IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF AN APPLICATION BY MICHAEL PEARSON

- AND -

IN THE MATTER OF LEADFX INC.

APPLICATION

TO: THE SECRETARY OF THE COMMISSION
Ontario Securities Commission
19th Floor, 20 Queen Street West
Toronto, Ontario
M5H 3S8

THIS APPLICATION to the Ontario Securities Commission (the "Commission") is brought by the Applicant, Michael Pearson, in connection with a special meeting (the "Meeting") of shareholders of LeadFX Inc. ("LeadFX") called to consider and, if thought advisable, to approve, a special resolution (the "Arrangement Resolution") to approve a going-private transaction (the "Transaction"), to be completed via a statutory plan of arrangement (the "Arrangement") under section 192 of the *Canada Business Corporations Act* (the "CBCA").

THIS APPLICATION WILL COME ON FOR A HEARING on a date, at a time and at a place to be set by the Secretary of the Commission.

A. ORDER SOUGHT

1. The Applicant makes an application for:

(a) An order permitting this application to be heard;

(b) An order that LeadFX has not complied with Multilateral Instrument 61-101 – *Protection of Minority Securityholders in Special Transactions* ("MI 61-101") with respect to the Arrangement;

(c) An order pursuant to section 127(1)3 of the *Securities Act* (the "Act") that the exemption from the minority approval requirement in section 4.6(1)(a) of MI 61-101 (the "90 Per Cent Exemption") is not available to LeadFX with respect to the Arrangement;

(d) An order restraining LeadFX and its affiliates from completing the Transaction (whether via the Arrangement or otherwise) without complying with MI 61-101, including, without limitation, the requirement of obtaining the approval of a majority of the minority shareholders ("Minority Approval") in accordance with Part 8 of MI 61-101;

(e) An order pursuant to section 127(1)5 of the Act requiring LeadFX to:

(i) immediately disseminate to the public a news release advising that, as a result of the Commission's orders, LeadFX must obtain Minority Approval as a condition for approval of the Arrangement Resolution;

(ii) immediately amend or supplement its management information circular dated August 10, 2018 (the "Circular") to reflect that Minority Approval is required as a condition for approval of the Arrangement Resolution; and

(iii) send such amended or supplemented Circular to shareholders of LeadFX as of the Record Date for the Meeting not less than 10 days prior to the Meeting, as adjourned or postponed;

(f) An order pursuant to section 127(1)2 of the Act that trading cease in respect of any shares of LeadFX issued, or to be issued, under or in connection with the Arrangement, unless and until LeadFX satisfies the Commission that the provisions of paragraph 1(e) above have been complied with;

(g) An order pursuant to section 127(1)2.1 of the Act that the acquisition of any shares of LeadFX by the Controlling Shareholders (as defined below) or their affiliates is prohibited unless and until LeadFX satisfies the Commission that the provisions of paragraph 1(e) above have been complied with; and

(h) Such alternative or further and other relief as counsel for the Applicant may request and the Commission may order.

B. GROUNDS

Overview

1. LeadFX is a TSX-listed issuer that has deliberately structured a going-private transaction to artificially rely on an exemption for Minority Approval under MI 61-101. The Applicant seeks, *inter alia*, an order that LeadFX cannot rely on that exemption in this case, and is required to obtain Minority Approval of the Transaction.

2. Prior to announcing the Transaction, LeadFX issued a substantial amount of equity to one of its Controlling Shareholders at below fair value. It did so with the intention of triggering the 90 Per Cent Exemption under MI 61-101. This exemption would allow LeadFX to effect the Transaction without minority approval. The issuance of equity was "connected" to the Transaction and should be regulated as a single transaction for the purposes of determining whether an exemption under MI 61-101 applies.

3. This application raises issues of artificiality that engage public interest considerations. It is in the public interest that the Commission intervene and grant the relief sought on this application.

4. This application is urgent. The Meeting has been scheduled for October 3, 2018, and the application for the final order approving the Arrangement (the "Final Order") is scheduled to be heard on October 5, 2018 at 9:30 a.m. If the Final Order is granted at that hearing, it is anticipated that the Transaction will close the same day.

5. The Applicant respectfully requests that the Commission hold a hearing in this matter no later than September 28, 2018.

The Parties

6. LeadFX is a reporting issuer under the Act and is a corporation existing under the CBCA. LeadFX is an international mining and development company focused on the operation and development of lead mines.

7. The principal asset and sole material mineral project of LeadFX is a 100% equity interest in Rosslyn Hill Mining Pty Ltd which, in turn, has a 100% interest in the currently non-producing Paroo Station lead mine (the "Mine") in Western Australia.

8. As at August 7, 2018 (the "Record Date"), LeadFX had 69,615,713 common shares ("Common Shares") issued and outstanding as fully-paid and non-assessable. The Common Shares are listed on the TSX under the symbol "LFX".

9. LeadFX also had the following other securities outstanding as of the Record Date:

(a) 2,008,000 outstanding incentive stock options to acquire Common Shares;

(b) 244,104 outstanding warrants to acquire Common Shares;

(c) 5,750,000 outstanding Stage 3 Warrants (as defined in the Circular); and

(d) 327,000 performance share units ("PSUs")

(collectively, the "Other Securities").

10. The Applicant, Michael Pearson, is an individual who resides in the City of Toronto. As of the Record Date, Mr. Pearson, directly or indirectly, beneficially owned or exercised control over 2,363,715 Common Shares of LeadFX. This represents approximately 3.4% of the Common Shares outstanding, on a non-diluted basis.

The Controlling Shareholders

11. LeadFX's controlling shareholders are Sentient Executive GP III, Limited, Sentient Executive GP IV, Limited (collectively, "Sentient") and InCoR Energy Materials Limited ("InCoR" and, together with Sentient, the "Controlling Shareholders").

12. As of the Record Date, InCoR owned 27,306,475 Common Shares representing approximately 39.2% of the outstanding Common Shares, and Sentient and its affiliates owned 36,609,182, representing approximately 52.6% of the outstanding Common Shares.

13. The Controlling Shareholders and their affiliates collectively owned approximately 91.8% of the Common Shares outstanding as of the Record Date.

The InCoR Warrants

14. On May 12, 2017, LeadFX announced that it had entered into a transaction with InCoR and InCoR Technologies Limited (an affiliate of InCoR) regarding the transfer of lead refining technologies to LeadFX for the initial development of a lead refinery at the Mine (the "InCoR Transaction").

15. On June 20, 2017, the Controlling Shareholders (or affiliates thereof) entered into an umbrella agreement (the "Umbrella Agreement") that provided for the transfer of the lead hydrometallurgical processing technologies to LeadFX.

16. Under the terms of the InCoR Transaction and the Umbrella Agreement, InCoR undertook to finance a Definitive Feasibility Study ("DFS") for the development of a Hydrometallurgical Facility at the Mine. Upon the successful completion of the DFS, LeadFX would have exclusive rights to use and sub-license InCoR's lead refining technologies.

17. On August 15, 2017, pursuant to the InCoR Transaction, LeadFX issued two separate Common Share purchase warrants (the "InCoR Warrants") to InCoR to acquire up to 28,750,000 Common Shares in the capital of LeadFX. Pursuant to their terms, the InCoR Warrants were

exercisable, for no additional consideration, on and subject to the occurrence of the following triggering events:

(a) 80% of the Warrants (or 23,000,000 Warrants) (the "Stage 2 Warrant") were exercisable on completion of a successful DFS. InCoR contracted SNC-Lavalin Australia Pty Ltd. to prepare the DFS and on February 28, 2018, LeadFX released results that demonstrated the technical and economic feasibility of constructing and operating a Hydrometallurgical Facility at the Mine. Shortly thereafter, the Stage 2 Warrant was exercised and the underlying Common Shares were issued to InCoR; and

(b) The remaining 20% of the Warrants (or 5,750,000 Warrants) (the "Stage 3 Warrant") are exercisable only upon receipt of definitive environmental approvals by LeadFX to construct a lead refinery at the Mine. If, however, the Stage 3 Warrant had not previously been exercised in accordance with its terms prior to the Effective Date (as defined in the Circular), the Stage 3 Warrant would be exercised into an equivalent number of Common Shares in accordance with the Arrangement.

18. The InCoR Warrants had a deemed (non-cash) exercise price of $2.00.

The Arrangement

19. The Arrangement was announced via press release on or about July 23, 2018. The Circular was distributed to Shareholders on or about August 10, 2018. The Arrangement is to be carried out pursuant to the terms of the Plan of Arrangement, in accordance with section 192 of the CBCA.

20. The Arrangement permits the Controlling Shareholders to indirectly acquire all of the issued and outstanding Common Shares of LeadFX. It also results in the termination of any rights of the holders of the Other Securities to participate in the company or its future growth.

21. Under the Arrangement, the current Shareholders (other than the Controlling Shareholders) would have their Common Shares consolidated on a 5,000,000 to 1 basis. Holders of fractional shares (*i.e.* a holder of less than 5,000,000 shares pre-consolidation) would receive a cash payment of $1.00 in cash per pre-consolidation Common Share held (the "Cash Consideration").

22. The Arrangement provides dissent and appraisal rights in accordance with section 190 of the CBCA. Shareholders who exercise such rights (the "Dissenting Shareholders") would be entitled to have the fair value of their Common Shares fixed by a judge.

23. In connection with the Arrangement, LeadFX formed a special committee of independent directors (the "Special Committee"). LeadFX also obtained a valuation and fairness opinion (the "Fairness Opinion") from INFOR Financial Inc. ("INFOR") who determined that the Cash Consideration is fair, from a financial point of view, to the Shareholders (other than the Controlling Shareholders).

24. On the basis of a report and recommendation of the Special Committee, the board unanimously resolved to approve the terms of the Arrangement. Three directors declared a conflict and abstained from voting.

25. The Arrangement is subject to Shareholder approval of a majority of not less than 66 2/3% of the votes cast in person or by proxy at the Meeting. LeadFX has called the Meeting for October 3, 2018 at 10:00 a.m.

26. The Controlling Shareholders have advised LeadFX that all votes attached to their Common Shares will be voted in favour of the Arrangement Resolution. The votes attached to such Common Shares are sufficient to adopt the Arrangement Resolution.

27. The Arrangement also requires the approval of the Ontario Superior Court of Justice (the "Court") by way of the Final Order.

28. LeadFX has commenced an application for the Final Order. It obtained an interim order of Justice S.F. Dunphy (the "Interim Order") on or about August 10, 2018, and the application for the Final Order is scheduled to be heard on October 5, 2018 at 9:30 a.m.

29. Under the Arrangement, the Final Order must be granted by October 31, 2018.

The Arrangement Violates MI 61-101

30. As a reporting issuer listed on the TSX, LeadFX is subject to the requirements of MI 61-101. The Arrangement is a "related party transaction" under MI 61-101. The Arrangement also constitutes a "business combination" for the purposes of MI 61-101.

31. MI 61-101 provides that an issuer shall not carry out a business combination without obtaining Minority Approval unless an exemption is available.

32. LeadFX is purporting to rely on the exemption at section 4.6(1)(a) of MI 61-101 (as defined above, the "90 Per Cent Exemption"). LeadFX is therefore not seeking Minority Approval as a condition for approval of the Arrangement.

33. The 90 Per Cent Exemption applies where one or more "interested parties" (as defined in MI 61-101) beneficially own 90 per cent or more of the outstanding securities. The Controlling Shareholders owned 91.8% of the Common Shares as of the Record Date.

34. LeadFX deliberately issued the InCoR Warrants before the Arrangement was announced, pursuant to the InCoR Transaction and the Umbrella Agreement. On or about February 28, 2018, the Stage 2 Warrant was exercised upon the completion of the DFS, resulting in the issuance of 23,000,000 Common Shares to InCoR. This was done with the intention of artificially triggering the 90 Per Cent Exemption. This is not permitted under MI 61-101.

35. If the Stage 2 Warrant had not been exercised, all else being equal, the Controlling Shareholders would own only 40,915,657 Common Shares, representing approximately 87% of the issued and outstanding Common Shares. LeadFX would not have qualified for the exemption from Minority Approval under MI 61-101, and would have had to have achieved a "majority of the minority" approval of the Transaction.

36. LeadFX entered into the InCoR Transaction with the intention of circumventing the requirement for Minority Approval under MI 61-101.

37. The InCoR Transaction itself should have been subject to Minority Approval. Prior to entering into the InCoR Transaction, InCoR did not own any Common Shares of LeadFX at all. The InCoR Warrants contemplated the issuance of a total of 28,750,000 Common Shares to

InCoR, representing approximately 42.9% of the Common Shares issued and outstanding as at May 12, 2017 on a non-diluted basis. The issuance of the InCoR Warrants represented a potential material change in control of LeadFX.

38. LeadFX never publicly disclosed that, as an implication of the InCoR Transaction, it would now be able to go private under a Plan of Arrangement and ostensibly rely on the 90 Per Cent Exemption.

39. The abusive and improper nature of the InCoR Transaction is compounded by the fact that InCoR appears to have obtained the Common Shares at below fair value. The consideration paid for such Common Shares included the financing of the DFS and the transfer of lead refining technologies to LeadFX. The DFS is estimated to have cost $5 million. This represents an implied purchase price of $0.21 per Common Share, excluding any value that may be attributable to the lead refining technologies.

40. On May 12, 2017, the date the InCoR Transaction was announced, the Common Shares of LeadFX traded at a price of $0.53 per share. Common Shares traded as high as $1.65 per share as recently as May 16, 2018, and the 52-week high is reported as $2.25 per Common Share.

41. MI 61-101 provides that a series of transactions may be deemed to be "connected" in certain circumstances. "Connected transactions" is defined in MI 61-101 to mean:

> "two or more transactions that <u>have at least one party in common</u>, directly or indirectly, other than transactions related solely to services as an employee, director or consultant, and
>
> (a) <u>are negotiated or completed at approximately the same time</u>, or
>
> (b) the completion of at least one of the transactions <u>is conditional on the completion of each of the other transactions</u>.

[Emphasis added].

42. The InCoR Transaction, the Umbrella Agreement and the Arrangement (collectively, the "Connected Transactions") satisfy this definition as:

(a) They have at least one party in common (LeadFX);

(b) They were negotiated and/or completed at approximately the same time;

(c) They were negotiated by and under the common direction of the Controlling Shareholders;

(d) Both the InCoR Transaction and the Umbrella Agreement related to the transfer of lead refining technologies to LeadFX and contemplated that InCoR would take a significant equity stake in LeadFX;

(e) The InCoR Warrants were issued pursuant to the InCoR Transaction and the Umbrella Agreement;

(f) The Stage 3 Warrant (being the 20% component of the InCoR Warrants) is expressly exercisable upon the successful completion of the Arrangement, for no additional consideration;

(g) The issuance of the InCoR Warrants affected the rights of minority shareholders under the Arrangement; and

(h) The completion of the Arrangement (without Minority Approval) is conditional on the issuance and exercise of the InCoR Warrants.

43. Companion Policy 61-101 (the "Companion Policy") also indicates that the Commission may intervene where a transaction has been "divided" to avoid MI 61-101:

> "…we may intervene if we believe that a transaction is being carried out in stages or otherwise divided up for the purpose of avoiding the application of a provision of the Instrument."

44. The Companion Policy also recognizes, at section 2.7(2), that each step in a series of two or more interrelated steps will be regulated as a single transaction by MI 61-101.

45. The Connected Transactions should be viewed as a single transaction under MI 61-101 for the purposes of determining whether an exemption is available.

46. The Commission should exercise its discretion under section 127(1)3 to refuse to allow LeadFX to rely on the 90 Per Cent Exemption in this case.

Abuse of Minority Shareholders

47. The abusive manner in which the Arrangement is proposed to be carried out raises not only issues concerning the provisions of MI 61-101, but also raises serious issues of artificiality that engage public interest considerations.

48. The Commission's public interest jurisdiction is engaged where there is conduct inconsistent with Ontario securities laws or an abuse of shareholders or the capital markets. Exercise of the public interest power in such circumstances does not require a technical breach of Ontario securities laws.

49. The public interest power under section 127 of the Act is preventative in nature and prospective in orientation. Where a transaction or series of transactions have been deliberately

structured to skirt the requirement for Minority Approval in MI 61-101, the Commission has the authority to intervene and prevent such transaction or transactions from occurring.

50. This accords with the "twin purposes" of the Act, namely: (i) to provide protection to investors from unfair, improper or fraudulent practices; and (ii) to foster fair and efficient capital markets and confidence in capital markets. The Commission's public interest jurisdiction is guided by these purposes.

51. It would undermine confidence in the capital markets if issuers subject to MI 61-101 were able to effect abusive and unfair plans of arrangement by artificially structuring transactions to undermine the rights of minority shareholders.

52. The actions of LeadFX and the Controlling Shareholders will cause severe harm to LeadFX and its minority shareholders. In the circumstances, the Commission should exercise its public interest power to restrain the attempts by LeadFX, the Controlling Shareholders and their affiliates to thwart or circumvent the policy behind MI 61-101.

Meaningful Vote

53. In this case, the Controlling Shareholders have indicated that they intend to vote their shares in favour of the Arrangement Resolution. Unless a separate minority vote is held, the Arrangement Resolution will almost certainly be approved by the requisite two-thirds majority of shareholders at the Meeting.

54. Without a separate minority vote, minority shareholders will have no opportunity to express a meaningful view regarding whether the Arrangement is in their interests. It is essential as a matter of fairness that a minority vote be held.

Deficient Disclosure

55. Under National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102"), LeadFX is required to file any contract that it, or any of its subsidiaries, are party to that is material to LeadFX (a "Material Contract").

56. In connection with the Arrangement, InCoR and LeadFX entered into a commitment letter on or about July 23, 2013 (the "Commitment Letter") which, among other things, reflected InCoR's commitment to directly or indirectly invest in Common Shares of LeadFX sufficient to satisfy the Cash Consideration under the Arrangement.

57. The Commitment Letter is a Material Contract within the meaning of NI 51-102. LeadFX failed to file the Commitment Letter by uploading it electronically to SEDAR, or otherwise. This is a violation of its disclosure obligations under NI 51-102.

58. In addition, LeadFX was late in filing, or has failed to file, some of its documents in connection with the Arrangement, without explanation. LeadFX was required to file a Material Change Report in connection with the Arrangement within 10 days after the Arrangement was announced. LeadFX was late in filing this document.

59. LeadFX failed to file any other Material Contracts. LeadFX also failed to file or describe any agreement with Sentient.

60. LeadFX has not observed the standard of disclosure expected of a sophisticated commercial party. The Commission may consider this as a relevant factor in determining whether, in the totality of the circumstances, it is necessary to make an order in the public interest.

No Valid Business Purpose

61. The InCoR Transaction and the Umbrella Agreement were executed by LeadFX and the Controlling Shareholders, acting jointly and in concert, to issue a substantial number of Common Shares to InCoR with the intention of depriving minority shareholders of their rights under the Arrangement. These abusive transactions have no valid business purpose, were entered into in bad faith, and are a "sham".

Cease Trade

62. The Commission should exercise its authority under section 127(1)2 and 2.1 to order that trading of all Common Shares issued, or to be issued, in connection with the Arrangement cease until LeadFX satisfies the conditions specified in paragraph 1(e) of this application, above.

Right to Be Heard

63. The Commission has the discretion to permit private parties to commence proceedings under section 127 of the Act.

64. The Commission should exercise its discretion to hear this Application for the following reasons, in accordance with *MI Developments Inc., Re,* (2009), 32 O.S.C.B. 126:

(a) The Application involves and relates to a transaction regulated by MI 61-101;

(b) The Application involves alleged breaches of MI 61-101, but is not purely in the nature of an enforcement proceeding;

(c) The orders sought are future looking and prophylactic in that they are intended to prevent completion of the Arrangement without Minority Approval;

(d) The Commission has the authority to impose an appropriate remedy in the circumstances;

(e) The Applicant is directly affected by the Arrangement and has a sufficiently direct interest in the outcome of the Application; and

(f) It is in the public interest to hear the Application.

C. DOCUMENTARY EVIDENCE

1. The following documentary evidence will be used at the hearing of the Application:

(a) The affidavit of Michael Pearson, to be sworn; and

(b) Such further and other evidence as counsel for the Applicant may advise and the Commission may permit.

September 18, 2018

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