

MERGER AGREEMENT

THIS AGREEMENT, Made and entered into in triplicate this 2nd day of October, 1978, by and between BIVENS LIVESTOCK CO., an Idaho corporation, hereinafter referred to as "Livestock Co., " and B & B FEEDLOTS, INC., an Idaho corporation, hereinafter referred to as "Feedlot Co.".

WITNESSETH:

WHEREAS, Livestock Co., is a corporation duly organized and existing under the laws of the State of Idaho, having been incorporated on the 29th day of January, 1960, and Feedlot Co., is a corporation duly organized and existing under the laws of the State of Idaho, having been incorporated on the 1st day of July, 1972; and

WHEREAS, the authorized capital stock of Livestock Co., consists of 4,500 shares of Common Stock, par value of \$100.00, of which 2,000 shares are outstanding; and

WHEREAS, Feedlot Co., had authorized capital stock consisting of 4,000 shares of Common Stock, par value of \$100.00, of which 1,002 shares are outstanding; and

WHEREAS, the Boards of Directors of both corporations deem it advisable for the general welfare and advantage of both corporations and their respective shareholders that both corporations merge into a single corporation pursuant to this Merger Agreement, and both corporations respectively desire to so merge pursuant to this Agreement and pursuant to the applicable provisions of the laws of the State of Idaho;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained, the parties hereby agree, in accordance with the applicable provisions of the laws of the State of Idaho, that both corporations shall be merged into a single corporation, to-wit: Livestock Co., an Idaho corporation, one of both corporations, which is not a new corporation, and which shall continue its corporate existence and be the corporation surviving the merger

(said corporation hereafter being sometimes called the "Surviving Corporation"), and the terms and conditions of the merger hereby agreed upon (hereafter called the "Merger"), which the parties covenant to observe, keep and perform and the mode of carrying the same into effect are and shall be as hereafter set forth:

ARTICLE I

Effective Time of the Merger

At the effective time of the Merger, the separate existence of Feedlot Co., shall cease and the Livestock Co., shall be merged into the Surviving Corporation. Consummation of this Merger shall be effective as of September 30, 1978.

ARTICLE II

Governing Law; Certificate of Incorporation

The laws which are to govern the Surviving Corporation are the laws of the State of Idaho.

ARTICLE III

By - Laws

That the By-Laws of Livestock Co., at the effective time of the Merger shall be the By-Laws of the Surviving Corporation until the same shall be altered or amended in accordance with the provisions thereof.

ARTICLE IV

Directors and Officers

The Directors of Livestock Co., at the effective time of the Merger shall be the Directors of the Surviving Corporation until their respective successors are duly elected and qualified. Subject to the authority of the Board of Directors as provided by law and the By-Laws of the Surviving Corporation, the Officers of Livestock Co., at the effective time of the Merger shall be the Officers of the Surviving Corporation.

ARTICLE V

Conversion of Shares in the Merger

1. Livestock Co.'s Common Stock. None of the shares of Common Stock, par value \$100.00 per share, of Livestock Co., issued at the effective time of the Merger shall be converted as a result of the Merger, but all of such shares (including shares held in the treasury) shall remain issued shares of Common Stock of the Surviving Corporation.

2. Feedlot Co.'s Common Stock. At the effective time of the Merger, each share of Common Stock of the Feedlot Co., shall be cancelled, and no Livestock Co., shares shall be issued for the Feedlot Co., shares cancelled. The shareholders of Feedlot Co., are the same as in the Livestock Co., and their Feedlot Co., share values will be reflected in the added value of their Livestock Co., shares.

ARTICLE VI

Effect of the Merger

At the effective time of the Merger, the Surviving Corporation shall succeed to, without other transfer, and shall possess and enjoy, all of the rights, privileges, immunities, powers and franchises both of a public and a private nature, and shall be subject to all the restrictions, disabilities and duties of each of both Corporations, and all the rights, privileges, immunities, powers and franchises of each of both corporations and all property, real, personal and mixed, and all debts due to either of said both corporations on whatever account, for stock subscriptions as well as for all other things in action or belonging to each of said corporations, shall be vested in the Surviving Corporation; and all property, rights, privileges, immunities, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective both corporations, and the title to any real estate vested by deed or otherwise in either of said both corporations shall not revert or be in any way impaired

by reason of the Merger; provided, however, that all rights of creditors and all liens upon any property of either of said both corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the effective time of the Merger, and all debts, liabilities and duties of said both corporations, respectively, shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the Surviving Corporation.

ARTICLE VII

Accounting Matters

The assets and liabilities of both corporations as at the effective time of the Merger, shall be taken up on the books of the Surviving Corporation at the amounts at which they shall be carried at that time on the books of both corporation. The amount of capital of the Surviving Corporation after the Merger shall remain the same as it was before the Merger. The surplus of the Surviving Corporation after the Merger, including any surplus arising in the Merger, shall be available to be used for any legal purposes for which surplus may be used.

ARTICLE VIII

Approval of Shareholders; Filing of Certificate of Merger

This Agreement shall be submitted to the shareholders of both corporations as required by law and their Articles of Incorporation at a meeting to be held on the 30th day of September, 1978. Each Common Stock shareholder of each corporation shall be entitled to vote upon the approval of this Merger. After such approval, a Certificate of Merger, shall be prepared and signed and sent to the Secretary of the State of Idaho for filing as provided by law.

ARTICLE IX

Feedlot Co.'s Representations and Warranties

Feedlot Co., represents to Livestock Co., as follows:

1. Organization, etc. Feedlot Co., is a corporation duly

organized, validly existing and in good standing under the laws of the State of Idaho. Feedlot Co., has corporate power to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it require qualification.

2. Capitalization. Feedlot Co.'s capitalization consists of 2,500 shares of Common Stock, par value of \$100.00, of which 1,002 shares are outstanding. Each share is fully paid, non assessable, and entitled to one vote. No options are outstanding.

3. Financial Statements. Financial statements of Feedlot Co., has been delivered to Livestock Co., for the previous two (2) fiscal years.

All such financial statements are true and complete as prepared by the respective Co.'s accountant in accordance with general accounting principles.

4. Representations and Warranties. (a) Feedlot Co., has and on the closing date will have good and marketable title to the machinery, equipment, merchandise, materials, supplies and other property of every kind, tangible or intangible, contained in its offices, plants and other facilities or shown as assets in its records and its books of account, free and clear of all liens, encumbrances and all charges except as reflected in the aforesaid financial statements and except for liens, encumbrances and charges, if any, which do not materially detract from the value of or interfere with the use of the properties subject thereto or affected thereby.

(b) All taxes imposed by the U. S. or by any foreign country or by any state, municipality, subdivision or instrumentality of the U. S. or of any foreign country or by any other taxing authority, which are due or payable by Feedlot Co., and all price redetermination or renegotiation claims asserted or that may be asserted against it, have been paid in full or are adequately provided for by reserves

shown in the records and books of account of Feedlot Co., and will be so paid or provided for on the closing date. All income tax returns for Feedlot Co., have been examined and accepted by the taxing authorities having jurisdiction thereof through the years specified in the Disclosure Schedule, and no extension of time for the assessment of deficiencies for any such years is in effect. Feedlot Co., has no knowledge of any unassessed tax deficiency proposed or threatened against it.

(c) Feedlot Co., is enjoying and on the closing date will enjoy good working relationships under all of the franchise, dealer, sales representation and other agreements necessary to the normal operation of its business. All or substantially all personal properties used in the business of Feedlot Co., are and on the closing date will be in good and operable condition.

(d) Feedlot Co., is adequately insured with respect to risks normally insured against by companies similarly situated. All such policies are in full force and effect. Livestock Co., because of mutuality of officers, have knowledge of any and all claims that Feedlot Co., might have pending for its benefit or liability.

5. Material Contracts. Feedlot Co., is not in default in any material respect under the terms of any material outstanding contract, agreement, lease or other commitment.

6. No Conflict With Other Instruments. At the effective time of the Merger, the consummation of the transactions contemplated by this Merger Agreement will not result in the breach of any term or provision of or constitute a default under any indenture, mortgage, deed of trust or other material agreement or instrument to which Feedlot Co., is a party.

7. Governmental Authorizations. Feedlot Co., and each of its consolidated subsidiaries has all licenses, franchises, permits and other governmental authorizations are valid and sufficient for

all businesses presently carried on by Feedlot Co., and its consolidated subsidiaries.

ARTICLE X

Livestock Co.'s Representations and Warranties

Livestock Co., represents and warrants to Feedlot Co., as follows:

1. Organization. Livestock Co., is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho. Livestock Co., has corporate power to carry on its business as it is now being conducted and is qualified to do business in every jurisdiction in which the character and location of the assets owned by it or the nature of the business transacted by it require qualification.

2. Capitalization. Livestock Co.'s capitalization consists of 4,500 shares of Common Stock, par value of \$100.00, of which 2,000 shares are outstanding. Each share is fully paid, non assessable, and entitled to one vote. No options are outstanding.

3. Financial Statements. Livestock Co., has delivered to Feedlot Co., financial statements for the previous two (2) fiscal years.

All such financial statements are true and complete as prepared by the respective Co.'s accountant in accordance with general accounting principles.

4. Litigation and Proceedings. There is no suit, action or legal or administrative proceeding pending, or to the knowledge of Livestock Co., threatened, against it or any of its consolidated subsidiaries, which, if adversely determined, might materially and adversely affect the financial condition of Livestock Co., and its consolidated subsidiaries or the conduct of their businesses nor is there any decree, injunction or order of any court, governmental department or agency outstanding against Livestock Co., or any of its consolidated subsidiaries having any such effect.

5. Material Contracts. Neither Livestock Co., nor any of its consolidated subsidiaries is in default in any material respect under the terms of any material outstanding contract, agreement, lease or other commitment.

6. No Conflict With Other Instruments. At the effective time of the Merger, the consummation of the transactions contemplated by this Merger Agreement will not result in the breach of any term or provision of or constitute a default under any indenture, mortgage, deed of trust or other material agreement or instrument to which Livestock Co., is a party.

7. Governmental Authorizations. Livestock Co., has all licenses, franchises, permits and other governmental authorizations valid and sufficient for all businesses presently carried on by Livestock Co.

ARTICLE XI

Conduct of Businesses Pending the Merger

From and after the date of this Agreement and prior to the effective time of the Merger, neither of the constituent corporations will, without the prior written consent of the other:

(a) Amend its Certificate of Incorporation or By-Laws except, in the case of Livestock Co., as may be necessary to enable it to carry out the provisions of this Agreement;

(b) Engage in any material activity or transaction or incur any material obligation (by contract or otherwise) except in the ordinary course of business;

(c) Issue rights or options to purchase or subscribed to any shares of its capital stock or subdivide or otherwise change any such shares;

(d) Issue or sell any shares of its capital stock or securities;

(e) Declare or pay any dividends on or make any distributions in respect of any shares of its capital stock.

From and after the date of this Agreement and prior to the effective time of the Merger, Feedlot Co., will use its best efforts to preserve its business organizations intact; to keep available to Livestock Co., the services of Feedlot Co.'s, present officers and employees; and to preserve for Livestock Co., the goodwill of Feedlot Co.'s, suppliers, customers and others having business relations with any of them. During the same period, Feedlot Co., will not put into effect any material increase in the compensation or other benefits applicable to officers or other key personnel.

ARTICLE XII

Additional Agreements

The constituent corporations further agree as follows:

1. Access and Information. Livestock Co., and Feedlot Co., hereby agree that each will give to the other and to the other's accountants, counsel and other representatives full access during normal business hours throughout the period prior to the Merger to all of its properties, books, contracts, commitments and records, and that each will furnish the other during such period with all such information concerning its affairs as such other party may reasonably request. In the event of the termination of this Agreement each party will deliver to the other all documents, work papers and other material obtained from the other relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, and will use its best efforts to have any information so obtained and not heretofore made public kept confidential.

2. Benefits: On the Merger, the Livestock Co., will cause to be continued any pension plan for officers or employees of Feedlot Co., now in effect, or any group hospital or accident insurances in effect.

3. Expenses. Upon a termination of this Agreement as provided in Section 3. of Article XIII hereof, each party will pay all costs and expenses of its performance of and compliance with all agree-

ments and conditions contained herein on its part to be performed or complied with, including fees, expenses and disbursements of its accountants and control.

4. Further Assurances. If at any time the Surviving Corporation shall consider or be advised that any further assignment or assurance in law or other action is necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, the title to any property or rights of Feedlot Co., acquired or to be acquired by or as a result of the Merger, the proper officers and Directors of Livestock Co., Feedlot Co., and the Surviving Corporation, respectively, shall be and they hereby are severally and fully authorized to execute and deliver such proper deeds, assignments and assurances in law and take such other action as may be necessary or proper in the name of Livestock Co., or the Surviving Corporation to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise carry out the purposes of this Agreement.

ARTICLE XIII

Conditions Precedent; Termination; General Provisions

1. Conditions Precedent to Livestock Co.'s Obligation. The obligation of Livestock Co., to effect the Merger shall be subject to the following conditions (which may be waived in writing by Livestock Co.):

(a) The representations and warranties of Feedlot Co., herein contained shall be true as of and at the effective time of the Merger with the same effect as though made at such time; Feedlot Co., shall have performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the effective time of the Merger; and Feedlot Co., shall have delivered to Livestock Co., a Certificate, dated the effective date of the Merger and signed by its President or its Vice President, and its Secretary, to both such effects.

(b) No material change in the corporate status, businesses, operations or financial condition of Feedlot Co., shall have occurred since the 1st day of July, 1978, (whether or not covered by insurance), other than changes in the ordinary course of business, none of which has been materially adverse in relation to Feedlot Co., taken as a whole and no other event or condition of any character shall have occurred or arisen since that date which shall have materially and adversely affected the corporate status, businesses, operations or the financial condition of Feedlot Co., taken as a whole.

(c) Livestock Co., shall have received such written consents and confirmations (or opinions of counsel to the effect that such consents or confirmations are not required), as it may reasonably request to the effect that the Surviving Corporation will succeed upon consummation of the Merger to all of Feedlot Co.'s right, title and interest in and to its material contracts, agreements, leases and other commitments and that the Surviving Corporation shall possess and enjoy all material licenses, franchises, permits and other governmental authorizations possessed by Feedlot Co., at the date hereof.

(d) Any and all permits, approvals and other action of the Commissioner of Corporations of the State of Idaho and of any other jurisdiction or authority required in the opinion of counsel for Livestock Co., for the lawful consummation of the Merger shall have been obtained, and no such permit, approval or other action shall contain any provision which in the judgment of Livestock Co., shall be unduly burdensome.

2. Conditions Precedent to Feedlot Co.'s Obligation. The obligation of Feedlot Co., to effect the Merger shall be subject to the following conditions (which may be waived by Feedlot Co.):

(a) The representations and warranties of Livestock Co., herein contained shall be true as of and at the effective time of the Merger with the same effect as though made at such time; Livestock Co.,

shall have performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the effective time of the Merger; and Livestock Co., shall have delivered to Feedlot Co., a Certificate, dated the effective date of the Merger and signed by its President or its Vice President, and its Secretary, to both effects.

(b) No material change in the corporate status, businesses, operations or financial condition of Livestock Co., shall have occurred since the 1st day of July, 1978, other than changes in the ordinary course of business, and changes permitted by Article XI hereof, none of which has been materially adverse in relation to Livestock Co., taken as a whole, and no other event or condition of any character shall have occurred or arisen since that date which shall have materially and adversely affected the corporate status, businesses, operations or financial condition of Livestock Co., taken as a whole.

3. Termination and Abandonment. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and abandoned at any time before the effective time of the Merger, whether before or after adoption or approval of this Agreement by the shareholders of both corporations under any one or more of the following circumstances:

(a) By the mutual consent of the Boards of Directors of both corporations;

(b) By Livestock Co., if holders of more than 33% of the outstanding shares of the Feedlot Co., shall have voted against the Merger;

(c) By Livestock Co., if, prior to the effective time of the Merger, the conditions set forth in Paragraphs (a) through (d), inclusive, of Section 1 of this Article XIII shall not have been met;

(d) By Feedlot Co., if, prior to the effective time of the Merger, the conditions set forth in Paragraphs (a) through (b), in-

clusive, of Section 2 of this Article XIII shall not have been met;

(e) By either of the constituent corporations if any action or proceeding before any court or other governmental body or agency shall have been instituted or threatened to restrain or prohibit the Merger and such constituent corporation deems it and advisable to proceed with the Merger; or

(f) By either of the constituent corporations if the requisite approval of the shareholders of both constituent corporations shall not have been obtained on or before the 15th day of September, 1978, or if the Certificate of Merger and this Agreement shall not have been filed as provided in Article I hereof.

Upon any such termination and abandonment, neither party shall any liability or obligation hereunder to the other.

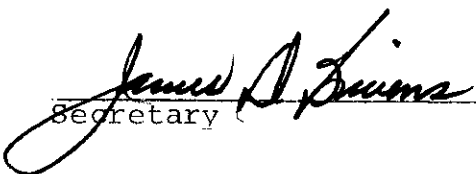
4. Amendments. Any of the terms or conditions of this Agreement may be modified or waived at any time before the effective time of the Merger by the party which is, or the shareholders of which are, entitled to the benefit thereof upon the authority of the Board of Directors of such party, provided that any such modification or waiver shall in the judgment of the party making it not affect substantially or materially and adversely the benefits to such party or its shareholders intended under this Agreement.

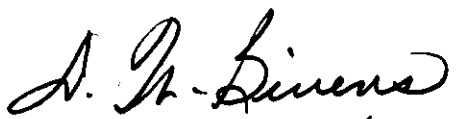

IN WITNESS WHEREOF, this Agreement has been signed by a majority of the Directors of each of the constituent corporations and each of the constituent corporations has caused its corporate seal to be hereunto affixed and attested by the signature of its Secretary, all as of the day and year first above written.

Bivens
Livestock Co.

A majority of the Directors of Livestock Co.

ATTEST:


Secretary

B & B
Feedlot, Inc.

A majority of the Directors of Feedlot Co.

ATTEST:

A. G. Livens
Secretary

James A. Livens
A. G. Livens

The foregoing Merger Agreement, having been duly executed by a majority of the Directors of Livestock Co., and Feedlot Co., respectively, under the corporate seals of the respective corporations, and the said Merger Agreement having been duly approved or adopted by the stockholders, of each of said corporations in the manner provided by the laws of their respective states of incorporation, the President or a Vice President and the Secretary of said corporations do now execute this Merger Agreement under the respective seals of said corporations by the authority of the Directors and Stockholders of each, as the act, deed and agreement of each of said corporations on this 2nd day of October, 1978.

BIVENS LIVESTOCK CO

By

A. G. Livens
President

ATTEST:

James A. Livens
Secretary

B & B FEEDLOT, INC.

By

James A. Livens
President

ATTEST:

A. G. Livens
Secretary

STATE OF IDAHO)
 ss.
County of Payette)

Personally appeared before me, a notary public in and for the county and state aforesaid, DAVID W. BIVENS, President, and JAMES D. BIVENS, Secretary of LIVESTOCK CO., an Idaho corporation, with whom I am personally acquainted, and who acknowledged that they executed the foregoing Merger Agreement on behalf of LIVESTOCK CO., pursuant to authority duly granted by its Board of Directors.

WITNESS my hand and official seal, in the county and state aforesaid, this 2nd day of October, 1978.

Nancy Jarowsky
Notary Public for Idaho
Residing at ~~Payette~~ Buttland, Idaho.

STATE OF IDAHO)
 ss.
County of Payette)

Personally appeared before me, a notary public in and for the county and state aforesaid, JAMES D. BIVENS, President, and DAVID W. BIVENS, Secretary of FEEDLOT CO., an Idaho corporation, with whom I am personally acquainted, and who acknowledged that they executed the foregoing Merger Agreement on behalf of FEEDLOT CO., pursuant to authority duly granted by its Board of Directors.

WITNESS my hand and official seal, in the county and state aforesaid, this 2nd day of October, 1978.

Nancy Jarowsky
Notary Public for Idaho
Residing at ~~Payette~~ Buttland, Idaho.