Action No. 0901-________
Affidavit of Murray D'Angelo
sworn October 26th, 2009

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

BETWEEN:

NATIONAL BANK OF CANADA

Plaintiff
(Applicant)

-and-

ACTION ENERGY INC., NORTHERN GAS MARKETING INC. and GRIFFON PETROLEUM INC.

Defendants
(Respondents)

AFFIDAVIT OF MURRAY D'ANGELO
(Appointment of Receiver and Manager of Action Energy Inc.)

I, Murray D'Angelo, Banker, of the City of Calgary, in the Province of Alberta, **MAKE OATH AND SAY AS FOLLOWS:**

I. INTRODUCTION

1. I am the Senior Manager of the Special Loans Department for National Bank of Canada ("National Bank") and, as such, have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I do verily believe the same to be true.

2. I have been personally involved in the within Defendants' account and have reviewed the business records of National Bank relevant to the within proceedings and application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

II. BUSINESSES OF ACTION ENERGY INC.

3. Action Energy Inc. ("Action") is an oil and gas company engaged in the production, exploration, development and acquisition of natural gas and petroleum properties in the Provinces of Alberta and Saskatchewan and in the State of Montana in the United States of America.

4. Action is the successor, by amalgamation, of numerous predecessor corporations including High Plains Energy Inc. ("High Plains"), Powermax Energy Inc. ("Powermax") and Rolling Thunder Exploration Ltd. ("Rolling Thunder").

5. The Defendants, Northern Gas Marketing Inc. ("Northern Gas") and Griffon Petroleum Inc. ("Griffon") are each subsidiaries of Action but are currently relatively inactive.

III. LOANS AND GRANTING OF SECURITY

6. National Bank, as Lender, has provided various loans to Action, initially through its predecessors, since approximately March 2003. The terms of the Loan Agreements have been set out in various Offering Letters as amended from time to time. The current terms of the loan arrangement between the National Bank and Action are contained in an Offering Letter dated June 24, 2009, a true copy of which is attached as **Exhibit "A"** to this my Affidavit.

7. In accordance with the terms of the various Offering Letter agreements, National Bank had advanced various loans to Action. As at today's date the total indebtedness outstanding is in excess of $31,600,000 (this amount fluctuates daily). Attached hereto as **Exhibit "B"** is a payout statement for Action as at October 19, 2009 (the date of the demands for repayment).

8. As security for the amounts advanced by the National Bank pursuant to the various Credit Facility Agreements, Action (and its predecessors), granted various security to the National Bank that has been registered at the Personal Property Security Registry, Land Titles and the Department of Energy, as appropriate. The various security currently outstanding includes (due to the volume of security, the following list is not exhaustive and all property schedules have been removed from the security as attached hereto):

   (a) \$50 million Second Supplemental Debenture dated December 22, 2006 granted by Action to the National Bank (**Exhibit "C"**);

   (b) Third Supplemental Debenture dated August 4, 2009 granted by Action to the National Bank (**Exhibit "D"**);

   (c) Debenture dated June 12, 2003 granted by High Plains to the National Bank (**Exhibit "E"**);

   (d) General Assignment of Book Debts dated June 12, 2003 granted by High Plains to the National Bank (**Exhibit "F"**)

   (collectively the "Security").

9. It is an express term of the June 24, 2009 Credit Facilities Agreement that the Action indebtedness owing to the National Bank is repayable upon demand.

IV. GUARANTEES

10. The Defendants, Northern Gas and Griffon have each guaranteed the indebtedness of Action owing to the National Bank. Included in this regard are the following:

    (a) Guarantee dated June 12, 2003 granted by Northern Gas in favour of the National Bank (**Exhibit "G"**);

    (b) Guarantee dated June 12, 2003 granted by Griffon in favour of the National Bank (**Exhibit "H"**);

(c) Guarantee dated September 28, 2005 granted by Griffon in favour of the National Bank (**Exhibit "I"**);

(d) Guarantee dated September 28, 2005 granted by Northern Gas in favour of the National Bank (**Exhibit "J"**);

(e) Confirmation of Guarantee and Security dated December 22, 2006 granted by Griffon in favour of the National Bank (**Exhibit "K"**);

(f) Confirmation of Guarantee and Security dated December 22, 2006 granted by Northern Gas in favour of the National Bank (**Exhibit "L"**)

(collectively the "Guarantee Documents").

11. Griffon and Northern Gas each provided various security to the National Bank with respect to the indebtedness owing under the Guarantee Documents.

V. DEMAND

12. On October 19, 2009, counsel for the National Bank delivered to Action and their counsel a demand pursuant to Section 244 (1) of the *Bankruptcy and Insolvency Act* (the "Demand") and a Notice of Intention to Enforce Security pursuant to Section 244 (1) of the *Bankruptcy and Insolvency Act* (the "Notice").

13. Attached hereto and marked as **Exhibits "M" and "N"** respectively are copies of the Demand and Notice sent to Action and their counsel.

14. Since the date of the October 19, 2009 Demand and Notice, no payout nor payment has been received.

VI. ACTION'S ATTEMPTS TO SELL ASSETS OR RE-FINANCE

15. In May, 2009, Action engaged a financial advisor to review Action's strategic alternatives, including the potential sale of assets sufficient to satisfy the National Bank indebtedness. An extensive marketing initiative was undertaken with approximately 175

to 200 parties being contacted. Numerous confidentiality agreements were executed, a data room was established and various technical presentations and follow up site visits and meeting occurred. At the bid deadline in late June 2009, 11 bids were received but these bids were insufficient to satisfy the indebtedness owing to the National Bank and were deemed insufficient by Action and as such none of the bids obtained during this sales process were completed.

16. Pursuant to a Memorandum of Understanding dated September 1, 2009, Action retained Michael Steele ("Steele") of Avonlea Ventures Inc. ("Avonlea") to work as a Chief Restructuring Consultant. A copy of the Memorandum of Understanding outlining this retainer is attached as **Exhibit "O"** hereto.

17. Pursuant to the Memorandum of Understanding, Steele /Avonlea agreed to oversee restructuring, re-financing or sale initiatives that might include, "without limitation, a Plan of Arrangement, amalgamation, merger, takeover bid, reverse takeover bid, asset purchase, share purchase, joint venture or other business combination".

18. Concurrent with the Chief Restructuring Consultant Memorandum of Understanding retainer, Action also entered into a Corporate Governance Agreement with Steele Consulting Partnership, a true copy of which is attached as **Exhibit "P"** hereto.

19. As a result of the Steele / Avonlea efforts in conjunction with Action, numerous potential purchasers or merger candidates were contacted. Further, the possibility of obtaining funds for Action through a gross overriding royalty financing was considered. Various technical and economic summaries and reports were prepared and considered.

20. Pursuant to these efforts, Action received a Letter of Intent from Westfire Energy Ltd. ("Westfire") proposing an acquisition of all of Action's oil and natural gas assets together with associated tangibles and miscellaneous interests (the "Action Assets") for a purchase price in the sum of $30 million in cash. A copy of the Westfire Letter of Intent dated October 15, 2009 that has been accepted by Action is attached as **Exhibit "Q"** hereto.

21. Some terms of the Westfire Letter of Intent as accepted by Action include the following:

(a) payment of a $2 million deposit (which deposit has been received);

(b) a $2 million break fee / stalking horse fee payable by Action in priority to any other claims if Action concludes an alternate sale or arrangement;

(c) certain due diligence conditions remain outstanding;

(d) the proposal is subject to receiving a Vesting Order from the Alberta Court of Queen's Bench;

(e) the Steele / Avonlea restructuring fee (3% of the total price) is to be paid by Westfire and deducted from the total purchase price.

22. The proposed Westfire Letter of Intent does not include Action's receivables, working capital, corporate attributes nor certain tax pools.

23. The National Bank has advised Action and Westfire that it supports the terms of the proposed Letter of Intent subject only to receipt of a *bona fide* competing offer likely to close for an amount in excess of $30 million plus the $2 million break fee / stalking horse fee.

24. National Bank has entered into an arrangement with Steele / Avonlea for a reduction in their fees if National Bank suffers a significant shortfall.

25. I do verily believe that the Westfire Letter of Intent is the best offer received following extensive sales or re-financing initiatives pursued by Action and their advisors.

VII. CURRENT STATUS OF THE ACTION INDEBTEDNESS

26. I do verily believe that Action is currently in default of its obligations owing to the National Bank.

27. I do verily believe that Action is indebted to the National Bank pursuant to the Credit Facilities Agreement as secured by the Security and Guarantee Documents in a sum in excess of $31 million plus accrued and accruing costs and interest.

28. I am advised that the Directors of Action do not intend to dispute or oppose this receivership application and are likely to resign prior to any scheduled receivership hearing.

29. Action has downsized its staff significantly.

30. Ongoing production to cover overhead and expenses is depleting Action's resources and the Bank's collateral.

31. I do verily believe that Action is an insolvent entity and is currently unable to meet its financial obligations. As a result of its current financial circumstances, I do verily believe that Action is under considerable financial stress and is prioritizing its payables. As a consequence of Action's current financial position, National Bank recently increased Action's operating line of credit from $31,000,000.00 to $32,000,000.00 in order to address the concern of Action's management that it would otherwise be cut-off from receiving services necessary to maintain production levels.

32. National Bank has recently been advised by management that the depletion rate of production is estimated to be up to 45 barrels of oil equivalent per day per month. As a result of this forecasted depletion rate, I do verily believe that there will be a significant deterioration of National Bank's security position.

VIII. RECEIVER

33. In all of the circumstances, I do verily believe that the appointment of a Receiver and Manager over the undertakings, property and assets of Action is necessary and proper to protect the interests of the National Bank and to preserve and realize upon its security. In this regard, I do verily believe that it is important that any Receiver appointed immediately review the Westfire Letter of Intent and the initiatives taken by Action to attempt to realize upon its assets and report back to this Court in those regards as quickly as possible.

34. I do verily believe that Ernst & Young Inc. are qualified and have consented to their appointment as Receiver and Manager, or alternatively, Receiver of Action if so ordered by this Court. Attached hereto and marked as **Exhibit "R"** to this my Affidavit is a true copy of the Consent to Act as Receiver executed by Deryck Helkaa, an authorized signatory of Ernest & Young Inc.

IX. CONCLUSION

35. I am authorized to swear this Affidavit on behalf of the National Bank.

36. I make this Affidavit for no improper purpose.

37. I make this Affidavit in support of an application to appoint Ernst & Young Inc. as the

38. Receiver and Manager of the undertakings, property and assets of Action.

SWORN before me at the City of Calgary, in the Province of Alberta, this 26th day of October, 2009.	)	
A Commissioner for Oaths in and for the Province of Alberta	)	**Murray D'Angelo**

GILLIAN BARNETT
Student-at-Law

Action No. 0901-16005
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Judicial Centre of Calgary

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CLERK OF THE COURT
OCT 26 2009
CALGARY, ALBERTA

AFFIDAVIT OF MURRAY D'ANGELO
(Appointment of Receiver and Manager of Action Energy Inc.)

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