

Proof of Debt – General Form

Empowering Wind MFC Limited (in Liquidation)	
Date of Winding-Up Order/Resolution for voluntary winding-up Court order dated 19 September 2016	
1	Name of creditor (If a company please also give company registration number). Middlesbrough Football & Athletic Company (1986) Limited (registered number 05324467) (MFC)
2	Address of creditor for correspondence. Riverside Stadium, Middlesbrough, TS3 6RS
3	Total amount of claim, including any Value Added Tax and outstanding uncapitalised interest as at the date the company went into liquidation. £4,111,874.75
4	Details of any documents by reference to which the debt can be substantiated. (Note: There is no need to attach them now but the liquidator may call for any document or evidence to substantiate the claim at his discretion as may the chairman or convenor of any meeting). 1. Lease dated 17 June 2013 made between MFC and Empowering Wind MFC Limited (EW) 3. Energy Supply Agreement dated 7 November 2013 made between MFC and EW
5	If amount in 3 above includes outstanding uncapitalised interest please state amount. £
6	Particulars of how and when debt incurred (If you need more space append a continuation sheet to this form). Please see the attached continuation sheet
7	Particulars of any security held, the value of the security, and the date it was given. None
8	Particulars of any reservation of title claimed in respect of goods supplied to which the claim relates. Not applicable
9	Signature of creditor or person authorised to act on his behalf 
	Name in BLOCK LETTERS JULIAN GILL
	Position with or in relation to creditor SOLICITOR
	Address of person signing (if different from 2 above) BOND DICKINSON LLP, 112 QUAYSIDE, NICLE WAPON TUNE, NE1 3DX
Admitted to vote for	Admitted for dividend for
£	£

Date	Date
Liquidator	Liquidator

Proof of Debt Continuation Sheet for
Middlesbrough Football & Athletic Company (1986) Limited ("MFC")

Empowering Wind MFC Limited (in Liquidation) ("EW")

Executive Summary

1. MFC's debt in the total sum of £4,111,874.75 (inclusive of value added tax) arises from amounts payable to it by EW as a result of breaches by EW of the following agreements:
 - 1.1 a lease dated 17 June 2013 between MFC and EW (**Lease**); and
 - 1.2 an energy supply agreement dated 17 June 2013 made between MFC and EW as subsequently amended on 7 November 2013 (**ESA**).
2. In summary, EW owes the following amounts under the Lease and the ESA:-
 - 2.1 £80,209.95 in respect of Capacity Rent payable by EW to MFC under the terms of the Lease at a rate of £50,000 per annum (exclusive of VAT) for the period from 17 June 2014 (the first anniversary of the date of execution of the Lease) to 19 August 2015 (the date of termination of the Lease); and
 - 2.2 £4,031,664.80 in respect of amounts payable by EW to MFC under clause 3.4.2 of the ESA at a rate of £0.08 per kWh of electricity consumed by MFC from 17 June 2014 (the first anniversary of the date of execution of the ESA) to 17 June 2034 (being the date of expiry of the ESA).

Background

3. EW was incorporated for the specific purpose of constructing and operating a wind turbine on part of MFC's land within the overflow car park at the Riverside Stadium (**Property**). The proposal was that electricity that MFC would otherwise have drawn from the National Grid would be generated by the wind turbine and supplied to the Riverside Stadium, thereby enabling MFC to reduce its energy costs.
4. Brief details of the terms of the Lease and the ESA are set out below.

Lease of Land at Riverside Stadium

5. MFC granted EW an option to lease the Property under the terms of an Option Agreement dated 15 June 2012. EW exercised the option and the parties entered into the Lease. The Lease included the following provisions:-
 - 5.1 Clause 2 – provided that EW agreed to pay £200,000 in consideration of the grant of the lease of the Property for a term of 26 years and also agreed to pay MFC rent (defined as "Capacity Rent") in accordance with Schedule 7;
 - 5.2 Schedule 7, paragraph 1.4 – provided that MFC was to receive a "Capacity Rent" of £50,000 per annum (subject to indexation) for each "Accounting Year", which was defined so as to commence on the earlier of the commissioning of the wind turbine or the first anniversary of the date of execution of the Lease (i.e. on 17 June 2014);
 - 5.3 Schedule 7, paragraph 1.8 – provided that the Capacity Rent was payable quarterly in advance on the usual quarter dates (25 March, 24 June, 29 September and 25 December);
 - 5.4 Schedule 3, paragraph 1.2 – provided that interest at a rate of 4% above the base rate of Barclays Bank plc is payable any sums not paid within 14 days of their due date under the Lease; and
 - 5.5 Schedule 5, paragraph 1 – allowed MFC to require EW to remedy any failure to pay any sums due under the Lease within a reasonable period (which was specified as being not less than 28 days) after which MFC was entitled to terminate the Lease.
 6. Because the wind turbine had not been commissioned by 17 June 2014 the Capacity Rent became payable from that date. EW failed to pay the Capacity Rent which fell due on 24 June 2014, 29 September 2014, 25 December 2014, 25 March 2015 and 24 June 2015 in the sum of £12,500 plus value added tax per quarter.
 7. MFC send a notice to EW on 14 July 2015 requiring payment of the outstanding Capacity Rent but EW failed to pay the outstanding rent.
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8. Therefore, on 19 August 2015 MFC forfeited the Lease.

Energy Supply Agreement

9. The ESA set out the basis on which EW would supply electricity generated by the wind turbine to MFC. The ESA included the following provisions:-
 - 9.1 Clause 2.1 – provided that the terms of the ESA (other than clauses 3.1-3.3 and 4) would be effective from the date of the ESA and continue in full force and effect until the end of the "Contract Term". The "Contract Term" is defined as the period from the date of the ESA (ie

- 17 June 2013) until the earlier of 20 years from the "Commissioning Date" or the date of termination pursuant to clause 7;
- 9.2 Clause 3.4.1 - provided that EW would ensure that the "Start Date" (i.e. the date by which the wind turbine would be commissioned and EW would have entered into a connection agreement with the local electricity distributor) would be within 12 months of the date of execution of the original ESA (ie 17 November 2014);
- 9.3 Clause 3.4.2 – provided that in the event that EW failed to meet the Start Date it would pay MFC "...£0.08 for [each] kWh of electricity consumed by [MFC] at the Property until the Start Date" (clause 3.4.2); and
- 9.4 Clause 7 – provided that MFC may terminate the ESA by notice to EW upon the occurrence of certain events including the termination of the Lease or the insolvency of EW.
10. Notwithstanding the liquidation of EW and the termination of the Lease, MFC has not given notice of termination of the ESA. Therefore, the ESA continues in full force and effect.
11. Because the wind turbine had not been commissioned by 17 June 2014 and because EW will not be able to comply with its obligations under the ESA to commission the wind turbine, MFC is entitled to payment from EW of £0.08 for each kilowatt hour its uses for the period of 20 years from 17 June 2014.
12. Between 17 June 2014 and 31 December 2016 MFC used 5,580,141 kilowatt hours of electricity as follows:
- 17 June 2014 to 31 December 2014 – 1,813,748 kWh
- 1 January 2015 to 31 December 2015 – 2,006,112 kWh
- 1 January 2016 to 31 December 2016 – 2,566,722 kWh
13. Based on the usage for this period MFC estimates that its annual usage of electricity for the remaining term of the ESA will be 2,566,722 kilowatt hours per annum.
14. In total therefore, MFC is entitled to payment from EW of £4,031,664.80 (excluding VAT) in respect of 50,395,810 kilowatt hours of electricity that it will use during the term of the ESA at the rate of £0.08 per kilowatt.