

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN

IN RE:

EXPRESS GRAIN TERMINALS, LLC,
EXPRESS BIODIESEL, LLC
EXPRESS PROCESSING, LLC

Debtor(s)

Case No. 21-11832-SDM
Case No. 21-11834-SDM
Case No. 21-11835-SDM

Chapter 11

OFFICIAL FORM FOR ASSERTION OF INTEREST IN GRAIN¹

Identified below is a description of the grain located at or in the possession, custody, or control of Express Grain Terminals, LLC, Express Biodiesel, LLC, or Express Processing, LLC as of September 29, 2021, which is subject to any right, title, or interest of the undersigned Interest Holder.

1. Name and Contact Information of Interest Holder
Name: <u>Macquarie Commodities (USA) Inc.</u>
Address: <u>c/o Haynes and Boone, LLP, Attn: Kelli S. Norfleet</u> <u>1221 McKinney, Suite 4000, Houston, TX 77010</u>
Telephone: <u>(713) 547-2000</u>
Email: <u>kelli.norfleet@haynesboone.com</u>
2. Product in which Interest is asserted:
<input checked="" type="checkbox"/> Soybeans
<input type="checkbox"/> Corn
<input type="checkbox"/> Other (explain): _____

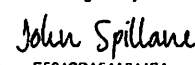
¹ This Official Form should be used for asserting an Interest in Pre-Petition Grain or Proceeds in any of the following Chapter 11 Cases: *In re Express Grain Terminals, LLC* (Case No. 11-11832-SDM), *In re Express Processing, LLC*, (Case No. 21-11835-SDM), and *In re Express Biodiesel, LLC*, (Case No. 21-11834-SDM).

3. Amount of Product (Number of Bushels) in which Interest is asserted:
750,000 bushels of No. 2 Yellow Soybeans
4. Debtor against whom your Interest is asserted:
<input checked="" type="checkbox"/> Express Grain Terminals, LLC <input type="checkbox"/> Express Processing, LLC <input type="checkbox"/> Express Biodiesel, LLC
5. Basis for Interest
<input type="checkbox"/> Grain sold to Debtor <input checked="" type="checkbox"/> Grain stored with Debtor <input type="checkbox"/> Security Interest held in grain <input type="checkbox"/> Crop Production security interest in grain sold/delivered to Debtor <input type="checkbox"/> Reclamation Claim <input type="checkbox"/> Other (explain): _____
6. Nature of relationship to any Debtor/Interest in these bankruptcy cases:
See attached addendum. _____ _____ _____

Attached are scale tickets or other documentation verifying the above amounts with ticket details such as commodity description, amount, and owner. If the type of interest is a secured claim, please identify the grantor of lien and all documentation identifying the security of the grantor.

If documentation is voluminous or otherwise confidential, please attach a summary of the documents in your possession or control which contains such information. Such documentation should be provided in hard copy and electronic format to the 557 Professional care of the Business Debtors' counsel at the below address.

To be considered all Interest notices must be filed with the Bankruptcy Court by **December 3, 2021, at 5:00 P.M. Central Time** or such interest may not be considered by the Bankruptcy Court.

DocuSigned by:

E584CDA54A844BA...

Signed

John Spillane, Managing Director, Macquarie Commodities (USA), Inc.

Print Name

12/3/2021

Date

Mail to:*

United States Bankruptcy Court
Northern District of Mississippi
Thad Cochran U.S. Courthouse
703 Hwy 145 North
Aberdeen, Mississippi 39730

With a copy to Business Debtors' counsel:

Craig M. Geno, Esq.
Law Offices of Craig M. Geno, PLLC
587 Highland Colony Parkway
Ridgeland, MS 39157
Tel: 601-427-0048
Email: cmgeno@cmgenolaw.com

*Parties with electronic filing access must file this Official Form electronically in lieu of mailing it to the Court.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

In re:	§	
	§	
Express Grain Terminals, LLC,	§	Chapter 11
	§	
Debtor.	§	Case No. 21-11832-SDM

**ADDENDUM TO MACQUARIE COMMODITIES (USA), INC.'S
ASSERTION OF INTEREST IN GRAIN**

1. On September 29, 2021 (the “Petition Date”), Express Grain Terminals, LLC (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above captioned case (the “Chapter 11 Case”) in the United States Bankruptcy Court for the Northern District of Mississippi, Aberdeen Division (the “Court”). The Debtor continues to manage and operate its business as debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. On November 8, 2021, the Court entered the *Order Establishing Procedures for Determination of Rights, Ownership Interests, Liens, Security Interests and All Other Interests In and To Grain and Proceeds of Grain* [Docket No. 1070] (the “557 Procedures”). Macquarie Commodities (USA), Inc. (“Macquarie”) submits the Official Form for Assertion of Interest in Grain and this Addendum to Macquarie Commodities (USA), Inc.’s Assertion of Interest in Grain (together with all exhibits hereto, collectively, the “Assertion of Interest”) in accordance with the 557 Procedures.¹

3. The Debtor is in the business of storing and handling grain, including but not limited to corn, wheat, and soybeans (the “Grain”). Pursuant to that certain grain storage agreement

¹ Although this Assertion of Interest is filed in the bankruptcy case of the Debtor, Macquarie reserves all rights to assert interests in any Grain or Proceeds (each as defined in the 557 Procedures) that may be in the possession, custody, or control of Express Biodiesel, LLC or Express Processing, LLC.

between Macquarie, the Debtor, and Macquarie Bank Limited dated April 21, 2020 (the “Grain Storage Agreement”), the Debtor agreed to store Grain in an approved warehouse for Macquarie, but legal and beneficial title to all Stored Macquarie Grain remains with Macquarie. In exchange for the Debtor’s storage of the Stored Macquarie Grain, Macquarie pays certain storage fees to the Debtor. A copy of the Grain Storage Agreement is attached hereto as Exhibit A.²

4. On January 15, 2021, Macquarie entered into a grain purchase contract (the “First Grain Purchase Contract”) to purchase 1,000,000 bushels of No. 2 Yellow Soybeans from the Debtor at the July futures price plus a specified premium. A copy of the First Grain Purchase Contract is attached hereto as Exhibit B. On January 15, 2021, Macquarie paid the Debtor \$14,495,000 (the “Purchase Price”) pursuant to the First Grain Purchase Contract. A copy of the wire confirmation reflecting Macquarie’s payment of the Purchase Price to the Debtor is attached hereto as Exhibit C. Macquarie and the Debtor also entered into a grain sales contract (the “First Grain Sales Contract”), pursuant to which the Debtor agreed to purchase 1,000,000 bushels of No. 2 Yellow Soybeans from Macquarie on or before May 20, 2021. A copy of the First Grain Sales Contract is attached hereto as Exhibit D. The Debtor also issued a warehouse receipt (the “First Warehouse Receipt”) to Macquarie reflecting Macquarie’s ownership of the 1,000,000 bushels of No. 2 Yellow Soybeans. A copy of the First Warehouse Receipt is attached hereto as Exhibit E.

5. On May 20, 2021, the Debtor purchased 1,000,000 bushels of No. 2 Yellow Soybeans from Macquarie under the First Grain Sales Contract. Concurrently therewith, the Debtor and Macquarie entered into a new grain purchase contract (the “Second Grain Purchase

² Macquarie has redacted limited pricing information of a confidential and proprietary nature in certain of the Exhibits attached to this Addendum and submits the confidential and proprietary pricing information is not relevant or necessary to its assertion of interest in grain. Unredacted copies of the Exhibits (the “Unredacted Exhibits”) have been provided to the 557 Professional (as defined in the 557 Procedures). Pursuant to the 557 Procedures, the 557 Professional may provide the Unredacted Exhibits to any party in interest in the case upon written request to the 557 Professional by a party in interest who executes a certification that the Unredacted Exhibits will not be filed of public record absent further Court order and will not be used or further disseminated except in connection with the 557 Procedures.

Contract”) reflecting Macquarie’s purchase of 1,000,000 bushels of No. 2 Yellow Soybeans from the Debtor at the August futures price plus a specified premium. A copy of the Second Grain Purchase Contract is attached hereto as Exhibit F. In addition, the Debtor and Macquarie entered into a new grain sales contract (the “Second Grain Sales Contract”), pursuant to which the Debtor agreed to purchase 1,000,000 bushels of No. 2 Yellow Soybeans from Macquarie on or before July 16, 2021. A copy of the Second Grain Sales Contract is attached hereto as Exhibit G. Pursuant to the Second Grain Purchase Contract, the parties setoff the amount due to Macquarie under the First Grain Sales Contract and the amount due to the Debtor under the Second Grain Purchase Contract. As a result of the change in market prices for No. 2 Yellow Soybeans between the First Grain Sales Contract and the Second Grain Purchase Contract, there was a net balance due to Macquarie under the transactions in the amount of \$569,500.00. The Debtor paid Macquarie this balance on May 20, 2021. A copy of the wire confirmation reflecting Macquarie’s receipt of this payment is attached as Exhibit H.

6. On July 16, 2021, the Debtor purchased 1,000,000 bushels of No. 2 Yellow Soybeans from Macquarie under the Second Grain Sales Contract. Concurrently therewith, the Debtor and Macquarie entered into a new grain purchase contract (the “Third Grain Purchase Contract”) reflecting Macquarie’s purchase of 900,000 bushels of No. 2 Yellow Soybeans from the Debtor at the November futures price plus a specified premium. A copy of the Third Grain Purchase Contract is attached hereto as Exhibit I. In addition, the Debtor and Macquarie entered into a new grain sales contract (the “Third Grain Sales Contract”), pursuant to which the Debtor agreed to purchase 900,000 bushels of No. 2 Yellow Soybeans from Macquarie on or before September 28, 2021. A copy of the Third Grain Sales Contract is attached hereto as Exhibit J. Pursuant to the Third Grain Purchase Contract, the parties setoff the amount due to Macquarie under the Second Grain Sales Contract and the amount due to the Debtor under the Third Grain

Purchase Contract. As a result of the difference in volumes and the change in market prices for No. 2 Yellow Soybeans between the Second Grain Sales Contract and the Third Grain Purchase Contract, there was a net balance due to Macquarie under the transactions in the amount of \$3,076,800.00. The Debtor paid Macquarie this balance on July 16, 2021. A copy of the wire confirmation reflecting Macquarie's receipt of this payment is attached as Exhibit K. In connection with these transactions, Macquarie returned the First Warehouse Receipt to the Debtor, and the Debtor issued two new warehouse receipts (the "Second Warehouse Receipts") to Macquarie reflecting Macquarie's ownership of the 900,000 bushels of No. 2 Yellow Soybeans under the Third Grain Purchase Contract. Copies of the Second Warehouse Receipts are attached hereto as Exhibit L.

7. On September 21, 2021, the Debtor purchased 50,000 bushels of No. 2 Yellow Soybeans from Macquarie pursuant to the Third Grain Sales Contract. The Debtor paid Macquarie \$2,548,570 for this purchase. A copy of the wire confirmation reflecting Macquarie's receipt of this payment is attached as Exhibit M. In connection therewith, Macquarie returned one of the Second Warehouse Receipts representing 100,000 bushels of No. 2 Yellow Soybeans to the Debtor, and the Debtor issued a new warehouse receipt (the "Third Warehouse Receipt") to Macquarie for 50,000 bushels of No. 2 Yellow Soybeans. A copy of the Third Warehouse Receipt is attached hereto as Exhibit N.

8. On September 28, 2021, the Debtor purchased the remaining 850,000 bushels of No. 2 Yellow Soybeans from Macquarie pursuant to the Third Grain Sales Contract. Concurrently therewith, the Debtor and Macquarie entered into a new grain purchase contract (the "Fourth Grain Purchase Contract") reflecting Macquarie's purchase of 750,000 bushels of No. 2 Yellow Soybeans from the Debtor at the November futures price plus a specified premium. A copy of the Fourth Grain Purchase Contract is attached hereto as Exhibit O. In addition, the Debtor entered

into a new grain sales contract (the “Fourth Grain Sales Contract,” and together with the Fourth Grain Purchase Contract and the Grain Storage Agreement, the “Macquarie Agreements”),³ pursuant to which the Debtor agreed to purchase 750,000 bushels of No. 2 Yellow Soybeans from Macquarie on or before October 1, 2021. A copy of the Fourth Grain Sales Contract is attached hereto as Exhibit P. Pursuant to the Fourth Grain Purchase Contract, the parties setoff the amount due to Macquarie under the Third Grain Sales Contract and the amount due to the Debtor under the Fourth Grain Purchase Contract. As a result of the difference in volumes and the change in market prices for No. 2 Yellow Soybeans between the Third Grain Sales Contract and the Fourth Grain Purchase Contract, there was a net balance due to Macquarie under the transactions in the amount of \$1,307,910. The Debtor paid this balance on September 28, 2021. A copy of the wire confirmation reflecting Macquarie’s receipt of this payment is attached as Exhibit Q. In connection with these transactions, Macquarie returned the remaining Second Warehouse Receipt and the Third Warehouse Receipt to the Debtor, and the Debtor issued two new warehouse receipts (the “Fourth Warehouse Receipts”) to Macquarie reflecting Macquarie’s ownership of the 750,000 bushels of No. 2 Yellow Soybeans under the Fourth Grain Purchase Contract. Copies of the Fourth Warehouse Receipts are attached hereto as Exhibit R.

9. The Debtor agreed to store the 750,000 bushels of No. 2 Yellow Soybeans (the “Stored Macquarie Grain”) that Macquarie purchased under the Fourth Grain Purchase Contract at the Debtor’s warehouse facility located at 23248 County Road 512, Sidon, Mississippi 38954 pursuant to the Grain Storage Agreement.

10. The Fourth Grain Sales Contract provides that title to the Stored Macquarie Grain will remain with Macquarie until the Debtor pays the purchase price due in accordance with the

³ The summary of the terms of any document, including the Macquarie Agreements, contained herein is qualified in its entirety by the terms of such document. In the event of any conflict between the terms of any document referenced herein and this Assertion of Interest, the terms of the document shall control.

terms of the Fourth Grain Sales Contract. The Debtor did not make payment of the purchase price due by October 1, 2021, and as a result Macquarie has not transferred title of any Stored Macquarie Grain to the Debtor. If the Debtor had purchased the Stored Macquarie Grain under the Fourth Grain Sales Contract, the amount that the Debtor would have owed to Macquarie at the time of purchase would have been \$9,580,575.00.

11. Under the Grain Storage Agreement, “[s]olely as a precaution, in the event that any Person asserts a claim or a court of competent jurisdiction or arbitration tribunal should hold for any reason that, notwithstanding the intention of the parties to the contrary, title to any of such Stored Grain is construed to be other than a bailment,” the Debtor granted Macquarie a security interest in the Stored Macquarie Grain, including the “products” and “proceeds” thereof, as such terms are defined in the applicable Uniform Commercial Code (“UCC”). *See Exhibit A*, at § 14.3. The Debtor also granted Macquarie a security interest in the Stored Macquarie Grain in each of the grain purchase contracts. *See, e.g., Exhibit P*, at § 13 (“To protect Buyer in the event that this Contract is for any reason characterized in whole or in part as a secured transaction and not a true sale and otherwise, without derogation to the intent of the Parties that this Contract constitutes a true sale of the Grain subject of this Contract, this Contract shall constitute a security agreement under the applicable UCC and Seller hereby grants to Buyer a security interest in all of the present and future rights of Seller, if any, in the Grain subject of this Contract, all warehouse receipts and other documents reflecting the Grain subject of this Contract, all accounts and payment intangibles of Seller arising from the sale or other disposition of the Grain subject of this Contract and all cash and other proceeds of the foregoing . . .”).

12. To perfect its security interest, Macquarie properly filed a UCC-1 financing statement reflecting its security interest in the Stored Macquarie Grain on May 1, 2020. Macquarie also filed a UCC-1 financing statement evidencing its ownership of the Stored Macquarie Grain

on April 21, 2020. Copies of these financing statements are attached hereto as **Exhibit S** (the “**Macquarie Financing Statements**”).

13. Macquarie and UMB Bank, N.A. (“**UMB**”) are parties to a letter agreement (the “**Subordination Agreement**”) dated February 5, 2020, pursuant to which UMB agreed, among other things, not to contest or join any other person in contesting the treatment of Macquarie’s purchase of the Stored Macquarie Grain under the Macquarie Agreements as a true sale. A copy of the Subordination Agreement is attached hereto as **Exhibit T**. UMB also agreed, without derogation of UMB’s treatment of Macquarie’s purchase and sale transactions as true sales, to the Debtor’s grant of a security interest to Macquarie and agreed that “notwithstanding the order of any filings, the perfection or non-perfection of security interests, commingling of the Collateral, or any other circumstances, the rights of Macquarie in the Commodity and the security interests of Macquarie in the Collateral shall be senior to and prior to any security interest held by the Secured Party in any Collateral.”

14. This Assertion of Interest is filed without waiver and with express reservation of any and all rights that may exist at law or in equity. Macquarie further reserves the right to amend or supplement this Assertion of Interest.

15. Macquarie does not waive or abandon any claims it may have against any person or non-debtor entity, and Macquarie expressly reserves the right to pursue and recover from any party from which repayment of the interest asserted herein may be made.

16. Any notices with respect to this Assertion of Interest should be sent to:

Kelli S. Norfleet, Counsel to Macquarie
Haynes and Boone, LLP
1221 McKinney St., Suite 4000
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