability exists in accordance with uniform and non-discriminatory standards adopted by the Administrator from time to time.

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(p) “Employee” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company will be sufficient to constitute “employment” by the Company.

(q) “Employment Agreement” means the Executive Employment Agreement by and between the Company and Participant, effective June 13, 2011.

(r) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(s) “Exchange Program” means a program under which (i) the Option is surrendered or cancelled in exchange another stock option (which may have higher or lower exercise prices and different terms), equity awards of a different type, and/or cash, (ii) Participant would have the opportunity to transfer for value the Option to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of the Option is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

(t) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Market, the Nasdaq Global Select Market or the Nasdaq Capital Market, its Fair Market Value shall be the closing sales price for such stock (or, if no closing sales price was reported on that date, as applicable, on the last trading date such closing sales price is reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination (or, if no bids and asks were reported on that date, as applicable, on the last trading date such bids and asks are reported); or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value will be determined in good faith by the Administrator.

(u) “Good Reason” means the termination by Participant upon the occurrence of any of the below described events. Participant must provide notice to the Company of the existence of such event within ninety (90) days of the first occurrence of such event, and the Company will have thirty (30) days to remedy the condition, in which case no Good Reason shall exist. If the Company fails to remedy the condition within such thirty (30) day period, Participant must terminate employment within two (2) years of the first occurrence of such event. The events which constitute a Good Reason termination are: (i) the assignment of a different title or change that results in a

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material reduction in Participant's duties or responsibilities; or (ii) a material reduction by the Company in Participant's base compensation, other than a reduction in his base salary that is part of a general salary reduction affecting employees generally and provided the reduction is not greater, percentage-wise, than the reduction affecting other employees generally or failure to provide an annual increase in base compensation commensurate with other executives; provided, however, in determining whether to provide an annual increase in base compensation commensurate with an annual increase provided to other executives, the Company may take into account factors such as market levels of compensation, Participant's overall performance, and other factors reasonably considered by the Company's compensation committee and/or Board, so long as such determination is not made in bad faith with the intent to discriminate against Participant.

(v) "Incentive Stock Option" means an Option that by its terms qualifies and is otherwise intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(w) "Nonstatutory Stock Option" means an Option that by its terms does not qualify or is not intended to qualify as an Incentive Stock Option.

(x) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(y) "Option" means the stock option set forth in the Notice of Grant.

(z) "Outside Director" means a Director who is not an Employee.

(aa) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(bb) "Participant" means the holder of the Option.

(cc) "Service Provider" means an Employee, Director or Consultant.

(dd) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14(a) of the Terms and Conditions.

(ee) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

2. Grant of Option. The Company hereby grants to the Participant named in the Notice of Grant the Option to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per Share set forth in the Notice of Grant (the "Exercise Price"), subject to all of the terms and conditions in this Agreement.

3. Vesting Schedule. The Option awarded by this Agreement will vest in accordance with the vesting provisions set forth in the Notice of Grant. Shares scheduled to vest on a certain date or upon the occurrence of a certain condition will not vest in Participant in accordance with any of the provisions of this Agreement, unless Participant will have been continuously a Service Provider from the Date of Grant until the date such vesting occurs.

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4. Authority of the Administrator.

(a) Powers of the Administrator. Subject to the provisions of this Agreement, the Administrator will have the authority, in its discretion:

- (i) to determine the terms and conditions of any, and to institute any Exchange Program;
- (ii) to construe and interpret the terms of the Agreement and the Option;
- (iii) to prescribe, amend and rescind rules and regulations relating to the Agreement, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws or for qualifying for favorable tax treatment under applicable foreign laws;
- (iv) to modify or amend the Option (subject to Section(s) 4(d)(i) and 21 of the Terms and Conditions), including but not limited to the discretionary authority to extend the post-termination exercisability period of the Option and to extend the maximum term of the Option;
- (v) to allow Participant to satisfy withholding tax obligations in such manner as prescribed in Section 7 of the Terms and Conditions;
- (vi) to allow a Participant to defer the receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant under the Option pursuant to such procedures as the Administrator may determine; and
- (vii) to make all other determinations deemed necessary or advisable for administering the Agreement.

(b) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations will be final and binding on the Participant and any other holders of Shares subject to the Option.

(c) No Liability. Under no circumstances shall the Company, its Affiliates, the Administrator, or the Board incur liability for any indirect, incidental, consequential or special damages (including lost profits) of any form incurred by any person, whether or not foreseeable and regardless of the form of the act in which such a claim may be brought, with respect to the Agreement or the Company's, its Affiliates', the Administrator's or the Board's roles in connection with the Agreement.

(d) Limitations.

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(i) Prohibition Against Repricing. Notwithstanding Section 4(a)(iv), the Administrator may not modify or amend the Option to reduce the exercise price of the Option after it has been granted (except for adjustments made pursuant to Section 14), and neither may the Administrator cancel the outstanding Option and immediately replace it with any other award with a lower exercise price, unless such action is approved by shareholders prior to such action being taken.

(ii) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash an Option previously granted based on such terms and conditions as the Administrator will establish and communicate to the Participant at the time that such offer is made. Notwithstanding anything contained in this Section 4(d)(ii) to the contrary, the Administrator shall not be allowed to authorize the buyout of an underwater Option without the prior consent of the Company's shareholders.

#### 5. Exercise of Option.

(a) Right to Exercise. This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the terms of this Agreement.

(b) Method of Exercise. This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit B (the "Exercise Notice") or in a manner and pursuant to such procedures as the Administrator may determine, which will state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Agreement. The Exercise Notice will be completed by Participant and delivered to the Company. The Exercise Notice will be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares together with any applicable tax withholding. This Option will be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by the aggregate Exercise Price.

(c) Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, the Participant may exercise his Option within such period of time as is specified in the Notice of Grant to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). Unless otherwise provided by the Administrator, if on the date of termination the Participant is not vested as to his entire Option, the Shares covered by the unvested portion of the Option will forfeit. If after termination the Participant does not exercise his Option within the time specified by the Administrator, the Option will terminate, and the Shares covered by such Option will forfeit.

6. Method of Payment. Payment of the aggregate Exercise Price will be by any of the following, or a combination thereof, at the election of Participant:

(a) cash;

(b) check;

(c) consideration received by the Company under a formal cashless exercise program adopted by the Company in connection with the Agreement; or

(d) surrender of other Shares which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares, provided that accepting such Shares, in the sole discretion of the Administrator, will not result in any adverse accounting consequences to the Company.

**7. Tax Obligations.**

(a) Withholding of Taxes. Notwithstanding any contrary provision of this Agreement, no certificate representing the Shares will be issued to Participant, unless and until satisfactory arrangements (as determined by the Administrator) will have been made by Participant with respect to the payment of income, employment and other taxes which the Company determines must be withheld with respect to such Shares. To the extent determined appropriate by the Company in its discretion, it will have the right (but not the obligation) to satisfy any tax withholding obligations by reducing the number of Shares otherwise deliverable to Participant. If Participant fails to make satisfactory arrangements for the payment of any required tax withholding obligations hereunder at the time of the Option exercise, Participant acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver the Shares if such withholding amounts are not delivered at the time of exercise.

(b) Code Section 409A. Under Code Section 409A, an option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "Discount Option") may be considered "deferred compensation." A Discount Option may result in (i) income recognition by Participant prior to the exercise of the option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The Discount Option may also result in additional state income, penalty and interest charges to the Participant. Participant acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the Date of Grant in a later examination. Participant agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Participant will be solely responsible for Participant's costs related to such a determination.

8. Rights as Shareholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a shareholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant. After such issuance, recordation and delivery, Participant will have all the rights of a shareholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

9. Compliance With Code Section 409A. The Option will be designed and operated in such a manner that it is either exempt from the application of, or comply with, the requirements of Code Section 409A such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A, except as otherwise determined in the

sole discretion of the Administrator. The Agreement is intended to meet the requirements of Code Section 409A and will be construed and interpreted in accordance with such intent, except as otherwise determined in the sole discretion of the Administrator. To the extent that the Option or payment, or the settlement or deferral thereof, is subject to Code Section 409A the Option will be granted, paid, settled or deferred in a manner that will meet the requirements of Code Section 409A, such that the grant, payment, settlement or deferral will not be subject to the additional tax or interest applicable under Code Section 409A.

10. Leaves of Absence/Transfer Between Locations. Unless the Administrator provides otherwise and except as required by Applicable Laws, vesting of the Option granted hereunder will be suspended during any unpaid leave of absence. A Participant will not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, or any Subsidiary.

11. No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

12. Address for Notices. Any notice to be given to the Company under the terms of this Agreement will be addressed to the Company at AVI BioPharma, Inc., 3450 Monte Villa Parkway, Suite 101, Bothell, WA 98021, or at such other address as the Company may hereafter designate in writing.

13. Non-Transferability of Option.

(a) This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Participant only by Participant.

(b) Notwithstanding anything to the contrary in the Agreement, in no event will the Administrator have the right to determine and implement the terms and conditions of any Award Transfer Program without shareholder approval.

14. Adjustments; Dissolution or Liquidation; Merger or Change of Control.



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(a) Adjustments. In the event that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Shares or other securities of the Company, or other change in the corporate structure of the Company affecting the Shares occurs, the Administrator, in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Agreement, will adjust the number, class, and price of Shares covered by the Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator will notify each Participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, the Option will terminate immediately prior to the consummation of such proposed action.

(c) Change of Control. Subject to the terms of the Employment Agreement, in the event of a merger or Change of Control, the Option will be treated as the Administrator determines without a Participant's consent, including, without limitation, that (i) the Option will be assumed, or substantially equivalent awards will be substituted, by the acquiring or succeeding corporation (or an affiliate thereof) with appropriate adjustments as to the number and kind of shares and prices; (ii) upon written notice to a Participant, that the Participant's Option will terminate upon or immediately prior to the consummation of such merger or Change of Control; (iii) the Option will vest and become exercisable, realizable, or payable, in whole or in part prior to or upon consummation of such merger or Change of Control, and, to the extent the Administrator determines, terminate upon or immediately prior to the effectiveness of such merger or Change of Control; (iv) (A) the termination of the Option in exchange for an amount of cash and/or property, if any, equal to the amount that would have been attained upon the exercise of the Option or realization of the Participant's rights as of the date of the occurrence of the transaction (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction the Administrator determines in good faith that no amount would have been attained upon the exercise of the Option or realization of the Participant's rights, then the Option may be terminated by the Company without payment), or (B) the replacement of the Option with other rights or property selected by the Administrator in its sole discretion; or (v) any combination of the foregoing.

In the event that the successor corporation does not assume or substitute for the Option (or portion thereof), the Participant will fully vest in and have the right to exercise all of his outstanding Options that are not assumed or substituted for, including Shares as to which the Option would not otherwise be vested or exercisable. In addition, if the Option is not assumed or substituted for in the event of a Change of Control, the Administrator will notify the Participant in writing or electronically that the Option will be fully vested and exercisable for a period of time determined by the Administrator in its sole discretion, and the Option will terminate upon the expiration of such period.

For the purposes of this subsection 14(c), the Option will be considered assumed if, following the merger or Change of Control, the Option confers the right to purchase or receive, for each Share subject to the Option immediately prior to the merger or Change of Control, the consideration (whether stock, cash, or other securities or property) received in the merger or Change of Control by holders of Common Stock for each Share held on the effective date of the transaction

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(and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or Change of Control is not solely common stock of the successor corporation or its Parent, the Board may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, for each Share subject to the Option, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or Change of Control.

Notwithstanding anything in this subsection (c) to the contrary, if a payment under the Agreement is subject to Section 409A of the Code and if the change of control definition contained in the Agreement does not comply with the definition of "change in control" for purposes of a distribution under Section 409A of the Code, then any payment of an amount that is otherwise accelerated under this Section will be delayed until the earliest time that such payment would be permissible under Section 409A of the Code without triggering any penalties applicable under Section 409A of the Code.

15. Date of Grant. The date of grant of the Option will be, for all purposes, the date on which the Administrator makes the determination granting the Option, or such other later date as is determined by the Administrator. Notice of the determination will be provided to each Participant within a reasonable time after the date of such grant.

16. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

17. Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration or qualification of the Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. The Company will make all reasonable efforts to meet the requirements of any such state or federal law or securities exchange and to obtain any such consent or approval of any such governmental authority. Assuming such compliance, for income tax purposes the Exercised Shares will be considered transferred to Participant on the date the Option is exercised with respect to such Exercised Shares.

18. Electronic Delivery. The Company may, in its sole discretion, decide to deliver any documents related to Options awarded under the Agreement or future options that may be awarded under the Agreement by electronic means or request Participant's consent to participate by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to participate through any on-line or electronic system established and maintained by the Company or another third party designated by the Company.

19. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

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20. Agreement Severable. In the event that any provision in this Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

21. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof, and may not be modified adversely to Participant's interest except by means of a writing signed by the Company and Participant. Notwithstanding anything to the contrary in this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Code Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A of the Code in connection to this Option.

22. Acknowledgment. By accepting this Option, Participant expressly warrants that he or she has received an Option pursuant to this Agreement, and has received, read and understood a description of the Agreement.

23. Governing Law. This Agreement will be governed by the laws of the State of Oregon, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Option or this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Oregon, and agree that such litigation will be conducted in the state courts of Oregon, or the federal courts for the United States for the District of Oregon, and no other courts, where this Option is made and/or to be performed.

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**EXHIBIT B**  
**AVI BIOPHARMA, INC.**  
**STAND-ALONE STOCK OPTION GRANT**  
**EXERCISE NOTICE**

AVI BioPharma, Inc.  
3450 Monte Villa Parkway, Suite 101  
Bothell, WA 98021

Attention: \_\_\_\_\_

Exercise of Option. Effective as of today, \_\_\_\_\_, \_\_\_\_\_, the undersigned ("Purchaser") hereby elects to purchase \_\_\_\_\_ shares (the "Shares") of the Common Stock of AVI BioPharma, Inc. (the "Company") under and pursuant to the Stand Alone Stock Option Agreement dated \_\_\_\_\_ (the "Agreement"). The purchase price for the Shares will be \$\_\_\_\_\_, as required by the Agreement.

Delivery of Payment. Purchaser herewith delivers to the Company the full purchase price of the Shares and any required tax withholding to be paid in connection with the exercise of the Option.

Representations of Purchaser. Purchaser acknowledges that Purchaser has received, read and understood the Agreement and agrees to abide by and be bound by their terms and conditions.

Rights as Shareholder. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a shareholder will exist with respect to the Shares subject to the Option, notwithstanding the exercise of the Option. The Shares so acquired will be issued to Purchaser as soon as practicable after exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date of issuance, except as provided in Section 14 of the Agreement.

Tax Consultation. Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or disposition of the Shares and that Purchaser is not relying on the Company for any tax advice.

Entire Agreement; Governing Law. The Agreement is incorporated herein by reference. This Exercise Notice and the Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the

Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This Agreement is governed by the internal substantive laws, but not the choice of law rules, of Oregon.

Submitted by:  
PURCHASER

Accepted by:  
AVI BIOPHARMA, INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Its

Address:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Received

OPINION OF WHITE & LEE LLP

June 20, 2011

AVI BioPharma, Inc.  
3450 Monte Villa Parkway, Suite 101  
Bothell, WA 98021

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "*Registration Statement*") to be filed by AVI BioPharma, Inc., an Oregon corporation (the "*Company*"), with the Securities and Exchange Commission on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended, of an aggregate of 24,558,447 shares (the "*Shares*") of your common stock, par value \$0.0001 per share, reserved for issuance under the AVI BioPharma, Inc. 2011 Equity Incentive Plan (the "*Plan*"), 650,000 Shares reserved for issuance under the Stand Alone Stock Option Grant to Effie Toshav, 800,000 Shares reserved for issuance under the Stand Alone Stock Option Grant to Peter Linsley, and 850,000 Shares reserved for issuance under the Stand Alone Stock Option Grant to Edward Kaye (collectively the "*Option Grants*"). In connection with the filing of the Registration Statement, we have acted as the Company's special legal counsel and have reviewed the actions proposed to be taken by you in connection with the issuance and sale of the Shares to be issued under the Plan and Option Grants.

In rendering this opinion, we have made such legal and factual examinations and inquiries as we have deemed advisable or necessary for the purpose of rendering this opinion. As to matters of fact material to the opinions expressed herein, we have relied upon the representations as to factual matters contained in and made by the Company pursuant to a certificate of an officer of the Company. In addition, we have examined originals or copies of documents, corporate records and other writings which we consider relevant for the purposes of this opinion. In such examination, we have assumed the genuineness of all signatures on original documents, the conformity to original documents of all copies submitted to us and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

We express no opinion as to matters governed by any laws other than the applicable laws of the State of Oregon and the federal law of the United States of America.

It is our opinion that, when issued and sold in the manner referred to in the Plan and Option Grants and pursuant to the agreements which accompany the Plan and Option Grants, the Shares will be legally and validly issued, fully paid and nonassessable. We express no other opinions other than the opinion set forth in the foregoing sentence.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto. In giving such consent, we do not consider that we are "experts" within the meaning of such term as used in the Securities Act, or the rules and regulations of the Securities and Exchange Commission issued thereunder, with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

WHITE & LEE LLP

By /s/ William H. Caffee  
William H. Caffee

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
AVI BioPharma, Inc.

We consent to the use of our reports dated March 14, 2011, with respect to the balance sheets of AVI BioPharma, Inc. (a developmental stage company) as of December 31, 2010 and 2009, and the related statements of operations, shareholders' equity (deficit) and comprehensive income (loss), and cash flows for each of the years in the three-year period ended December 31, 2010 and the information included in the cumulative from inception presentations for the period January 1, 2002 to December 31, 2010 (not separately presented), and the effectiveness of internal control over financial reporting as of December 31, 2010, incorporated herein by reference.

/s/ KPMG LLP

Seattle, Washington  
June 20, 2011