

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT is entered into by and between **Panhandle Cooperative Association**, a Nebraska Cooperative Corporation, Scottsbluff, Nebraska ("PANHANDLE") and **Farmers Cooperative Elevator Company**, a Nebraska Cooperative Corporation, Hemingford, Nebraska, ("FARMERS").

### RECITALS:

WHEREAS, PANHANDLE was organized as a Nebraska cooperative corporation to engage in the purchasing, selling, handling, shipping, manufacturing, marketing, and storing of farm and household products, equipment and supplies, and carry on any related activity or business and to act as agent, broker, or representative for its stockholders and patrons; and

WHEREAS, FARMERS was organized as a Nebraska cooperative corporation to engage in the purchasing, storage, handling, marketing, and warehousing of agricultural products, and carry on any related activity or business and to act as agent, broker, or representative for its stockholders and patrons; and

WHEREAS, PANHANDLE and FARMERS have similar business goals; and

WHEREAS, the Boards of Directors of each respective Cooperative have examined their methods of doing business and have determined that the best interests of the stockholders and patrons of the two Cooperatives would be served if the Cooperatives combined their businesses into a single, unified Cooperative; and

WHEREAS, in order to maintain existing licenses, permits, taxpayer status and identification, and organizational structure as a Cooperative, it is necessary to designate one of the two Cooperatives as the surviving corporate entity as provided by *Neb. Rev. Stat. § 21-2,162*; and

WHEREAS, the Cooperatives have agreed that the corporate entity of FARMERS is designated as the surviving corporate entity, and that upon requisite approval by each of the Cooperatives' respective stockholders as provided herein, the surviving entity will change its corporate name to: LEGACY COOPERATIVE.

NOW, THEREFORE, in mutual consideration of the following covenants and agreements, the Cooperatives adopt the following Plan of Merger:

### PLAN OF BUSINESS COMBINATION

THE FOLLOWING ARE THE PROVISIONS PURSUANT TO WHICH THE PLAN OF MERGER WILL BE IMPLEMENTED:

A. The names of the cooperative corporations to be combined are: Panhandle Cooperative Association ("PANHANDLE") and Farmers Cooperative Elevator Company ("FARMERS").

B. PANHANDLE and FARMERS will be combined and FARMERS will be the surviving corporate entity, changing its name to LEGACY COOPERATIVE. Upon requisite approval by each of the Cooperatives' respective stockholders as provided herein, the Boards of Directors of the two Cooperatives should promptly explore a rebranding of the surviving entity

which may include, in addition to a change in the corporate name of the surviving Cooperative, a transfer or registration of any tradenames to be used by the surviving entity from and after the Effective Date.

C. The terms and conditions of the business combination pursuant to *Neb. Rev. Stat. § 21-2,162* are as follows:

1. The business combination shall be deemed effective by and between the Cooperatives as of the later of the following dates (referred to as the "Effective Date"): (a) March 1, 2024; or (b) the date that the business combination becomes effective under *Neb. Rev. Stat. § 21-2,166*.

2. As of the Effective Date, the net book value of the equity of the stockholders and equityholders of the Cooperatives shall be determined. An audit opinion as of February 29, 2024 will be obtained for each Cooperative. Such audits shall be completed on the basis of generally accepted accounting principles applied consistently with past practices. The audits will be made to verify that the allocated equity stated on the records of each respective Cooperative is materially correct so that a dollar-for-dollar exchange of such stock, members' equity credits and certificates of participation can be completed as of the Effective Date. For purposes of determination of the equity of the stockholders and equityholders of PANHANDLE, the assets and liabilities of PANHANDLE shall be scheduled at book value as determined by the audit. Transfer of the assets and liabilities of PANHANDLE to FARMERS shall be completed in accordance with generally accepted accounting principles.

3. From and after the Effective Date, LEGACY COOPERATIVE'S fiscal year will commence on September 1 and end on August 31 of each year unless subsequently changed by the Board of Directors of the surviving Cooperative.

4. After receipt of the audit reports, schedules shall be prepared showing the book value of the equity of each stockholder and equityholder of the Cooperatives, which schedules shall be deemed a part of this Agreement and Plan.

5. In the determination of the amount of equity of the stockholders and equityholders of PANHANDLE, only those equities allocated on the books of account shall be considered. Any unallocated equity shall be considered a reserve contribution by the stockholders and equityholders and shall be transferred as an unallocated, unsegregated surplus contribution to FARMERS. The determination of equity as of the Effective Date shall include the allocation of the savings or loss experienced for the ending fiscal period. In the event of a loss, it shall be charged against the retained savings of PANHANDLE. In the event of a net savings, it shall be transferred as an unallocated, unsegregated surplus contribution to FARMERS.

6. Upon the determination of the equity of the stockholders and equityholders of PANHANDLE as herein provided and following merger of the Cooperatives, FARMERS shall issue its stock, certificates of participation and members' equity credits for the full amount of the equity of the stockholders and equityholders of PANHANDLE. FARMERS shall issue a share of common stock at \$25.00 par value to each stockholder of PANHANDLE who is a bona fide agricultural producer and is eligible to hold a share of common stock in FARMERS; provided, however, no stockholder shall hold more than one (1) such share of common stock and the

remainder of the equities of each stockholder shall be represented by members' equity credits as authorized by the Board of Directors and issued by FARMERS. In the event a stockholder of PANHANDLE is already the holder of one (1) share of common stock in FARMERS, then all the remaining equity of such member shall be represented by members' equity credits as described herein. Any person eligible to be a member of FARMERS who does not have sufficient equity to permit issuance of a share of common stock shall receive an equivalent common stock credit and be issued a share of common stock when he or she has earned or otherwise acquired common stock credits equal to the par value of one share of common stock. Any patron of PANHANDLE not eligible to be a stockholder of FARMERS shall, upon completion of the necessary documentation, be issued a \$25.00 face value certificate of participation, and the remainder of the equities of such patron shall be represented by members' equity credits as described below. Any patron of PANHANDLE whose equity is less than \$25.00 shall receive an equivalent equity credit in FARMERS until such patron shall have earned or otherwise acquired equity credits equal to the face value of a certificate of participation. The accountant for PANHANDLE shall prepare, and the Boards of Directors shall ratify a schedule setting forth the individual equity interests to be used for the issuance and distribution of FARMERS's stock, certificates of participation and members' equity credits. All certificates evidencing the issuance or holding of common stock, members' equity credits, revolving fund credits, per unit retains, nonqualified patronage allocations, or any other forms of allocated equity of PANHANDLE shall, from and after the Effective Date, be deemed cancelled and of no force or effect.

7. Members' equity credits issued by LEGACY COOPERATIVE will be issued and identified with the following Series designations:

a. Series A – Representing the deferred equity interests held by equityholders of FARMERS prior to Effective Date.

b. Series B – Representing the deferred equity interests held by equityholders of PANHANDLE prior to Effective Date.

Following the Effective Date, the Board of Directors of LEGACY COOPERATIVE will endeavor to follow like redemption practices for each outstanding series of members' equity credits to the end that each holder of a series of members' equity credits will receive the same redemption priorities as if the merger had not occurred. Any equities allocated after the Effective Date would be redeemed by LEGACY COOPERATIVE on an approximate 15-year redemption cycle subject to the same qualifications, priorities and uniform redemption practices as established by the Board of Directors of LEGACY COOPERATIVE to its stock, certificates of participation and qualified members' equity credits; provided, further, that after the Effective Date, the priority redemption of all equities shall continue to be subject to the discretion of the Board of Directors based upon the financial condition of LEGACY COOPERATIVE and other appropriate business considerations.

8. Both Cooperatives shall keep in force existing contracts of insurance pertaining to their property and assets until the Effective Date. Both Cooperatives assume all risk of loss, destruction, or damage due to fire or other casualty prior to the Effective Date. Either Cooperative shall have the right to terminate this Agreement if the business of the other is substantially curtailed or interrupted prior to the Effective Date by any such loss, destruction, or damage due

to fire or other casualty. FARMERS shall cause to be maintained in effect for not less than five years from and after the Effective Date policies of directors' and officers' liability insurance and fiduciary liability insurance which are substantially equivalent in coverage to PANHANDLE's current such policies and which will insure PANHANDLE's directors, former directors, officers, and former officers with respect to matters occurring at or prior to the Effective Date.

9. On the Effective Date, all property and assets of PANHANDLE will become the property and assets of FARMERS and FARMERS will be responsible for the debts and liabilities of PANHANDLE. The effect of the business combination shall be as provided by *Neb. Rev. Stat. § 21-2,167*. The separate existence of PANHANDLE's corporate entity will cease when the business combination becomes effective. It is the intent of the Cooperatives that this business combination be deemed a tax-free reorganization pursuant to the Internal Revenue Code.

10. LEGACY COOPERATIVE will commit its best efforts to continue and improve the services to be provided to all the stockholders and patrons of the combined Cooperatives.

11. PANHANDLE shall, prior to the Effective Date, make any necessary provisions for the satisfaction or transfer to FARMERS of all claims of PANHANDLE's employees, direct, indirect or contingent, incurred prior to the Effective Date. LEGACY COOPERATIVE shall provide for uniform treatment of retained employees with respect to employee benefits. All employees of LEGACY COOPERATIVE shall be subject to the direction and control of the President and Chief Executive Officer.

12. In order to align FARMERS Restated Articles of Incorporation with this Agreement and Plan of Merger, each respective Cooperative approves the following amendments to the Restated Articles of Incorporation of FARMERS:

a. Article I shall be amended to change the name from Farmers Cooperative Elevator Company to LEGACY COOPERATIVE;

13. In order to align FARMERS Bylaws with this Agreement and Plan of Merger, each respective Cooperative approves the following amendments to the Bylaws of FARMERS, changing its name to LEGACY COOPERATIVE:

a. The name of the Cooperative shall be changed from Farmers Cooperative Elevator Company to LEGACY COOPERATIVE.

b. Article X shall be amended to provide that the fiscal year of the Cooperative shall commence on the first day of September each year and end on the last day of August of the following year.

14. On the Effective Date and upon approval of the Board of Directors and subject to change after the Effective Date at the discretion of the Board of Directors, Charlie Wright will become the President and Chief Executive Officer of LEGACY COOPERATIVE and Bart Moseman will become the Chief Operating Officer of LEGACY COOPERATIVE, reporting directly to the President and CEO.

15. Upon execution hereof, and until the Effective Date, neither Cooperative shall take any action outside of the ordinary course of business without the approval of the other Cooperative. Action outside of the ordinary course of business shall include but not be limited to

(i) the purchase or sale of assets with a value, individually or in the aggregate, of at least \$100,000, (ii) commencement of litigation, (iii) borrowing of funds or (iv) incurring liabilities other than for normal business operations. The Boards of Directors shall exchange information and hold joint meetings as required while this transaction is pending; provided, however, that the business of each respective Cooperative shall remain separate pending the Effective Date and the Cooperatives shall not share information that would coordinate pricing, the setting of margins or other sales or marketing practices prior to the Effective Date.

16. This Agreement and Plan of Merger shall be submitted for approval to the stockholders of FARMERS and PANHANDLE at special meetings of the stockholders of the respective Cooperatives to be held on January 11, 2024, following the required notice which shall not be less than 10 days nor more than 50 days prior to the meetings. If the stockholders of either Cooperative fail to approve the Agreement and Plan by a majority vote of eligible stockholders constituting a quorum, the Agreement and Plan shall terminate. Voting will take place by mail ballot as provided under Nebraska law.

17. As of the Effective Date, the Board of Directors of LEGACY COOPERATIVE will be comprised of the current members of the Boards of Directors of both PANHANDLE and FARMERS eligible to serve as Directors under the Bylaws of LEGACY COOPERATIVE. The resulting Board of Directors for LEGACY COOPERATIVE will be comprised of fourteen (14) members, consisting of seven (7) members from each of the Cooperative’s board of directors serving the respective Cooperative immediately preceding the Effective Date. For elections occurring after the Effective Date and during the transitional period set forth below, nominations shall be made and elections held for two territorial District pools and one At-Large pool in accordance with the Bylaws of LEGACY COOPERATIVE, with each of the Cooperative’s respective trade territory in effect immediately preceding the Effective Date generally constituting the boundary of the two Districts. As of the Effective Date, each of the Cooperative’s current board of directors shall designate seven (7) qualified individuals, actively engaged in farming operations, to serve on the Board of Directors of LEGACY COOPERATIVE after the Effective Date with District or At-Large designations as follows:

<u>FARMERS Northern District/At-Large:</u>	<u>PANHANDLE Southern District/At-Large:</u>
Director #1 – Northern District	Director #1 – Southern District
Director #2 – Northern District	Director #2 – Southern District
Director #3 – Northern District	Director #3 – Southern District
Director #4 – At-Large District	Director #4 – At Large District
Director #5 – At-Large District	Director #5 – At-Large District
Director #6 – At-Large District	Director #6 – At-Large District
Director #7 – At-Large District	Director #7 – At-Large District

After the Effective Date, the Board of Directors may, through attrition and in conformance with the Bylaws of LEGACY COOPERATIVE and Nebraska law, reduce the number of directors from fourteen (14) to a number agreed upon by the Board. After the Effective Date, the Board of Directors shall set staggered terms to ensure continuity in leadership.

Following the Effective Date, the Board of Directors of LEGACY COOPERATIVE shall

determine, in its discretion and subject to LEGACY COOPERATIVE's Bylaws, the length of term and term limits, if any, for directors and the appropriate manner in which to achieve geographic representation of all stockholders.

18. Notwithstanding any provisions of this Agreement to the contrary, at any time prior to Effective Date, this Agreement may be terminated and the transaction abandoned upon a majority vote of both the Board of Directors and a quorum of the stockholders of either PANHANDLE or FARMERS, unless otherwise provided herein. If the Board of Directors of either Cooperative vote to terminate this Agreement prior to Effective Date, the Cooperative shall be entitled to postpone the Effective Date by up to sixty (60) days in order to hold a Stockholders meeting on the question of whether the Cooperative should terminate this Agreement. After the Board of Directors and a majority of a quorum of Stockholders of either Cooperative vote to terminate this Agreement, written notice shall be personally delivered to the President/CEO or Chairman of the other Cooperative setting forth the action taken, the date of the meetings at which the action was taken, and the vote counts for both the Board of Directors meeting and the Stockholders meeting. Upon the timely delivery of said notice, this Agreement shall become null and void and of no further effect, and there shall be no further liability on the part of either Cooperative and each Cooperative shall pay all of its own expenses related to the transaction herein contemplated.

19. The business combination described herein shall not become effective unless, prior to the Effective Date, the Cooperatives shall have received all approvals of governmental entities and other third parties that are required in order to effectuate the transactions described herein.

20. Following the execution of this Agreement and prior to the Effective Date, the Cooperatives shall prepare, on a joint basis, any and all announcements, press releases and other informational or promotional materials announcing the business combination. The content and timing of all such announcements and releases shall be subject to the prior approval of each Cooperative.

21. Following the Effective Date, the Board of Directors of LEGACY COOPERATIVE shall have the sole discretion regarding engaging any consultants to the Board of Directors.

22. The officers of PANHANDLE and FARMERS are authorized and directed to perform all necessary acts and execute all necessary documents to effect the business combination on the conditions stated herein.

23. This Agreement and Plan is governed by the laws of the State of Nebraska.

24. The terms and conditions hereof shall be binding upon and inure to the benefit of the successors and assigns of the two Cooperatives, provided, however, neither this Plan nor any transaction hereunder shall be construed to confer upon any person or firm other than the two Cooperatives and their respective stockholders, any rights or remedies. Timely performance of all obligations set forth in this Agreement is of the essence hereof, and not a mere recital.

25. This Agreement may be executed in any number of counterparts with the same effect as if the Parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement. Copied, facsimile and digitally-imaged versions of this document and any signatures on any counterpart hereof shall be considered for all purposes

as originals.

Dated: November \_\_\_\_, 2023.

FARMERS COOPERATIVE ELEVATOR CO.

By \_\_\_\_\_

Chairman

ATTEST:

\_\_\_\_\_

Secretary

Dated: November 28, 2023.

PANHANDLE COOPERATIVE ASSOCIATION

By *Douglas L. Olson*

Chairman

ATTEST:


*Matt Kaufman*

Secretary


as originals.

Dated: November 29, 2023.

FARMERS COOPERATIVE ELEVATOR CO.

By  \_\_\_\_\_  
Chairman

ATTEST:

  
Secretary

Dated: November \_\_\_\_, 2023.

PANHANDLE COOPERATIVE ASSOCIATION

By \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary