

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT
TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): July 15, 2021

BIONIK LABORATORIES CORP.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

000-54717

(Commission File Number)

27-1340346

(IRS Employer Identification No.)

483 Bay Street, N105
Toronto, ON
(Address of Principal Executive Offices)

M5G 2C9
(Zip Code)

Registrant's Telephone Number, Including Area Code: (416) 640-7887

(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Not applicable	Not applicable	Not applicable

Item 1.01 Entry Into a Material Definitive Agreement.

The information set forth in Item 2.03 is incorporated by reference into this Item 1.01.

Item 1.02 Termination of a Material Definitive Agreement.

As a result of the Refinancing and related transactions, the Term Loan Agreement and the Promissory Note (as each such capitalized term is defined in Item 2.03 below) were deemed paid in full and terminated. The information set forth in Item 2.03 with respect to the Refinancing is incorporated by reference into this Item 1.02.

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

On July 15, 2021, Bionik Laboratories Corp. (the "Company") commenced a refinancing of its existing indebtedness (the "Refinancing") and launched a new secured convertible promissory note offering (the "Offering") of up to \$10,000,000.

The Refinancing

Pursuant to the Refinancing, (a) a portion of the outstanding principal and accrued and unpaid interest under the Company's existing Term Loan and Security Agreement dated as of February 12, 2021 (the "Term Loan Agreement") pursuant to which, among other things, the Company may borrow up to \$3,000,000 from lenders from time to time and (b) all of the outstanding principal and accrued and unpaid interest under the Company's existing Promissory Note in the principal amount of \$2,000,000 issued on March 23, 2020 in favor of Celeste Management (the "Promissory Note"), were used as consideration to acquire new convertible promissory notes (the "Convertible Notes") in the Offering and, as a result and with the option exercises described below, the Term Loan Agreement and the Promissory Note were deemed paid in full and terminated.

Accordingly, (a) an aggregate of \$1,064,456.80 in outstanding principal and accrued and unpaid interest under the Term Loan Agreement was used to purchase a like amount of

Convertible Notes in the Offering and (b) an aggregate of \$2,222,333.67 in outstanding principal and accrued and unpaid interest under the Promissory Note was used to purchase a like amount of Convertible Notes in the Offering.

The remaining \$642,153.61 portion of the outstanding principal and accrued and unpaid interest under the Term Loan Agreement, which were held by (a) RGD Investissements S.A.S., an affiliate of Remi Gaston-Dreyfus, a director of the Company, and (b) an affiliate of André-Jacques Auberton-Hervé, the Chairman of the Board of Directors of the Company, was applied towards the purchase price to exercise outstanding options beneficially owned by Messrs. Gaston-Dreyfus and Auberton-Hervé.

The Offering

Pursuant to the terms of the Offering, the Company is offering for sale up to \$10,000,000 in Convertible Notes to accredited investors and non-U.S. persons. As a result of the Restructuring and new investments into the Convertible Notes, the Company issued between July 15, 2021 and July 21, 2021 an aggregate of \$7,286,790.47 in principal of Convertible Notes, of which an aggregate of \$4,000,000 was purchased for cash and the remainder was issued as a result of the Restructuring.

The Company intends to use the net cash proceeds from the Offering for the Company's working capital and general corporate purposes.

The Convertible Notes bear interest at a fixed rate of 1% per month, computed based on a 360-day year of twelve 30-day months and will be payable, along with the principal amount, on the earlier of (the "Maturity Date"): (a) March 31, 2022 and (b) the consummation of the Offering, provided that the Company raises in one or more tranches aggregate gross proceeds of no less than \$10,000,000.

The Note will be convertible into equity of the Company upon the following events on the following terms:

- On the Maturity Date without any action on the part of the Lender, the outstanding principal and accrued and unpaid interest under the Note will be converted into shares of common stock at a conversion price of \$9.50 per share (the "Conversion Price").

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- Upon a change of control transaction prior to the Maturity Date, the outstanding principal and accrued and unpaid interest under the Note would, at the election of the holders of a majority of the outstanding principal of the Convertible Notes under the Offering, be either (i) payable upon demand as of the closing of such change of control transaction or (ii) convertible into shares of the Company's common stock immediately prior to such change of control transaction at a price per share equal to the lesser of (x) the Conversion Price, or (y) the per share consideration to be received by the holders of the common stock in such change of control transaction.

To secure the prompt payment and performance to the holders of the Convertible Notes, the Company assigned, pledged and granted a continuing security interest in and to, and lien on, all of its Collateral (as defined in the Convertible Note).

The Note contains customary events of default, which, if uncured, entitle the holder of a Convertible Note to accelerate the due date of the unpaid principal amount of, and all accrued and unpaid interest on, its Convertible Note.

The foregoing is a brief description of the subscription of the Convertible Note and the terms of the Convertible Note and is qualified in its entirety by reference to the full text of the form of Subscription Agreement, a copy of which is included as Exhibit 10.1 to this Current Report on Form 8-K, and the Convertible Note, the form of which is included as Exhibit 10.2 to this Current Report on Form 8-K, each of which are incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth above in Item 2.03 of this Current Report on Form 8-K relating to the issuance of the Convertible Notes is incorporated by reference herein. The Convertible Notes and, unless subsequently registered, the shares underlying the Convertible Notes, will be issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act") and/or Regulation S under the Securities Act, as transactions by an issuer not involving any public offering and/or to non-U.S. persons.

On July 15, 2021, an aggregate of \$431,953.61 in outstanding principal and accrued and unpaid interest under the Term Loan Agreement held by RGD Investissements S.A.S., an affiliate of Remi Gaston-Dreyfus, a director of the Company, was applied towards the exercise price for options to purchase an aggregate of 115,759 shares of common stock at a price per share of \$3.595 and 5,000 shares of common stock at a price per share of \$3.16 (the "RGD Option Shares"). The RGD Option Shares are issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act as transactions by an issuer not involving any public offering.

On July 15, 2021, an aggregate of \$210,200.00 in outstanding principal and accrued and unpaid interest under the Term Loan Agreement held by an affiliate of André-Jacques Auberton-Hervé, the Chairman of the Board of Directors of the Company, was applied towards the exercise price for options to purchase an aggregate of 115,759 shares of common stock at a price per share of \$3.595 (the "AJAH Option Shares"). The AJAH Option Shares are issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act as transactions by an issuer not involving any public offering.

Item 9.01 Financial Statements and Exhibits.

Exhibit	Description
10.1	Form of Subscription Agreement
10.2	Form of Convertible Promissory Note

SIGNATURES

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

Date: July 21, 2021

BIONIK LABORATORIES CORP.

By: /s/ Rich Russo Jr.

Name: Rich Russo Jr.
Title: Chief Financial Officer and Interim CEO

SUBSCRIPTION AGREEMENT

This **Subscription Agreement** (this “**Agreement**”) is made as of the date set forth on the signature page hereto, by and among **Bionik Laboratories Corp.**, a Delaware corporation (the “**Company**”), and the subscribers identified on the signature pages hereto (each, a “**Subscriber**” and collectively, the “**Subscribers**”).

Recitals

Whereas, in June 2021, the Company commenced an offering to sell from time to time up to US\$10,000,000 in Secured Convertible Promissory Notes in the form annexed hereto as Exhibit A (each, a “**Note**” and collectively, the “**Notes**”) pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), Rule 506(b) of Regulation D and/or Regulation S as promulgated under the Securities Act (the “**Offering**”); and

Whereas, the Subscribers wish to purchase Notes in the amount set forth on (the “**Subscription Amount**”) their respective Signature Page to this Agreement or a counterpart to this Agreement.

Now, Therefore, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Subscribers hereby agree as follows:

1. PURCHASE OF CONVERTIBLE PROMISSORY NOTES.

1.1 Subscription. Subject to the terms and conditions herein, each Subscriber will loan to the Company such amount, and the Company shall borrow from each Subscriber, in accordance with the respective Subscription Amount and at such date as mutually agreed upon between the Company and each Subscriber (each such date, a “**Funding Date**”).

1.2 Payment for Subscription. Each Subscriber agrees that the Subscription Amount to the Company for the amount of the Subscriber’s subscription hereunder is to be made upon the applicable Closing (as defined below), (a) by check or by wire transfer to an account designated by the Company, or (b) through the recapitalization and roll-over of existing loans and accrued interest (“**Loans**”), held by existing shareholders of the Company (including the Subscriber) (a “**Recapitalization**” and such existing Loans, the “**Existing Debt**”). In the event of a Recapitalization, all amounts of Existing Debt thereof, to the extent so recapitalized and rolled-over, shall be deemed paid and satisfied in full and the Company shall no longer have any such obligations for repayment thereunder.

1.3 Closing.

(a) The closing of the subscriptions for the Notes shall occur on each Funding Date (collectively, the “**Closings**” and each, without distinction, a “**Closing**”). Each Closing shall be held remotely by the electronic exchange of documents and funds (or recapitalization of such existing Loans, as the case may be) at such time and by such means upon which the Company and the Subscribers purchasing the Notes at such Closing shall agree.

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(b) At each Closing, the Company shall deliver to the Subscribers executed Notes in the amounts determined for each Purchaser pursuant to this Section 1.

2. REPRESENTATIONS AND WARRANTIES.

2.1 Representations and Warranties by the Company. The Company represents and warrants to each Subscriber that:

(a) **Authorization.** The Company has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary for the: (i) authorization execution, delivery and performance of this Agreement by the Company; (ii) authorization, sale, issuance and delivery of the Notes contemplated hereby and the performance of the Company’s obligations hereunder; and (iii) authorization, issuance and delivery of the securities issuable upon conversion of the Notes has been taken. The securities issuable upon conversion of the Notes will be validly issued, fully paid and nonassessable.

(b) **Enforceability.** Assuming this Agreement has been duly and validly authorized, executed and delivered by the parties hereto and thereto other than the Company, this Agreement is duly authorized, executed and delivered by the Company constitutes the legal, valid and binding obligations of the Company enforceable against the Company in accordance with its terms, except as such enforcement is limited by general equitable principles, or by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors rights generally.

(c) **No Violations.** The execution, delivery and performance of this Agreement and the Notes by the Company and the consummation by the Company of the transactions contemplated hereby and thereby will not (i) result in a violation of the Certificate of Incorporation of the Company or other organizational documents of the Company, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Company by which any property or asset of the Company is bound or affected.

2.2 Disclaimer. It is specifically understood and agreed by each Subscriber that the Company has not made, nor by this Agreement shall be construed to make, directly or indirectly, explicitly or by implication, any representation, warranty, projection, assumption, promise, covenant, opinion, recommendation or other statement of any kind or nature with respect to the anticipated profits or losses of the Company, except as otherwise provided with this Agreement.

2.3 Representations and Warranties by the Subscribers. Each Subscriber represents and warrants to the Company that:

(a) The Subscriber is acquiring the Notes for the Subscriber’s own account, as principal, for investment purposes only and not with any intention to resell, distributes or otherwise dispose of the Notes, in whole or in part.

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(b) The Subscriber has had an unrestricted opportunity to: (i) obtain information concerning the Offering, including the Notes, the Company and its proposed and existing business and assets; (ii) ask questions of, and receive answers from the Company concerning the terms and conditions of the Offering; and (iii) to obtain such additional information as may have been necessary to verify the accuracy of the information contained in this Agreement or otherwise provided.

(c) The Subscriber has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of investing in the Company, and all information that the Subscriber has provided concerning the Subscriber, the Subscriber's financial position and knowledge of financial and business matters is true, correct and complete.

(d) The Subscriber has relied solely on the advice of, or has consulted with, in regard to the legal, investment and tax considerations involved in the purchase, ownership and disposition of Notes, the Subscriber's own legal counsel, business and/or investment adviser, accountant and tax adviser.

(e) If the Subscriber is an entity, the Subscriber is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, as the case may be. The Subscriber has all requisite power and authority to own its properties, to carry on its business as presently conducted, to enter into and perform this Agreement, the Notes and the agreements, documents and instruments executed, delivered and/or contemplated hereby (collectively, the "**Subscription Documents**") to which it is a party and to carry out the transactions contemplated hereby and thereby. The Subscription Documents are valid and binding obligations of the Subscriber, enforceable against it in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws, from time to time in effect, which affect enforcement of creditors' rights generally. If applicable, the execution, delivery and performance of the Subscription Documents to which it is a party have been duly authorized by all necessary action of the Subscriber. The execution, delivery and performance of the Subscription Documents and the performance of any transactions contemplated by the Subscription Documents will not: (i) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which the Subscriber is a party or by which it or its assets are bound, or any provision of its organizational documents (if an entity), or cause the creation of any lien or encumbrance upon any of the assets of the Subscriber; (ii) violate, conflict with or result in a default (whether after the giving of notice, lapse of time or both) under, any provision of any law, regulation or rule, or any order of, or any restriction imposed by any court or other governmental agency applicable to the Subscriber; (iii) require from the Subscriber any notice to, declaration or filing with, or consent or approval of any governmental authority or other third party other than pursuant to federal or state securities or blue sky laws; or (iv) accelerate any obligation under, or give rise to a right of termination of, any agreement, permit, license or authorization to which the Subscriber is a party or by which it is bound.

(f) At the time the Subscriber was offered the Notes, it was, and at the date hereof it is, and on each Funding Date and date on which the Subscriber converts the Notes the Subscriber will be, an "accredited investor" as defined in Rule 501(a) under the Securities Act. The Subscriber hereby represents that neither the Subscriber nor any of its Rule 506(d) Related Parties is a "bad actor" within the meaning of Rule 506(d) promulgated under the Securities Act. For purposes of this Agreement, "**Rule 506(d) Related Party**" shall mean a person or entity covered by the "Bad Actor disqualification" provision of Rule 506(d) of the Securities Act.

3. MISCELLANEOUS.

3.1 Addresses and Notices. All notices, demands, consents, requests, instructions and other communications to be given or delivered or permitted under or by reason of the provisions of this Agreement or in connection with the transactions contemplated hereby shall be in writing and shall be deemed to be delivered and received by the intended recipient as follows: (i) if personally delivered, on the business day of such delivery (as evidenced by the receipt of the personal delivery service); (ii) if mailed certified or registered mail return receipt requested, two (2) business days after being mailed; or (iii) if delivered by overnight courier (with all charges having been prepaid), on the business day of such delivery (as evidenced by the receipt of the overnight courier service of recognized standing). If any notice, demand, consent, request, instruction or other communication cannot be delivered because of a changed address of which no notice was given (in accordance with this [Section 3.1](#), or the refusal to accept same, the notice, demand, consent, request, instruction or other communication shall be deemed received on the second business day the notice is sent (as evidenced by a sworn affidavit of the sender). All such notices, demands, consents, requests, instructions and other communications will be sent to the following addresses or facsimile numbers as applicable:

If to the Company to:

Bionik Laboratories Corp.
483 Bay Street, N105
Toronto, ON M5G 2C9
Attention: CEO

With copies to:

Ruskin Moscou Faltischek, PC
1425 RXR Plaza
East Tower, 15th Floor
Uniondale, New York 11556
Attention: Stephen E. Fox, Esq.

If to the Subscriber, to the address set forth on the signature page annexed hereto.

Any such person may by notice given in accordance with this [Section 3.1](#) to the other parties hereto designate another address or person for receipt by such person of notices hereunder.

3.2 Titles and Captions. All Article and Section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and do not in any way define, limit, extend or describe the scope or intent of any provisions hereof.

3.3 Assignability. [This Agreement is not transferable or assignable by the undersigned.] / [This Agreement is not transferable or assignable by the Company without the prior written consent of the undersigned. This Agreement is not transferable or assignable by the undersigned without the prior written consent of the Company; provided, however, that the consent of the Company shall not be required in connection with a proposed assignment to any fund or account managed by the same investment manager as the Subscriber or an affiliate of the Subscriber, subject to such transferee or assignee, as applicable, executing a joinder to this Agreement or a separate subscription agreement in the same form as this Agreement.]

3.4 Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

3.5 Further Action. The parties shall execute and deliver all documents, provide all information and take or forbear from taking all such action as may be necessary or appropriate to achieve the purposes of this Agreement. Each party shall bear its own expenses in connection therewith.

3.6 Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware without regard to its conflict of law rules.

3.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, legal representatives, personal representatives, permitted transferees and permitted assigns. If the undersigned is more than one person, the obligation of the undersigned shall be joint and several and the agreements, representations, warranties and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and such person's heirs, executors, administrators and successors.

3.8 Integration. This Agreement, together with the remainder of the Subscription Documents of which this Agreement forms a part, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements and understandings, whether written or oral, pertaining thereto. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions hereof.

3.9 Amendment. This Agreement and the Notes may be amended only with the written consent of the Company and the holders of a majority of the aggregate principal amount of the Notes (a "**Majority in Interest**"). The conditions or observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by written instrument and with respect to conditions or performance obligations benefiting the Company, by the Company, and with respect to conditions or performance obligations benefiting the Subscribers, only with the consent of a Majority in Interest. Any amendment or waiver effected in accordance with this Section 3.9 shall be binding on all holders of the Notes, even if they do not execute such amendment, consent or waiver, as the case may be.

3.10 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by creditors of any party.

3.11 Waiver. No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition.

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3.12 Rights and Remedies. The rights and remedies of each of the parties hereunder shall be mutually exclusive, and the implementation of one or more of the provisions of this Agreement shall not preclude the implementation of any other provision.

3.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

signatures on the following pages

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In Witness Whereof, the undersigned has executed this Agreement on this ____ day of _____, 2021.

Signature of Subscriber:

By: _____
Name: _____
Title: _____

Print Name of Subscriber

Social Security Number(s) or EIN

Mailing Address of Subscriber(s)

Residence of Subscriber(s)

Street

Street

City State Zip Code

City State Zip Code

If Joint Ownership, check one:

- Joint Tenants with Right of Survivorship
 Tenants-in-Common
 Tenants by the Entirety
 Community Property
 Other (specify): _____

\$ _____
Aggregate Subscription Amount

Method of Payment: Wire Transfer Check Recapitalization of Existing Debt

Existing Debt (Issue Date): _____

FOREGOING SUBSCRIPTION ACCEPTED:

Bionik Laboratories Corp.

By: _____

Name: _____
Title:

Signature Page to Subscription Agreement

Exhibit A

SECURED CONVERTIBLE PROMISSORY NOTE

[See attached]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF EXCEPT IN COMPLIANCE WITH, OR PURSUANT TO AN EXEMPTION FROM, THE REQUIREMENTS OF SUCH ACT OR SUCH LAWS.

BIONIK LABORATORIES CORP.

SECURED CONVERTIBLE PROMISSORY NOTE

Principal Amount: US\$[]

Issue Date: [], 2021

Bionik Laboratories Corp., a Delaware corporation (the “*Company*”), for value received, hereby promises to pay to [] or its permitted assigns or successors (the “*Holder*”), the principal amount of [] Dollars (US\$[]) (the “*Principal Amount*”), without demand, on the Maturity Date (as hereinafter defined), together with any accrued and unpaid interest due thereon. This Note shall bear interest at a fixed rate of 1% per month, beginning on the Issue Date. Interest shall be computed based on a 360-day year of twelve 30-day months and shall be payable, along with the Principal Amount, on the Maturity Date. Except as set forth in Section 3.1, payment of all principal and interest due shall be in such coin or currency of the United States of America as shall be legal tender for the payment of public and private debts at the time of payment.

This Note is a convertible promissory note referred to in that certain Subscription Agreement dated as of the date hereof, or series of like subscription agreements (individually or collectively, the “*Subscription Agreement*”), among the Company and the subscribers named therein, pursuant to which the Company is seeking to borrow up to \$10,000,000 (the “*Offering*”).

1. DEFINITIONS.

1.1 Definitions. The terms defined in this Section 1 whenever used in this Note shall have the respective meanings hereinafter specified.

“*Change in Control*” means a merger or consolidation of the Company with or into any other entity in which the stockholders of the Company immediately prior to the merger or consolidation do not own more than 50% of the outstanding voting power (assuming conversion of all convertible securities and the exercise of all outstanding options and warrants) of the surviving entity or the sale, lease, licensing, transfer or other disposition of all or substantially all the assets of the Company; provided, however, that any new issuance of capital stock (or securities convertible or exercisable into capital stock) of the Company to one or more third parties for the sole purpose of providing funding for the Company shall not constitute a Change in Control.

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“*Collateral*” shall mean and include all machinery, equipment, furniture, furnishings, tools, tooling, fixtures, and accessories, and all accounts receivable, instruments, contract rights and other rights to receive the payment of money, patents, chattel paper, licenses, leases and general intangibles, including all trade names and trade styles and all additions, accessions, modifications, improvements, replacements and substitutions thereto and therefor, whether now owned or hereafter acquired or arising, and the proceeds, products and income of any of the foregoing, including insurance proceeds.

“*Common Stock*” means the common stock, par value \$0.001 per share, of the Company.

“*Conversion Shares*” means the Common Stock issued or issuable to the Holder pursuant to Article 3.

“*Event of Default*” shall have the meaning set forth in Section 6.1.

“*Holder*” or “*Holders*” means the person named above or any Person who shall thereafter become a recordholder of this Note in accordance with the terms hereof.

“*Issue Date*” means the issue date stated above.

“*Maturity Date*” shall mean the earlier of (a) March 31, 2022, and (b) the consummation of a Qualified Financing.

“*Note*” means this Convertible Note, as amended, modified or restated.

“*Person*” means an individual, corporation, partnership, limited liability company, association, trust, joint venture, unincorporated organization or any government, governmental department or agency or political subdivision thereof.

“*Qualified Financing*” means the Offering, provided that the Company raises in one or more tranches aggregate gross proceeds of no less than US\$10,000,000.

“*Securities Act*” means the United States Securities Act of 1933, as amended.

2. GENERAL PROVISIONS.

2.1 Loss, Theft, Destruction of Note. Upon receipt of evidence satisfactory to the Company of the loss, theft, destruction or mutilation of this Note and, in the case of any such loss, theft or destruction, upon receipt of indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Note, the Company will make and deliver, in lieu of such lost, stolen, destroyed or mutilated Note, a new Note of like tenor and unpaid principal amount dated as of the date hereof. This Note shall be held and owned upon the express condition that the provisions of this Section 2.1 are exclusive with respect to the replacement of a mutilated, destroyed, lost or stolen Note and shall preclude any and all other rights and remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement of negotiable instruments or other securities without their surrender.

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2.2 Prepayment; Redemption. This Note may not be prepaid by the Company in whole or in part, except with the prior written consent of the Holder. This Note may not be redeemed by the Company in whole or in part, except with the prior written consent of the Holder.

3. CONVERSION OF NOTE.

3.1 Conversion.

(a) **Conversion upon Maturity Date.** On the Maturity Date without any action on the part of the Holder, the outstanding principal and accrued and unpaid interest under the Notes will be converted into shares of Common Stock at a conversion price of US\$9.50 per share (the "**Conversion Price**").

(b) **Conversion upon Change of Control.** If a Change of Control transaction occurs prior to the Maturity Date, the outstanding principal and accrued and unpaid interest under the Note would, at the election of the holders of a majority of the outstanding principal of the Notes, be either (i) payable upon demand as of the closing of such Change of Control transaction or (ii) convertible into shares of the Common Stock immediately prior to such Change of Control transaction at a price per share equal to the lesser of (x) the Conversion Price, or (y) the per share consideration to be received by the holders of the Common Stock in such Change of Control transaction.

(c) **Cancellation.** Upon and as of the Maturity Date, this Note will be cancelled on the books and records of the Company and shall solely represent the right to receive the Conversion Shares.

3.2 Delivery of Securities Upon Conversion.

(a) As soon as is practicable after the Maturity Date or an event pursuant to Section 3.1(b)(ii), the Company shall deliver to the Holder a certificate or certificates evidencing the Conversion Shares issuable to the Holder.

(b) The issuance of certificates for Conversion Shares upon conversion of this Note shall be made without charge to the Holder for any issuance tax in respect thereof or other cost incurred by the Company in connection with such conversion and the related issuance of securities. Upon conversion of this Note, the Company shall take all such actions as are necessary in order to ensure that the Conversion Shares so issued upon such conversion shall be validly issued, fully paid and nonassessable.

3.3 Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon conversion of this Note. If any conversion of this Note would create a fractional share or a right to acquire a fractional share, the Company shall round to the nearest whole number.

4. COLLATERAL.

4.1 Security Interest In The Collateral. To secure the prompt payment and performance to Holder of the obligations hereunder, the Company hereby assigns, pledges and grants to Holder a continuing security interest in and to, and lien on, all of its Collateral.

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4.2 Perfection Of Security Interest. The Company shall take all action that may be necessary or desirable or that Holder may reasonably request, so as at all times to maintain the validity, perfection, enforceability and priority of Holder's security interest in and lien on the Collateral or to enable Holder to protect, exercise or enforce its rights hereunder and in the Collateral. By its signature hereto, the Company hereby authorizes Holder to file against the Company one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code in form and substance reasonably satisfactory to Holder.

5. STATUS; RESTRICTIONS ON TRANSFER.

5.1 Status of Note. This Note is a direct, general and unconditional obligation of the Company, and constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity. This Note does not confer upon the Holder any right to vote or to consent or to receive notice as a stockholder of the Company, as such, in respect of any matters whatsoever, or any other rights or liabilities as a stockholder, prior to conversion hereof into Conversion Shares.

5.2 Restrictions on Transferability. This Note and any Conversion Shares issued with respect to this Note, have not been registered under the Securities Act, or under any state securities or so-called "blue sky laws," and may not be offered, sold, transferred, hypothecated or otherwise assigned except (a) pursuant to a registration statement with respect to such securities which is effective under the Act or (b) upon receipt from counsel satisfactory to the Company of an opinion, which opinion is satisfactory in form and substance to the Company, to the effect that such securities may be offered, sold, transferred, hypothecated or otherwise assigned (i) pursuant to an available exemption from registration under the Act and (ii) in accordance with all applicable state securities and so-called "blue sky laws." The Holder agrees to be bound by such restrictions on transfer. The Holder further consents that the certificates representing the Conversion Shares that may be issued with respect to this Note may bear a restrictive legend to such effect.

5.3 COVENANTS. In addition to the other covenants and agreements of the Company set forth in this Note, the Company covenants and agrees that so long as this Note shall be outstanding, if any one or more events occur which constitute or which, with the giving of notice or the lapse of time or both, would constitute an Event of Default or if the Holder shall demand payment or take any other action permitted upon the occurrence of any such Event of Default, the Company will forthwith give notice to the Holder, specifying the nature and status of the Event of Default or other event or of such demand or action, as the case may be.

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6. REMEDIES.

6.1 Events of Default. "**Event of Default**" wherever used herein means any one of the following events:

(a) The Company shall fail to issue and deliver the Conversion Shares in accordance with Section 3;

(b) Default in the due and punctual payment of the principal of, or any other amount owing in respect of (including interest), this Note when and as the same shall become due and payable;

(c) Default in the performance or observance of any covenant or agreement of the Company in this Note (other than a covenant or agreement a default in the performance of which is specifically provided for elsewhere in this Section 6.1), and the continuance of such default for a period of 10 days after there has been given to the Company by the Holder a written notice specifying such default and requiring it to be remedied;

(d) The entry of a decree or order by a court having jurisdiction adjudging the Company as bankrupt or insolvent; or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Company or of any substantial part of its property, or

ordering the winding-up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 calendar days;

(e) The institution by the Company of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors;

(f) The Company seeks the appointment of a statutory manager or proposes in writing or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or any group or class thereof or files a petition for suspension of payments or other relief of debtors or a moratorium or statutory management is agreed or declared in respect of or affecting all or any material part of the indebtedness of the Company; or

(g) It becomes unlawful for the Company to perform or comply with its obligations under this Note.

6.2 Effects of Default. If an Event of Default occurs and is continuing, then and in every such case the Holder may declare this Note to be due and payable immediately, by a notice in writing to the Company, and upon any such declaration, the Company shall pay to the Holder the outstanding principal amount of this Note plus all accrued and unpaid interest through the date the Note is paid in full; and Holder may also assign this Note to any third party without the consent of the Company subject to applicable securities laws governing transferability of this Note]. Holder shall further have the right to exercise any and all rights and remedies provided for herein, under the Uniform Commercial Code and at law or equity generally, including the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take possession of and sell any or all of the Collateral with or without judicial process. Holder may enter the Company's premises without legal process and without incurring liability to the Company therefor, and Holder may thereupon, or at any time thereafter, in its discretion without notice or demand, take the Collateral and remove the same to such place as Holder may deem advisable and Holder may require the Company to make the Collateral available to Holder at a convenient place.

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6.3 Remedies Not Waived; Exercise of Remedies. No course of dealing between the Company and the Holder or any delay in exercising any rights hereunder shall operate as a waiver by the Holder. No failure or delay by the Holder in exercising any right, power or privilege under this Note shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. By acceptance hereof, the Holder acknowledges and agrees that this Note is one of a series of Convertible Promissory Notes of similar tenor issued by the Company pursuant to the Offering (collectively, the "*Related Notes*") and that upon the occurrence and during the continuance of any Event of Default, the holders of a majority in original principal amount of the Related Notes, including this Note, shall have the right to act on behalf of the holders of all such Notes in exercising and enforcing all rights and remedies available to all of such holders under this Note, including, without limitation, foreclosure of any judgment lien on any assets of the Company. By acceptance hereof, the Holder agrees not to independently exercise any such right or remedy without the consent of the holders of a majority in original principal amount of the Related Notes (for the avoidance of doubt, including this Note).

7. MISCELLANEOUS.

7.1 Severability. If any provision of this Note shall be held to be invalid or unenforceable, in whole or in part, neither the validity nor the enforceability of the remainder hereof shall in any way be affected.

7.2 Notice. Where this Note provides for notice of any event, such notice shall be given (unless otherwise herein expressly provided) in writing and either (a) delivered personally, (b) sent by certified, registered or express mail, postage prepaid or (c) sent by facsimile or other electronic transmission, and shall be deemed given when so delivered personally, sent by facsimile or other electronic transmission (confirmed in writing) or mailed. Notices shall be addressed, if to Holder, to its address as provided in the Subscription Agreement or, if to the Company, to its principal office.

7.3 Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of Delaware (without giving effect to any conflicts or choice of law provisions that would cause the application of the domestic substantive laws of any other jurisdiction).

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7.4 Forum. The Holder and the Company hereby agree that any dispute which may arise out of or in connection with this Note shall be adjudicated before a court of competent jurisdiction in the State of Delaware and they hereby submit to the exclusive jurisdiction of the courts of the State of Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, with respect to any action or legal proceeding commenced by either of them and hereby irrevocably waive any objection they now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum.

7.5 Headings. The headings of the Articles and Sections of this Note are inserted for convenience only and do not constitute a part of this Note.

7.6 Amendments. This Note may be amended or waived only with the written consent of the Company and the holders of a majority in original aggregate principal amount of this Note and the other Related Notes. Any such amendment or waiver shall be binding on all holders of the Notes, even if they do not execute such consent, amendment or waiver.

7.7 No Recourse Against Others. The obligations of the Company under this Note are solely obligations of the Company and no officer, employee or stockholder shall be liable for any failure by the Company to pay amounts on this Note when due or perform any other obligation.

7.8 Assignment; Binding Effect. This Note may [not] be assigned by the Company without the prior written consent of the Holder. [This Note is not transferable or assignable by the Holder without the prior written consent of the Company; provided, however, that the consent of the Company shall not be required in connection with a proposed assignment to any fund or account managed by the same investment manager as the Holder or an affiliate of the Holder but in any case subject to applicable securities laws governing transferability of this Note.] This Note shall be binding upon and inure to the benefit of both parties hereto and their respective permitted successors and assigns.

Signature on the Following Page

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In Witness Whereof, the Company has caused this Note to be signed by its duly authorized officer on the date hereinabove written.

Bionik Laboratories Corp.

By: _____
Name:
Title:

Signature Page to Convertible Promissory Note
