SUNPOWER CORP
Form SC 14D9
May 03, 2011
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

Solicitation/Recommendation Statement

Under Section 14(d)(4) of the Securities Exchange Act of 1934

SUNPOWER CORPORATION

(Name of Subject Company)

SUNPOWER CORPORATION

(Name of Person Filing Statement)

Class A Common Stock, $0.001 par value

Class B Common Stock, $0.001 par value

(Title of Class of Securities)

867652109

867652307

(CUSIP Number of Class of Securities)

Thomas H. Werner

Chief Executive Officer and President

77 Rio Robles

San Jose, California 95134

(408) 240-5500

(Name, address and telephone number of person authorized to receive

notices and communications on behalf of the persons filing statement)

With copies to:

Bruce R. Ledesma

Executive Vice President,

General Counsel

and Corporate Secretary

77 Rio Robles

San Jose, California 95134

(408) 240-5500

R. Todd Johnson

Stephen E. Gillette

Jones Day

1755 Embarcadero Road

Palo Alto, California 94303

(650) 739-3939

Jonn R. Beeson

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3161 Michelson Drive, Suite 800 Irvine, California 92612

(949) 851-3939

¨ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Table of Contents

TABLE OF CONTENTS

ITEM 1.	SUBJECT COMPANY INFORMATION	1
ITEM 2.	IDENTITY AND BACKGROUND OF FILING PERSON	1
ITEM 3.	PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS	2
ITEM 4.	THE SOLICITATION OR RECOMMENDATION	27
ITEM 5.	PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED	50
ITEM 6.	INTEREST IN SECURITIES OF THE SUBJECT COMPANY	51
ITEM 7.	PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS	51
ITEM 8.	ADDITIONAL INFORMATION	51
ITEM 9.	EXHIBITS	61

Table of Contents

ITEM 1. SUBJECT COMPANY INFORMATION.
(a) Name and Address.

The name of the subject company is SunPower Corporation, a Delaware corporation (**SunPower**). The address of the SunPower s principal executive office is 77 Rio Robles, San Jose, California 95134. The Company s telephone number is (408) 240-5500.

(b) Securities.

This Solicitation/Recommendation Statement on Schedule 14D-9 (this **Statement**) relates to Class A Common Stock, par value $0.001 per share (**Class A Shares**), and Class B Common Stock, par value $0.001 per share (**Class B Shares**), of SunPower (collectively, the **Shares**). As of April 27, 2011, there were 56,907,338 Class A Shares issued and outstanding, and 42,033,287 Class B Shares issued and outstanding.

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON.
(a) Name and Address.

SunPower is the person filing this Statement and is the subject company. SunPower s name, address and telephone number are set forth in Item 1 Subject Company Information above, which information is incorporated by reference herein. SunPower s website is www.sunpowercorp.com. The information on SunPower s website should not be considered a part of this Statement.

(b) Tender Offer.

This Statement relates to the tender offer disclosed in the Schedule TO, dated May 3, 2011 (the **Schedule TO**), filed by Total S.A., a *société anonyme* organized under the laws of the Republic of France (**Total**) and its indirect wholly owned subsidiary, Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France (**Purchaser**), to purchase up to 34,144,400 Class A Shares and up to 25,220,000 Class B Shares (or such greater number of Class A Shares and Class B Shares as Purchaser may elect to purchase as expressly permitted by the Tender Offer Agreement) at a purchase price of $23.25 per Share for each class, net to the seller thereof in cash (the **Offer Price**), without interest and less applicable withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated May 3, 2011 (as amended, supplemented or otherwise modified from time to time, the **Offer to Purchase**) and the related Letter of Transmittal (as amended, supplemented or otherwise modified from time to time, the **Letter of Transmittal**) (which collectively constitute the **Offer**).

According to the Schedule TO, the address of Total s principal executive office is 2 place Jean Millier, La Défense 6, 92400 Courbevoie, France, and its telephone number is +33-1-47-44-45-46.

The Offer is being made pursuant to the Tender Offer Agreement, dated as of April 28, 2011 (the **Tender Offer Agreement**) by and between Purchaser and SunPower. In connection with the Tender Offer Agreement, Total entered into a guaranty to secure the payment and performance obligations of Purchaser under the Tender Offer Agreement upon the terms and subject to the conditions set forth in such guaranty (the **Tender Offer Agreement Guaranty**). Copies of the Tender Offer Agreement and Tender Offer Agreement Guaranty are filed as Exhibits (e)(1) and (e)(6) to this Statement, respectively, and are incorporated herein by reference.

In connection with the Tender Offer Agreement, SunPower and Purchaser entered into an Affiliation Agreement, dated as of April 28, 2011 (the **Affiliation Agreement**), which will become effective if Purchaser purchases Shares pursuant to the terms and conditions of the Offer. Under the terms of the Affiliation Agreement, Purchaser and SunPower agreed to various arrangements concerning, among other things, Purchaser s rights to maintain its percentage ownership of SunPower, limits on Purchaser s ownership of the

Table of Contents

Shares above specified limits and the governance of SunPower. Additionally, Total entered into a guaranty to secure the payment and performance obligations of Purchaser and each subsidiary of Purchaser under the Affiliation Agreement (the **Affiliation Agreement Guaranty**). Copies of the Affiliation Agreement and Affiliation Agreement Guaranty are filed as Exhibits (e)(3) and (e)(7) to this Statement, respectively, and are incorporated herein by reference.

In connection with the Tender Offer Agreement, SunPower and Total entered into a Credit Support Agreement, dated as of April 28, 2011 (the **Credit Support Agreement**), which will become effective if Purchaser purchases Shares pursuant to the terms and conditions of the Offer. Under the terms of the Credit Support Agreement, Total has agreed to guarantee certain letter of credit facilities of SunPower and to offer to assist SunPower in obtaining additional credit. A copy of the Credit Support Agreement is filed as Exhibit (e)(2) to this Statement and is incorporated herein by reference.

In connection with the Tender Offer Agreement, SunPower and Purchaser also entered into a Research and Collaboration Agreement, dated as of April 28, 2011 (the **R&C Agreement**), which will become effective if Purchaser purchases Shares pursuant to the terms and conditions of the Offer. The Research and Collaboration Agreement establishes a framework for research and development collaboration between Purchaser and SunPower following the consummation of the Offer. A copy of the Research and Collaboration Agreement is filed as Exhibit (e)(5) to this Statement and is incorporated herein by reference.

In connection with the Tender Offer Agreement, SunPower and Purchaser also entered into the non-binding Tenesol Term Sheet, dated as of April 28, 2011 (the **Tenesol Term Sheet**). The Tenesol Term Sheet provides for SunPower to acquire Tenesol S.A. from Total.

In connection with the Tender Offer Agreement, SunPower and Purchaser also entered into a Registration Rights Agreement, dated as of April 28, 2011 (the **Registration Rights Agreement**), which will become effective if Purchaser purchases Shares pursuant to the terms and conditions of the Offer. The Registration Rights Agreement provides customary registration rights related to Purchaser s ownership of Shares. A copy of the Registration Rights Agreement is filed as Exhibit (e)(4) to this Statement and is incorporated herein by reference.

The Tender Offer Agreement Guaranty, the Affiliation Agreement, the Affiliation Agreement Guaranty, the Credit Support Agreement, the Research and Collaboration Agreement, the Tenesol Term Sheet and the Registration Rights Agreement are, collectively, the **Related Documents** .

SunPower does not take any responsibility for the accuracy or completeness of any information described herein and also set forth in the Schedule TO concerning Purchaser, Total, their affiliates, officers or directors or any failure by Purchaser or Total to disclose events or circumstances that may have occurred and may affect the accuracy or completeness of such information.

ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

Except as described below or in the Information Statement of the Company attached to this Schedule 14D-9 as Annex A, which is incorporated by reference herein (the **Information Statement**), as of the date hereof, there are no material agreements, arrangements or understandings or any actual or potential conflicts of interest between SunPower or its affiliates and: (1) its executive officers, directors or affiliates, or (2) Purchaser, Total, or their respective executive officers, directors or affiliates. The Information Statement is being furnished to SunPower stockholders pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**), and Rule 14f-1 promulgated under the Exchange Act in connection with Purchaser s rights pursuant to the Affiliation Agreement to designate persons to the SunPower Board (the **SunPower Board**) after acquiring Shares pursuant to the Offer.

Table of Contents

(a) Arrangements between SunPower, Purchaser and Total.

In connection with the transactions contemplated by the Offer, (i) SunPower and Purchaser entered into the Tender Offer Agreement, (ii) SunPower and Total entered into the Tender Offer Agreement Guaranty, (iii) SunPower and Total entered into the Credit Support Agreement, (iv) SunPower and Purchaser entered into the Affiliation Agreement, (v) SunPower and Total entered into the Affiliation Agreement Guaranty, (vi) SunPower and Purchaser entered into the R&C Agreement, (vii) SunPower and Purchaser entered into a non-binding Tenesol Term Sheet, (viii) SunPower and Purchaser entered into the Registration Rights Agreement, (ix) SunPower entered into a Rights Agreement Amendment, and (x) SunPower and Total Gas & Power Ventures SAS entered into the Confidentiality Agreement, as amended and restated, dated November 4, 2010 (the **Confidentiality Agreement**). Stockholders are encouraged to read the Tender Offer Agreement, the Related Documents and the Confidentiality Agreement in their entirety.

The Tender Offer Agreement.

The Tender Offer Agreement may be examined and copies may be obtained in the manner set forth in The Offer to Purchase Section 8 Certain Information Concerning SunPower.

The Offer. The Tender Offer Agreement provides that the Offer will be conducted subject to the conditions described in The Offer to Purchase Section 1 Terms of the Offer and the Offer to Purchase Section 15 Conditions of the Offer.

Recommendation. Under the terms of the Tender Offer Agreement, the SunPower Board is obligated to recommend that SunPower stockholders accept the Offer and tender their Shares pursuant to the Offer (the **Company Board Recommendation**). For a description of the circumstances in which the SunPower Board of directors may change its recommendation, see Change in Recommendation below.

No Solicitation. Subject to certain exceptions, SunPower and its subsidiaries will not, and will not allow each of their respective representatives to, continue any previously existing activities, discussions or negotiations with any persons with respect to any Acquisition Proposal or Acquisition Transaction (as each such term is defined below). Subject to certain exceptions, from the execution and delivery of the Tender Offer Agreement until the earlier to occur of the termination of the Tender Offer Agreement in accordance with its terms or the closing of the Offer, SunPower will not, SunPower will cause its subsidiaries not to, and SunPower will not authorize or permit any of its, any of its subsidiaries or any of their respective representatives to, directly or indirectly:

- solicit, initiate, knowingly encourage, knowingly induce or knowingly facilitate any inquiry with respect to, or the making, submission or announcement of, an Acquisition Proposal or an Acquisition Transaction;

- furnish to any person (other than Purchaser, its affiliates or any of its or their designees) any non-public information relating to SunPower or any of its subsidiaries, or afford access to the business, properties, assets, books or records of SunPower or any of its subsidiaries to any person (other than Purchaser, its affiliates or any of its or their designees), or take any other action, in each case in a manner that is intended or would be reasonably expected to assist or facilitate the making of any Acquisition Proposal or an Acquisition Transaction;

- participate or engage in discussions or negotiations with any person with respect to an Acquisition Proposal or an Acquisition Transaction;

- approve, endorse or recommend, or propose to approve, endorse or recommend, an Acquisition Proposal or an Acquisition Transaction;

- enter into any merger agreement, letter of intent, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement contemplating or otherwise

3

relating to, or that is intended to, or would reasonably be expected to, lead to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement, as defined below);

terminate, amend or waive any rights under (or fail to enforce by seeking an injunction or by seeking to specifically enforce the terms of) any standstill or other similar agreement between SunPower or any of its subsidiaries and any other person, unless such person enters into an Acceptable Confidentiality Agreement (which would supersede any existing standstill or other similar agreement) in accordance with the terms of the Tender Offer Agreement;

take any other action to exempt any person, other than Purchaser, from Section 203 of the Delaware General Corporation Law (**DGCL**) or any other applicable anti-takeover laws (except as contemplated by the Affiliation Agreement (as defined below)); or

agree or propose to do any of the foregoing.

Notwithstanding the foregoing terms or any other provision of the Tender Offer Agreement, at any time prior to the closing of the Offer, the SunPower Board may (x) engage or participate in discussions or negotiations with any person that has, after the date of the Tender Offer Agreement, made (and not withdrawn) a bona fide written Acquisition Proposal that was not received as a result of any material breach or violation of the foregoing terms and that the SunPower Board reasonably determined in good faith (after consultation with its financial advisor and its outside legal counsel) that such Acquisition Proposal either constitutes or is reasonably likely to lead to a Superior Proposal, and/or (y) make available or furnish any non-public information relating to SunPower or any of its subsidiaries to any person that has made (and not withdrawn) an Acquisition Proposal contemplated by the foregoing subclause (x) pursuant to a confidentiality and standstill agreement with such person, the terms of which are no less favorable to SunPower than those contained in the confidentiality agreement between it and Purchaser (*provided, however,* that such standstill provision may permit such person to make a non-public Acquisition Proposal to the SunPower Board providing for a negotiated Acquisition Transaction (an **Acceptable Confidentiality Agreement**)); *provided, however,* that in the case of any action taken pursuant to the preceding clauses (x) or (y): SunPower will have given Purchaser at least 36 hours prior written notice of (A) its intent to take the foregoing action, (B) the identity of the person(s) making such Acquisition Proposal, and (C) all of the material terms and conditions of such Acquisition Proposal (unless such Acquisition Proposal is in written form, in which case SunPower will give Purchaser a copy thereof together with the commitment letters and other material documents constituting or relating to such Acquisition Proposal); and prior to or contemporaneously with furnishing any non-public information to such person, SunPower will have furnished or made available such non-public information to Purchaser (to the extent such information has not been previously furnished or made available to Purchaser). Any action taken by a representative SunPower or any of its subsidiaries that would be a breach of the foregoing restrictions if it had been taken by SunPower will be deemed a breach of such restrictions by SunPower for purposes of the Tender Offer Agreement.

In addition, SunPower will promptly, and in all cases within 24 hours, advise Purchaser in writing of the receipt by it, any of its subsidiaries or any of their respective representatives of (i) any Acquisition Proposal, (ii) any request for information that would reasonably be expected to lead to an Acquisition Proposal or (iii) any inquiry with respect to, or which would reasonably be expected to lead to, any Acquisition Proposal. In connection with such notice, SunPower will provide Purchaser with the material terms and conditions of such Acquisition Proposal, request or inquiry (and all material agreements, commitment letters and other material documents constituting or relating to such Acquisition Proposal), and the identity of the person or group making any such Acquisition Proposal, request or inquiry. At all times from the receipt of the foregoing, SunPower will keep Purchaser reasonably informed of the status and material terms and conditions (including all amendments or proposed amendments) of any such Acquisition Proposal, request or inquiry.

The Tender Offer Agreement defines **Acquisition Proposal**, as any inquiry, indication of interest, offer or proposal relating to an Acquisition Transaction from any person other than Purchaser or any of its affiliates.

The Tender Offer Agreement defines **Acquisition Transaction** as a transaction or series of related transactions (other than a transaction with Purchaser or any of its Affiliates) involving:

any direct or indirect purchase or other acquisition by any person or group (as defined in or under Section 13(d) of the Exchange Act) from SunPower of 15% or more of the total outstanding equity interests in or voting securities of SunPower, or any tender offer or exchange offer that, if consummated, would result in any person or group (as defined in or under Section 13(d) of the Exchange Act) beneficially owning 15% or more of the total outstanding equity interests in or voting securities of SunPower;

any direct or indirect purchase or other acquisition of 50% or more of any class of equity or other voting securities of one or more direct or indirect subsidiaries of SunPower, the business(es) of which, individually or in the aggregate, generate 15% or more of the consolidated revenues of SunPower and its subsidiaries, taken as a whole (for the 12-month period ending on the last day of SunPower s most recently completed fiscal year), or the assets of which, individually or in the aggregate, constitute 15% or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of SunPower and its subsidiaries, taken as a whole, in each case excluding any purchase or other acquisition of any class of equity or other voting securities of any directly or indirectly owned special purpose vehicle established to facilitate solar system sales in the ordinary course of SunPower s utility and power plant or large commercial business lines (each a **Solar SPE**) in the ordinary course of business;

any merger, consolidation, business combination, liquidation, dissolution, recapitalization, reorganization or other similar transaction involving (A) SunPower pursuant to which its stockholders (as a group) immediately preceding such transaction hold less than 85% of the equity interests in or voting securities of the surviving or resulting entity of such transaction, or (B) one or more of the subsidiaries of SunPower, the business(es) of which, individually or in the aggregate, generate 15% or more of the consolidated revenues (for the 12-month period ending on the last day of SunPower s most recently completed fiscal year) of SunPower and its subsidiaries, taken as a whole, or the assets of which, individually or in the aggregate, constitute 15% or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of SunPower and its subsidiaries, taken as a whole, pursuant to which the stockholders of each such subsidiary (as a group) immediately preceding such transaction hold less than 50% of the equity interests in or voting securities of the surviving or resulting entity of each such transaction; but in each case excluding any merger, consolidation, business combination, liquidation, dissolution, recapitalization, reorganization or other similar transaction involving any Solar SPE in the ordinary course of business;

any direct or indirect sale, transfer or disposition (other than in the ordinary course of business) of (A) assets of SunPower which, individually or in the aggregate, constitute 15% or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of SunPower and its subsidiaries, taken as a whole, or (B)(x) all or substantially all of the assets of one or more Subsidiaries, the business(es) of which, individually or in the aggregate, generate 15% or more of the consolidated revenues of SunPower and its subsidiaries, taken as a whole (for the 12-month period ending on the last day of SunPower s most recently completed fiscal year), or (y) assets of one or more of the subsidiaries of SunPower, which assets, individually or in the aggregate, constitute 15% or more (measured by the fair market value thereof as of the date of such transaction) of the consolidated assets of SunPower and its subsidiaries, taken as a whole; but excluding in each case any direct or indirect sale, transfer or disposition of (x) assets of any Solar SPE in the ordinary course of business or (y) securities held by SunPower or any of its subsidiaries of any person, which securities are listed on any national or internationally recognized securities exchange; or

any combination of the foregoing transactions that results in one of the effects referenced in the bullet above.

Table of Contents

The Tender Offer Agreement defines **Superior Proposal** as any unsolicited, bona fide written offer or proposal (that has not been withdrawn) for an Acquisition Transaction on terms that the SunPower Board has determined in good faith (after consultation with its financial advisor and outside legal counsel and taking into consideration, in addition to any other factors determined by it in good faith to be relevant, (A) all financial considerations relevant thereto, including conditions in the financial and credit markets, (B) the identity of the person(s) making such offer or proposal and the parties providing any of the financing for the transaction contemplated thereby, and the prior history of such person(s) and sources of financing in connection with the consummation or failure to consummate similar transactions, (C) the anticipated timing, conditions and prospects for completion of the transaction contemplated by such offer or proposal, and (D) the other terms and conditions of such offer or proposal and the implications thereof on SunPower, including relevant legal, regulatory and other aspects of such offer or proposal deemed relevant by the board of directors of SunPower would be more favorable to SunPower s stockholders than Purchaser s offer for their Shares (or any proposal delivered by Purchaser in accordance with the terms of the Tender Offer Agreement); *provided, however,* that for purposes of the reference to an Acquisition Proposal in this definition of a Superior Proposal, all references in the definition of Acquisition Transaction to 15% or more will be deemed to be references to at least a majority, and the reference in the definition of Acquisition Transaction to 85% will be deemed to be a reference to 50%.

Change in Recommendation. SunPower has agreed that neither the SunPower Board nor any committee thereof will (i) fail to make the Company Board Recommendation to the holders of the Shares, (ii) withhold, withdraw, amend or modify in a manner adverse to Purchaser, or publicly propose to withhold, withdraw, amend or modify in a manner adverse to Purchaser, the Company Board Recommendation, (iii) adopt, approve, recommend, endorse or otherwise declare advisable the adoption of any Acquisition Proposal, (iv) in the case of a publicly announced or publicly disclosed Acquisition Proposal that is not a tender or exchange offer, fail to reaffirm the Company Board Recommendation within ten business days after a written request by Purchaser that SunPower do so, it being understood that any publicly announced or publicly disclosed material amendment or modification to any such Acquisition Proposal will be deemed to be a new Acquisition Proposal for purposes of this clause (iv) (and, if applicable, Purchaser will specify in its written request whether or not such request is in respect of a material amendment or modification to any such Acquisition Proposal); *provided*, that, SunPower shall not be obligated to reaffirm the Company Board Recommendation on more than one occasion in response to an Acquisition Proposal and any such failure to reaffirm on more than one occasion in response to any such Acquisition Proposal will not constitute a Company Board Recommendation Change, (v) in the case of an Acquisition Proposal that is a tender or exchange offer, fail to have filed within ten business days after the public announcement of the commencement of such Acquisition Proposal a Schedule 14D-9 pursuant to Rule 14e-2 and Rule 14d-9 promulgated under the Exchange Act recommending that the SunPower stockholders reject such Acquisition Proposal and not tender any Shares into such tender or exchange offer, or (vi) publicly resolve, agree or propose to take any such actions (each such foregoing action or failure to act in clauses (i) through (vi) being referred to herein as a **Company Board Recommendation Change**); *provided, however,* that nothing in the Tender Offer Agreement will prohibit the SunPower Board from disclosing to the stockholders of SunPower a position contemplated by Rule 14e-2(a) and Rule 14d-9 promulgated under the Exchange Act; *provided, however,* that any disclosure other than a stop, look and listen or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act, an express rejection of any applicable Acquisition Proposal or an express reaffirmation of its recommendation to its stockholders in favor of the Offer will be deemed to be a Company Board Recommendation Change.

However, if, at any time prior to the closing of the Offer, the SunPower Board receives a Superior Proposal or a material event, fact, circumstance or development, unknown to the SunPower Board as of the date of the Tender Offer Agreement, which becomes known prior to the closing of the Offer (other than, and not relating in any way to, an Acquisition Proposal) (an **Intervening Event**) occurs, the SunPower Board may effect a Company Board Recommendation Change *provided,* that: (i) the SunPower Board determines in good faith (after consultation with its financial advisor and outside legal counsel) that failure to effect a Company Board Recommendation Change would be inconsistent with its fiduciary duties to stockholders under Delaware law;

(ii) SunPower has notified Purchaser in writing that it intends to effect a Company Board Recommendation Change, which will include (A) with respect to a Superior Proposal, a copy of the final form of all agreements, commitment letters and other material documents constituting or relating to such Superior Proposal or (B) in response to an Intervening Event, a description of the material facts and circumstances relating to such Intervening Event (in each case, a **Recommendation Change Notice**); *provided,* that, notwithstanding anything to the contrary set forth in the Tender Offer Agreement, such Recommendation Change Notice will in no event constitute a Company Board Recommendation Change; (iii) upon Purchaser s request, SunPower will have made its representatives reasonably available to discuss and negotiate in good faith with Purchaser s representatives any proposed modifications to the terms and conditions of the Tender Offer Agreement during the Matching Period (as defined below under Termination of the Tender Offer Agreement); and (iv) if Purchaser has delivered to SunPower a written proposal to alter the terms or conditions of the Tender Offer Agreement during such Matching Period that is capable of being accepted by the SunPower and, upon such acceptance would be legally binding on Purchaser, the SunPower Board has determined in good faith (after consultation with its financial advisor and outside legal counsel), after considering the terms of such proposal by Purchaser, that failure to effect a Company Board Recommendation Change would continue to be inconsistent with its fiduciary duties to SunPower s stockholders under Delaware law. Any material amendment or modification to any Superior Proposal will be deemed to be a new Superior Proposal for purposes of the foregoing paragraph (and require a new Matching Period, except that all references to five business days in the definition of Matching Period will be references to three business days). SunPower will keep confidential any proposals made by Purchaser to revise the terms of the Tender Offer Agreement, other than in the event of any amendment to the Tender Offer Agreement and to the extent required to be disclosed in any reports of SunPower filed with the Securities and Exchange Commission.

Termination of the Tender Offer Agreement. The Tender Offer Agreement provides that it may be terminated and the Offer may be abandoned at any time prior to the closing of the Offer:

by mutual written agreement of Purchaser and SunPower;

by either Purchaser or SunPower, if the closing of the Offer has not occurred prior to (i) 11:59 p.m. (California time) on December 31, 2011 (the **Termination Date**; *provided, however,* that the right to terminate the Tender Offer Agreement on this basis will not be available to any party whose action or failure to fulfill any obligation under the Tender Offer Agreement has been a principal cause of or resulted in any of the conditions to the Offer described in The Offer to Purchase Section 15 Conditions of the Offer to fail to be satisfied and such action or failure to act constitutes a material breach of the Tender Offer Agreement;

by Purchaser or SunPower, in the event that the Offer has expired in accordance with its terms and has not been extended and is not required to be extended pursuant to the provisions of the Tender Offer Agreement, without the closing of the Offer having occurred;

by Purchaser or SunPower, in the event that any governmental authority of competent jurisdiction has (i) enacted, issued or promulgated any law that is in effect and has the effect of making the consummation the Offer illegal, or (ii) issued or granted any order that is in effect and has the effect of making the Offer illegal, and such order has become final and non-appealable;

by SunPower, in the event that (i) SunPower is not then in material breach of its covenants, agreements and other obligations under the Tender Offer Agreement, and (ii) Purchaser has breached or otherwise violated any of its material covenants, agreements or other obligations under the Tender Offer Agreement in any material respect, or any of the representations and warranties of Purchaser set forth in the Tender Offer Agreement has become inaccurate, which breach, violation or inaccuracy, individually or in the aggregate with other such breaches, violations or inaccuracies, would reasonably be expected to prevent the consummation of, or give Purchaser the right not to consummate, the Offer, and have not been cured prior to the later of (A) any then scheduled expiration of the Offer or (B) 30 days after the giving of written notice by SunPower to Purchaser of such breach, violation or inaccuracy;

by Purchaser, in the event that (i) Purchaser is not then in material breach of its covenants, agreements and other obligations under the Tender Offer Agreement, and (ii) SunPower has breached or otherwise violated any of its material covenants, agreements or other obligations under the Tender Offer Agreement, or any of the representations and warranties of SunPower set forth in the Tender Offer Agreement has become inaccurate, in either case such that the events described in the fifth, sixth or eighth bullets under The Offer to Purchase Section 15 Conditions of the Offer below has occurred, and have not been cured, prior to the later of (A) any then scheduled expiration of the Offer or (B) 30 days after the giving of written notice by Purchaser to SunPower of such breach, violation or inaccuracy;

by SunPower, in the event that (i) SunPower has received a Superior Proposal (defined below); (ii) the SunPower Board has determined in good faith (after consultation with outside legal counsel) that the failure to enter into a definitive agreement relating to such Superior Proposal would be inconsistent with its fiduciary duties to SunPower stockholders under Delaware law; (iii) SunPower has notified Purchaser in writing of the Superior Proposal, which notice will include a copy of the material terms and conditions of such Superior Proposal (and the final form of all agreements, commitment letters and other material documents constituting or relating to such Superior Proposal) (a **Superior Proposal Notice**); *provided,* that, notwithstanding anything to the contrary in the Tender Offer Agreement, such notice will not constitute a Company Board Recommendation Change; (iv) if requested by Purchaser, SunPower has made its representatives reasonably available to discuss and negotiate in good faith with Purchaser s representatives any proposed modifications to the terms and conditions of the Tender Offer Agreement during the period beginning at 9:00 a.m. Pacific time on the day immediately following delivery by SunPower to Purchaser of such Superior Proposal Notice and ending at 9:00 a.m. Pacific time on the fifth business day thereafter (the **Matching Period**); (v) if Purchaser has delivered to SunPower during the Matching Period a written proposal that if accepted by SunPower would be binding on Purchaser to alter the terms and conditions of the Tender Offer Agreement, and the SunPower Board has determined in good faith (after consultation with its financial advisors and outside legal counsel), after considering the terms of such proposal by Purchaser, that the Superior Proposal giving rise to such Superior Proposal Notice continues to be a Superior Proposal; and (vi) concurrently with the termination of the Tender Offer Agreement, SunPower pays Purchaser a termination fee (the **Termination Fee**) equal to the sum of (i) $42,500,000 plus (ii) certain out-of-pocket fees and expenses of Purchaser or its affiliates associated with the Offer (the **Purchaser Expenses**), up to a maximum of $2,500,000 (unless Purchaser agrees in writing to reject payment of such Termination Fee); *provided,* that any material amendment or modification to any Superior Proposal will be deemed to be a new Superior Proposal for purposes of the foregoing (and require a new Matching Period, measured as set forth above, except that all references to five business days will be references to three business days); or

by Purchaser, in the event that (i) the SunPower Board or any committee thereof has effected a Company Board Recommendation Change (whether or not in compliance with the terms of the Tender Offer Agreement) or (ii) SunPower has violated or breached any of its obligations and agreements described above under No Solicitation in any material respect.

Fees and Expenses; Termination Fee. Except as detailed below, the Tender Offer Agreement provides that all fees and expenses incurred in connection with the Offer and transactions contemplated by the Tender Offer Agreement will be paid by the parties incurring such fees and expenses.

SunPower will pay Purchaser the Termination Fee (unless Purchaser agrees in writing to reject payment of such Termination Fee) in the event that (A) the Tender Offer Agreement is terminated pursuant to any of the provisions described in the second, third or sixth bullet points under Termination of the Tender Offer Agreement above (*provided,* that the breach giving rise to such termination pursuant to the provision described in the sixth bullet point under Termination of the Tender Offer Agreement above must have occurred following the public announcement or public disclosure of the Acquisition Proposal referenced in clause (B) below) and at the time of such termination the Minimum Condition had not been satisfied, (B) following the execution and

Table of Contents

delivery of the Tender Offer Agreement and prior to termination, an Acquisition Proposal has been publicly announced or become publicly disclosed, and (C) within 365 days following termination, SunPower (x) consummates a Competing Acquisition Transaction (as defined below) or (y) enters into a definitive agreement providing for a Competing Acquisition Transaction that is subsequently consummated (whether or not such Competing Acquisition Transaction is with respect to the Acquisition Proposal referenced in the preceding clause (B)). For purposes of the foregoing, a **Competing Acquisition Transaction** means an Acquisition Transaction except that all references to 15% or more will be deemed to be references to at least a majority, and the reference therein to 85% will be deemed to be a reference to 50%.

SunPower will also pay Purchaser the Termination Fee (unless Purchaser agrees in writing to reject payment of such Termination Fee) if it terminates the Tender Offer Agreement pursuant to any of the provisions described in the seventh or eighth bullet points under Termination of the Tender Offer Agreement above.

In addition, SunPower will pay Purchaser the Purchaser Expenses up to a maximum of $2,500,000 if the Tender Offer Agreement is terminated pursuant to the provisions described in the third bullet point under Termination of the Tender Offer Agreement above and at the expiration of the Offer the Minimum Condition is not satisfied (*provided,* that, such Purchaser Expenses will be credited against any Termination Fee that may become payable pursuant to the foregoing).

Reasonable Best Efforts to Complete. Each of Purchaser and SunPower will use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party or parties in doing, all things reasonably necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by the Tender Offer Agreement, including by:

- using its reasonable best efforts to cause the conditions to the Offer described in The Offer to Purchase Section 15 Conditions Of The Offer to be satisfied or fulfilled;
- using its reasonable best efforts to make any necessary filings with respect to the Offer under the Exchange Act;
- using its reasonable best efforts to obtain all necessary or appropriate consents, waivers and approvals, and to provide all necessary notices, under SunPower s material contracts so as to maintain and preserve the benefits under such contracts following the consummation of the transactions;
- making all necessary registrations, declarations and filings with governmental authorities in connection with the Tender Offer Agreement and the consummation of the transactions contemplated thereby, and obtaining all necessary actions or non-actions, waivers, clearances, consents, approvals, orders and authorizations from governmental authorities (including any necessary antitrust approvals) in connection with the Tender Offer Agreement and the consummation of the transactions contemplated thereby; and
- assisting the other parties in (A) making all necessary registrations, declarations and filings with governmental authorities in connection with the Tender Offer Agreement and the consummation of the transactions contemplated hereby, including by providing such information regarding itself, its affiliates and their respective operations as may be requested in connection with a filing by it or any of its subsidiaries and (B) obtaining all necessary actions or non-actions, waivers, clearances, consents, approvals, orders and authorizations from Governmental Authorities (including any necessary antitrust approvals) in connection with this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding the foregoing, nothing set forth above or elsewhere in the Tender Offer Agreement will be deemed to require Purchaser or SunPower or any subsidiary thereof to agree to any divesture by itself or any of its affiliates of shares of capital stock or of any business, assets or property, or the imposition of any limitation on the ability of any of them to conduct their business or to own or exercise control of such assets, properties and stock.

Table of Contents

Takeover Laws. In the event that any state anti-takeover or other similar statute or regulation is or becomes applicable to the Tender Offer Agreement or any of the transactions contemplated by the Tender Offer Agreement, SunPower, at the direction of the SunPower Board, and Purchaser, at the direction of Purchaser s board of directors, each will use its reasonable best efforts to provide that the transactions contemplated by the Tender Offer Agreement may be consummated as promptly as practicable on the terms and subject to the provisions set forth in the Tender Offer Agreement, and otherwise to minimize the effect of such statute or regulation on the Tender Offer Agreement and the transactions contemplated by the Tender Offer Agreement.

Amendment. Subject to applicable laws and subject to the other provisions of the Tender Offer Agreement, the Tender Offer Agreement may be amended by the parties at any time by execution of an instrument in writing signed on behalf of each of Purchaser and SunPower; *provided, however,* that after the closing of the Offer, no amendment may be made that decreases the price per share to be paid by the Purchaser pursuant to the Offer.

Reclassification. Subject to SunPower s receipt of a tax opinion of Jones Day, Skadden, Arps, Slate, Meagher & Flom LLP or other outside counsel to SunPower reasonably satisfactory to Purchaser regarding the effect of implementing the Reclassification Proposal (as defined below), which tax opinion is reasonably satisfactory to Purchaser and, to the extent so required pursuant to any written agreement entered into between SunPower and Cypress Semiconductor Corporation (**Cypress**), reasonably satisfactory to Cypress, SunPower will establish a record date for, call, give notice of, convene and hold a meeting of SunPower stockholders as promptly as practicable following the acceptance for payment of Shares in the Offer, but in no event later than the six month anniversary of the acceptance for payment of Shares in the Offer, for the purpose of voting upon a proposal to amend SunPower s Certificate of Incorporation to reclassify all outstanding shares of SunPower s Class A Shares and Class B Shares into a single class of common stock named Common Stock which has the same voting powers, preferences, rights and qualifications, limitations and restrictions as the Class A Shares as of the date of the Tender Offer Agreement (the **Reclassification Proposal**). Purchaser will vote all Shares acquired in the Offer (or otherwise owned by it or any of its respective wholly owned subsidiaries as of the applicable record date) in favor of (x) the Reclassification Proposal in accordance with the DGCL, and (y) an increase in the number of shares available for issuance under SunPower s equity incentive plans by 2,500,000, in each case at such SunPower stockholder meeting or otherwise.

Certain Forbearances. Except as disclosed to Purchaser in connection with the disclosures made against the representations and warranties of the Tender Offer Agreement or consented to in writing by Purchaser, from the entering into until the termination of the Tender Offer Agreement and the acceptance for payment, and payment for, all Shares that are validly tendered and not properly withdrawn pursuant to the Offer, SunPower will not, and will not permit any of its subsidiaries to, take any of the following actions:

- any amendment to SunPower s bylaws or certificate of incorporation, except as expressly contemplated by the Affiliation Agreement (as defined below);

- any amendment or redemption of the Rights Agreement, except as expressly contemplated by the Affiliation Agreement;

- certain actions described in Section 4.3 of the Affiliation Agreement, except (i) in the case of paragraph (d) of that section, for any sale, lease, license, transfer or other disposition of Solar SPEs in the ordinary course of business, and (ii) in the case of paragraph (f) of that section, in connection with refinancing or replacing any of SunPower s 1.25% convertible debentures, the issuance of a new convertible debenture issued on or after July 1, 2011 on no less favorable terms than SunPower s 1.25% convertible debentures being refinanced or replaced with respect to ranking (senior/senior sub/subordinated), financial covenants, operational covenants, and events of default, and whether issued prior to or after the replacement of such 1.25% convertible debentures; *provided, however,* that SunPower will have provided Purchaser with written notice of such issuance at least five business days prior to such issuance (which notice shall contain a reasonably detailed summary of the material terms and conditions of such new convertible debentures) and shall have consulted with Purchaser during such five business day period;

Table of Contents

any issuance, sale, pledge, disposition, granting or encumbrance of any shares of any class of capital stock of SunPower, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock, or any other ownership interest (including any phantom interest and including any SunPower stock awards or voting securities), of SunPower, except for (i) the grant of stock awards or voting securities under SunPower s equity incentive plans in the ordinary course of business consistent with past practice, (ii) the issuance of shares of SunPower s common stock upon the exercise of SunPower options or the vesting or settlement of SunPower s restricted stock or restricted stock unit awards outstanding on the date of the Tender Offer Agreement or granted in accordance with the foregoing, and (iii) upon the conversion or exercise of convertible debentures outstanding on the date of the Tender Offer Agreement;

any declaration, setting aside, making or payment of any dividend or other distribution (payable in cash, stock, property or otherwise) with respect to, or any reclassification, combination, split or subdivision of, any shares of any class of capital stock of SunPower;

any redemption, purchase or other acquisition, directly or indirectly, of any shares of any class of capital stock of SunPower, except for (i) tax withholdings and exercise price settlements upon exercise of options or with respect to restricted stock restricted stock unit awards, in each case in the ordinary course of business and in compliance with applicable law and (ii) purchases of shares of SunPower common stock or convertible debentures from the holders thereof in one or more privately negotiated transactions which are not effected in the open market and would not constitute a tender offer in accordance with applicable laws; or

any announcement of an intention to enter into, or entry into, any formal or informal contract or any commitment to do any of the foregoing.

Representations and Warranties. In the Tender Offer Agreement, SunPower has made customary representations and warranties to Purchaser (subject to certain conditions), including, but not limited to, representations relating to: the organization and good standing of SunPower; the authorization, execution, delivery and performance of the Tender Offer Agreement and the agreements and transactions contemplated by the Tender Offer Agreement; no violations of law, conflicts with or consents required in connection with the Tender Offer Agreement and the agreements and transactions contemplated thereby; SunPower s capitalization; the due organization, valid existence and good standing of SunPower s subsidiaries; ownership of SunPower s subsidiaries; the filing of all requisite reports, forms and documents with the SEC; SunPower s public information and financial statements; the absence of undisclosed liabilities; absence of certain changes or events; compliance with laws and orders; permits and compliance; litigation and legal proceedings; the validity of SunPower s material contracts; tax matters; employee plans; labor matters; property and assets; environmental matters; intellectual property; and Schedule TO and Schedule 14D-9.

In the Tender Offer Agreement, Purchaser has made customary representations and warranties to SunPower (subject to certain exceptions), including, but not limited to, representations relating to: organization, existence and good standing of Purchaser; authorization, execution, delivery and performance of the Tender Offer Agreement and the transactions contemplated by the Tender Offer Agreement; governmental authority and consents required for the Tender Offer Agreement; litigation and legal proceedings; ownership of capital stock; brokers and finders; sufficiency of financing; and Schedule TO and Schedule 14D-9.

The representations and warranties contained in the Tender Offer Agreement are subject to certain limitations agreed upon by Purchaser and SunPower in the Tender Offer Agreement, in some cases subject to a standard of materiality provided for in the Tender Offer Agreement, and are qualified by information in confidential disclosure schedules that were provided by SunPower in connection with the signing of the Tender Offer Agreement. These confidential disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Tender Offer Agreement. Moreover, the representations and warranties in the Tender Offer Agreement were negotiated with the principal purpose of

Table of Contents

allocating risk among Purchaser and SunPower, and establishing the circumstances under which Purchaser would have the right not to consummate the Offer under which a party may have the right to terminate the Tender Offer Agreement, rather than establishing matters of fact.

Third Party Beneficiaries. Except, from and after the closing of the Offer, for the rights of holders of shares validly tendered and not properly withdrawn pursuant to the Offer and accepted for exchange by Purchaser pursuant to the Offer to receive the Offer Price pursuant to the Offer, the Tender Offer Agreement is not intended to, and will not, confer upon any other person any rights or remedies.

Specific Performance. Subject to certain terms and conditions, Purchaser and SunPower have agreed that, in addition to any other remedy to which they are entitled at law or in equity, in the event of any breach or threatened breach by SunPower, on the one hand, or Purchaser, on the other hand, of any of their respective covenants or obligations set forth in the Tender Offer Agreement, SunPower, on the one hand, and Purchaser, on the other hand, shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of the Tender Offer Agreement or to enforce compliance with, the covenants and obligations of the other under the Tender Offer Agreement.

The Tender Offer Agreement Guaranty.

Total has entered into the Tender Offer Agreement Guaranty in connection with the Offer pursuant to which Total unconditionally guarantees the full and prompt payment of Purchaser s payment obligations under the Tender Offer Agreement and the full and prompt performance of all of Purchaser s representations, warranties, covenants, duties and agreements contained in the Tender Offer Agreement; *provided,* that the maximum aggregate liability to Total under the Tender Offer Guaranty will not be more than the aggregate value at the Offer Price of the maximum number of Shares which may be validly tendered and accepted for payment pursuant to and in accordance with the terms of the Tender Offer Agreement.

The Credit Support Agreement.

On April 28, 2011, SunPower entered into a Credit Support Agreement with Total. Pursuant to the Credit Support Agreement, subject to the terms and conditions described below, Total, as Guarantor has agreed to enter into one or more guarantee agreements (each a **Guaranty**) with banks providing letter of credit facilities to SunPower in support of SunPower s utility and power plant (**UPP**) and large commercial portion of the residential and commercial segment (**LComm**) businesses (whether for the account of SunPower or any wholly owned subsidiary of SunPower) and certain other permitted purposes. Pursuant to such Guarantees, Guarantor would guarantee the payment to the applicable bank of SunPower s obligation to reimburse a draw on a letter of credit and pay interest thereon in accordance with the letter of credit facility between such bank and SunPower. The Credit Support Agreement will become effective on the date on which the acceptance for payment by Purchaser of Shares pursuant to the Offer occurs (the **CSA Effective Date**).

Under the Credit Support Agreement, at any time from the CSA Effective Date until the fifth anniversary thereof, SunPower may request that Guarantor provide a Guaranty with respect to a letter of credit facility, which may be a facility that was in effect as of the CSA Effective Date and pursuant to which SunPower proposes to arrange for letters of credit to be issued after the CSA Effective Date. Guarantor is required to issue and enter into the Guaranty requested by SunPower subject to certain terms and conditions, any of which may be waived by Total. These terms and conditions include, but are not limited to, that:

after giving effect to SunPower s request, the sum, calculated in dollars or an equivalent dollar amount, as applicable, of (a) the aggregate amount available to be drawn under guaranteed letter of credit facilities, (b) the amount of letters of credit available to be issued under any guaranteed facility and (c) the aggregate amount of draws (including accrued but unpaid interest) on any letters of credit issued under any guaranteed facility that have not yet been reimbursed by SunPower (such sum, the

Aggregate L/C Amount) cannot exceed $445 million for the period from the CSA Effective Date through December 31, 2011, $725 million for the period from January 1, 2012 through December 31, 2012, $771 million for the period from January 1, 2013 through December 31, 2013, $878 million for the period from January 1, 2014 through December 31, 2014, $936 million for the period from January 1, 2015 through December 31, 2015 and $1 billion for the period from January 1, 2016 through the termination of the Credit Support Agreement (the **Maximum L/C Amount**), subject to certain adjustments, including that if the SunPower Board approves a projected income statement, cash flow statement and balance sheet of SunPower (an **Annual Operating Plan**) for any period specified above that provides for credit support exceeding the amounts specified for such period, Guarantor may, in its sole discretion, increase the amounts specified for such period up to the amount set forth in such Annual Operating Plan, or, if the SunPower Board approves an Annual Operating Plan by supermajority board approval (as described in the Affiliation Agreement) for any period specified above that provides for credit support of less than 90% of the amounts specified for such period, then the maximum amount of credit support available for such period will automatically be reduced to the amount set forth in such Annual Operating Plan, but, if following such reduction SunPower s management approves UPP and LComm projects such that SunPower s requires credit support of up to, but not exceeding, 110% of such reduced amount, then such reduced amount will be increased to such higher required credit support amount, which credit support amount can be further increased up to, but not exceeding, the maximum amounts specified for such period above if the SunPower Board approves UPP and LComm projects that require additional credit support and, finally, the maximum Aggregate L/C Amount for the period from the CSA Effective Date through December 31, 2011 may be increased to $645 million to support SunPower s construction of the California Valley Solar Ranch in San Luis Obispo County, California if SunPower is the prime contractor for such project and the EPC arrangements for such project, including contracts with prime contractors and subcontractors and related credit support, performance guaranty and completion guaranty arrangements, are reasonably satisfactory to Guarantor;

the letter of credit facility for which SunPower is requesting a Guaranty must provide that any letter of credit drawn under such facility be repaid within five business days;

the letter of credit facility cannot permit the issuance of letters of credit after the fifth anniversary of the CSA Effective Date or with an expiration date after the seventh anniversary of the CSA Effective Date;

the letter of credit facility may not permit the issuance of letters of credit for any obligations of SunPower or a wholly-owned subsidiary other than (a) performance guarantees (with a period of up to two years after completion of the applicable project) and completion guarantees (until completion of the applicable project) with respect to engineering, procurement and construction services provided in connection with its UPP and LComm businesses, (b) performance guarantees for engineered hardware packages not including engineering, procurement and construction services for UPP projects for a period of up to two years after completion of the applicable project, (c) certain purchase, repayment and tax indemnity obligations of SunPower or a wholly-owned subsidiary existing as of the CSA Effective Date and supported by no more than three letters of credit (which letters of credit will be replaced by letters of credit issued pursuant to a guaranteed facility), and (d) certain other permitted purposes related to project development for a period of up to two years; provided that SunPower will be permitted to have outstanding letters of credit for the purposes set forth in clauses (a) and (b) for a period of between two and three years and for an aggregate initial face amount of up to 15% of the then-applicable Maximum L/C Amount;

no Trigger Event (as defined below) has occurred or is ongoing, or would result from SunPower entering into such letter of credit facility (together with any associated ancillary documents or agreements); and

the Guaranty must be provided in substantially the form agreed by Guarantor and the applicable bank, and, in any case, must include (a) the right of Guarantor to direct the bank to suspend the issuance of

Table of Contents

additional letters of credit upon the occurrence and during the continuation of a Trigger Event or following a reduction in the Maximum L/C Amount and (b) an obligation of the bank to notify Guarantor in writing of each issuance or drawdown of a letter of credit under the facility.

Payments to be paid by SunPower to Guarantor. In consideration for the commitments of Guarantor, SunPower is required to pay Guarantor a guarantee fee, repayment of any payments made under any Guaranty plus interest, certain expenses of Guarantor and interest on overdue amounts owed to Guarantor. The guarantee fee for each letter of credit that is the subject of a Guaranty and was outstanding for all or part of the preceding calendar quarter will be equal to: (x) the average daily amount of the undrawn amount of such letter of credit plus the amount drawn on such letter of credit that has not yet been reimbursed by SunPower or Guarantor, (y) multiplied by 1.00% for letters of credit issued or extended prior to the second anniversary of the CSA Effective Date, 1.40% for letters of credit issued or extended from the second anniversary of the CSA Effective Date until the third anniversary of the CSA Effective Date, 1.85% for letters of credit issued or extended from the third anniversary of the CSA Effective Date until the fourth anniversary of the CSA Effective Date, and 2.35% for letters of credit issued or extended from the fourth anniversary of the CSA Effective Date until the fifth anniversary of the CSA Effective Date, (z) multiplied by the number of days that such letter of credit was outstanding, divided by 365. SunPower is required to reimburse payments made by Guarantor under any Guaranty within 30 days plus interest at a rate equal to LIBOR (as in effect as of the date of Guarantor s payment) plus 3.00%. The expenses of Guarantor to be reimbursed by SunPower will include reasonable out-of-pocket expenses incurred after the CSA Effective Date in the performance of its services under the Credit Support Agreement and reasonable out-of-pocket attorneys fees and expenses incurred in connection with payments to a bank under a Guaranty or enforcement of any of SunPower s obligations. Overdue payment obligations of SunPower will accrue interest at a rate per annum equal to LIBOR as in effect at such time such payment was due plus 5.00%. Finally, SunPower is solely responsible for any bank fees incurred in connection with securing any letter of credit facilities.

Benchmark Credit Terms. No later than June 30, 2012 and annually every June 30 thereafter throughout the term of the Credit Support Agreement, and also at any time SunPower desires to obtain a letter of credit facility that would be the subject of a Guaranty, SunPower is required to solicit benchmark credit terms for of a letter of credit facility without a Guaranty from Guarantor and without collateral and report those benchmark terms to Guarantor. If (a) the annual fees payable by SunPower on the issued amount of a letter of credit under a proposed letter of credit facility that is not guaranteed by Guarantor are equal to or less than 110% of the annual fees plus any applicable guarantee fee payable to Guarantor pursuant to a guaranteed letter of credit facility under the Credit Support Agreement, (b) the other fees payable under such non-guaranteed letter of credit facility are reasonable in light of the fees payable under a guaranteed letter of credit facility and the anticipated uses of such non-guaranteed letter of credit facility and (c) the other terms and conditions of such non-guaranteed letter of credit facility (including restrictive covenants) are reasonable in light of the anticipated use of such non-guaranteed letter of credit facility, then (i) SunPower will be required to enter into such non-guaranteed letter of credit facility as soon as commercially reasonable, (ii) SunPower will be required reduce the commitments under guaranteed letter of credit facilities in an amount equal to such non-guaranteed letter of credit facility and (iii) so long as such non-guaranteed letter of credit facility remains in effect, the Maximum L/C Amount during such period will be reduced by the maximum aggregate amount of the letters of credit that may be issued pursuant to such non-guaranteed letter of credit facility.

Covenants of SunPower and Guarantor. Under the Credit Support Agreement, SunPower has agreed to undertake certain actions, including, but not limited to, ensuring that the payment obligations of SunPower to Guarantor rank at least equal in right of payment with all of SunPower s other present and future indebtedness, other than certain permitted secured indebtedness. SunPower also agrees to refrain from taking certain actions, including, but not limited to, agreeing that it will not:

request, during any period in which (a) 10% or more of the initial face amount of all then-outstanding letters of credit issued under guaranteed facilities has been drawn during the preceding twelve months

and (b) such drawn letters of credit relate to three or more projects that are developed or owned by at least three unrelated sponsors (unless corrective actions are implemented to the reasonable satisfaction of Guarantor s authorized officer), the issuance of a letter of credit under a guaranteed facility if the Aggregate L/C Amount, after giving effect to the issuance of such letter of credit, would be greater than the greater of (i) the Aggregate L/C Amount immediately prior to the issuance of such letter of credit, plus 25% of the Maximum L/C Amount immediately prior to the issuance of such letter of credit, less the Aggregate L/C Amount immediately prior to the issuance of such letter of credit, and (ii) 50% of the then-applicable Maximum L/C Amount;

request the issuance of a letter of credit if: (a) SunPower defaults with respect to its reimbursement obligations to Guarantor described above or any payment obligation under the Credit Support Agreement that is 30 days overdue for which Guarantor has demanded payment in writing, (b) SunPower defaults in the observance or performance of any agreement, term or condition contained in any letter of credit facility that is the subject of a Guaranty, which would constitute an event of default or similar event under such letter of credit facility (other than an obligation to pay any amount, the payment of which is guaranteed by Guarantor), up to or beyond any applicable grace period provided in the guaranteed facility (unless waived by the applicable bank and Guarantor), (c) SunPower or any of its subsidiaries (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) is unable, or admits in writing its inability, to pay its debts generally as they mature, (iii) makes a general assignment for the benefit of its or any of its creditors, (iv) is dissolved or liquidated, (v) becomes insolvent, (vi) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law or consent to same or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding, or (vii) takes any action for the purpose of effecting any of the foregoing, provided, that to the extent that any of the foregoing applies only to one or more subsidiaries of SunPower and not to SunPower itself, then only to the extent that such event or occurrence could reasonably be expected to have a material adverse effect on the business, assets, operations or financing or other condition of SunPower or its subsidiaries, when taken as a whole, the ability of SunPower to pay or perform its obligations under the Credit Support Agreement, the rights and remedies of Guarantor under the Credit Support Agreement, or the validity and enforceability of the Credit Support Agreement or the rights and remedies of Guarantor thereunder (a **CSA Material Adverse Effect**), or (d) proceedings are commenced (and not dismissed within 60 days) for the appointment of receiver, trustee, liquidator or custodian of SunPower, or of all or a substantial part of its property or any of its subsidiaries, or any other involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to SunPower or any of its subsidiaries or its or their debts under any bankruptcy, insolvency or similar law are commenced, except that to the extent the proceeding applies only to one or more subsidiaries and not to SunPower itself, then only to the extent that such event could reasonably be expected to have a CSA Material Adverse Effect;

amend any agreements related to any guaranteed letter of credit facility;

grant any lien to secure indebtedness (other than certain permitted secured indebtedness) unless (a) an identical lien is granted to Guarantor to secure SunPower s obligations and (b) such other lien is at all times equal or subordinate to the priority of the lien granted to Guarantor under (a);

make any equity distributions as long as it has any outstanding repayment obligation to Guarantor resulting from a draw on guaranteed letter of credit; or

request a guaranteed letter of credit for any project (or series of projects located within 500 meters of one another) with a nameplate capacity rating in excess of 50 megawatts (ac alternating current) (other than SunPower s California Valley Solar Ranch project), it being understood that, subject to certain conditions, Guarantor will be deemed to have consented to such a letter of credit if it has not responded to any request for its consent within four weeks after receiving all documentation it has

reasonably requested to evaluate the proposed letter of credit, and if Guarantor objects to guaranteeing such letter of credit, SunPower may obtain such letter of credit under a non-guaranteed credit facility, and such letter of credit facility may be secured without the requirement to grant to Guarantor a lien, and any letters of credit issued thereunder will not count towards calculating the Aggregate L/C Amount or the Maximum L/C Amount.

Guarantor agrees that

promptly after the CSA Effective Date, it will use reasonable efforts to assist SunPower in obtaining a $200,000,000 revolving credit facility with lenders and on terms as may be agreed from time to time between Guarantor and SunPower; and

any liens granted to Guarantor in connection with SunPower s grant of a lien to secure other indebtedness will be junior and subordinate to the priority of the liens granted to the holders of certain permitted secured indebtedness, and Guarantor agrees to enter into intercreditor agreements with the holders of permitted secured indebtedness to effectuate as much.

Trigger Events. Under the Credit Support Agreement, following a Trigger Event, and during its continuation, Guarantor may elect not to enter into any additional Guaranties; declare all or any portion of the outstanding amounts owed by SunPower to Guarantor to be due and payable; after providing prior written notice to SunPower, direct banks that have provided guaranteed letter of credit facilities to stop all issuances of any additional letters of credit under such facilities; access and inspect SunPower s relevant financial records and other documents upon reasonable notice to SunPower; and exercise all other rights it may have under applicable law, provided that at its discretion Guarantor may also rescind such actions.

The following events each constitute a **Trigger Event** :

SunPower defaults with respect to its reimbursement obligations to Guarantor described above or any payment obligation under the Credit Support Agreement that is 30 days overdue for which Guarantor has demanded payment in writing;

any representation or warranty made by SunPower in the Credit Support Agreement or as an inducement to enter into any Guaranty is false, incorrect, incomplete or misleading in any material respect when made and has not been cured within 15 days after notice thereof by Guarantor;

SunPower fails, and continues to fail for 15 days, to observe or perform any material covenant, obligation, condition or agreement in the Credit Support Agreement;

SunPower defaults in the observance or performance of any agreement, term or condition of any guaranteed facility that would constitute an event of default or similar event thereunder (other than an obligation to pay any amount, the payment of which is guaranteed by Guarantor), up to or beyond any grace period provided in such facility, unless waived by the applicable bank and Guarantor;

SunPower or any of its subsidiaries defaults in the observance or performance of any agreement, term or condition contained in any bond, debenture, note or other indebtedness such that the holders of such indebtedness may accelerate the payment of $25 million or more of such indebtedness;

SunPower or any of its subsidiaries (a) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (b) is unable, or admits in writing its inability, to pay its debts generally as they mature, (c) makes a general assignment for the benefit of its or any of its creditors, (d) is dissolved or liquidated, (e) becomes insolvent, (f) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself

or its debts under any bankruptcy, insolvency or other similar law or consent to same or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding, or (g) takes any action for the purpose of effecting any of the foregoing, provided, that to the extent that any of the foregoing applies only to one or more subsidiaries of SunPower and

Table of Contents

not to SunPower itself, then a Trigger Event will be deemed to have occurred only if such event or occurrence could reasonably be expected to have a CSA Material Adverse Effect; and

proceedings are commenced (and not dismissed within 60 days) for the appointment of receiver, trustee, liquidator or custodian of SunPower, or of all or a substantial part of its property or any of its subsidiaries, or any other involuntary case or other proceeding seeking liquidation, reorganization or other relief with respect to SunPower or any of its subsidiaries or its or their debts under any bankruptcy, insolvency or similar law are commenced, except that the extent the proceeding applies only to one or more subsidiaries and not to SunPower itself, then such event will only constitute a Trigger Event to the extent that such event could reasonably be expected to have a CSA Material Adverse Effect.

Termination. The Credit Support Agreement will terminate after the later of the payment in full of all obligations thereunder and the termination or expiration of each Guaranty provided thereunder following the fifth anniversary of the CSA Effective Date. In addition, the Credit Support Agreement will terminate automatically and be of no further force or effect upon the Tender Offer Agreement being terminated in accordance with its terms.

Assignment. The Credit Support Agreement may not be assigned by SunPower without the prior written consent of Guarantor.

The following terms and conditions apply to assignments by Guarantor:

During the period from the CSA Effective Date through December 31, 2013, Guarantor may not assign its rights and obligations under the Credit Support Agreement without the prior written consent of SunPower.

During the period from January 1, 2014 through June 30, 2016 (the **Free Transfer Period**), Total, as the initial Guarantor (but not any assignee of Total), may assign its rights and obligations under the Credit Support Agreement without the prior written consent of SunPower to any entity that (a) acquires beneficial ownership of 40% or more of the combined voting power of all voting stock of SunPower and (b) is rated BBB+/Baa1 or better (or, if such entity does not have a current credit rating, would be rated BBB+/Baa1 or better, as determined by a leading investment bank retained by Guarantor (subject to confirmation by a second leading investment bank retained by SunPower, at its option), based on such entity s long-term unsecured, unsubordinated debt as of the proposed assignment date taking into account the totality of the transactions pursuant to which such entity is acquiring the voting power or voting stock of SunPower and assuming the rights and obligations of Guarantor under the Credit Support Agreement. If a proposed transferee has a credit rating from both S&P and Moody s and has a credit rating of BBB+ or better by S&P or Baa1 or better by Moody s, but not both, that proposed transferee would satisfy the requirements above if the S&P and Moody s credit ratings do not differ by more than one rating (for example, if the S&P credit rating is BBB+ and the Moody s credit Rating is Baa2, such person would satisfy the requirements above, but if the S&P credit rating is BBB+ and the Moody s credit rating is Baa3, such person would not satisfy the requirements above).

Any assignment by Guarantor will not release Guarantor from its obligations to guarantee letters of credit pursuant to a letter of credit facility that is the subject of a Guaranty and outstanding as of the date of the assignment, so long as SunPower continues to pay the guarantee fee relating to such letters of credit. However, Guarantor may notify the banks that have issued such outstanding letters of credit that no new letters of credit may be issued under the applicable letter of credit facility and guaranteed by Guarantor.

In connection with an assignment during the Free Transfer Period to an assignee that is rated lower than A by S&P or A2 by Moody s, Guarantor may either (a) pay to SunPower an assignment fee equal to $20 million as of January 1, 2014 and reduced by $2 million per calendar quarter until reduced to

Table of Contents

zero (for example, the fee payable for an assignment on October 15, 2014 would be $14 million) or (b) agree to pay to SunPower a make-whole amount based on a calculation of the amount actually paid by SunPower to banks that are party to letter of credit facilities (both guaranteed and non-guaranteed) and to lenders in revolving credit facilities permitted under the Credit Support Agreement in increased costs as a result of Total s assignment of its rights and obligations under the Credit Support Agreement. Such make-whole amount would be payable on a quarterly basis from the assignment date through the fifth anniversary of the CSA Effective Date.

The Affiliation Agreement.

In connection with the Offer, Purchaser and SunPower have entered into an affiliation agreement (the **Affiliation Agreement**). The Affiliation Agreement will govern the relationship following the closing of the Offer between SunPower, on the one hand, and Total, Purchaser, any affiliate of Total and any member of a group of persons formed for the purpose of acquiring, holding, voting, disposing of or beneficially owning voting stock of SunPower of which Total or any of its affiliates is a member (excluding SunPower and its controlled subsidiaries and the Disinterested Directors (as defined below), the **Total Group**), on the other hand. The Affiliation Agreement is not effective until the closing of the Offer.

Standstill. Following the closing of the Offer and during the Standstill Period (as defined below), Purchaser, Total, any of their respective affiliates and certain other related parties (the **Total Group**) may not:

effect or seek, or announce any intention to effect or seek, any transaction that would result in the Total Group beneficially owning Shares in excess of the Applicable Standstill Limit (as defined below), or take any action that would require SunPower to make a public announcement regarding the foregoing;

request SunPower, SunPower s directors who are independent for stock exchange listing purposes and not appointed to the SunPower Board by Purchaser (the **Disinterested Directors**), or officers or employees of SunPower, to amend or waive any of the standstill restrictions applicable to the Total Group; or

enter into any discussions with any third party regarding any of the foregoing.

In addition, no member of the Total Group may, among other things, solicit proxies relating to the election of directors to the SunPower Board without the prior approval of the Disinterested Directors.

However, the Total Group is permitted to:

during the period commencing with the closing of the Offer until the second anniversary of such closing, and following the written invitation from the Disinterested Directors, either (i) make and consummate a tender offer to acquire 100% of the outstanding voting power of SunPower (a **Total Tender Offer**) that is approved and recommended by the Disinterested Directors, or (ii) propose and effect a merger providing for the acquisition of 100% of the outstanding voting power of SunPower (a **Total Merger**) that is approved and recommended by the Disinterested Directors;

during the period commencing on the second anniversary of the closing of the Offer until December 31, 2014, either (i) make and consummate a Total Tender Offer that is approved and recommended by the Disinterested Directors or (ii) propose and effect a Total Merger that is approved and recommended by the Disinterested Directors; and

during the period commencing on January 1, 2015 and at any time thereafter, either (i) make and consummate a Total Tender Offer or (ii) propose and effect a Total Merger so long as, in each case, Purchaser complies with certain advance notice and prior negotiation obligations, including providing written notice to SunPower at least 120 days prior to commencing or proposing such Total Tender Offer or Total Merger and making its designees reasonably available for the purpose of negotiation with the Disinterested Directors concerning such Total Tender Offer or Total Merger.

The **Standstill Period** is the period beginning on the date of the Affiliation Agreement and ending on the earlier to occur of:

- a change in control of SunPower;
- the first time that the Total Group beneficially owns less than 15% of the outstanding voting power of SunPower;
- prior to Purchaser, together with any controlled subsidiary of Total, owning 50% or less of the outstanding voting power of SunPower or 40% or less of the outstanding voting power of SunPower when at least $100 million in Guaranties are outstanding under the Credit Support Agreement, SunPower or the SunPower Board taking or failing to take certain of the actions described below under Events Requiring Stockholder Approval by Purchaser without Purchaser s prior approval or fails to comply with certain of the covenants of SunPower described below under Covenants of Purchaser and SunPower ;
- upon the first time that Purchaser, together with any controlled subsidiary of Total owns 50% or less of the outstanding voting power of SunPower or 40% or less of the outstanding voting power of SunPower when at least $100 million in Guarantees are outstanding under the Credit Support Agreement, a tender offer for at least 50% of the outstanding voting power of SunPower is commenced by a third party (unless, among other things, such tender offer is withdrawn at a time that the Total Group has not commenced a Total Tender Offer, in which case the Standstill Period will be reinstated); and
- the termination of the Affiliation Agreement.

The **Applicable Standstill Limit** is the applicable percentage of the lower of (i) the outstanding Shares or (ii) the then outstanding voting power of SunPower equal to:

- 63% during the period commencing with the closing of the Offer and ending on the second anniversary of such closing;
- 66-$^{2}/_{3}$% during the period commencing on the second anniversary of the closing of the Offer and ending on December 31, 2014; and
- 70% during the period commencing on January 1, 2015 and continuing thereafter until the termination of the Affiliation Agreement.

Exceptions to Standstill. If during the Standstill Period, any member of the Total Group inadvertently and without knowledge that the transaction would result in a breach of the Applicable Standstill Limit, acquires beneficial ownership of Shares in excess of the Applicable Standstill Limit, the Total Group will not be in breach of its standstill obligations described above so long as:

- Purchaser promptly notifies SunPower;
- the Total Group causes such shares to be voted in direct proportion to the manner in which all stockholders of SunPower other than the Total Group and SunPower s directors or executives vote; and
- within the time periods provided in the Affiliation Agreement, the Total Group sells such excess Shares to SunPower or on the open market.

If, during the Standstill Period, any member of the Total Group acquires beneficial ownership of Shares in excess of the Applicable Standstill Limit as the result of the conversion of any convertible securities issued by SunPower that were acquired by the Total Group directly from SunPower, then the Total Group will not be in breach of its standstill obligations described above so long as:

- Purchaser promptly notifies SunPower; and
- causes such shares to be voted in direct proportion to the manner in which all stockholders of SunPower other than the Total Group and SunPower s directors or executives vote.

During the Standstill Period, the Total Group will not be in breach of its standstill obligations described above if any member of the Total Group holds beneficial ownership of Shares in excess of the Applicable Standstill Limit solely as a result of:

- recapitalizations, repurchases or other actions taken by SunPower or its controlled subsidiaries that have the effect of reducing the number of Shares then outstanding;

- the issuance of Shares to Purchaser in connection with the acquisition by SunPower of Tenesol; or

- the rights specified in any poison pill share purchase rights plan of SunPower having separated from the Shares and a member of the Total Group having exercised such rights.

Transfer of Control. If any member or members of the Total Group seek to transfer, in one or a series of transactions, either (i) 40% or more of the outstanding Shares or (ii) 40% or more of the outstanding voting power of SunPower to a single person or group, then such transfer must be conditioned on, and may not be effected, unless the transferee either:

- makes a tender offer to acquire 100% of the voting power of SunPower, at the same price per share of voting stock and using the same form of consideration to be paid by the transferee to the Total Group, and the completion of such tender offer is conditioned on (i) a majority of the shares of voting stock held by stockholders that are not members of the Total Group being tendered and (ii) an irrevocable, unwaivable commitment by the transferee to promptly acquire in a subsequent merger any shares not purchased in such tender offer, to the extent any shares are purchased in such tender offer, for the same amount and form of consideration per share offered in such tender offer; or

- proposes a merger providing for the acquisition of 100% of the voting power of SunPower, at the same price per share of voting stock and using the same form of consideration to be paid by the transferee to the Total Group, and the consummation of such merger is conditioned upon the approval of shares of voting stock representing a majority of the shares of voting stock held by stockholders that are not members of the Total Group.

Purchaser s Rights to Maintain. The Total Group has the following rights to maintain its ownership in SunPower until (i) the first time that the Total Group owns less than 40% of the outstanding voting power of SunPower or (ii) until the first time that Purchaser or any controlled subsidiary of Total transfers Shares to a person other than a controlled subsidiary of Total and as a result of such transfer Purchaser, together with the controlled subsidiaries of Total, owns less than 50% of the outstanding voting power of SunPower (in each case, regardless of whether such event occurs as a result of a recapitalization of SunPower, a repurchase of securities by SunPower or the Total Group subsequently increases its ownership of SunPower in the future).

If SunPower proposes to issue new securities primarily for cash in a financing transaction, then Purchaser has the right to purchase a portion of such issuance equal to its percentage ownership of SunPower and SunPower is obligated to provide Purchaser with advance notice of any such issuance. Purchaser can also elect to purchase securities in open market purchases or through privately-negotiated transactions in an amount equal to its percentage ownership of SunPower in connection with such issuance.

If SunPower proposes to issue new securities in consideration for a business or asset of a business, then Purchaser has the right to purchase additional securities in the open market or through privately-negotiated transactions equal to its percentage ownership of SunPower and SunPower is obligated to provide Purchaser with advance notice of any such issuance. Purchaser has similar rights in the event that SunPower issues or proposes to issue (including pursuant to its equity plans or as the result of conversion of convertible securities issued by SunPower) securities that, together with all other issuances of securities by SunPower since the end of the preceding fiscal quarter aggregate to more than 1% of SunPower s fully diluted equity.

So long as Purchaser provides SunPower with appropriate notice within the time periods established by the Affiliation Agreement, Purchaser has a nine month grace period, subject to certain extensions to satisfy

20

regulatory conditions, to acquire securities in the open market or through privately-negotiated transactions in connection with any of the issuances described above and such securities will be deemed to have been owned by Purchaser for purposes of the Affiliation Agreement.

SunPower Board. The Affiliation Agreement provides that, immediately after the consummation of the Offer, the SunPower Board will be expanded to eleven persons, composed of the Chief Executive Officer of SunPower (who will also serve as the chairman of the SunPower Board), four current members of the SunPower Board and six directors designated by Purchaser. The four current members of the SunPower Board who will continue on the SunPower Board following the consummation of the Offer are W. Steve Albrecht, Betsy S. Atkins, Thomas R. McDaniel and Pat Wood III.

On the first anniversary of the completion of the Offer (i) the Disinterested Directors are obligated to cause one the Disinterested Directors to resign from the SunPower Board, (ii) upon the effectiveness of such resignation, Purchaser will promptly cause one of the directors designated by Purchaser to resign from the SunPower Board and (iii) thereafter the SunPower Board will take all action necessary to reduce the number of authorized members of the SunPower Board to nine directors (such actions, a **Board Reduction Event**).

So long as Purchaser, together with the controlled subsidiaries of Total, owns at least 10% of the outstanding voting power of SunPower, the SunPower Board must use its reasonable best efforts to elect the directors designated by Purchaser as follows:

- until the first time that Purchaser, together with controlled subsidiaries of Total, own less than 50% of the voting power of SunPower, Purchaser will be entitled to designate six nominees to serve on the SunPower Board until the Board Reduction Event, and five nominees to serve on the SunPower Board thereafter;

- until the first time that Purchaser, together with controlled subsidiaries of Total, own less than 50% but not less than 40% of the voting power of SunPower, Purchaser will be entitled to designate five nominees to serve on the SunPower Board until the Board Reduction Event, and four nominees to serve on the SunPower Board thereafter;

- until the first time that Purchaser, together with controlled subsidiaries of Total, own less than 40% but not less than 30% of the voting power of SunPower, Purchaser will be entitled to designate four nominees to serve on the SunPower Board until the Board Reduction Event, and three nominees to serve on the SunPower Board thereafter;

- until the first time that Purchaser, together with controlled subsidiaries of Total, own less than 30% but not less than 20% of the voting power of SunPower, Purchaser will be entitled to designate three nominees to serve on the SunPower Board until the Board Reduction Event, and two nominees to serve on the SunPower Board thereafter; and

- until the first time that Purchaser, together with controlled subsidiaries of Total, own less than 20% but not less than 10% of the voting power of SunPower, Purchaser will be entitled to designate two nominees to serve on the SunPower Board until the Board Reduction Event, and one nominee to serve on the SunPower Board after thereafter.

If at any time the number of directors designated by the Total Group exceeds the number of directors that the Total Group is entitled to designate, the Total Group will cause such excess director to resign and such director will be replaced by a director who is independent for stock exchange listing purposes and is selected by the Nominating and Governance Committee of the SunPower Board.

If any director designated by Total ceases to serve on the SunPower Board for any reason (other than as a result of Purchaser no longer being able to designate such director), the SunPower Board must promptly take all action necessary to appoint a replacement director designated by Purchaser. Until such replacement has been

appointed, the SunPower Board, without Purchaser s written consent, will not take any action requiring supermajority approval (as described below).

If any Disinterested Director or the Chief Executive Officer of SunPower ceases to serve on the SunPower Board, the Nominating and Governance Committee of the SunPower Board will select a replacement director who is independent for stock exchange listing purposes or is the Chief Executive Officer of SunPower, as applicable.

For as long as they are serving on the SunPower Board, the directors designated by the Total Group will be allocated across the three classes that comprise the SunPower Board in a manner as equal as practicable.

Subject to any stock exchange listing requirements, until the first time that Purchaser, together with any controlled subsidiaries of Total, owns less than 30% of the outstanding voting power of SunPower:

- the Audit Committee of the SunPower Board will be comprised of three Disinterested Directors;

- the Compensation Committee and the Nominating and Governance Committee of the SunPower Board will each be comprised of two Disinterested Directors and one director designated by the Total Group; and

- any other standing committee of the SunPower Board will comprise a majority of directors not designated by the Total Group, but will include at least one director designated by the Total Group.

Until the first time that Purchaser, together with any Total controlled subsidiaries, own less than 10% of the outstanding voting power of SunPower, a representative of Purchaser will, subject to certain exceptions, be permitted to attend all meetings of the SunPower Board or any committee thereof in a non-voting, observer capacity (other than any committee whose sole purpose is to consider a transaction for which there exists an actual conflict of interest between the Total Group, on the one hand, and SunPower and its affiliates, on the other hand).

Events Requiring Specific Board Approval. At any time when Purchaser, together with any controlled subsidiaries of Total, owns at least 30% of the outstanding voting power of SunPower, neither the Total Group nor SunPower (or any of its affiliates) may effect any of the following without first obtaining the approval of a majority of the Disinterested Directors:

- any amendment to SunPower s certificate of incorporation or bylaws;

- any transaction that, in the reasonable judgment of the Disinterested Directors, involves an actual conflict of interest between the Total Group, on the one hand, and SunPower and its affiliates, on the other hand;

- the adoption of any shareholder rights plan or the amendment or failure to renew SunPower s existing shareholder rights plan;

- except as provided above, the commencement of any tender offer or exchange offer by the Total Group for Shares or securities convertible into Shares, or the approval of a merger of SunPower or any company that it controls with a member of the Total Group;

- any voluntary dissolution or liquidation of SunPower or any company that it controls;

any voluntary bankruptcy filing by SunPower or any company that it controls or the failure to oppose any other person s bankruptcy filing or action to appoint a receiver of SunPower or any company that it controls;

any delegation of all or a portion of the authority of the SunPower Board to any committee of the SunPower Board;

Table of Contents

- any amendment, modification or waiver of any provision of the Affiliation Agreement;
- any modification of director s and officer s insurance coverage; or
- any reduction in the compensation of the Disinterested Directors.

Events Requiring Supermajority Board Approval. At any time when Purchaser, together with any controlled subsidiaries of Total, own at least 30% of the outstanding voting power of SunPower, neither the Total Group nor SunPower (or any of its affiliates) may, without first obtaining the approval of a majority two-thirds of the directors (including at least one Disinterested Director), effect any approval or adoption of SunPower s annual operating plan or budget that has the effect of reducing the planned letter of credit utilization in any given year by more than 10% below the applicable maximum letter of credit amount in the Credit Support Agreement.

Events Requiring Stockholder Approval by Purchaser. Until the first time that Purchaser, together with any controlled subsidiaries of Total, owns 50% or less of the outstanding voting power of SunPower or 40% or less of the outstanding voting power of SunPower when at least $100 million in Guarantees are outstanding pursuant to the Credit Support Agreement, SunPower and its controlled subsidiaries may not effect any of the following without first obtaining the approval of Purchaser:

- any amendment to SunPower s certificate of incorporation or bylaws;
- any transaction pursuant to which SunPower or any company that it controls acquires or otherwise obtains the ownership or exclusive use of any business, property or assets of a third party if as of the date of the consummation of such transaction the aggregate net present value of the consideration paid or to be paid exceeds the lower of (i) 15% of SunPower s then-consolidated total assets or (ii) 15% of SunPower s market capitalization;
- any transaction pursuant to which a third party obtains ownership or exclusive use of any business, property or assets of the SunPower or any company that it controls if as of the date of the consummation of such transaction the aggregate net present value of the consideration received or to be received exceeds the lower of (i) 10% of SunPower s then-consolidated total assets or (ii) 10% of SunPower s market capitalization;
- the adoption of any shareholder rights plan or certain changes to SunPower s existing shareholder rights plan;
- except for the incurrence of certain permitted indebtedness, the incurrence of additional indebtedness in excess of the difference, if any, of 3.5 times SunPower s LTM EBITDA (as defined in the Affiliation Agreement) less SunPower s Outstanding Gross Debt (as defined in the Affiliation Agreement);
- subject to certain exceptions, any voluntary dissolution or liquidation of SunPower or any company that it controls; or
- any voluntary bankruptcy filing by SunPower or any company that it controls or the failure to oppose any other person s bankruptcy filing or action to appoint a receiver of SunPower or any company that it controls.

Certain Matters Related to SunPower s Shareholder Rights Plan. Until the Total Group beneficially owns less than 15% of the outstanding voting power of SunPower, neither SunPower nor the SunPower Board is permitted to adopt any shareholder rights plan or make certain changes to SunPower s existing shareholder rights plan without the approval of Purchaser.

Covenants of Purchaser and SunPower. In order to effect the transactions contemplated by the Affiliation Agreement, each of Purchaser and SunPower have committed to taking certain actions, including:

amending SunPower s bylaws to provide that the Total Group may call a special meeting of SunPower s stockholders in certain circumstances;

Table of Contents

- taking certain actions to exculpate Total, Purchaser, any controlled subsidiary of Total and the SunPower directors designated by Purchaser from corporate opportunities, to the extent permitted by applicable law;
- taking certain actions to render Delaware s business combination statute inapplicable to the Total Group and certain future transferees of the Total Group;
- making certain amendments to SunPower s existing shareholder rights plan, including excluding the Total Group from the definition of Acquiring Person in such plan;
- renewing SunPower s existing shareholder rights plan so long as the Total Group beneficially owns at least 15% of the outstanding voting power of SunPower; and
- providing Purchaser with certain financial information of SunPower from time to time.

Breach by Members of the Total Group. If Total, any Total controlled subsidiary or any agent thereof takes an action that would constitute a breach of the Affiliation Agreement by Purchaser if Purchaser had taken such action, Purchaser shall be deemed for purposes of the Affiliation Agreement to have taken such action and to have breached the Affiliation Agreement. Purchaser has agreed to use its best efforts to prevent any member of the Total Group from taking any action that would constitute a breach of the Affiliation Agreement.

Termination. The Affiliation Agreement generally terminates upon the earlier to occur of (i) the Total Group owning less than 10% of the outstanding voting power of SunPower or (ii) the Total Group owning 100% of the outstanding voting power of SunPower.

The Affiliation Agreement Guaranty.

Total has entered into a guaranty (the **Affiliation Agreement Guaranty**) in connection with the Offer pursuant to which Total unconditionally guarantees the full and prompt payment of Total s, Purchaser s and each Total Controlled Corporation s payment obligations under the Affiliation Agreement and the full and prompt performance of Total s, Purchaser s and each Total Controlled Corporation s representations, warranties, covenants, duties and agreements contained in the Affiliation Agreement.

The R&C Agreement.

In connection with the Offer, Total and SunPower are entering into a Research & Collaboration Agreement (the **R&C Agreement**) that establishes a framework under which they may engage in a long-term research and development collaboration (**R&D Collaboration**). The R&D Collaboration is expected to encompass a number of different long-term projects and short- or medium-term projects (**R&C Projects**), with a focus on advancing technologies in the area of photovoltaics. The primary purpose of the R&D Collaboration is to (i) maintain and expand SunPower s technology position in the crystalline silicon domain; (ii) ensure SunPower s industrial competitiveness in the short, mid and long term; and (iii) prepare for the future and guarantee a sustainable position for both SunPower and Total to be best-in-class industry players. The R&C Agreement contemplates a joint committee (the **R&C Strategic Committee**) that will identify, plan and manage the R&D Collaboration. Due to the impracticability of anticipating and establishing all of the legal and business terms that will be applicable to the R&D Collaboration or to each R&C Project, the R&C Agreement sets forth broad principles applicable to the parties potential R&D Collaboration, and Total and SunPower expect that the R&C Strategic Committee will establish the particular terms governing each particular R&C Project consistent with the terms set forth in R&C Agreement.

The Term Sheet for SunPower s Acquisition of Tenesol.

In connection with the Offer, SunPower has indicated its intent to acquire Total s interest in Tenesol S.A., a French company that designs, manufactures, markets, installs and operates solar photovoltaic systems, subject to

Table of Contents

confirmatory due diligence. Total currently owns a 50% interest in Tenesol and recently announced that it was acquiring the remaining 50% interest in Tenesol that is held by EDF ENR. SunPower and Purchaser have entered into a non-binding term sheet (the **Tenesol Term Sheet**) in connection with their potential transaction. The Tenesol Term Sheet provides for SunPower to acquire 100% of the outstanding capital stock of Tenesol in exchange for approximately US$167 million, subject to adjustment based on further due diligence to be completed by SunPower. The purchase price, net of certain liabilities to be set forth in definitive agreements related to SunPower s potential purchase, would be payable at SunPower s option in some combination of cash (a portion of which may be subject to installment terms to be agreed between the parties) and SunPower stock, with such shares of SunPower stock valued at the same price paid in the Offer. Certain assets of Tenesol located in France s overseas departments and territories (i.e., French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia and Reunion Island) would not be included in the transaction. The Tenesol Term Sheet provides that the execution of definitive acquisition agreements would be subject, among other things, to approval of SunPower s purchase by the Disinterested Directors and receipt by SunPower of a fairness opinion. The parties have agreed to a period of exclusive negotiations regarding SunPower s potential purchase extending through December 31, 2011, which date the parties may agree to extend. The Tenesol Term Sheet is non-binding except for provisions regarding the period of exclusive negotiations and confidentiality. Total will further review SunPower s proposal after Total s acquisition of EDF ENR s 50% interest is finalized.

The Registration Rights Agreement.

In connection with the Offer, Purchaser and SunPower entered into a customary registration rights agreement (the **Registration Rights Agreement**) related to Purchaser s ownership of Shares. The Registration Rights Agreement provides Purchaser with shelf registration rights, subject to certain customary exceptions, and up to two demand registration rights in any 12-month period, also subject to certain customary exceptions. Purchaser also has certain rights to participate in any registrations of securities initiated by SunPower. SunPower will generally pay all costs and expenses incurred by SunPower and Purchaser in connection with any shelf or demand registration (other than selling expenses incurred by Purchaser). SunPower and Purchaser have also agreed to certain indemnification rights. The Registration Rights Agreement terminates on the first date on which (i) the Shares held by Purchaser constitute less than 5% of the then-outstanding Shares, (ii) all securities held by Purchaser may be immediately resold pursuant to Rule 144 promulgated under the Exchange Act during any 90-day period without any volume limitation or other restriction, or (iii) SunPower ceases to be subject to the reporting requirements of the Exchange Act.

The Stockholder Rights Plan.

On April 28, 2011, prior to the execution of the Tender Offer Agreement, SunPower entered into an amendment (the **Rights Agreement Amendment**) to the Rights Agreement, as amended, dated August 12, 2008, by and between SunPower and Computershare Trust Company, N.A., as Rights Agent (the **Rights Agreement**), in order to, among other things, render the rights therein inapplicable to each of (i) the approval, execution or delivery of the Tender Offer Agreement, (ii) the commencement or consummation of the Offer, (iii) the consummation of the other transactions contemplated by the Tender Offer Agreement and the related agreements, or (iv) the public or other announcement of any of the foregoing.

The Confidentiality Agreement.

On November 4, 2010, SunPower and Total Gas & Power Ventures SAS entered into an amended and restated confidentiality agreement (the **Confidentiality Agreement**), which amended and restated a confidentiality agreement they had entered into on September 28, 2010, and which provides, among other things, that, in connection with an evaluation relating to a potential relationship, cooperation or transaction, each of Total and SunPower would keep all confidential information relating to the other party confidential and would not disclose such information to any other persons (except to representatives of either party who were actively and directly participating in the evaluation or who otherwise had a need to know such information for the

Table of Contents

purpose of the evaluation, or as required by law) without the consent of the other party, and pursuant to which Total was required to abide by certain standstill restrictions involving SunPower s securities for a period of 18 months unless specifically approved in writing by the SunPower Board.

(b) Arrangements with Current Executive Officers and Directors of SunPower.

SunPower s executive officers and the members of SunPower s Board may be deemed to have interests in the transactions contemplated by the Tender Offer Agreement that may be different from or in addition to those of SunPower s stockholders generally. These interests may create potential conflicts of interest. SunPower s Board was aware of these interests and considered them, among other things, in reaching its decision to approve the Tender Offer Agreement, the Related Documents and the transactions contemplated thereby.

Under SunPower s current equity plan, all restricted stock units received by each of SunPower s non-employee directors become vested if a change of control (as defined in the equity plan) occurs with respect to SunPower during the director s service with SunPower. Consummation of the Offer is expected to constitute a change of control for purposes of SunPower s equity plan.

SunPower s executive officers, including the Named Executive Officers (as defined under Item 8), are parties to Employment Agreements (as defined and described under Item 8) which provide for double-trigger severance benefits upon Qualified Terminations (as defined under Item 8) in connection with a change of control (as defined in the Employment Agreements). Consummation of the Offer is expected to constitute a change of control for purposes of the Employment Agreements. Currently, a Qualified Termination is in connection with a change of control if it occurs during the period three months prior to the change of control and ending 24 months following the change of control. SunPower intends to propose to the executive officers that their Employment Agreements will be amended by Retention Agreements (as defined and described under Item 8) that would, among other things, amend certain provisions of the Employment Agreements, including extending the 24-month time period described in the prior sentence to a 36-month time period following the change of control. Assuming the executive officers agree to such Retention Agreements and they are approved by the compensation committee, the specific benefits potentially payable to SunPower s Named Executive Officers are set forth in detail in Item 8. Material benefits payable to the other executive officers upon a Qualified Termination in connection with a change of control are as follows, assuming termination occurs May 31, 2011:

Executive Officer other than a Named Executive Officer	Cash Severance (2 times base salary and target bonus)	Cash Value of Full Acceleration of Equity	Continued Benefits	Outplacement Services
Bruce R. Ledesma	$ 1,190,000	$ 2,839,453	$38,643 (for 24 months)	$ 15,000
Doug J. Richards	$ 1,088,000	$ 2,812,157	$32,473 (for 24 months)	$ 15,000

In addition, each of these executive officers would receive a lump-sum payment equal to $7,367 for Mr. Ledesma and $5,658 for Mr. Richards for accrued paid time off and an aggregate amount of $33,831 for Mr. Ledesma and $28,429 for Mr. Richards for annual make-up payments for taxes incurred by the executive officer in connection with benefits plans coverage. If any of the severance payments, accelerated vesting and lapsing of restrictions would constitute a parachute payment within the meaning of Section 280G of the Internal Revenue Code and be subject to excise tax or any interest or penalties payable with respect to such excise tax, then these executive officers benefits would be either delivered in full or delivered as to such lesser extent that would result in no portion of such benefits being subject to such taxes, interest or penalties, whichever results in them receiving, on an after-tax basis, the greatest amount of benefits.

SunPower expects to implement an employee retention program for its executive officers and other select key employees. Under the present formulation of this program as reviewed by the SunPower compensation committee (the impact of which on SunPower s Named Executive Officers is described below under Item 8),

several hundred SunPower employees are expected to receive awards covering an aggregate of approximately 2,410,000 time-based restricted stock units (**RSUs**) with an aggregate value (based on the Offer Price of $23.25 per share) of approximately $56 million. The retention RSU awards are expected to vest in equal one-third increments on each of the first three anniversaries of the consummation of the Offer. For further information about the retention RSU awards for SunPower s Named Executive Officers, plus information about golden parachute compensation in connection with the Offer, please see Item 8(g) below, which is incorporated by reference in this Item 3(b) by this reference.

The following retention RSU awards are expected to be offered, subject to the executive officers agreement to certain amendments to their Employment Agreements and SunPower compensation committee approval, to SunPower s executive officers, other than Named Executive Officers: Mr. Ledesma, 90,000 RSUs and Mr. Richards 100,000 RSUs, in each case, with terms and conditions substantially similar to the grants to the Named Executive Officers described in Item 8(h).

For further information with respect to the arrangements between SunPower and its executive officers, directors and affiliates described in this Item 3(b), please also see the Information Statement, including the information under the headings Directors Designated by Total; Security Ownership of Certain Beneficial Owners and Management; Compensation Discussion and Analysis; 2010 Summary Compensation Table; 2010 Grants of Plan-Based Awards; Outstanding Equity Awards at 2010 Fiscal Year-End Table; 2010 Option Exercises and Stock Vested Table; Potential Payment Upon Termination or Change of Control; Director Compensation; and Certain Relationships and Related Transactions.

ITEM 4. THE SOLICITATION OR RECOMMENDATION.
(a) Solicitation / Recommendation.

At a meeting duly called and held on April 28, 2011, the SunPower Board unanimously (1) determined that the Offer and the Tender Offer Agreement (including the transactions contemplated by the Tender Offer Agreement) are fair to, and in the best interests of, SunPower and its stockholders, (2) approved the Tender Offer Agreement and the transactions contemplated by the Tender Offer Agreement, including the Offer, and (3) recommended that SunPower s stockholders accept the Offer and tender their Shares to Purchaser pursuant to the Offer.

The SunPower Board unanimously recommends the acceptance of the Offer by the stockholders of SunPower. See Reasons for the SunPower Board Recommendation for a discussion of the factors considered by the board of directors in making its recommendation.

(b) Background of the Offer.

As part of the evaluation of our business in an ongoing effort to enhance stockholder value, the Board regularly reviews and assesses long-term strategic goals and risks associated with our business. SunPower s strategy has been historically focused on solar panel technology leadership, as defined by high sunlight-to-electricity conversion efficiency, and by investment in downstream (that is, marketing and sale of solar power products and related services to end users in the residential, commercial, utility and other markets) channels across both major market segments, utility power plants and residential and commercial rooftops. This strategy requires significant capital investment across the value chain.

Since SunPower s initial public offering in November 2005 through December 2010, we raised approximately $1.6 billion through the sale of equity and convertible debt and used the proceeds to fund the growth of our manufacturing capacity as well as to make strategic downstream investments and acquisitions, including the acquisitions of PowerLight Corp. in 2007 and Sunray Renewable Energy (**SunRay**) in 2010. These acquisitions deepened our strategic position in the downstream value chain but also increased the total

Table of Contents

capital required to expand our business. During 2009 and 2010, the valuation multiples of SunPower stock, along with the stocks of many other solar industry public companies, declined significantly, effectively increasing SunPower s cost of capital.

During this period, the Board focused on strategic alternatives that would enable SunPower to continue to grow rapidly in an era of more expensive and constrained capital in the solar industry. In the early stages of this evaluation, in late 2009 and the first quarter of 2010, SunPower identified fundamental changes that SunPower s management believed would present challenges for the solar industry, as well as operational challenges to our ability to compete successfully in that industry. These challenges included potential reductions in demand as a result of incentive policy developments throughout Europe, access to capital and cyclicality in project finance markets, increased competition from lower-cost suppliers in Asia (some of which receive substantial foreign government support) and pricing pressures resulting from growth in capacity across the solar industry. We also considered challenges specific to our business, including our need for additional capital to execute our growth plans, as well as the requirement to restrict cash on our balance sheet to secure letters of credit used to finance our business operations.

In response to these challenges, during the first three quarters of 2010, the Board regularly discussed a wide variety of alternatives, including continuing to execute our long-term strategic plan and possible enhancements to that plan, potential opportunities for acquisitions, dispositions and strategic partnerships, internal restructurings and measures to increase our capital resources. In light of the industry conditions described above, management and the Board determined that it was critical that we enhance our ability to access additional capital on favorable terms or find partners to help finance our larger downstream utility and power plants (**UPP**) projects. During this period SunPower negotiated a manufacturing joint venture with AU Optronics Corp. that significantly reduced the capital required from SunPower for construction of our largest manufacturing facility. Following the establishment of this joint venture, the Board encouraged management to evaluate other opportunities in the downstream part of our business that could similarly reduce our capital needs without constricting the continued growth of our business. From October 2009 to March 2010, at the instruction of the Board, management and representatives of SunPower contacted approximately 14 companies to determine whether they would be interested in exploring a strategic joint venture or other transaction.

Representatives from Total s strategic advisor, Messier Maris & Associs (**Messier Maris**), contacted Thomas H. Werner, our Chief Executive Officer, on behalf of Total in April 2010. They described Total s interest in the photovoltaic sector generally and in engaging in a discussion with SunPower regarding areas of potential cooperation between the two companies. Following this initial contact, on May 17, 2010, Arnaud Chaperon, Senior Vice President of New Energies for the Gas & Power division of Total, met with Peter Aschenbrenner, our Vice President of Corporate Strategy, to further discuss Total s interest in the photovoltaic industry and SunPower. Both of these conversations were at a general level and no specific transaction terms were discussed.

On May 4, 2010, in response to a previous request from the Board, the Board engaged in a wide-ranging discussion regarding industry conditions and strategic alternatives that might be available to SunPower, including reducing cash expenditures (through joint ventures such as the AU Optronics joint venture) and considering the sale of projects that were in the SunRay project pipeline. The Board directed management to prioritize such strategic alternatives and to update the Board as appropriate in future meetings. The Board provided guidance of the names and types of companies and financial strategic partners that SunPower might consider pursuing and also reviewed with management other alternatives, including equity offerings and partnerships that might be pursued.

Following the initial meetings with Total in April and May 2010, Messrs. Aschenbrenner and Werner and other SunPower executives met with representatives of Total on June 14, 2010 and July 1, 2010 to continue to discuss Total s activities and strategies in the photovoltaic sector.

Table of Contents

In June 2010, as a follow up to the Board discussions on May 4, 2010, the Board requested that management develop a plan to address SunPower s increasing capital needs, including possible partnerships that would provide SunPower with additional access to capital.

On July 29, 2010, Mr. Aschenbrenner and other representatives of SunPower met with representatives from a global energy management company (**Company A**) to broadly discuss opportunities for the two companies to cooperate in the UPP business. Among other things, Mr. Aschenbrenner reviewed with Company A its photovoltaic business profile and strategy, including its North American engineering, procurement and construction (**EPC**) capabilities.

On August 30, 2010, Mr. Aschenbrenner and Dennis Arriola, our Chief Financial Officer, met with Mr. Chaperon, Denis Giorno, Vice President of New Ventures of the Gas & Power division of Total, and other Total representatives together with representatives from Messier Maris. At this meeting, Total indicated an interest in exploring a potential strategic partnership with SunPower that might include, among other things, Total becoming (i) one of SunPower s upstream (i.e., sourcing and manufacturing of solar cells, modules and panels) industrial partners, (ii) SunPower s primary UPP partner to support growth in new regions and to improve its financial strength, or (iii) a primary partner of SunPower s downstream residential and commercial (**R&C**) business. Total also raised the possibility that it might be interested in acquiring an equity ownership stake of less than 20% in SunPower.

On September 6, 2010, Mr. Aschenbrenner met with a number of representatives from Total, including Mr. Giorno, Christophe Dargnies, Business Development Manager of the Gas & Power division of Total, and others to discuss the scope of possible cooperation between the companies across the solar industry value chain.

On September 15, 2010, Philippe Boisseau, President of the Gas & Power division of Total, and Mr. Chaperon met with Messrs. Werner, Arriola and Aschenbrenner to further discuss potential relationships between Total and SunPower. Total and SunPower agreed to review each company s various operations and businesses, and determine whether and where opportunities for a strategic business relationship appeared to be most promising. Following the September 15, 2010 meeting, SunPower and Total engaged in a number of site visits, including tours of SunPower s production facilities in Malaysia and the Philippines and of Total s facilities in France. The purpose of these visits was to deepen each company s understanding of the other s business, particularly with respect to photovoltaic manufacturing activities.

As part of this ongoing dialogue, on September 28, 2010, SunPower and a subsidiary of Total executed a confidentiality agreement so that the parties could share non-public information regarding their business activities.

On September 29, 2010, Mr. Aschenbrenner and representatives of SunPower met with Mr. Dargnies and representatives of Total as well as the Chief Executive Officer of Tenesol SA, which is a 50%-owned Total joint venture that designs and manufactures solar panels, to discuss a potential commercial contract.

On October 11, 2010 and October 12, 2010, Mr. Aschenbrenner, Jack Peurach, SunPower s Executive Vice President, Research and Development, and other SunPower representatives met with Messrs. Chaperon, Dargnies and other representatives of Total to discuss, among other things, their respective photovoltaic research and development activities and UPP business.

Separately, during the period of late August 2010 through October 2010, senior members of our management team, including Messrs. Werner and Arriola and Charles Boynton, our Vice President of Finance and Corporate Development, held a series of separate informal meetings with two private equity firms, which meetings were initiated at SunPower s request and were designed to explore whether such firms would be interested in pursuing a strategic investment or other transaction that would strengthen SunPower s capital resources. Each firm received business and financial information from SunPower for this assessment. These

discussions were preliminary in nature and were terminated by the private equity firms without making a specific investment or other proposal, both of which cited SunPower s ongoing capital requirements as their principal reason for terminating discussions.

The confidentiality agreement was amended and restated in November 2010 to include a provision pursuant to which Total agreed to restrictions on the purchase of Shares.

In October and early November 2010, the discussions with Total began to focus on considering a possible joint venture involving SunPower s UPP and R&C businesses. On November 4, 2010 and November 5, 2010, Messrs. Aschenbrenner and Arriola and other SunPower representatives met with Messrs. Dargnies and Giorno and other representatives of Total to discuss our UPP and R&C lines of business as well as our research and development programs and technology. The discussions were intended to further improve each company s understanding of the other s business activities and to further evaluate the manner and areas in which the two companies could potentially work together.

At a strategic planning meeting during the first week of November 2010 culminating in a Board meeting on November 10, 2010, SunPower s management presented to the Board various strategic options that it was considering. Management provided the Board with a review of meetings held to date with Total and the two private equity firms described above, as well as certain information regarding management s discussions with Company A. Management and the Board discussed the challenge that SunPower s current debt levels and cash requirements would present to a private equity firm seeking to use leverage in a relationship with SunPower. Management also reviewed the results of an August 2010 consulting firm report commissioned by SunPower and completed in August 2010, which was designed to provide management and the Board with multiyear planning models for the UPP, R&C and upstream businesses and better insight into how to increase stockholder value. As part of this presentation, the Board discussed the challenges to SunPower s business, including, among other things, capital needs, regulatory changes and intensifying price competition, as well as several potential strategic responses to these challenges, including continuing its existing business strategy, seeking minority investments from both financial and strategic investors, spinning-out segments of the business and selling SunPower. The Board directed management to prioritize the process of evaluating alternatives for partnering with companies that could support SunPower s future capital expenditure requirements and to continue to update the Board as appropriate. Over the ensuing months, Mr. Werner periodically updated the Board regarding management s continuing focus on these matters.

On November 23, 2010, Mr. Aschenbrenner solicited Total s reaction to SunPower s preliminary ideas related to strategic cooperation between the two companies. The parties engaged in further discussions regarding these ideas on November 29, 2010. Our preliminary ideas presented to Total included, among other things, research and development collaboration between the two companies, a joint venture that would manage the global UPP business with financial support provided by Total and a product supply agreement by which SunPower would supply solar cells to Tenesol. During these meetings, Total again indicated that it was interested in the possibility of acquiring an equity ownership stake of less than 20% in SunPower.

On December 3, 2010, Messrs. Werner, Aschenbrenner and Arriola met with Messrs. Boisseau, Chaperon, Giorno and other representatives of Total to continue discussions regarding possible strategic cooperation between the companies. The representatives of SunPower and Total discussed several possible transaction structures, including, among others, a joint venture relationship with a minority equity investment in SunPower by Total, or a joint venture without such an investment.

Mr. Werner updated the Board regarding possible strategic alternatives, including the discussions with Total and Company A, at a meeting on December 8, 2010. Management reviewed with the Board, among other things, potential areas of cooperation, subsequent steps and possible timing for arriving at recommendations regarding the foregoing.

Throughout December 2010 and January 2011, Messrs. Werner and Aschenbrenner met with representatives of Company A on a number of occasions in person and by video and teleconference to discuss a possible joint venture between the two companies. These discussions focused on a joint venture or other transaction involving the UPP business. Company A indicated that it would consider fully financing a potential joint venture s project pipeline, which could potentially enable SunPower to focus the joint venture on the portion of its value chain that was the most dependent on financial support.

On January 6, 2011, Mr. Werner updated the Board in respect of management s continued exploration of strategic alternatives as directed by the Board, including discussions with Total, Company A, and another private equity firm (**PE Firm 1**). From time to time in the past, management had discussed a number of potential projects with PE Firm 1, including, among others, investments in new photovoltaic module technologies. During the meeting, the Board authorized additional substantive engagement with PE Firm 1 regarding SunPower s ongoing evaluation of strategic alternatives.

From January 18, 2011 to January 21, 2011, Messrs. Giorno and Dargnies and other representatives of Total, along with representatives of Messier Maris and representatives of Total s financial advisor, Credit Suisse Securities (Europe) Limited (**Credit Suisse**), met with SunPower executives and representatives of Deutsche Bank Securities Inc., SunPower s financial advisor (**Deutsche Bank**), at SunPower s offices in San Jose, California. At these meetings Messrs. Werner, Aschenbrenner, Arriola and other SunPower executives provided Total with a broad overview of SunPower s various business activities, and identified in particular SunPower s interest in obtaining financial support from Total to help finance our planned growth. They also presented SunPower s financial model, including a forecast of future financial results (Initial Forecast), and engaged in discussions with Total regarding possible joint venture alternatives. During these discussions, SunPower executives outlined our projected letter of credit needs through 2016, as well as our overall financing requirements and an overview of our capital expenditures. Total and SunPower executives acknowledged at this time that structuring a joint venture presented several challenges involving structure, governance, intellectual property ownership and other operational matters. During these meetings, Total s representatives also expressed concern about providing credit assistance of the magnitude requested by SunPower to an entity that Total would not control.

On January 25, 2011 and January 26, 2011, Messrs. Arriola and Aschenbrenner met with Messrs. Chaperon and Boisseau and other Total executives to further discuss a proposed Europe, Middle East and Africa downstream (UPP and R&C) joint venture between Total and SunPower, including, among other things, potential synergies from employing a joint approach to various markets and segments the parties had discussed, as well as Total providing credit support to the joint venture. The representatives of SunPower and Total engaged in several follow-up telephone conversations during which they further discussed the details of the proposed joint venture. At these meetings, the companies again acknowledged the difficulties inherent in structuring a joint venture and expressed a willingness to explore other alternatives.

On January 27, 2011 and January 28, 2011, Messrs. Aschenbrenner and Arriola, together with representatives of Deutsche Bank, met with representatives of Company A to further discuss a possible joint venture consisting of a global development business with Company A purchasing certain assets from SunPower, including its EPC group, providing for project pipeline and large project operations and maintenance service contracts, as well as providing credit support to the joint venture. Over the next three weeks, representatives of SunPower and Company A held numerous telephone calls to discuss potential business scenarios for the proposed global UPP joint venture and to clarify the potential magnitude of required project financing requirements that such a venture could incur.

On January 31, 2011, Mr. Werner had a telephone conversation with Mr. Boisseau. Mr. Werner outlined the challenges that SunPower and Total had experienced in attempting to structure a joint venture that would be mutually beneficial to the parties. Mr. Werner asked Mr. Boisseau to consider if there were alternative structures that Total may propose that would avoid the complexity of a joint venture but would provide SunPower with additional access to capital.

During January 2011 and February 2011, Mr. Boynton met on multiple occasions with representatives of PE Firm 1 to discuss its interest in investing in, or otherwise pursuing a transaction with, SunPower. PE Firm 1 indicated that in its view SunPower did not have the financial capacity to support the amount of debt that would be required to obtain a sufficient equity return for PE Firm 1, given the financing needs of the UPP business and SunPower s anticipated capital expenditure requirements. PE Firm 1 communicated that it did not have the ability to commit the required equity financing without either debt financing or an equity partner. SunPower and PE Firm 1 mutually decided to terminate discussions.

On February 1, 2011, Messrs. Arriola and Aschenbrenner updated the Board regarding possible strategic alternatives, including the status and nature of matters under discussion with Total and Company A, and the termination of discussions with PE Firm 1. The Board reviewed the various possible transactions presented and directed management to continue to engage in these discussions and to update the Board as appropriate. At this time, the Board indicated its support for the engagement of Deutsche Bank as financial advisor to SunPower in connection with ongoing strategic discussions. Shortly thereafter, SunPower engaged Jones Day as its legal counsel to assist with discussions.

Also on February 1, 2011, Messrs. Arriola, Aschenbrenner, Boynton, Chaperon, Giorno and Dargnies had a telephone call in which the representatives of Total solicited SunPower s willingness to consider several potential alternatives to a joint venture.

On February 3, 2011, Mr. Aschenbrenner spoke via telephone with Messrs. Chaperon, Giorno and Dargnies who indicated that prior to finalizing Total s approach to a transaction with SunPower, Total would need to resolve, among other things, how SunPower or any joint venture would be organized and operated following a transaction. Representatives of Total noted that it was not interested in managing any joint venture because it did not wish to disrupt our management team.

From February 7, 2011 to February 10, 2011, Messrs. Werner, Arriola, Aschenbrenner and other SunPower executives met with Messrs. Chaperon and Boisseau and other Total executives, as well as representatives of Messier Maris and Credit Suisse. SunPower provided further details regarding a possible strategic relationship with Total and engaged in preliminary discussions regarding how the process of formalizing the relationship might develop over time. SunPower executives also reviewed with Total the Initial Forecast. At this meeting, the SunPower executives informed Total that SunPower believed that the type of joint venture that the parties had been discussing would be unworkable, in part because of governance and operational complications that the parties had been unable to resolve. The representatives of Total again expressed concern about providing credit support of the magnitude requested by SunPower to an entity that Total would not control. The representatives of Total indicated that they were considering a substantial equity investment in SunPower, but that they planned to consult with Total s senior management team over the subsequent weeks and attempt to propose a new business relationship that would achieve both companies objectives.

On February 8, 2011 Mr. Aschenbrenner met with a senior executive of another company (**Company B**) about a potential strategic collaboration. SunPower had from time to time in the past discussed with Company B various possible strategic collaborations. Over the following four weeks, the two executives engaged in a series of wide-ranging discussions involving potential synergies that could result from strategic cooperation across the value chain. During this period, Mr. Werner had a subsequent conversation with the chief executive officer of Company B to gauge its interest in pursuing a strategic relationship. In early March. SunPower decided not to pursue further discussions with Company B because of Company B s inability to finance a cash transaction, the limited potential benefits of a stock combination and other factors specific to Company B.

On February 16, 2011 Messrs. Werner, Arriola, Boynton and Aschenbrenner attended a video conference with the chief executive officer and other representatives of Company A, during which the Company A representatives presented the framework of a proposal for the structure and valuation approach for a global UPP joint venture with SunPower. Shortly following the conclusion of the video conference, Mr. Aschenbrenner

Table of Contents

called Company A to inform it that the proposed approach was not acceptable to SunPower. On February 18, 2011, a senior executive of Company A informed Mr. Werner that Company A would not be willing to make a proposal that would meet SunPower s valuation request. After this communication, SunPower did not pursue further strategic discussions with Company A.

On March 7, 2011, Mr. Boisseau presented to Mr. Werner a verbal proposal whereby Total would acquire a majority stake in SunPower via tender offer for Class A Shares and Class B Shares at a price of $22.50 per share. In connection with its acquisition of a majority stake in SunPower, Total proposed to provide credit support to SunPower increasing over time to a maximum of $1 billion.

On March 9, 2011 and March 10, 2011, Messrs. Giorno and Dargnies and other Total executives, together with representatives from Credit Suisse, met in person with Messrs. Arriola and Aschenbrenner and Bruce Ledesma, SunPower s Executive Vice President and General Counsel, together with representatives from Deutsche Bank. At this meeting, representatives of Total provided additional detail with respect to the verbal proposal made to Mr. Werner on March 7, 2011. They specified that:

- it was Total s intent to acquire between 55% and 60% of each class of Shares in a tender offer transaction representing Shares sufficient for Total to retain a majority interest in SunPower following potential dilutive issuances under convertible debentures and option exercises, among others;

- Total would require that the Class A Shares and Class B Shares be combined into a single class of shares following the consummation of the tender offer, subject to receipt of an acceptable legal tax opinion;

- Total would provide credit support in the form of a guarantee for letters of credit issued by SunPower to support our UPP business in an amount consistent with our business plan, with the annual amount to be guaranteed ranging from $445 million in 2011 to a maximum of $1 billion in 2016;

- the size of the Board would be expanded to nine members, five of whom would be designated by Total, three of whom would be independent and one of whom would be Mr. Werner;

- if Total were to acquire the balance of Tenesol from a subsidiary of the EDF Group, SunPower could then acquire Tenesol from Total for approximately $170 million and if SunPower were to fail to purchase Tenesol or to pay the price proposed by Total, then SunPower would incur an additional credit support fee of up to $170 million; and

- a retention plan designed to ensure that certain employees and management remain with SunPower following the consummation of Total s proposed transaction would be put in place.

Finally, Total requested that SunPower agree to negotiate detailed term sheets over the ensuing two-week period following which SunPower would agree to exclusively negotiate with Total for a period of 30 days in order to complete definitive documentation. SunPower s representatives asked questions regarding Total s proposal, but did not engage in substantive negotiations regarding the proposal at this meeting.

On March 11, 2011, Mr. Boisseau contacted Mr. Werner by telephone to discuss Total s proposal. The Board met later that day to discuss Total s proposal and other strategic alternatives that might be available to SunPower. Members of management, including Messrs. Werner, Arriola and Ledesma, as well as representatives of Deutsche Bank and Jones Day, participated in the meeting. Mr. Werner began the meeting by presenting an update as to the challenges facing SunPower and the solar industry generally. Mr. Werner indicated that, due to the factors discussed at the Board s November strategic planning sessions and meeting, more recent Italian regulatory uncertainty and rapidly escalating price competition, management expected increasing difficulty in growing its business unless it effected a substantial transaction in which SunPower would obtain greater financial resources or additional access to capital. The Board expressed its continued support with this approach, consistent with its longstanding focus on bolstering SunPower s balance sheet. Representatives of Deutsche Bank then provided an overview of the transaction proposed by Total and led a discussion with respect to the financial aspects thereof, including the potential value to our stockholders of the proposed credit support from Total.

Representatives of Jones Day reviewed the Board s fiduciary duties in these circumstances. At the conclusion of these discussions, the Board instructed management to continue discussions with Total while also seeking alternative transactions that might produce a superior outcome for stockholders and determined to form an ad hoc transaction committee of independent directors composed of W. Steve Albrecht, Thomas R. McDaniel and Pat Wood, III. The transaction committee was tasked by the Board to closely monitor the status of the negotiations with Total, to manage the process to consider other possible alternative transactions and to make recommendations to the Board regarding potential transaction terms.

Following the Board meeting, Mr. Werner spoke via telephone with Mr. Boisseau. They agreed that members of each management team would meet on March 17 and 18, 2011 to discuss the terms of Total s proposal, and that Mr. Werner would meet with Mr. Boisseau as well as Christophe de Margerie, Total s Chief Executive Officer, on March 18, 2011 in Paris.

On March 13, 2011, Total s legal counsel, Wilson Sonsini Goodrich & Rosati, Professional Corporation (**Wilson Sonsini**), distributed to Jones Day preliminary drafts of non-binding term sheets further outlining the various terms of the Total proposal. Also on March 13, a representative of Total sent Mr. Ledesma a legal due diligence request list and, continuing through April 28, 2011, representatives of Wilson Sonsini conducted legal due diligence on SunPower.

Also on March 13, 2011, the Board s transaction committee held its first meeting to discuss Total s initial proposal. Representatives of Jones Day and Deutsche Bank were also present. Messrs. Werner and Arriola reviewed in detail management s proposed response to the key points of Total s proposal. The transaction committee reviewed each term proposed by Total, taking into account the views of management, Deutsche Bank and Jones Day. The transaction committee provided instructions to management regarding the terms of a counterproposal to be delivered to Total, including price and with particular focus on the credit support as it related to value creation for the minority stockholders. Messrs. Werner and Arriola also provided the transaction committee a review of the discussions with Company A and Company B. Representatives of Deutsche Bank reviewed a number of factors to consider in determining whether to proactively solicit third party interest in an alternative strategic transaction prior to or following the execution of definitive agreements, and discussed a list of prospective third parties that it believed might reasonably be expected to have the resources and interest to engage in a potential business combination with, or otherwise provide the required credit support to, SunPower. In reviewing that list, management and members of the transaction committee reviewed both companies and private equity firms that had previously been contacted in reviewing strategic alternatives as well as other potential strategic partners. The transaction committee instructed Deutsche Bank that, before SunPower engaged in exclusive negotiations with Total, Deutsche Bank should conduct a market check process by contacting the parties it identified as potentially interested in and having the financial resources to pursue an alternative transaction that might result in a superior outcome for SunPower s stockholders, including an acquisition of all of SunPower or an acquisition of a majority interest in SunPower on terms superior to those offered by Total. Following the meeting with management, the transaction committee met in executive session, as it did following all subsequent meetings.

Between March 13, 2011 and March 15, 2011, Deutsche Bank approached five parties to gauge their interest in pursuing a transaction with SunPower. On March 15, one of the parties (**Company C**) expressed interest in receiving non-public information about SunPower and Company C signed a confidentiality agreement on March 19, 2011, after which Deutsche Bank provided Company C with non-public business and financial information regarding SunPower. On March 16, another of the parties (**Company D**) expressed interest in receiving non-public information about SunPower and meeting with representatives of SunPower management.

On March 14, 2011, SunPower, acting in collaboration with its advisors from Jones Day and Deutsche Bank, provided a written response to the key terms of Total s proposal to Total and its legal and financial advisors. This response included, among other things, enhancement to the credit support terms proposed by Total, a proposal that Total designate less than a majority of the Board and proposed protections for SunPower s stockholders that would continue in a minority position following completion of the Offer.

Table of Contents

On March 15, 2011, Messrs. Giorno and Dargnies and other representatives of Total, along with representatives of Credit Suisse, Messier Maris and Wilson Sonsini, met with Messrs. Arriola, Aschenbrenner and Ledesma and representatives from Deutsche Bank and Jones Day to hear SunPower s response to Total s proposal. At this meeting, Mr. Giorno expressed disappointment in SunPower s response to Total s proposal, including among other things the Board structure that SunPower had proposed, and concern that Total and SunPower would not be able to successfully negotiate a transaction. The meeting then adjourned with the understanding that each of SunPower and Total expected to resume discussions at a subsequent date.

On March 17, 2011 and March 18, 2011, Messrs. Aschenbrenner, Arriola and Ledesma, together with representatives of Deutsche Bank and Jones Day, met with Messrs. Giorno, Dargnies and Humbert de Wendel, Senior Vice President of Corporate Business Development for Total, together with representatives of Credit Suisse, Messier Maris and Wilson Sonsini. During the course of these meetings, the parties engaged in extensive negotiations regarding the terms of Total s proposal. SunPower s management team indicated, however, that it would not negotiate a termination fee or enter into exclusive negotiations with Total at that time, and further proposed that Total increase the per Share price in the Offer to $24.00.

On March 17, 2011, Messrs. Arriola and Ledesma updated the transaction committee on the status of the negotiations, particularly discussions regarding the price, form of credit support, protections for minority stockholders following completion of Total s tender offer and Board composition. The transaction committee discussed various negotiating positions and provided direction to management, with a particular focus on obtaining the highest price possible and ensuring sufficient protection of SunPower s minority stockholders following the completion of Total s tender offer. Representatives of Deutsche Bank provided preliminary results of an update on the market check process, indicating that a total of five prospective parties had been approached with all five indicating a willingness to consider the opportunity. They also indicated that SunPower was negotiating a confidentiality agreement with Company C prior to providing access to non-public information about SunPower.

The March 17, 2011 meetings between the two management teams continued on March 18, 2011, as SunPower management and Total presented revised proposals. It became apparent during the course of these meetings that Total would not accept a transaction of a type under discussion unless it gained majority control of the Board. Total also again requested an exclusive negotiation period, which the SunPower representatives declined. Simultaneously, Mr. Werner met in Paris, France with Messrs. de Margerie and Boisseau and Patrick de La Chevardière, Total s Chief Financial Officer, during which Mr. Werner proposed, among other things, that Total increase its offer price and provide SunPower with a revolving credit facility, in addition to credit support already proposed, that it could use to increase liquidity. Mr. Boisseau stated that Total would not be prepared to increase its offer from $22.50 per share at that time and that it believed that the credit support arrangements proposed by Total should provide SunPower with sufficient liquidity.

The transaction committee met on March 20, 2011 to obtain an update from our management team and provide guidance with respect to the negotiations with Total. Representatives of Jones Day and Deutsche Bank participated in this meeting. Messrs. Arriola and Ledesma and representatives of Jones Day reviewed in detail the status of each of the key negotiating points. They noted that progress had been made with respect to the form of credit support, protections for SunPower s minority stockholders following completion of Total s tender offer and Board composition. Deutsche Bank then informed the transaction committee that of the five parties contacted by Deutsche Bank, two parties had indicated that they would not be pursuing a potential transaction with SunPower, two (Company C and Company D) were still in active discussions and the remaining party was still considering whether to engage in discussions.

Following the March 20, 2011 meeting of the transaction committee, our management and Jones Day continued to negotiate the term sheets for the proposed definitive agreements with Total and Wilson Sonsini, and in particular requested Total s commitment that it would not acquire the remainder of SunPower s publicly traded equity without negotiating with our independent directors and obtaining the consent of the majority of the minority of SunPower s stockholders.

Table of Contents

On March 21, 2011, Wilson Sonsini distributed Total s initial draft of the Credit Support Agreement to Jones Day.

On March 23, 2011, representatives of Deutsche Bank met by telephone with representatives of Company C to review various business and financial aspects of SunPower, the process for making a strategic proposal to SunPower and the objectives of the Board in pursuing a transaction. On March 24, 2011, Mr. Werner and the chief executive officer of Company C discussed SunPower s process and objectives. On March 25, 2011, a representative of Company C notified Deutsche Bank that it no longer had any interest in pursuing a transaction with SunPower.

On March 25, 2011, the Board received an update from the transaction committee and our management with respect to the status of negotiations with Total and the progress of discussions with other interested parties. Representatives of Jones Day and Deutsche Bank participated at this meeting. Management provided an update with respect to the negotiations with Total. Representatives of Jones Day advised the Board on its fiduciary duties. Deutsche Bank led a discussion of the financial aspects of the transaction, including focus on the credit support agreement. The representatives of Deutsche Bank also noted that Company D was the only alternative participant that remained in active discussions and that one prospective party was still considering its interest.

On March 27, 2011, Wilson Sonsini distributed Total s initial draft of the Tender Offer Agreement to Jones Day.

On March 28, 2011 and March 29, 2011, Messrs. Giorno and Dargnies and others from Total met with Messrs. Aschenbrenner and Arriola. Representatives of Messier Maris, Credit Suisse and Wilson Sonsini were present on behalf of Total, and representatives of Deutsche Bank and Jones Day attended on our behalf. During these meetings, the representatives of SunPower and Total continued to negotiate the terms of Total s proposal, including the credit support that would be provided by Total, the governance terms that would be implemented following Total s acquisition of a majority interest in SunPower, including minority stockholder protections, the conditions to Total s obligation to close the Offer, and the process related to SunPower s evaluation of an acquisition of Tenesol. The parties agreed that they would prepare a non-binding term sheet for a potential acquisition of Tenesol by SunPower, but that any definitive agreement or commitment by SunPower would be negotiated at a later time and approved by SunPower s independent directors. At the conclusion of these meetings, Messrs. Arriola and Aschenbrenner met with representatives of Total to discuss the financial terms of the Offer. However, the representatives of Total resisted any discussion of an increase in the price payable by Total, other than to note that they did not believe that Total would be willing to pay a price in excess of $23.00 per Share.

On March 28, 2011, Messrs. Aschenbrenner and Boynton, together with representatives of Deutsche Bank, met with representatives of Company D to further discuss SunPower s business and financial profile. Also on March 28, 2011 SunPower and Company D signed a confidentiality agreement, after which Deutsche Bank provided non-public business and financial information regarding SunPower.

On March 30, 2011, Mr. Boisseau contacted Mr. Werner and indicated that Total would be prepared to increase the per Share price to be paid in the tender offer to $23.00 subject to satisfactory negotiation of the remaining open issues.

On April 1, 2011, a representative of Total distributed an initial draft of a Research and Collaboration Agreement to Jones Day and Wilson Sonsini distributed Total s initial draft of the Affiliation Agreement to Jones Day on April 2, 2011.

On April 4, 2011, SunPower s transaction committee met to discuss the status of negotiations with Total. Mr. Arriola reviewed in detail the status of the material open negotiating points, including the offer price, credit support terms, tender offer termination provisions and associated termination fees, Board composition and the

potential acquisition of Tenesol. Mr. Ledesma and Jones Day described at length the negotiation of minority stockholder protections following the closing of the tender offer. The transaction committee engaged in deliberations regarding the key transaction terms, providing feedback to management and its advisers. The representatives of Deutsche Bank led an update discussion with respect to financial aspects of the transaction. The representatives of Deutsche Bank also noted that management was still engaged in discussions with Company D; the fifth party had ultimately declined to participate in discussions with SunPower and there were no other participants considering pursuing a transaction with SunPower at that time. Following this meeting, Mr. Albrecht, the chairman of the transaction committee, and Mr. Werner updated Thurman J. Rodgers, the chairman of the Board, regarding the transaction committee s meeting. During this discussion, it was suggested that Mr. Rodgers contact the chief executive officer of Company D regarding Company D s possible interest in pursuing a transaction with SunPower. Mr. Rodgers made this contact on April 5, 2011.

Between April 6, 2011 and April 8, 2011, Messrs. Arriola, Aschenbrenner and Ledesma met with Messrs. Giorno and de Wendel and other representatives of Total to continue the negotiation of the terms of the proposed transaction. During this same period, representatives of Wilson Sonsini met with representatives of Jones Day to negotiate certain aspects of the definitive transaction documents.

Between April 7, 2011 and April 12, 2011, members of our management and representatives of Deutsche Bank held a number of conference calls with representatives of Company D to discuss our business operations, future prospects and our UPP business.

On April 9, 2011, Mr. Rodgers and Company D s chief executive officer met to further discuss a possible transaction between Company D and SunPower.

On April 10, 2011, Messrs. Werner, Ledesma and Douglas Richards, our Executive Vice President, Human Resources and Corporate Services, briefed the Board s compensation committee on possible management retention arrangements to ensure the retention of key members of management following the consummation of the Offer. On April 11, 2011, the chairs of the Board s transaction and compensation committees discussed, with representatives of the compensation committee s executive compensation consultant and Jones Day, the retention arrangements. Following discussions of the terms of SunPower s existing change-in-control arrangements, Messrs. Werner, Ledesma and Richards were asked to join the discussion. Mr. Werner informed the directors that the SunPower negotiating team had been instructed not to discuss any retention arrangements with the Total negotiating team, and that management s view was that if benefits were payable under the retention pool, if one were established, the recipients of such benefits would be required to waive certain rights under SunPower s existing change of control agreements. It was the consensus of the group that the compensation committee s executive compensation consultant should work under the direction of the compensation committee as to any retention pool proposal.

On April 12, 2011, Wilson Sonsini distributed Total s initial draft of the Registration Rights Agreement to Jones Day and Jones Day delivered a response to Wilson Sonsini s initial draft of the Tender Offer Agreement.

At a meeting of the transaction committee on April 12, 2011, Mr. Arriola provided an update of the key negotiating points with Total. Mr. Werner described the recent discussions between Mr. Rodgers and Company D s chief executive officer and also provided an update on continuing developments in the solar energy sector, including the potential negative impact of the reduction or expected reduction of feed in tariffs (i.e., government mandated prices that utilities must pay for solar energy) in Italy and potentially Germany. Mr. Arriola reviewed with the transaction committee the effects of these and other adverse market developments on SunPower s financial forecasts, which led management to develop a Management Case containing lower forecasted operating results.

On April 13, 2011, a senior executive of Company D contacted Mr. Werner to inform him that Company D may be prepared to pursue a minority investment in SunPower. Mr. Werner responded that such a transaction

might be attractive to SunPower if Company D could provide sufficient credit support to SunPower to help fund SunPower s future capital requirements. At the conclusion of this discussion, the parties agreed to arrange for a call among their financial personnel to review the parameters of potential credit support.

Between April 13, 2011 and April 15, 2011, Messrs. Giorno, de Wendel and Dargnies and other representatives of Total met with Messrs. Arriola and Ledesma. Representatives of Jones Day and Deutsche Bank, as well as representatives of Wilson Sonsini and Credit Suisse, participated in these meetings. The parties made significant progress with respect to the deal protection terms surrounding the Offer and agreed upon the termination fee structure reflected in the Tender Offer Agreement and on governance arrangements designed to protect the interests of our minority stockholders following the majority acquisition by Total, including the standstill and disinterested board approval provisions in the Affiliation Agreement. Representatives from Jones Day and Wilson Sonsini continued to negotiate the terms of the definitive agreements associated with the transaction through April 28, 2011.

On April 14, 2011, Messrs. Arriola and Boynton and representatives of Deutsche Bank participated in a conference call with representatives of Company D to review SunPower s credit support objectives. On April 15, 2011, a senior executive from Company D contacted Mr. Werner to inform him that Company D was not prepared to move forward with any transaction with SunPower, principally due to the magnitude of the credit support requested by SunPower, the capital required to complete an investment and different views within Company D s executive team regarding the attractiveness of the UPP business in Europe.

Also on April 14, 2011, the Board s compensation committee held a special meeting to consider, among other things, the possible retention arrangements. The meeting was attended by, among others, Mr. Richards and representatives of the compensation committee s executive compensation consultant and Jones Day. The compensation committee engaged in an extensive discussion regarding the benefits of implementing retention incentives following the completion of the Offer, including the increased risk of executive departures following the completion of the Offer in light of the fact that the proposed acquirer would be a large foreign oil company, the benefits to SunPower inherent in retaining key employees and practices in similar circumstances. Following discussion, the compensation committee directed the compensation consultant to continue discussions with Total and incorporate their feedback into the compensation committee s draft proposal and to reconvene a further meeting of the compensation committee prior to any further interaction by management with Total on the specifics of the proposed retention incentives.

On April 16, 2011, Wilson Sonsini delivered initial drafts of proposed guaranties pursuant to which Total would agree to guarantee the performance by Purchaser of its obligations under the Tender Offer Agreement and the Affiliation Agreement.

On April 17, 2011, the Board s compensation committee reconvened to discuss the possible management retention arrangements. The meeting was attended by Mr. Werner, representatives of the compensation committee s executive compensation consultant and Jones Day. Mr. Werner reviewed in detail the preliminary suggestions prepared in response to the previous compensation committee meeting, responding to questions and comments from committee members. He explained that retention payments would be available to executives only if they waived certain rights under existing change-in-control arrangements. The committee s consultant explained the methodology used to analyze the possible retention arrangement. At the conclusion of this discussion, the compensation consultant advised the compensation committee that, in the compensation consultant s opinion, the proposed retention program was reasonable under the circumstances in terms of the total amount of the pool, the allocation between senior management and executives generally and vesting terms. The compensation committee determined that Mr. Werner, in consultation with the chair of the compensation committee and its consultant, should continue to refine the proposed retention amounts for review at a future meeting, and that the chair of the committee, in consultation with the committee s compensation consultant, should discuss with Mr. Werner the allocation to him under the retention arrangement taking into account appropriate factors, including Mr. Werner s existing compensation arrangements with SunPower, Mr. Werner s

change-in-control agreement, practices in other transactions and the cost of replacement of a CEO. These discussions were conducted and resulted in the allocation to Mr. Werner described in Additional Information: Information about Golden Parachute Compensation.

The Board met on April 21, 2011, with representatives of Deustche Bank and Jones Day in attendance. At this meeting, Mr. Albrecht provided a comprehensive update on the status of negotiations with Total and the progress made following the March 25, 2011 meeting of the Board. Mr. Arriola provided an overview of management s updated financial outlook and reviewed with the Board market developments of the past several weeks, including recent Italian regulatory uncertainty, which had produced several areas of risk to the revenue and earnings targets reflected in the annual operating plan approved by the Board in February 2011. Messrs. Werner and Arriola then presented in detail the Management Case in light of these recent market developments. Members of the Board questioned management extensively regarding the Management Case. Jones Day then reviewed in detail each of the material terms contained in the current draft definitive agreements pertaining to the proposed transaction with Total. Following this discussion, Deutsche Bank led an updated discussion with respect to financial aspects of the transaction with Total. The chair of the Board s compensation committee provided an update to the Board regarding retention incentives proposed by Total in the transaction. The Board engaged in deliberations regarding the terms of the proposed transaction, the financial aspects of the transaction and the possible retention arrangements. The Board further discussed the potential benefits to SunPower inherent in retaining key management and employees following a change of control. The compensation committee indicated that it would continue to oversee the retention incentive discussions with Total. At the conclusion of the meeting, it was the consensus of the Board that management should continue negotiations with Total.

During the period between April 21, 2011 and April 27, 2011, Mr. Richards and Stephen Douglas, Legal Director, Gas & Power division of Total, engaged in multiple teleconference negotiations with respect to Total s proposed retention arrangements and the form of retention agreement proposed to be employed. Throughout this period, Mr. Richards was advised by Mr. Werner, who in turn was acting at the direction of the Board s compensation committee.

On April 22, 2011, Messrs. Boisseau and Werner further discussed by telephone the aggregate retention pool based on direction from the Board s compensation committee. During this discussion, the two agreed in principal to the terms of retention arrangements that would provide a pool of approximately 2.4 million restricted stock units to be granted to SunPower employees, including certain members of SunPower s senior management team, which restricted stock units would vest over a three-year period and be conditioned upon and granted subsequent to the closing of the Offer. Mr. Werner advised Mr. Boisseau that the retention arrangements could not be entered into until subsequently reviewed by the compensation committee.

On April 25, 2011, Messrs. Boisseau and Werner discussed the price per Share to be paid by Total in the Offer. During this discussion, Mr. Boisseau agreed that Total would raise its offer price from $22.50 to $23.25 per Share assuming favorable negotiation of the remaining open issues.

On April 26, 2011, SunPower and Total reached agreement on the final form of the non-binding term sheet relating to a potential acquisition of Tenesol by SunPower.

During the evening of April 27, 2011 through to the morning of April 28, 2011, representatives of Jones Day and Wilson Sonsini and the managements of SunPower and Total negotiated the final points of the Tender Offer Agreement, Affiliation Agreement, Credit Support Agreement, Total guaranties and Research & Collaboration Agreement.

On April 28, 2011, the Board held a meeting to consider the proposed transaction with Total, with management and representatives from Jones Day and Deutsche Bank in attendance. Our management described the terms of the final negotiations with Total, including the terms of each of the agreements being entered into, and members of the Board asked questions and engaged in discussion. Representatives of Jones Day reviewed the material terms of the definitive documents, focusing on changes since the Board meeting on April 21, 2011,

Table of Contents

and again advised the Board of its fiduciary duties in the circumstances. Representatives of Deutsche Bank again provided a financial analysis of the proposed transaction. Representatives of Deutsche Bank then provided its oral opinion, which was subsequently confirmed in writing, that, as of April 28, 2011 and based upon and subject to the various considerations, assumptions, qualifications, limitations and other matters as set forth in the opinion (a written copy of which is attached to this Schedule 14D-9 as Annex B), the $23.25 per share offer price to be received by holders of Shares in the Offer was fair, from a financial point of view, to such holders, excluding Total and its affiliates. The Board then had further discussion of the factors relating to the acquisition, and at the conclusion of these discussions, among other things, unanimously (i) determined that the Offer and the Tender Offer Agreement (including the transactions contemplated by the Tender Offer Agreement) are fair to, and in the best interests of, SunPower and its stockholders, (ii) approved the Tender Offer Agreement and the transactions contemplated by the Tender Offer Agreement, including the Offer, and (iii) recommended that SunPower s stockholders accept the Offer and tender their Shares to Purchaser pursuant to the Offer. Following the conclusion of the Board meeting, SunPower and the Rights Agent executed and delivered the Rights Agreement Amendment to exempt the transactions contemplated by the Tender Offer Agreement from the Rights Plan.

The Tender Offer Agreement and Related Documents were subsequently executed by SunPower and Total following the Board meeting on April 28, 2011. Promptly following the execution of these documents, SunPower and Total issued a joint press release announcing the transaction.

(c) Reasons for the SunPower Board Recommendation.

The SunPower Board consulted with SunPower s senior management, legal counsel and financial advisor in evaluating the Tender Offer Agreement, the Related Documents and the other transactions contemplated thereby, and in recommending that SunPower s stockholders tender their Shares pursuant to the Offer. As part of this evaluation and recommendation process, the SunPower Board considered a number of reasons for its recommendation, including the following features which the SunPower Board believed supported its decisions:

- the Offer will be paid in cash providing certainty, immediate value and liquidity to SunPower s stockholders whose tenders are accepted;

- the $23.25 per share price to be paid for each Share represents a 46% premium over the closing price of the Class A Shares and a 49% premium over the closing price of the Class B Shares on April 27, 2011, the last full trading day on the NASDAQ Global Select Market before the Offer and the related transactions were unanimously approved by SunPower s Board and publicly announced;

- the belief of the SunPower Board, based upon arm s length negotiations with Purchaser, that the price to be paid by Purchaser is the highest price per share that Purchaser was willing to pay for the Company and that the terms of the Tender Offer Agreement and Related Documents include the most favorable terms to SunPower to which Purchaser was willing to agree;

- the Offer allows SunPower s stockholders to receive $23.25 in cash for a substantial portion of their Shares and, at the same time, provides them the opportunity to participate in the future performance of SunPower through continuing Share ownership;

- the belief that having Total as a strategic, majority stockholder, and the terms of the Credit Support Agreement will, among other things, (i) increase SunPower s financial resources, thereby helping facilitate its continued success in the solar industry, (ii) enhance SunPower s ability to make strategic, long-term decisions, which will allow it to achieve its growth plans and increase manufacturing capacity over the next three years, and (iii) improve SunPower s access to capital through the support of Total s investment grade rating and strong banking relationships;

- the fact that the review of historical and current information concerning SunPower s business, financial performance and conditions, operations, management, competitive positions and prospects by the SunPower Board supported the conclusion that the Offer and other transactions contemplated thereby were in the best interests of SunPower s stockholders;

the belief of the SunPower Board after a thorough review of strategic alternatives and discussions with the management of SunPower and its advisors, that the value offered to stockholders pursuant to the Offer is more favorable to the stockholders of SunPower than the potential value that might have resulted from other strategic opportunities reasonably available to SunPower, including remaining as an independent company or pursuing a business combination transaction or joint venture with another party;

the fact that discussions with potential strategic partners (including through the market check process conducted by SunPower s advisors at the direction of the SunPower Board) failed to produce another party with the interest and ability to proceed with a business combination that could reasonably be expected to result in a more favorable outcome for SunPower s stockholders;

the belief that Total and SunPower share a common vision for the solar industry: a wide variety of energy sources will be required to meet coming increases in global energy demand, and the development of renewable energies particularly solar will be paramount in ensuring a balanced energy mix alongside conventional resources;

the belief that through access to Total s financial strength, SunPower will have additional resources to accelerate the development of its business and further leverage its existing technology;

the belief that SunPower s world-class management team will continue to operate SunPower as a stand-alone business, supported by strategic financial and operational resources from Total;

the belief that the credit support provided by Total pursuant to the Tender Offer Agreement, Related Documents and the transactions contemplated thereby will (i) significantly de-risk the achievement of SunPower s business plan, and may allow for accelerated growth in solar project development, manufacturing activities, and other capital expenditure opportunities, (ii) free up cash currently locked in existing letters of credit or restricted cash collateral accounts, which requirements will continue to grow over time, (iii) likely increase the availability of additional and lower-cost capital, and (iv) assist SunPower in avoiding potential dilution from new financing transactions;

the belief that Total s presence in over 130 countries, including countries in the Middle East, Asia, Africa and South America will help SunPower to capitalize on growth in new markets as they become viable for the solar industry;

the belief that Total and SunPower share a common strategy of pursuing a vertically integrated business model that operates in a wide range of activities across the solar sector value chain;

the belief that the R&C Agreement entered into with Purchaser could expand SunPower s research and development capacity and resources;

the belief that SunPower will retain its entrepreneurial and high growth orientation and business culture with its existing management and employees;

the belief of SunPower s Board that, based upon the advice of counsel, the Affiliation Agreement provides reasonable and arms-length negotiations with Total protections of the interests of the public stockholders after completion of the Offer, including, without limitation, imposing certain restrictions on Purchaser s ability to acquire additional Shares and to effect certain fundamental corporate transactions;

the fact that the Tender Offer Agreement permits the SunPower Board to respond appropriately to an unsolicited offer from a third party and to terminate the Tender Offer Agreement if there is a superior proposal and it is necessary to terminate the Tender Offer Agreement for SunPower s Board to comply with its fiduciary duties under applicable law;

the conclusion of the SunPower Board that the amount of the termination fee payable by SunPower was reasonable in light of the benefits of the transaction;

the likelihood of Total and SunPower obtaining any necessary regulatory approvals, including the termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the **HSR Act**) and EC Merger Regulation;

the opinion of Deutsche Bank to the board of directors to the effect that, as of the date of the opinion and based upon and subject to certain matters described therein, the $23.25 per share offer price to be received by holders of Shares in connection with the Offer is fair, from a financial point of view, to such holders, excluding Total and its affiliates;

the limited number and nature of conditions to closing of the Offer, including that it is not subject to a financing condition; and

the other terms and conditions of the Offer.

The SunPower Board also considered a variety of risks and other potentially negative factors of the Tender Offer Agreement and the Related Documents, including the following:

the fact that the successful consummation of the Offer will result in Purchaser s ability to control the SunPower Board as well as the strategic direction of SunPower;

the fact that public stockholders of SunPower are less likely in the future to receive a premium for their remaining shares from any party other than Total and that Total is not obligated to purchase the remaining Shares outstanding;

the significant reduction in SunPower s public float that would occur upon consummation of the Offer, and the possibility that such a reduction could make it more difficult for SunPower to access the capital markets or attract the interest of analysts and investors, and could thereby reduce trading liquidity in the Shares and/or have a negative effect on SunPower s stock prices;

the fact that Total s company history as an oil and gas company organized under the laws of the Republic of France may create a cultural gap with SunPower that could be disruptive to the day-to-day operations of SunPower and have a negative effect on its employees, and any existing or future customers and other stakeholders;

the fact that there may be alternative strategies to fund the growth of SunPower s business which may permit SunPower to retain full independence;

the fact that the consummation of the Offer and related transactions may, in the future, create additional layers of reporting for SunPower with the result of detracting management s primary attention and focus away from managing SunPower s business and operations;

the fact that the Offer and the other related transactions may not be consummated in a timely manner or at all;

in connection with the Tenesol Term Sheet, SunPower may need to perform additional diligence and evaluate a potential restructuring with respect to a proposed acquisition of Tenesol, which would need to be negotiated by SunPower with a controlling stockholder, but would require approval of SunPower s disinterested directors in accordance with the Affiliation Agreement;

the termination fee payable to Purchaser upon the occurrence of certain events, including the potential effect of such termination fee to deter other potential acquirors from making a competing offer for SunPower that might be more advantageous to SunPower s stockholders; and

the restrictions in the Tender Offer Agreement on the conduct of SunPower s business prior to the consummation of the Offer, which may delay or prevent SunPower from undertaking business or other opportunities that may arise prior to the consummation of the Offer.

SunPower s Board concluded that the risks, uncertainties, restrictions and potentially negative factors associated with the Offer were outweighed by the potential benefits of the Offer.

Table of Contents

The foregoing discussion summarizes the material information and factors considered by SunPower s Board in its consideration of the Offer. SunPower s Board collectively reached the unanimous decision to approve the Offer in light of the factors described above and other factors that each member of the board of directors felt were appropriate. In view of the variety of factors and the quality and amount of information considered, the board of directors did not find it practicable to, and did not make specific assessments of, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination. Individual members of the board of directors may have given different weight to different factors.

(d) Intent to Tender.

To SunPower s knowledge, after making reasonable inquiry, four of SunPower s seven directors and all of SunPower s executive officers currently intend to tender or cause to be tendered pursuant to the Offer all Shares held of record or beneficially owned by such persons immediately prior to the expiration of the Offer, as it may be extended (other than Shares for which such holder does not have discretionary authority). The foregoing does not include any Shares over which, or with respect to which, any such director or executive officer acts in a fiduciary or representative capacity or is subject to the instructions of a third party with respect to such tender.

(e) Financial Forecasts.

SunPower s management prepares forecasts of its expected financial performance for internal use as part of its ongoing management of the business. SunPower does not, as a matter of course, make public forecasts as to future performance or earnings beyond the next succeeding fiscal quarter and the current fiscal year, in part because of the unpredictability, particularly over time, of the underlying assumptions and estimates. In July and August 2010, management worked with a consulting firm to build a 10-year plan. This plan was refined in early February 2011 to build a management case for SunPower s global operations in 2011 and 2012. We refer to this case as the Initial Forecast . The assumptions underlying the Initial Forecast included the following:

A moderate decline in the Italian Feed-in-Tariff (**FIT**) (14% in 2011 and approximately 10% thereafter), without caps or agricultural land limitations, that would support continued growth of the market;

A global market of 50 GW in 2015, with continued growth period over period, and an average selling price (**ASP**) decline that was roughly on track with our cost reduction roadmap;

The availability of project finance and access to corporate debt and equity markets;

Continued improvement in operations, including driving down panel costs and balance of system costs, growing SunPower s dealer base, and improving efficiency in terms of operating expense as a percent of revenue from 12% in 2010 to 8.4% in 2012;

Cost and ASP reduction in the solar industry, resulting in a market that is competitive with traditional sources of energy;

Continued government support for large scale solar projects to replace gas and coal fired electricity generation, and a growing share of new energy demand served by solar power; and

SunPower s construction of one fab per year (with production capacity of approximately 700 MW per fab).

SunPower provided the Initial Forecast to Total on February 9, 2011, and also provided the Initial Forecast to the parties with which SunPower shared forward-looking information in the strategic assessment and market check processes described in Item 4(b) (Background and Reasons for the SunPower Board s Recommendations), and to Deutsche Bank. The Initial Forecast is being provided in this document because SunPower made it available to the foregoing parties in connection with their respective due diligence reviews of SunPower.

Table of Contents

On February 10, 2011, the Italian regulator for solar programs, the GSE, confirmed prior publicly announced estimates that the volume of solar systems completed in Italy in 2010 was more than 3 times the volume the GSE had earlier publicly disclosed. On March 3, 2011, the Italian government passed a new legislative decree stating that the current solar FIT would conclude on May 31, and that Italy would adopt a new FIT on June 1. The details of the new FIT program were not included in the legislative decree. The decree also set forth a limit on the construction of solar plants on agricultural land. These announcements, and the surrounding uncertainty around the ultimate resolution of the FIT and agricultural limitations, had a materially negative effect on the market for solar systems in Italy. Solar projects planned for 2011 were delayed, which has driven down both demand and average selling prices for solar panels. Analysts expect that power plant pipelines intended for construction in 2012 will have limited viability, resulting in overall reduced global market size projections for 2012 forward. Due to capacity expansion and reduced demand expectations, analysts also expect price competition to increase and to be sustained for several years. These deployments negatively affected SunPower s outlook on market volume, requiring that management reconsider several of the assumptions it had used in preparing the Initial Forecast.

SunPower management, in light of the changed circumstances determined in March 2011 that certain of the assumptions underlying the Initial Forecast were outdated in light of the circumstances, and no longer represented management s best estimate of the factors likely to affect SunPower s financial performance in the future. Accordingly, in early April 2011, SunPower management prepared a revised forecast based on assumptions that management believed more accurately reflected SunPower s prospects in light of the events described above. We refer to this forecast as the Management Case. The assumptions underlying the Management Case included the following:

- 24% FIT reduction in Italy;
- Continued building out of Italian solar projects in 2011 despite delays, but a much smaller Italian market in 2012 and beyond;
- General oversupply and a global market of 28GW in 2015;
- Improvement in operating expenses as a percentage of revenue from 12.6% to 8.8% in 2012;
- Shifting of SunPower s sales from solar power systems to components; and
- Delays in SunPower s construction of fabs based on reduced cash flow to finance fab expansion.

Table of Contents

SunPower provided the Management Case to Deutsche Bank on April 10, 2011 for use in connection with the financial analyses underlying its fairness opinion described on page 2. Representatives from Deutsche Bank provided the Management Case to Total and its representatives during meetings commencing on April 13, 2011 and ending on April 15, 2011. The forecasts provided by SunPower s management and described above are summarized in the tables set forth below:

	Initial Forecast	
	2011	**2012**
	U.S. $ in millions, except EPS amounts	
Revenue	**$ 3,125**	**$ 4,910**
Gross Profit	**$ 683**	**$ 1,127**
EBITDA	**$ 460**	**$ 819**
EPS	**$ 2.46**	**$ 5.25**

			Management Case		
	2011	**2012**	**2013**	**2014**	**2015**
		U.S. $ in millions, except EPS amounts			
Revenue	**$ 2,850**	**$ 3,715**	**$ 4,183**	**$ 5,444**	**$ 6,960**
Gross Profit	**$ 642**	**$ 715**	**$ 870**	**$ 1,111**	**$ 1,434**
EBITDA	**$ 420**	**$ 511**	**$ 620**	**$ 779**	**$ 1,037**
EPS	**$ 2.03**	**$ 2.58**	**$ 3.35**	**$ 4.13**	**$ 5.45**

These forecasts were not prepared with a view to public disclosure or compliance with published guidelines of the Securities and Exchange Commission (the **SEC**) or the guidelines established by the American Institute of Certified Public Accountants regarding projections or forecasts. The forecasts do not purport to present operations in accordance with U.S. generally accepted accounting principles, and SunPower s independent auditors have not examined, compiled or performed any procedures with respect to the forecasts, nor have they expressed any opinion or any other form of assurance on such forecasts, or on the likelihood that SunPower may achieve the results contained in the forecasts.

Like all forecasts, these forecasts are subjective in many respects and, thus, susceptible to multiple interpretations and periodic revisions based on actual experience and business developments. The forecasts also reflect numerous estimates and assumptions of SunPower s management, some of which are detailed above, with respect to general business, economic, market and financial conditions and other matters. The forecasts constitute forward-looking information and are subject to risks and uncertainties that could cause actual results to differ materially from the forecasted results, including, but not limited to, SunPower s performance and ability to achieve strategic goals over the applicable periods, industry performance, general business and economic conditions, customer requirements, competition, adverse changes in applicable laws, regulations or rules, and the factors described under Risk Factors in SunPower s Annual Report on Form 10-K for the year ended January 2, 2011 and in SunPower s other filings with the SEC. The forecasts should not, therefore, be considered a guaranty of future operating results. The inclusion of the forecasts in this document should not be regarded as an indication that any of Total, Purchaser, SunPower, Deutsche Bank or their respective affiliates or representatives consider the forecasts to be necessarily predictive of actual future events, and the forecasts should not be relied upon as such.

The forecasts should be evaluated in conjunction with the historical financial statements and other information regarding SunPower contained in SunPower s public filings with the SEC. The forecasts do not take into account any circumstances or events occurring after the date they were prepared. Further, the forecasts do not take into account the effect of any failure of the Offer to be consummated and should not be viewed as accurate or continuing in that context.

(f) Opinion of Deutsche Bank.

Deutsche Bank has acted as financial advisor to SunPower in connection with the Tender Offer Agreement, pursuant to which Purchaser will conduct the Offer and pay the Offer Price for each Share accepted in the Offer. In conjunction with the Tender Offer Agreement, SunPower and Purchaser will enter into the Related Documents (the transactions contemplated by the Tender Offer Agreement and the Related Documents, collectively, the **Transaction**). At the April 28, 2011 meeting of the Board, Deutsche Bank delivered its oral opinion and subsequently confirmed its oral opinion in a written opinion to the Board indicating that, as of April 28, 2011, the date of such written opinion, based upon and subject to the assumptions made, matters considered and limits of the review undertaken by Deutsche Bank it is Deutsche Bank s opinion as investment bankers that the Offer Price to be received by holders of Shares in the Offer is fair, from a financial point of view, to such holders, excluding Total and its affiliates.

The full text of Deutsche Bank s written opinion, dated April 28, 2011 (referred to as the Deutsche Bank Opinion), which sets forth, among other things, the assumptions made, matters considered and limits on the review undertaken by Deutsche Bank in connection with the Deutsche Bank Opinion, is attached as Annex B to this Schedule 14D-9 and is incorporated herein by reference. SunPower stockholders are urged to read the Deutsche Bank Opinion carefully and in its entirety. The summary of the Deutsche Bank Opinion set forth in this Schedule 14D-9 is qualified in its entirety by reference to the full text of the Deutsche Bank Opinion.

In connection with Deutsche Bank s role as financial advisor to SunPower, and in arriving at its opinion, Deutsche Bank reviewed certain publicly available financial and other information concerning SunPower, certain internal analyses, financial forecasts and other information relating to SunPower prepared by management of SunPower. Deutsche Bank also held discussions with certain senior officers of SunPower regarding the businesses and prospects of SunPower. In addition, Deutsche Bank has (i) reviewed the reported prices and trading activity for the Shares, (ii) to the extent publicly available, compared certain financial and stock market information for SunPower with similar information for certain other companies it considered relevant whose securities are publicly traded, (iii) to the extent publicly available, reviewed the financial terms of certain recent business combinations which it deemed relevant, (iv) reviewed the Tender Offer Agreement and Related Documents, and (v) performed such other studies and analyses and considered such other factors as it deemed appropriate.

In preparing the Deutsche Bank Opinion, Deutsche Bank did not assume responsibility for the independent verification of, and did not independently verify, any information, whether publicly available or furnished to it, concerning SunPower, including, without limitation, any financial information considered in connection with the rendering of its opinion. Accordingly, for purposes of the Deutsche Bank Opinion, Deutsche Bank, with the permission of SunPower, assumed and relied upon the accuracy and completeness of all such information. Deutsche Bank did not conduct a physical inspection of any of the properties or assets, and did not prepare or obtain any independent evaluation or appraisal of any of the assets or liabilities (including any contingent, derivative or off-balance-sheet assets and liabilities), of SunPower, Total or Purchaser or any of their respective subsidiaries, nor has it evaluated the solvency or fair value of SunPower under any state or federal law relating to bankruptcy, insolvency or similar matters. With respect to the financial forecasts made available to Deutsche Bank and used in its analyses, Deutsche Bank has assumed with the permission of the Board that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of SunPower as to the matters covered thereby. In rendering the Deutsche Bank Opinion, Deutsche Bank expressed no view as to the reasonableness of such forecasts and projections or the assumptions on which they are based. The Deutsche Bank Opinion was necessarily based upon economic, market and other conditions as in effect on, and the information made available to Deutsche Bank as of, the date of such opinion. In conducting its analysis and arriving at the Deutsche Bank Opinion, Deutsche Bank was aware of but did not rely on the Initial Forecast because management advised Deutsche bank that such forecast was no longer a reliable estimate of SunPower s future financial performance.

Table of Contents

For purposes of rendering the Deutsche Bank Opinion, Deutsche Bank has assumed, with the Board s permission, that, in all respects material to its analysis, the Transaction will be consummated in accordance with its terms, without any material waiver, modification or amendment of any term, condition or agreement. Deutsche Bank has also assumed that all material governmental, regulatory or other approvals and consents required in connection with the consummation of the Transaction will be obtained and that in connection with obtaining any necessary governmental, regulatory or other approvals and consents, no material restrictions will be imposed. Deutsche Bank is not a legal, regulatory, tax or accounting expert and has relied on the assessments made by SunPower and its advisors with respect to such issues.

Set forth below is a brief summary of certain financial analyses performed by Deutsche Bank in connection with rendering the Deutsche Bank Opinion and reviewed with the SunPower Board at its meeting on April 28, 2011.

Historical Stock Performance. Deutsche Bank reviewed and analyzed recent and historical market prices and trading volume for the Shares and compared such market prices to certain stock market and industry indices.

Deutsche Bank also analyzed the Offer Price to be received by SunPower stockholders in the Offer in relation to the closing market price of the Class A Shares and Class B Shares as of April 27, 2011, the last trading date prior to the date of announcement of the Transaction, and the 30-day average closing price (for the period of time ended April 27, 2011) of the Class A Shares and Class B Shares. This analysis indicated that the Offer Price to be paid to SunPower stockholders in the Offer represented:

- a premium of 46% on the Class A Shares and a premium of 49% on the Class B Shares, based upon the respective closing price of the Class A Shares and the Class B Shares on April 27, 2011.
- a premium of 43% on the Class A Shares and a premium of 46% on the Class B Shares based upon the respective 30-day average closing price of the Class A Shares and the Class B Shares.
- a premium of 27% on the Class A Shares and a premium of 30% on the Class B Shares based upon the highest closing price of the Class A Shares and the Class B Shares in the 12 months prior to April 27, 2011.
- a premium of 132% on the Class A Shares and a premium of 147% on the Class B Shares based upon the lowest closing price of the Class A Shares and the Class B Shares in the 12 months prior to April 27, 2011.

Premiums Comparison. Deutsche Bank compared the premiums provided in the Offer with premiums provided in (i) completed U.S. technology mergers and acquisition transactions between 2009 and 2011 between $1 billion and $5 billion in size, excluding those with negative premiums and premiums above 100% (the **Selected Technology Transactions**), and (ii) completed acquisitions of ownership stakes greater than 50% and less than 100% in a tender offer for U.S. public company shares from between 1989 and 2011, excluding distressed and financial sponsor transactions (the **Selected Tender Offers** , and together with the Selected Technology Transactions, the **Selected Precedent Transactions**). This analysis indicated that, compared with the above outlined one-day premium of 46% on the Class A Shares and one-day premium of 49% on the Class B Shares, the Selected Precedent Transactions provided:

- a median one-day premium of 33% for the Selected Technology Transactions.
- a median one-day premium of 28% for the Selected Tender Offers from the period of time between 2000 and 2011.
- a median one-day premium of 40% for the Selected Tender Offers from the period of time between 1989 and 2011.

Analysis of Selected Publicly Traded Companies. Deutsche Bank compared certain financial information and commonly used valuation measurements for SunPower to corresponding information and measurements for a

group of five publicly traded vertically integrated solar power companies: SolarWorld AG, MEMC Electronic Materials Inc., Yingli Green Energy Holding Company Ltd., Suntech Power Holdings Company Ltd. and Trina Solar Ltd. (the **Selected Companies**). Such financial information and valuation measurements included, among other things, (i) common equity market valuation; (ii) operating performance; (iii) ratios of common equity market value as adjusted for debt and cash (**Enterprise Value**) to revenues, earnings before interest expense, income taxes and depreciation and amortization (**EBITDA**) and earnings before interest expense and income taxes (**EBIT**); and (iv) ratios of common equity market prices per share (**Equity Value**) to earnings per share (**EPS**). To calculate the trading multiples for SunPower and the Selected Companies, Deutsche Bank used publicly available information concerning historical and projected financial performance. Deutsche Bank also used the Management Case and Wall Street estimates (the **Street Case**).

As part of this analysis, Deutsche Bank estimated and applied multiple ranges to the Shares (both Class A Shares and Class B Shares) as follows:

- a range of implied Share prices based upon a selected range of EBITDA multiples, on an estimated calendar year 2011 basis, of 4.5x to 6.0x was $17.12 to $23.04 for the Management Case and $15.37 to $20.70 for the Street Case.

- a range of implied Share prices based upon a selected range of EBITDA multiples, on an estimated calendar year 2012 basis, of 4.5x to 6.0x was $20.97 to $28.17 for the Management Case and $19.29 to $25.93 for the Street Case.

- a range of implied Share prices based upon a selected range of EPS multiples, on an estimated calendar year 2011 basis, of 7.0x to 10.0x was $14.18 to $20.26 for the Management Case and $13.97 to $19.96 for the Street Case.

- a range of implied Share prices based upon a selected range of EPS multiples, on an estimated calendar year 2012 basis, of 6.5x to 8.5x was $16.77 to $21.92 for the Management Case and $14.95 to $19.55 for the Street Case.

None of the companies utilized as a comparison are identical to SunPower. Accordingly, Deutsche Bank believes the analysis of publicly traded comparable companies is not simply mathematical. Rather, it involves complex considerations and qualitative judgments, reflected in Deutsche Bank s opinion, concerning differences in financial and operating characteristics of the comparable companies and other factors that could affect the public trading value of the comparable companies.

Analysis of Selected Precedent Transactions. Deutsche Bank reviewed the financial terms, to the extent publicly available, of four completed mergers and acquisition transactions since December 2007 in the solar power industry (the **Selected Transactions**). Deutsche Bank calculated various financial multiples based on certain publicly available information for each of the Selected Transactions and compared them to corresponding financial multiples in the Transaction. Deutsche Bank used the Management Case and Street Case for its analysis of the Selected Transactions. The transactions reviewed were:

Announcement Date	Target / Acquiror
12/04/07	Solarfun Power Holdings Co. Ltd. / Good Energies Inc.
06/02/08	ersol Solar Energy AG / Robert Bosch GmbH
08/02/09	aleo solar AG / Robert Bosch GmbH
08/03/10	Solarfun Power Holdings Co. Ltd / Hanwha Chemical Corp.

As part of its analysis, Deutsche Bank estimated ranges of EBITDA multiples of 5.0x to 7.0x for the last 12 months and 4.5x to 6.5x for the next 12 months. Applying these multiples to SunPower EBITDA for the last twelve months resulted in a price per Share range of $16.41 to $23.22. Applying these multiples to SunPower estimates resulted in an implied equity value per Share range of $17.12 to $25.01 in the Management Case and $15.37 to $22.48 in the Street Case.

All multiples for the Selected Transactions were based on public information available at the time of announcement of such transaction, without taking into account differing market and other conditions during the period of time during which the Selected Transactions occurred. Because the reasons for, and circumstances surrounding, each of the precedent transactions analyzed were so diverse, and due to the inherent differences between the operations and financial conditions of SunPower and the companies involved in the Selected Transactions and other transactions described herein, Deutsche Bank believes that a comparable transaction or premiums paid analysis is not simply mathematical. Rather, it involves complex considerations and qualitative judgments, reflected in Deutsche Bank s opinion, concerning differences between the characteristics of these transactions and the Transaction that could affect the value of the subject companies and businesses and SunPower.

Discounted Cash Flow Analysis. Deutsche Bank performed a discounted cash flow analysis for SunPower based on the Management Case. Deutsche Bank calculated the discounted cash flow values for SunPower as the sum of the net present values of (i) the estimated unleveraged free cash flows that SunPower will generate for the calendar years 2011 through 2015, plus (ii) the terminal value of SunPower at the end of such period. The terminal values of SunPower were calculated based on the perpetuity method. Deutsche Bank used discount rates ranging from 14.5% to 16.5% and perpetuity growth rates ranging from 6.0% to 8.0%. Deutsche Bank used such discount rates based on its judgment of the estimated weighted average cost of capital of SunPower and such perpetuity growth rates based on the growth rates in the terminal year of management s estimates. This analysis indicated a range of values per Share of $19.87 to $31.48.

The foregoing summary describes all analyses and factors that Deutsche Bank deemed material in its presentation to the Board, but is not a comprehensive description of all analyses performed and factors considered by Deutsche Bank in connection with preparing its opinion. The preparation of a fairness opinion is a complex process involving the application of subjective business judgment in determining the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, is not readily susceptible to summary description. Deutsche Bank believes that its analyses must be considered as a whole and that considering any portion of such analyses and of the factors considered without considering all analyses and factors could create a misleading view of the process underlying the opinion. In arriving at its fairness determination, Deutsche Bank did not assign specific weights to any particular analyses.

In conducting its analyses and arriving at the Deutsche Bank Opinion, Deutsche Bank utilized a variety of generally accepted valuation methods. The analyses were prepared solely for the purpose of enabling Deutsche Bank to provide the Deutsche Bank Opinion to the Board as to the fairness, from a financial point of view, of the Offer Price to be received by holders of Shares in the Offer to such holders, excluding Total and its affiliates, and do not purport to be appraisals or necessarily reflect the prices at which businesses or securities actually may be sold, which are inherently subject to uncertainty. In connection with its analyses, Deutsche Bank made, and was provided by SunPower management with, numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond SunPower s control. Analyses based on estimates or forecasts of future results are not necessarily indicative of actual past or future values or results, which may be significantly more or less favorable than suggested by such analyses. Because such analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of SunPower, Deutsche Bank or their respective advisors, neither SunPower nor Deutsche Bank nor any other person assumes responsibility if future results or actual values are materially different from these forecasts or assumptions.

The terms of the Transaction were determined through negotiations between SunPower and Total and were approved by the Board. Although Deutsche Bank provided advice to SunPower during the course of these negotiations, the decision to enter into the Transaction was solely that of the Board. As described above, the opinion and presentation of Deutsche Bank to the Board were only one of a number of factors taken into consideration by the Board in making its determination to approve the Transaction. The Deutsche Bank Opinion was provided to the Board to assist it in connection with its consideration of the Transaction. Deutsche Bank

expressed no opinion as to the merits of the underlying decision by SunPower to engage in the Transaction, whether any holder of Shares should tender Shares in the Offer or the price at which Shares will trade at any time.

SunPower selected Deutsche Bank as financial advisor in connection with the Transaction based on Deutsche Bank s qualifications, expertise, reputation and experience in mergers and acquisitions. SunPower has retained Deutsche Bank pursuant to a letter agreement dated January 31, 2011 (the **Engagement Letter**). As compensation for Deutsche Bank s services in connection with the Transaction, SunPower agreed to pay Deutsche Bank $1,500,000 upon delivery of the Deutsche Bank Opinion and $10,000,000 (plus an incentive fee of up to $2,000,000 in SunPower s discretion) if the Offer is completed (against which the opinion fee will be credited). Regardless of whether the Offer is completed, SunPower has agreed to reimburse Deutsche Bank for the reasonable fees and disbursements of Deutsche Bank s counsel and all of Deutsche Bank s reasonable travel and other out-of-pocket expenses incurred in connection with the Transaction or otherwise arising out of the retention of Deutsche Bank under the Engagement Letter. SunPower has also agreed to indemnify Deutsche Bank and certain related persons to the full extent lawful against certain liabilities, including certain liabilities under the federal securities laws arising out of its engagement or the Transaction.

Deutsche Bank is an affiliate of Deutsche Bank AG (together with its affiliates, the **DB Group**). Deutsche Bank has, from time to time, provided investment banking, commercial banking (including extension of credit) and other financial services to Total, Purchaser and SunPower or their respective affiliates for which it has received compensation, including acting as bookrunner on a concurrent common stock and convertible debenture offering by SunPower in April 2009, bookrunner on a convertible debenture offering by SunPower in March 2010, a counter-party for a portion of the call-spreads associated with each of such convertible debenture offerings (the **Call-Spreads**), and lead underwriter in a letter of credit facility for SunPower (the **L/C Facility**) in 2010. Members of the DB Group may realize a profit or loss on the Call-Spreads based upon the Offer. Letters of credit guaranteed under the Credit Support Agreement may be used to replace letters of credit issued pursuant to the L/C Facility. DB Group may also provide investment and commercial banking services to the Purchaser and SunPower in the future, for which Deutsche Bank would expect DB Group to receive compensation. In the ordinary course of business, members of the DB Group may actively trade in the securities and other instruments and obligations of Total, the Purchaser and SunPower for their own accounts and for the accounts of their customers. Accordingly, the DB Group may at any time hold a long or short position in such securities, instruments and obligations.

ITEM 5. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED.

SunPower has retained Deutsche Bank as its financial advisor in connection with the Tender Offer Agreement. Deutsche Bank has provided an opinion as to the fairness, from a financial point of view of the Offer Price to be received by holders of Shares in the Offer to such holders (excluding Total and its affiliates), a copy of which is filed as Annex B hereto and is incorporated herein by reference.

SunPower has retained Deutsche Bank pursuant to the Engagement Letter. As compensation for Deutsche Bank s services in connection with the Transaction, SunPower agreed to pay Deutsche Bank $1,500,000 upon delivery of its opinion and $10,000,000 (plus an incentive fee of up to $2,000,000 in SunPower s discretion) if the Offer is completed (against which the opinion fee will be credited). Regardless of whether the Offer is completed, SunPower has agreed to reimburse Deutsche Bank for the reasonable fees and disbursements of Deutsche Bank s counsel and all of Deutsche Bank s reasonable travel and other out-of-pocket expenses incurred in connection with the Transaction or otherwise arising out of the retention of Deutsche Bank under the Engagement Letter. SunPower has also agreed to indemnify Deutsche Bank and certain related persons to the full extent lawful against certain liabilities, including certain liabilities under the federal securities laws arising out of its engagement or the Transaction.

Table of Contents

Except as set forth above, neither SunPower nor any person acting on its behalf has employed, retained or agreed to compensate any person to make solicitations or recommendations to stockholders of the SunPower concerning the Offer.

ITEM 6. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

No transaction in Shares have been effected during the past 60 days by SunPower or, to the knowledge of SunPower, any current executive officer, director, affiliate or subsidiary of SunPower, except for the following transactions:

Name of Person	Transaction Date	Number of Class A Shares	Price Per Share	Nature of Transaction
Bruce R. Ledesma	3/7/2011	5,276	$ 16.46	Disposition of Shares(a)
Marty T. Neese	3/8/2011	8,442	$ 15.71	Disposition of Shares(a)
Howard J. Wenger	4/1/2011	2,000	$ 17.21	Disposition of Shares(a)
Howard J. Wenger	4/29/2011	7,250	$ 21.81	Disposition of Shares(a)
Thomas H. Werner	4/29/2011	25,000	n/a	Gift of Shares to Marquette University
Howard J. Wenger	5/2/2011	2,000	$ 21.04	Disposition of Shares(a)
Bruce R. Ledesma	5/3/2011	2,000	$ 21.26	Disposition of Shares(a)

(a) The Class A Shares were sold pursuant to a previously adopted rule 10b5-1 trading plan.

ITEM 7. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS.

Except as set forth in this Statement, SunPower is not engaged in any negotiation in response to the Offer which relates to (1) a tender offer or other acquisition of SunPower s securities by Purchaser, any subsidiary of SunPower or any other person, (2) an extraordinary transaction, such as a merger, reorganization or liquidation, involving SunPower or any subsidiary of SunPower, (3) any purchase, sale or transfer of a material amount of assets by SunPower or any subsidiary of SunPower or (4) any material change in the present dividend rate or policy, or indebtedness or capitalization of SunPower. Except as set forth above, there are no transactions, resolutions of the SunPower Board, agreements in principle or signed contracts entered into in response to the Offer that relate to one or more of the matters referred to in this paragraph.

ITEM 8. ADDITIONAL INFORMATION.

(a) Section 14(f) Information Statement.

The Information Statement attached as Annex A hereto is being furnished in connection with the possible designation by Purchaser and SunPower, of certain persons to be appointed to the SunPower Board, other than at a meeting of SunPower s stockholders as described in the Information Statement, and is incorporated herein by reference.

(b) Annual Report on Form 10-K and Current Reports on Form 8-K.

For additional information regarding the business and financial results of SunPower, please see the following documents that have been filed by SunPower with the SEC, each of which is incorporated herein by reference:

SunPower s Annual Report on Form 10-K for the year ended January 2, 2011.

SunPower s Current Reports on Form 8-K filed with the SEC since January 2, 2011 (other than with respect to information furnished under Items 2.02 and 7.01 of any Current Report on Form 8-K, including the related exhibits under Item 9.01).

Table of Contents

(c) Board Action Regarding Rights Agreement.

On August 12, 2008, the Company adopted the Rights Agreement to guard against partial tender offers and other coercive tactics to gain control of SunPower without offering a fair and adequate price to all of SunPower s stockholders. Under the Rights Agreement, the rights will become exercisable if a person becomes an acquiring person by acquiring beneficial ownership of 20% or more of the Shares or 20% or more of the Class B Shares.

Immediately prior to the execution of the Tender Offer Agreement, SunPower and Computershare Trust Company, N.A. entered into an amendment to the Rights Agreement, dated April 28, 2011, in order to, among other things, render the rights therein inapplicable to each of (1) the approval, execution or delivery of the Tender Offer Agreement, including the approval, execution and delivery of any amendments thereto, (2) the commencement or consummation of the Offer, (3) the consummation of the other transactions contemplated by the Tender Offer Agreement and the Related Agreements, or (4) the public or other announcement of any of the foregoing.

Copies of the Rights Agreement and the amendment to the Rights Agreement have been filed as Exhibits (e)(9) and (e)(10), respectively, to this Statement and are incorporated herein by reference.

(d) Appraisal Rights.

Appraisal rights are not available to holders of Shares in connection with the Offer.

(e) Anti-takeover Statutes.

Delaware Anti-takeover Statute. As a Delaware corporation, SunPower is subject to Section 203 of the DGCL. Under Section 203, certain business combinations between a Delaware corporation whose stock is publicly traded or held of record by more than 2,000 stockholders and an interested stockholder are prohibited for a three-year period following the date that such a stockholder became an interested stockholder, unless:

- the transaction in which the stockholder became an interested stockholder or the business combination was approved by the board of directors of the corporation before the other party to the business combination became an interested stockholder;

- upon completion of the transaction that made it an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the commencement of the transaction (excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) the voting stock owned by directors who are also officers or held in employee benefit plans in which the employees do not have a confidential right to tender or vote stock held by the plan); or

- the business combination was approved by the board of directors of the corporation and ratified by two-thirds of the outstanding voting stock which the interested stockholder did not own.

The term business combination is defined generally to include mergers or consolidations between a Delaware corporation and an interested stockholder, transactions with an interested stockholder involving the assets or stock of the corporation or its majority owned subsidiaries and transactions which increase an interested stockholder s percentage ownership of stock. The term interested stockholder is defined generally as a stockholder who, together with affiliates and associates, owns (or, within three years prior, did own) 15% or more of a Delaware corporation s outstanding voting stock.

SunPower s board of directors has taken all action necessary to exempt the Offer, the Tender Offer Agreement and the other transactions with each of Purchaser and Total from the restrictions on business combinations contained in Section 203 of the DGCL.

Other State Anti-takeover Statutes. SunPower conducts business in a number of states throughout the United States, some of which have enacted anti-takeover laws. Should any person seek to apply any state anti-takeover law, SunPower and Purchaser will, and are required by the Tender Offer Agreement to, use reasonable best efforts to consummate the Offer as promptly as practicable, which may include challenging the validity or applicability of any such statute in appropriate court proceedings. In the event it is asserted that the anti-takeover laws of any state are applicable to the Offer, and an appropriate court does not determine that it is inapplicable or invalid as applied to the Offer, Purchaser might be required to file certain information with, or receive approvals from, the relevant state authorities. In addition, if enjoined, Purchaser might be unable to accept for payment any Shares tendered pursuant to the Offer, or be delayed in continuing or consummating the Offer. In such case, Purchaser may not be obligated to accept for payment any Shares tendered.

Except as described herein, we do not know whether any of these laws will, by their terms, apply to the Offer, and we have not complied with any such laws except as described herein. To the extent that certain provisions of these laws purport to apply to the Offer, SunPower believes there are reasonable bases for contesting such laws.

In 1982, in *Edgar v. MITE Corp.*, the Supreme Court of the United States invalidated on constitutional grounds the Illinois Business Takeover Statute which, as a matter of state securities law, made takeovers of corporations meeting certain requirements more difficult. However, in 1987, in *CTS Corp. v. Dynamics Corp. of America*, the Supreme Court held that the State of Indiana could, as a matter of corporate law, constitutionally disqualify a potential acquiror from voting shares of a target corporation without the prior approval of the remaining stockholders where, among other things, the corporation is incorporated, and has a substantial number of stockholders, in the state. Subsequently, in *TLX Acquisition Corp. v. Telex Corp.*, a U.S. federal district court in Oklahoma ruled that the Oklahoma statutes were unconstitutional as applied to corporations incorporated outside Oklahoma in that they would subject such corporations to inconsistent regulations. Similarly, in *Tyson Foods, Inc. v. McReynolds*, a U.S. federal district court in Tennessee ruled that four Tennessee takeover statutes were unconstitutional as applied to corporations incorporated outside Tennessee. This decision was affirmed by the United States Court of Appeals for the Sixth Circuit. In December 1988, a U.S. federal district court in Florida held, in *Grand Metropolitan PLC v. Butterworth*, that the provisions of the Florida Affiliated Transactions Act and the Florida Control Share Acquisition Act were unconstitutional as applied to corporations incorporated outside of Florida.

(f) Antitrust.

Under the HSR Act and the rules that have been promulgated thereunder by the Federal Trade Commission (the **FTC**), certain acquisition transactions may not be consummated unless certain information has been furnished to the Antitrust Division of the Department of Justice (the **Antitrust Division**) and the FTC and certain waiting period requirements have been satisfied. The purchase of Shares pursuant to the Offer is subject to such requirements.

Pursuant to the Tender Offer Agreement and the requirements of the HSR Act, Purchaser filed a Notification and Report Form with respect to the Offer with the Antitrust Division and the FTC on May 2, 2011. As a result, the waiting period applicable to the purchase of Shares pursuant to the Offer will expire at 11:59 p.m., New York City time, on May 17, 2011. However, before such time, the Antitrust Division or the FTC may extend the waiting period by requesting additional information or documentary material relevant to the Offer from Purchaser. If such a request is made, the waiting period will be extended until 11:59 p.m., New York City time, ten days after Purchaser s substantial compliance with such request. Thereafter, the transaction could only be delayed by regulators if the regulators were to seek and obtain injunctive relief. Purchaser made a request pursuant to the HSR Act for early termination of the waiting period applicable to the Offer. There can be no assurance, however, that the 15-day HSR Act waiting period will be terminated early.

Table of Contents

Shares will not be accepted for payment or paid for pursuant to the Offer until the expiration or earlier termination of the applicable waiting period under the HSR Act. See The Offer to Purchase Section 15 Conditions of the Offer. Subject to certain circumstances described in The Offer to Purchase Section 4 Withdrawal Rights, any extension of the waiting period will not give rise to any withdrawal rights not otherwise provided for by applicable law. If Purchaser s acquisition of Shares is delayed pursuant to a request by the Antitrust Division or the FTC for additional information or documentary material pursuant to the HSR Act, the Offer will be extended in accordance with the provisions of the Tender Offer Agreement. See The Offer to Purchase Section 11 Background of the Offer; Contacts with SunPower and The Offer to Purchase Section 12 Transaction Documents The Tender Offer Agreement.

The Antitrust Division and the FTC frequently scrutinize the legality under the antitrust laws of transactions such as Purchaser s acquisition of Shares pursuant to the Offer. At any time before or after the consummation of any such transactions, the Antitrust Division or the FTC could take such action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the purchase of Shares pursuant to the Offer or seeking divestiture of the Shares so acquired or divestiture of Purchaser s or SunPower s substantial assets. Private parties and individual states may also bring legal actions under the antitrust laws. SunPower does not believe that the consummation of the Offer will result in a violation of any applicable antitrust laws. However, there can be no assurance that a challenge to the Offer on antitrust grounds will not be made, or if such a challenge is made, what the result will be. See The Offer to Purchase Section 15 Conditions of the Offer for certain conditions to the Offer, including conditions with respect to litigation and certain governmental actions.

The Offer is subject to merger control clearance by the Commission pursuant to the EC Merger Regulation. Under the EC Merger Regulation, a transaction meeting certain thresholds may not be completed before it is notified to the European Commission (the **Commission**) and the Commission (a) has not declared that the transaction does not to fall within the scope of the EC Merger Regulation, (b) has declared that the transaction is compatible with the common market, or (c) has been deemed to have declared that the transaction is compatible with the common market. The purchase of Shares pursuant to the Offer falls under the definition of a notifiable concentration pursuant to the EC Merger Regulation.

Within 25 working days of the notification of the Offer, the Commission must decide whether to approve the Offer or to open an in-depth (Phase II) investigation. If a decision is not taken within this period, the Offer is deemed to have been approved. This period is extended to 35 working days if the parties propose remedies to resolve any competition concerns the Commission may have, or if a Member State requests that all or part of the Offer be referred to its national competition authority for review under national merger control legislation. The Commission will open a Phase II investigation only if it has serious doubts that the Offer will significantly impede competition in the single market or a substantial part of it, and the parties have not offered remedies that resolve those doubts. If an in-depth investigation (Phase II) is opened, the Commission s investigation can take up to further 90 working days, which can be extended in certain circumstances, including if the parties offer commitments with a view to rendering the Offer compatible with the single market. If the Commission has not taken a decision within 90 working days, nor extended this investigation period, the Offer is deemed to have been approved.

The EC Merger Regulation provides that a concentration cannot be put into effect until EC merger control approval has been obtained from the Commission. However, the EC Merger Regulation expressly states that, in a public bid situation, the acquirer is not prevented from acquiring the securities of the target company, provided that (a) the concentration is notified without delay and (b) the acquiror does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments, and even then still only after obtaining a derogation granted by the Commission.

The Commission frequently scrutinizes under the EC Merger Regulation transactions such as Purchaser s acquisition of Shares pursuant to the Offer. The Commission could prohibit the transaction by declaring that the concentration is incompatible with the common market or the Commission could require, as a condition to

clearance, a remedy such as the divestiture of Shares acquired by Purchaser or the divestiture of substantial assets of SunPower or its subsidiaries, or of Purchaser or its subsidiaries. Although the parties believe that consummation of the Offer is not incompatible with the common market, there can be no assurance that a challenge to the Offer will not be made by the Commission or, if a challenge is made, what the result will be.

(g) Information about Golden Parachute Compensation.

Background. Messrs. Thomas H. Werner, Dennis V. Arriola, Howard J. Wenger, James S. Pape and Marty T. Neese are SunPower s current named executive officers (**Named Executive Officers**). In this document, SunPower is required to disclose any agreement or understanding, whether written or unwritten, between the Named Executive Officers and SunPower or Total concerning any type of compensation, whether present, deferred or contingent, that is based upon or otherwise relates to the Offer.

As described further below, SunPower maintains double-trigger change of control severance arrangements pursuant to its current employment agreements with the Named Executive Officers (the **Employment Agreements**) and other executives. Generally, this means that the Named Executive Officers would receive change of control severance payments and benefits in connection with a change of control only if SunPower terminates their employment, or if the Named Executive Officers terminate their employment with SunPower, under certain specified circumstances during a period beginning three months prior to the change of control and ending 24 months following the change of control. In connection with the consummation of the Offer, SunPower is expected to propose to the Named Executive Officers that they enter into Retention Agreements with the Named Executive Officers (the **Retention Agreements**) that would, among other things, amend certain provisions of the Employment Agreements, including extending the 24-month time period described in the prior sentence to a 36-month time period following the change of control (such period of time, as extended, the **Protection Period**).

The consummation of the Offer would constitute a change of control under the Employment Agreements. As a result, as further discussed below, after consummation of the Offer, the Named Executive Officers could become entitled to receive change of control severance payments and benefits. However, these payments and benefits would only be payable if SunPower terminates their employment without cause (as defined in the Employment Agreements and described below), or the Named Executive Officers terminate their employment with SunPower for good reason (as defined in the Employment Agreements and described below) (each such termination of employment, a **Qualifying Termination**) during the Protection Period. Under the proposed Retention Agreements, consummation of the Offer and the subsequent continuation of employment of the Named Executive Officers without any material reduction in the terms and conditions of their employment would not, in and of itself, constitute grounds for a Qualifying Termination pursuant to the terms of the Retention Agreements. In other words, the consummation of the Offer would be deemed to satisfy only the first trigger under the double-trigger Employment Agreements.

Award of Restricted Stock Units Related to the Offer. As consideration for executing the currently anticipated form of the Retention Agreements and subject to compensation committee approval, the Named Executive Officers would also receive, contingent on the consummation of the Offer, the following awards of time-based RSUs: Mr. Werner, 300,000 RSUs; Mr. Arriola, 100,000 RSUs; Mr. Wenger, 120,000 RSUs; Mr. Pape, 120,000 RSUs and Mr. Neese, 120,000 RSUs (the **Retention RSU Awards**). The Retention RSU Awards would vest in equal one-third increments on each of the first three anniversaries of the consummation of the Offer, subject to the Named Executive Officer remaining employed by SunPower on each applicable vesting date. If the Retention RSU Awards would constitute a parachute payment within the meaning of Section 280G of the Internal Revenue Code and be subject to excise tax, then the Retention RSU Awards would be either delivered in full or delivered as to such lesser extent that would result in no portion of such award being subject to such taxes, whichever results in each Named Executive Officer receiving, on an after-tax basis, the greatest amount of the award.

Table of Contents

Aggregate Amounts of Potential Compensation. To provide you with meaningful information about the potential double-trigger payments and benefits the Named Executive Officers could receive if they experience a Qualifying Termination during the Protection Period related to consummation of the Offer, plus the Retention RSU Awards, assuming they are granted in the amounts currently anticipated, the table below summarizes the total potential payments and benefits that the Named Executive Officers would be entitled to receive if each of the Named Executive Officers experienced a Qualifying Termination during the Protection Period such that they also receive two-thirds of the total potential value of the anticipated Retention RSU Awards. Note, however, that due to the anticipated vesting schedule of the Retention RSU Awards, if the Named Executive Officers experience a Qualifying Termination during the Protection Period, they would not vest in the full amount (or possibly any portion) of the Retention RSU Awards.

Table of Contents

Golden Parachute Compensation

The following table presents the calculated value of all compensation potentially payable to the Named Executive Officers that is based upon or otherwise relates to the Offer, based on the Offer Price of $23.25 and assuming the consummation of the Offer immediately prior to termination of the Named Executive Officers employment with SunPower either without cause or for good reason as of May 31, 2011, which is the earliest date on which the Offer might close. Despite the currently anticipated vesting schedule for the expected Retention RSU Awards and the assumed trigger date for the table of May 31, 2011 for the consummation of the Offer and the Qualifying Termination (as well as assuming that the executive officer agrees to amend his Employment Agreement and the compensation committee of the SunPower Board approves the awards), as explained above, the Retention RSU Awards are included in the table at two-thirds of their anticipated full value in the interest of complete disclosure. Except for some or all of the Retention RSU Awards, none of the amounts shown in the table will be payable to any of the Named Executive Officers unless a Qualifying Termination occurs during the Protection Period.

Name	Cash($)(1)(2)	Equity($)(2)(3)	Pension/ NQDC($)(2)(4)	Perquisites/ Benefits ($)(2)(5)	Tax Reimbursement ($)(2)(6)	Other ($)(7)(2)	Total($)(2)
Thomas H. Werner, President and Chief Executive Officer	$ 4,532,941	$ 9,652,656	$ 0	$ 57,809	$ 16,870	$ 4,665,000	$ 18,925,276
Dennis V. Arriola, Executive Vice President and Chief Financial Officer	$ 1,676,829	$ 4,477,671	$ 0	$ 28,109	$ 8,143	$ 1,727,500	$ 7,918,252
Howard J. Wenger, President, Utility & Power Plants	$ 1,531,040	$ 3,943,828	$ 0	$ 0	$ 0	$ 1,875,000	$ 7,349,868
James S. Pape, President, Residential & Commercial	$ 1,525,595	$ 2,964,375	$ 0	$ 40,645	$ 11,772	$ 1,875,000	$ 6,417,387
Marty T. Neese, Chief Operating Officer	$ 1,505,689	$ 6,081,503	$ 0	$ 27,647	$ 8,008	$ 1,875,000	$ 9,497,847

(1) These amounts include the following lump-sum payments equivalent to 24 months (or 36 months in Mr. Werner s case) of each Named Executive Officer s current base salary: Mr. Werner, $1,800,000; Mr. Arriola, $880,000; Mr. Wenger, $800,000; Mr. Pape, $800,000 and Mr. Neese, $830,000. These amounts do not include any earned but unpaid annual bonus for SunPower s 2010 fiscal year, as those amounts were previously paid to the Named Executive Officers. These amounts also include the following lump-sum payments equal to the product of the Named Executive Officer s target bonus for SunPower s 2011 fiscal year multiplied by two (or three in Mr. Werner s case): Mr. Werner, $2,700,000; Mr. Arriola, $792,000; Mr. Wenger, $720,000; Mr. Pape, $720,000 and Mr. Neese, $664,000. Finally, these amounts include the following lump-sum payments equivalent to each Named Executive Officer s accrued and unpaid base salary and paid time off (assuming each officer s paid time off accrual as of May 31, 2011 equals such accrual as reflected in their April 21, 2011 paystubs): Mr. Werner, $32,941; Mr. Arriola, $4,829; Mr. Wenger, $11,040; Mr. Pape, $5,595 and Mr. Neese, $11,689.

(2) Except as otherwise described in the footnotes to this table, these amounts would be payable only if a Qualifying Termination occurred, as described in the narrative accompanying this table.

(3) These amounts represent the accelerated vesting of the following time-based restricted stock units and performance share units (which performance share units are assumed to be earned at the maximum level due

to accelerated vesting) for each Named Executive Officer: Mr. Werner, 265,168 restricted stock units and 150,000 performance share units; Mr. Arriola, 140,088 restricted stock units and 52,500 performance share units; Mr. Wenger, 117,127 restricted stock units and 52,500 performance share units; Mr. Pape, 75,000 restricted stock units and 52,500 performance share units and Mr. Neese, 108,570 restricted stock units and 153,000 performance share units. These amounts are based on a price per share of Class A Shares of $23.25, which price is the per share purchase price under the Offer. No amounts are included for the acceleration of unvested stock options because the exercise price of all such options is (and is assumed to continue to be through May 31, 2011) greater than $23.25 per share (the per share purchase price under the Offer). Pursuant to the terms of the currently anticipated form of the Retention Agreements, the Retention RSU Awards are not subject to any accelerated vesting for a Qualifying Termination during the Protection Period (unless the acceleration occurs in connection with a change of control other than consummation of the Offer), and therefore are not reflected in this column.

(4) The Named Executive Officers are not entitled to any pension or non-qualified deferred compensation benefit enhancements for a Qualified Termination in connection with a change of control.

(5) The Named Executive Officers are not entitled to any perquisites or other personal benefits or property for a Qualified Termination in connection with a change of control. These amounts represent the value of the continuation of the Named Executive Officer s coverage under SunPower s health and benefits plans for up to 24 months (up to 36 months in Mr. Werner s case) at SunPower s expense (no amount is reported for Mr. Wenger due to his waiver of coverage). These benefits have been calculated based on assumptions used by SunPower for financial reporting purposes under generally accepted accounting principles, including that the cost of COBRA coverage would represent the cost of continuing coverage for the full 24 or 36 months, as applicable.

(6) These amounts represent the aggregate make-up payments for taxes incurred by each Named Executive Officer in connection with the health and benefits plans coverage referred to in footnote (5) above.

(7) As described above, these amounts include the following values attributable to the currently anticipated form of Retention RSU Awards assuming two-thirds of the entire award will be earned by each Named Executive Officer, despite the assumption for the table of consummation of the Offer as of May 31, 2011 (the anticipated Retention RSU Awards are being included in the table in the interest of full disclosure, but are subject to grant and acceptance by our executives): Mr. Werner, $4,650,000; Mr. Arriola, $1,550,000; Mr. Wenger, $1,860,000; Mr. Pape, $1,860,000 and Mr. Neese, $1,860,000. If there is no Qualifying Termination during the Protection Period, the following values (but no double-trigger severance amounts) will be earned by each Named Executive Officer for the anticipated Retention RSU Awards at the end of the total vesting period: Mr. Werner, $6,975,000; Mr. Arriola, $2,325,000; Mr. Wenger, $2,790,000; Mr. Pape, $2,790,000 and Mr. Neese, $2,790,000. Due to the anticipated vesting schedule of the Retention RSU Awards, if the Named Executive Officers experience a Qualifying Termination during the Protection Period, they would not vest in the full amount (or possibly any portion) of the Retention RSU Awards. These amounts also include SunPower s reimbursement of up to $15,000 for each Named Executive Officer for outplacement services under the Employment Agreements, and for Mr. Arriola reflects $162,500 as the vesting of the remainder of his unvested compensation for loss on the sale of his home in connection with his recent relocation, as described further below.

Change of Control Arrangements Under the Employment Agreements. The current Employment Agreements generally provide for a three-year term that will automatically renew unless SunPower provides notice of its intent not to renew at least 120 days prior to the renewal date. Under the Retention Agreements, SunPower will not provide the Named Executive Officers with a notice of non-renewal in connection with the end of the Employment Agreements initial term. The Employment Agreements will continue in effect, as amended by the Retention Agreements, after consummation of the Offer. The Employment Agreements provide for change of control severance payments and benefits for Named Executive Officer employment terminations without cause or for good reason in connection with a change of control of SunPower. For purposes of the Employment Agreements, a change of control is generally defined as:

a sale of all or substantially all of SunPower s assets;

any merger, consolidation, or other business combination of SunPower with or into another corporation, entity, or person (other than a transaction in which the holders of at least a majority of the shares of voting capital stock of SunPower outstanding immediately prior to such transaction continue to hold either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity a majority of the total voting power represented by the shares of voting capital stock of SunPower (or the respective surviving entity) outstanding immediately after such transaction);

the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of SunPower capital stock;

one or more contested elections of directors during a period of 36 consecutive months, as a result of which or in connection with which the persons who were directors before the first of such elections or their nominees cease to constitute a majority of the board of directors; or

a dissolution or liquidation of SunPower.

Consummation of the Offer would constitute a change of control under this definition.

Under the Employment Agreements, cause generally means the occurrence of any of the following, as determined by SunPower in good faith (in each case, subject if possible to a 30-day cure period):

acts or omissions constituting gross negligence or willful misconduct on the part of the Named Executive Officer with respect to his obligations or otherwise relating to SunPower s business;

the Named Executive Officer s conviction of, or plea of guilty or nolo contendere to, crimes involving fraud, misappropriation or embezzlement, or a felony crime of moral turpitude;

the Named Executive Officer s violation or breach of any fiduciary duty (whether or not involving personal profit) to SunPower, except to the extent that his violation or breach was reasonably based on the advice of SunPower s outside counsel, or willful violation of any of SunPower s published policies governing the conduct of its executives or other employees; or

the Named Executive Officer s violation or breach of any contractual duty to SunPower, which duty is material to the performance of his duties or results in material damage to SunPower or its business.

Good reason under the Employment Agreements means for a given Named Executive Officer the occurrence of any of the following without the Named Executive Officer s express prior written consent:

a material reduction in the Named Executive Officer s position or duties (other than based solely on completion of the Offer);

a material breach of the Named Executive Officer s Employment Agreement;

a material reduction in the Named Executive Officer s aggregate target compensation, including the Named Executive Officer s base salary and target bonus on a combined basis, excluding a reduction that is applied to substantially all of SunPower s other senior

executives (however, that for purposes of this clause, whether a reduction in target bonus has occurred shall be determined without any regard to any actual bonus payments made to the Named Executive Officer); or

a relocation of the Named Executive Officer s primary place of business for the performance of his duties for SunPower to a location that is more than 45 miles from SunPower s then-current business location.

A Named Executive Officer shall be considered to have good reason under the Employment Agreement, as amended, only if, no later than 90 days following an event otherwise constituting good reason under the

Table of Contents

Employment Agreement, he gives notice to SunPower of the occurrence of such event and SunPower fails to cure the event within 30 days following its receipt of such notice from him, and he terminates employment within 24 months following the change of control. Consummation of the Offer and the subsequent continuation of employment of the Named Executive Officers without any material reduction in the terms and conditions of their employment would not, in and of itself, constitute grounds for a Qualifying Termination pursuant to the terms of the Employment Agreements.

In the event a Named Executive Officer s employment is terminated by SunPower without cause or by him for good reason during the Protection Period, then the Employment Agreements provide that the Named Executive Officer is entitled to the following benefits:

- a lump-sum payment equivalent to 24 months (or 36 months in Mr. Werner s case) of his base salary;
- a lump-sum payment equal to any earned but unpaid annual bonus for a completed fiscal year;
- a lump-sum payment equal to the product of (1) his target bonus for the then current fiscal year, multiplied by (2) two (or three in Mr. Werner s case);
- continuation of his and his eligible dependents coverage under SunPower s benefit plans for up to 24 months (or 36 months in Mr. Werner s case), at SunPower s expense;
- a lump-sum payment equal to his accrued and unpaid base salary and paid time off;
- reimbursement of up to $15,000 for services of an outplacement firm mutually acceptable to him and SunPower; and
- annual make-up payments for taxes incurred by him in connection with benefit plans coverage.

Base salaries and target bonuses for purposes of the lump-sum calculations described above would be based on the highest sum of such amounts during the year preceding the termination date. Interest on amounts subject to delayed payment in compliance with Section 409A of the Internal Revenue Code would be paid at the short-term applicable federal rate for the month of termination, with annual compounding. In addition, if SunPower terminates a Named Executive Officer s employment without cause or he terminates his employment with SunPower for good reason during the Protection Period, then the Employment Agreements also provide for the following benefits:

- all of his unvested options, shares of restricted stock and restricted stock units (including performance-based restricted stock units, but specifically excluding the Retention RSU Awards) would become fully vested and (as applicable) exercisable as of the termination date and remain exercisable for the time period otherwise applicable to such equity awards following such termination date; and
- all provisions regarding forfeiture, restrictions on transfer, and SunPower s rights of repurchase, in each case otherwise applicable to shares of restricted stock or restricted stock units (excluding the Retention RSU Awards), shall lapse as of the termination date.

Additionally, Mr. Arriola s Employment Agreement provides that up to $650,000 of compensation for loss on the sale of his home in connection with his recent relocation is subject to pro rata repayment to SunPower under certain conditions, but becomes fully vested and earned if his employment is terminated without cause or if he terminates his employment for good reason.

If any of the severance payments, accelerated vesting and lapsing of restrictions would constitute a parachute payment within the meaning of Section 280G of the Internal Revenue Code and be subject to excise tax or any interest or penalties payable with respect to such excise tax, then the Named Executive Officer s benefits would be either delivered in full or delivered as to such lesser extent that would result in no portion of such benefits being subject to such taxes, interest or penalties, whichever results in him receiving, on an after-tax basis, the greatest amount of benefits.

Prior to receiving the benefits described in the Employment Agreements, the Named Executive Officer would be required to sign a separation agreement and release of claims. In addition, the benefits would be conditioned upon the Named Executive Officer not soliciting SunPower employees or customers for one year following the termination date. Each Named Executive Officer is also subject to an ongoing nondisparagement provision. If the non-solicitation covenant is breached, all continuing payments and benefits would cease immediately, and SunPower may pursue all available remedies.

(h) Forward-Looking Statements.

Any statements contained in this document that are not historical facts, and the assumptions underlying such statements, are forward-looking statements. Words such as anticipate, believe, estimate, expect, forecast, intend, may, plan, project, predict, should and w expressions as they relate to SunPower are intended to identify such forward-looking statements. All forward-looking statements are subject to various risks and uncertainties that could cause actual results to differ materially from expectations. Forward-looking statements in this press release include the quotes from executives of both companies, and statements concerning the parties ability to close the transaction, the expected closing date of the transaction, and the expected benefits from the credit support arrangements and research and development collaboration. Actual events or results may differ materially from those described in this release due to a number of risks and uncertainties. These potential risks and uncertainties include, among others, uncertainties as to the timing of the tender offer; the satisfaction of closing conditions, including the receipt of regulatory approvals; the failure to retain key SunPower employees, contracts or governmental benefits; customer and partner uncertainty regarding the anticipated benefits of the transaction; whether certain industry segments will grow as anticipated; actual or proposed regulatory changes, including in Italy; the competitive environment among providers of renewable energy; and other risks detailed in SunPower filings with the SEC, including those discussed in SunPower s annual report on Form 10-K for the year ended January 2, 2011 which is on file with the SEC and available at the SEC s website at www.sec.gov. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of their dates. SunPower is not obligated, and does not intend, to update these forward-looking statements to reflect events or circumstances after the date of this document, except as required by law.

ITEM 9. EXHIBITS

Exhibit No.	Description
(a)(1)	Offer to Purchase dated May 3, 2011 (incorporated herein by reference to Exhibit (a)(1)(A) of the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(2)	Letter of Transmittal (including Substitute Form W-9) (incorporated herein by reference to Exhibit (a)(1)(B) of the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(3)	Notice of Guaranteed Delivery (incorporated herein by reference to Exhibit (a)(1)(C) of the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(4)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(D) of the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(5)	Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(E) of the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(6)	Press Release, issued on April 28, 2011 (incorporated herein by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by SunPower on April 28, 2011).

Table of Contents

Exhibit No.	Description
(a)(7)	Form of Summary Advertisement as published on May 3, 2011 in the Wall Street Journal (incorporated herein by reference to Exhibit (a)(1)(G) to the Schedule TO filed by Purchaser and Total on May 3, 2011).
(a)(8)	Letter, dated May 3, 2011, to SunPower s stockholders.**
(a)(9)	Opinion of Deutsche Bank Securities Inc., dated April 28, 2011, attached as Annex B.
(e)(1)	Tender Offer Agreement, dated as of April 28, 2011, by and between Purchaser and SunPower (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(2)	Credit Support Agreement, dated as of April 28, 2011, by and between Total and SunPower (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(3)	Affiliation Agreement, dated as of April 28, 2011, by and between Purchaser and SunPower (incorporated herein by reference to Exhibit 10.3 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(4)	Registration Rights Agreement, dated as of April 28, 2011, by and between Purchaser and SunPower (incorporated herein by reference to Exhibit 10.6 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(5)	Research & Collaboration Agreement, dated as of April 28, 2011, by and between Purchaser and SunPower (incorporated herein by reference to Exhibit 10.5 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(6)	Guaranty, dated as of April 28, 2011, by and between Total and SunPower (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(7)	Guaranty, dated as of April 28, 2011, by and between Total and SunPower (incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K filed by SunPower on May 2, 2011).
(e)(8)	Confidentiality Agreement, as amended and restated, dated as of November 4, 2010 by and between Total Gas & Power Ventures SAS and SunPower.**
(e)(9)	Rights Agreement, dated as of August 12, 2008, by and between SunPower and Computershare Trust Company, N.A., as rights agent, including the form of Certificate of Designation of Series A Junior Participating Preferred Stock, the form of Certificate of Designation of Series B Junior Participating Preferred Stock and the forms of Right Certificates, Assignment and Election to Purchase and the Summary of Rights attached thereto as Exhibits A, B, C and D, respectively (incorporated by reference to Exhibit 4.1 to SunPower s current report on Form 8-K filed by SunPower on August 12, 2008).
(e)(10)	Amendment to Rights Agreement, dated as of April 28, 2011, by and between SunPower and Computershare Trust Company, N.A., as rights agent (incorporated herein by reference to Exhibit 4.1 of SunPower s current report on Form 8-K filed by the Company on May 2, 2011).
(g)	Not applicable.
Annex A	Information Statement.*
Annex B	Opinion of Deutsche Bank Securities Inc., dated April 28, 2011.*

* Included with the statement mailed to the stockholders of SunPower.
** Filed herewith.

62

Table of Contents

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

SUNPOWER CORPORATION

By:	/s/ DENNIS V. ARRIOLA
Name:	Dennis V. Arriola
Title:	Executive Vice President and Chief Financial Officer

May 3, 2011

Table of Contents

ANNEX A

SUNPOWER CORPORATION

INFORMATION STATEMENT PURSUANT

TO SECTION 14(f) OF THE

SECURITIES EXCHANGE ACT OF 1934 AND RULE 14f-1 THEREUNDER

NO VOTE OR OTHER ACTION OF SECURITY HOLDERS IS REQUIRED

IN CONNECTION WITH THIS INFORMATION STATEMENT.

This Information Statement is being mailed on or about May 3, 2011 as part of the Solicitation / Recommendation Statement on Schedule 14D-9 (the **Schedule 14D-9**) to holders of Class A Common Stock, $0.001 par value per share (the **Class A Shares**), and Class B Common Stock, $0.001 par value per share (the **Class B Shares** and together with the Class A Shares, the **Shares**). In this document, the words SunPower, we, our, ours, and us refer only to SunPower Corporation and not to any other person or entity.

The Information Statement is being furnished in connection with the Tender Offer Agreement, dated as of April 28, 2011 (the **Tender Offer Agreement**), by and between Total Gas & Power USA, SAS, a *société par actions simplifiée* organized under the laws of the Republic of France (**Purchaser**) and SunPower Corporation (**SunPower**), setting forth the terms and conditions pursuant to which Purchaser will commence a tender offer (the **Offer**) to purchase up to 34,144,400 of the outstanding Class A Shares and up to 25,220,000 of the outstanding Class B Shares at a price of $23.25 per Share, net to the holder thereof in cash, without interest and less applicable withholding taxes.

Purchaser commenced the Offer on May 3, 2011. The Offer is scheduled to expire at 12:00 midnight, New York City time, on Tuesday, May 31, 2011, unless the Offer is extended pursuant to the terms of the Tender Offer Agreement.

This Information Statement is being mailed to you in accordance with Section 14(f) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**), and Rule 14f-1 promulgated thereunder. The information set forth herein supplements certain information set forth in the Schedule 14D-9.

You are urged to read this Information Statement carefully. SunPower is not, however, soliciting your proxy, and you are not required to take any action with respect to the subject matter of this Information Statement. The information contained in this Information Statement or incorporated by reference herein concerning Purchaser and its respective officers, directors, representatives or affiliates or actions or events with respect to any of them, was provided by Purchaser and SunPower takes no responsibility for such information. Capitalized terms used and not otherwise defined herein have the meanings set forth in the Schedule 14D-9.

DIRECTORS DESIGNATED BY TOTAL

Purchaser has informed SunPower that the employees of Purchaser and/or its affiliates listed below will be its initial designees to the SunPower board of directors (the **SunPower Board**) pursuant to the Affiliation Agreement (the **Total Directors**). Purchaser has informed SunPower that each of the employees listed below has consented to act as a director of SunPower if so designated. The business address of Purchaser is 2 place Jean Millier, La Défense 6, 92400 Courbevoie, France, and the telephone number of Purchaser is 011-331-4744-4546. Those persons nominated to serve as directors of SunPower by Purchaser will serve in accordance with the terms of the Affiliation Agreement, dated as of April 28, 2011, by and between SunPower and Purchaser (the **Affiliation Agreement**), the General Corporation Law of the State of Delaware, and SunPower s certificate of incorporation and bylaws.

Table of Contents

Arnaud Chaperon (age 55). Mr. Chaperon currently serves as the Senior Vice President of New Energies for the Gas & Power division of Total S.A. Before taking this position in 2007, Mr. Chaperon was the Managing Director for five years of Total E&P Qatar and country representative of the Total group, which has oil, gas, and petrochemical assets and operations in the State of Qatar. Previous to that, he held other positions within the Total group, where he has been employed since 1980. Mr. Chaperon holds a master s degree in engineering from École Nationale Supérieure de Techniques Avancées.

Bernard Clement (age 52). Mr. Clement has served as the Senior Vice President of Gas Assets, Technology, and Research & Development for the Gas & Power division of Total S.A. since January 1, 2010. From 2003 through 2009, Mr. Clement served as Vice President of the Exploration & Production division of Total S.A. relative to its interests in the Middle East. Previous to that, he held other positions within the Total group, where he has been employed since 1983. Mr. Clement has engineering degrees from Ecole Nationale Supérieure du Pétrole et des Moteurs, where he focused on geophysics, and from École Polytechnique.

Denis Giorno (age 60). Mr. Giorno has served as the Vice President of New Ventures for the Gas & Power division of Total S.A. since October 2007. From 2005 to 2007, Mr. Giorno was Vice President, Business Development, of the Gas & Power division relative to Total s interests in Asia, South America, and Africa. Previous to that, he held other positions within the Total group, where he has been employed since 1975. Mr. Giorno received a degree in civil engineering from École Nationale des Ponts et Chaussées, a Master of Science degree in managerial science and engineering at Stanford University and a degree in Petroleum Engineering from École Nationale du Pétrole et des Moteurs. Mr. Giorno also completed the Stanford Graduate School of Business Executive Education program.

Jean Marc Otero del Val (age 44). Mr. Otero del Val has served as General Manager of the Grandpuits Refinery for Total France S.A. since 2007. From 2003 to 2007, Mr. Otero del Val served as the Managing Director for Total Coal South Africa (Pty) Ltd., a subsidiary of Total S.A. that focuses on the mining of export quality coal in South Africa. Previous to that, he held other positions within the Total group, where he has been employed since 1998. Mr. Otero del Val received a degree in chemical engineering from École Polytechnique, a Bachelor of Arts in finance from Strasbourg University, and a Master of Arts in finance from Paris-Dauphine University.

Reinhard Schneider (age 58). Mr. Schneider has worked over 25 years for Atotech, one of the world s leading suppliers of integrated product systems and services for electroplating, semiconductor, and printed circuit board manufacturing, and a subsidiary of Total S.A. In 2005, Mr. Schneider became Atotech s Chief Executive Officer, and currently continues to serve in this position. Mr. Schneider received a degree in mechanical engineering from Würzburg/Schweinfurt.

Humbert de Wendel (age 55). Mr. de Wendel has served as the Senior Vice President of Corporate Business Development for Total since 2006. From 2000 to 2006, Mr. de Wendel served as a Vice President for Total overseeing finance of its exploration and production subsidiaries. Previous to that, he held other positions within the Total group, where he has been employed since 1982. Mr. de Wendel currently is a member of the board of directors of Spain s second largest gas, oil, and petrochemicals company, Compañía Española de Petróleos, S.A. Mr. de Wendel holds a degree in law and economics from the Institut d études Politiques de Paris, and a degree in business administration from École Supérieure des Sciences Économiques et Commerciales.

Purchaser has advised SunPower that, to its knowledge after reasonable inquiry, none of the Total Directors has been convicted in a criminal proceeding (excluding traffic violations or misdemeanors) or has been a party to any judicial or administrative proceeding during the past ten years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws.

Table of Contents

Purchaser has advised SunPower that, to the best of its knowledge, none of its designees to the board of directors (i) is currently a director of, or holds any position with, SunPower or any of its subsidiaries or (ii) beneficially owns any securities (or rights to acquire any securities) of SunPower. Purchaser has advised SunPower that, to the best of its knowledge, none of its designees or any of his affiliates (a) has a familial relationship with any directors or executive officers of SunPower or any of its subsidiaries or (b) has been involved in any transactions with SunPower or any of its directors, officers or affiliates that are required to be disclosed pursuant to the rules and regulations of the Securities and Exchange Commission (the **SEC**), except as may be disclosed herein.

For more information on the Total Directors, please see the description of *The Affiliation Agreement* in the Schedule 14D-9 Item 3(a).

CURRENT BOARD OF DIRECTORS OF SUNPOWER CORPORATION

The SunPower Board is currently comprised of six members and divided into three classes, in accordance with Article IV, Section B of SunPower s certificate of incorporation. The SunPower Board is currently comprised of the following directors:

Name	Age	Class	Director Since
W. Steve Albrecht	64	II	2005
Betsy S. Atkins	57	II	2005
Uwe-Ernst Bufe	66	I	2008
Thomas R. McDaniel	62	III	2009
Thomas H. Werner	51	III	2003
Pat Wood III	48	I	2005

The Class I group of directors will hold office until the annual meeting of stockholders in 2012 or until their successors are elected. The Class II group of directors will hold office until the annual meeting of stockholders in 2013 or until their successors are elected. The Class III group of directors will hold office until the annual meeting of stockholders in 2014 or until their successors are elected.

Pursuant to the Affiliation Agreement, immediately upon the consummation of the Offer, the SunPower Board will be expanded to eleven persons, one of the current SunPower directors will resign, and the Total Directors will become members of the board of directors. It is anticipated that Mr. Bufe will resign from the SunPower Board immediately upon consummation of the Offer. Please see the description of the Affiliation Agreement and additional information regarding the composition of the SunPower Board in *The Affiliation Agreement* in the Schedule 14D-9 Item 3(a).

Mr. W. Steve Albrecht has served as Andersen Alumni Professor of Accounting at the Marriott School of Management at Brigham Young University, or BYU, since 1977, and as Associate Dean from 1997 through 2008. Mr. Albrecht, a certified public accountant, certified internal auditor, and certified fraud examiner, joined BYU in 1977 after teaching at Stanford University and the University of Illinois. Prior to becoming a professor, he worked as an accountant for Deloitte & Touche. Mr. Albrecht is the past president of the American Accounting Association and the Association of Certified Fraud Examiners. Mr. Albrecht currently serves on the board of directors of Cypress Semiconductor Corporation (**Cypress**) and Red Hat, Inc. (on whose board of directors he previously served from 2003 to 2009). He served as a trustee of the Financial Accounting Foundation that oversees the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) until June 2009. He served on the board of directors of SkyWest, Inc. from 2003 to 2009. He was a prior member of the Committee of Sponsoring Organizations (COSO) and has done extensive expert witnessing in major financial cases and consulting for major organizations.

Mr. Albrecht brings significant financial management and financial disclosure experience, as well as significant knowledge of SunPower s recent history and experiences to the SunPower Board. Mr. Albrecht s

experience is quite different from that of the SunPower Board s other directors in that he does not have lengthy work experience in the industry served by SunPower. Mr. Albrecht instead brings to the SunPower Board his extensive knowledge in the areas of accounting, strategy, financial reporting, and controls and experience as a leader of a large, well-respected academic institution. This background and experience qualifies him as a financial expert, which is relevant to his duties as an audit committee member. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Mr. Albrecht should serve as a director of SunPower and Chairman of the Audit Committee.

Ms. Betsy S. Atkins has served as Chief Executive Officer of Baja Ventures, a technology, life sciences and renewable energy early stage venture capital fund, since 1994. She served as the Chairman and Chief Executive Officer of Clear Standards, Inc., which developed enterprise level emission measurement software, from 2008 to 2009 until its sale to SAP. She previously served as Chairperson and Chief Executive Officer of NCI, Inc., a neutraceutical functional food company, from 1991 through 1993. Ms. Atkins co-founded Ascend Communications, a manufacturer of communications equipment, in 1989, where she was also a member of the board of directors until its acquisition by Lucent Technologies, a telecommunications systems, software and products company, in 1999. Ms. Atkins currently serves on the board of directors of Polycom, Inc. and Chico s FAS, Inc. She is a member of the Council on Foreign Relations. Ms. Atkins served on the boards of directors of Vonage Holdings Corp. from 2005 to 2007; Reynolds American, Inc. from 2004 to 2010; and Towers Watson & Co. in 2010. She served as a presidential appointee to the Pension Benefit Guaranty Corp. board of directors from 2001 to 2003. Ms. Atkins is also a member of Florida International University s College of Medicine Health Care Network Faculty Group Practice, Inc.

Ms. Atkins brings significant sales, marketing and corporate governance experience to the SunPower Board. Ms. Atkins experience, through nearly 25 years of executive officer service with companies in a high growth phase, gives her a unique perspective on SunPower s business. Ms. Atkins also brings to the SunPower Board extensive knowledge in the areas of executive compensation and corporate governance. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Ms. Atkins should serve as a director of SunPower, Chairperson of the Compensation Committee and lead independent director.

Dr. Uwe-Ernst Bufe was Chief Executive Officer of Degussa and Degussa-Hüls AG, a specialty chemicals company which is now the Chemicals Business Area of Evonik Industries, until May 2000. Before joining the executive board of Degussa AG in 1987, he was executive vice president of its U.S. subsidiary. After the company s merger with Hüls in 1998, he assumed the role of and Chief Executive Officer of Degussa-Hüls AG. Dr. Bufe joined UBS in 2001 and served as Vice Chairman of the UBS Investment Banking and Deputy Chairman of UBS Deutschland until March 2009. He is also a member of the Supervisory Board of Akzo Nobel N.V. (The Netherlands) and an independent, non-executive director of Umicore S.A. (Belgium) and was a member of the Supervisory Board of Directors of Kali + Salz AG (Germany) until August 2009 and Solvay S.A. (Belgium) until May 2009.

Dr. Bufe brings significant manufacturing and sales experience to the SunPower Board. Dr. Bufe brings extensive knowledge of practices in the European business community, which brings a unique perspective to the SunPower Board as it considers matters affecting SunPower s international operations. He also has prior manufacturing and factory experience, which brings a unique perspective to SunPower s manufacturing component. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Dr. Bufe should serve as a director of the Company.

Mr. Thomas R. McDaniel was Executive Vice President, Chief Financial Officer and Treasurer of Edison International, a generator and distributor of electric power and investor in infrastructure and energy assets, before retiring in July 2008 after 37 years of service. Prior to January 2005, Mr. McDaniel was Chairman, Chief Executive Officer and President of Edison Mission Energy, a power generation business specializing in the development, acquisition, construction, management and operation of power production facilities. Mr. McDaniel

was also Chief Executive Officer and a director of Edison Capital, a provider of capital and financial services supporting the growth of energy and infrastructure projects, products and services, both domestically and internationally. Mr. McDaniel is a director of SemGroup, L.P., a midstream energy service company. He is also a director of Cypress Envirosystems, a subsidiary of Cypress, which develops and markets energy efficiency products. Mr. McDaniel also serves on the Advisory Board of Coda Automotive, which is a manufacturer and distributor of all-electric cars and transportation battery systems, and On Ramp Wireless, a communications company serving electrical, gas and water utilities. Mr. McDaniel currently serves on the board of directors of the Senior Care Action Network (SCAN) and SCAN Foundation. Through the McDaniel Family Foundation, he is also actively involved in a variety of charitable activities such as the Boys and Girls Club of Huntington Beach, the Adult Day Care Center and the Free Wheelchair Mission.

Mr. McDaniel brings significant operational and development experience to the SunPower Board. Mr. McDaniel s extensive experience growing and operating global electric power businesses is directly aligned with SunPower s efforts to expand the utility and power plant segment of the business. In addition, Mr. McDaniel s prior experience as a Chief Financial Officer qualifies him as a financial expert, which is relevant to his duties as an Audit Committee member. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Mr. McDaniel should serve as a director of SunPower.

Mr. Thomas H. Werner has served as SunPower s President and Chief Executive Officer since May 2010, as a member of the SunPower Board since June 2003, and the Chairman of the board of directors since May 3, 2011. From June 2003 to April 2010, Mr. Werner served as SunPower s Chief Executive Officer. Prior to joining SunPower, from 2001 to 2003, he held the position of Chief Executive Officer of Silicon Light Machines, Inc., an optical solutions subsidiary of Cypress. From 1998 to 2001, Mr. Werner was Vice President and General Manager of the Business Connectivity Group of 3Com Corp., a network solutions company. He has also held a number of executive management positions at Oak Industries, Inc. and General Electric Co., and currently serves as a board member of Cree, Inc., Silver Spring Networks, and the Silicon Valley Leadership Group (as Chairman). Mr. Werner holds a bachelors degree in industrial engineering from the University of Wisconsin Madison, a bachelor s degree in electrical engineering from Marquette University and a master s degree in business administration from George Washington University.

Mr. Werner brings significant leadership and operational management experience to the SunPower Board. Mr. Werner provides the SunPower Board with valuable insight into management s perspective with respect to SunPower s operations. Mr. Werner brings significant technical, operational and financial management experience to the SunPower Board. Mr. Werner has demonstrated strong executive leadership skills through nearly 20 years of executive officer service with various companies and brings the most comprehensive view of SunPower s operational history over the past few years. Mr. Werner also brings to the SunPower Board leadership experience through his service on the board of directors for two other organizations, which gives him the ability to compare the way in which management and the boards operate within the companies he serves. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Mr. Werner should serve as a director of SunPower.

Mr. Pat Wood III has served as a Principal of Wood3 Resources, an energy infrastructure developer, since July 2005. He is active in the development of electric power and natural gas infrastructure assets in the United States. From 2001 to 2005 Mr. Wood served as the Chairman of the Federal Energy Regulatory Commission. From 1995 to 2001, he chaired the Public Utility Commission of Texas. Mr. Wood has also been an attorney with Baker & Botts, a global law firm, and an associate project engineer with Arco Indonesia, an oil and gas company, in Jakarta. He currently serves as a director of Quanta Services, Inc. and has served on a number of private company boards: Texas Genco, Airtricity, TPI Composite, Xtreme Power, First Wind and Range Fuels. He is a strategic advisor to Natural Gas Partners, an energy private equity fund. Mr. Wood is a director of the American Council on Renewable Energy and a member of the National Petroleum Council.

Table of Contents

Mr. Wood brings significant strategic and operational management experience to the SunPower Board. Mr. Wood has demonstrated strong leadership skills through nearly ten years of regulatory leadership in the energy sector. Mr. Wood brings a unique perspective and extensive knowledge of energy project development, public policy development, governance and the regulatory process. His legal background also provides the SunPower Board with a perspective on the legal implications of matters affecting SunPower s business. Based on the SunPower Board s identification of these qualifications, skills and experiences, the SunPower Board has concluded that Mr. Wood should serve as a director of SunPower and Chairman of the Nominating and Corporate Governance Committee.

Table of Contents

DIRECTOR COMPENSATION

The following table summarizes compensation paid to non-employee members of the SunPower Board related to their 2010 service:

Name	Fees Earned or Paid in Cash ($)(1)	Stock Awards ($)(2)(3)	Total ($)
W. Steve Albrecht	120,019	204,471	324,490
Betsy S. Atkins	71,269	204,471	275,740
Uwe-Ernst Bufe	55,018	184,472	239,490
Thomas R. McDaniel	85,029	219,971	305,000
T.J. Rodgers(4)	17	278,963	278,980
Pat Wood III	90,019	204,471	294,490

(1) The amounts reported in this column represent the aggregate cash retainers and payments for fractional shares received by the non-employee directors for 2010, but do not include amounts reimbursed to the non-employee directors for expenses incurred in attending board of directors and committee meetings. The amount set forth in this column for Mr. Rodgers reflects payments in respect of fractional shares. He received no cash retainers or other payments in respect of his service as a director.

(2) The amounts reported in this column represent the aggregate grant date fair value computed in accordance with Financial Accounting Standards Board (or FASB) ASC Topic 718 for restricted stock units granted to the non-employee directors in 2010, as further described below. Each non-employee director received the following grants of restricted stock units on the following dates with the following grant date fair values (please note that some amounts reported may not add up exactly due to rounding on an award-by-award basis):

Non-Employee Director	Grant Date	Restricted Stock Units (#)	Grant Date Fair Value ($)
W. Albrecht	05/03/2010	2,348	39,775
	05/11/2010	2,924	44,708
	08/11/2010	4,842	59,992
	11/11/2010	4,252	59,996
B. Atkins	05/03/2010	2,348	39,775
	05/11/2010	2,924	44,708
	08/11/2010	4,842	59,992
	11/11/2010	4,252	59,996
U. Bufe	05/03/2010	2,053	34,778
	05/11/2010	2,597	39,708
	08/11/2010	4,439	54,999
	11/11/2010	3,897	54,987
T. McDaniel	05/03/2010	3,246	54,987
	05/11/2010	3,597	54,998

	08/11/2010	4,439	54,999
	11/11/2010	3,897	54,987
T. J. Rodgers	05/03/2010	2,778	47,059
	05/11/2010	3,722	56,909
	08/11/2010	7,062	87,498
	11/11/2010	6,201	87,496
P. Wood, III	05/03/2010	2,348	39,775
	05/11/2010	2,924	44,708
	08/11/2010	4,842	59,992
	11/11/2010	4,252	59,996

Table of Contents

(3) As of January 2, 2011, the following non-employee directors held the following restricted stock units: Mr. Albrecht, 0; Ms. Atkins, 0; Dr. Bufe, 3,960; Mr. McDaniel, 5,280; Mr. Rodgers, 0; and Mr. Wood, 0. As of January 2, 2011, the following non-employee directors also held options for the following number of shares: Mr. Albrecht, 33,000; Ms. Atkins, 14,198; Dr. Bufe, 0; Mr. McDaniel, 0; Mr. Rodgers, 0; and Mr. Wood, 48,000. Under SunPower s current equity plan, all stock awards received by each of SunPower s non-employee directors become vested if a change of control (as defined in the equity plan) occurs with respect to SunPower during the director s service with SunPower. Consummation of the Offer is expected to constitute a change of control for purposes of SunPower s equity plan.

(4) Mr. Rodgers retired from the board of directors effective May 3, 2011.

SunPower pays each of its non-employee directors as follows:

- an annual fee of $275,000 ($68,750 quarterly) for service on the SunPower Board (other than as Chairman of the SunPower Board);
- an additional annual fee of $25,000 ($6,250 quarterly) for service as the chair of a committee of the SunPower Board (other than the Chairman of the SunPower Board);
- an annual fee of $350,000 ($87,500 quarterly) to the Chairman of the SunPower Board, if he or she qualifies as an outside director, for service on the SunPower Board and on committees of the SunPower Board; and
- an additional annual fee of $15,000 ($3,750 quarterly) for the lead independent director.

These annual fees are prorated on a quarterly basis for any director that joins the SunPower Board during the year. All of the $15,000 additional fee payable to the lead independent director is paid in cash. All of the fees paid to the Chairman of the SunPower Board are paid in the form of restricted stock units. The other fees are paid on a quarterly basis 20% in cash on or about the date of the SunPower Board meeting in the second month of each quarter and 80% in the form of fully-vested restricted stock units on the 11th day in the second month of each quarter (or on the next trading day if such day is not a trading day). The restricted stock units are settled in shares of SunPower common stock within seven days of the date of grant.

In April 2010, the SunPower Board reviewed and considered providing additional compensation for each of the Audit Committee members in recognition of the substantial time and effort dedicated by the members in conducting the independent investigation into certain accounting and finance reporting matters at SunPower s Philippines operations. As a result of this review and consideration, the SunPower Board approved one-time special cash fees of $60,000 for Mr. Albrecht, $30,000 for Mr. Wood, and $30,000 for Mr. McDaniel. Each of Messrs. Albrecht, Wood and McDaniel abstained from voting to approve this payment.

Ms. Atkins and Dr. Bufe each received the standard fees for their service on the board of directors during fiscal 2010, including Ms. Atkins s additional fee as the lead independent director. Mr. Rodgers did not receive any cash compensation for his services on the SunPower Board (except for a minimal payment for fractional shares). SunPower also reimbursed its non-employee directors for their travel expenses for attending SunPower Board and committee meetings.

DIRECTOR INDEPENDENCE

The board of directors has determined that five of the current six directors, namely Mr. Albrecht, Ms. Atkins, Dr. Bufe, and Messrs. McDaniel and Wood, each meet the standards for independence as defined by applicable listing standards of the NASDAQ Global Select Market and rules and regulations of the SEC. The board of directors has also determined that Mr. Werner, the President and Chief Executive Officer, is not independent as defined by applicable listing standards of the NASDAQ Global Select Market. There are no family relationships among any of SunPower s directors or executive officers.

Table of Contents

LEAD INDEPENDENT DIRECTOR, LEADERSHIP STRUCTURE AND RISK OVERSIGHT

The board of directors has determined that having a lead independent director assist the Chairman of the board of directors and Chief Executive Officer is in the best interest of stockholders at this time. In early 2010, Betsy S. Atkins was appointed to serve as the lead independent director for the SunPower Board. This structure ensures a greater role for the independent directors in the oversight of SunPower and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of the board of directors. SunPower believes that this leadership structure also is preferred by a significant number of SunPower s stockholders.

With the retirement of Mr. Rodgers from the SunPower Board at the 2011 annual meeting of stockholders, the SunPower Board, on May 3, 2011, appointed Mr. Werner, the President and Chief Executive Officer of SunPower, as the new Chairman of the SunPower Board. SunPower believes the current SunPower Board leadership structure is optimal because it demonstrates strong and experienced leadership to its stockholders, employees, customers and other stakeholders, with a single person setting the tone and having primary responsibility for managing SunPower s strategy and operations. Mr. Werner brings to SunPower a comprehensive knowledge of SunPower s business and operating history, a unique combination of technical, operational and financial management experience, and nearly 20 years of executive officer service with various companies. In his position as President and Chief Executive Officer, Mr. Werner has primary responsibility for the day-to-day operations of SunPower and provides consistent leadership on SunPower s key strategic objectives. In his role as Chairman of the SunPower Board, he sets the agenda and strategic priorities for the SunPower Board, presides over its meetings and communicates its recommendations, decisions and guidance to the other members of senior management. The SunPower Board believes that the combination of these two roles provides consistent communication and coordination throughout the organization, and an effective and efficient implementation of corporate strategy. In addition, Mr. Werner is the most knowledgeable member of the SunPower Board regarding SunPower s business, challenges and the risks SunPower faces, and in his role as Chairman, is able to most effectively facilitate the SunPower Board s oversight of those matters. The SunPower Board believes this combined leadership structure is appropriately balanced by the lead independent director and the three principal committees of the SunPower Board, each of which is chaired by an independent director.

The SunPower Board is actively involved in oversight of risks that could affect SunPower. This oversight is conducted primarily through committees of the SunPower Board, in particular the Audit Committee, as disclosed in the descriptions of each of the committees below and in the charters of each of the committees. The full SunPower Board, however, has retained responsibility for general oversight of risks. The SunPower Board satisfies this responsibility through full reports by each committee chair regarding the committee s considerations and actions, as well as through regular reports directly from officers responsible for oversight of particular risks within SunPower. The SunPower Board believes its administration of its risk oversight function has not affected the SunPower Board leadership structure.

MEETINGS AND COMMITTEES OF THE BOARD OF DIRECTORS

The SunPower Board held four regular, quarterly meetings, one annual meeting and eight special meetings during fiscal year 2010. During fiscal year 2010, each director, other than Mr. Rodgers, attended at least 75% of the aggregate number of meetings of the SunPower Board and its committees on which such director served. Mr. Rodgers attended 69% of SunPower Board meetings in fiscal year 2010. SunPower s independent directors held four executive sessions during regular, quarterly meetings without management present during fiscal year 2010.

SunPower believes that good corporate governance is important to ensure that it is managed for the long-term benefit of its stockholders. The SunPower Board has established committees to ensure that SunPower maintains strong corporate governance standards. The SunPower Board has standing Audit, Compensation, and

Table of Contents

Nominating and Corporate Governance Committees. The charters of SunPower s Audit, Compensation, and Nominating and Corporate Governance Committees are available on SunPower s website at *http://investors.sunpowercorp.com/documents.cfm*. You may also request copies of committee charters free of charge by writing to SunPower Corporation, 77 Rio Robles, San Jose, California 95134, Attention: Corporate Secretary.

Audit Committee. The Audit Committee is a separately-designated standing committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. Each of the members of the Audit Committee is independent as that term is defined in Section 10A of the Exchange Act and as defined by applicable listing standards of the NASDAQ Global Select Market. Each member of the Audit Committee is financially literate and has the requisite financial sophistication as required by the applicable listing standards of the NASDAQ Global Select Market. In addition, the SunPower Board has determined that each of Messrs. Albrecht and McDaniel meet the criteria of an audit committee financial expert within the meaning of applicable SEC regulations due to his professional experiences described in his biography above. The Audit Committee is currently and was during 2010 composed of the following directors:

- W. Steve Albrecht (Chair)
- Thomas R. McDaniel
- Pat Wood III

The purpose of the Audit Committee, pursuant to its charter, is to:

- provide oversight of SunPower s accounting and financial reporting processes and the audit of SunPower s financial statements and internal controls by SunPower s independent registered public accounting firm;
- assist the SunPower Board in the oversight of: (1) the integrity of SunPower s financial statements; (2) SunPower s compliance with legal and regulatory requirements; (3) the independent registered public accounting firm s performance, qualifications and independence; and (4) the performance of SunPower s internal audit function;
- oversee management s identification, evaluation, and mitigation of major risks to SunPower;
- prepare an audit committee report as required by the SEC to be included in the annual proxy statement; and
- provide to the SunPower Board such information and materials as it may deem necessary to make the SunPower Board aware of financial matters requiring the attention of the SunPower Board.

The Audit Committee also serves as the representative of the SunPower Board with respect to its oversight of the matters described below in the Audit Committee Report. The Audit Committee has also established procedures for (1) the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or auditing matters, and (2) the confidential, anonymous submission by SunPower employees of concerns regarding accounting or auditing matters. The Audit Committee promptly reviews such complaints and concerns. The Audit Committee held twelve meetings in 2010, including meetings to review the quarterly and annual financial statements and press releases with SunPower management and independent registered public accountants prior to release. For further information regarding the composition of the Audit Committee following the closing of the Offer, please see the description of *The Affiliation Agreement* in Item 3(a) of the 14D-9 Schedule.

Compensation Committee. Each of the members of the Compensation Committee is independent as defined by applicable listing standards of the NASDAQ Global Select Market. The Compensation Committee is currently and was during 2010 composed of the following directors:

Betsy S. Atkins (Chair)

Uwe-Ernst Bufe

Thomas R. McDaniel

Table of Contents

The Compensation Committee, pursuant to its charter, assists the SunPower Board in discharging its duties with respect to:

- the formulation, implementation, review, and modification of the compensation of directors and executive officers;
- the preparation of an annual report of the Compensation Committee for inclusion in the annual proxy statement or Annual Report on Form 10-K, in accordance with applicable rules of the SEC and applicable listing standards of the NASDAQ Global Select Market;
- reviewing and discussing the Compensation Discussion and Analysis, set forth in the annual proxy statement, with management; and
- the administration of SunPower s stock plans, including the Second Amended and Restated SunPower Corporation 2005 Stock Incentive Plan.

In certain instances, the Compensation Committee has delegated limited authority to Mr. Werner, in his capacity as a director, with respect to compensation and equity awards for employees other than SunPower s executive officers. For more information on SunPower s processes and procedures for the consideration and determination of executive compensation, please see Compensation Discussion and Analysis below. The Compensation Committee held six meetings during fiscal 2010. For further information regarding the composition of the Compensation Committee following the closing of the Offer, please see the description of *The Affiliation Agreement* in the Schedule 14D-9 Item 3(a).

Compensation Committee Interlocks and Insider Participation. No member of the Compensation Committee was at any time during fiscal 2010 one of SunPower s officers or employees, or is one of SunPower s former officers or employees. No member of the Compensation Committee had any relationship requiring disclosure under Item 404 and Item 407(e)(4) of Regulation S-K. Additionally, during fiscal 2010, none of SunPower s executive officers or directors was a member of the board of directors, or any committee of the board of directors, or of any other entity such that the relationship would be construed to constitute a compensation committee interlock within the meaning of the rules and regulations of the SEC.

Nominating and Corporation Governance Committee. Each of the members of the Nominating and Corporate Governance Committee is independent as defined by applicable listing standards of the NASDAQ Global Select Market. The Nominating and Corporate Governance Committee is currently and was during 2010 composed of the following directors:

- Betsy S. Atkins
- Uwe-Ernst Bufe
- Pat Wood III (Chair)

The Nominating and Corporate Governance Committee, pursuant to its charter, assists the SunPower Board in discharging its responsibilities with respect to:

- the identification of individuals qualified to become directors and the selection or recommendation of candidates for all directorships to be filled by the board of directors or by the stockholders; and
- the development, maintenance and recommendation of a set of corporate governance principles applicable to SunPower, and for periodically reviewing such principles.

The Nominating and Governance Committee also considers diversity in identifying nominees for directors. In particular, the Nominating and Governance Committee believes that the members of the SunPower Board should encompass a diverse range of talent, skill and expertise sufficient to provide sound and prudent guidance with respect to SunPower s operations and interests. In addition, the Nominating and Governance Committee has

Table of Contents

determined that the SunPower Board as a whole must have the right diversity, mix of characteristics and skills for the optimal functioning of the SunPower Board in its oversight of SunPower.

The Nominating and Governance Committee believes the SunPower Board should be comprised of persons with skills in areas such as:

- relevant industries, especially solar products and services;
- technology manufacturing;
- sales and marketing;
- leadership of large, complex organizations;
- finance and accounting;
- corporate governance and compliance;
- strategic planning;
- international business activities; and
- human capital and compensation.

Under SunPower s Corporate Governance Principles, during the director nominee evaluation process, the Nominating and Corporate Governance Committee and the SunPower Board will take the following into account:

- Candidates should be capable of working in a collegial manner with persons of different educational, business and cultural backgrounds and should possess skills and expertise that complement the attributes of the existing directors;
- Candidates should represent a diversity of viewpoints, backgrounds, experiences and other demographics;
- Candidates should demonstrate notable or significant achievement and possess senior-level business, management or regulatory experience that would benefit SunPower;
- Candidates shall be individuals of the highest character and integrity;

- Candidates shall be free from any conflict of interest that would interfere with their ability to properly discharge their duties as a director or would violate any applicable law or regulation;

- Candidates shall be capable of devoting the necessary time to discharge their duties, taking into account memberships on other boards and other responsibilities; and

- Candidates shall have the desire to represent the interests of all stockholders.

The Nominating and Corporate Governance Committee held five meetings during fiscal 2010. For further information regarding the composition of the Nominating and Corporate Governance Committee following the closing of the Offer, please see the description of *The Affiliation Agreement* in Item 3(a) of the Schedule 14D-9.

NOMINATIONS TO THE BOARD OF DIRECTORS

The Nominating and Corporate Governance Committee of the SunPower Board is responsible for recommending nominees for the SunPower Board.

As provided in SunPower s Corporate Governance Policies, the Nominating and Corporate Governance Committee will consider suggestions from stockholders concerning possible candidates for nomination to the SunPower Board. Such suggestions should be submitted to the Nominating and Corporate Governance Committee as described below.

All of SunPower s current directors were originally recommended to the SunPower Board by various sources, including its outside directors, major stockholders, advisors and other referral sources. All of the Total Directors were designated by Purchaser.

Director Nominations by Stockholders

The Nominating and Corporate Governance Committee will consider director candidates recommended by SunPower stockholders. Such nominations should be directed to the Nominating and Corporate Governance Committee, c/o Corporate Secretary, SunPower Corporation, 77 Rio Robles, San Jose, California 95134. In addition, the stockholder must give notice of a nomination to the Corporate Secretary, and such notice, pursuant to the Company s bylaws, must be given not earlier than the 120th day and not later than the 90th day prior to the first anniversary of the preceding year s annual meeting, provided that in the event that the next annual meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be received not later than the close of business on the tenth (10th) day following the day on which SunPower mails or publicly announces its notice of the date of the annual meeting, whichever occurs first. Any such proposal must include the following:

- the name, age, business address, residence address and record address of such nominee;
- the principal occupation or employment of such nominee;
- the class or series and number of shares of SunPower stock owned beneficially or of record by such nominee;

Certain Interests of FBLB Directors and Executive Officers in the Merger

In considering the recommendation of the FBLB board of directors with respect to the merger proposal, FBLB shareholders should be aware that certain persons, including the directors and executive officers of FBLB, have interests in the merger that are in addition to their interests as shareholders of FBLB generally. The FBLB board of directors was aware of these interests and considered them, among other matters, when making a decision to approve the merger agreement and recommend that FBLB shareholders approve the merger agreement.

SAR Awards. FBLB adopted a Stock Appreciation Rights Plan in 2015 to provide equity-linked incentives to certain executive officers and other employees of FBLB and FB&T. Of the 28 officers and employees who participate in the plan, three of them – Barry Orr, Greg Garland and Denise Thomas – are executive officers of FBLB and hold in the aggregate 22,600 SARs. Under the terms of the merger agreement, and on the same basis as all other holders of SAR awards, these individuals will receive payments based on the value of the SARs as of the closing date. See “The Merger Agreement—SAR Payments,” beginning on page 38. Assuming a market price of Heartland common stock of $52.05 per share, the closing price of a share of Heartland common stock on April 6, 2018 (the last practicable trading date before the date of this proxy statement/prospectus), Messrs. Orr and Garland and Ms. Thomas will receive payments of approximately $1.3 million, $851,000 and $291,000, respectively, for the SARs they hold. Payments made to the holders of outstanding SAR awards, including these executive officers, will reduce the amount of the aggregate cash consideration paid to the FBLB shareholders in the merger.

Indemnification and Insurance. From and following the effective time, the directors and officers of FBLB will be entitled to indemnification from Heartland to the same extent and subject to the conditions set forth in the articles of incorporation and bylaws of FBLB or as required by law. FBLB (or Heartland, if necessary) has agreed to obtain a “tail” insurance policy for a period of at least six years after completion of the merger for directors’ and officers’ liability and fiduciary liability. Heartland has agreed to pay the premium for such “tail” insurance policy, subject to certain reasonableness limitations, although any insurance premium payments made by Heartland for such “tail” insurance policy will be considered a transaction expense under the merger agreement.

Employment Agreements. Heartland, FBLB and FB&T have entered into employment agreements with each of Barry Orr and Greg Garland, which will become effective upon completion of the merger. The employment agreements provide that Messrs. Orr and Garland will serve as Chairman of the Board and Chief Executive Officer of FB&T and President and a director of FB&T, respectively. Under the employment agreements, Messrs. Orr and Garland are entitled to receive a base salary, a signing bonus, an annual retention bonus, an annual cash bonus payable upon achievement of certain objectives and annual grants of restricted stock units of Heartland. They will also be subject to certain ongoing confidentiality, noncompetition and nonsolicitation obligations.

Mr. Orr's employment agreement provides for a base salary of $350,000 per year, a signing bonus of $100,000, an annual retention bonus of $50,000, an annual performance-based cash bonus of up to 50% of his base salary and annual grants of Heartland restricted stock units having a fair market value on the date of grant of up to 35% of his annual base salary. In addition, pursuant to the employment agreement with Mr. Orr, Heartland has agreed to nominate Mr. Orr for election to the Heartland board of directors at such time as his appointment as a director would not result in the number of Heartland board members who are not "independent directors" exceeding the number of independent directors. Mr. Garland's employment agreement provides for a base salary of $275,000 per year, a signing bonus of $100,000, an annual retention bonus of $50,000, an annual performance-based cash bonus in an amount up to 40% of his base salary and annual grants of Heartland restricted stock units having a fair market value on the date of grant of up to 25% of his annual base salary. Mr. Orr previously did not have an employment agreement with FBLB or FB&T. However, his employment agreement does not provide for appreciably greater compensation than the compensation he currently receives. Mr. Garland has an existing employment with FB&T. Although the new employment agreement with Mr. Garland is structured differently than his existing employment agreement, the aggregate compensation payable under the new employment agreements does not differ substantially from the aggregate compensation payable to him under his existing employment agreement.

Change in Control Payments and Director Support Agreements. On September 23, 2014, the Board Leadership Committee of FBLB's board of directors adopted a plan to provide support payments to the board’s non-employee directors, as well as to the Chairman of the Board and certain officers who support the board of directors, upon the

occurrence of a change in control transaction in recognition of their respective contributions to FBLB leading to such change in control and, with respect to the non-employee directors, in consideration for any obligations undertaken by these persons in connection with the change in control transaction. Pursuant to the plan, the board’s eight non-employee directors and the Chairman of the Board are each entitled to receive a lump sum payment of $48,000 upon a change in control. In addition, the Board Secretary and Board Scribe are each entitled to receive a lump sum amount of $18,000. In connection with the receipt of these payments, and as a condition to Heartland’s obligation to consummate the merger, each of the FBLB's non-employee directors will enter into a

28

support agreement with Heartland, which is expected to (1) provide, among other things, that the director will use reasonable efforts to refrain from harming the goodwill and customer and client relationships of Heartland and FB&T and (2) restrict the director's ability to solicit customers or employees of FB&T or otherwise engage in competitive activities with respect to FB&T for a period of time following the closing.

Employee Benefit Plans. All employees of FB&T who continue on as employees following the merger, including those who are executive officers of FBLB, will be entitled to participate in the employee benefit plans and programs maintained for employees of Heartland. These individuals will receive credit for their years of service with FB&T for purposes of eligibility and vesting (and, solely with respect to vacation and severance benefits, benefit accrual) under any employee benefit plans and programs sponsored by Heartland to the extent permitted by applicable law.

REGULATORY MATTERS AND TAX CONSEQUENCES AND ACCOUNTING TREATMENT OF THE MERGER

Regulatory Matters

Heartland and FBLB have agreed to use all commercially reasonable efforts to obtain all regulatory approvals required to complete the transactions contemplated by the merger agreement. These approvals require applications by Heartland to acquire FBLB and FB&T with the FRB pursuant to the Bank Holding Company Act of 1956 and applications with the TDB pursuant to Chapters 201 and 202 of the Texas Finance Code. Heartland has completed, or will complete, the filing of applications to obtain these required regulatory approvals from the FRB and the TDB.

A transaction approved pursuant to the Bank Holding Company Act of 1956 may not be completed until 30 days after approval is received, during which time the Antitrust Division of the U.S. Department of Justice may challenge the merger. The commencement of an antitrust action would stay the effectiveness of an approval unless a court specifically ordered otherwise. With the consent of the Antitrust Division, the waiting period may be reduced to no less than 15 days.

We are not aware of any material governmental approvals or actions that are required for completion of the merger other than those described above. It is presently contemplated that if any such additional government approvals or actions are required, those approvals or actions will be sought.

Heartland and FBLB believe that neither the merger of FBLB with and into Heartland nor the acquisition of FB&T by Heartland raises significant regulatory concerns and that they will be able to obtain all requisite regulatory approvals on a timely basis without the imposition of any condition that could reasonably be expected to have a material adverse effect on FB&T or Heartland. However, there can be no assurance that all of the regulatory approvals described above will be obtained, and, if obtained, that the approvals will be received on a timely basis or that there will not be any litigation challenging such approvals. Likewise, no assurance can be provided that the Antitrust Division of the U.S. Department of Justice or any state attorney general will not attempt to challenge the merger on antitrust grounds. If such a challenge is made, the result of the challenge cannot be predicted.

Material U.S. Federal Income Tax Consequences of the Merger

The following describes the material anticipated U.S. federal income tax consequences to a U.S. Holder (as defined below) of FBLB common stock with respect to the exchange of FBLB common stock for Heartland common stock and cash at the effective time of the merger and contingent rights to receive additional shares of Heartland common stock subject to the tax holdback.

This discussion assumes that U.S. Holders hold their FBLB common stock as capital assets within the meaning of section 1221 of the Code. This discussion is based on the Code, administrative pronouncements, judicial decisions and Treasury Regulations, each as in effect as of the date of this proxy statement/prospectus. All of the foregoing are subject to change at any time, possibly with retroactive effect, and all are subject to differing interpretations. No advance ruling has been or will be sought or obtained from the IRS regarding the U.S. federal income tax consequences of the merger. As a result, no assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth below.

This discussion does not address any tax consequences arising under U.S. federal tax laws other than U.S. federal income tax laws, nor does it address the laws of any state, local, foreign or other taxing jurisdiction. In addition, this discussion does not address all aspects of U.S. federal income taxation that may apply to U.S. Holders of FBLB

common stock in light of their particular circumstances or U.S. Holders that are subject to special rules under the Code, such as holders of FBLB

29

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common stock that are pass-through entities or trusts, persons who acquired shares of FBLB common stock as a result of the exercise of employee stock options or otherwise as compensation or through a tax-qualified retirement plan, persons subject to the alternative minimum tax, tax-exempt organizations, broker-dealers, traders in securities that have elected to apply a mark-to-market method of accounting, persons having a "functional currency" other than the U.S. dollar and persons holding their FBLB common stock as part of a straddle, hedging, constructive sale or conversion transaction.

For purposes of this summary, a "U.S. Holder" is a beneficial owner of FBLB common stock that is for U.S. federal income tax purposes:

- a United States citizen or resident alien;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States or any state therein or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if (1) it is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust, or (2) the trust has made a valid election to be treated as a United States person for United States federal income tax purposes.

U.S. Holders should consult with their own tax advisors regarding the specific tax consequences of the merger and the tax holdback in light of their particular circumstances, including the tax consequences under state, local, foreign and other tax laws and the possible effects of changes in the United States federal or other tax laws.

Tax Classification of the Merger. The merger is intended to qualify as a reorganization under section 368(a) of the Code, and the obligations of FBLB to complete the merger are subject to the receipt of the opinion of Fenimore, Kay, Harrison & Ford, LLP, special counsel to FBLB ("Fenimore Kay"), that the merger will qualify as a "reorganization" under Section 368(a) of the Code. FBLB does not currently intend to waive this opinion condition to its obligation to complete the merger.

The following discussion, subject to the limitations and qualifications described herein, constitutes the opinion of Fenimore Kay regarding the material U.S. federal income tax consequences of the merger applicable to a U.S. Holder that exchanges FBLB common stock in the merger, to the extent the following discussion sets forth statements of U.S. federal income tax law or legal conclusions with respect thereto. The opinion of counsel relies on assumptions, including assumptions regarding the absence of changes in existing facts and law and the completion of the merger in the manner contemplated by the merger agreement, and on the accuracy of representations and covenants made by FBLB and Heartland, including those contained in representation letters of officers of FBLB and Heartland. If any of the representations or assumptions upon which the opinion is based are incorrect, the tax consequences of the merger could be adversely affected. An opinion of counsel represents counsel’s best legal judgment and is not binding on the IRS or any court, nor does it preclude the IRS from adopting a contrary position.

Based on the accuracy of representations made by FBLB and Heartland and subject to the limitations and qualifications described above, Fenimore Kay, special counsel to FBLB, has rendered its opinion that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Code, and that the following discussion constitutes its opinion regarding the material U.S. federal income tax consequences of the merger to U.S. Holders.

Exchange of FBLB Common Stock for Heartland Common Stock, Cash and Contingent Rights to Receive Additional Heartland Common Stock subject to the Tax Holdback. Based on and subject to the foregoing, the merger will qualify as a "reorganization" within the meaning of Section 368(a) of the Code. Subject to the discussion below regarding the tax treatment of the tax holdback, the U.S. federal income tax consequences of the merger to U.S. Holders of FBLB common stock will be as follows:

- A U.S. Holder will recognize gain in an amount equal to the lesser of the amount of cash received by the U.S. Holder in the merger (other than cash received in lieu of a fractional share of FBLB common stock) and the gain realized. The gain realized is the excess of (1) the sum of the cash received by the U.S. Holder in the merger (other than cash received in lieu of a fractional share of FBLB common stock) plus the fair market value, determined at the Effective Time, of the Heartland common stock received at the effective time of the merger and the Heartland common stock

subject to the tax holdback over (2) the U.S. Holder's adjusted tax basis in the FBLB common stock surrendered in the merger.

- No losses will be recognized other than losses, if any, realized in connection with the receipt of cash in lieu of a fractional share interest, as described below.

30

- The gain recognized by a U.S. Holder in the merger generally will constitute capital gain, unless the receipt of cash has the effect of a distribution of a dividend, as discussed below in the section titled "Potential Treatment of Cash as a Dividend," in which case some or all of such gain may be treated as dividend income rather than as capital gain.
- Any capital gain recognized by a U.S. Holder generally will constitute long-term capital gain if the shareholder's holding period for the FBLB common stock exchanged in the merger is more than one year as of the date of the merger, and otherwise will constitute short-term capital gain.
- The aggregate tax basis of the shares of Heartland common stock received by a U.S. Holder at the effective time of the merger (including, for this purpose, any fractional share of Heartland common stock for which cash is received) plus the maximum number of shares of Heartland common stock that the U.S. Holder could receive from the tax holdback will equal the aggregate tax basis of the U.S. Holder's FBLB common stock surrendered in the merger, decreased by the amount of cash received by the U.S. Holder in the merger (excluding any cash received in lieu of a fractional share) and increased by the amount of gain recognized by the U.S. Holder in the merger. In the event that less than all of the Heartland common stock subject to the tax holdback is released to the Stockholder Representative for the benefit of FBLB shareholders, the tax basis of a U.S. Holder's shares of Heartland common stock will be recalculated, as discussed further in the section titled "Tax Treatment of Tax Holdback."
- The holding period of the shares of Heartland common stock received by a U.S. Holder in the merger and subject to the tax holdback will include the holding period of the shareholder's FBLB common stock exchanged in the merger.

If a U.S. Holder exchanges more than one "block" of shares of FBLB common stock (that is, groups of shares that the holder acquired at different times or at different prices), the holder must calculate gain separately as to each block, and the results for each block may not be netted in determining the holder’s overall gain. Instead, the U.S. Holder will generally recognize gain on those shares on which gain is realized, but, as described above, losses may not be recognized.

Potential Treatment of Cash as a Dividend. In general, the determination of whether gain recognized by a U.S. Holder will be treated as capital gain or a dividend distribution will depend upon whether, and to what extent, the merger reduces the U.S. Holder’s deemed percentage stock ownership interest in Heartland. For purposes of this determination, a U.S. Holder will be treated as if the shareholder first exchanged all of its FBLB common stock solely for Heartland common stock (instead of a combination of Heartland common stock and cash as will actually be received) and then Heartland immediately redeemed a portion of that Heartland common stock in exchange for the cash the shareholder received in the merger. The IRS has held that any reduction in the interest of a shareholder that owns a small number of shares in a publicly and widely-held corporation and that exercises no control over corporate affairs would result in capital gain as opposed to distribution treatment.
If a U.S. Holder’s gain recognized in the merger is treated as a distribution, the U.S. Holder will be required to include the amount of this distribution in gross income as a dividend to the extent of our current and accumulated “earnings and profits.” To the extent a distribution exceeds our current and accumulated “earnings and profits,” the distribution will be treated first as a tax-free return of capital to the extent of the U.S. Holder’s adjusted tax basis in the Heartland common shares received (including the Heartland common stock subject to the tax holdback) and thereafter, as gain from the sale or exchange of the Heartland common shares. Dividends paid by us to non-corporate U.S. Holders generally will be eligible for the preferential tax rates applicable to long-term capital gains, provided certain holding period and other conditions are satisfied.

The remainder of this discussion assumes that the gain recognized in the merger will be treated as capital gain. Because the possibility of distribution treatment depends primarily on a U.S. Holder’s particular circumstances, including the application of constructive ownership rules, U.S. Holders should consult their tax advisers about the possibility of dividend distribution treatment.

Cash In Lieu of Fractional Shares. To the extent that a U.S. Holder receives cash in lieu of a fractional share of common stock of Heartland, the shareholder will be deemed to have received that fractional share in the merger and then to have received the cash in redemption of that fractional share. The U.S. Holder generally will recognize gain or

loss equal to the difference between the cash received and the portion of the shareholder's tax basis in the shares of FBLB common stock surrendered allocable to that fractional share. This gain or loss generally will be long-term capital gain or loss if the holding period for those shares of FBLB common stock is more than one year as of the date of the merger.

Tax Treatment of Tax Holdback. For U.S. federal income tax purposes, U.S. Holders should be treated as the owners of the Heartland common stock subject to the tax holdback beginning at the effective time of the merger. The remainder of this discussion assumes this treatment.

Receipt of Heartland common stock upon release from the tax holdback will not be taxable to the U.S. Holders. At the time of each release, if any, of Heartland common stock from the tax holdback, the U.S. Holder will be required to recalculate the U.S. Holder's aggregate tax basis in Heartland common stock, taking into account any change (due to the satisfaction of special tax losses) in the maximum number of shares of Heartland common stock the U.S. Holder may receive, and also making appropriate adjustments if the U.S. Holder has sold or otherwise disposed of Heartland common stock previously received.
To the extent that shares of Heartland common stock subject to the tax holdback are returned to Heartland to satisfy special tax claims, a U.S. Holder will recognize gain or loss equal to the difference between the U.S. Holder's adjusted tax basis in the shares returned and the fair market value of those shares as of the time of return. The fair market value (determined as of the time of return) of any shares that are returned to Heartland to satisfy special tax claims will be added to the aggregate tax basis of the U.S. Holder's remaining shares of Heartland common stock received in the merger and released from the tax holdback. Gain or loss recognized on return of shares of Heartland common stock to Heartland will be long-term capital gain or loss if the U.S. Holder's holding period for the returned shares is more than one year as of the date of return. As noted above, the holding period of the shares of Heartland common stock subject to the tax holdback will include the holding period of the U.S. Holder's FBLB common stock exchanged in the merger.
The tax treatment of the tax holdback is complex. Each U.S. Holder should consult with its own tax advisor regarding the federal income tax consequences of the tax holdback.

Backup Withholding. Backup withholding at the applicable rate may apply with respect to certain payments, including cash received in the merger and cash dividends paid with respect to Heartland common stock subject to the tax holdback, unless a U.S. Holder (1) is a corporation or is within certain other exempt categories and, when required, demonstrates this fact, or (2) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and otherwise complies with applicable requirements of the backup withholding rules. A U.S. Holder who does not provide its correct taxpayer identification number may be subject to penalties imposed by the IRS. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against the shareholder's U.S. federal income tax liability, provided the shareholder furnishes certain required information to the IRS.

Reporting Requirements. A U.S. Holder will be required to retain records pertaining to the merger and will be required to file with such shareholder's U.S. federal income tax return for the year in which the merger takes place a statement setting forth certain facts relating to the merger. In addition, each U.S. Holder who is a "significant holder" that receives Heartland common stock in the merger will be required to file a statement with his, her or its federal income tax return setting forth his, her or its adjusted tax basis in the FBLB common stock surrendered and the fair market value of the Heartland common stock and cash, if any, received in the merger. A "significant holder" is a holder of FBLB common stock who, immediately before the merger, owned at least one percent (by vote or value) of the outstanding shares of FBLB common stock or owned FBLB securities with an adjusted tax basis of $1,000,000 or more.
TAX MATTERS REGARDING THE MERGER ARE VERY COMPLICATED, AND THE TAX CONSEQUENCES OF THE MERGER TO ANY PARTICULAR FBLB SHAREHOLDER WILL DEPEND ON THAT SHAREHOLDER'S PARTICULAR SITUATION. FBLB SHAREHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE MERGER AND THE TAX HOLDBACK, INCLUDING TAX RETURN REPORTING REQUIREMENTS, THE APPLICABILITY OF FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS AND THE EFFECT OF ANY PROPOSED CHANGE IN THE TAX LAWS TO THEM.
Accounting Treatment
The merger of FBLB into Heartland will be accounted for under the acquisition method of accounting by Heartland, as that term is used under GAAP, for accounting and financial reporting purposes. As a result, the historical financial statements of Heartland will continue to be the historical financial statements of Heartland following the completion of the merger. The assets (including identifiable intangible assets) and liabilities (including executory contracts and other commitments) of FBLB as of the effective time of the merger will be recorded at their respective fair values and

added to the assets and liabilities of Heartland. Any excess of the aggregate merger consideration over the net fair values of FBLB assets and liabilities is recorded as goodwill (i.e., excess purchase price). Financial statements of Heartland issued after the merger will reflect such fair values and will not be restated retroactively to reflect the historical financial position or results of operations of FBLB. The results of operations of FBLB will be included in the results of operations of Heartland beginning on the effective date of the merger.

32

Board of Directors and Management of Heartland Following Completion of the Merger

The composition of Heartland's board of directors and its senior management will not be changed following completion of the merger. Information about the current Heartland directors and executive officers can be found in Heartland's proxy statement dated April 6, 2018 for its 2018 Annual Meeting of Stockholders. See "Where You Can Find More Information" on page 55.

DISSENTERS' RIGHTS OF FBLB SHAREHOLDERS

General. If you hold one or more shares of FBLB common stock, you have the right to dissent from the merger and have the appraised fair value of your shares of common stock paid to you in cash. The ultimate amount that a dissenting shareholder receives in an appraisal proceeding may be less than, equal to or more than the amount he or she would have received under the merger agreement. If you are contemplating exercising your right to dissent, we urge you to read carefully the provisions of Chapter 10, Subchapter H of the TBOC, which are attached as Appendix B to this proxy statement/prospectus, and consult with your legal counsel before electing or attempting to exercise these rights. The following summary describes the steps you must take if you want to exercise your right to dissent. This summary, however, is not a complete statement of all applicable requirements and is qualified in its entirety by reference to Chapter 10, Subchapter H of the TBOC. You should read this summary and the full text of the law carefully.

How to Exercise and Perfect Your Right to Dissent. To be eligible to exercise your right to dissent to the merger:

- prior to the special meeting, you must deliver to FBLB written notice of your objection to the merger that (1) states that you will exercise your right to dissent if the merger proposal is approved and the merger is completed and (2) provides an address to which FBLB may send a notice to you if the merger is completed;
- you must vote your shares of FBLB common stock "AGAINST" the merger proposal, either by proxy or in person, at the special meeting;
- you must provide to FBLB, not later than the 20th day after FBLB sends you notice that the merger was completed, your written demand for payment that states (1) the number of shares of FBLB common stock you own, (2) your estimate of the fair value of such common stock and (3) an address to which a notice relating to the dissent and appraisal procedures may be sent to you;
- you must submit to FBLB, not later than the 20th day after you deliver to FBLB your written demand for payment described in the preceding bullet point, (1) if your shares are certificated, your certificates representing the shares, or (2) if your shares are uncertificated, signed assignments of the ownership interests in the shares; and
- you must continuously hold your shares of FBLB common stock from the record date through the completion of the merger.

If you intend to dissent from the merger, you must send written notice to FBLB's Chairman, President and Corporate Secretary at:

First Bank Lubbock Bancshares, Inc.
9816 Slide Rd.
Lubbock, Texas 79424
Attention: Chairman, President and Corporate Secretary

If you fail to vote your shares of FBLB common stock at the special meeting against the merger proposal, or otherwise fail to comply with any of these conditions and the merger is completed, you will lose your right to dissent from the merger and will instead receive the per share merger consideration. If you comply with the items set forth in the first two bullet points above and the merger is completed, FBLB will send you a written notice advising you that the merger has been completed. FBLB must deliver this notice to you within 10 days after the merger is completed. A proxy card which is signed and does not contain voting instructions will, unless revoked, be voted in favor of the merger proposal, will constitute a waiver of your dissenters' rights, and will nullify any previous written demand for appraisal.

Your Demand for Payment and Delivery of Share Certificates. If you wish to dissent from the merger and receive the fair value of your shares of FBLB common stock in cash, you must, within 20 days after the date the notice of completion of the merger was delivered or mailed to you by FBLB, send a written demand to FBLB for payment of the fair value of your shares of common stock that complies with the applicable statutory requirements. The fair value of your shares of FBLB common stock will be the value of the shares on the day immediately preceding the date of completion of the merger, excluding any appreciation or depreciation in anticipation of the merger. Additionally, within 20 days after the date on which your written demand for payment of the fair value of your shares of FBLB common stock is delivered to FBLB, you must submit to FBLB

33

any certificates representing your shares for purposes of making a notation on such certificates that a demand for payment of fair value for your shares has been made under Chapter 10, Subchapter H of the TBOC. All such certificates must be submitted to FBLB at the address below. Your written demand and any notices to FBLB must be sent to FBLB's Chairman, President and Corporate Secretary at:
First Bank Lubbock Bancshares, Inc.
9816 Slide Rd.
Lubbock, Texas 79424
Attention: Chairman, President and Corporate Secretary

Your written demand must state how many shares of FBLB common stock you own and your estimate of the fair value of your shares of common stock. If you fail to send your written demand to FBLB within 20 days after the date the notice of completion of the merger was delivered or mailed to you by FBLB, you will be bound by the merger and you will not be entitled to receive a cash payment representing the fair value of your shares of FBLB common stock. Instead, you will receive the per share merger consideration. The failure to submit your share certificates will have the effect, at the option of FBLB, of terminating your rights of dissent and appraisal unless a court, for good cause shown, directs otherwise.
Actions of FBLB Upon Receipt of Your Demand for Payment. Within 20 days after FBLB receives your demand for payment and your estimate of the fair value of your shares of FBLB common stock, FBLB must send you written notice stating whether or not it accepts your estimate of the fair value of your shares.
If FBLB's written notice accepts your estimate, FBLB will pay the amount of your estimate of fair value within 90 days after the merger is completed. FBLB will make this payment to you only if you have surrendered the share certificates, duly endorsed for transfer to FBLB, or the signed assignments of ownership in non-certificated shares, as applicable, representing your shares of common stock.
If FBLB's written notice does not accept your estimate, the notice will provide FBLB's estimate of the fair value of your shares and an offer to pay that amount to you within 120 days after the merger is completed. To accept FBLB's offer, you must provide notice of your acceptance to FBLB within 90 days after the merger is completed, and your failure to do so within that 90-day period will constitute rejection by you of FBLB's offer.
Payment of the Fair Value of Your Shares of Common Stock Upon Agreement of an Estimate. If you and FBLB reach an agreement on the fair value of your shares of common stock within 90 days after the merger is completed, FBLB must pay you the agreed amount within 120 days after the merger is completed, if you have surrendered to FBLB the duly endorsed share certificates or the signed assignments of ownership in non-certificated shares, as applicable, representing your shares of common stock.
Commencement of Legal Proceedings if a Demand for Payment Remains Unsettled. If you and FBLB have not reached an agreement as to the fair value of your shares of common stock within 90 days after the merger is completed, you or FBLB may, within 60 days after the expiration of that 90 day period, commence proceedings in Lubbock County, Texas, asking the court to determine the fair value of your shares of common stock. FBLB has no obligation to file such a petition in the event there are dissenting shareholders and FBLB and such dissenting shareholders are unable to reach an agreement as to the fair value of the shares. If court proceedings are initiated, the court will determine if you have complied with the dissent provisions of the TBOC and if you have become entitled to a valuation of and payment for your shares of common stock. The court will appoint one or more qualified persons to act as appraisers to determine the fair value of your shares. The appraisers will determine the fair value of your shares and will report this value to the court. The court will consider the report, and both you and FBLB may address the court about the report. The court will determine the fair value of your shares and direct FBLB to pay that amount, plus interest, which will begin to accrue 91 days after the merger is completed. If any shareholder files a petition with the court requesting a finding and determination of the fair value of its shares, then within 10 days of receipt of service of such petition by FBLB, FBLB must file with the court a list containing the names and addresses of all shareholders who have demanded payment for fair value of their shares and with whom agreements as to the fair value of their shares have not been reached by FBLB.
Rights as a Shareholder. If you have made a written demand on FBLB for payment of the fair value of your shares of common stock, you will not thereafter be entitled to vote or exercise any other rights as a shareholder except the right

to receive payment for your shares as described herein and the right to maintain an appropriate action to obtain relief on the ground that the merger would be or was fraudulent. In the absence of fraud in the merger, your right under the dissent provisions described herein is the exclusive remedy for the recovery of the value of your shares or money damages with respect to the merger.

Withdrawal of Demand. If you have made a written demand on FBLB for payment of the fair value of your common stock, you may unilaterally withdraw such demand at any time before payment for your shares has been made or before a petition has been filed with a court for determination of the fair value of your shares. However, if either payment of the fair value of your common stock has been made by FBLB or a petition has been filed with a court for determination of the fair value of your shares, you may not withdraw your demand on FBLB for payment of fair value without FBLB's consent. If you withdraw your demand, your rights to dissent are terminated, or you are otherwise unsuccessful in asserting your dissenters' rights, you will be bound by the terms of the merger and your status as a shareholder will be restored without prejudice to any corporate proceedings, dividends or distributions which may have occurred during the interim.

One condition to Heartland's obligation to complete the merger is that the total number of dissenting shares cannot be more than 7.5% of the number of outstanding shares of FBLB common stock.

THE MERGER AGREEMENT

The following describes material provisions of the merger agreement, which is attached as Appendix A to this proxy statement/prospectus and which is incorporated by reference into this proxy statement/prospectus. The rights and obligations of the parties are governed by the express terms and conditions of the merger agreement and not by this summary or any other information contained in this proxy statement/prospectus. We urge you to read the merger agreement carefully and in its entirety.

The Merger

Pursuant to the merger agreement, and upon filing of a certificate of merger with the Secretary of State of Delaware and a certificate of merger with the Texas Secretary of State, FBLB will merge with and into Heartland, with Heartland as the surviving entity. Upon the completion of the merger, each share of FBLB common stock, other than shares held by either Heartland or FBLB and shares held by FBLB shareholders who properly assert their dissenters' rights, will be automatically converted into the right to receive Heartland common stock and cash. FBLB shareholders would receive merger consideration for each share of FBLB common stock of 3.0934 shares of Heartland common stock and, assuming the market value of a share of Heartland common stock is $52.05, the closing price of a share of Heartland common stock on April 6, 2018 (the last practicable trading date before the date of this proxy statement/prospectus), approximately $4.96 in cash, subject to certain adjustments described below.

Stock Component of Merger Consideration. The exchange ratio for the stock component of the merger consideration is fixed and will not be adjusted to reflect changes in the price of Heartland common stock occurring prior to the completion of the merger. However, if the price of Heartland common stock drops below certain levels, as described in the section titled "The Merger Agreement—Termination," FBLB may exercise a "walk-away" right and terminate the merger agreement, unless Heartland increases the exchange ratio or cash component of the merger consideration by exercising its "top-up" option.

The stock component of the merger consideration is subject to a tax holdback of 0.3586 shares of Heartland common stock for each share of FBLB common stock (or an aggregate of 388,506 shares of Heartland common stock), if FBLB has not received certain rulings from the IRS prior to the effective time of the merger. The shares subject to the tax holdback may not be released, or only be partially released, to FBLB shareholders if Heartland incurs a tax loss because FBLB failed to qualify as an "S corporation" or any of FBLB's subsidiaries failed to qualify as a "qualified subchapter S subsidiary" (within the meaning of the Code or comparable provisions of state, local or other tax law) prior to the effective time of the merger. A claim against the tax holdback may reduce the number of the shares of Heartland common stock that will be received by FBLB shareholders in the merger by up to 0.3586 shares for each share of FBLB common stock. To the extent that Heartland or any of its subsidiaries incurs a tax loss based on the circumstances described above, Heartland will be indemnified for any such tax loss. The tax holdback will be the sole source from which Heartland may satisfy any indemnification claim.

Any portion of the tax holdback not used to indemnify Heartland for a tax loss will be released to the Stockholder Representative for the benefit of the former holders of FBLB common stock on the earliest of receipt by FBLB of an IRS ruling in form and substance reasonably satisfactory to Heartland or on the applicable release dates, subject in the

case of each release date to later release upon the resolution of any pending tax claims. However, prior to distribution by the Stockholder Representative of any shares of Heartland common stock subject to the tax holdback to former FBLB shareholders, the Stockholder Representative will be entitled to reimbursement from the tax holdback of reasonable third-party expenses incurred by the Stockholder Representative as a result of his acting in such capacity. The release dates for the shares of Heartland common stock subject to the tax holdback and the potential number of shares to be distributed on each of these dates is set forth below:

35

- Within 10 business days after August 17, 2018 (i.e., the first release date), Heartland will issue 62,036 shares of Heartland common stock to the Stockholder Representative for the benefit of former holders of FBLB common stock, as reduced by any Heartland tax loss the amount of any pending tax claims against Heartland related to FBLB's 2014 tax liability.
- Within 10 business days after September 8, 2019 (i.e., the second release date), Heartland will issue 77,441 shares of Heartland common stock to the Stockholder Representative for the benefit of former holders of FBLB common stock, as reduced by any Heartland tax loss the amount of any pending tax claims against Heartland related to FBLB's 2015 tax liability.
- Within 10 business days after March 10, 2020 (i.e., the third release date), Heartland will issue 109,329 shares of Heartland common stock to the Stockholder Representative for the benefit of former holders of FBLB common stock, as reduced by any Heartland tax loss the amount of any pending tax claims against Heartland related to FBLB's 2016 tax liability.
- Within 10 business days after the third anniversary of the date on which FBLB's 2017 federal income tax return is filed (i.e., the fourth release date), Heartland will issue 141,700 shares of Heartland common stock to the Stockholder Representative for the benefit of former holders of FBLB common stock, as reduced by any Heartland tax loss the amount of any pending tax claims against Heartland related to FBLB's 2017 tax liability.

The shares of Heartland common stock subject to the tax holdback will be issued and outstanding shares, but will be held by Heartland pending release as described above. Accordingly, FBLB shareholders will have the right to vote, and receive cash dividends on, the shares subject to holdback beginning on the effective date of the merger and until such time, if any, as such shares are utilized to satisfy an indemnification claim. However, until such time as the shares of Heartland common stock subject to holdback are released as described above, they will not be transferable.

Cash Component of Merger Consideration. Pursuant to the merger agreement, the aggregate amount of the cash component of the merger consideration to be paid to FBLB shareholders will be $17,505,724, less amounts payable to the holders of SARs. Assuming the market price of a share of Heartland common stock is $50.15, the closing price per share on December 11, 2017 (the last trading date before the merger agreement was executed), the payments to holders of SARs would be approximately $11.5 million. Assuming the market price of a share of Heartland common stock is $52.05, the closing price per share on April 6, 2018 (the last practicable trading date before the date of this proxy statement/prospectus), the payments to holders of SARs would be approximately $12.1 million.

In addition, the cash component of the merger consideration is subject to certain adjustments. If FBLB's Adjusted Tangible Common Equity (as defined below) is less than $83.0 million on the last business day of the month immediately preceding the month in which the closing date of the determination date, then the cash component of the merger consideration will be reduced by the amount by which FBLB's Adjusted Tangible Common Equity is less than $83.0 million. If FBLB's Adjusted Tangible Common Equity is greater than $84.0 million on the determination date, then the cash component of the merger consideration will be increased by the amount, up to $5.0 million, by which FBLB's Adjusted Tangible Common Equity is greater than $85.0 million.

"Adjusted Tangible Common Equity" means an amount equal to (a) the sum of (i) the total shareholders' common equity of FBLB, determined in accordance with GAAP as of the close of business on the determination date as adjusted to reflect a reasonable projection of the operations of FBLB through the effective time of the merger, and (ii) the determination date transaction expenses, less (b) the sum of (x) the value of the intangible assets determined as of the close of business on the determination date as adjusted to reflect a reasonable projection of the operations of FBLB through the effective time of the merger, and (y) the amount, if any, by which transaction expenses exceed $7.5 million.

The following table presents the value of the cash component of the merger consideration for each share of FBLB common stock, and its impact on total consideration per share, based upon various levels of FBLB's Adjusted Tangible Common Equity:

Adjusted Tangible Common Equity	Cash Adjustment per Share	Cash Consideration per Share	Stock Consideration per Share(1)	Total Consideration per Share
$88.00 million	$ 3.347	$ 8.310	$ 161.011	$ 169.322
$87.00 million	2.511	7.473	161.011	168.485
$86.00 million	1.674	6.637	161.011	167.648
$85.00 million	0.837	5.800	161.011	166.811
$84.00 million	—	4.963	161.011	165.974
$83.50 million	—	4.963	161.011	165.974
$83.00 million	—	4.963	161.011	165.974
$82.00 million	(0.837)	4.126	161.011	165.137
$81.00 million	(1.674)	3.289	161.011	164.301
$80.00 million	(2.511)	2.452	161.011	163.464
$79.00 million	(3.347)	1.616	161.011	162.627

(1) Assumes the closing sales price of Heartland common stock of $52.05 as of April 6, 2018 (the last practicable trading date before the date of this proxy statement/prospectus) and the fixed exchange ratio of 3.0934 shares of Heartland common stock issued for each share of FBLB common stock.

Total Merger Consideration. Based on the closing price of a share of Heartland common stock as of December 11, 2017 (the last trading date before the merger agreement was executed) of $50.15, the aggregate merger consideration to be received by FBLB shareholders was valued at approximately $174.0 million, or $160.65 per share of FBLB common stock. Based on the price of a share of Heartland common stock as of April 6, 2018 (the last practicable trading date before the date of this proxy statement/prospectus) of $52.05, the aggregate merger consideration payable to FBLB shareholders was valued at approximately $179.8 million, or $165.97 per share of FBLB common stock. These valuations assume that no adjustments will be made to the cash component of the aggregate merger consideration based on FBLB's Adjusted Tangible Common Equity and no claims will be made by Heartland against the tax holdback. Because the market price for Heartland common stock and the Adjusted Tangible Common Equity of FBLB will fluctuate prior to the merger, the value of the actual consideration you will receive may be different from the amounts described above.

Fractional Shares

Heartland will not issue any fractional shares of Heartland common stock. Instead, a FBLB shareholder who would otherwise have received a fraction of a share of Heartland common stock will receive an amount of cash equal to the fraction of a share of Heartland common stock to which such holder would otherwise be entitled multiplied by the closing price of Heartland common stock on the last trading day immediately preceding the closing date.

Exchange of Stock Certificates

Exchange of Stock Certificates. Please do not send us your stock certificates at this time. Promptly after the completion of the merger, Heartland or its transfer agent will send transmittal materials to each holder of FBLB stock certificates (who has not previously surrendered his, her or its stock certificates) for use in exchanging FBLB stock certificates for certificates representing shares of Heartland common stock and cash. Heartland will deliver certificates or a book entry notification for Heartland common stock and a check to the holders of FBLB common stock once Heartland receives the properly completed transmittal materials and certificates representing such holder’s shares of FBLB common stock.

FBLB stock certificates may be exchanged for Heartland stock certificates and cash until such time that the stock certificates and cash would otherwise escheat to or become the property of any governmental unit or agency. At the end of that period, all unclaimed Heartland stock certificates and cash will become (to the extent permitted by abandoned property and any other applicable law) the property of Heartland.

If your FBLB stock certificate has been lost, stolen or destroyed, you may receive a Heartland stock certificate and cash upon the making of an affidavit of that fact. Heartland's transfer agent may require you to post a bond in a reasonable

37

amount as an indemnity against any claim that may be made against the transfer agent or Heartland with respect to the lost, stolen or destroyed FBLB stock certificate.

Neither Heartland, Heartland’s transfer agent, FBLB, nor any other person will be liable to any former holder of FBLB stock for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

Transferability of Heartland Common Stock

The shares of Heartland common stock to be issued to former FBLB shareholders will be registered by Heartland with the SEC. Accordingly, these shares will be freely transferable under the applicable securities laws, except for shares issued to any former FBLB shareholder who may be deemed to be an affiliate of Heartland. Heartland common stock is quoted on the Nasdaq Global Select Market under the symbol "HTLF," and shares of Heartland common stock issued to former FBLB shareholders pursuant to the merger agreement may be traded on this market.

SAR Payments

In 2015, FBLB adopted a Stock Appreciation Rights Plan (the "SAR Plan") to provide equity-linked incentives to certain executive officers and employees of FBLB and FB&T. As an "S corporation," FBLB is limited in the number of shareholders that it may have at any time. Accordingly, the SAR Plan was designed to align the interests of these executive officers and employees with FBLB's shareholders by enabling the participants to realize the appreciation of FBLB's common stock value over the time that the SAR awards were outstanding, without FBLB having to issue those participants actual shares of common stock. As of April 6, 2018, an aggregate of 111,700 SARs were issued and outstanding, of which 22,600 were held by executive officers of FBLB and FB&T.

The SARs become vested only upon a "change in control" of FBLB. Accordingly, the outstanding SARs will vest at the effective time of the merger. As provided in the SAR Plan, the value of each SAR upon a change in control is determined by a formula. This formula provides that the value of an SAR will be equal to the difference between (a) the net price per share of FBLB common stock in the change in control transaction (after taking into account (i) taxes assuming a 20% capital gains rate, subject to adjustment due to changes in tax law, (ii) payoff of indebtedness of FBLB, and (iii) expenses of FBLB in connection with the change in control transaction (including payments to holders of SARs as a result of the change in control transaction)), and (b) the "initial value" of the SAR as set forth in the applicable award agreement relating to the SAR. The weighted average of the initial value of all outstanding SARs is $50.46.

The SAR Plan is administered by a committee of FBLB's board of directors. The committee presently estimates that the weighted average value of each SAR based on the above formula is approximately $159.05, assuming the market value of a share of Heartland common stock is $52.05 (which was the closing price on April 6, 2018 (the last practicable trading date prior to the date of this proxy statement/prospectus)). Accordingly, based on the above formula, the aggregate value of all outstanding SARs is approximately $12.1 million. This aggregate amount will be payable in cash at the effective time of the merger to all holders of SARs.

Repayment of Indebtedness to The Bankers' Bank

On the closing date, Heartland will, on behalf of FBLB, pay off all of the principal and interest outstanding as of the effective time of the merger of indebtedness owed to The Bankers' Bank pursuant to the Loan and Security Agreement dated April 22, 2017 between The Bankers' Bank and FBLB. FBLB anticipates that the amount of the payment to The Bankers' Bank will be approximately $4.6 million.

Statutory Trust Securities

FBLB has two wholly-owned, unconsolidated subsidiary grantor trusts that were established for the purpose of issuing trust preferred securities. The trusts used the net proceeds from each of the offerings to purchase a like amount of junior subordinated debentures of FBLB. As of the effective time of the merger, Heartland will assume FBLB's obligations and acquire its rights related to the trusts and the debentures underlying the trust securities. As of December 31, 2017, FBLB had outstanding $9.0 million in aggregate liquidation amount of trust preferred securities, and the aggregate principal amount of the junior subordinated debentures was $9.3 million.

Conditions to Completion of the Merger

Unless the parties agree otherwise, the completion of the merger will take place at a time and place to be agreed upon by the parties as soon as practicable after all closing conditions have been satisfied or waived.

The merger will be completed when Heartland files a certificate of merger with the Secretary of State of the State of Delaware and FBLB files a certificate of merger with the Texas Secretary of State, unless Heartland and FBLB agree to a later time for the completion of the merger and specify that time in the certificates of merger. We currently expect to complete the merger in the second quarter of 2018, subject to receipt of required shareholder and regulatory approvals. However, we cannot be certain when, or if, the conditions to the merger will be satisfied or waived, or that the merger will be completed.

Mutual Conditions to Completion of the Merger. FBLB's and Heartland's respective obligations to complete the merger are subject to the fulfillment or waiver of the following mutual conditions:

- the receipt of the required federal and state regulatory approvals;
- the absence of any injunction or order that would impair the consummation of the merger;
- the absence of any law or regulation enacted or promulgated that would materially impair the consummation of the merger;
- the absence of any governmental action that would restrain or prohibit the merger, prohibit ownership by Heartland of a material portion of FBLB's businesses or assets, or require Heartland to divest any of its or FBLB's businesses or assets;
- neither party will have terminated the merger agreement as permitted by its terms;
- approval and adoption of the merger agreement by FBLB shareholders; and
- the effectiveness of the registration statement relating to the issuance of Heartland common stock in exchange for FBLB common stock.

FBLB Conditions to Completion of the Merger. FBLB's obligations to complete the merger are subject to the fulfillment or waiver of the following conditions:

- the truth and correctness of Heartland's representations and warranties, subject to the applicable standard of the materiality in the merger agreement;
- Heartland's performance in all material respects of the obligations required to be performed by it under the merger agreement;
- no change of control of Heartland;
- the receipt by FBLB of a legal opinion from its special counsel that the merger will qualify as a tax-free reorganization pursuant to Section 368(a) of the Code; and
- the release of all personal guarantees relating to indebtedness owed by FBLB to The Bankers' Bank.

Heartland Conditions to Completion of the Merger. Heartland's obligations to complete the merger are subject to the fulfillment or waiver of the following conditions:

- the truth and correctness of FBLB's representations and warranties, subject to the applicable standard of the materiality in the merger agreement;
- FBLB's performance in all material respects of the obligations required to be performed by it under the merger agreement;
- FBLB will have furnished to Heartland Indemnification Waiver Agreements executed by KSOP trustees, pursuant to which the KSOP trustees will waive any rights to indemnification from FB&T, Heartland or any of their affiliates;
- FBLB will have furnished to Heartland copies of the certificate executed by KSOP trustees stating, among other things, that the terms and conditions of the merger agreement, taken as a whole, are fair to and in the best interest of the KSOP from a financial point of view;
- the total number of dissenting shares will be no greater than 7.5% of the number of issued and outstanding shares of FBLB common stock;
- certain required consents to the merger will have been obtained and be in full force and effect;

- no persons other than the FBLB shareholders will have asserted that they are the owners of, or have the right to acquire, any capital stock in either FBLB or FB&T, or are entitled to any merger consideration payable to FBLB shareholders;
- the Employment Agreement dated December 12, 2017, among Heartland, FBLB, FB&T and Barry Orr, the Chairman, President and Chief Executive Officer of FBLB, will be in full force and effect;
- the Employment Agreement dated December 12, 2017, among Heartland, FBLB, FB&T and Greg Garland, the President of FB&T, will be in full force and effect;
- FBLB will have provided for the distribution of the SAR Payment to all holders of SARs as of the closing date of the merger;
- FBLB will have delivered to Heartland on or prior to the second business day prior to the closing date a payoff letter from The Bankers' Bank setting forth the aggregate amount of indebtedness owed to the Bankers' Bank outstanding as of the closing date and including a customary statement that, if such aggregate amount of indebtedness is paid on the closing date, such indebtedness will be repaid in full and all liens securing such closing date indebtedness will thereafter be automatically released and terminated; and
- FBLB will have furnished Heartland with executed copies of Director Support Agreements, pursuant to which each non-employee director of FBLB will agree not to compete with, or solicit for employment the employees of, FBLB, FB&T or any of their affiliates or of Heartland or any of its affiliates, or to disclose any of their confidential information.

No Solicitation

FBLB has agreed that it will not, and will cause FB&T not to, and will use its best efforts to cause FBLB's and FB&T's officers, directors, employees, agents and authorized representatives not to:

- solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any "acquisition proposal" (as defined below), or take any action that would reasonably be expected to lead to an acquisition proposal;
- furnish any information regarding FBLB or FB&T to any person in connection with or in response to an acquisition proposal or an inquiry or indication of interest that would reasonably be expected to lead to an acquisition proposal;
- engage in any discussions or negotiations regarding any acquisition proposal, or that would reasonably be expected to lead to any acquisition proposal;
- approve, endorse or recommend any acquisition proposal; or
- enter into a letter of intent or contract contemplating any acquisition transaction.

However, prior to approval of the merger agreement by holders of two-thirds of the issued and outstanding FBLB common stock, FBLB may consider and participate in discussions and negotiations with respect to an unsolicited bona fide acquisition proposal, and furnish information regarding FBLB or FB&T in response to a "superior proposal," but only if: (1) the FBLB board of directors determines in good faith, after consultation with outside counsel, that such action is required in order to comply with its fiduciary obligations to FBLB' shareholders under applicable law; (2) the acquisition proposal did not result from any breach by FBLB of its obligations under the merger agreement relating to non-solicitation; (3) FBLB first enters into a confidentiality agreement with the party proposing the acquisition proposal and notifies Heartland of the identity of such person at least two business days before furnishing any information; and (4) FBLB also provides to Heartland any information it provides to the party proposing the acquisition proposal, at least two business days beforehand.

FBLB has also agreed:

- to notify Heartland promptly (and in any event within 24 hours) of any request for information relating to an acquisition proposal and to provide Heartland with relevant information regarding the acquisition proposal or request;
- to keep Heartland fully informed of the status of any such acquisition proposal (including any modifications or proposed modifications); and
- to cease immediately and cause to be terminated any existing discussions with any persons regarding an acquisition proposal.

As used in the merger agreement, "acquisition proposal" means any offer, proposal, inquiry or indication of interest contemplating or otherwise relating to (a) any merger, consolidation, share exchange, business combination, issuance of securities, acquisition of securities, tender offer, exchange offer or other similar transaction (i) in which FBLB or FB&T is involved, (ii) in which any person or group (as defined in the Securities Exchange Act of 1934 and the rules promulgated thereunder (the "Exchange Act")) acquires beneficial or record ownership of more than 15% of outstanding securities of any class of voting securities of FBLB or FB&T, or (iii) in which FBLB or FB&T sells more than 20% of outstanding securities of any class of its voting securities, or (b) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated net revenues, net income or assets of FBLB, except transactions in the ordinary course of business.
As used in the merger agreement, "superior proposal" means any acquisition proposal by a third party on terms which the board of directors of FBLB determines in its good faith judgment, after consultation with, and receipt of written advice from, its financial advisors (which advice will be communicated to Heartland), to be more favorable from a financial point of view to its shareholders than the merger and the other transactions contemplated by the merger agreement, (a) after taking into account the likelihood of consummation of such transaction on the terms set forth therein, taking into account all legal, financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal, and any other relevant factors permitted under applicable law, (b) after giving Heartland at least five Business Days to respond to such third-party acquisition proposal once the board of directors of FBLB has notified Heartland that in the absence of any further action by Heartland it would consider such acquisition proposal to be a superior proposal, and then (c) after taking into account any amendment or modification to the merger agreement proposed by Heartland.

Termination

Termination by Heartland or FBLB. Either Heartland or FBLB may decide to terminate the merger agreement:

- if the boards of directors of Heartland and FBLB mutually consent to the termination of the merger agreement;
- if there is a law or governmental order that prohibits the merger; or
- if a governmental entity has denied the approval of the merger on a final and non-appealable basis.

Termination by FBLB. FBLB may decide to terminate the merger agreement:

- if the merger has not been completed by July 31, 2018, unless FBLB has failed to comply fully with its obligations under the merger agreement;
- if Heartland has or will have breached any representation, warranty or agreement in any material respect and such breach cannot be or is not cured within 30 days after written notice of the breach is given;
- if holders of at least two-thirds of the issued and outstanding shares of FBLB common stock fail to approve the merger at the special meeting; or
- if FBLB has breached any of the provisions of its covenant not to solicit superior proposals.

FBLB also may terminate the merger agreement pursuant to a "walk-away" right at any time within five business days after the determination date, if both of the following conditions are met:

- the volume weighted average closing price of Heartland common stock during the 15 trading days ending on, and including, the trading day immediately preceding the 10th day prior to the Heartland determination date stock price is below $41.37; and
- the ratio of the Heartland determination date stock price to $50.15, the closing price of Heartland common stock on the trading day immediately prior to the date of the merger agreement, is less than the ratio of the average daily closing value of the Index during the same time period used to calculate the Heartland determination date stock price, to the closing value of the Index on the trading day immediately prior to the date of the merger agreement, after subtracting 0.175 from the second ratio.

However, FBLB's written notice to terminate the merger agreement will have no force and effect if Heartland exercises its "top-up" option and agrees in writing within five business days to increase the original exchange ratio to an amount equal to:

- the original exchange ratio (3.0394 shares of Heartland common stock for each share of FBLB common stock), divided by the Heartland determination date stock price, and
- multiplied by $41.37.

Alternatively, Heartland may retain the original exchange ratio, and increase cash consideration so that FBLB shareholders are entitled to receive the same value for each share of FBLB common stock as the holder would have received had the original exchange ratio been increased as described above. Because the "walk-away" formula is dependent on the future price of Heartland common stock and the Index, it is not possible to determine what the adjusted merger consideration would be at this time, but, in general, more cash or more shares of Heartland common stock would be issued to take into account the extent to which the Heartland determination date stock price is less than $41.37.

Termination by Heartland. Heartland may terminate the merger agreement:

- if the merger has not been completed by July 31, 2018, unless Heartland has failed to comply fully with its obligations under the merger agreement;
- if FBLB has or will have breached any representation, warranty or agreement in any material respect and such breach cannot be or is not cured within 30 days after written notice of the breach is given;
- if holders of at least two-thirds of the issued and outstanding shares of FBLB common stock fail to approve the merger at the special meeting; or
- if any of the mutual conditions or Heartland's conditions to complete the merger become impossible to satisfy (other than through a failure of Heartland to comply with its obligations under the merger agreement).

Termination Fee and Payment of Expenses

If the merger agreement is terminated and abandoned for any reason other than fraud or willful breach, it will become void and there will be no liability on the part of Heartland, FBLB or their respective representatives, except that designated provisions of the merger agreement will survive the termination, including provisions relating to the payment of expenses and/or a termination fee in the circumstances described below.

Heartland and FBLB must reimburse the other party for out-of-pocket expenses (in an amount not to exceed $750.000 in the aggregate) in connection with the preparation, negotiation, execution and performance of the merger agreement as follows:

- Heartland must pay to FBLB all out-of-pocket expenses incurred by FBLB in the event Heartland has breached a representation, warranty or agreement contained in the merger agreement in any material respect, and such breach is not or cannot be cured in a 30-day period.
- FBLB must pay to Heartland all out-of-pocket expenses incurred by Heartland if the merger agreement is terminated because the merger agreement has not been adopted by the requisite vote of the shareholders of FBLB at the special meeting, or because FBLB has breached a representation, warranty or agreement contained in the merger agreement in any material respect, and such breach is not or cannot be cured in a 30-day period.

FBLB must pay a termination fee of $7.4 million in cash if the merger agreement is terminated:

- by FBLB because it has determined to enter into an agreement with another acquirer that has submitted a superior proposal;
- by Heartland if FBLB has breached its agreement to call a meeting of shareholders and to recommend that its shareholders adopt the merger agreement at such meeting; or
- by Heartland if FBLB has breached any of its covenants relating to solicitation of a superior proposal.

If FBLB is required to pay the termination fee, FBLB will not be obligated to reimburse Heartland for its out-of-pocket expenses.

Other Covenants and Agreements

FBLB has undertaken customary covenants that place restrictions on it and FB&T until the completion of the merger. In general, FBLB has agreed to, and has agreed to cause each of its subsidiaries to, conduct its business in the ordinary course consistent with past practice, preserve intact in all material respects its business organization and the goodwill, use commercially reasonable efforts to keep available the services of its officers, employees and consultants, and

maintain

42

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satisfactory relationships with vendors, customers and others having business relationships with it. Also, subject to applicable laws, FBLB has agreed to confer on a regular and frequent basis with representatives of Heartland to report operational matters and the general status of ongoing operations as reasonably requested by Heartland. In addition, FBLB has agreed to not take any action that would render any representation or warranty made by FBLB in the merger agreement untrue on the closing date of the merger.

FBLB has further agreed that, except with Heartland's prior written consent, FBLB will not, and will cause FB&T not to, among other things, undertake any of the following actions:

- amend or propose to amend its articles of incorporation or bylaws;
- issue or sell any of its equity securities, securities convertible into or exchangeable for its equity securities, warrants, options or other rights to acquire its equity securities, or any bonds or other securities, except deposit and other bank obligations in the ordinary course of business;
- redeem, purchase, acquire or offer to acquire any shares of capital stock of FBLB or any of its subsidiaries;
- split, combine or reclassify any outstanding shares of capital stock of FBLB or any of its subsidiaries, or declare, set aside or pay any dividends or other distribution on any such shares of capital stock, except that FB&T may pay dividends to FBLB in the ordinary course of business, and FBLB may pay dividends in the ordinary course of business for the sole purpose of providing FBLB shareholders with funds to pay taxes on the income of FBLB;
- incur any material indebtedness, except in the ordinary course of business;
- discharge or satisfy any material encumbrance on its properties or assets or pay any material liability, except otherwise in the ordinary course of business;
- sell, assign, transfer, mortgage, pledge or subject to any lien or other encumbrance any of its assets, except in the ordinary course of business;
- cancel any material indebtedness or claims or waive any rights of material value, except in the ordinary course of business;
- acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any corporation, partnership, joint venture or other business organization or division or material assets thereof, or assets or any real estate or assets or deposits that are material to FBLB, except in exchange for indebtedness previously contracted, including other real estate owned;
- make any single or group of related capital expenditures or commitments therefor in excess of $50,000 or enter into any lease or group of related leases with the same party which involves aggregate lease payments of more than $50,000 for any individual lease or involves more than $100,000 for any group of related leases in the aggregate;
- change its accounting methods, other than changes required by GAAP or regulatory accounting principles;
- cancel or terminate its current insurance policies or allow any of the coverage thereunder to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies for substantially similar premiums are in full force and effect;
- enter into or modify any employment, severance or similar agreements or arrangements with, or grant any compensation increases to, any director, officer or management employee, except in the ordinary course of business;
- enter into or modify any independent contractor or consultant contract outside the ordinary course of business in a manner that requires annual payments in excess of $100,000;
- terminate the employment of any employee of FBLB or its subsidiaries, other than in the ordinary course of business;
- terminate or amend any bonus, profit sharing, stock option, restricted stock, pension, retirement, deferred compensation, or other employee benefit plan, trust, fund, contract or arrangement for the benefit or welfare of any employees, except as contemplated under the merger agreement or as required by law;
- make, modify or revoke any election with respect to taxes, consent to any waiver or extension of time to asses or collect any taxes, file any amended returns or file any refund claim;
- enter into or modify any material contract with respect to the matters described in this section;
- extend credit or enter into any commitment to extend credit, except in the ordinary course of business and in accordance with the lending practices of FB&T as disclosed to Heartland, or extend credit in excess of $500,000 on an unsecured basis or $1,000,000 on a secured basis, or in any amount to a borrower with a loan listed on the

43

watch list, except, in each case after providing Heartland with prior written notice of such extension of credit and a copy of the loan underwriting analysis and credit memorandum and the basis of the credit decision;

- sell, assign or otherwise transfer any participation in any loan without providing Heartland with prior written notice of such sale, assignment or other transfer; or
- sell any equity securities in its investment portfolio.

Representations and Warranties

The merger agreement contains representations and warranties by each of FBLB and Heartland. Among others, FBLB's representations and warranties to Heartland cover the following:

- corporate matters, including organization, standing and power;
- authority relative to execution and delivery of the merger agreement, and the absence of conflicts with, or violations of, organizational documents, contracts or laws as a result of the merger;
- the fact that the approval of holders of two-thirds of the issued and outstanding shares of FBLB common stock is the only vote required of any holders of FBLB capital stock with respect to the merger agreement;
- capitalization;
- ownership of FBLB common stock and the holders of the SARs;
- financial statements;
- absence of undisclosed liabilities;
- FB&T loans, substandard loans, other real estate owned and commitments to extend credit;
- allowance for loan and lease losses;
- deposits;
- reports and filings with federal and state banking authorities;
- subsidiaries, interests in limited liability companies and off balance sheet arrangements;
- the correctness of its books and records;
- the absence of material adverse changes or events since September 30, 2017;
- the absence of certain material actions and developments since September 30, 2017;
- ownership and leases of real and personal property;
- intellectual property;
- environmental liability;
- Community Reinvestment Act compliance;
- information security;
- taxes;
- material contracts and commitments;
- litigation;
- financial advisors and brokers;
- employee and labor matters;
- employee benefit plans;
- governance and administration of the KSOP;
- insurance matters;
- transactions with affiliates;
- permits and compliance with laws;
- absence of fiduciary accounts;
- interest rate risk management instruments;
- absence of guarantees;
- absence of circumstances that would prevent regulatory approvals being obtained;
- the fairness opinion of Stephens;
- transactions in securities; and
- registration obligations.

44

Heartland's representations and warranties to FBLB cover the following:

- corporate matters, including organization, standing and power;
- authority relative to execution and delivery of the merger agreement and the absence of conflicts with, or violations of, organizational documents, contracts or laws as a result of the merger;
- validity of Heartland common stock to be issued pursuant to the merger;
- capitalization;
- accuracy of filings with the SEC;
- the absence of any material adverse change since September 30, 2017;
- reports and filings with federal and state banking regulatory authorities, and compliance with laws;
- Community Reinvestment Act compliance;
- the absence of circumstances that would prevent regulatory approvals being obtained;
- the absence of any action that would cause the merger to fail to qualify for the tax treatment described in this proxy statement/prospectus;
- the absence of any litigation that would prevent, enjoin, alter or materially delay the merger;
- the financial capacity to pay the cash component of the merger consideration;
- internal controls;
- compliance with Nasdaq rules and regulations; and
- financial advisors and brokers.

The representations described above and included in the merger agreement were made for purposes of the merger agreement and are subject to qualifications and limitations agreed by the respective parties in connection with negotiating the terms of the merger agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standard of materiality different from what might be viewed as material to shareholders, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters as facts. This description of the representations and warranties, and their reproduction in the copy of the merger agreement attached to this proxy statement/prospectus as Appendix A, are included solely to provide investors with information regarding the terms of the merger agreement. Accordingly, the representations and warranties and other provisions of the merger agreement should not be read alone, but instead should only be read together with the information provided elsewhere in this proxy statement/prospectus and in the documents incorporated by reference into this proxy statement/prospectus, including the periodic and current reports and statements that Heartland files with the SEC. See the section titled "Where You Can Find More Information" beginning on page 55.

Expenses and Fees

In general, except as described in the section titled "The Merger Agreement—Termination Fee and Payment of Expenses," each party will be responsible for all expenses incurred by it in connection with the negotiation and completion of the transactions contemplated by the merger agreement. However, Heartland will pay the filing fees and printing and mailing costs in connection with the preparation and distribution of this proxy statement/prospectus and the filings with bank regulatory authorities.

Amendment or Waivers

The merger agreement may only be amended by written agreement, signed by both Heartland and FBLB. Any provisions of the merger agreement may be waived by the party benefited by those provisions.

INFORMATION ABOUT FBLB

Overview

FBLB is a bank holding company headquartered in Lubbock, Texas. Through its wholly-owned banking subsidiary, FB&T, a Texas state non member bank, FBLB provides a broad range of financial products and services tailored to meet the needs of small to medium-sized businesses, professionals and retail customers who live or do business in its markets. FB&T operates from eight locations in West Texas, with four banking offices in Lubbock, Texas and one banking office in each of Tahoka, Wilson, Colorado City and Snyder, Texas. Through its subsidiary, PrimeWest, FB&T also engages in mortgage lending in Lubbock, the Permian Basin and across parts of north Texas. As of December 31, 2017, FBLB had approximately

45

$930.1 million in total assets, total loans held to maturity of $669.3 million, total deposits of $821.4 million and shareholders' equity of $87.7 million.

FBLB's principal executive office is located at 9816 Slide Road, Lubbock, Texas 79424, and its telephone number is (806) 788-2800.

Beneficial Ownership Information

The following table sets forth information about the beneficial ownership of FBLB common stock as of March 19, 2018 by (1) each shareholder known by FBLB to be the beneficial owner of more than 5% of the outstanding shares of FBLB, (2) each director and executive officer of FBLB, FB&T or PrimeWest, and (3) all of the directors and executive officers of FBLB, FB&T and PrimeWest, as a group. The number of shares indicated as beneficially owned in the table below, and the percentage ownership information, has been determined in accordance with federal securities laws. In general, beneficial ownership includes shares owned by spouses, minor children and other relatives residing in the same household, as well as trusts, partnerships, corporations or deferred compensation plans which are affiliated with the principal. Except as indicated in the footnotes below, FBLB believes, based on its books and records and other information furnished to it, that the persons named in the table below have sole voting and investment power with respect to all shares of common stock that they beneficially own, subject to applicable community property laws. The ownership percentages in the table are based on 1,083,275 shares of FBLB common stock outstanding as of April 6, 2018. Unless otherwise noted, the address for each shareholder listed below is the address of FBLB's principal office, which is 9816 Slide Road, Lubbock, Texas 79424. Beneficial ownership representing less than 1% is denoted with an asterisk (*).

Name and Position with FBLB, FB&T or PrimeWest[1]	Shares Beneficially Owned		Percent of Class	
5% Shareholders				
Barry Orr, Chairman, President, Chief Executive Officer and Director of FBLB	85,208	(2)	7.87	%
Nancy Scholz	58,000		5.35	%
Directors and Executive Officers (Other than Barry Orr)				
Drew Anderson, Executive Vice President and Chief Lending Officer of FB&T	10,520		0.97	%
Barry Brown, Director of FBLB	53,654		4.95	%
Duncan Burkholder, Director of FBLB	25,650		2.37	%
Abel Castro, Executive Vice President and Business Development Officer of FB&T	8,629	(2)	0.80	%
Bill deTournillon, Director of FBLB and President of PrimeWest	18,804	(2)(3)	1.74	%
Greg Garland, Executive Vice President and Director of FBLB	16,838	(2)	1.26	%
Ricky Green, Director of FBLB	39,208		3.62	%
J.W. Holt, Director of FBLB	500		0.05	%
Ken Lackey, Director of FBLB	11,840		1.09	%
Bruce Orr, Director of FBLB	34,556		3.19	%
Allyn Piland, Executive Vice President of PrimeWest	6,251	(2)	0.58	%
Hana Robertson, Executive Vice President and Chief Deposit Officer of FB&T	194	(2)	0.02	%
Ron Rogers, Director of FBLB	11,535		1.06	%
Gary Rothwell, Director of FBLB	25,710		2.37	%
Denise Thomas, Executive Vice President and Treasurer of FBLB	3,151	(2)	0.29	%
Bill Waller, Executive Vice President and Chief Operations Officer of FB&T	7,193	(2)	0.66	%
Tim White, Executive Vice President and Chief Credit Officer of FB&T	9,773		0.90	%
James Young, Director of FBLB	47,047		4.34	%
Directors and Executive Officers as a Group (19 Persons)	416,261		38.42	%

(1) Positions with FBLB are identified for each shareholder, unless a shareholder's primary role is with FB&T or PrimeWest.

(2) Includes shares of FBLB common stock held in such person’s account in the KSOP. Each such person will have the right to direct the vote of his or her shares held through the KSOP with respect to the proposal to approve the

merger.

(3) Includes 4,000 shares held of record by Mr. deTournillon's wife.

46

INFORMATION ABOUT HEARTLAND

General

Heartland is a publicly-held, multi-bank holding company. At December 31, 2017, Heartland had approximately $9.81 billion of total assets, total loans held to maturity of $6.39 billion, total deposits of $8.15 billion and common stockholders' equity of $990.5 million. Heartland’s total capital as of December 31, 2017, was $991.5 million.

Heartland conducts a community banking business through 10 bank subsidiaries, which are independently chartered community banks operating in the states of Iowa, Illinois, Wisconsin, New Mexico, Arizona, Montana, Colorado, Minnesota, Kansas, Missouri, Texas and California. All bank subsidiaries of Heartland are members of the FDIC. Listed below are Heartland's current bank subsidiaries, which operate a total of 118 banking locations:

- Dubuque Bank and Trust Company, Dubuque, Iowa, is chartered under the laws of the state of Iowa.
- Illinois Bank & Trust, Rockford, Illinois, is chartered under the laws of the state of Illinois.
- Wisconsin Bank & Trust, Madison, Wisconsin, is chartered under the laws of the state of Wisconsin.
- New Mexico Bank & Trust, Albuquerque, New Mexico, is chartered under the laws of the state of New Mexico.
- Rocky Mountain Bank, Billings, Montana, is chartered under the laws of the state of Montana.
- Arizona Bank & Trust, Phoenix, Arizona, is chartered under the laws of the state of Arizona.
- Citywide Banks, Denver, Colorado, is chartered under the laws of the state of Colorado.
- Minnesota Bank & Trust, Edina, Minnesota, is chartered under the laws of the state of Minnesota.
- Morrill & Janes Bank and Trust Company, Merriam, Kansas, is chartered under the laws of the state of Kansas.
- Premier Valley Bank, Fresno, California, is chartered under the laws of the state of California.

Dubuque Bank and Trust Company also has two wholly-owned non-bank subsidiaries:

- DB&T Insurance, Inc., a multi-line insurance agency. DB&T has one wholly-owned subsidiary, Heartland Financial USA, Inc. Insurance Services. This subsidiary is a multi-line insurance agency that provides online insurance products to consumers and small business clients in the markets in which Heartland's bank subsidiaries conduct business.
- DB&T Community Development Corp., a community development company that partners with other entities in the development of low-income housing and historic rehabilitation projects.

Heartland has three active non-bank subsidiaries as listed below:

- Citizens Finance Parent Co., a consumer finance company with two wholly-owned subsidiaries:
- •Citizens Finance Co., a consumer finance company with offices in Iowa and Wisconsin.
- •Citizens Finance of Illinois Co., a consumer finance company with offices in Illinois.
- Heartland Community Development Inc., a property management company that holds and manages certain nonperforming assets acquired from Heartland's bank subsidiaries.
- Heartland Financial USA, Inc. Insurance Services, a multi-line insurance agency that provides online insurance products to consumers and small business clients in markets in which Heartland's bank subsidiaries conduct business.

In addition, as of December 31, 2017, Heartland had trust preferred securities issued through special purpose trust subsidiaries formed for the purpose of offering cumulative capital securities, including Heartland Financial Statutory Trust IV, Heartland Financial Statutory Trust V, Heartland Financial Statutory Trust VI, Heartland Financial Statutory Trust VII, Morrill Statutory Trust I, Morrill Statutory Trust II, Sheboygan Statutory Trust I, CBNM Capital Trust I, Citywide Capital Trust III, Citywide Capital Trust IV and Citywide Capital Trust V.

Heartland completed two strategic acquisitions in 2017. In July 2017, Heartland acquired Citywide Banks of Colorado, Inc., the parent company of Citywide Banks, a Colorado state bank. Immediately after this acquisition, Citywide Banks was merged with and into Heartland's existing Colorado banking subsidiary, and the surviving bank

adopted the "Citywide Banks" name. In February 2017, Heartland acquired Founders Bancorp, the parent company of Founders Community Bank, a California state bank. Founders Community Bank was merged into Premier Valley Bank, Heartland's

47

California state banking subsidiary. Also, on February 23, 2018, Heartland acquired Signature Bancshares (the "Signature Bancshares Acquisition"), the parent company of Signature Bank. Signature Bank was merged into Minnesota Bank & Trust, Heartland's Minnesota banking subsidiary.

All of Heartland’s subsidiaries are wholly-owned.

The principal business of Heartland's bank subsidiaries consists of making loans to and accepting deposits from businesses and individuals. Its bank subsidiaries provide full service commercial and retail banking in their communities. Both Heartland's loans and its deposits are generated primarily through strong banking and community relationships and through management that is actively involved in the community. Heartland's lending and investment activities are funded primarily by core deposits. This stable source of funding is achieved by developing strong banking relationships with customers through value-added product offerings, competitive market pricing, convenience and high-touch personal service. Deposit products, which are insured by the FDIC to the full extent permitted by law, include checking and other demand deposit accounts, NOW accounts, savings accounts, money market accounts, certificates of deposit, individual retirement accounts, health savings accounts and other time deposits. Loan products include commercial and industrial, commercial real estate, small business, agricultural, real estate mortgage, consumer, and credit cards for commercial, business and personal use.

Heartland supplements the local services of its bank subsidiaries with a full complement of ancillary services, including wealth management, investment and insurance services. Heartland provides convenient electronic banking services and client access to account information through business and personal online banking, mobile banking, bill payment, remote deposit capture, treasury management services, debit cards and automated teller machines.

Dubuque Bank and Trust Company, Heartland’s oldest bank subsidiary, was originally incorporated in Iowa in 1935. Heartland was formed as an Iowa corporation to serve as its holding company in 1981, and Heartland reincorporated in Delaware on June 30, 1993. Heartland's principal executive offices are located at 1398 Central Avenue, Dubuque, Iowa 52001. Heartland’s telephone number is (563) 589-2100 and its website address is www.htlf.com.

Additional Information About Heartland

Additional information about Heartland and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See the section titled "Where You Can Find More Information."

COMPARISON OF RIGHTS OF HOLDERS OF HEARTLAND
COMMON STOCK AND FBLB COMMON STOCK

The rights of FBLB shareholders are currently governed by the Texas Business Organizations Code (the "TBOC"), and FBLB's articles of incorporation and bylaws. Upon completion of the merger, FBLB shareholders will become shareholders of Heartland and, as such, their rights with respect to the shares received in the merger will be governed by the Delaware General Corporation Law (the "DGCL"), and Heartland's certificate of incorporation and bylaws. The following discussion summarizes the material differences between the rights of FBLB shareholders and the rights of Heartland stockholders. While Heartland and FBLB believe that the summary includes the material differences between the rights of their respective shareholders prior to the merger, this summary does not include a complete description of all of the differences between the rights of Heartland's stockholders and the rights of FBLB's shareholders, nor does it include a complete description of the specific rights of the respective shareholders discussed. You should read carefully the relevant provisions of Heartland's certificate of incorporation and bylaws and FBLB's articles of incorporation and bylaws, as well as the TBOC and DGCL, for a more complete understanding the differences in rights. This summary is qualified in its entirety by reference to the constituent documents of each company, as well as the TBOC and DGCL.
Authorized Capital Stock

Heartland. The authorized capital stock of Heartland consists of 40,000,000 shares of common stock and 200,000 shares of preferred stock, of which (1) 16,000 have been designated as Series A Junior Participating Preferred, (2) 81,698 shares have been designated as Fixed Rate Cumulative Perpetual Preferred Stock, Series B, (3) 81,698 shares of Non-Cumulative Perpetual Preferred Stock, Series C, and (4) 3,000 shares of Senior Non-Cumulative Perpetual Convertible Preferred Stock, Series D. As of December 31, 2017, Heartland had 29,953,356 shares of outstanding common stock and 745 shares of outstanding Series D preferred stock. On February 23, 2018, Heartland issued an additional 1,001,246 shares of common stock in connection with the Signature Bancshares Acquisition.

FBLB. The authorized capital stock of FBLB consists of 2,000,000 shares of common stock and 1,000,000 shares of preferred stock. As of April 6, 2017, FBLB had 1,083,075 shares of outstanding common stock.

Size of Board of Directors

Heartland. The DGCL provides that the board of directors of a business corporation will consist of one or more members, each of whom will be a natural person, and that the number of directors will be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change will be made only by amendment. Heartland’s certificate of incorporation provides that the number of directors will not be less than three nor more than nine. Heartland will propose an amendment to its certificate of incorporation to increase the maximum number of directors from 9 to 11 at its 2018 annual meeting of stockholders.

FBLB. The TBOC provides that the board of directors will consist of one or more directors. The number of directors will be fixed by or in the manner provided in the certificate of formation or bylaws. FBLB's bylaws provide that the number of directors will consist of not less than one and not more than 40 members elected by the shareholders at the annual meeting.

Qualifications of Directors

Heartland. The DGCL provides that directors need not be stockholders unless otherwise required by the certificate of incorporation or the bylaws, and that other qualifications of directors may be prescribed in the certificate of incorporation or the bylaws.

The Heartland bylaws provide that directors need not be residents of Delaware or the United States or stockholders of the corporation. Heartland's certificate of incorporation and bylaws provide that a person will not be eligible for election to the board of directors if such person is 70 years of age or older on the date of such election, provided, however, that such restriction does not apply to any incumbent directors who attained the age of 65 years prior to January 1, 1993. Heartland will propose an amendment to its certificate of incorporation to increase the maximum age at which a person may be elected a director from 70 to 72 at its 2018 annual meeting of stockholders.

FBLB. Under the TBOC, a director is not required to be a resident of the State of Texas or a shareholder of the corporation, unless otherwise required by the corporation's certificate of formation or bylaws. FBLB's bylaws similarly provide that directors need not be residents of the State of Texas or shareholders of FBLB.

Filling Vacancies on the Board

Heartland. The DGCL provides that, unless the certificate of incorporation or bylaws state otherwise, a majority of the directors then in office (although less than a quorum) or the sole remaining director may fill any vacancy on the board of directors including newly created directorships resulting from an increase in the number of directors.

Heartland's bylaws provide that vacancies may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, by the nominating and compensation committee, or by the sole remaining director.

FBLB. The TBOC provides that a vacancy on the board of directors may be filled by election at an annual or special meeting of the shareholders called for that purpose or by the affirmative vote of the majority of the remaining directors then in office, even if the remaining directors constitute less than a quorum of the board of directors. FBLB's bylaws provide that a vacancy on the board of directors may be filled by the vote of a majority of the remaining directors then in office.

Removal of Directors

Heartland. Under the DGCL, directors may be removed, with or without cause, by the holders of a majority of the shares entitled to vote on their election; however, in the case of a corporation whose board of directors is classified, stockholders may effect such removal only for cause unless the certificate of incorporation otherwise provides. Heartland's certificate of incorporation provides that a director may only be removed for cause and by an affirmative vote of 70% of the outstanding shares entitled to vote generally in the election of directors at an annual meeting of stockholders or a meeting of the stockholders called for that purpose.

FBLB. Unless otherwise provided in the certificate of formation or the bylaws of a corporation, the TBOC provides that at any meeting of shareholders called expressly for the purpose of removing a director, any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at any election of directors.

FBLB's articles of incorporation and bylaws do not specify procedures with respect to the removal of directors.

Nomination of Directors for Election

Heartland. If a stockholder wishes to nominate a person for election as director, the stockholder must give timely notice in proper written form to the Secretary of Heartland. To be timely, such stockholder notice must be received by the Secretary at Heartland's principal executive offices not later than the close of business on the 30th day nor earlier than the opening of business on the 75th day before the meeting; provided, however, that in the event the notice of the meeting is given less than 40 days before the meeting, notice must be received not later than 10 days after the date that notice of the meeting was given. To be in proper written form, such stockholder's notice must be in writing and contain information regarding the nominee to the board of directors and the stockholder bringing the nomination and other information specified in Heartland's bylaws.

FBLB. FBLB's bylaws do not specify procedures with respect to the nomination of directors.

Fiduciary Duty of Directors

Heartland. Directors of Delaware corporations have fiduciary obligations to act in accordance with the so-called duties of "due care" and "loyalty." The duty of care requires that the directors act in an informed and deliberative manner and to inform themselves, prior to making a business decision, of all material information reasonably available to them. The duty of loyalty requires the directors to act in good faith, not out of self-interest and in a manner that the directors reasonably believe to be in the best interests of the corporation.

FBLB. In Texas, the fiduciary duties of directors have been characterized as including duties of loyalty (including good faith), care and obedience, and these duties are owed to the corporation and its shareholders collectively.

Stockholder and Shareholder Meetings

Heartland Annual Meetings. Under Heartland's bylaws an annual meeting of the stockholders must be held on the Wednesday following the third Tuesday of May each year or on such other date as the board of directors may determine.

Heartland Special Meetings. Under the DGCL, a special meeting may be called by the board of directors or by other persons authorized by the certificate of incorporation or the bylaws. Heartland's bylaws provide that special meetings of the stockholders may be called by the chairman of the board, the vice chairman of the board, the president, the board, or at the written request of stockholders representing a majority of outstanding voting shares.

FBLB Regular Meetings. Under FBLB's bylaws, a regular meeting of the shareholders will be held at such time as specified by the board of directors, but in no event will such meeting be held later than May 15th of each calendar year.

FBLB Special Meeting. The TBOC provides that special meetings of the shareholders of a corporation may be called by the president, by the board of directors or by any other person authorized to call special meetings by the certificate of formation or bylaws of the corporation. A special meeting may also be called by the percentage of shares specified in the certificate of formation, not to exceed 50% of the shares entitled to vote, or if no percentage is specified, at least 10% of all of the shares of the corporation entitled to vote at the proposed special meeting. Under FBLB's bylaws, special meetings of the shareholders may be called by the president, the board of directors or by the president at the request of the holders of at least 10% of all of the shares of the corporation entitled to vote at the proposed special meeting, unless otherwise prescribed by law.

Submission of Shareholder Proposals

Heartland. Heartland's bylaws provide that a stockholder must give notice to the secretary of Heartland not less than 30 days nor more than 75 days prior to the date of the originally scheduled meeting in order to bring business before an annual meeting. The notice must set forth as to each matter the stockholder proposes to bring before the meeting: (1) a description of the proposal and the reasons for the proposal; (2) the name and address of the proposing stockholder; (3) the number of shares of Heartland's common stock beneficially owned by the stockholder; and (4) any interest of the stockholder in the proposal.

FBLB. FBLB's bylaws do not specify procedures with respect to business that may be brought by a shareholder at a meeting of shareholders.

Notice of Shareholder Meetings

Heartland. Heartland's bylaws provide that it will notify stockholders of the place, date, and time of a meeting not less than 10 nor more than 60 days before the date of the meeting or in the case of a merger or consolidation of Heartland requiring stockholder approval or a sale, lease or exchange of all or substantially all of Heartland's property and assets, not less than 20 nor more than 60 days before the date of meeting. If the notice is for a meeting other than the annual meeting, the notice will also specify the purpose or purposes for which the meeting is called.

FBLB. FBLB's bylaws provide that the corporation will notify those shareholders entitled to vote of the date, time and place of each shareholders meeting not less than 10 nor more than 50 days before the meeting date. Notice of special shareholders' meeting must include the purpose or purposes of the meeting, and the business transacted at all special meetings will be confined to the purpose or purposes stated in the notice (except for procedural matters). However, under the TBOC, notice of a meeting at which a fundamental business transaction is to be considered will be mailed to all shareholders of record, whether or not entitled to vote at such meeting, not less than 21 days prior to the meeting. If the fundamental business transaction to be considered is a merger, conversion or interest exchange, such notice will include a copy or summary of such plan of merger, conversion or interest exchange, as appropriate, and a notice of the right of dissent and appraisal.

Shareholder Vote Required for Mergers and Sales

Heartland. The DGCL generally requires that a merger or consolidation or sale, lease or exchange of all or substantially all of a corporation's property and assets be approved by the directors and by a majority of the outstanding stock entitled to vote thereon. Under the DGCL, a surviving bank need not obtain stockholder approval for a merger if: (1) the merger agreement does not amend the certificate of incorporation of the surviving bank; (2) each share of the surviving bank's stock outstanding prior to the merger remains outstanding in identical form after the merger; or (3) either no shares of common stock of the surviving bank are to be issued in the merger, or, if common stock will be issued, it will not increase the number of shares of common stock outstanding prior to the merger by more than 20%.

In addition, the DGCL permits the merger of one corporation, of which at least 90% of the outstanding shares of each class is owned by another corporation, with or into the other corporation, without shareholder approval of either corporation.

Heartland's certificate of incorporation provides that a merger or consolidation or a sale, lease or exchange of all or substantially all of Heartland's property and assets requires the affirmative vote of 70% of Heartland's voting shares unless such transaction (1) is approved by resolution adopted by not less than two-thirds of Heartland's board of directors, (2) is with a corporation of which the majority of the outstanding shares are owned by Heartland, or (3) does not require stockholder approval under the DGCL.

FBLB. The TBOC generally requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation entitled to vote to approve a fundamental business transaction, unless a different vote, but not less than a majority of the shares entitled to vote on the matter, is specified in the certificate of formation. Under the TBOC, fundamental business transactions include mergers, conversions, exchanges and sales of all or substantially all of assets.

FBLB's articles of incorporation do not provide for any lesser voting requirements for fundamental business transactions, and its bylaws expressly defer to the voting requirements provided in the TBOC.

Distributions

Heartland. The DGCL allows the board of directors to declare and pay dividends and other distributions to stockholders either out of surplus, or out of net profits for the current or preceding fiscal year in which the dividend is declared. A distribution out of net profits is not permitted if a corporation’s capital is less than the accumulated preference of preference shares, until the deficiency has been repaired.

In addition to the restrictions discussed above, Heartland's ability to pay dividends to its stockholders may be affected by rules, regulations and policies of the Federal Reserve applicable to bank holding companies.

Under the Certificate of Designation of its Series D Preferred Stock, Heartland is prohibited from paying dividends on any shares of parity stock or junior stock (other than a dividend payable solely in shares of junior stock) or redeeming

shares of parity stock or junior stock if it has failed to pay dividends on such Series D Preferred Stock.

FBLB. The TBOC allows the board of directors to make a distribution if such distribution would not violate the corporation's certificate of formation, cause the corporation to be insolvent following such distribution or exceed the surplus of the corporation available for distributions. In addition, FBLB's bylaws provide the board of directors with authority to set aside funds of the corporation that would otherwise be available for distributions to reserve against contingencies. FBLB's articles of incorporation and bylaws do not provide any other special requirements for issuing dividends.

In addition to the restrictions discussed above, FBLB's ability to pay dividends to its shareholders may be affected by rules, regulations and policies of the Federal Reserve applicable to bank holding companies.

Preemptive Rights

Heartland. Under the DGCL, shareholders do not have preemptive rights unless expressly provided in the corporation's certificate of incorporation. Heartland's certificate of incorporation and bylaws do not provide for preemptive rights.

FBLB. Under the TBOC, shareholder do not have preemptive rights unless expressly provided in the corporation's certificate of formation. FBLB's articles of incorporation and bylaws do not provide for preemptive rights.

Shareholder Actions Without a Meeting

Heartland. Under the DGCL, unless otherwise provided in the certificate of incorporation, stockholders may act without a meeting if a written consent is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Heartland's certificate of incorporation and bylaws provide that stockholders may act without a meeting if a written consent is signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on such action were present and voted.

FBLB. Under the TBOC, shareholders may act without a meeting if a written consent is signed by all of the shareholders entitled to vote on the matter, unless the corporation's certificate of formation allow less than unanimous consent (but not less that the number of votes necessary to take the action at the meeting).

FBLB's articles of incorporation provide that shareholders may act without a meeting if a written consent is signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on such action were present and voted.

Dissenters' Rights of Appraisal

Heartland. Under the DGCL, stockholders have appraisal rights in connection with mergers and consolidations, provided the stockholder complies with certain procedural requirements of the DGCL. However, this right to demand appraisal does not apply to shares of any class or series of stock if, at the record date fixed to determine the stockholders entitled to receive notice of and to vote:

- the shares are listed on a national securities exchange; or
- the shares are held of record by more than 2,000 stockholders.

Further, no appraisal rights are available for shares of stock of a constituent corporation surviving a merger if the merger does not require a vote of the stockholders of the surviving bank.

Regardless of the above, appraisal rights are available for the shares of any class or series of stock if the holders are required by the terms of an agreement of merger or consolidation to accept for their stock anything other than:

- shares of stock of the corporation surviving or resulting from the merger or consolidation;
- shares of stock of any other corporation which, at the effective date of the merger or consolidation, will be listed on a national securities exchange, or held of record by more than 2,000 stockholders;
- cash in lieu of fractional shares of the corporations described in either of the above; or
- any combination of the shares of stock and cash in lieu of fractional shares described in any of the three above.

FBLB. Under the TBOC, a shareholder of a corporation is entitled to (1) dissent from a fundamental business transaction and (2) subject to compliance with the procedures set forth in the TBOC, obtain the fair value of the shareholder's ownership interest through an appraisal. The TBOC further provides that there is no right of dissent in favor of the holders of shares listed on a national securities exchange under certain circumstances depending on the consideration to be received pursuant to the terms of the plan of merger, conversion or exchange. The procedures for exercising dissenters' rights in Texas are more fully described in the section entitled "Dissenters' Rights of FBLB Shareholders."

Shareholder Class Voting Rights

Heartland. The DGCL provides that unless otherwise provided in a corporation's certificate of incorporation, each stockholder is entitled to one vote for each share of capital stock held by such stockholder.

Holders of the Series D Preferred Stock have the right to vote with the common stockholders, on a converted basis and as a single class, upon any amendment to the certificate of incorporation that would adversely affect their powers, preferences or special rights.

FBLB. The TBOC provides that unless otherwise provided in a corporation's certificate of formation, each shareholder is entitled to one vote for each share held.

Indemnification

Heartland. A Delaware corporation is required to indemnify a present or former director or officer against expenses actually and reasonably incurred in an action that such person successfully defends on the merits or otherwise.

A corporation may indemnify any director, officer, employee or agent who is or is threatened to be made a party to a non-derivative proceeding against expenses, judgments and settlements incurred in connection with the proceeding, provided the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful. A director, officer, employee or agent made or threatened to be made a party to a derivative action can be indemnified to the same extent, except that indemnification is not permitted with respect to claims in which the person has been adjudged liable to the corporation unless the court determines to allow indemnity for expenses.

Any permissive indemnification of a present or former director, officer, employee or agent, unless ordered by a court, will be made by the corporation upon a determination by: (2) a majority vote of the disinterested directors even though less than a quorum; (2) a committee of disinterested directors, designated by a majority vote of such directors even though less than a quorum; (3) independent legal counsel in a written opinion; or (4) the stockholders. The statutory rights regarding indemnification are not exclusive.

Heartland's bylaws provide that Heartland will indemnify a director or officer made party to a proceeding by reason of the fact that he or she is or was a director or officer of the corporation against expenses, judgments, fines and settlements in the circumstances that the Delaware statute allows, and under the authority of one of the groups specified above, excluding independent legal counsel.

FBLB. Generally, Chapter 8 of the TBOC permits a corporation to indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person was or is a director or officer if it is determined that such person (1) conducted himself in good faith, (2) reasonably believed (i) in the case of conduct in his official capacity as a director or officer of the corporation, that his conduct was in the corporation’s best interest, or (ii) in other cases, that his conduct was not opposed to the corporation’s best interests, and (3) in the case of any criminal proceeding, did not have reasonable cause to believe that his conduct was unlawful. In addition, the TBOC requires a corporation to indemnify a director or officer for any action that such director or officer is wholly successful, on the merits or otherwise, in the defense of the proceeding.

FBLB's articles of incorporation and bylaws provide for indemnification of directors and officers to the fullest extent allowed by Texas law. Such indemnification may include expenses incurred in defending a proceeding in advance of its final disposition upon receipt of a written undertaking by such director or officer to repay such amounts if it is determined by final disposition of such proceeding that he or she is not entitled to indemnification by FBLB.

Limitations on Directors' Liability

Heartland. Under the DGCL, a Delaware corporation's certificate of incorporation may eliminate director liability for all acts except: (1) an act or omission not in good faith or that involves intentional misconduct or knowing violation of the law; (2) a breach of the duty of loyalty; (3) improper personal benefits; or (4) certain unlawful distributions. Heartland’s certificate of incorporation contains such an exculpatory provision.

FBLB. Under the TBOC, the certificate of formation of a corporation may provide that directors and officers of the corporation are not liable to the corporation or its owners for monetary damages for an act or omission by such persons in their capacities as directors and officers. FBLB's articles of incorporation provide that a director of FBLB will not be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director to the fullest extent permitted by law, except it does not eliminate or limit the liability of a director for: (1) a breach of the director’s duty of loyalty; (2) acts or omissions not in good faith that (i) constitute a breach of the director’s duty to the corporation or (ii) involve intentional misconduct or a knowing violation of law; (3) any transaction from which the director derived an improper personal benefit; or (4) acts or omissions for which the liability of a director is expressly provided by an applicable statute.

Amendment of Certificate or Articles of Incorporation

Heartland. Under the DGCL and unless the certificate requires a greater value, an amendment to the certificate of incorporation may be adopted by holders of a majority of the voting shares at a meeting at which a quorum is present, provided that, a class of stockholders has the right to vote separately on an amendment if it would: (1) increase or decrease the aggregate number of authorized shares of the class; (2) increase or decrease the par value of the shares of the class; or (3) adversely change the powers, preferences, or special rights of the shares of the class.

The Heartland certificate of incorporation provides that the provisions regarding (1) amendment to bylaws and certificate of incorporation, (2) the size, qualifications and classes of the board of directors, (3) additional voting requirements, (4) business combinations with interested stockholders, and (5) stockholder action by written consent, will not be amended, changed or repealed unless approved by the affirmative vote of the holders of shares having at least 70% of the voting power of all outstanding stock entitled to vote thereon, unless such amendment, change or repeal was approved by at least two-thirds of the directors.

FBLB. Under the TBOC, a corporation’s certificate of formation may be amended by the affirmative vote of the holders of two-thirds of the outstanding shares entitled to vote on the amendment, and, if entitled to vote by class or series of shares, by the holders of two-thirds of the outstanding shares of each class or series entitled to vote on the amendment, unless a different number, not less than a majority of shares entitled to vote on the matter or class or series entitled to vote on the matter, is specified in the corporation’s certificate of formation. An amendment that merely restates the existing certificate, as amended, may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders.

FBLB's articles of incorporation do not provide for any special requirements for amendment of the articles of incorporation.

Amendment of Bylaws

Heartland. Under the DGCL, stockholders entitled to vote have the power to adopt, amend or repeal bylaws. In addition, a corporation may, in its certificate of incorporation, confer such power upon the board of directors. However, the stockholders always retain the power to adopt, amend or repeal the bylaws, even though the board of directors may also be delegated such power.

Heartland's certificate of incorporation and bylaws provide that the bylaws also may be amended, altered or repealed by (1) the stockholders, provided such amendment, alteration or repeal is approved by the affirmative vote of holders of not less than 70% of the outstanding shares of stock entitled to vote at an election of directors, or (2) the affirmative vote of not less than two-thirds of the directors.

FBLB. Under the TBOC, unless a corporation's certificate of formation or a bylaw adopted by the shareholders provides otherwise, a corporation's shareholders may amend the bylaws regardless of whether they may also be amended by the board of directors.

FBLB's articles of incorporation and bylaws provide that the board of directors may alter, amend or repeal the bylaws. These documents do not expressly restrict the shareholders from altering, amending or repealing the bylaws.

Shareholder Inspection Rights
Heartland. Under the DGCL, every stockholder of record has the right to inspect, upon written demand under oath stating the stockholder's purpose for inspection, in person or by agent or attorney, the corporation's stock ledger, stockholder list, its other books and records and, subject to certain restrictions, the books and records of a subsidiary of the corporation.
FBLB. Under the TBOC, a shareholder of a Texas corporation has the right to examine the books and records of the corporation at any reasonable time upon written notice stating a proper purpose if it (1) has been a shareholder for six months or (2) holds at least five percent of its outstanding shares.
CERTAIN OPINIONS

The validity of the Heartland common stock offered by this proxy statement/prospectus has been passed upon for Heartland by Dorsey & Whitney LLP.
Fenimore, Kay, Harrison & Ford, LLP has delivered an opinion concerning material federal income tax consequences of the merger. See the section titled "Regulatory Matters and Tax Consequences and Accounting Treatment of the Merger—Material U.S. Federal Income Tax Consequences of the Merger" on pages 29 to 32.
EXPERTS

The consolidated financial statements of Heartland Financial USA, Inc. as of December 31, 2017 and 2016, and for each of the years in the three-year period ended December 31, 2017, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2017, have been incorporated by reference herein and in the registration statement in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.
WHERE YOU CAN FIND MORE INFORMATION

Heartland files annual, quarterly and current reports, proxy statements and other information with the SEC. Heartland's SEC filings are available to the public through the Internet at the SEC web site at http://www.sec.gov. You may also read and copy any document Heartland files with the SEC at the SEC's public reference room at 100 F Street, N.E., Washington, D.C., 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference facilities and their copy charges. You may also obtain copies of Heartland's SEC filings at the office of The Nasdaq Stock Market located at One Liberty Plaza, 165 Broadway, New York, NY 10006. For further information on obtaining copies of Heartland's public filings at The Nasdaq Stock Market, you should call 1-212-401-8700.
The SEC allows Heartland to incorporate by reference into this proxy statement/prospectus the information it files with the SEC. This allows Heartland to disclose important information to you by referencing those filed documents. Heartland has previously filed the following documents with the SEC and is incorporating them by reference into this proxy statement/prospectus:

- Heartland's Annual Report on Form 10-K for the year ended December 31, 2017;
- Heartland's definitive Proxy Statement for its annual meeting of shareholders to be held on May 16, 2018; and
- the description of Heartland's common stock and preferred share purchase rights included in its registration statements on Form 8-A filed with the SEC, including any amendment or reports filed for the purpose of updating such description, and in any other registration statement or report filed by us under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

Heartland is also incorporating by reference any future filings made by it with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial filing of the registration statement of which this proxy statement/prospectus is a part and prior to the date of the FBLB special meeting on May 15, 2018. The most recent information that Heartland files with the SEC automatically updates and supersedes more dated information.

You can obtain a copy of any documents which are incorporated by reference in this proxy statement/prospectus or any supplement at no cost by writing or telephoning Heartland at:

Investor Relations
Heartland Financial USA, Inc.
1398 Central Avenue
Dubuque, Iowa 52001
(563) 589-2100

You should rely only on the information contained or incorporated by reference in this proxy statement/prospectus or any supplement hereto relating to the Heartland common stock. Heartland has not authorized anyone to provide you with different information. You should not assume that the information in this proxy statement/prospectus or any supplement is accurate as of any date other than the date on the front cover of those documents. The business, financial condition, results of operations and prospects of Heartland may have changed since those dates.

APPENDIX A

AGREEMENT AND PLAN OF MERGER
DATED AS OF NOVEMBER 12, 2017
BY AND BETWEEN
HEARTLAND FINANCIAL USA, INC.
AND
FIRST BANK LUBBOCK BANCSHARES, INC.

TABLE OF CONTENTS

		Page
ARTICLE 1 DEFINITIONS		A-5
ARTICLE 2 MERGER		A-14
2.1	The Merger	A-15
2.2	Effect of Merger	A-15
2.3	Conversion of FBLB Common Stock	A-15
2.4	Adjustment to Cash Consideration for Changes in Adjusted Tangible Common Equity	A-15
2.5	Adjustments to Heartland Common Stock	A-15
2.6	Rights of Holders of FBLB Common Stock; Capital Stock of Heartland	A-15
2.7	Payment and Exchange of Certificates	A-15
2.8	Dissenting Shares	A-16
2.9	The Closing	A-17
2.10	Withholding	A-18
2.11	Payment of Other Amounts Payable at Closing	A-18
2.12	Tax-Free Reorganization	A-18
2.13	Additional Actions	A-18
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF HEARTLAND		A-18
3.1	Organization and Qualification	A-18
3.2	Authority Relative to this Agreement; Non-Contravention	A-18
3.3	Validity of Heartland Common Stock	A-19
3.4	Capital Stock	A-19
3.5	Exchange Act Reports	A-19
3.6	No Material Adverse Changes	A-20
3.7	Reports and Filings; Compliance with Laws	A-20
3.8	Community Reinvestment Act	A-20
3.9	Regulatory Approvals	A-20
3.10	Certain Tax Matters	A-21
3.11	Litigation	A-21
3.12	Financial Ability	A-21
3.13	Internal Controls	A-21
3.14	NASDAQ	A-21
3.15	Financial Advisor	A-21
3.16	No Other Representations or Warranties	A-21
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF FBLB		A-21
4.1	Organization and Qualification	A-21
4.2	Authority Relative to this Agreement; Non-Contravention	A-23
4.3	Capitalization	A-23
4.4	Ownership of FBLB Common Stock	A-24
4.5	Financial Statements	A-24
4.6	Absence of Undisclosed Liabilities	A-24
4.7	Loans; Substandard Loans; OREO; Commitments to Extend Credit	A-25
4.8	Allowance for Loan and Lease Losses	A-25

4.9 Deposits A-25

4.10	Reports and Filings	A-26
4.11	Subsidiaries; Interests in LLCs; Off Balance Sheet Arrangements	A-26
4.12	Books and Records	A-26
4.13	No Material Adverse Changes	A-27
4.14	Absence of Certain Developments	A-27
4.15	Properties	A-28
4.16	Intellectual Property	A-29
4.17	Environmental Matters	A-29
4.18	Community Reinvestment Act	A-31
4.19	Information Security	A-31
4.20	Tax Matters	A-31
4.21	Contracts and Commitments	A-35
4.22	Litigation	A-36
4.23	Financial Advisor	A-36
4.24	Employees	A-36
4.25	Employee Benefit Plans	A-38
4.26	KSOP Committee; KSOP Trustees	A-41
4.27	Insurance	A-41
4.28	Affiliate Transactions	A-41
4.29	Compliance with Laws; Permits	A-41
4.30	No Fiduciary Accounts	A-42
4.31	Interest Rate Risk Management Instruments	A-42
4.32	No Guarantees	A-42
4.33	Regulatory Approvals	A-42
4.34	Fairness Opinion	A-42
4.35	Transactions in Securities	A-42
4.36	Registration Obligation	A-43
4.37	No Other Representations or Warranties	A-43
ARTICLE 5 CONDUCT OF BUSINESS PENDING THE MERGER		A-43
5.1	Conduct of Business	A-43
5.2	Access to Information; Confidentiality	A-45
5.3	Notice of Developments	A-45
5.4	Certain Loans and Related Matters	A-45
5.5	Financial Statements and Pay Listings	A-46
5.6	Consents and Authorizations	A-46
5.7	Tax Matters	A-46
5.8	No Solicitation	A-47
5.9	Maintenance of Allowance for Loan and Lease Losses	A-47
5.10	Heartland Forbearances	A-48
5.11	FBLB Forbearances	A-48
ARTICLE 6 ADDITIONAL COVENANTS AND AGREEMENTS		A-48
6.1	Filings and Regulatory Approvals	A-48
6.2	Shareholder Meeting; Registration Statement	A-48
6.3	Establishment of Accruals	A-50
6.4	Employee Matters	A-50

A-3

6.5	Tax Treatment	A-51
6.6	Updated Schedules	A-52
6.7	Indemnification; Directors' and Officers' Insurance	A-52
6.8	Statutory Trusts	A-52
6.9	Determination of Adjusted Tangible Common Equity	A-53
6.10	Nomination of Orr for Election as Heartland Director	A-53
6.11	Heartland Confidential Information	A-53
6.12	Indemnification Waiver Agreements	A-53
6.13	Reservation of Heartland Common Stock	A-53
6.14	Special Tax Holdback	A-53
ARTICLE 7 CONDITIONS		A-56
7.1	Conditions to Obligations of Each Party	A-56
7.2	Additional Conditions to Obligation of FBLB	A-57
7.3	Additional Conditions to Obligation of Heartland	A-58
ARTICLE 8 TERMINATION, AMENDMENT AND WAIVER		A-59
8.1	Reasons for Termination	A-59
8.2	Effect of Termination	A-61
8.3	Expenses	A-61
8.4	FBLB Termination Fee	A-61
8.5	Amendment	A-61
8.6	Waiver	A-61
ARTICLE 9 GENERAL PROVISIONS		A-62
9.1	Press Releases and Announcements	A-62
9.2	Notices	A-62
9.3	Assignment	A-63
9.4	No Third Party Beneficiaries	A-63
9.5	Schedules	A-63
9.6	Interpretation	A-63
9.7	Severability	A-64
9.8	Complete Agreement	A-64
9.9	Governing Law	A-64
9.10	Submission to Jurisdiction	A-64
9.11	Specific Performance	A-64
9.12	Waiver of Jury Trial	A-64
9.13	Investigation of Representations, Warranties and Covenants	A-65
9.14	Counterparts and Effectiveness	A-65
9.15	No Survival of Representations	A-65
SIGNATURES		A-66

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “Agreement”), dated as of December 12, 2017, is made and entered into by and between Heartland Financial USA, Inc., a Delaware corporation (“Heartland”), and First Bank Lubbock Bancshares, Inc., a Texas corporation (“FBLB”).

WHEREAS, the respective Boards of Directors of Heartland and FBLB have determined that it is advisable and in the best interests of Heartland and FBLB and their respective shareholders to consummate the merger of FBLB with and into Heartland as described in Article 2 (the “Merger”);

WHEREAS, as a result of the Merger, the outstanding shares of Common Stock, par value $1.00 per share, of FBLB (“FBLB Common Stock”) will be converted into a combination of cash and shares of Common Stock, $1.00 par value per share, of Heartland (“Heartland Common Stock”);

WHEREAS, FBLB owns all of the issued and outstanding capital stock of First Bank & Trust Company, a Texas state-chartered bank (“FB&T”), which, upon consummation of the Merger, will become a wholly-owned subsidiary of Heartland;

WHEREAS, as an inducement to Heartland to enter into this Agreement, the directors and officers of FBLB and FB&T and certain other persons who are parties to the FBLB Control Group Agreement (as defined in Article 1) and who own, in the aggregate, 35.41% of the issued and outstanding shares of FBLB Common Stock have entered into a Voting Agreement dated the date hereof (the “Voting Agreement”) with Heartland and FBLB pursuant to which such persons have agreed to vote in favor of the Merger and all other transactions contemplated by this Agreement at the Voting Meeting (as defined in the FBLB Control Group Agreement) or the FBLB Shareholder Meeting (as defined in Section 6.2(a), as the case may be;

WHEREAS, as an inducement to Heartland to enter into this Agreement, each of the non-employee directors of FBLB has agreed to enter into, prior to or as of the date of the consummation of the Merger, a Director Support Agreement with FBLB and Heartland (each, a “Director Support Agreement”) with Heartland and FBLB pursuant to which each such non-employee directors will agree not to compete with, or solicit the employees of, any FBLB Entity or Heartland or any of its Affiliates (as defined in Article 1), or disclose confidential information of any FBLB entity or Heartland or any of its Affiliates;

WHEREAS, Barry Orr, Chairman, President and Chief Executive Officer of FBLB (“Orr”), has entered into the Orr Employment Agreement (as defined in Article 1);

WHEREAS, Greg Garland, President of FB&T (“Garland”), has entered into the Garland Employment Agreement (as defined in Article 1);

WHEREAS, Heartland and FBLB desire that the Merger be made on the terms and subject to the conditions set forth in this Agreement and that the Merger qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and the rules and regulations promulgated thereunder.

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

“Acquisition Proposal” means any offer, proposal, inquiry or indication of interest (other than an offer, proposal, inquiry or indication of interest by Heartland) contemplating or otherwise relating to any Acquisition Transaction.

“Acquisition Transaction” means any transaction or series of transactions involving (a) any merger, consolidation, share exchange, business combination, issuance of securities, acquisition of securities, tender offer, exchange offer or other similar transaction (i) in which any FBLB Entity is a constituent corporation, (ii) in which a Person or “group” (as defined in

the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 15% of the outstanding securities of any class of voting securities of any FBLB Entity or (iii) in which any FBLB Entity issues or sells securities representing more than 20% of the outstanding securities of any class of voting securities of such FBLB Entity; or (b) any sale (other than sales in the Ordinary Course of Business), lease (other than in the Ordinary Course of Business), exchange, transfer (other than in the Ordinary Course of Business), license (other than nonexclusive licenses in the Ordinary Course of Business), acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated net revenues, net income or assets of FBLB.

"Actual Cash Consideration" means the Cash Consideration, the Downwardly Adjusted Cash Consideration or the Upwardly Adjusted Cash Consideration, as the case may be, that any holder of shares of FBLB Common Stock will be entitled to receive for each FBLB Converted Common Share pursuant to Sections 2.3(a) and 2.4.

"Adjusted Tangible Common Equity" means (a) the sum of (i) the total stockholders' common equity of FBLB, determined in accordance with GAAP as of the close of business on the Determination Date as adjusted to reflect a reasonable projection of the operations of FBLB through the Effective Time, and (ii) the Determination Date Transaction Expenses less (b) the sum of (x) the value of the Intangible Assets determined as of the close of business on the Determination Date as adjusted to reflect a reasonable projection of the operations of FBLB through the Effective Time, and (y) the amount, if any, by which the Transaction Expenses exceed $7,500,000. For purposes of the foregoing definition, "a reasonable projection of operations" will be based on the average monthly operations of FBLB during the six-month period ending on the Determination Date.

"Affiliate" has the meaning set forth in Rule 12b 2 under the Exchange Act.

"Aggregate Tax Holdback Amount" means 388,506 shares of Heartland Common Stock.

"Ancillary Documents" means the Voting Meeting Agreement, the Orr Employment Agreement, the Garland Employment Agreement, the Indemnification Waiver Agreement the KSOP Committee's Certificate, the NDA and any and all other agreements, certificates and documents required to be delivered by either party hereto prior to or at the Closing pursuant to the terms of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which a state bank is required to be closed under Texas Law.

"Bylaws" mean, with respect to any corporation, those instruments that at that time constitute its bylaws, including any amendments thereto.

"Cash Consideration" means an amount equal to (a)(i) $17,505,724, less (ii) the SAR Payment, divided by (b) the FBLB Common Shares Outstanding.

"Cause" means (a) any act of (i)(A) fraud or intentional misrepresentation by an employee or (B) embezzlement, misappropriation or conversion of assets or opportunities of any FBLB Entity or any of Heartland or its Affiliates by an employee, (ii) the willful violation of any Law (other than traffic violations or similar offenses) by an employee, (iii) the commission of any act of moral turpitude or conviction of a felony by an employee or (iv) the willful or negligent failure of an employee to perform his or her duties in any material respect.

"Charter" means, with respect to any corporation, those instruments that at that time constitute its charter as filed or recorded under the general corporation or other applicable Law of the jurisdiction of incorporation or association, including the articles or certificate of incorporation or association, any amendments thereto and any articles or certificates of merger or consolidation.

"Code" means the Internal Revenue Code of 1986, as amended.

"Committee" has the meaning set forth in the SAR Plan.

"Commonly Controlled Entity" means any entity under common control with FBLB within the meaning of Sections 414(b), (c), (m), (o) or (t) of the Code.

"Consent" means any authorization, consent, approval, filing, waiver, exemption or other action by or notice to any Person.

"Contract" means a contract, agreement, lease, commitment or binding understanding, whether oral or written, that is in effect as of the date of this Agreement or any time after the date of this Agreement.
"CRA" means the Community Reinvestment Act.
"Determination Date" means the last Business Day of the month immediately preceding the month in which the Effective Time occurs.
"Determination Date Transaction Expenses" means the amount of Transaction Expenses (a) paid and expensed by FBLB or FB&T through the close of business on the Determination Date, or (b) reflected as accrued expenses on the FBLB Determination Date Balance Sheet.
"Disclosure Schedules" means the Schedules delivered by FBLB to Heartland on or prior to the date of this Agreement, which will be neither attached to this Agreement nor publicly available.
"Encumbrance" means any charge, claim, community property interest, easement, covenant, condition, equitable interest, lien, option, pledge, security interest, right of first refusal or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.
"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
"FBLB Common Shares Outstanding" means 1,083,275 shares of FBLB Common Stock.
"FBLB Control Group Agreement" means the Control Group Agreement dated as of December 17, 2013 among certain FBLB Shareholders.
"FBLB Converted Common Share" means each share of FBLB Common Stock that will be converted into the Stock Consideration and Actual Cash Consideration pursuant to Sections 2.3(a), 2.4 and 2.5.
"FBLB Determination Date Balance Sheet" means the consolidated balance sheet of FBLB prepared by FBLB in accordance with GAAP as of the Determination Date pursuant to Section 6.9.
"FBLB Entities" means, collectively, FBLB, FB&T, PrimeWest, OLI, FSI and FPHI.
"FBLB Shareholder" means any holder of issued and outstanding shares of FBLB Common Stock.
"FBLB Shareholders' Agreement" means the Shareholders' Agreement among FBLB and each of the FBLB Shareholders, which is intended to protect FBLB's status as a corporation taxable under Subchapter S of the Code.
"FB&T Subsidiaries" means, collectively, PrimeWest, OLI, FSI and FPHI.
"First Release Date" means August 17, 2018.
"Fourth Release Date" means the third anniversary of the date on which the 2017 federal income Tax Return of FBLB is filed.
"GAAP" means generally accepted accounting principles in the United States applied on a consistent basis during the periods involved.
"Garland Employment Agreement" means the Employment Agreement dated as of the date hereof among Heartland, FBLB, FB&T and Garland, which will become effective as of the Effective Time and will supersede and cancel the Employment Agreement dated March 17, 2015 between FB&T and Garland.
"Governmental Authorization" means any approval, consent, license, permit, waiver, registration or other authorization issued, granted, given, made available or otherwise required by any Governmental Entity or pursuant to applicable Law.
"Governmental Entity" means any federal, state, local, foreign, international or multinational entity or authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of or pertaining to government.

"Governmental Order" means any judgment, injunction, writ, order, ruling, award or decree by any Governmental Entity or arbitrator.
"Heartland Closing Date Stock Price" means the closing sale price of a share of Heartland Common Stock on the last trading day immediately preceding the Closing Date as quoted on the NASDAQ Global Select Market on such trading day.
"Indebtedness" means, with respect to any Person, without duplication: (a) all obligations of such Person for borrowed money, or with respect to deposits or advances of any kind; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person upon which interest charges are customarily paid (other than trade payables incurred in the Ordinary Course of Business); (d) all obligations of such Person under conditional sale or other title retention agreements relating to any property purchased by such Person; (e) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for services and supplies incurred in the Ordinary Course of Business); (f) all lease obligations of such Person that are required to be or otherwise are capitalized on the books and records of such Person in accordance with GAAP; (g) all obligations of others secured by a lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (h) all obligations of such Person under interest rate, currency or commodity derivatives or hedging transactions (valued at the termination value thereof); (i) all letters of credit or performance bonds issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the Ordinary Course of Business); and (j) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.
"Indemnification Waiver Agreements" means (a) an agreement, in a form acceptable to Heartland, dated as of the Closing Date among the members of the KSOP Committee, on the one hand, and the Surviving Corporation and Heartland, on the other hand, pursuant to which the members of the KSOP Committee will waive any rights to indemnification from the Surviving Corporation, Heartland or any of their Affiliates provided for in the KSOP (including, for the avoidance of doubt, Section 15.8 thereof) or any other document, and (b) an agreement, in a form acceptable to Heartland, between the KSOP Trustees, on the one hand, and the Surviving Corporation and Heartland, on the other hand, pursuant to which the KSOP Trustees will waive any rights to indemnification from the Surviving Corporation, Heartland or any of their Affiliates provided for in the KSOP Trust or any other document.
"Intangible Asset" means any asset of any FBLB Entity that is considered an intangible asset under GAAP, including goodwill.
"Intellectual Property" means: (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereon, and all patents, patent applications and patent disclosures, together with all reissues, continuations, continuations-in-part, divisions, extensions and re-examinations thereof; (b) all trademarks whether registered or unregistered, service marks, domain names, corporate names and all combinations thereof, and associated therewith; (c) all copyrights whether registered or unregistered, and all applications, registrations and renewals in connection therewith; (d) all datasets, databases and related documentation; and (e) all other intellectual property and proprietary rights.
"IRS" means the Internal Revenue Service.
"Knowledge of FBLB" or other similar phrase means the knowledge of a director or executive officer of FBLB, FB&T or PrimeWest after due inquiry.
"Knowledge of Heartland" or other similar phrase means the knowledge of a director or executive officer of Heartland after due inquiry.
"KSOP" means FBLB's Employee Stock Ownership with 401(k) Provisions Plan and Trust dated January 1, 2013, as amended through the date hereof.
"KSOP Committee" means the Committee (as defined in the KSOP).
"KSOP Committee's Certificate" means a certificate from the members of KSOP Committee stating, in addition to other items reasonably requested by Heartland, that (a) in connection with the Merger and the other transactions contemplated hereby, all pass-through voting requirements with respect to the KSOP have been satisfied and (b) (i) the consideration received by the KSOP pursuant to this Agreement for the shares of FBLB Common Stock held by the KSOP is not less than the "fair market value" (as defined in IRS Revenue Ruling 59-60) of such shares, and

(ii) the terms and conditions of this Agreement, taken as a whole, are fair to and in the best interest of the KSOP from a financial point of view; provided, however, that such

A-8

certificate may state that (1) none of the KSOP Trustees is a licensed financial or investment advisor and (2) the statements contained in clause (b) above are based on the financial expertise of the KSOP Trustees in their capacities as the KSOP Trustees and executive officers and directors of FBLB.
“KSOP Trust” means FBLB’s Employee Stock Ownership Trust referred to in the KSOP.
“KSOP Trustees” means the members of the KSOP Committee.
“Law” means any constitution, law, ordinance, principle of common law, regulation, rule, statute or treaty of any Governmental Entity.
“Liability” means any liability or obligation whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due, whether known or unknown, and regardless of when asserted.
“Litigation” means any claim, action, arbitration, mediation, audit, hearing, investigation, proceeding, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Entity or arbitrator or mediator.
“Material Adverse Effect” means any change, effect, event or condition, individually or in the aggregate, that has had, or, with the passage of time, would reasonably be expected to have, a material adverse effect on the business, assets, properties, financial condition, or results of operations of the FBLB Entities, taken as a whole, or Heartland and its Subsidiaries, taken as a whole, as the case may be; provided, however, that “Material Adverse Effect” will not be deemed to include the impact of (a) changes after the date hereof in Laws of general applicability to banks and bank holding companies, (b) changes after the date hereof in GAAP or regulatory accounting requirements generally applicable to banks and bank holding companies, (c) changes after the date hereof in economic conditions generally affecting banks and bank holding companies, (d) the public announcement of the Merger, (e) any outbreak of hostilities or any new declared or undeclared acts of war, and (f) with respect to the FBLB Entities, the effects of any action taken with the prior consent of Heartland or as otherwise required by this Agreement; further provided, however, that the effect of any of the changes described in clauses (a) through (c) will not be excluded from the definition of “Material Adverse Effect” to the extent they have a disproportionate impact on FBLB Entities as a whole, on the one hand, or Heartland and its Subsidiaries as a whole, on the other hand, as measured relative to similarly situated companies in the financial services industry.
“NDA” means the Confidentiality and Non-Disclosure Agreement dated April 7, 2017 between Heartland and FBLB.
“Ordinary Course of Business” means the ordinary course of business of the FBLB Entities consistent with past custom and practice (including with respect to nature, scope, magnitude, quantity and frequency).
“Orr Employment Agreement” means the Employment Agreement dated as of the date hereof among Heartland, FBLB, FB&T and Orr, which will become effective as of the Effective Time.
“Per Share Holdback Amount” means 0.3586 shares of Heartland Common Stock.
“Permitted Encumbrances” means (a) Encumbrances for Taxes and other governmental charges and assessments that are not yet due and payable or which are being contested in good faith by appropriate proceedings (provided required payments have been made and adequate accruals or reserves have been established in connection with any such contest), (b) Encumbrances of carriers, warehousemen, mechanics’ and materialmen and other like Encumbrances arising in the Ordinary Course of Business (provided lien statements have not been filed as of the Closing Date), (c) easements, rights of way and restrictions, zoning ordinances and other similar Encumbrances affecting the Leased Operating Real Property and which do not unreasonably restrict the use thereof in the Ordinary Course of Business, (d) statutory Encumbrances in favor of lessors arising in connection with any property leased to any FBLB Entity, (e) Encumbrances reflected in the Latest Balance Sheets and the Related Statements or arising under Material Contracts and (f) Encumbrances that will be removed prior to or in connection with the Closing.
“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, Governmental Entity or other entity.
“Plan” means every plan, fund, contract, program and arrangement (whether written or not) for the benefit of present or former employees, including those intended to provide (a) medical, surgical, health care, hospitalization, dental, vision, workers’ compensation, life insurance, death, disability, legal services, severance, sickness or accident benefits (whether or not

A-9

defined in Section 3(1) of ERISA), (b) pension, profit sharing, stock bonus, retirement, supplemental retirement or deferred compensation benefits (whether or not Tax qualified and whether or not defined in Section 3(2) of ERISA) or (c) salary continuation, unemployment, supplemental unemployment, severance, termination pay, change-in-control, vacation or holiday benefits (whether or not defined in Section 3(3) of ERISA), (i) that is maintained or contributed to by any of the FBLB Entities or any Commonly Controlled Entity, (ii) that any of the FBLB Entities or any Commonly Controlled Entity has committed to implement, establish, adopt or contribute to in the future, (iii) for which any of the FBLB Entities or any Commonly Controlled Entity is or may be financially liable as a result of the direct sponsor's affiliation with any of the FBLB Entities or their shareholders (whether or not such affiliation exists at the date of this Agreement and notwithstanding that the Plan is not maintained by any of the FBLB Entities or any Commonly Controlled Entity for the benefit of its employees or former employees) or (iv) for or with respect to which any of the FBLB Entities or any Commonly Controlled Entity is or may become liable under any common law successor doctrine, express successor liability provisions of Law, provisions of a collective bargaining agreement, labor or employment Law or agreement with a predecessor employer. "Plan" does not include any arrangement that has been terminated and completely wound up prior to the date of this Agreement and for which none of the FBLB Entities nor any Commonly Controlled Entity has any present or potential future Liability.

"Remedies Exception" means except to the extent enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting the enforcement of creditors' rights generally and by general equitable principles.

"Return" means any return, declaration, report, estimate, information return or statement pertaining to any Taxes.

"SAR Payment" means the aggregate amount payable to all holders of SARs as of the Closing Date pursuant to the SAR Plan as determined by the Committee's interpretation of definition of "Star Value" (as set forth in the SAR Plan).

"SAR Plan" means FBLB's Stock Appreciation Rights Plan effective as of January 1, 2015.

"SARs" has the meaning set forth in the SAR Plan.

"Second Release Date" means September 8, 2019.

"Severance Costs" means all amounts paid or payable to any employee or non-employee director of any FBLB Entity as a result of the execution of this Agreement or the performance and consummation of the transactions contemplated hereby (including any amounts due and payable pursuant to any existing employment, change in control, salary continuation, deferred compensation, non-competition, retention, bonus or other similar agreement, plan or arrangement); provided, however, that Severance Costs will not include (a) any payments made by Heartland pursuant to Section 6.4(d) or (b) the $1,606,113 and $281,448 that have been accrued by FBLB with respect to those certain Salary Continuation Agreements and Deferred Cash Incentive Agreements set forth on Schedule 4.21, respectively.

"Special Tax Loss" and, collectively, "Special Tax Losses" means any and all Liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties (including the reasonable fees of legal counsel, accountants and other outside consultants related thereto) incurred by a Tax Indemnified Party (a) in connection with the assessment or imposition of Taxes on any Heartland or any FBLB Entity (i) as a result of FBLB failing to qualify as an "S corporation" within the meaning of Section 1361 of the Code or any comparable provisions of state, local or other Tax Law, or (ii) as a result of any wholly-owned direct or indirect Subsidiary of FBLB failing to qualify as a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code or any comparable provisions of state, local or other Tax Law, or (b) in connection with the conduct of a Tax Proceeding in which the IRS or any other Governmental Entity takes the position that such failure to qualify as an "S corporation" or a "qualified subchapter S subsidiary" may have occurred.

"Statutory Declarations of Trust" means the declarations of trust contained in (a) the Amended and Restated Trust Agreement, dated June 27, 2002, between Outsource Capital Group, Inc., as depositor, and the trustees named therein, and (b) the Amended and Restated Declaration of Trust, dated September 23, 2004, between Outsource Capital Group, Inc., as sponsor, and JPMorgan Chase Bank, as trustee.

"Statutory Trust Agreements" means the Statutory Trust Debentures, the Statutory Trust Declarations of Trust, the Statutory Trust Guarantees, the Statutory Trust Indentures and the Statutory Trust Securities.

"Statutory Trust Debentures" means the debentures issued pursuant to the Statutory Trust Indentures.

"Statutory Trust Debt" means the aggregate principal outstanding under the Statutory Trust Debentures.

A-10

"Statutory Trust Guarantees" means (a) the Trust Preferred Securities Guarantee Agreement, dated June 27, 2002, by and between Outsource Capital Group, Inc. and Wells Fargo Bank, National Association, as trustee, and (b) Guarantee Agreement, dated September 23, 2004, by and between JPMorgan Chase Bank, as trustee, and Outsource Capital Group, Inc.
"Statutory Trust Indentures" means (a) the Indenture, dated June 27, 2002, between FB&T, as Issuer, and the Trustees named therein, and (b) the Indenture, dated September 23, 2004, between Outsource Capital Group, Inc., as issuer, and JPMorgan Chase Bank, as trustee.
"Statutory Trust Securities" means the common securities and preferred securities issued pursuant to the Statutory Declarations of Trust.
"Statutory Trusts" means the Outsource Capital Group, Inc. Capital Statutory Trust III and Outsource Capital Group, Inc. Capital Trust IV, each of which is a Delaware grantor trust.
"Stockholder Representative" means Orr acting in his capacity as representative of the holders of FBLB Common Stock pursuant to Section 6.14(o).
"Subsidiary" means, with respect to any Person, any other Person (other than a natural person), whether incorporated or unincorporated, in which such Person, directly or indirectly (a) has a 50% or more equity interest or (b) owns at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions; provided, however, that the term will not include any such entity in which such voting securities or equity interest is owned or controlled in a fiduciary capacity, without sole voting power, or was acquired in securing or collecting a debt previously contracted in good faith.
"Superior Proposal" means any Acquisition Proposal by a third party on terms which the Board of Directors of FBLB determines in its good faith judgment, after consultation with, and receipt of written advice from, its financial advisors (which advice will be communicated to Heartland), to be more favorable from a financial point of view to its shareholders than the Merger and the other transactions contemplated hereby, (a) after taking into account the likelihood of consummation of such transaction on the terms set forth therein, taking into account all legal, financial (including the financing terms of any such proposal), regulatory and other aspects of such proposal, and any other relevant factors permitted under applicable Law, (b) after giving Heartland at least five Business Days to respond to such third-party Acquisition Proposal once the Board of Directors of FBLB has notified Heartland that in the absence of any further action by Heartland it would consider such Acquisition Proposal to be a Superior Proposal, and then (c) after taking into account any amendment or modification to this Agreement proposed by Heartland.
"Tax Proceeding" means any Litigation with the IRS or any other Governmental Entity relating to Taxes.
"Taxes" means all taxes, charges, fees, levies or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property or other taxes, customs, duties, fees, assessments or charges of any kind whatsoever, including all interest and penalties thereon, and additions to tax or additional amounts imposed by any Governmental Entity.
"The Bankers Bank Indebtedness" means the Indebtedness owed to The Bankers Bank on the Closing Date by FBLB pursuant to (a) the Promissory Note, dated May 9, 2017, between FBLB, as borrower, and The Bankers Bank, as lender, and (b) the Promissory Note, dated April 22, 2017 between FBLB, as borrower, and The Bankers Bank, as lender, together with any interest accrued thereon and any prepayment premiums or penalties, and any other fees, expenses and other amounts payable as a result of the prepayment or discharge of such Indebtedness on the Closing Date.
"Third Release Date" means March 10, 2020.
"Transaction Expenses" means all amounts paid, to be paid, accrued or to be accrued by any FBLB Entity (or by Heartland, as successor to, or owner of, any such FBLB Entity) that arise out of or in connection with the execution of this Agreement and the performance and consummation of the transactions contemplated hereby (whether arising before, at or after the Effective Time), including (a) legal, accounting and financial advisory fees or commissions, (b) Severance Costs, (c) termination fees or other expenses incurred in connection with the termination of any Contract of any FBLB Entity (including Contracts relating to information technology or card services), (d) payments made in connection with the termination of any Plans (unless the amount of such payments has been accrued by FBLB), (e) the amount of any penalties or other expenses incurred by any FBLB Entity in connection with the

prepayment of Indebtedness by any of them occurring as a result

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of such transactions, (f) premiums or other expenses relating to the D&O Insurance, (g) Liabilities for employment Taxes arising out of or incurred in connection with the payment of such Transaction Expenses or the SAR Payment, (h) payments made to non-employee directors pursuant to the Director Support Agreements (to the extent not included in Severance Costs), and (i) signing bonuses paid to Orr or Garland (to the extent not included in Severance Costs); provided, however, that Transaction Expenses will not include any payment to the holders of SARS in accordance with this Agreement.

The following terms not defined above are defined in the sections indicated below:

Definition	Defined
Affordable Care Act	4.24(k)
Agreement	Preamble
ALLL	4.8
Bank Holding Company Act	3.1
Bank Regulators	4.18
Bank Regulatory Approvals	3.2
Blue Sky Laws	3.2
Orr	Recitals
Cash Consideration	2.3(a)
Change of FBLB Board Recommendation	6.2(a)
Closing	2.9
Closing Date	2.9
Code	Recitals
D&O Insurance	6.7(b)
Delaware Certificate of Merger	2.2(d)
Departments	4.24(d)
DGCL	2.1
Director Support Agreement	Recitals
Dissenting Shareholder	2.8(a)
Dissenting Shares	2.8(b)
Downwardly Adjusted Cash Consideration	2.4
Effective Date	2.2(d)
Effective Time	2.2(d)
Environmental Costs	4.17(a)(i)
Environmental Law	4.17(a)(ii)
Exchange Act	3.2
Exchange Ratio	2.3(a)
Expenses	8.3
FBLB	Preamble
FBLB Annual Financial Statements	4.5(a)
FBLB Board Recommendation	6.2(a)
FBLB Common Stock	Recitals
FBLB Employees	4.24(j)
FBLB Financial Statements	4.5(a)
FBLB IT Systems	4.19(c)
FBLB Leases	4.15(g)
FBLB Regulatory Reports	4.10
FBLB Shareholder Meeting	6.2(a)
FB&T	Recitals
FB&T Annual Financial Statements	4.5(b)
FB&T Common Stock	4.3(a)
FB&T Financial Statements	4.5(b)

A-12

FDIC	3.2
FPHI	4.1(f)
Fractional Share Amount	2.3(b)
FRB	3.2
FSI	4.1(e)
Garland	Recitals
Hazardous Materials	4.17(a)(iii)
Heartland	Preamble
Heartland 10-K Reports	3.5(a)
Heartland 10-Q Report	3.5(a)
Heartland Common Stock	Recitals
Heartland Common Stock Special Tax Loss Price	6.14(f)
Heartland Plans	6.4(c)
Heartland Regulatory Reports	3.7(a)
Heartland Series A Preferred Stock	3.4
Heartland Series B Preferred Stock	3.4
Heartland Series C Preferred Stock	3.4
Heartland Series D Preferred Stock	3.4
Indemnified Party	6.7(a)
IRS Ruling	6.14(a)
Latest Balance Sheets	4.5(c)
Latest FBLB Balance Sheet	4.5(a)
Latest FB&T Balance Sheet	4.5(b)
Leased Real Property	4.15(d)
Letter of Transmittal	2.7(a)
List	4.17(a)(iv)
Material Contracts	4.21(a)
Merger	Recitals
Merger Consideration	2.3(a)
NASDAQ	3.2
OLI	4.1(d)
Operating Real Property	4.15(d)
OREO	4.7(c)
Owned Real Property	4.15(b)
Payoff Letter	7.3(m)
PrimeWest	4.1(c)
Proxy Statement/Prospectus	6.2(b)
Real Property	4.15(d)
Registration Statement	6.2(b)
Regulatory Action	4.17(a)(v)
Related FBLB Statements	4.5(a)
Related FB&T Statements	4.5(b)
Related Financial Statement	4.5(c)
Related Statement	4.17(a)(vi)
Representatives	5.8(a)
Required Consents	5.6
Required FBLB Shareholder Vote	4.2(a)
Ruling Request	6.14(b)
SEC	3.5(a)
Securities Act	3.2

A-13

Stephens	4.23
Stock Consideration	2.3(a)
Surviving Corporation	2.1
Tax Claim	6.14(d)
Tax Indemnified Parties	6.14(c)
Termination Date	8.1(d)(i)
TBOC	2.1
TDB	3.2(a)
Texas Banking Statute	3.2
Texas Certificate of Merger	2.2(d)
TFC	3.2(a)
Third-Party Environmental Claim	4.17(a)(vii)
Upwardly Adjusted Cash Consideration	2.4
Voting Agreement	Recitals
Work Permits	4.24(d)

ARTICLE 2
MERGER

2.1The Merger. Under the terms of this Agreement and subject to the satisfaction or waiver of the conditions set forth in Article 7, at the Effective Time, FBLB will be merged with and into Heartland. Heartland, in its capacity as the corporation surviving the Merger, is sometimes referred to herein as the “Surviving Corporation.” The Merger will be effected pursuant to the provisions of, and with the effect provided in, Section 252 of the Delaware General Corporation Law (the “DGCL”) and Chapter 10, Subchapter A of Title 1 of the Texas Business Organizations Code (the “TBOC”).

2.2Effect of Merger.

(a)At the Effective Time, FBLB will be merged with and into Heartland, and the separate existence of FBLB will cease. The Charter and the Bylaws of Heartland, as in effect immediately prior to the Effective Time, will be the Charter and the Bylaws of the Surviving Corporation, until the same may be amended as provided therein and in accordance with applicable Law. The directors and officers of Heartland immediately prior to the Effective Time will be the directors and officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and will qualify.

(b)At the Effective Time and thereafter, the Surviving Corporation will be responsible and liable for all the Liabilities, Indebtedness and penalties of each of Heartland and FBLB.

(c)At the Effective Time and thereafter, the Surviving Corporation will possess all the rights, privileges, immunities and franchises, of a public as well as of a private nature, of each of Heartland and FBLB; all property, real, personal and mixed, and all Indebtedness due on whatever account, and all and every other interest, of or belonging to or due to each of Heartland and FBLB, will be taken and deemed to be transferred to and vested in the Surviving Corporation without further act or deed; and the title to any real estate or any interest therein, vested in Heartland or FBLB, will not revert or be in any way impaired by reason of the Merger.

(d)To effect the Merger, the parties hereto will cause a Certificate of Merger substantially in the form attached hereto as Exhibit A (the “Delaware Certificate of Merger”) and a Certificate of Merger substantially in the form attached hereto as Exhibit B (the “Texas Certificate of Merger”) relating to the Merger to be filed with the Secretary of State of Delaware and the Secretary of State of Texas, respectively. The Merger will become effective upon the filing of the Delaware Certificate of Merger and the Texas Certificate of Merger or at a time designated in such filings. As used

herein, the term "Effective Date" will mean the date on which the Merger will become effective as provided in the preceding sentence, and the term "Effective Time" will mean the time on the Effective Date when the Merger will become effective. The Effective Date and the Effective Time will take place on the Closing Date.

2.3Conversion of FBLB Common Stock.

(a)To effectuate the Merger, at the Effective Time, and without any further action of Heartland, FBLB or any holder of FBLB Common Stock, each issued and outstanding share of FBLB Common Stock (other than shares to be canceled pursuant to Section 2.3(c) and Dissenting Shares) will be canceled and extinguished and be converted into and become a right to receive (i) subject to Section 2.4, the Cash Consideration, and (ii) subject to Section 2.5, 3.0934 shares (the "Exchange Ratio") of Heartland Common Stock (the "Stock Consideration," and, together with the Actual Cash Consideration, the "Merger Consideration").

(b)No fractional shares of Heartland Common Stock will be issued for FBLB Converted Common Shares, and in lieu of any fractional share, Heartland will pay to each holder of FBLB Converted Common Shares who otherwise would be entitled to receive a fractional share of Heartland Common Stock an amount of cash (without interest) equal to the product of (i) the Heartland Closing Date Stock Price multiplied by (ii) the fractional share interest to which such holder would otherwise be entitled (the "Fractional Share Amount").

(c)Each share of FBLB Common Stock held as treasury stock of FBLB or held directly or indirectly by Heartland, other than shares held in a fiduciary capacity or in satisfaction of Indebtedness previously contracted, will be canceled, retired and cease to exist, and no exchange or payment will be made with respect thereto.

2.4Adjustment to Cash Consideration for Changes in Adjusted Tangible Common Equity. If the Adjusted Tangible Common Equity is less than $83,000,000, the Cash Consideration will be reduced by an amount equal to (a) the amount by which the Adjusted Tangible Common Equity is below $83,000,000, divided by (b) the FBLB Common Shares Outstanding (the "Downwardly Adjusted Cash Consideration"). If the Adjusted Tangible Common Equity is greater than $84,000,000, the Cash Consideration will be increased by an amount equal to (i) the lesser of (x) $5,000,000, and (y) the amount by which the Adjusted Tangible Common Equity is above $84,000,000, divided by (ii) the FBLB Common Shares Outstanding (the "Upwardly Adjusted Cash Consideration").

2.5Adjustments to Heartland Common Stock. In the event Heartland changes (or establishes a record date for changing) the number of shares of Heartland Common Stock issued and outstanding prior to the Effective Date as a result of any stock split, recapitalization, reclassification, combination, exchange of shares, readjustment or similar transaction with respect to the outstanding Heartland Common Stock, or Heartland declares a stock dividend or extraordinary cash dividend, and the record date therefor will be prior to the Effective Date, the Exchange Ratio will be proportionately adjusted.

2.6Rights of Holders of FBLB Common Stock; Capital Stock of Heartland.

(a)At and after the Effective Time and until surrendered for exchange, each outstanding stock certificate which immediately prior to the Effective Time represented the FBLB Converted Common Shares will be deemed for all purposes to evidence the right to receive the Stock Consideration and the Actual Cash Consideration for each FBLB Converted Common Share, and the record holder of such outstanding stock certificate will, after the Effective Time, be entitled to vote the shares of Heartland Common Stock into which such shares of FBLB Common Stock will have been converted on any matters on which the holders of record of Heartland Common Stock, as of any date subsequent to the Effective Time, will be entitled to vote. In any matters relating to such stock certificates, Heartland may rely conclusively upon the record of shareholders maintained by FBLB containing the names and addresses of the holders of record of FBLB Common Stock at the Effective Time.

(b)At and after the Effective Time, each share of capital stock of Heartland issued and outstanding immediately prior to the Effective Time will remain an issued and existing share of capital stock of the Surviving Corporation and will not be affected by the Merger.

2.7Payment and Exchange of Certificates.

(a)Payment of Merger Consideration; Exchange of Certificates. Within 10 Business Days after the Closing, Heartland or a paying agent appointed by Heartland will cause to be distributed to each holder of shares of FBLB Common Stock a letter of transmittal or other appropriate materials to facilitate the surrender of certificates representing such shares in exchange for the Stock Consideration and the Actual Cash Consideration for each FBLB Converted Common Share (a "Letter of Transmittal"). Within 10 Business Days after surrender to Heartland or to a paying agent appointed by Heartland of any certificate which prior to the Effective Date represented a share of FBLB Common Stock, Heartland or such paying agent will distribute to the Person in whose name such certificate is

registered, the Stock Consideration and the Actual Cash Consideration, and, if applicable, cash in the amount of any Fractional Share Amount.

(b)Failure to Surrender Certificates. Following the return by a paying agent appointed by Heartland, if any, to Heartland of the Merger Consideration held by it, any former shareholder of FBLB who has not complied with this Article 2 will thereafter look only to Heartland with respect to the payment of the Merger Consideration, any cash in lieu of fractional shares and any unpaid dividends and distributions on the Heartland Common Stock deliverable in respect of each share of FBLB Common Stock held by such shareholder. If outstanding certificates formerly representing FBLB Converted Common Shares are not surrendered prior to the date on which the Merger Consideration to which any holder of such shares is entitled as a result of the Merger would otherwise escheat to or become the property of any Governmental Entity, the unclaimed Merger Consideration will, to the extent permitted by abandoned property and any other applicable Law, become the property of Heartland (and to the extent not in Heartland's possession will be paid over to Heartland), free and clear of any and all claims or interest of any Person. Notwithstanding the foregoing, neither Heartland nor any other Person will be liable to any former holder of FBLB Common Stock for any amount delivered to a public official pursuant to applicable abandoned property, escheat or other similar Laws.

(c)Lost Certificates. In the event that any certificate representing FBLB Converted Common Shares will have been lost, stolen or destroyed, Heartland will issue and pay in exchange for such lost, stolen or destroyed certificate, upon the making of an affidavit of that fact by the holder thereof in form reasonably satisfactory to Heartland's paying agent, the Merger Consideration for each FBLB Converted Common Share; provided, however, that Heartland or Heartland's paying agent may, as a condition precedent to the issuance and payment of the Merger Consideration to which the holder of such certificate is entitled as a result of the Merger, require the owner of such lost, stolen or destroyed certificate to deliver a bond in such sum as it may direct as indemnity against any claim that may be made against Heartland, FBLB or any other party with respect to the certificate alleged to have been lost, stolen or destroyed.

(d)Dividends. Until outstanding certificates formerly representing FBLB Converted Common Shares are surrendered as provided in Section 2.7(a) and (c), no dividend or distribution payable to holders of record of shares of Heartland Common Stock will be paid to any holder of such outstanding certificates, but upon surrender of such outstanding certificates by such holder, there will be paid to such holder the amount of any dividends or distributions (without interest) theretofore paid with respect to such whole shares of Heartland Common Stock, but not paid to such holder, and which dividends or distributions had a record date occurring on or subsequent to the Effective Time.

(e)Full Satisfaction. The Merger Consideration issued and paid upon the surrender for exchange of each FBLB Converted Common Share in accordance with the terms and conditions of this Agreement will be deemed to have been issued and paid in full satisfaction of all rights pertaining to such FBLB Converted Common Share.

2.8Dissenting Shares.

(a)Notwithstanding any provision of this Agreement to the contrary, any shares of FBLB Common Stock held by a Person (a "Dissenting Shareholder") who has demanded and perfected a demand for appraisal of his, her or its shares of FBLB Common Stock in accordance with Chapter 10, Subchapter H, of the TBOC, and, as of the Effective Time, has neither effectively withdrawn nor lost his, her or its right to such demand will not represent a right to receive Merger Consideration for any share of FBLB Common Stock pursuant to Sections 2.3(a), 2.4 and 2.5, but in lieu thereof the holder thereof will be entitled to only such rights as are granted by Chapter 10, Subchapter H, of Title 1 of the TBOC.

(b)Notwithstanding the provisions of Section 2.8(a), if any Dissenting Shareholder demanding payment of fair value of such Dissenting Shareholder's shares of FBLB Common Stock ("Dissenting Shares") under the TBOC will effectively withdraw or lose (through failure to perfect or otherwise) such Dissenting Shareholder's rights and remedies granted by Chapter 10, Subchapter H, of Title 1 of the TBOC, then, as of the Effective Time or the time of such withdrawal or

loss, whichever occurs later, each Dissenting Share will automatically be converted into and represent only the right to receive the Merger Consideration as provided in Sections 2.3(a), 2.4 and 2.5 upon surrender of the certificate or certificates representing such Dissenting Shares.

(c)FBLB will give Heartland prompt notice of any written objection by a Dissenting Shareholder to the Merger or any demands by a Dissenting Shareholder for appraisal of his, her or its shares of FBLB Common Stock received by FBLB in accordance with Chapter 10, Subchapter H, of Title 1 of the TBOC, and Heartland will have the

right, at its expense, to direct in all negotiations and proceedings with respect to such demands. FBLB will not, except with the prior written consent of Heartland or as otherwise required by Law, make any payment with respect to, settle, or offer to settle, any such demands. Heartland will make any payments, settlement and offers of settlements to Dissenting Shareholders with respect to demands made pursuant to Chapter 10, Subchapter H, of Title 1 of the TBOC.

2.9The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") will take place remotely via the exchange of documents and signatures or at such other location mutually agreed upon by Heartland and FBLB. The Closing will take place as soon as practicable once the conditions in Article 7 have been satisfied or waived but in any event within 10 Business Days after the date on which all such conditions have been satisfied or waived, unless the parties otherwise agree (the "Closing Date"). The failure of the Closing will not ipso facto result in termination of this Agreement and will not relieve any party of any obligation under this Agreement.

(a)Subject to the conditions set forth in this Agreement, on the Closing Date, FBLB will deliver to Heartland:
(i)the certificate of FBLB, dated the Closing Date, required by Section 7.3(c);

(ii)the certificate of FBLB, dated the Closing Date, required by Section 7.3(d);

(iii)a certificate of FBLB dated the Closing Date (A) stating the number of shares of FBLB Common Stock outstanding immediately prior to the Effective Time, (B) stating that there are no other shares of capital stock of FBLB or options, warrants, rights to acquire, or securities convertible into capital stock of FBLB outstanding as of the Closing Date, and (D) the number of the Dissenting Shares;

(iv)duly executed copies of all Required Consents;

(v)a certificate of the secretary or an assistant secretary of FBLB, dated the Closing Date, certifying as to a copy of the text of the resolutions adopted by the Board of Directors of FBLB terminating the KSOP;

(vi)certificates representing all outstanding shares of FB&T Common Stock, which will be free of any Encumbrance;

(vii)the minute books, stock transfer records, corporate seal and other materials related to the corporate administration of all of the FBLB Entities;

(viii)releases of all Encumbrances on the Real Property, other than Permitted Encumbrances;

(ix)certificates dated as of a date not earlier than the third Business Day prior to the Closing executed by appropriate officials of the State of Texas as to the existence of each of the FBLB Entities;

(x)Certificates of Account Status issued by the Texas Comptroller of Public Accounts covering each of the FBLB Entities;

(xi)a duly executed FIRPTA statement for purposes of satisfying Heartland's obligations under Section 1.1445-2(c) of the Treasury Regulations; and

(xii)such other certificates, documents and instruments that Heartland reasonably requests for the purpose of
(1) evidencing the accuracy of the representations and warranties of FBLB, (2) evidencing the performance and compliance by FBLB with agreements contained in this Agreement, (3) evidencing the satisfaction of any condition referred to in Section 7.3 or (4) otherwise facilitating the consummation of the transactions contemplated by this Agreement.

(b)Subject to the conditions set forth in this Agreement, on the Closing Date, Heartland will deliver to FBLB:

(i)the certificate of Heartland, dated the Closing Date, required by Section 7.2(c);

(ii)the certificate of Heartland, dated the Closing Date, required by Section 7.2(d); and

(iii)such other certificates, documents and instruments that FBLB reasonably requests for the purpose of (1) evidencing the accuracy of the representations and warranties of Heartland, (2) evidencing the performance and compliance by Heartland with agreements contained in this Agreement, (3) evidencing the satisfaction of any condition referred to in Section 7.2 or (4) otherwise facilitating the consummation of the transactions contemplated by this Agreement.

2.10Withholding. Heartland or its paying agent will be entitled to deduct and withhold from the Merger Consideration otherwise payable pursuant to this Agreement any amounts required to be withheld or deducted with respect to such consideration under any applicable provisions of all Laws relating to Taxes (including the Code). To the extent that amounts are so withheld and timely remitted to the appropriate Governmental Entity, such withheld amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

2.11Payment of Other Amounts Payable at Closing. On the Closing Date, Heartland will:

(a)on behalf of FBLB, pay to such account as FBLB specifies to Heartland in writing at least two Business Days prior to the Closing Date as the amount of the SAR Payments; and

(b)on behalf of FBLB, pay to such account as FBLB specifies to Heartland in writing at least two Business Days prior to the Closing Date as the amount of The Bankers Bank Indebtedness in accordance with the Payoff Letter.

2.12Tax-Free Reorganization. The acquisition contemplated by this Agreement is intended to be a reorganization within the meaning of Section 368(a) of the Code and Treasury Regulations promulgated thereunder, and this Agreement is intended to be a "plan of reorganization" within the meaning of the Treasury Regulations promulgated under Section 368 of the Code. Each party to this Agreement agrees to treat this acquisition as a reorganization within the meaning of Section 368(a) of the Code and agrees to treat this Agreement as a "plan of reorganization" within the meaning of the Treasury Regulations under Section 368 of the Code, unless and until there is a determination, within the meaning of Section 1313 of the Code, that such treatment is not correct.

2.13Additional Actions. If, at any time after the Effective Time, Heartland will consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper to: (a) vest, perfect or confirm, of record or otherwise, in Heartland its right, title or interest in or to or under any of the rights, privileges, powers, franchises, properties or assets of FBLB; or (b) otherwise carry out the purposes of this Agreement, Heartland and its proper officers and directors or their designees will be authorized to execute and deliver, in the name and on behalf of any of the FBLB Entities all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of any of the FBLB Entities, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm Heartland's right, title or interest in or to or under any of the rights, privileges, powers, franchises, properties or assets of FBLB and otherwise to carry out the purposes of this Agreement.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF HEARTLAND

Heartland hereby represents and warrants to FBLB as follows:
3.1Organization and Qualification. Heartland is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has the requisite corporate power to carry on its business as now conducted. Heartland is registered as a bank holding company under Bank Holding Company Act of 1956, as amended (the "Bank Holding Company Act"). Heartland is licensed or qualified to do business in every jurisdiction in which the nature of its business or its ownership or property requires it to be licensed or qualified, except where the failure to be so licensed or qualified would not have or would not be reasonably expected to have a Material Adverse

Effect on Heartland.

3.2Authority Relative to this Agreement; Non-Contravention.

(a)Heartland has the requisite corporate power and authority to enter into this Agreement and the Ancillary Documents (to which Heartland is a party), and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and such Ancillary Documents by Heartland and the consummation by Heartland of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of Heartland. No other corporate proceedings on the part of Heartland are necessary to authorize this Agreement, the

Ancillary Documents (to which Heartland is a party), or to consummate the Merger and the transactions contemplated by this Agreement and the Ancillary Agreements (to which Heartland is a party). This Agreement and the Ancillary Documents (to which Heartland is a party) have been duly executed and delivered by Heartland and constitutes a valid and binding obligation of Heartland, enforceable in accordance with its terms, subject to the Remedies Exception. Heartland is not subject to, or obligated under, any provision of (a) its Charter or Bylaws, (b) any Contract, (c) any license, franchise or permit or (d) subject to obtaining the approvals referred to in Section 3.2(b), any Law, order, judgment or decree, which would be breached or violated by its execution, delivery and performance of this Agreement or any of the Ancillary Agreements (to which Heartland is a party) or the consummation by it of the transactions contemplated hereby or thereby.

(b)No Consent of any Governmental Entity is necessary on the part of Heartland for the consummation by it of the transactions contemplated by this Agreement, except for any approvals or waivers from the Board of Governors of the Federal Reserve System (the "FRB") for the Merger required under Bank Holding Company Act, any notices to and approvals from the Texas Department of Banking (the "TDB") required under Chapter 202 of the Texas Finance Code (the "TFC") and any notices to the Federal Deposit Insurance Corporation (the "FDIC") (such notices, approvals or waivers being herein collectively referred to as the "Bank Regulatory Approvals"); approvals to issue Heartland Common Stock under the Securities Act of 1933, as amended, and the rules and regulations thereunder (the "Securities Act"), under state securities or blue sky laws and the rules and regulations thereunder ("Blue Sky Laws"), and under the rules of the NASDAQ Stock Market, Inc. ("NASDAQ"); filings with respect to the Merger under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act"); and the filing with respect to the Merger of the Delaware Certificate of Merger and the Texas Certificate of Merger with the Secretary of State of Delaware and the Secretary of State of Texas, respectively.

3.3Validity of Heartland Common Stock. The shares of Heartland Common Stock to be issued pursuant to this Agreement will be, when issued, duly authorized, validly issued, fully paid and nonassessable and free and clear of any Encumbrance. Such shares of Heartland Common Stock will be authorized for listing on the NASDAQ Global Select Market or other national securities exchange upon official notice of issuance. The shares of Heartland Common Stock to be issued pursuant to this Agreement will be free of any preemptive rights of the shareholders of Heartland or any other Person. The shares of Heartland Common Stock to be issued pursuant to this Agreement will not be subject to any restrictions on transfer arising under the Securities Act; provided, however, that any holders of such shares who become employees of Heartland or any of its Subsidiaries will be subject to Heartland's insider trading policies (including the "black-out" periods relating to the trading of shares of Heartland Common Stock) to the extent such employees are covered by such insider trading policies.

3.4Capital Stock. The authorized capital stock of Heartland consists of 40,000,000 shares of Heartland Common Stock, and 200,000 shares of Preferred Stock, par value $1.00 per share, of which 16,000 shares have been designated Series A Junior Participating Preferred Stock ("Heartland Series A Preferred Stock"), 81,698 shares have been designated Series B Fixed Rate Cumulative Perpetual Preferred Stock ("Heartland Series B Preferred Stock"), 81,698 shares have been designated Senior Non-Cumulative Perpetual Preferred Stock, Series C ("Heartland Series C Preferred Stock") and 3,000 shares have been designated Senior Non-Cumulative Perpetual Convertible Preferred Stock, Series D ("Heartland Series D Preferred Stock"). As of September 30, 2017, (a) (i) 29,946,069 shares of Heartland Common Stock were issued and outstanding (and no shares of Heartland Common Stock were held as treasury shares), (ii) 1,275,198 shares of Heartland Common Stock were reserved for issuance pursuant to Heartland's stock incentive and employee stock purchase plans; (iii) 3,000 shares of Heartland Common Stock were reserved for issuance pursuant to Heartland Series D Preferred Stock; and (iv) no shares of Heartland Common Stock were reserved for issuance to holders of the CIC Bancshares, Inc. 6.5% Subordinated Notes Due 2019 assumed by Heartland on February 5, 2016; and (b) no shares of Heartland Series A Preferred Stock were issued and outstanding; (c) no shares of Heartland Series B Preferred Stock were issued and outstanding; (d) no shares of Heartland Series C Preferred Stock were issued and outstanding, and (e) 745 shares of Heartland Series D Preferred Stock were issued and outstanding.

3.5Exchange Act Reports.

(a)Prior to the execution of this Agreement, Heartland has made available to FBLB complete and accurate copies of (i) Heartland's Annual Reports on Form 10 K for the years ended December 31, 2014, 2015 and 2016, as amended (the "Heartland 10 K Reports"), as filed under the Exchange Act with the Securities and Exchange Commission (the "SEC"), (ii) all Heartland proxy statements and annual reports to shareholders used in connection with meetings of Heartland shareholders held since January 1, 2014, and (iii) Heartland's Quarterly Report on Form 10 Q for the quarter ended September 30, 2017 (the "Heartland 10 Q Report"), as filed under the Exchange Act with the SEC. As of their respective dates, such documents, together with all other material reports and statements (and any amendments required to be made with respect thereto) that Heartland was required to file with the SEC pursuant to the

Exchange Act after January 1, 2017, (x) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and (y) each of the foregoing complied as to form in all material respects with the applicable Laws and rules and regulations of the SEC. Since January 1, 2014, Heartland has filed all reports that it was required to file with the SEC pursuant to the Exchange Act.

(b)Heartland's financial statements (including any footnotes thereto) contained in the Heartland 10 K Reports and the Heartland 10 Q Report were prepared in accordance with GAAP (except that the financial statements set forth in the Heartland 10 Q Report may not contain all notes required by GAAP and are subject to year-end adjustments, none of which is material) and fairly present, in all material respects, the consolidated financial position of Heartland and its Subsidiaries as of the dates thereof and the consolidated results of operations, changes in shareholders' equity and cash flows for the periods then ended.

3.6No Material Adverse Changes. Since September 30, 2017, and except as otherwise disclosed in reports filed with the SEC prior to the date hereof, there has been no material adverse change in, and no event, occurrence or development in the business of Heartland or its Subsidiaries that, taken individually or as a whole, has had or would reasonably be expected to have a Material Adverse Effect on Heartland or its Subsidiaries or on the consummation of the transactions contemplated hereby. As of the date hereof, except with respect to the transactions contemplated hereby, and except as otherwise disclosed in reports filed with the SEC prior to the date hereof, since September 30, 2017, Heartland and each of its Subsidiaries has conducted its respective business only in the Ordinary Course of Business.

3.7Reports and Filings; Compliance with Laws.

(a)Since January 1, 2014, each of Heartland and its Subsidiaries has filed each report or other filing it was required to file with any federal or state banking or bank holding company or other Governmental Entity having jurisdiction over it (together with all exhibits thereto, the "Heartland Regulatory Reports"), except for such reports and filings which the failure to so file would not have a Material Adverse Effect on Heartland or on the consummation of the transactions contemplated hereby. As of their respective dates or as subsequently amended prior to the date hereof, each Heartland Regulatory Report was true and correct in all material respects and complied in all material respects with applicable Laws.

(b)Heartland and its Subsidiaries are, and at all times since January 1, 2014 have been, in compliance in all material respects with all Laws, Governmental Orders or Governmental Authorizations.

(c)Since January 1, 2014, each of Heartland and its Subsidiaries has held all Governmental Authorizations required for the conduct of its business, except where the failure to hold any such Governmental Authorization would not have a Material Adverse Effect on Heartland.

(d)Heartland is not a party to or is subject to any Governmental Order, written agreement or memorandum of understanding with, or a commitment letter or similar submission to, or extraordinary supervisory letter from any Bank Regulator, nor has Heartland adopted any policies, procedures or board resolutions at the request or suggestion of, any Bank Regulator that would reasonably be expected to impair the ability of Heartland to obtain the Bank Regulatory Approvals or to operate the Surviving Corporation in the Ordinary Course of Business after the Closing Date.

(e)No Governmental Entity has initiated since January 1, 2015 or currently has pending any proceeding or enforcement action against Heartland or any of its Subsidiaries.

3.8Community Reinvestment Act. Each Subsidiary of Heartland that is a bank had a rating of “satisfactory” or better as of its most recent CRA examination, and neither Heartland nor any such Subsidiary has been advised of, or has reason to believe that any facts or circumstances exist that would reasonably be expected to cause any such Subsidiary to be deemed not to be in satisfactory compliance in any respect with the CRA or to be assigned a rating for CRA purposes by any Governmental Entity charged with the supervision or regulation of banks or bank holding companies or engaged in the insurance of bank deposits of lower than “satisfactory.”

3.9Regulatory Approvals. As of the date hereof, Heartland is not aware of any fact or circumstance relating to it or any of its Subsidiaries that would materially impede or delay receipt of any Bank Regulatory Approvals or that would likely result in the Bank Regulatory Approvals not being obtained. Neither Heartland nor any of its Subsidiaries is subject to any Governmental Order, written agreement or memorandum of understanding with, or is a party to any commitment letter or

similar undertaking to, or is a recipient of any extraordinary supervisory agreement letter from, or has adopted any policies, procedures or board resolutions at the request or suggestion of, any Governmental Entity that would reasonably be expected to, impair the ability of Heartland to obtain the Bank Regulatory Approvals in a timely fashion or to operate FB&T in the Ordinary Course of Business after the Merger. Heartland has not received any indication from any Governmental Entity that such Governmental Entity would oppose or refuse to grant or issue its consent or approval, if required, with respect to the transactions contemplated hereby, and has no reason to believe that, if requested, any Governmental Entity required to approve the transactions contemplated hereby would oppose or fail to grant its consent or approval to such transactions.

3.10Certain Tax Matters. Neither Heartland nor any of its Subsidiaries has taken or agreed to take any action and, to the Knowledge of Heartland, there are no circumstances, that would prevent the acquisition contemplated by this Agreement from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

3.11Litigation. There is no Litigation pending against, or, to the Knowledge of Heartland, threatened against Heartland or its Subsidiaries, before or by any Governmental Entity, that in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement. To the Knowledge of Heartland, there are no facts that would reasonably be expected to give rise to Litigation against Heartland or any of its Subsidiaries that would have or would reasonably be expected to have a Material Adverse Effect on Heartland or its Subsidiaries, taken as a whole.

3.12Financial Ability. Heartland has or will have as of the Closing Date sufficient capital and readily available funds to enable it to consummate the transactions contemplated by this Agreement and to deliver the Actual Cash Consideration as provided for in this Agreement. Heartland’s ability to carry out its obligations under this Agreement is not contingent on additional financing.

3.13Internal Controls. Heartland and each of its Subsidiaries maintains a system of internal control over financial reporting sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including reasonable assurance (a) that transactions are executed in accordance with management’s general or specific authorizations and recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability and (b) regarding prevention or timely detection of any unauthorized acquisition, use or disposition of assets that would have a material effect on the financial statements of Heartland or such Subsidiary.

3.14NASDAQ. Heartland is in compliance in all material respects with the applicable listing rules and corporate governance rules and regulations of NASDAQ.

3.15Financial Advisor. Except for fees and other compensation payable to Panoramic Capital Advisors, Inc., there are no claims for brokerage commissions, finders’ fees, financial advisory fees or similar compensation in connection with the transactions contemplated by this Agreement based on any Contract made by or on behalf of Heartland or any of its Subsidiaries.

3.16No Other Representations or Warranties. Except for the representations and warranties made by Heartland in this Article 3, neither Heartland nor any other Person makes any express or implied representation or warranty with respect to Heartland, its Subsidiaries or their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects, and Heartland hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither Heartland nor any other Person makes or has made any representation or warranty to FBLB or any of its Affiliates or Representatives with respect to (i) any financial projection, forecast, estimate, budget or prospective information relating to Heartland, any of its Subsidiaries or their respective businesses, or (ii) except for the representations and warranties made by Heartland in this Article 3, any oral or written information presented to FBLB or any of its Affiliates or Representatives in the course of their due

diligence investigation of Heartland, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF FBLB

FBLB hereby represents and warrants to Heartland that, except as described in the Disclosure Schedules:
4.1Organization and Qualification.

(a)FBLB is a corporation duly organized, validly existing and in good standing under the Laws of the State of Texas, and has the requisite corporate power to carry on its business as now conducted. FBLB is a bank

holding company registered under Bank Holding Company Act. Except as set forth on Schedule 4.1(a), FBLB is, and as of the Closing Date will be, the lawful record and beneficial owner of all of the issued and outstanding stock of FB&T, free and clear of any Encumbrance. The copies of the Charter and Bylaws of FBLB, which have been provided to Heartland prior to the date of this Agreement, are correct and complete and reflect all amendments made thereto. FBLB is not in violation of any provisions of its Charter and Bylaws.

(b)FB&T is a Texas state banking association authorized to conduct business as a bank in Texas duly organized, validly existing and in good standing under the Laws of the State of Texas. FB&T has the requisite corporate power and authority (including all Governmental Authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and to carry on the business and activities now conducted by it. FB&T is an insured bank as defined in the Federal Deposit Insurance Act. FB&T owns 100% of the issued and outstanding equity securities of the FB&T Subsidiaries, each of which is a duly authorized operating subsidiary under the TFC. FB&T has no other Subsidiaries. The nature of the business of FB&T does not require it to be, and it is not, qualified to do business in any jurisdiction other than the State of Texas. The copies of the Charter and Bylaws of FB&T, which have been provided to Heartland prior to the date of this Agreement, are correct and complete and reflect all amendments made thereto. FB&T is not in violation of any provisions of its Charter and Bylaws.

(c)PrimeWest Mortgage Corporation (“PrimeWest”) is a corporation duly organized, validly existing and in good standing under the Laws of the State of Texas. PrimeWest has the requisite corporate power and authority (including all Governmental Authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and to carry on the business activities now conducted by it. The nature of the business of PrimeWest does not require it to be and it is not qualified to do business in any jurisdiction other than the State of Texas. The copies of the Charter and Bylaws of PrimeWest which have been provided to Heartland prior to the date of this Agreement are correct and complete and reflect all amendments made thereto. PrimeWest is not in violation of any provisions of its Charter or Bylaws.

(d)Outsource Lease, Inc. (“OLI”) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. OLI has the requisite power and authority (including all Governmental Authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and to carry on the business activities now conducted by it. The nature of the business of OLI does not require it to be and it is not qualified to do business in any jurisdiction other than the State of Texas. The copies of the Charter and Bylaws of OLI which have been provided to Heartland prior to the date of this Agreement are correct and complete and reflect all amendments made thereto. OLI is not in violation of any provisions of its Charter or Bylaws.

(e)FBT Servicing, Inc. (“FSI”) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. FSI has the requisite corporate power and authority (including all Governmental Authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and to carry on the business activities now conducted by it. The nature of the business of FSI does not require it to be and it is not qualified to do business in any jurisdiction other than the State of Texas. The copies of the Charter and Bylaws of FSI which have been provided to Heartland prior to the date of this Agreement are correct and complete and reflect all amendments made thereto. FSI is not in violation of any provisions of its Charter or Bylaws.

(f)Foreclosed Property Holdings, Inc. (“FPHI”) is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas. FPHI has the requisite corporate power and authority (including all Governmental Authorizations as are legally required) to carry on its business as now being conducted, to own, lease and operate its properties and assets as now owned, leased or operated and to enter into and to carry on the business activities now conducted by it. The nature of the business of FPHI does not require it to be and it is not qualified to do

business in any jurisdiction other than the State of Texas. The copies of the Charter and Bylaws of FPHI which have been provided to Heartland prior to the date of this Agreement are correct and complete and reflect all amendments made thereto. FPHI is not in violation of any provisions of its Charter or Bylaws.

(g)The Statutory Trusts are duly organized and validly existing under the Delaware Statutory Trust Act and the Laws of the State of Delaware. FBLB is, and as of the Closing Date, will be the lawful record and beneficial owner of all of the Statutory Trust Securities that are common securities. The copies of the Statutory Trust Declarations of Trust which have been provided to Heartland prior to the date of this Agreement are correct and

complete and reflect all amendments made thereto as of the date of this Agreement. The Statutory Trusts are not in violation of any provisions of the Statutory Trust Declarations of Trust.

4.2Authority Relative to this Agreement; Non-Contravention.

(a)FBLB has the requisite corporate power and authority to enter into this Agreement and the Ancillary Documents (to which FBLB is a party), and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and such Ancillary Documents by FBLB and the consummation by FBLB of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of FBLB. Other than the approval of the Merger by holders of at least two-thirds of the number of issued and outstanding shares of FBLB Common Stock as of the record date for the FBLB Shareholder Meeting (the "Required FBLB Shareholder Vote"), no other corporate proceedings on the part of FBLB are necessary to authorize this Agreement, or the Ancillary Documents (to which FBLB is a party), or to consummate the Merger or any other transactions contemplated hereby or thereby. No "control share acquisition," "business combination moratorium," "fair price" or other form of antitakeover statute or regulation under the TBOC or any applicable provisions of the takeover Laws of Texas or any other state (and any comparable provisions of the FBLB Charter or Bylaws), apply or will apply to this Agreement or the Merger.

(b)This Agreement and the Ancillary Documents (to which FBLB is a party) have been duly executed and delivered by FBLB and constitute a valid and binding obligation of FBLB, enforceable in accordance with its terms, subject to the Remedies Exception. Except as set forth on Schedule 4.2(b), none of the FBLB Entities is subject to, or obligated under, any provision of (i) its Charter, Bylaws or other governing documents, (ii) any Contract, (iii) any license, franchise or permit or (iv) subject to obtaining the approvals referred to in Section 4.2(c), any Law, order, judgment or decree, which would be breached or violated, or in respect of which a right of termination or acceleration or any encumbrance on any of its assets would be created, by the execution, delivery or performance of this Agreement and the Ancillary Documents (to which FBLB is a party), or the consummation of the transactions contemplated hereby and thereby.

(c)Other than the Bank Regulatory Approvals and the filing of the Texas Certificate of Merger and the Delaware Certificate of Merger, no Governmental Authorization is necessary on the part of any of the FBLB Entities for the consummation by FBLB of the transactions contemplated by this Agreement and the Ancillary Documents (to which FBLB is a party).

4.3Capitalization.

(a)The authorized capital stock of FBLB consists of 2,500,000 shares of FBLB Common Stock and 1,000,000 shares of Preferred Stock, $1.00 par value per share ("FBLB Preferred Stock"). Of the authorized shares of FBLB Common Stock, 1,083,275 shares are issued and outstanding (excluding 28,667 shares of FBLB Common Stock held as treasury shares), and of the authorized shares of FBLB Preferred Stock, no shares of FBLB Preferred Stock are issued and outstanding. The authorized capital stock of FB&T consists of 15,000 shares of Common Stock, $10.00 par value per share ("FB&T Common Stock"). Of the authorized shares of FB&T Common Stock, 15,000 shares of FB&T Common Stock are issued and outstanding. The authorized capital stock of PrimeWest consists of 5,000 shares of Common Stock, par value $100.00 per share ("PrimeWest Common Stock"), and 682 shares of PrimeWest Common Stock are issued and outstanding (with no shares of PrimeWest Common Stock held in treasury). The authorized capital stock of OLI consists of 100,000 shares of Common Stock, par value $10.00 per share ("OLI Common Stock"), and 100 shares of OLI Common Stock are issued and outstanding (with no shares of OLI Common Stock held in treasury). The authorized capital stock of FSI consists of 1,000,000 shares of Common Stock, par value $1.00 per share ("FSI Common Stock"), and 20,000 shares of FSI Common Stock are issued and outstanding (with no shares of FSI Common Stock held in treasury). The authorized capital stock of FPHI consists of 1,000 shares of Common Stock, par value $1.00 per share ("FPHI Common Stock"), and 1,000 shares of FPHI Common Stock are issued and outstanding (with no shares of FPHI Common Stock held in treasury). The issued and outstanding shares of FBLB Common Stock, FB&T

Common Stock, PrimeWest Common Stock, OLI Common Stock, the FSI Common Stock and the FPHI Common Stock are duly authorized, validly issued, fully paid and nonassessable and have not been issued in violation of any preemptive rights.

(b)Except for the SARs, there are no options, warrants, conversion privileges or other rights or Contracts obligating any of the FBLB Entities to issue, sell, purchase or redeem any shares of its capital stock or securities or obligations of any kind convertible into or exchangeable for any shares of its capital stock, nor are there any stock appreciation, phantom or similar rights outstanding based upon the book value or any other attribute of any

of capital stock of any of the FBLB Entities, or the earnings or other attributes of any of the FBLB Entities. Schedule 4.3(b) sets forth, for all outstanding SARs, (a) the name of the holder of any SARs, (b) the number of SARs held by each such holder, (c) the Initial Value (as defined in the SAR Plan) of each of the SARs held by each such holder, and (d) the domicile address of each such holder.

4.4Ownership of FBLB Common Stock. Schedule 4.4 sets forth, for all of the issued and outstanding shares of FBLB Common Stock, (a) the name of the holder of such shares, (b) the number of shares of FBLB Common Stock owned by each such holder, and (c) the domicile address of each such holder. Except for the FBLB Control Share Agreement and the FBLB Shareholder Agreement, there are no shareholder agreements, voting agreements, proxies, voting trusts or other understanding agreements or commitments with or among one or more of such holders with respect to the voting, disposition or other incidents of ownership of any shares of FBLB Common Stock, including any agreement that provides for preemptive rights or imposes any limitation or restriction on FBLB Common Stock, including any restriction on the right of a holder of shares of FBLB Common Stock to vote, sell or otherwise dispose of any FBLB Common Stock.

4.5Financial Statements.

(a)Prior to the execution of this Agreement, FBLB has made available to Heartland copies of its audited consolidated balance sheets as of December 31, 2014, 2015, and 2016 and the related statements of operations, changes in shareholders' equity and cash flows for the years then ended (collectively, together with any notes thereto, the "FBLB Annual Financial Statements"). FBLB has made available to Heartland copies of its unaudited consolidated balance sheets as of September 30, 2016 and 2017, and the related statements of operations for the nine-month periods then ended. The consolidated balance sheet of FBLB as of September 30, 2017 is herein referred to as the "Latest FBLB Balance Sheet," and the related statement of income for the nine-month period then ended are herein referred to as the "Related FBLB Statement." The Annual FBLB Financial Statements, the Latest FBLB Balance Sheet and the Related FBLB Statement are collectively referred to as the "FBLB Financial Statements." The FBLB Financial Statements are based upon the books and records of FBLB, and have been prepared in accordance with GAAP (except that the Latest FBLB Balance Sheet and the Related FBLB Statement may not contain all notes required by GAAP and are subject to year-end adjustments, none of which is material). The FBLB Financial Statements fairly present the consolidated financial position of FBLB as of the dates thereof and the consolidated results of operations, changes in shareholders' equity and cash flows for the periods then ended, as applicable.

(b)Prior to the execution of this Agreement, FBLB has made available to Heartland copies of the unaudited balance sheets of FB&T as of December 31, 2014, 2015 and 2016 and the related statements of operations for the years then ended (collectively, the "FB&T Annual Financial Statements"). FBLB has made available to Heartland copies of the balance sheet of FB&T as of September 30, 2017 and the related statement of operations for the nine-month period then ended. The balance sheet of FB&T as of September 30, 2017 is herein referred to as the "Latest FB&T Balance Sheet," and the related statements of operations for the nine-month period then ended are herein referred to as the "Related FB&T Statements." The FB&T Annual Financial Statements, the Latest FB&T Balance Sheet and the Related FB&T Statements are collectively referred to herein as the "FB&T Financial Statements." The FB&T Financial Statements have been prepared in accordance with GAAP (except that the Latest FB&T Balance Sheet and the Related FB&T Statements do not contain any notes required by GAAP and are subject to year-end adjustments, none of which is material). The FB&T Financial Statements fairly present the financial position of FB&T as of the dates thereof and the results of operations for the periods then ended.

(c)The Latest FBLB Balance Sheet and the Latest FB&T Balance Sheet are collectively referred to as the "Latest Balance Sheets," and the Related FBLB Statements and the Related FB&T Statements are collectively referred to as the "Related Financial Statements."

4.6Absence of Undisclosed Liabilities. None of the FBLB Entities has any Liability and, to the Knowledge of FBLB, there is no basis for any present or future Litigation, charge, complaint or demand against any of the FBLB Entities, giving rise to any Liability, except (a) as reflected or expressly reserved against in the Latest Balance Sheets, (b) a Liability that has arisen after the date of the Latest Balance Sheets in the Ordinary Course of Business (none of which is a material uninsured Liability for breach of Contract, breach of warranty, tort, infringement, Litigation or violation of Governmental Order, Governmental Authorization or Law), or (c) obligations under any Contract listed on a Disclosure Schedule to this Agreement or under a Contract not required to be listed on such a Disclosure Schedule.

4.7Loans; Substandard Loans; OREO; Commitments to Extend Credit.

(a)The documentation relating to each loan made by any FBLB Entity and relating to all security interests, mortgages and other liens with respect to all collateral for each such loan are adequate for the enforcement of the material terms of each such loan and of the related security interests, mortgages and other liens. The terms of each such loan and of the related security interests, mortgages and other liens comply in all material respects with all applicable Laws (including Laws relating to the extension of credit).

(b)Except as set forth in Schedule 4.7(b), there are no loans, leases, other extensions of credit or commitments to extend credit of any FBLB Entity that has been or, to the Knowledge of FBLB, should have been classified as non-accrual, as restructured, as 90 days past due, as still accruing and doubtful of collection or any comparable classification. FBLB has disclosed all of the "substandard," "doubtful," "loss," "special mention," "nonperforming" or "problem" loans of each of the FBLB Entities on the "watch list" of each such FBLB Entity, a copy of which is attached as Schedule 4.7(b). No borrower with respect to a loan of any FBLB Entity in excess of $25,000 has: (i) filed, or consented by answer or otherwise to the filing against it of, a petition for relief, reorganization or arrangement, or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency Law; (ii) made an assignment for the benefit of its creditors; (iii) consented to the appointment of a custodian, receiver, trustee, liquidator or other Person with similar power over such borrower or any substantial part of such borrower's property; (iv) been adjudicated insolvent; or (v) taken any action for the purpose of authorizing any of the foregoing.

(c)Except as set forth in Schedule 4.7(c), none of the FBLB Entities has any outstanding loans or assets classified as "Other Real Estate Owned" ("OREO"). Schedule 4.7(c) contains a description of each property classified by any FBLB Entity as OREO. Prior to the execution of this Agreement, FBLB has delivered the latest appraisal of each property classified as OREO obtained by any FBLB Entity. The value of any property classified by any FBLB Entity as OREO and reflected on the Latest Balance Sheet was determined on a "fair value less cost to sell" basis. None of the FBLB Entities has entered into any Contract obligating it pay for expenses with respect to improvements on, or the development of, any OREO.

(d)Except as set forth in Schedule 4.7(d), none of the FBLB Entities has at any time since January 1, 2014 purchased or sold any loans, advances or any participations therein. Except as set forth in Schedule 4.7(d), none of the FBLB Entities has at any time since January 1, 2014 sold any of its assets with recourse of any kind to such FBLB Entity, nor entered into any Contract providing for the sale or servicing of any loan or other asset that constitutes a "recourse arrangement" under any applicable regulation or policy promulgated by a Governmental Entity. None of the FBLB Entities has received any request to repurchase any loan, advance or participation therein or other asset sold to a third party, and none of the FBLB Entities has been advised by any third-party purchaser of any loan, advance or participation therein or any other asset that such purchaser intends to request that such FBLB Entity repurchase such loan, advance or participation therein or other asset.

(e)Except as set forth in Schedule 4.7(e), no FBLB Entity has extended loans with a principal amount in excess of $500,000, and there are no Contracts binding upon any FBLB Entity to do so. Schedule 4.7(e) lists, as of September 30, 2017, the 10 largest borrowers of all FBLB Entities (based on the principal amount of total combined loans made to any customers of FBLB Entities).

4.8Allowance for Loan and Lease Losses. The allowance for loan and lease losses ("ALLL") is, and will be as of the Effective Time, in compliance with existing methodology of the FBLB Entities for determining the adequacy of the ALLL, as well as the standards established by applicable Governmental Entities and the Financial Accounting Standards Board, and is and will be adequate under all standards. None of the FBLB Entities has been notified by any Governmental Entity or independent auditor of such FBLB Entity, in writing or otherwise, that: (a) such allowances are inadequate; (b) the practices and policies of the FBLB Entities in establishing such allowances and in accounting for non-performing and classified assets generally fail to comply with applicable accounting or regulatory

requirements; or (c) such allowances are inadequate or inconsistent with the historical loss experience of the FBLB Entities.

4.9Deposits. All of the deposits held by FB&T (including the records and documentation pertaining to such deposits) have been established and are held in compliance in all material respects with all: (a) applicable policies, practices and procedures of FB&T; and (b) applicable Law, including anti-money laundering, anti-terrorism or embargoed Persons requirements. Except as set forth in Schedule 4.9, no deposit of FB&T is a Brokered Deposit (as defined in 12 C.F.R. §337.6(a)(2)) or is subject to any encumbrance, legal restraint or other legal process (other than garnishments, pledges, set-off rights, escrow limitations and similar actions taken in the Ordinary Course of Business). All of the deposit accounts of FB&T are

insured up to the applicable limits (or fully insured if there is no limit) through the Deposit Insurance Fund as administered by the FDIC to the fullest extent permitted by applicable Law, and all premiums and assessments required to be paid for such insurance have been paid when due. No legal action or proceeding for the termination or revocation of such insurance is pending, or, to the Knowledge of FBLB, has any such termination or revocation been threatened.

4.10Reports and Filings. Since January 1, 2014, each of the FBLB Entities has filed each report or other filing that it was required to file with any federal or state banking, bank holding company or other applicable Governmental Entity having jurisdiction over it, including the FRB, the FDIC and the TDB (together with all exhibits thereto, the "FBLB Regulatory Reports"), except for such reports and filings which the failure to so file would not have a Material Adverse Effect on any of the FBLB Entities or on the consummation of the transactions contemplated hereby. FBLB has provided or made available to Heartland copies of all of FBLB Regulatory Reports that it may provide consistent with applicable Law. As of their respective dates or as subsequently amended prior to the date hereof, each of FBLB Regulatory Reports was true and correct in all material respects and complied in all material respects with applicable Laws.

4.11Subsidiaries; Interests in LLCs; Off Balance Sheet Arrangements.

(a)FBLB owns all of the issued and outstanding shares of FB&T Common Stock, and FB&T owns all of the issued and outstanding shares of PrimeWest Common Stock, OLI Common Stock, FSI Common Stock and FBHI Common Stock. Except for the shares of FB&T Common Stock owned by FBLB and the shares of the PrimeWest Common Stock, the OLI Common Stock, FSI Common Stock and FBHI Common Stock owned by FB&T, none of the FBLB Entities owns any stock, limited liability company membership units, partnership interests or any other equity security issued by any other Person, except securities owned by any of the FBLB Entities in its investment portfolio in the Ordinary Course of Business and the common securities of the Statutory Trusts.

(b)None of the FBLB Entities is a party to or member or partner of, or has any commitment to become a party to or member or partner of, any joint venture, off balance sheet limited liability company, off balance sheet partnership or any similar off balance sheet entity, including any structured finance, special purpose or limited purpose entity or Person, or any "off balance sheet arrangements" (as defined in Item 303(a) of Regulation S K under the Securities Act), where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or of any material Liabilities of, any of the FBLB Entities.

4.12Books and Records.

(a)The books of account of each of the FBLB Entities are complete and correct in all material respects and have been maintained in accordance with sound business practices. Each transaction is properly and accurately recorded on the books and records of each of the FBLB Entities, and each document upon which entries in books and records of each of the FBLB Entities are based is complete and accurate in all material respects.

(b)Each of the FBLB Entities maintains a system of internal control over financial reporting sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including reasonable assurance (A) that transactions are executed in accordance with management's general or specific authorizations and recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, and (B) regarding prevention or timely detection of any unauthorized acquisition, use or disposition of assets that would have a material effect on the financial statements of FBLB or FB&T.

(c)Since January 1, 2014, (A) none of the FBLB Entities nor, to the Knowledge of FBLB, any director, officer, manager, employee, auditor, accountant or representative of any of the FBLB Entities, has received notice (written or

oral) or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of the FBLB Entities or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that either FBLB or FB&T has engaged in improper accounting or auditing practices, and (B) no attorney representing any of the FBLB Entities, whether or not employed by such FBLB Entity, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by any of the FBLB Entities or its respective officers, directors, members, employees or agents to the Board of Directors of any of the FBLB Entities or other any committee thereof or, to the Knowledge of FBLB, to any officer or director of any of the FBLB Entities.

(d)The minute books and stock or equity records of each of the FBLB Entities, all of which have been made available to Heartland, except to the extent restricted by applicable Law, are correct in all material respects. The

minute books of each of the FBLB Entities contain accurate records of all meetings held and actions taken by the holders of stock or other equity interests, the Boards of Directors and committees of the Boards of Directors of each of the FBLB Entities since January 2001 (except to the extent minutes have not yet been approved or finalized by such Boards of Directors or committees), and no meeting of any such holders, Boards of Directors or committees has been held for which minutes are not contained in such minute books (except to the extent such minutes have not been approved or finalized by such Boards of Directors or other or committees). At the Closing, all such books and records will be in the possession of FBLB.

4.13No Material Adverse Changes. Since the date of the Latest Balance Sheets, there has been no material adverse change in, and no event, occurrence or development in the business of any of the FBLB Entities that, taken individually or as a whole and together with any other events, occurrences and developments with respect to such business, has had, or would reasonably be expected to have, a Material Adverse Effect on the FBLB Entities or materially adversely affect the consummation of the transactions contemplated hereby. Except with respect to the transactions contemplated hereby, since the date of the Latest Balance Sheets, each of the FBLB Entities has conducted its business only in the Ordinary Course of Business.

4.14Absence of Certain Developments. Except as contemplated by this Agreement or as set forth in the Latest Balance Sheets, the Related Statements or on Schedule 4.14, since September 30, 2017, none of the FBLB Entities has:

(a)issued or sold any of its equity securities, membership units, securities convertible into or exchangeable for its equity securities, warrants, options or other rights to acquire its equity securities or membership units, or any bonds or other securities, except deposit and other bank obligations and investment securities in the Ordinary Course of Business;

(b)redeemed, purchased, acquired or offered to acquire, directly or indirectly, any shares of its capital stock, membership units or other securities;

(c)split, combined or reclassified any of its outstanding shares of capital stock or declared, set aside or paid any dividends or other distribution payable in cash, property or otherwise with respect to any shares of capital stock or other securities of any FBLB Entity;

(d)incurred any Liability, whether due or to become due, other than in the Ordinary Course of Business and, in the case of FB&T, consistent with safe and sound banking practices;

(e)discharged or satisfied any Encumbrance or paid any Liability other than in the Ordinary Course of Business and, in the case of FB&T, consistent safe and sound banking practices;

(f)mortgaged or subjected to Encumbrance any of its property, business or assets, tangible or intangible except (i) for Permitted Encumbrances, and (ii) for pledges of assets to secure public funds deposits;

(g)sold, transferred or otherwise disposed of any of its assets or canceled any material Indebtedness or claims or waived any rights of material value, other than those assets sold, transferred or otherwise disposed of for fair value in the Ordinary Course of Business;

(h)suffered any theft, damage, destruction or loss of or to any property or properties owned or used by it, whether or not covered by insurance, which would, individually or in the aggregate, have a Material Adverse Effect on the FBLB Entities;

(i)made or granted any bonus or any wage, salary or compensation increase or severance or termination payment to, or promoted, any director, officer, employee, group of employees or consultant, entered into any employment contract or hired any employee, in each case, other than in the Ordinary Course of Business;

(j)made or granted any increase in the benefits payable under any employee benefit plan or arrangement, amended or terminated any existing employee benefit plan or arrangement or adopted any new employee benefit plan or arrangement, except as required by Law;

(k)made any single or group of related capital expenditures or commitments therefor in excess of $50,000 or entered into any lease or group of related leases with the same party which involves aggregate lease

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payments payable of more than $50,000 for any individual lease or involves more than $100,000 for any group of related leases in the aggregate;

(l)acquired (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any corporation, limited liability company, partnership, joint venture or other business organization or division or material assets thereof, or assets or deposits that are material to any of the FBLB Entities;

(m)taken any other action or entered into any other transaction other than in the Ordinary Course of Business;

(n)made any change in its accounting methods or practices, other than changes required by Law made in accordance with GAAP or regulatory accounting principles generally applicable to depository institutions such as FB&T or PrimeWest; or

(o)made, modified or revoked any material election with respect to Taxes or consented to any waiver or extension of time to assess or collect any material Taxes;

(p)reversed any amount of its previously established ALLL;

(q)sold any equity securities in its investment portfolio; or

(r)agreed to do any of the foregoing.

4.15Properties.

(a)The real properties owned by, or demised by leases to, any FBLB Entity are listed on Schedule 4.15(a), and constitute all of the real property owned, leased (whether or not occupied and including any leases assigned or leased premises sublet for which any FBLB Entity remains liable), owned, used or occupied by any FBLB Entity. The only real property demised by a lease to any FBLB Entity is listed on Schedule 4.15(a), and constitutes all of the real property leased (whether or not occupied and including any leases assigned or leased premises sublet for which any FBLB Entity remains liable), used or occupied by any FBLB Entity.

(b)Each FBLB Entity owns good and marketable title to each parcel of real property identified on Schedule 4.15(a) as being owned by it (the “Owned Real Property”), fee and clear of any Encumbrance except for Permitted Encumbrances.

(c)The leases of real property listed on Schedule 4.15(c) as being leased by any FBLB Entity (the “Leased Real Property” and, together with the Owned Real Property, the “Real Property,” and the Real Property occupied by any FBLB Entity in the conduct of its business is hereinafter referred to as the “Operating Real Property”) are in full force and effect, and such FBLB Entity holds a valid and existing leasehold interest under each of the leases for the term listed on Schedule 4.15(c). The leases for the Leased Real Property are in full force and effect, and one of the FBLB Entities holds a valid and existing leasehold interest under the lease for the term listed on Schedule 4.15(c). The Leased Real Property is subject to no Encumbrance or interests that would entitle the owner thereof to interfere with or disturb use or enjoyment of the Leased Real Property or the exercise by the applicable FBLB Entity of its rights under such lease so long as such FBLB Entity is not in default under such lease.

(d)Each parcel of Operating Real Property has access sufficient for the conduct of the business as conducted by the applicable FBLB Entity on such parcel of Operating Real Property to public roads and to all utilities, including electricity, sanitary and storm sewer, potable water, natural gas, telephone, fiber optic, cable television, and other utilities used in the operation of the business at that location. The zoning for each parcel of Operating Real Property permits the existing improvements and the continuation of the business being conducted thereon as a conforming use. None of the FBLB Entities is in violation of any applicable zoning ordinance or other Law relating to the Owned Real

Property or, to the Knowledge of FBLB, the Leased Real Property. None of the FBLB Entities has received any written notice of any such violation or the existence of any condemnation or other proceeding with respect to any of the Operating Real Property. The buildings and other improvements are located within the boundary lines of each parcel of Operating Real Property, and do not encroach over applicable setback lines. There are no improvements contemplated to be made by any Governmental Entity, the costs of which are to be assessed as assessments, special assessments, special Taxes or charges against any of the Owned Real Property or, to the Knowledge of FBLB, any of the Leased Real Property.

(e)Each of the FBLB Entities has good and marketable title to, or a valid leasehold interest in, the buildings, machinery, equipment and other tangible assets and properties used by it, located on its premises or shown in the Latest FBLB Balance Sheet, free and clear of all Encumbrances except for Permitted Encumbrances and properties and assets disposed of in the Ordinary Course of Business since the date of the Latest FBLB Balance Sheet.

(f)All of the buildings, fixtures, furniture and equipment necessary for the conduct of the businesses of the FBLB Entities are in adequate condition and repair, ordinary wear and tear excepted, and are usable in the Ordinary Course of Business. Each of the FBLB Entities owns, or leases under valid leases, all buildings, fixtures, furniture, personal property, land improvements and equipment necessary for the conduct of its business as it is presently being conducted.

(g)Schedule 4.15(g) lists all lease agreements pursuant to which any FBLB Entity leases Real Property to any Person other than an FBLB Entity ("FBLB Leases"). Each FBLB Lease is in full force and effect.

(h)Each of the FBLB Entities has a title policy conforming to an ALTA Form 2006 Owners' Policy of Insurance issued by a reputable title insurer insuring marketable fee title with respect to each parcel of Owned Property in such FBLB Entity, as the case may be. The copies of such title insurance policies that have been provided to Heartland prior to the date of this Agreement are correct and complete in all material respects and reflect all amendments thereto.

4.16Intellectual Property.

(a)Each of the FBLB Entities owns or possesses valid and binding licenses and other rights to use all Intellectual Property that is listed and described in Schedule 4.16 (other than commercially available "shrink wrap" or "click wrap" licenses), and none of the FBLB Entities has received any written notice of conflict or allegation of invalidity with respect thereto that asserts the right of others. Each of the FBLB Entities owns or has a valid right to use the Intellectual Property, free and clear of all liens (except any restrictions set forth in Contracts relating to any licensed Intellectual Property), and has performed all the obligations required to be performed by it and is not in default under any Contract relating to any of the foregoing. To the Knowledge of FBLB, such Intellectual Property is valid and enforceable.

(b)(i) Each of the FBLB Entities owns or is validly licensed to use (in each case, free and clear of any liens, except any restrictions set forth in Contracts relating to any licensed Intellectual Property) all Intellectual Property used in or necessary for the conduct of its business as currently conducted; (ii) to the Knowledge of FBLB, the use of any Intellectual Property by the FBLB Entities and the conduct of their respective businesses as currently conducted does not infringe on or otherwise violate the legal rights of any Person; (iii) to the Knowledge of FBLB, no Person is challenging, infringing on or otherwise violating any right of any of the FBLB Entities with respect to any Intellectual Property owned by and/or licensed by such FBLB Entity; and (iv) none of the FBLB Entities has received any written notice of any pending Litigation against an FBLB Entity with respect to any Intellectual Property used by such FBLB Entity, and, to the Knowledge of FBLB, no facts or events exist that would give rise to any Litigation against any of the FBLB Entities with respect to Intellectual Property.

4.17Environmental Matters.

(a)As used in this Section 4.17, the following terms have the following meanings:

(i)"Environmental Costs" means any and all costs and expenditures, including any fees and expenses of attorneys and of environmental consultants or engineers incurred in connection with investigating, defending, remediating or otherwise responding to any Release of Hazardous Materials, any violation or alleged violation of Environmental Law, any fees, fines, penalties or charges associated with any governmental authorization, or any actions necessary to comply with

any Environmental Law.

(ii)“Environmental Law” means any Law, governmental authorization or governmental order relating to pollution, contamination, Hazardous Materials or protection of the environment.

(iii)“Hazardous Materials” means any dangerous, toxic or hazardous pollutant, contaminant, chemical, waste, material or substance as defined in or governed by any Law relating to such substance or otherwise relating to the environment or human health or safety, including any waste, material, substance,

pollutant or contaminant that would reasonably be expected to cause any injury to human health or safety or to the environment or would reasonably be expected to subject the owner or operator of the Leased Operating Real Property to any Environmental Costs or Liability under any Environmental Law.

(iv)“List” means the United States Environmental Protection Agency’s National Priorities List of Hazardous Waste Sites or any other list, schedule, log, inventory or record, however defined, maintained by any Governmental Entity with respect to sites from which there has been a Release of Hazardous Materials.

(v)“Regulatory Action” means any litigation with respect to either any of the FBLB Entities brought or instigated by any Governmental Entity in connection with any Environmental Costs, Release of Hazardous Materials or any Environmental Law.

(vi)“Release” means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, escaping or any other release or threatened release, however defined, whether intentional or unintentional, of any Hazardous Material.

(vii)“Third-Party Environmental Claim” means any litigation (other than a Regulatory Action) based on negligence, trespass, strict liability, nuisance, toxic tort or any other cause of action or theory relating to any Environmental Costs, Release of Hazardous Materials or any violation of Environmental Law.

(b)No Third-Party Environmental Claim or Regulatory Action is pending or, to the Knowledge of FBLB, threatened against any FBLB Entity.

(c)None of the Owned Real Property, the Leased Real Property or any OREO held by any FBLB Entity is listed on a List.

(d)All transfer, transportation or disposal of Hazardous Materials by any of the FBLB Entities to properties not owned, leased or operated by such FBLB Entity has been in compliance with applicable Environmental Law; and none of the FBLB Entities transported or arranged for the transportation of any Hazardous Materials to any location that is (i) listed on a List, (ii) listed for possible inclusion on any List or (iii) the subject of any Regulatory Action or Third-Party Environmental Claim.

(e)To the Knowledge of FBLB, no Owned Real Property, OREO or Leased Real Property held by any FBLB Entity has ever been used as a landfill, dump or other disposal, storage, transfer, handling or treatment area for Hazardous Materials, or as a gasoline service station or a facility for selling, dispensing, storing, transferring, disposing or handling petroleum and/or petroleum products.

(f)There has not been any Release of any Hazardous Material by any FBLB Entity, or any Person under its control, or, to the Knowledge of FBLB, by any other Person, on, under, about, from or in connection with the Owned Real Property and any OREO held by any FBLB Entity, including the presence of any Hazardous Materials that have come to be located on or under the Owned Real Property or OREO from another location. To the Knowledge of FBLB, there has not been any Release of any Hazardous Material by any FBLB Entity, or any Person under its control, or, to the Knowledge of FBLB, by any other Person, on, under, about, from or in connection with the Leased Real Property, including the presence of any Hazardous Materials that have come to be located on or under the Leased Real Property from another location.

(g)The Operating Real Property and any OREO held by any of the FBLB Entities has been used and operated in compliance with all applicable Environmental Laws.

(h)Each of the FBLB Entities has obtained all Governmental Authorizations relating to Environmental Laws necessary for the operations of such FBLB Entity, and all such Governmental Authorizations relating to the Environmental Laws are listed on Schedule 4.17(h). Each of the FBLB Entities has filed all material reports and notifications required to be filed under and pursuant to all applicable Environmental Laws.

(i)No Encumbrance has been attached or filed against any of the FBLB Entities in favor of any Person for (i) any Liability under or violation of any applicable Environmental Law, (ii) any Release of Hazardous Materials or (iii) any imposition of Environmental Costs.

(j)No Hazardous Materials have been generated, treated, contained, handled, located, used, manufactured, processed, buried, incinerated, deposited or stored on, under or about any part of the Operating Real Property or any OREO held by any of the FBLB Entities, or, to the Knowledge of FBLB, any other Person. The Real Property and any OREO of any of the FBLB Entities contain no asbestos, urea, formaldehyde, radon at levels above natural background, PCBs or pesticides. No aboveground or underground storage tanks are located on or under the Owned Real Property or any OREO held by any of the FBLB Entities, or have been located on or under the Owned Real Property or any OREO held by any of the FBLB Entities, and then subsequently been removed or filled. To the Knowledge of FBLB, no aboveground or underground storage tanks are located on or under the Leased Real Property, or have been located on or under the Leased Real Property, and then subsequently been removed or filled.

(k)To the Knowledge of FBLB, no expenditure will be required in order for Heartland to comply with any Environmental Law in effect at the time of Closing in connection with the operation or continued operation of the Operating Real Property or any OREO held by any of the FBLB Entities in a manner consistent with the present operation thereof.

4.18Community Reinvestment Act. FB&T had a rating of "satisfactory" or better as of its most recent CRA examination, and FBLB has not been advised of, and has no reason to believe that any facts or circumstances exist that would reasonably be expected to cause FBLB or FB&T to be deemed not to be in satisfactory compliance in any respect with the CRA or to be assigned a rating for CRA purposes by any Governmental Entity charged with the supervision or regulation of banks or bank holding companies or engaged in the insurance of bank deposits (collectively, "Bank Regulators") of lower than "satisfactory."

4.19Information Security.

(a)Since January 1, 2014, there has been no unauthorized disclosure of, or access to, any nonpublic personal information of a customer in the possession of any FBLB Entity that would reasonably be expected to result in substantial harm or inconvenience to such customer. FBLB has not received written notice of any facts or circumstances exist that would cause any FBLB Entity to be deemed not to be in satisfactory compliance in any respect with the applicable privacy of customer information requirements contained in any federal and state privacy Laws, including in Title V of the Gramm-Leach-Bliley Act of 1999.

(b)The records, systems, controls, data and information of each FBLB Entity are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the FBLB Entities or their authorized representatives (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a Material Adverse Effect on the FBLB Entities.

(c)All information technology and computer systems (including software, information technology and telecommunication hardware and other equipment) relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information, whether or not in electronic format, used in or necessary to the conduct of the businesses of each of the FBLB Entities (collectively, "FBLB IT Systems") have been maintained by technically competent personnel, in accordance with standards set by the manufacturers or otherwise in accordance with standards in the industry, to reasonably ensure proper operation, monitoring and use. The FBLB IT Systems are in good working condition to perform all information technology operations necessary to conduct business as currently conducted. None of the FBLB Entities has experienced within the past three (3) years any material disruption to, or material interruption in, its conduct of its business attributable to a defect, bug, breakdown or other failure or deficiency of the FBLB IT Systems. The FBLB Entities have taken reasonable measures to provide for the back-up and recovery of the data and information necessary to the conduct of their businesses (including such data and information that is stored on magnetic or optical media in the Ordinary Course of Business) without material disruption to, or material interruption in, the conduct of their respective business. None of the FBLB Entities is in

material breach of any Material Contract related to any FBLB IT Systems.

4.20Tax Matters.

(a)Each of the FBLB Entities (i) has timely filed (or has had timely filed on its behalf) each Return required to be filed or sent by it in respect of any Taxes, each of which was correctly completed and accurately reflected any Liability for Taxes of the relevant FBLB Entity in all material respects, and any Affiliate of such entity, covered by such Return, (ii) timely and properly paid (or had paid on its behalf) all Taxes due and payable for all Tax periods or portions thereof whether or not shown on such Returns, (iii) established on the books of account of the

relevant FBLB Entity, in accordance with GAAP and consistent with past practices, adequate reserves for the payment of any Taxes not then due and payable and (iv) complied in all material respects with all applicable Laws relating to the withholding of Taxes and the payment thereof in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

(b)Each FBLB Entity has made (or caused to be made on its behalf) all estimated Tax payments required to have been made to avoid any underpayment penalties.

(c)There are no Encumbrances for Taxes upon any assets of any FBLB Entity, except Permitted Encumbrances.

(d)No FBLB Entity has requested any extension of time within which to file any Return, which Return has not since been filed.

(e)No deficiency for any Taxes has been proposed, asserted or assessed against any FBLB Entity that has not been resolved and paid in full. No waiver, extension or comparable consent given by any FBLB Entity regarding the application of the statute of limitations with respect to any Taxes or any Return is outstanding, nor is any request for any such waiver or consent pending. Except as set forth on Schedule 4.20(e), there has been no Tax audit or other administrative proceeding or court proceeding with regard to any Taxes or any Return of any FBLB Entity for any Tax year subsequent to the year ended December 31, 2012, nor is any such Tax audit or other proceeding pending, nor has there been any notice to any FBLB Entity by any Governmental Entity regarding any such Tax audit or other proceeding, nor is any such Tax audit or other proceeding threatened with regard to any Taxes or Returns. Except as set forth on Schedule 4.20(e), there are no outstanding subpoenas or requests for information with respect to any of the Returns of any FBLB Entity. No FBLB Entity has entered into a closing agreement pursuant to Section 7121 of the Code or any similar provision under any other Law.

(f)No additional Taxes will be assessed against any FBLB Entity for any Tax period or portion thereof ending on or prior to the Effective Date that will exceed the estimated reserves for Taxes established by the relevant FBLB Entity that will be taken into account in determining the Adjusted Tangible Common Equity. Except as set forth on Schedule 4.20(f), there are no unresolved questions, claims or disputes concerning the Liability for Taxes of any FBLB Entity.

(g)Schedule 4.20(g) lists all federal, state, local and foreign income Tax Returns filed with respect to the FBLB Entities for taxable periods ended on or after December 31, 2012, indicates those Returns that have been audited and indicates those Returns that currently are the subject of audit. True and complete copies of the Returns of each FBLT Entity, as filed with the IRS and all state or local Tax jurisdictions for the years ended December 31, 2014, 2015 and 2016 have been delivered to Heartland.

(h)No FBLB Entity has any Liability for Taxes in a jurisdiction where it does not file a Return, nor has any FBLB Entity received notice from a taxing authority in such a jurisdiction that it is or may be subject to taxation by that jurisdiction.

(i)No FBLB Entity is a party to any Contract that would result, separately or in the aggregate, in the payment of any “excess parachute payments” within the meaning of Section 280G of the Code, and the consummation of the transactions contemplated by this Agreement will not be a factor causing payments to be made by any FBLB Entity or any other Person that are not deductible (in whole or in part) as a result of the application of Section 280G of the Code.

(j)No FBLB Entity will be required to include in a taxable period ending after the Effective Date taxable income attributable to income that accrued in a taxable period prior to the Effective Date but was not recognized for Tax purposes in such prior taxable period (or to exclude from taxable income in a taxable period ending after the Effective Date any deduction the recognition of which was accelerated from such taxable period to a taxable period prior to the

Effective Date) as a result of the installment method of accounting, the completed contract method of accounting, the long-term contract method of accounting, the cash method of accounting, Code Section 481 or Code Section 108(i) or comparable provisions of state, local or foreign Tax Law, or for any other reason.

(k)No closing agreements, private letter rulings or similar agreements or rulings have been entered into or issued by any Governmental Entity with respect to any FBLB Entity, which would be binding following the Effective Time, and no such agreements or rulings have been applied for and are currently pending.

(l)Except as set forth in Schedule 4.20(l), no FBLB Entity is a party to any Tax allocation, sharing, indemnity, or reimbursement agreement or arrangement (other than any customary Tax indemnification provisions in ordinary course commercial agreements or other arrangements that are not primarily related to Taxes).

(m)No FBLB Entity has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(n)No FBLB Entity (i) has been a member of an affiliated group filing a consolidated Return (other than a group the common parent of which was FBLB) or (ii) has any Liability for the Taxes of any Person (other than FBLB) under Treasury Regulations Section 1.1502 6 (or any similar provision of Law), as a transferee or successor, by Contract, or otherwise.

(o)No FBLB Entity constitutes either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of shares qualifying for tax-free treatment under Section 355 of the Code that (i) took place during the two-year period ending on the date of this Agreement or (ii) could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the transactions contemplated by this Agreement.

(p)No FBLB Entity has engaged in any transaction that is subject to disclosure under Treasury Regulation Section 1.6011 4 or 1.6011 4T, or has participated in any "confidential corporate tax shelter" (within the meaning of Treasury Regulation Section 301.6111-2(a)(2)) or a "potentially abusive tax shelter" (within the meaning of Treasury Regulation Section 301.6112-1(b)).

(q)No FBLB Entity has a "permanent establishment" in any country other than the United States, as such term is defined under any applicable Tax treaty between the United States and such other country.

(r)Except as set forth on Schedule 4.20(r), no power of attorney granted by any FBLB Entity relating to Taxes is currently in force.

(s)FBLB has made available to Heartland schedules setting forth the income Tax attributes of each FBLB Entity (including current and accumulated net operating losses and the adjusted tax basis of the assets of each FBLB Entity) and any applicable limitations on the use of those Tax attributes (including prior limitations under Section 382 of the Code), which are true and correct in all material respects.

(t)Each FBLB Entity reported all transactions that could give rise to an underpayment of Tax (within the meaning of Section 6662 of the Code) on the relevant Returns in a manner for which there is substantial authority, or adequately disclosed such transactions on the Returns as required in accordance with Section 6662(d)(2)(B) of the Code. No FBLB Entity has omitted from gross income on any Return an amount of income that was properly includible on such Return and that exceeds 25% of the amount of gross income stated in the Return, other than an amount with respect to which information is disclosed on the Return that is sufficient to apprise the IRS of the nature and amount of the item, in accordance with the provisions of Code Section 6501(e)(1)(B)(iii) and Treasury Regulations Section 301.6501(e)-1(a)(1)(iv).

(u)There is no Contract, plan or arrangement, including this Agreement, pursuant to which any current or former employee of any FBLB Entity would be entitled to receive any payment as a result of the transactions contemplated by this Agreement that would not be deductible under Section 404 or 162(m) of the Code.

(v)No FBLB Entity has been a member of any partnership or joint venture or the holder of a beneficial interest in any trust for any period for which the statute of limitations for any Taxes potentially applicable as a result of such

membership or holding has not expired.

(w)No property of any FBLB Entity is (i) property that the relevant FBLB Entity is or will be required to treat as being owned by another Person under the provisions of Section 168(f)(8) of the Code (as in effect prior to amendment by the Tax Reform Act of 1986), (ii) “tax-exempt use property” within the meaning of Section 168(h) of the Code or (iii) “tax-exempt bond financed property” within the meaning of Section 168(g)(5) of the Code.

(x)None of the Indebtedness of any FBLB Entity constitutes (i) “corporate acquisition indebtedness” (as defined in Section 279(b) of the Code) with respect to which any interest deductions may be

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disallowed under Section 279 of the Code or (ii) an "applicable high yield discount obligation" under Section 163(i) of the Code, and none of the interest on any such indebtedness will be disallowed as a deduction under any other provision of the Code.

(y)No FBLB Entity has taken or agreed to take any action, or knows of any circumstances, that would prevent the acquisition contemplated by this Agreement from qualifying as a reorganization within the meaning of Section 368(a) of the Code.

(z)FBLB validly elected to be an "S corporation" within the meaning of Sections 1361 and 1362 of the Code for all periods beginning January 1, 1999. For all periods beginning January 1, 1999, FBLB also validly elected (or is so treated due to its federal election) to be an "S corporation" in all states and local jurisdictions which recognize such status and in which it would, absent such an election, be subject to corporate income Tax. Except as set forth on Schedule 4.20(z), there has been no basis for the revocation or other termination of FBLB's "S corporation" election at any time on or after January 1, 1999 and neither FBLB nor any other Person has taken any action that would have caused FBLB to cease being an "S corporation" for federal, state or local Tax purposes at any time on or after January 1, 1999.

(aa)A valid election was made for each of FB&T, OLI and PrimeWest to be a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code for all periods beginning January 1, 1999. For all periods beginning January 1, 1999, a valid election was also made for each of FB&T, OLI and PrimeWest to be a "qualified subchapter S subsidiary" in all states and local jurisdictions which recognize such status and in which it would, absent such an election, be subject to corporate income Tax (or FB&T is so treated in all such states and local jurisdictions due to its federal election). There has been no basis for the revocation or other termination of the "qualified subchapter S subsidiary" election of FB&T, OLI or PrimeWest at any time on or after January 1, 1999, and neither FBLB nor any other Person has taken any action that would have caused FB&T, OLI or PrimeWest to cease being a "qualified subchapter S subsidiary" for federal, state or local Tax purposes at any time on or after January 1, 1999.

(bb)A valid election was made for FPHI to be a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code for all periods beginning November 3, 2010. For all periods beginning November 3, 2010, a valid election was also made for FPHI to be a "qualified subchapter S subsidiary" in all states and local jurisdictions which recognize such status and in which it would, absent such an election, be subject to corporate income Tax (or FPHI is so treated in all such states and local jurisdictions due to its federal election). There has been no basis for the revocation or other termination of FPHI's "qualified subchapter S subsidiary" election at any time on or after November 3, 2010, and neither FBLB nor any other Person has taken any action that would have caused FPHI to cease being a "qualified subchapter S subsidiary" for federal, state or local Tax purposes at any time on or after November 3, 2010.

(cc)A valid election was made for FSI to be a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code for all periods beginning with the date on which FSI was acquired by FB&T. For all periods beginning with the date on which FSI was acquired, a valid election was also made for FSI to be a "qualified subchapter S subsidiary" in all states and local jurisdictions which recognize such status and in which it would, absent such an election, be subject to corporate income Tax (or FSI is so treated in all such states and local jurisdictions due to its federal election). There has been no basis for the revocation or other termination of FSI's "qualified subchapter S subsidiary" election at any time on or after the date on which FSI was acquired by FB&T, and neither FBLB nor any other Person has taken any action that would have caused FSI to cease being a "qualified subchapter S subsidiary" for federal, state or local Tax purposes at any time on or after FSI was acquired by FB&T.

(dd)True and complete copies of the "S corporation" and the "qualified subchapter S subsidiary" elections, any elections made under Sections 1361(d) or (e) of the Code by trusts that are or were at any time shareholders of FBLB, and the acceptances by the IRS of such elections have been delivered to Heartland.

(ee)No FBLB Entity has any liability for Tax under Section 1374 of the Code that has not been satisfied in full.

(ff)Each of the Statutory Trusts is, and has been at all times since its inception, a grantor trust under subpart E, Part I of subchapter J of the Code, and not an association or publicly traded partnership taxable as a corporation. All of the FBLB Entities have, at all relevant times since the formation of each Statutory Trust, treated each Statutory Trust as a grantor trust for all U.S. federal, state and local Tax purposes. Each of the Statutory

Trusts has timely filed (or has had timely filed on its behalf) each Return required to be filed or sent by it in respect of any Taxes, each of which was correctly completed and accurately reflected Liability for Taxes (if any) of the relevant Statutory Trust in all material respects. At all times since the issuance of the Statutory Trust Securities that are preferred securities of each of the Statutory Trusts, the principal amounts, interest and other amounts due and payable on such preferred securities have been paid in accordance with the terms of the relevant Statutory Trust Indenture and other applicable agreements, without any deferral of interest thereon.

4.21Contracts and Commitments.

(a)Schedule 4.21(a) lists the following Contracts to which any of the FBLB Entities is a party or subject or by which it is bound (such Contracts required to be listed on Schedule 4.21(a), the “Material Contracts”):

(i)any employment, agency, collective bargaining Contract or consulting or independent contractor Contract;

(ii)any written or oral Contract relating to any severance pay for any Person;

(iii)any written or oral Contract creating, modifying, memorializing or otherwise related to any obligation of any of the FBLB Entities upon a change of control;

(iv)any Contract to repurchase assets previously sold (or to indemnify or otherwise compensate the purchaser in respect of such assets), except for securities sold under a repurchase agreement providing for a repurchase date 30 days or less after the purchase date;

(v)any (A) contract or group of related contracts with the same party for the purchase or sale of products or services, under which the undelivered balance of such products and services has a purchase price in excess of $50,000 for any individual contract or $100,000 for any group of related contracts in the aggregate, or (B) other contract or group of related contracts with the same party continuing over a period of more than six months from the date or dates thereof, which is not entered into in the Ordinary Course of Business and is either not terminable by it on 30 days’ or less notice without penalty or involves more than $50,000 for any individual contract or $100,000 in the aggregate for any group of related contracts;

(vi)any Contract containing exclusivity, noncompetition or nonsolicitation provisions or that would otherwise prohibit any FBLB Entity from freely engaging in business anywhere in the world or prohibiting the solicitation of the employees or contractors of any other entity;

(vii)any stock purchase, stock option, restricted stock or restricted stock unit or stock incentive plan;

(viii)any Contract for capital expenditures in excess of $50,000;

(ix)any partnership agreement, joint venture agreement, limited liability company agreement, agreement among shareholders, investor rights agreement or other similar Contract or arrangement;

(x)any Contract with a Governmental Entity;

(xi)any Contract pursuant to which any FBLB Entity grants or makes available, or is granted or receives, any license, or other right requiring an expenditure in excess of $100,000 annually, with respect to any material Intellectual Property in each case that is reasonably necessary to operate the businesses of the FBLB Entities in the Ordinary Course of Business consistent, in the case of FB&T, with safe and sound banking practices (other than non-exclusive licenses to commercially available software);

(xii)any Contract relating to Indebtedness of more than $200,000 of any FBLB Entity (other than, in the case of FB&T, deposit agreements (A) entered into in the Ordinary Course of Business consistent with safe and sound banking practices and on the same terms as those contained in the standard deposit agreement of FB&T, and (B) evidencing deposit Liabilities of FB&T);

(xiii)any Contract the costs of which are Transaction Expenses; and

(xiv)any other Contract material to the businesses of the FBLB Entities, taken as a whole, which is not entered into in the Ordinary Course of Business.

(b)Except as disclosed on Schedule 4.21(b), (i) each of the FBLB Entities has performed all obligations required to be performed by it prior to the date hereof in connection with the Contracts or commitments set forth on Schedule 4.21(a), and none of the FBLB Entities is in receipt of any claim of default under any Contract or commitment set forth on Schedule 4.21(a), except for any failures to perform, breaches or defaults which would not, individually or in the aggregate, have a Material Adverse Effect on the FBLB Entities or materially adversely affect the consummation of the transactions contemplated hereby; (ii) none of the FBLB Entities has any present expectation or intention of not fully performing any material obligation pursuant to any Contract or commitment set forth on Schedule 4.21(a); and (iii) to the Knowledge of FBLB, there has been no cancellation, breach or anticipated breach by any other party to any Contract or commitment set forth on Schedule 4.21(a), except for any cancellation, breach or anticipated breach which would not, individually or in the aggregate, have a Material Adverse Effect on the FBLB Entities, or materially adversely affect the consummation of the transactions contemplated hereby.

4.22Litigation. Schedule 4.22 lists all Litigation pending or, to the Knowledge of FBLB, threatened against any of the FBLB Entities, and each Governmental Order to which any of the FBLB Entities is subject. To the Knowledge of FBLB, there are no facts that would reasonably be expected to give rise to other Litigation against any of the FBLB Entities. None of the matters set forth on Schedule 4.22, individually or in the aggregate, will have or would reasonably be expected to have a Material Adverse Effect on the FBLB Entities, or the materially adversely affect the consummation of the transactions contemplated hereby.

4.23Financial Advisor. Except as provided in the engagement letter dated July 7, 2017 between FBLB and Stephens Inc. (“Stephens”), there are no claims for brokerage commissions, finders’ fees, financial advisory fees or similar compensation in connection with the transactions contemplated by this Agreement based on any Contract made by or on behalf of any FBLB Entity.

4.24Employees.

(a)Schedule 4.24(a) lists (i) each employee of each of the FBLB Entities as of the date of this Agreement, and indicates for each such employee, and in the aggregate, (ii) which FBLB Entity employs such employee, (iii) whether such employee is full-time, part-time or on temporary status, (iv) whether such employee is an exempt or non-exempt employee under the Fair Labor Standards Act or applicable state law, (v) whether the employee is a salaried or hourly employee, (vi) the employee’s annual salary, wages and/or any other compensation arrangement (including compensation payable or for which such employee may be eligible pursuant to bonus, incentive, deferred compensation or commission arrangements), (vii) the number of hours of PTO, vacation time, and/or sick time that the employee has accrued as of the date hereof and the aggregate dollar amount thereof, (viii) the date of commencement of the employee’s employment, (ix) the employee’s position and/or title, (x) whether such employee is or will be on a leave of absence, including any protected leave under federal or state Law, as of the Effective Time, and (xi) whether such employee has any written or oral Contract with any of the FBLB Entities or otherwise is other than an employee at-will. To the Knowledge of FBLB, no executive or managerial employee of any of the FBLB Entities and no significant group of employees of any of the FBLB Entities has any plans to terminate his, her or their employment.

(b)Each of the FBLB Entities has complied in all material respects with all applicable Laws relating to employment and employment practices and/or the engagement of independent contractors, including but not limited to those Laws relating to the classification of employees as exempt or non-exempt employees or the classification of workers as independent contractors, calculation and payment of wages (including overtime pay, maximum hours of work and child labor restrictions), equal employment opportunity (including Laws prohibiting discrimination and/or harassment or requiring accommodation on the basis of race, color, national origin, religion, gender, disability, age, sexual

orientation or any other protected characteristic under any federal, state or local Law), protected leaves of absence (including leave under the Family Medical Leave Act), the protection of whistleblowers, affirmative action and other hiring practices, immigration, occupational safety and health, workers compensation, unemployment insurance, the payment of social security and other Taxes, the protection of confidential information, and/or unfair labor practices under the National Labor Relations Act or applicable state Law, and, to the Knowledge of FBLB, there are no facts which would constitute a violation of any applicable Law relating to employment and employment practices and/or the engagement of independent contractors.

(c)To the Knowledge of FBLB, no employee of any FBLB Entity is subject to any secrecy or noncompetition agreement or any other Contract or restriction of any kind that would impede in any way the ability of

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such employee to carry out fully all activities of such employee in furtherance of the businesses of any FBLB Entity as currently conducted.

(d)Schedule 4.24(a) lists each employee of each of the FBLB Entities who as of the date of this Agreement holds a temporary work authorization, including H 1B, L 1, F 1 or J 1 visas or work authorizations (the "Work Permits"), and shows for each such employee the type of Work Permit and the length of time remaining on such Work Permit. With respect to each Work Permit, all of the information that any FBLB Entity provided to the Department of Labor and the Immigration and Naturalization Service or the Department of Homeland Security (collectively, the "Departments") in the application for such Work Permit was true and complete. Each of the FBLB Entities received the appropriate notice of approval from the Departments with respect to each such Work Permit. None of the FBLB Entities has received any notice from the Department that any Work Permit has been revoked. There is no action pending or, to the Knowledge of FBLB, threatened to revoke or adversely modify the terms of any of the Work Permit. No Employee of FBLB is (a) a non-immigrant employee whose status would terminate or otherwise be affected by the transactions contemplated by this Agreement, or (b) an alien who is authorized to work in the United States in non-immigrant status. For each of the employees of any of the FBLB Entities hired after November 6, 1986, the appropriate FBLB Entity has retained an Immigration and Naturalization Service Form I 9, completed in accordance with applicable Law.

(e)The employment of all employees of any of the FBLB Entities who were terminated within the three (3) years prior to the Effective Time was terminated in accordance with any applicable contract terms and applicable Law, and none of the FBLB Entities has any Liability under any Contract or applicable Law applicable to any such terminated employee. Except as set forth in Schedule 4.24(e), the transactions contemplated by this Agreement will not cause any FBLB Entity to incur or suffer any Liability relating to, or obligation to pay, severance, termination or other payment to any Person.

(f)None of the FBLB Entities is subject to any outstanding Governmental Order requiring any action with respect to or related to the employment of any employees, or the engagement of any independent contractors or consultants, including any temporary, preliminary or permanent injunction.

(g)All loans that any FBLB Entity has outstanding to any of its respective employees were made in the Ordinary Course of Business on the same terms as would have been provided to a Person not Affiliated with such FBLB Entity, and all such loans with a principal balance exceeding $100,000, or that are nonaccrual or on the watch list of any FBLB Entity, are set forth in Schedule 4.24(g).

(h)No employee of any FBLB Entity is covered by any collective bargaining agreement, and no collective bargaining agreement is being negotiated. Within the last five years, none of the FBLB Entities has experienced and, to the Knowledge of FBLB, there has not been threatened, any strike, work stoppage, slowdown, lockout, picketing, leafleting, boycott, other labor dispute, union organization attempt, demand for recognition from a labor organization or petition for representation under the National Labor Relations Act or applicable state Law. No grievance, demand for arbitration or arbitration proceeding arising out of or under any collective bargaining agreement is pending or, to the Knowledge of FBLB, threatened.

(i)No Litigation is pending or, to the Knowledge of FBLB, threatened between any FBLB Entity and any applicant for employment of such FBLB Entity or any of its current or former employees, independent contractors or consultants, or any class or collective of any of the foregoing, including any Litigation in or before:

(i)any federal or state court;

(ii)the Equal Employment Opportunity Commission or any corresponding state or local fair employment practices agency relating to any claim or charge of discrimination or harassment in employment;

(iii)the United States Department of Labor or any corresponding state or local agency relating to any claim or charge concerning hours of work, wages or employment practices;

(iv)the Occupational Safety and Health Administration or any corresponding state or local agency relating to any claim or charge concerning employee safety or health;

(v)the Office of Federal Contract Compliance or any corresponding state agency;

(vi)the IRS or any corresponding state agency;

(vii)the National Labor Relations Board or any corresponding state agency, whether relating to any unfair labor practice or any question concerning representation; and/or

(viii)any Texas or other state Governmental Entity.

and, to the Knowledge of FBLB, there are no facts that would form a reasonable basis for any such Litigation.
(j)Each of the FBLB Entities has correctly classified its current and former employees (collectively, the "FBLB Employees") as exempt or non-exempt in compliance with the Fair Labor Standards Act and/or any corresponding state Law.

(k)Each of the FBLB Entities has classified all independent contractors in compliance with the Fair Labor Standards Act and/or any corresponding state Law.

(l)Each of the FBLB Entities has paid in full to all FBLB Employees all wages, salaries, bonuses and commissions due and payable to such employees under any contract or Law, and has fully reserved in its books of account all amounts for wages, salaries, bonuses and commissions due but not yet payable to such employees, and has withheld and paid all amounts required by Law to be withheld and paid from the compensation paid to FBLB Employees, as Taxes or otherwise, and it not liable for any arrears of wages or Taxes or any penalties for failure to comply with the foregoing.

(m)There has been no lay-off of employees or work reduction program undertaken by or on behalf of any FBLB Entity in the past two years, including any termination program for purposes of the Age Discrimination in Employment Act or any plant closing or mass layoff for purposes of the WARN Act, and no such program has been adopted by any FBLB Entity or been publicly announced.

(n)Each of the FBLB Entities properly has maintained all insurance related to the employment of any FBLB Employee, including workers' compensation and unemployment insurance coverage, to the extent required by any Law. There are no workers' compensation or unemployment claims pending against any of the FBLB Entities or, to the Knowledge of FBLB, any facts that would reasonably give rise to such a claim, that are not fully covered by insurance indemnity with respect to the amount of such claims.

(o)Except as set forth on Schedule 4.24(o), none of the FBLB Entities is under any obligation related to the garnishment of wages for any of its employees as of the date of this Agreement.

(p)Each of the FBLB Entities has implemented commercially reasonable policies and practices for the protection of confidential and proprietary business information, including intellectual property, and has required each FBLB Employee who has or reasonably could have been expected to have access to confidential or proprietary business information of any of the FBLB Entities to acknowledge and agree in writing to comply with policies of the FBLB Entities regarding the protection of all such confidential and proprietary business information (which policies FBLB believes are reasonable and customary in the banking industry).

4.25Employee Benefit Plans.

(a)Schedule 4.25(a) sets forth all Plans by name and brief description identifying: (i) the type of Plan, (ii) the funding arrangements for the Plan, (iii) the sponsorship of the Plan, (iv) the participating employers in the Plan, and (v) any one or more of the following characteristics that may apply to such Plan: (A) defined contribution plan as defined in Section 3(34) of ERISA or Section 414(i) of the Code, (B) defined benefit plan as defined in Section 3(35) of ERISA or Section 414(j) of the Code, (C) Plan that is or is intended to be Tax qualified under Section 401(a) or 403(a) of the

Code, (D) Plan that is or is intended to be an employee stock ownership plan as defined in Section 4975(e)(7) of the Code (and whether or not such Plan has entered into an exempt loan), (E) nonqualified deferred compensation arrangement, (F) employee welfare benefit plan as defined in Section 3(1) of ERISA, (G) multiemployer plan as defined in Section 3(37) of ERISA or Section 414(f) of the Code, (H) multiple employer plan maintained by more than one employer as defined in Section 413(c) of the Code, (I) Plan providing benefits after separation from service or termination of employment, (J) Plan that owns any FBLB or other employer securities as an investment, (K) Plan that provides benefits (or provides increased benefits or vesting) as a result of a change in control of any FBLB Entity, (L) Plan that is maintained pursuant to collective bargaining and (M) Plan that is funded, in whole

or in part, through a voluntary employees' beneficiary association exempt from Tax under Section 501(c)(9) of the Code.

(b)Schedule 4.19(b) sets forth the identity of each corporation, trade or business (separately for each category below that applies): (i) which is (or was during the preceding five years) under common control with any of the FBLB Entities within the meaning of Section 414(b) or (c) of the Code; (ii) which is (or was during the preceding five years) in an affiliated service group with any of the FBLB Entities within the meaning of Section 414(m) of the Code; (iii) which is (or was during the preceding five years) the legal employer of Persons providing services to any of the FBLB Entities as leased employees within the meaning of Section 414(n) of the Code; and (iv) with respect to which any of the FBLB Entities is a successor employer for purposes of group health or other welfare plan continuation rights (including Section 601 et. seq. of ERISA) or the Family and Medical Leave Act.

(c)FBLB has made available to Heartland true and complete copies of: (i) the most recent determination letter, if any, received by any FBLB Entity from the IRS regarding each Plan; (ii) the most recent determination or opinion letter ruling, if any, from the IRS that each trust established in connection with plans which are intended to be tax exempt under Section 501(a) or (c) of the Code are so tax exempt; (iii) all pending applications, if any, for rulings, determinations, opinions, no-action letters and the like filed with any governmental agency (including the Departments of Labor, IRS, Pension Benefit Guaranty Corporation and the SEC); (iv) the financial statements for each Plan for the three most recent fiscal or Plan years (in audited form if required by ERISA) and, where applicable, Annual Report/Return (Form 5500) with schedules, if any, and attachments for each Plan; (v) the most recently prepared actuarial valuation report for each Plan (including reports prepared for funding, deduction and financial accounting purposes); (vi) plan documents, trust agreements, insurance contracts, service agreements and all related Contracts and documents (including any employee summaries and material employee communications) with respect to each Plan, if any; and (vii) collective bargaining agreements (including side agreements and letter agreements) relating to the establishment, maintenance, funding and operation of any Plan, if any.

(d)Schedule 4.25(d) identifies each employee of the FBLB Entities who is: (i) absent from active employment due to short or long term disability; (ii) absent from active employment on a leave pursuant to the Family and Medical Leave Act or a comparable state Law; (iii) absent from active employment on any other leave or approved absence; (iv) absent from active employment due to military service (under conditions that give the employee rights to re-employment); or (v) not an "at will" employee.

(e)With respect to continuation rights arising under federal or state Law as applied to Plans that are group health plans (as defined in Section 601 et. seq. of ERISA), Schedule 4.25(e) identifies: (i) each FBLB Employee or qualifying beneficiary who has elected continuation; and (ii) each FBLB Employee or qualifying beneficiary who has not elected continuation coverage but is still within the period in which such election may be made.

(f)(i) All Plans intended to be Tax qualified under Section 401(a) or Section 403(a) of the Code have received a determination letter stating that they are so qualified; (ii) all trusts established in connection with Plans which are intended to be tax exempt under Section 501(a) or (c) of the Code have received a determination letter stating that they are so tax exempt; (iii) to the extent required either as a matter of Law or to obtain the intended tax treatment and tax benefits, all Plans comply in all material respects with the requirements of ERISA and the Code; (iv) all Plans have been maintained and administered (both in form and operation) materially in accordance with the documents and instruments governing the Plans and applicable Law; (v) all reports and filings with governmental agencies (including the Departments of Labor, IRS, Pension Benefit Guaranty Corporation and the SEC) required in connection with each Plan have been timely made; (vi) all disclosures and notices required by Law or Plan provisions to be given to participants and beneficiaries in connection with each Plan have been properly and timely made in all material respects; and (vii) each of the FBLB Entities has made a good faith effort to comply with the reporting and taxation requirements for FICA Taxes with respect to any deferred compensation arrangements under Section 3121(v) of the Code.

(g)(i) All contributions, premium payments and other payments required to be made in connection with the Plans have been timely made in accordance with applicable Law, (ii) a proper accrual has been made on the books of account of each of the FBLB Entities for all contributions, premium payments and other payments due in the current fiscal year, (iii) no contribution, premium payment or other payment has been made in support of any Plan that is in excess of the allowable deduction for federal income Tax purposes for the year with respect to which the contribution was made (whether under Section 162, Section 280G, Section 404, Section 419 or Section 419A of the Code or otherwise) and (iv) none of the FBLB Entities has any liabilities with respect to any Plan that is subject to Section 301 et seq. of ERISA or Section 412 of the Code, and (v) to the Knowledge of FBLB, none of the FBLB

Entities has any actual or potential Liability arising under Title IV of ERISA as a result of any Plan that has terminated or is in the process of terminating.

(h)Except as disclosed on Schedule 4.25(h):

(i)no action, suit, charge, complaint, proceeding, hearing, investigation or claim is pending with regard to any Plan other than routine uncontested claims for benefits;

(ii)the consummation of the transactions contemplated by this Agreement will not cause any Plan to increase benefits payable to any participant or beneficiary;

(iii)the consummation of the transactions contemplated by this Agreement will not: (A) entitle any FBLB Employee to severance pay, unemployment compensation or any other payment, benefit or award, or (B) accelerate or modify the time of payment or vesting, or increase the amount of any benefit, award or compensation due any such employee;

(iv)except as set forth on Schedule 4.25(h)(iv), none of the FBLB Entities has been notified that any Plan is currently under examination or audit by the Departments of Labor, the IRS, the Pension Benefit Guaranty Corporation or the SEC;

(v)to the Knowledge of FBLB, none of the FBLB Entities has any actual or potential Liability under Section 4201 et. seq. of ERISA for either a complete withdrawal or a partial withdrawal from a multiemployer plan; and

(vi)with respect to the Plans, to the Knowledge of FBLB, none of the FBLB Entities has any Liability (either directly or as a result of indemnification) for (and the transaction contemplated by this Agreement will not cause any Liability for): (A) any excise Taxes under Section 4971 through Section 4980B, Section 4999, Section 5000 or any other section of the Code, or (B) any penalty under Section 502(i), Section 502(l), Part 6 of Title I or any other provision of ERISA, or (C) any excise Taxes, penalties, damages or equitable relief as a result of any prohibited transaction, breach of fiduciary duty or other violation under ERISA or any other applicable Law.

(i)Except as disclosed on Schedule 4.25(i):
(i)all accruals required under FAS 106 and FAS 112 have been properly accrued on the financial statements of each of FBLB Entities;

(ii)no condition, Contract or Plan provision limits the right of any of the FBLB Entities to amend, cut back or terminate any Plan (except to the extent such limitation arises under ERISA or the Code); and

(iii)none of the FBLB Entities has any liability for life insurance, death or medical benefits after separation from employment other than (A) death benefits under the Plans identified on Schedule 4.25(i), or (B) health care continuation benefits described in Section 4980B of the Code.

(j)Each Plan, or other nonqualified deferred compensation plan of any of the FBLB Entities, that is subject to Section 409A of the Code has been designed and has been administered in compliance with Section 409A and the Treasury Regulations thereunder.

(k)Each Plan that is also a "group health plan" for purposes of the Patient Protection and Affordable Care Act of 2010 (Pub. L. No. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152) (collectively, the "Affordable Care Act") is in compliance with the applicable terms of the Affordable Care Act. Each of the FBLB Entities and each Commonly Controlled Entity offer minimum essential health coverage, satisfying affordability and minimum value requirements, to their full time employees (as defined by the Affordable Care Act) sufficient to prevent liability for assessable payments under Sections 4980H(a) and 4980H(b) of the Code. Each Plan

that is also a "group health plan" under the Affordable Care Act is operated in compliance with:

(i)market reform mandates set forth under Public Health Services Act Sections 2701 through 2709 and Sections 2711 through 2719A;

(ii)fees and reporting requirements for Patient-Centered Outcomes Research under Code Section 4376 and applicable regulations and transitional reinsurance under 45 C.F.R. Sections 153.10 through 153.420;

(iii)income exclusion provisions under Code Sections 105, 106 and 125;

(iv)information reporting rules as set forth under Sections 6051(a)(14), 6055 and 6056 of the Code; and

(v)standards for electronic transactions and operating rules under Sections 1171 and 1173 of the Social Security Act.

4.26KSOP Committee; KSOP Trustees. The KSOP Committee, which is comprised of the Persons set forth on Schedule 4.26, is the duly appointed committee for the KSOP, with the power and authority to act on behalf of the KSOP (a) as fiduciary of the KSOP in the manner described in Section 3(21)(A) of ERISA and (b) on behalf of the KSOP to the extent specified in the KSOP and any related trust or other documents. The KSOP Trustees are the duly appointed trustees acting under the KSOP Trust.

4.27Insurance. Schedule 4.27 hereto lists each insurance policy and bond maintained by each FBLB Entity with respect to its properties and assets, or otherwise. Prior to the date hereof, FBLB has delivered to Heartland complete and accurate copies of each of the insurance policies and bonds described on Schedule 4.27. All such insurance policies and bonds are in full force and effect, and none of the FBLB Entities is in default with respect to its obligations under any of such insurance policies. There is no claim by any of the FBLB Entities pending under any of such policies or bonds as to which coverage has been denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. Each of the FBLB Entities will after the Closing continue to have coverage under such policies and bonds with respect to events occurring prior to the Closing, including pursuant to the D&O Insurance tail policy.

4.28Affiliate Transactions. Except as set forth on Schedule 4.28, none of the FBLB Entities or any of their respective executive officers or directors, or any member of the immediate family of any such executive officer or director (which for the purposes hereof will mean a spouse, minor child or adult child living at the home of any such executive officer or director), or any entity which any of such Persons “controls” (within the meaning of Regulation O of the FRB), has any loan agreement, note or borrowing arrangement with any FBLB Entity or any other Contract with such FBLB Entity (other than normal employment arrangements or deposit account relationships) or any interest in any property, real, personal or mixed, tangible or intangible, used in or pertaining to the business of any FBLB Entity.

4.29Compliance with Laws; Permits.

(a)Each of the FBLB Entities is, and at all times since January 1, 2013 has been, in compliance in all material respects with all Laws, Governmental Orders or Governmental Authorizations, including (to the extent applicable) the Bank Holding Company Act, the FDIA, the Occupational Safety and Health Act of 1970, the Home Owners Loan Act, the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act of 1975, the Fair Housing Act, the Equal Credit Opportunity Act and the Federal Reserve Act, each as amended, and any other applicable Governmental Order or Governmental Authorization regulating or otherwise affecting bank holding companies, banks, banking and mortgage lending; and no claims have been filed by any Governmental Entity against any FBLB Entity alleging such a violation of any such Law which have not been resolved to the satisfaction of such Governmental Entity.

(b)Since January 1, 2013, none of the FBLB Entities has been advised of, and FBLB has no reason to believe that, any facts or circumstances exist that could reasonably be expected to cause any FBLB Entity to be deemed to be operating its business in violation of any provision of the Bank Secrecy Act, the USA PATRIOT Act of 2001 or any Governmental Order issued with respect to anti-money laundering by the U.S. Department of the Treasury’s Office of Foreign Assets Control, or any other applicable anti-money laundering Law or Governmental Order issued with respect to economic sanctions programs by the U.S. Department of the Treasury’s Office of Foreign Assets Control.

(c)Since January 1, 2013, each of the FBLB Entities has held all Governmental Authorizations required for the conduct of its business, except where the failure to hold any such Governmental Authorization would not have a Material Adverse Effect on any FBLB Entity.

(d)None of the FBLB Entities or any of their respective properties is a party to or is subject to any order, decree, directive, agreement or memorandum of understanding with, or a commitment letter or similar submission to, or extraordinary supervisory letter from any Bank Regulator, nor has any of the FBLB Entities adopted any policies, procedures or board resolutions at the request or suggestion of, any Bank Regulator. The FBLB Entities have paid all assessments made or imposed by any Bank Regulator.

(e)None of the FBLB Entities has been advised by, nor, to the Knowledge of FBLB, do any facts exist which would reasonably be expected to give rise to an advisory notice by, any Bank Regulator that such Bank Regulator is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, directive, agreement, memorandum of understanding, commitment letter, supervisory letter or similar submission or any request for the adoption of any policy, procedure or board resolution.

(f)(i) No Governmental Entity has initiated since December 31, 2013 or has pending any proceeding, enforcement action or, to the Knowledge of FBLB, investigation or inquiry into the business, operations, policies, practices or disclosures of any of the FBLB Entities (other than normal examinations conducted by a Bank Regulator in the Ordinary Course of the Business of such FBLB Entity), or, to the Knowledge of FBLB, threatened any of the foregoing, and (ii) there is no unresolved violation, criticism, comment or exception by any Bank Regulator with respect to any report or statement relating to any examinations or inspections of any of the FBLB Entities.

4.30No Fiduciary Accounts. None of the FBLB Entities acts as a fiduciary for any customer or account (including acting as a trustee, agent, custodian, personal representative, guardian, conservator or investment advisor).

4.31Interest Rate Risk Management Instruments.

(a)Schedule 4.31 sets forth a true, correct and complete list of all interest rate swaps, caps, floors and option agreements and other interest rate risk management arrangements to which any FBLB Entity is a party or by which any of its properties or assets may be bound. FBLB has delivered to Heartland true, correct and complete copies of all such interest rate risk management agreements and arrangements.

(b)All interest rate swaps, caps, floors and option agreements and other interest rate risk management arrangements to which any of the FBLB Entities is a party or by which any of its properties or assets may be bound were entered into in the Ordinary Course of Business and in accordance in all material respects with prudent banking practice and applicable rules, regulations and policies of Bank Regulators and with counterparties believed to be financially responsible at the time, and are legal, valid and binding obligations enforceable in accordance with their terms (except as may be limited by Remedies Exceptions), and are in full force and effect. Each of the FBLB Entities has duly performed in all material respects all of its obligations thereunder to the extent that such obligations to perform have accrued; and, to the Knowledge of FBLB, there are no breaches, violations or defaults or allegations or assertions of such by any party thereunder.

4.32No Guarantees. No Liability of any FBLB Entity is guaranteed by any other Person, nor, except as set forth in Schedule 4.32, has any FBLB Entity guaranteed the Liabilities of any other Person.

4.33Regulatory Approvals. FBLB is not aware of any fact or circumstance relating to any FBLB Entity that would materially impede or delay receipt of any Bank Regulatory Approvals or that would likely result in the Bank Regulatory Approvals not being obtained.

4.34Fairness Opinion. FBLB has received an opinion from Stephens addressed to the Board of Directors of FBLB to the effect that, as of the date of such opinion, and based upon the assumptions, qualifications contained therein, the Merger Consideration is fair, from a financial point of view, to the holders of FBLB Common Stock. FBLB has obtained the authorization of Stephens to include a copy of its fairness opinion in the Proxy Statement/Prospectus.

4.35Transactions in Securities.

(a)All offers and sales of capital stock of FBLB by FBLB were at all relevant times exempt from, or complied with, the registration requirements of the Securities Act and any applicable state securities Laws.

(b)None of the FBLB Entities, and, to the Knowledge of FBLB, (i) no director or executive officer of such FBLB Entities and (ii) no Person related to any such director or executive officer by blood, marriage or adoption

and residing in the same household has purchased or sold, or caused to be purchased or sold, any FBLB Common Stock or other FBLB securities in violation of any applicable provision of federal or state securities Laws.

4.36Registration Obligation. Neither FBLB nor FB&T is under any obligation, contingent or otherwise, to register any of their respective securities under the Securities Act.

4.37No Other Representations or Warranties. Except for the representations and warranties made by FBLB in this Article 4, neither FBLB nor any other Person makes any express or implied representation or warranty with respect to FBLB, its Subsidiaries or their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects, and FBLB hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither FBLB nor any other Person makes or has made any representation or warranty to Heartland or any of its Affiliates or Representatives with respect to (i) any financial projection, forecast, estimate, budget or prospective information relating to FBLB, any of its Subsidiaries or their respective businesses, or (ii) except for the representations and warranties made by FBLB in this Article 4, any oral or written information presented to Heartland or any of its Affiliates or Representatives in the course of their due diligence investigation of FBLB, the negotiation of this Agreement or in the course of the transactions contemplated hereby.

ARTICLE 5
CONDUCT OF BUSINESS PENDING THE MERGER

5.1Conduct of Business. From the date of this Agreement to the Effective Time, unless Heartland will otherwise agree in writing (which consent will not be unreasonably withheld, conditioned or delayed) or as otherwise expressly contemplated or permitted by other provisions of this Agreement, including this Section 5.1, Schedule 5.1 or except as may be required by applicable Law, any Governmental Order or policies imposed by any Governmental Entity:

(a)the businesses of each of the FBLB Entities will be conducted only in, and none of the FBLB Entities will take any action except in, the Ordinary Course of Business and in accordance with all applicable Laws;

(b)each of the FBLB Entities will (i) preserve its business organization and goodwill, and will use commercially reasonable efforts to keep available the services of its officers, employees and consultants and maintain satisfactory relationships with vendors, customers and others having business relationships with it, (ii) subject to applicable Laws, confer on a regular and frequent basis with representatives of Heartland to report operational matters and the general status of ongoing operations as reasonably requested by Heartland and (iii) not take any action that would render, or that reasonably would be expected to render, any representation or warranty made by FBLB in this Agreement untrue at the Closing as though then made and as though the Closing Date had been substituted for the date of this Agreement in such representation or warranty;

(c)none of the FBLB Entities will, directly or indirectly,

(i)amend or propose to amend its Charter or Bylaws;

(ii)issue or sell any of its equity securities, securities convertible into or exchangeable for its equity securities, warrants, options or other rights to acquire its equity securities, or any bonds or other securities, except deposit and other bank obligations in the Ordinary Course of Business;

(iii)redeem, purchase, acquire or offer to acquire, directly or indirectly, any shares of capital stock of any FBLB Entity;

(iv)split, combine or reclassify any outstanding shares of capital stock of any FBLB Entity, or declare, set aside or pay any dividend or other distribution payable in cash, property or otherwise with respect to shares of capital stock of any

FBLB Entity, except that (A) FB&T will be permitted to pay dividends on shares of FB&T Common Stock in the Ordinary Course of Business, and (B) FBLB will be permitted to pay dividends in the Ordinary Course of Business on shares of FBLB Common Stock for the sole purpose of providing FBLB Shareholders with funds to pay Taxes and in an amount equal to 40% of the taxable income of FBLB.

(v)incur any material Indebtedness, except in the Ordinary Course of Business;

(vi)discharge or satisfy any material Encumbrance on its properties or assets or pay any material liability, except otherwise in the Ordinary Course of Business;

(vii)sell, assign, transfer, mortgage, pledge or subject to any Encumbrance any of its assets, except (A) in the Ordinary Course of Business; provided, that any such sale, assignment or transfer of the Operating Real Property will not be considered in the Ordinary Course of Business, (B) Permitted Encumbrances and (C) Encumbrances which do not materially affect the value of, or interfere with the past or future use or ability to convey, the property subject thereto or affected thereby;

(viii)cancel any material Indebtedness or claims or waive any rights of material value, except in the Ordinary Course of Business;

(ix)acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any corporation, limited liability company, partnership, joint venture or other business organization or division or material assets thereof, or any real estate or assets or deposits that are material to any FBLB Entity, except in exchange for Indebtedness previously contracted, including OREO;

(x)make any single or group of related capital expenditures or commitments therefor in excess of $50,000 or enter into any lease or group of related leases with the same party which involves aggregate lease payments payable of more than $50,000 for any individual lease or involves more than $100,000 for any group of related leases in the aggregate; or

(xi)change any of its methods of accounting in effect on the date of the Latest Balance Sheet, other than changes required by GAAP or regulatory accounting principles;

(xii)cancel or terminate its current insurance policies or allow any of the coverage thereunder to lapse, unless simultaneously with such termination, cancellation or lapse replacement policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies for substantially similar premiums are in full force and effect;

(xiii)enter into or modify any employment, severance or similar agreements or arrangements with, or grant any compensation increases to, any director, officer or management employee, except in the Ordinary Course of Business;

(xiv)enter into or modify any independent contractor or consultant Contract between a FBLB Entity and an independent contractor or consultant of such FBLB Entity outside of the Ordinary Course of Business in a manner that requires annual payments to such independent contractor or consultant in excess of $100,000;

(xv)terminate the employment of any employee of any FBLB Entity, other than in the Ordinary Course of Business;

(xvi)terminate or amend any bonus, profit sharing, stock option, restricted stock, pension, retirement, deferred compensation, or other employee benefit plan, trust, fund, contract or arrangement for the benefit or welfare of any employees, except as contemplated hereunder or by Law;

(xvii)make, modify or revoke any election with respect to Taxes, consent to any waiver or extension of time to assess or collect any Taxes, file any amended Returns or file any refund claim;

(xviii)enter into or propose to enter into, or modify or propose to modify, any Contract with respect to any of the matters set forth in this Section 5.1(c);

(xix)(A) extend credit or enter into any Contract binding any FBLB Entity to extend credit except in the Ordinary Course of Business and in accordance with the lending policies of such FBLB Entity as disclosed to Heartland, or extend credit or enter into any Contract binding it to extend credit (1) in an amount in excess of $500,000 on an unsecured basis or $1,000,000 on a secured basis, in each case with respect to a single loan, or (2) to any borrower with a loan on the watch list of any FBLB Entity without, in each case, first providing Heartland (at least three (3) Business Days prior written notice to extending such credit or entering into any Contract binding any FBLB Entity to do so) with a copy of the loan underwriting

analysis and credit memorandum of the applicable FBLB Entity and the basis of the credit decision of such FBLB Entity, or (B) sell, assign or otherwise transfer any participation in any loan without first providing Heartland at least three (3) Business Days prior written notice of any such sale, assignment or other transfer; or

(xx)sell any equity securities in its investment portfolio.

5.2Access to Information; Confidentiality.

(a)FBLB will permit and will cause each FBLB Entity to permit Heartland full access on reasonable notice and at reasonable hours to the properties of such FBLB Entity, and will disclose and make available (together with the right to copy) to Heartland and to the internal auditors, loan review officers, employees, attorneys, accountants and other representatives of Heartland all books, papers and records relating to the assets, stock, properties, operations, obligations and liabilities of the FBLB Entities, including all books of account (including the general ledgers), Tax records, minute books of directors' and shareholders' meetings, organizational documents, bylaws, Contracts, filings with any regulatory authority, accountants' work papers, litigation files (including legal research memoranda), documents relating to assets and title thereto (including abstracts, title insurance policies, surveys, environmental reports, opinions of title and other information relating to the real and personal property), Plans, securities transfer records and shareholder lists, and any books, papers and records relating to other assets, business activities or prospects in which Heartland may have a reasonable interest, including its interest in planning for integration and transition with respect to the businesses of the FBLB Entities; provided, however, that (i) the foregoing rights granted to Heartland will in no way affect the nature or scope of the representations, warranties and covenants of FBLB set forth herein, and (ii) FBLB will be permitted to keep confidential any information that FBLB reasonably believes is subject to legal privilege or other legal protection that would be compromised by disclosure to Heartland. In addition, FBLB will instruct the officers, employees, counsel and accountants of each of the FBLB Entities to be available for, and respond to any questions of, such Heartland representatives at reasonable hours and with reasonable notice by Heartland to such individuals, and to cooperate fully with Heartland in planning for the integration of the businesses of the FBLB Entities with the businesses of Heartland and its Affiliates.

(b)For the purpose of FBLB verifying the representations and warranties of Heartland under this Agreement and compliance with its covenants and obligations hereunder, Heartland will make available such documents as are reasonably requested by FBLB; provided, however, that (i) the foregoing rights granted to FBLB will in no way affect the nature or scope of the representations, warranties and covenants of Heartland set forth herein, and (ii) Heartland will be permitted to keep confidential any information that Heartland reasonably believes is subject to legal privilege or other legal protection that would be compromised by disclosure to FBLB. FBLB will use commercially reasonable efforts to minimize any interference with Heartland's regular business operations in connection with any request for Heartland to make available documents pursuant to this Section 5.2(b).

(c)Any confidential information or trade secrets of each party received by the other party, its employees or agents in the course of the consummation of the Merger will be treated confidentially and held in confidence pursuant to the NDA, and any correspondence, memoranda, records, copies, documents and electronic or other media of any kind containing either such confidential information or trade secrets or both will be destroyed by the receiving party or, at the request of the disclosing party, returned to the disclosing party if this Agreement is terminated as provided in Article 8. Such information will not be used by either party or its agents to the detriment of the other party or its Subsidiaries and will at all times be maintained and held in compliance with the NDA.

(d)In the event that this Agreement is terminated, neither Heartland nor FBLB will disclose, except as required by Law or pursuant to the request of a Governmental Entity, the basis or reason for such termination, without the consent of the other party.

5.3Notice of Developments. To the extent permitted by applicable Law, FBLB will promptly notify Heartland of any emergency or other change in the Ordinary Course of Business of any of the FBLB Entities. Each party will promptly notify the other party in writing if such party should discover that any representation or warranty made by it in this Agreement was when made, has subsequently become or will be on the Closing Date untrue in any respect. No disclosure pursuant to this Section 5.3 will be deemed to amend or supplement the Disclosure Schedules or to prevent or cure any inaccuracy, misrepresentation, breach of warranty or breach of agreement.

5.4Certain Loans and Related Matters. FBLB will furnish to Heartland a complete and accurate list as of the end of each calendar month following the date of this Agreement within 25 days after the end of each such calendar month of

(a) all of the periodic internal credit quality reports of any FBLB Entity prepared during such calendar month (which reports will be prepared in a manner consistent with past practices), (b) all loans of any FBLB Entity classified as non-accrual, as restructured, as 90 days past due, as still accruing and doubtful of collection or any comparable classification, (c) all OREO, including in-substance foreclosures and real estate in judgment, (d) all new loans where the principal amount advanced exceeds $500,000, (e) any current repurchase obligations of any FBLB Entity with respect to any loans, loan participations or state or municipal obligations or revenue bonds, and (f) any standby letters of credit issued by FB&T.

5.5Financial Statements and Pay Listings.

(a)FBLB will furnish Heartland with balance sheets of FBLB and FB&T as of the end of each calendar month following the date of this Agreement and the related statements of income, within 25 days after the end of each such calendar month. Such financial statements will be prepared on a basis consistent with the Latest Balance Sheet and the Related Statement and on a consistent basis during the periods involved, and will fairly present the financial positions of FBLB and FB&T as of the dates thereof and the results of operations of FBLB and FB&T for the periods then ended.

(b)FBLB will make available to Heartland the payroll listings of each of the FBLB Entities as of the end of each pay period after December 15, 2017, within one week after the end of such pay period.

5.6Consents and Authorizations. FBLB will use its commercially reasonable efforts to obtain (at no cost to Heartland), prior to Closing, all Consents (the “Required Consents”) necessary or reasonably desirable for the consummation of the transactions contemplated by this Agreement. FBLB will keep Heartland reasonably advised of the status of obtaining the Required Consents, and Heartland will reasonably cooperate with FBLB to obtain the Required Consents, which will include providing publicly available financial or other information about Heartland and executing and delivering any consent, assignment or other instrument reasonably requested by any Person providing a Required Consent.

5.7Tax Matters.

(a)Each FBLB Entity, at its own or FBLB’s expense, will prepare and timely file (or cause to be prepared and timely filed) all Returns required to be filed by the FBLB Entity on or before the Effective Date, and timely pay all Taxes reflected thereon. FBLB’s 2017 “S corporation” federal income tax return and any applicable state or local income or franchise tax returns will be prepared and filed by FBLB no later than the Closing Date, without extensions. No later than 10 days prior to the due date (including extensions) for filing any income or franchise Tax Returns referred to in the foregoing sentence, FBLB will deliver such Returns to Heartland for review and comment. With respect to any Returns referred to in the first sentence of this subsection (a) other than income and franchise Tax Returns, FBLB will deliver such Returns to Heartland no later than five days prior to the due date (including extensions) for filing such Returns and Heartland will have the right to review and comment on such other Returns. The relevant FBLB Entity will consider the comments of Heartland in good faith and will incorporate comments reasonably requested by Heartland in each such Return prior to filing thereof.

(b)Heartland, at its own expense, will prepare and timely file (or cause to be prepared and timely filed) all Returns of the FBLB Entities required to be filed after the Effective Date. Heartland will prepare and file all such Returns in respect of a taxable period which ends on or prior to the Effective Date that are not required to be filed on or before the Effective Date, and all such Tax Returns in respect of a taxable period which begins before and ends after the Effective Date, consistent with past practices of the FBLB Entity, to the extent such practices comply with applicable Law.

(c)FBLB will be liable for any transfer, value added, excise, stock transfer, stamp, recording, registration and any similar Taxes that become payable in connection with the Merger and other transactions contemplated hereby. The

applicable parties will cooperate in preparing and filing such forms and documents as may be necessary to permit any such Transfer Tax to be assessed and paid on or prior to the Effective Date in accordance with any available pre sale filing procedure, and to obtain any exemption from or refund of any such Transfer Tax.

(d)The FBLB Entities and Heartland will cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Returns pursuant to this Section 5.7 and in connection with any audit, litigation or other proceeding with respect to Taxes. Such cooperation will include the retention and (upon the other party's reasonable request) the provision of records and information (including making such records and information available for copying) which are reasonably relevant to any such audit, litigation or other proceeding, the timely provision to the other party of powers of attorney or similar authorizations necessary to carry out the purposes of this

Section 5.7, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Heartland and each of the FBLB Entities agrees to retain all books and records with respect to Tax matters pertinent to the FBLB Entities relating to any taxable period which ends on or prior to the Effective Date until the expiration of the statute of limitations (and, to the extent notified by Heartland or its Affiliate, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Governmental Entity.

5.8No Solicitation.

(a)FBLB will not, and FBLB will each use its best efforts to cause the other FBLB Entities and the officers, directors, employees agents and authorized representatives ("Representatives") of all FBLB Entities not to, directly or indirectly, (i) solicit, initiate, encourage, induce or facilitate the making, submission or announcement of any Acquisition Proposal or take any action that would reasonably be expected to lead to an Acquisition Proposal, (ii) furnish any information regarding any FBLB Entity to any Person in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that would reasonably be expected to lead to an Acquisition Proposal, (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or that would reasonably be expected to lead to an Acquisition Proposal, (iv) approve, endorse or recommend any Acquisition Proposal or (v) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Transaction; provided, however, that prior to the adoption of this Agreement by the Required FBLB Shareholder Vote, this Section 5.8(a) will not prohibit FBLB from furnishing nonpublic information regarding the FBLB Entities to, or entering into discussions or negotiations with, any Person in response to a Superior Proposal that is submitted to FBLB by such Person (and not withdrawn) if (1) neither FBLB nor any other FBLB Entities and any of their respective Representatives have violated any of the restrictions set forth in this Section 5.8(a), (2) the Board of Directors of FBLB concludes in good faith, after having consulted with and considered the advice of outside counsel to FBLB, that such action is required in order for the Board of Directors of FBLB to comply with its fiduciary obligations to FBLB's shareholders under applicable Law, (3) at least two Business Days prior to furnishing any such nonpublic information to, or entering into discussions with, such Person, FBLB gives Heartland written notice of the identity of such Person and of FBLB's intention to furnish nonpublic information to, or enter into discussions with, such Person, and FBLB receives from such Person an executed confidentiality agreement containing customary limitations on the use and disclosure of all nonpublic written and oral information furnished to such Person by or on behalf of FBLB and (4) at least two Business Days prior to furnishing any such nonpublic information to such Person, FBLB furnishes such nonpublic information to Heartland (to the extent such nonpublic information has not been previously furnished by the FBLB to Heartland). Without limiting the generality of the foregoing, FBLB acknowledges and agrees that any violation of or the taking of any action inconsistent with any of the restrictions set forth in the preceding sentence by any FBLB Entity or any of its Representatives will be deemed to constitute a breach of this Section 5.8(a) by FBLB.

(b)FBLB will promptly (and in no event later than 24 hours after receipt of any Acquisition Proposal, any inquiry or indication of interest that would reasonably be expected to lead to an Acquisition Proposal or any request for nonpublic information) advise Heartland orally and in writing of any Acquisition Proposal, any inquiry or indication of interest that would reasonably be expected to lead to an Acquisition Proposal or any request for nonpublic information relating to any of the FBLB Entities (including the identity of the Person making or submitting such Acquisition Proposal, inquiry, indication of interest or request, and the terms thereof) that is made or submitted by any Person prior to the Closing Date. FBLB will keep Heartland fully informed with respect to the status of any such Acquisition Proposal, inquiry, indication of interest or request and any modification or proposed modification thereto.

(c)FBLB will immediately cease and cause to be terminated any existing discussions with any Person that relate to any Acquisition Proposal.

(d)FBLB will not release or permit the release of any Person from, or waive or permit the waiver of any provision of, any confidentiality, "standstill" or similar agreement to which FBLB is a party, and will enforce or cause to be enforced each such agreement at the request of Heartland. FBLB will promptly request each Person that has executed, within 12 months prior to the date of this Agreement, a confidentiality agreement in connection with its consideration of a possible Acquisition Transaction or equity investment to return all confidential information heretofore furnished to such Person by or on behalf of FBLB.

5.9Maintenance of Allowance for Loan and Lease Losses. FBLB will cause each FBLB Entity to maintain its ALLL in compliance with GAAP and Regulatory Accounting Principles and its existing methodology for determining the

adequacy of the ALLL, as well as the standards established by all applicable Governmental Entities and the Financial Accounting Standards Board. FBLB agrees that the ALLL of each FBLB Entity will be adequate under all standards, and that the ALLL will be consistent with the historical loss experience of the applicable FBLB Entity. Without limiting the generality of the foregoing, without the consent of Heartland or as set forth in Schedule 5.9, FBLB will not permit any FBLB Entity to reverse any amount of its previously established ALLL or allow the ALLL to be less than $9,300,000; provided, however, that an FBLB Entity may reverse a portion of its previously established ALLL relating to any of the distressed loans listed on Schedule 5.9 (in which case the ALLL may be reduced to an amount equal to $9,300,000, less the amount of such ALLL reversal), but only if (a) all amounts owed to such FBLB Entity under any such distressed loan are repaid in full, or (b) all amounts owed under any such distressed loan are written off by such FBLB Entity. Schedule 5.9 sets forth the amount of the ALLL associated with each distressed loan listed on Schedule 5.9.

5.10Heartland Forbearances. Except as expressly permitted by this Agreement or with the prior written consent of FBLB (which will not be unreasonably withheld, conditioned or delayed), during the period from the date of this Agreement to the earlier of the Effective Time and the termination of this Agreement in accordance with Article 8, Heartland will not, and will not permit any of its Subsidiaries to, except as may be required by applicable Law, any Governmental Order or policies imposed by any Governmental Entity, (a) take any action that would reasonably be expected to prevent, materially impede or materially delay the consummation of the transactions contemplated by this Agreement, or (b) take, or omit to take, any action that is reasonably likely to result in any of the conditions to the Merger set forth in Article 7 not being or becoming not being capable of being satisfied.

5.11FBLB Forbearances. Except as expressly permitted by this Agreement or with the prior written consent of Heartland, during the period from the date of this Agreement to the earlier of the Effective Time and the termination of this Agreement in accordance with Article 8, FBLB will not, and will not permit any FBLB Entity, except as may be required by applicable Law, any Governmental Order or policies imposed by any Governmental Entity, (a) take any action that would reasonably be expected to prevent, materially impede or materially delay the consummation of the transactions contemplated by this Agreement, or (b) take, or omit to take, any action that is reasonably likely to result in any of the conditions to the Merger set forth in Article 7 not being or becoming not being capable of being satisfied.

ARTICLE 6
ADDITIONAL COVENANTS AND AGREEMENTS

6.1Filings and Regulatory Approvals. Heartland and FBLB will use all commercially reasonable efforts and will cooperate with each other in the preparation and filing of, and Heartland will file, promptly after the date of this Agreement, all applications, notices or other documents required to obtain the Regulatory Approvals, and Heartland will provide copies of the non-confidential portions of such applications, filings and related correspondence to FBLB. Prior to filing each application, registration statement or other document with the applicable Governmental Entity, each party will provide the other party with an opportunity to review and comment on the non-confidential portions of each such application, registration statement or other document and will discuss with the other party which portions of this Agreement will be designated as confidential portions of such applications. Each party will use all commercially reasonable efforts and will cooperate with the other party in taking any other actions necessary to obtain such regulatory or other approvals and consents, including participating in any required hearings or proceedings. Subject to the terms and conditions herein provided, each party will use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement. Heartland will pay, or will cause to be paid, any applicable fees and expenses in connection with the preparation and filing of such regulatory filings necessary to obtain the Regulatory Approvals.

6.2Shareholder Meeting; Registration Statement.

(a)FBLB will call a special meeting of its shareholders (the "FBLB Shareholder Meeting") for the purpose of voting upon this Agreement and the Merger, and will schedule such meeting based on consultation with Heartland as soon as practicable after the Registration Statement is declared effective. The Board of Directors of FBLB will recommend that the shareholders approve this Agreement and the Merger (the "FBLB Board Recommendation"), and FBLB will use its best efforts (including soliciting proxies for such approval) to obtain the Required FBLB Shareholder Vote. The FBLB Board Recommendation may not be withdrawn or modified in a manner adverse to Heartland, and no resolution by the Board of Directors of FBLB or any committee thereof to withdraw or modify the FBLB Board Recommendation in a manner adverse to FBLB may be adopted; provided, however, that notwithstanding the foregoing, prior to the adoption of this Agreement by the Required FBLB Shareholder Vote, the Board of Directors of FBLB may withdraw, qualify or modify the FBLB Board Recommendation or approve, adopt, recommend or otherwise declare advisable any Superior Proposal made after the

date hereof and not solicited, initiated or encouraged in breach of Section 5.8, if the Board of Directors of FBLB determines in good faith, after consultation with outside counsel, that failure to do so would be likely to result in a breach of fiduciary duties under applicable law (a "Change of FBLB Board Recommendation"). In determining whether to make a Change of FBLB Board Recommendation in response to a Superior Proposal or otherwise, the Board of Directors of FBLB will take into account any changes to the terms of this Agreement proposed by Heartland or any other information provided by Heartland in response to such notice.

(b)For the purposes of (i) holding the FBLB Shareholder Meeting and (ii) registering Heartland Common Stock to be issued to shareholders of FBLB in connection with the Merger with the SEC and with applicable state securities authorities, Heartland will prepare, with the cooperation of FBLB (which will, for the avoidance of doubt, be given the opportunity to participate in the preparation of the Registration Statement and will have the right to approve the content of the Registration Statement relating to the FBLB Entities), a registration statement on Form S 4 (such registration statement, together with all and any amendments and supplements thereto, being herein referred to as the "Registration Statement"), which will include a proxy statement/prospectus satisfying all applicable requirements of the Securities Act, the Exchange Act and applicable Blue Sky Laws (such proxy statement/prospectus, together with any and all amendments or supplements thereto, being herein referred to as the "Proxy Statement/Prospectus").

(c)Heartland will furnish such information concerning Heartland and its Subsidiaries as is necessary in order to cause the Proxy Statement/Prospectus and the Registration Statement, insofar as they relate to Heartland and its Subsidiaries, to be prepared in accordance with Section 6.2(b). Heartland agrees promptly to notify FBLB if at any time prior to the FBLB Shareholder Meeting any information provided by Heartland in the Proxy Statement/Prospectus becomes incorrect or incomplete in any material respect, and to provide the information needed to correct such inaccuracy or omission.

(d)FBLB will promptly furnish Heartland with such information concerning FBLB or FB&T as is necessary in order to cause the Proxy Statement/Prospectus and the Registration Statement, insofar as they relate to FBLB or FB&T, to be prepared in accordance with Section 6.2(b), including the opinion of counsel as to Tax matters required to be filed as an exhibit thereto. FBLB agrees promptly to notify Heartland if at any time prior to the FBLB Shareholder Meeting any information provided by FBLB in the Proxy Statement/Prospectus becomes incorrect or incomplete in any material respect, and to provide Heartland with the information needed to correct such inaccuracy or omission.

(e)Heartland will promptly file the Registration Statement with the SEC and applicable state securities agencies. Heartland will use commercially reasonable efforts to cause (i) the Registration Statement to become effective under the Securities Act and applicable Blue Sky Laws at the earliest practicable date, and (ii) the shares of Heartland Common Stock issuable to the shareholders of FBLB to be authorized for listing on the NASDAQ Global Select Market or other national securities exchange. At the time the Registration Statement becomes effective, Heartland will use its commercially reasonable efforts to ensure that the Registration Statement complies in all material respects with the provisions of the Securities Act and applicable Blue Sky Laws. FBLB hereby authorizes Heartland to utilize in the Registration Statement the information concerning the FBLB Entities provided to Heartland for the purpose of inclusion in the Proxy Statement/Prospectus. Heartland will advise FBLB promptly when the Registration Statement has become effective and of any supplements or amendments thereto, and Heartland will furnish FBLB with copies of all such documents. Prior to the Effective Time or the termination of this Agreement, each party will consult with the other with respect to any material (other than the Proxy Statement/Prospectus) that might constitute a "prospectus" relating to the Merger within the meaning of the Securities Act.

(f)None of the information relating to Heartland and its Subsidiaries that is provided by Heartland for inclusion in: (i) the Proxy Statement/Prospectus, any filings or approvals under applicable federal or state banking Laws or regulations or state securities Laws, or any filing pursuant to the Securities Act will, at the time of mailing the Proxy Statement/Prospectus to FBLB's shareholders, at the time of the FBLB Shareholder Meeting and at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or

necessary to make the statements therein, in light of the circumstances under which they are made, not misleading; and (ii) the Registration Statement will, at the time the Registration Statement and each amendment or supplement thereto, if any, becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(g)None of the information relating to the FBLB Entities that is provided by FBLB for inclusion in: (i) the Proxy Statement/Prospectus, any approvals under applicable federal or state banking Laws or regulations or state securities Laws, or any filing pursuant to the Securities Act will, at the time of mailing the Proxy Statement/Prospectus to FBLB's shareholders, at the time of the FBLB Shareholder Meeting and at the Effective Time, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading; and (ii) the Registration Statement will, at the time the Registration Statement and each amendment or supplement thereto, if any, becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

(h)Heartland will bear the costs of all SEC filing fees with respect to the Registration Statement and the costs of qualifying the shares of Heartland Common Stock under the Blue Sky Laws, to the extent necessary. Heartland will also bear the costs of all NASDAQ listing fees with respect to listing the shares of Heartland Common Stock on the NASDAQ Global Select Market or other national securities exchange pursuant to this Agreement. Heartland will bear all printing and mailing costs in connection with the preparation and mailing of the Proxy Statement/Prospectus to FBLB and Heartland shareholders. Heartland and FBLB will each bear their own legal and accounting expenses in connection with the preparation of the Proxy Statement/Prospectus and the Registration Statement.

6.3Establishment of Accruals. If requested by Heartland, on the Business Day immediately prior to the Closing Date, FBLB will cause FB&T and any FBLB Subsidiary, consistent with GAAP, to establish such additional accruals and reserves as Heartland indicates are necessary to conform their accounting and credit loss reserve practices and methods to those of Heartland (as such practices and methods are to be applied to FB&T and the FB&T Subsidiaries from and after the Effective Time) and reflect Heartland's plans with respect to the conduct of the businesses of FB&T and the FB&T Subsidiaries following the Merger and to provide for the costs and expenses relating to the consummation by FBLB of the transactions contemplated by this Agreement; provided, however, that any such accruals and reserves will not affect the determination of Adjusted Tangible Common Equity. No such accruals or reserves will of itself constitute or be deemed to be a breach, violation or failure to satisfy any representation, warranty, covenant, condition or other provision or constitute grounds for termination of this Agreement or be an acknowledgment by FBLB (a) of any adverse circumstances for purposes of determining whether the conditions to Heartland's obligations under this Agreement have been satisfied; or (b) that such adjustment has any bearing on the Aggregate Merger Consideration. In no event will any accrual, reserve or other adjustment required or permitted by this Section 6.3 require any prior filing with any Governmental Entity or violate any Law, rule or order applicable to FB&T and the FB&T Subsidiaries.

6.4Employee Matters.

(a)General. At the request of Heartland, FBLB agrees to terminate any Plans as of the Effective Time on terms reasonably acceptable to Heartland. If any Plans are not so terminated, after the Effective Time, Heartland will have the right to continue, amend, merge or terminate any of such Plans in accordance with the terms thereof and subject to any limitation arising under applicable Law, including Tax qualification requirements. FBLB agrees that, at the request of Heartland, each of the FBLB Entities and any Commonly Controlled Entity will cease to be a participating employer of, and will cease making contributions to or otherwise providing benefits under, any Plan, as of the Effective Time. If, after the Effective Time, there are any Plans for which the Surviving Corporation or any of its Subsidiaries continues to be a participating employer, Heartland will have the right to discontinue such participation in any of such Plans in accordance with the terms thereof and subject to any limitation arising under applicable Law. However, until Heartland will take such action, such Plans will continue in force for the benefit of present and former employees of the FBLB Entities who have any present or future entitlement to benefits under any of the Plans.

(b)Termination of KSOP. Unless Heartland directs FBLB otherwise in writing, no later than five Business Days prior to the Closing Date, the Board of Directors of FBLB will adopt resolutions, effective immediately prior to the

Effective Date, (a) permanently discontinuing contributions to and terminating the KSOP, (b) converting the KSOP into a profit sharing plan, and (c) amending the KSOP, to the extent necessary, to comply with all applicable Laws. Such resolutions will provide that, as soon as administratively feasible following the Closing, but subject to any applicable regulatory requirements and receipt of any necessary regulatory approvals, the Surviving Corporation will direct the KSOP to distribute each participant's vested account balance in a single lump sum, including vested accounts already in pay status. FBLB will also take such other actions in furtherance of the termination of the KSOP as Heartland may reasonably require.

(c)Participation in Heartland Benefit Plans. At a date no later than ten (10) Business Days after the Closing Date, each FBLB Employee will be eligible to participate in the health, vacation and other non-equity based employee benefit plans of Heartland or its Subsidiaries (the "Heartland Plans") to the same extent as similarly situated employees of Heartland and to the extent permitted by the applicable Heartland Plan or applicable Law; provided, however, that nothing in this Section 6.4(c) or elsewhere in this Agreement will limit the right of Heartland or any of its Subsidiaries to amend or terminate a Heartland Plan at any time. With respect to the Heartland Plans, Heartland will, or will cause the Surviving Corporation or its Subsidiaries to: (i) with respect to each Heartland Plan that is a medical/prescription, dental or vision plan, (x) waive any exclusions for pre-existing conditions under such Heartland Plan that would result in a lack of coverage for any condition for which the applicable FBLB Employee would have been entitled to coverage under the corresponding Plan in which such FBLB Employee was an active participant immediately prior to his or her transfer to Heartland Plan, (y) waive any waiting period under such Heartland Plan, to the extent that such period exceeds the corresponding waiting period under the corresponding Plan in which such FBLB Employee was an active participant immediately prior to his or her transfer to Heartland Plan (after taking into account the service credit provided for herein for purposes of satisfying such waiting period), and (z) so long as the insurance companies of the FBLB Entities provide information related to the amount of such credit that is available to Heartland, provide each FBLB Employee with credit for deductibles paid by such FBLB Employee prior to his or her transfer to a Heartland Plan (to the same extent such credit was given under the analogous Plan prior to such transfer) in satisfying any applicable deductible or out-of-pocket requirements under such Heartland Plan for the plan year that includes such transfer and (ii) fully recognize service of the FBLB Employees with any of the FBLB Entities for purposes of eligibility to participate and vesting credit, and, solely with respect to vacation and severance benefits, benefit accrual in any Heartland Plan in which the FBLB Employees are eligible to participate after the Closing Date, to the extent that such service was recognized for that purpose under the analogous Plan prior to such transfer. Heartland will extend coverage to FBLB Employees for health care, dependent care and limited purpose health care flexible spending accounts established under Section 125 of the Code to the same extent as available to similarly situated employees of Heartland to the extent permitted by such Heartland Plans and applicable Law. Heartland will give effect to any elections made by FBLB Employees with respect to such accounts under any flexible benefits cafeteria plan of any FBLB Entity to the extent permitted by such Heartland Plan and applicable Law. FBLB Employees will be credited with amounts available for reimbursement equal to such amounts as were credited under any flexible benefits cafeteria plan of either FBLB or FB&T to the extent permitted by such Heartland Plan and applicable Law. The foregoing will not apply to the extent it would result in duplication of benefits.

(d)Terminated FBLB Employees. To the extent that Heartland terminates the employment of any employee of any of the FBLB Entities without Cause at, or within nine months after, the Effective Time, Heartland will offer such employee severance benefits equal to one week of base compensation for each full year of service to a FBLB Entity, with a minimum of two and a maximum of 12 weeks of severance pay, plus any unused accrued vacation time of such employee up to a maximum of three weeks, subject to the execution of a release of claims against Heartland, the Surviving Corporation and all FBLB Entities in a form reasonably acceptable to Heartland.

(e)FBLB Employee Retention Program. Prior to the Effective Time, FBLB and Heartland will mutually agree on and establish an employee retention bonus program and will allocate pursuant to such program cash awards to certain employees of the FBLB Entities, as mutually determined by Heartland and FBLB, to facilitate the retention of such employees to remain in the employ of one of the FBLB Entities through the completion of the system integration process between the FBLB Entities, on the one hand, and Heartland on the other hand.

(f)Affordable Care Act Reporting. As of the earlier of the Closing Date or the applicable reporting deadline under the Affordable Care Act, each FBLB Entity and any Commonly Controlled Entity will accurately complete and timely file with the IRS, and timely send to all covered individuals, as applicable, any required IRS Forms 1094 B, 1095 B, 1094 C and 1095 C for the 2016 calendar year with respect to each Plan that is subject to the Affordable Care Act.

(g)Limitation on Enforcement. This Agreement is an agreement solely between FBLB and Heartland. Nothing in this Agreement, including this Section 6.4, whether express or implied, confers upon any employee of any FBLB Entity, any employee of Heartland or its Subsidiaries or any other Person, any rights or remedies, including: (i) any right to employment or recall, (ii) any right to continued employment for any specified period, or (iii) any right to any particular compensation, benefit or aggregate benefits, or any other term or condition of employment, of any kind or nature whatsoever.

6.5Tax Treatment. Neither FBLB nor Heartland will take any action that would disqualify the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

A-51

6.6Updated Schedules. On a date 15 Business Days prior to the Effective Date and on the Effective Date, FBLB will modify any Schedule to this Agreement or add any Schedule or Schedules for the purpose of making the representations and warranties to which any such Schedule relates true and correct in all material respects as of such date, whether to correct any misstatement or omission in any Schedule or to reflect any additional information obtained by FBLB subsequent to the date any Schedule was previously delivered by FBLB to Heartland. Notwithstanding the foregoing, any updated Schedule will not have the effect of making any representation or warranty contained in this Agreement true and correct in all material respects for purposes of Section 7.3(a).

6.7Indemnification; Directors' and Officers' Insurance.

(a)Heartland agrees that all rights of the present and former directors and officers of any of the FBLB Entities to indemnification provided for in the Charter or Bylaws of such FBLB Entity, as applicable, as in effect on the date hereof, or required under any applicable Law (including rights to advancement of expenses and exculpation), will survive the Merger and continue in full force and effect until expiration of the applicable statute of limitations (each such director and officer being sometimes hereinafter be referred to as an "Indemnified Party"). Without limiting the generality of the foregoing, Heartland agrees that, following the Effective Time, the Surviving Corporation will indemnify any person made a party to any proceeding by reason of the fact that such person was a director, officer, member or employee of any of the FBLB Entities at or prior to the Effective Time to the fullest extent provided in, and will advance expenses in accordance with, the Charter and Bylaws of such FBLB Entity, as applicable, in the form previously provided to Heartland and effective as of the date of this Agreement, in each case subject to all the limitations set forth in such Charter and Bylaws. Notwithstanding anything to the contrary contained in this Section 6.7, nothing contained in this Agreement will require Heartland to indemnify, defend or hold harmless any Indemnified Party to a greater extent than any FBLB Entity may, as of the date of this Agreement, indemnify, defend and hold harmless such Indemnified Party, and any such indemnification provided pursuant to this Section 6.7 will be provided only to the extent that such indemnification is permitted by any applicable federal or state Laws.

(b)Prior to the Effective Time, FBLB will or, if FBLB is unable to, Heartland as of the Effective Time will, obtain a "tail" insurance policy with a claims period of at least six (6) years from and after the Effective Time with respect to directors' and officers' liability insurance and fiduciary liability insurance (collectively, "D&O Insurance") with benefits and levels of coverage at least as favorable to the Indemnified Parties as the existing policies of the FBLB Entities with respect to matters existing or occurring at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). Heartland will pay the premium for such D&O Insurance tail policy; provided, however, that in no event will Heartland be required to expend more than 200% of the current amount expended on an annual basis by FBLB and FB&T to procure their existing D&O Insurance policies. If FBLB or Heartland for any reason is unable to obtain such tail D&O Insurance policy on or prior to the Effective Time, Heartland will obtain as much as comparable D&O Insurance as is available at a cost in the aggregate for such six-year period up to 200% of the current annual premiums expended by the FBLB Entities for their existing D&O Insurance policies. Any insurance premium payments made by Heartland pursuant to this Section 6.7(b) will be considered Transaction Expenses in accordance with the definition of "Transaction Expenses" set forth in Article I.

(c)The provisions of this Section 6.7 are intended to be for the benefit of, and will be enforceable by, each Indemnified Party as if he or she were a party to this Agreement. The indemnification rights provided to each Indemnified Party pursuant hereto will be in addition to all other indemnification rights provided to such Indemnified Party under any Contract between any of the FBLB Entities and such Indemnified Party.

6.8Statutory Trusts. FB&T, as the owner of the Statutory Trust Securities that are common securities, will cause each of the Statutory Trusts (a) to remain a statutory trust, (b) to otherwise continue to be classified as a grantor trust for federal income Tax purposes, and (c) to cause each holder of Statutory Trust Securities that are preferred securities to be treated as owning an undivided beneficial interest in the Statutory Trust Debentures. Upon the Effective Time,

Heartland will assume FB&T's obligations and acquire its rights relating to the Statutory Trusts, including FB&T's obligations and rights under the Statutory Trust Debentures, Statutory Trust Securities and the other Statutory Trust Agreements. In connection therewith, FB&T will assist Heartland in assuming FB&T's obligations and acquiring its rights under the Statutory Trusts, and will provide the documentation required to make such assumption of obligations and acquisition of rights effective including any supplemental indentures or certificates that may be required under the Statutory Trust Agreements. Subject to the terms of the Statutory Trust Securities, immediately prior to the Closing, FB&T will pay, or cause to be paid, to the proper Persons all deferred and accrued but unpaid interest and any outstanding fees relating to the Statutory Trust Debentures and the Statutory Trusts.

6.9Determination of Adjusted Tangible Common Equity. As soon as practicable after the Determination Date, FBLB will prepare the FBLB Determination Date Balance Sheet. Within five (5) Business Days following the Determination Date, FBLB will prepare and deliver to Heartland its good faith determination of (a) the Adjusted Tangible Common Equity, together with reasonable support therefor (including the FBLB Determination Date Balance Sheet), and (b) the FBLB Determination Date Transaction Expenses, together with reasonable support therefor. If FBLB and Heartland agree on the amount of the Adjusted Tangible Common Equity, such amount will be final and conclusive. If Heartland and FBLB disagree as to such calculations and are unable to reconcile their differences in writing within five (5) Business Days, unless otherwise agreed upon by the parties, the items in dispute will be submitted to a mutually acceptable independent national accounting firm in the United States for final determination, and the calculations will be deemed adjusted in accordance with the determination of the independent accounting firm and will become binding, final and conclusive upon all of the parties hereto. The independent accounting firm will consider only the items in dispute and will be instructed to act within five (5) Business Days (or such longer period as FBLB and Heartland may agree) to resolve all items in dispute. FBLB and Heartland will share equally the payment of reasonable fees and expenses of the independent accounting firm.

6.10Nomination of Orr for Election as Heartland Director. Heartland agrees to nominate Orr for election to its Board of Directors at an annual meeting of Heartland's shareholders at such time as Orr's appointment as a director would not result in the number of Heartland directors who are not "Independent Directors" (as defined in Rule 5605(a)(2) of the NASDAQ Marketplace Rules) to exceed the number of Independent Directors. FBLB understands and acknowledges that, prior to such nomination of Orr, Heartland (a) will need to comply with its prior agreement to nominate another Person for election to its Board who will not be an Independent Director, and (b) will have to obtain approval by Heartland's shareholders of a proposal to amend its Charter to increase the maximum size of Heartland's Board.

6.11Heartland Confidential Information. Any confidential information or trade secrets of each of Heartland and its Subsidiaries received by any of the FBLB Entities or its employees or agents in the course of the negotiation and consummation of the Merger will be treated confidentially and held in confidence pursuant to the NDA, and any correspondence, memoranda, records, copies, documents and electronic or other media of any kind containing either such confidential information or trade secrets or both will be destroyed by such FBLB Entity or, at Heartland's request, returned to Heartland if this Agreement is terminated as provided in Article 8. Such information will not be used by either of FBLB or FB&T or its employees or agents to the detriment of Heartland and its Subsidiaries, and will at all times be maintained and held in compliance with the NDA.

6.12Indemnification Waiver Agreement. FBLB will cause the KSOP Trustees to execute the Indemnification Waiver Agreement.

6.13Reservation of Heartland Common Stock. Heartland agrees at all times from the date of this Agreement until the Merger Consideration has been paid in full to reserve a sufficient number of shares of Heartland Common Stock to fulfill its obligations under this Agreement.

6.14Special Tax Holdback.

(a)If, as of the time of satisfaction of the conditions set forth in Article 7 (other than conditions that by their terms are required to be satisfied at Closing), FBLB has not received a ruling under Section 1362(f) of the Code that FBLB will be treated as a valid "S corporation" at all times since January 1, 1999 (the "IRS Ruling") in scope, form and substance reasonably acceptable to Heartland, the Per Share Holdback Amount will be held back from the Stock Consideration that any holder of FBLB Common Stock is entitled to receive for each FBLB Converted Common Share pursuant to Sections 2.3(a), 2.4 and 2.6 of this Agreement. The Aggregate Tax Holdback Amount will be subject to the terms and conditions of this Section 6.14. Heartland agrees that, at all times from the Closing Date until the Aggregate Tax Holdback Amount has been used in full to satisfy Special Tax Losses or released to the former holders of FBLB Common Stock pursuant to the provisions of this Section 6.14, to reserve a sufficient number of shares of Heartland

Common Stock to fulfill its obligations with respect to the release of all or a portion of the Aggregate Tax Holdback Amount.

(b)FBLB will promptly provide Heartland with a copy of any request to the IRS for the IRS Ruling (the "Ruling Request") and all attachments thereto, and will notify and inform Heartland of all subsequent correspondence and communications with the IRS regarding the Ruling Request. In addition, FBLB will provide Heartland with copies of all subsequent written correspondence and documents submitted to the IRS in connection with the Ruling Request. FBLB will provide Heartland with a true and correct copy of the IRS Ruling, if received, as soon as practicable after receipt by FBLB.

(c)From and after the Closing Date, Heartland and its Affiliates (the “Tax Indemnified Parties”) will be indemnified and held harmless from and against any Special Tax Losses incurred by them. Claims by the Tax Indemnified Parties for indemnification of Special Tax Losses will be recovered solely from, and be limited to, the Aggregate Tax Holdback Amount that, at the time of any such claim, has not been released pursuant to the terms hereof, and will be subject to the terms and conditions of this Section 6.14.

(d)After the Closing Date, Heartland will promptly notify the Stockholder Representative in writing of any Tax assessment, demand, claim, or notice of the commencement of an audit received from the IRS or any other Governmental Entity (collectively, a “Tax Claim”) with respect to Taxes that could result in Special Tax Losses, but in any event within 10 days following receipt thereof. Notwithstanding the foregoing, a failure to give timely notice will not affect a Tax Indemnified Party’s rights to indemnification under this Section 6.14, except to the extent that the rights of the former holders of FBLB Common Stock are prejudiced thereby. Such notice will contain factual information (to the extent known) describing the Tax Claim and will include copies of the relevant portion of any notices or other documents received from the IRS or any other Governmental Entity with respect to any such Tax Claim, and will be updated to include notices or other documents subsequently received relating to such Tax Claim.

(e)Heartland will control any Tax Proceeding with respect to any Tax Claim that could result in an indemnification claim payable from the Aggregate Tax Holdback Amount for Special Tax Losses pursuant to this Section 6.14. The Stockholder Representative will be permitted to participate in all Tax Proceedings and any proceedings or communications related to the Ruling Request, if any, and employ counsel and Tax advisors with respect thereto at his own expense; provided, however, that the Stockholder Representative will be entitled to reimbursement of reasonable third-party costs, after the payment of any Special Tax Losses and prior to the distribution of any portion of the Aggregate Tax Holdback Amount to the former holders of FBLB Common Stock pursuant to Sections 6.14(h), (i), (j) or (k); further provided, however, that the Stockholder Representative will be entitled to reimbursement of his reasonable third-party costs only upon written request and presentation to Heartland of invoices and other written documentation supporting such third-party costs incurred by the Shareholder Representative. Heartland will provide to the Stockholder Representative and his counsel and Tax advisors all information reasonably requested with respect to any Tax Claim, Tax Proceeding and Ruling Request. Heartland and its Affiliates, on the one hand, and the Stockholder Representative, on the other hand, will cooperate, to the extent reasonably requested by each other, in connection with any Tax Claim, Tax Proceeding, and Ruling Request, including by the retention and (upon the reasonable request of Heartland and its Affiliates or the Stockholder Representative, as the case may be) the provision of records, documents and information reasonably relevant to such Tax Claim, Tax Proceeding, Ruling Request or IRS Ruling, and by making employees and other Persons available on a mutually convenient basis to provide additional information. Heartland, its Affiliates and the Stockholder Representative will act in good faith to resolve any such Tax Claim or Tax Proceeding or issues related to any Ruling Request. Neither Heartland nor any of its Affiliates will enter into any settlement or compromise of any Tax Proceeding that could result in an indemnification claim for Special Tax Losses payable from the Aggregate Tax Holdback Amount without the prior written consent of the Stockholder Representative (which consent will not be unreasonably withheld, conditioned or delayed).

(f)Any of the Tax Indemnified Parties will be deemed to incur a Special Tax Loss (including reasonable out-of-pocket costs related thereto) at the time such party pays any Special Tax Losses to a Governmental Entity following the closing of a Tax Proceeding or a “determination” of a Tax Claim within the meaning of Section 1313 of the Code, or at the time such Tax Indemnified Party pays an applicable third party for out-of-pocket costs related to the Tax Claim or Tax Proceeding. Any such Special Tax Loss (including reasonable out-of-pocket costs related thereto) will result in a reduction in the portion of shares of Heartland Common Stock to which such Special Tax Loss relates under Section 6.14(h), (i), (j) or (k), based on the closing price of Heartland Common Stock as quoted on the NASDAQ Global Select Market as of the last trading day immediately preceding such date on which the Special Tax Loss is deemed to have been incurred (the “Heartland Common Stock Special Tax Loss Price”).

(g)The Aggregate Tax Holdback Amount (or the applicable portion thereof) will be retained by Heartland from the Closing Date until the earliest of receipt by FBLB of the IRS Ruling, in scope, form and substance reasonably satisfactory to Heartland, or the First Release Date, the Second Release Date, the Third Release Date or the Fourth Release Date, as the case may be. If the IRS Ruling is received, after the Closing Date, in scope, form and substance reasonably satisfactory to Heartland, Heartland or a paying agent appointed by Heartland will release the Aggregate Tax Holdback Amount within 10 Business Days following the date on which Heartland receives the IRS Ruling to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share. Heartland will provide to the Stockholder

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Representative an accounting of the Aggregate Tax Holdback Amount remaining on a quarterly basis and at the time any Special Tax Loss is paid.

(h)Within 10 Business Days after the First Release Date, to the extent that the Aggregate Tax Holdback has not been earlier released in connection with receipt of the IRS Ruling, Heartland or a paying agent appointed by Heartland will distribute 62,036 shares of Heartland Common Stock to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share; provided, however, that such amount of shares will be adjusted downward for (i) decreases attributable to all amounts paid or to be paid by Heartland from the Aggregate Tax Holdback Amount in satisfaction of any Special Tax Loss relating to FBLB's 2014 U.S. Federal income Tax Liability and Tax year, and (ii) decreases for all pending Tax Claims that could reasonably result in a Special Tax Loss relating to FBLB's 2014 U.S. Federal income Tax Liability and Tax year that would be paid from the Aggregate Tax Holdback Amount.

(i)Within 10 Business Days after the Second Release Date, to the extent that the Aggregate Tax Holdback has not been earlier released in connection with receipt of the IRS Ruling, Heartland or a paying agent appointed by Heartland will distribute 77,441 shares of Heartland Common Stock to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share; provided, however, that such amount will be adjusted downward for (i) decreases attributable to all amounts paid or to be paid by Heartland from the Aggregate Tax Holdback Amount in satisfaction of any Special Tax Loss relating to FBLB's 2015 U.S. Federal income Tax Liability and Tax year, and (ii) decreases for all pending Tax Claims that could reasonably result in a Special Tax Loss relating to FBLB's 2015 U.S. Federal income Tax Liability and Tax year that would be paid from the Aggregate Tax Holdback Amount.

(j)Within 10 Business Days after the Third Release Date, to the extent that the Aggregate Tax Holdback has not been earlier released in connection with receipt of the IRS Ruling, Heartland or a paying agent appointed by Heartland will distribute 109,329 shares of Heartland Common Stock to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share; provided, however, that such amount will be adjusted downward for (i) decreases attributable to all amounts paid or to be paid by Heartland from the Aggregate Tax Holdback Amount in satisfaction of any Special Tax Loss relating to FBLB's 2016 U.S. Federal income Tax Liability and Tax year, and (ii) decreases for all pending Tax Claims that could reasonably result in a Special Tax Loss relating to FBLB's 2016 U.S. Federal income Tax Liability and Tax year that would be paid from the Aggregate Tax Holdback Amount.

(k)Within 10 Business Days after the Fourth Release Date, to the extent that the Aggregate Tax Holdback has not been earlier released in connection with receipt of the IRS Ruling, Heartland or a paying agent appointed by Heartland will distribute 141,700 shares of Heartland Common Stock to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share; provided, however, that such amount will be adjusted downward for (i) decreases attributable to all amounts paid or to be paid by Heartland from the Aggregate Tax Holdback Amount in satisfaction of any Special Tax Loss relating to FBLB's 2017 U.S. Federal income Tax Liability and Tax year, and (ii) decreases for all pending Tax Claims that could reasonably result in a Special Tax Loss relating to FBLB's 2017 U.S. Federal income Tax Liability and Tax year that would be paid from the Aggregate Tax Holdback Amount.

(l)Any shares of Heartland Common Stock in the Aggregate Tax Holdback Amount that are retained by Heartland pursuant to Section 6.14(h), (i), (j) or (k) due to a pending Tax Claim will be promptly distributed to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share after the final resolution of such pending Tax Claim and the payment of any Special Tax Losses attributable thereto, but in any event within 10 Business Days following the final resolution of such pending Tax Claim and the payment of any applicable Special Tax Losses attributable thereto. No fractional shares of Heartland Common Stock will be issued upon the release of shares subject to holdback under this Section,

and in lieu of any fractional share, Heartland will pay an amount of cash (without interest) equal to the product of (i) the Heartland Common Stock Special Tax Loss Price, multiplied by (ii) the fractional share interest to which such holder would otherwise be entitled.

(m)Concurrently with the release of shares of Heartland Common Stock as provided in accordance with this Section 6.14, Heartland will also pay to the Stockholder Representative for the benefit of the former holders of FBLB Common Stock pro rata in accordance with their holdings of each FBLB Converted Share an amount of cash equal to the dividends that would have otherwise been payable with respect to such released shares, assuming such shares had been issued and outstanding from the Effective Time through the date of such release.

(n)The number of shares of Heartland Common Stock subject to holdback will be adjusted appropriately to reflect any change in the number of shares of Heartland Common Stock by reason of any stock dividends or splits, reclassification, recapitalization or conversion with respect to Heartland Common Stock, received or to be received by holders of Heartland Common Stock, when the record date or payment occurs after the Effective Time and prior to the date on which such holdback amount is released. Any agreement relating to a merger, consolidation, share exchange or similar transaction to which Heartland is acquired and which provides for the exchange of Heartland Common Stock for cash or other securities will include provisions sufficient to ensure that the shares subject to the holdback provisions contained in this Section 6.14 are treated in the same manner as shares of Heartland Common Stock outstanding as of the date of any merger, consolidation, share exchange or other similar transaction.

(o)By approving this Agreement and the transactions contemplated hereby or by executing a Letter of Transmittal, each holder of FBLB Common Stock will have irrevocably (i) authorized and appointed the Stockholder Representative as such holder's representative to act on behalf of the holder with respect to the matters set forth in this Section 6.14, and (ii) agreed that the Stockholder Representative will not be liable, responsible or accountable in damages or otherwise to the holders of FBLB Common Stock for any Liabilities incurred by reason of any error in judgment or any act or failure to act arising out of the activities of the Stockholder Representative on behalf or in respect of the holders of FBLB Common Stock, including (A) the failure to perform any acts he is not expressly obligated to perform under this Agreement, (B) any acts or failures to act made in good faith or on the advice of legal counsel, accountants or other consultants to the Stockholder Representative, or (C) any other matter beyond the control of the Stockholder Representative.

ARTICLE 7
CONDITIONS

7.1Conditions to Obligations of Each Party. The respective obligations of each party to effect the transactions contemplated hereby will be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a)Regulatory Approvals. The Bank Regulatory Approvals will have been obtained and the applicable waiting periods, if any, under all statutory or regulatory waiting periods will have lapsed. None of such approvals will contain any conditions or restrictions that would (i) be reasonably expected to be materially burdensome on, or impair in any material respect the benefits of the transactions contemplated by this Agreement to Heartland; (ii) require any Person other than Heartland to be deemed a bank holding company under the Bank Holding Company Act; (iii) require any Person other than Heartland to guaranty, support or maintain the capital of FB&T; (iv) prohibit direct or indirect ownership or operation by Heartland of all or a material portion of the business or assets of the FBLB Entities or Heartland or any of its Subsidiaries, or compel Heartland or any of its Subsidiaries or any FBLB Entity to dispose of or to hold separately all or a material portion of its business or assets or any of its Subsidiaries or of such FBLB Entity; or (v) require a material modification of, or impose any material limitation or restriction on, the activities, governance, legal structure, compensation or fee arrangements of Heartland or any of its Subsidiaries (any of the foregoing, a "Materially Burdensome Regulatory Condition"); provided, however, that the following will not be deemed to be included in the preceding list and will not be deemed a "Materially Burdensome Regulatory Condition": any restraint, limitation, term, requirement, provision or condition that applies generally to bank holding companies and banks as provided by Law, written and publicly available supervisory guidance of general applicability, unwritten supervisory guidance of which Heartland has knowledge, in each case, as in effect on the date hereof.

(b)No Injunction. No injunction or other order entered by a state or federal court of competent jurisdiction will have been issued and remain in effect which would impair the consummation of the transactions contemplated hereby.

(c)No Prohibitive Change of Law. There will have been no Law, domestic or foreign, enacted or promulgated, which would materially impair the consummation of the transactions contemplated hereby.

(d)Governmental Action. There will not be any action taken, or any statute, rule, regulation, judgment, order or injunction proposed, enacted, entered, enforced, promulgated, issued or deemed applicable to the transactions contemplated hereby by any Governmental Entity which would reasonably be expected to result, directly or indirectly, in (i) restraining or prohibiting the consummation of the transactions contemplated hereby or obtaining material damages from any FBLB Entities or Heartland or any of Heartland's Subsidiaries in connection with the transactions contemplated hereby, (ii) prohibiting direct or indirect ownership or operation by Heartland of all or a material portion

of the businesses or assets of any FBLB Entity or of Heartland or any of its Subsidiaries, or to compelling Heartland or any of its Subsidiaries or any FBLB Entity to dispose of or to hold separately all or a material portion of the business or assets of Heartland or any of its Subsidiaries or of such FBLB Entity, as a result of the transactions contemplated hereby, or (iii) requiring direct or indirect divestiture by Heartland of any of its business or assets or of the business or assets of any FBLB Entity.

(e)No Termination. No party hereto will have terminated this Agreement as permitted herein.

(f)Shareholder Approval. The Merger will have been approved by the Required FBLB Shareholder Vote.

(g)Registration Statement. The Registration Statement will have been declared and will remain effective under the Securities Act, no stop order suspending the effectiveness of the Registration Statement will have been issued and no action, lawsuit, proceeding or investigation for that purpose will have been initiated or threatened by the SEC, and all approvals required under Blue Sky Laws relating to the shares of Heartland Common Stock issuable to the shareholders of FBLB hereunder will have been received. The shares of Heartland Common Stock issuable to the FBLB Shareholders will have been authorized for listing on the NASDAQ Global Select Market or other national securities exchange, subject to official notice of issuance.

7.2Additional Conditions to Obligation of FBLB. The obligation of FBLB to consummate the transactions contemplated hereby in accordance with the terms of this Agreement is also subject to the following conditions:

(a)Representations and Warranties. (i) The representations and warranties set forth in Article 3 that are not subject to materiality or Material Adverse Effect qualifications will be true and correct in all material respects at and as of the Closing Date as though then made and as though the Closing Date had been substituted for the date of this Agreement in such representations and warranties, except that any representation or warranty expressly made as of a specified date will only need to have been true on and as of such date, and (ii) the representations and warranties set forth in Article 3 that are subject to materiality or Material Adverse Effect qualifications will be true and correct in all respects at and as of the Closing Date as though then made and as though the Closing Date had been substituted for the date of this Agreement in such representations and warranties, except that any representation or warranty expressly made as of a specified date will only need to have been true on and as of such date.

(b)Agreements. Heartland will have performed and complied in all material respects with each of its agreements contained in this Agreement.

(c)Officer’s Certificate. Heartland will have furnished to FBLB a certificate of the Chief Executive Officer and Chief Financial Officer of Heartland, dated as of the Closing Date, in which such officers will certify to the conditions set forth in Sections 7.2(a) and (b).

(d)Heartland Secretary’s Certificate. Heartland will have furnished to FBLB (i) copies of the text of the resolutions by which the corporate action on the part of Heartland necessary to approve this Agreement and the transactions contemplated hereby were taken, and (ii) a certificate dated as of the Closing Date executed on behalf of Heartland by its corporate secretary or one of its assistant corporate secretaries certifying to FBLB that such copies are true, correct and complete copies of such resolutions and that such resolutions were duly adopted and have not been amended or rescinded.
(e)Change in Control of Heartland. Heartland will not have (i) been merged or consolidated with or into, or announced an agreement to merge with or into, another corporation in any transaction in which the holders of the voting securities of Heartland would not hold a majority of the voting securities of the surviving corporation, (ii) sold all or substantially all of its assets, or (iii) had one Person or group acquire, directly or indirectly, beneficial ownership of more than 50% of the outstanding Heartland Common Stock.

(f)Legal Opinion. FBLB will have received an opinion of Fenimore, Kay, Harrison & Ford, LLP that based on the terms of this Agreement and based on certain facts, representations and assumptions set forth in such opinion, the Merger will qualify as a reorganization under Section 368(a) of the Code. In rendering such opinion, such counsel may require and rely upon and may incorporate by reference representations and covenants, including representations and covenants contained in certificates of officers of FBLB and Heartland.

(g)Release of FBLB Personal Guarantees. FBLB will have received evidence in form reasonably satisfactory to FBLB that all personal guaranties relating to The Bankers Bank Indebtedness from the Persons listed on Schedule 7.2(g) will be unconditionally and automatically discharged and released not later than the Effective Time.

(h)Other Materials. FBLB will have received the materials set forth in Section 2.9(b).

7.3Additional Conditions to Obligation of Heartland. The obligation of Heartland to consummate the transactions contemplated hereby in accordance with the terms of this Agreement is also subject to the following conditions:

(a)Representations and Compliance. (i) The representations and warranties set forth in Article 4 that are not subject to materiality or Material Adverse Effect qualifications will be true and correct in all material respects at and as of the Closing Date as though then made and as though the Closing Date had been substituted for the date of this Agreement in such representations and warranties, except that any representation or warranty expressly made as of a specified date will only need to have been true on and as of such date, and (ii) the representations and warranties set forth in Article 4 that are subject to materiality or Material Adverse Effect qualifications will be true and correct in all respects at and as of the Closing Date as though then made and as though the Closing Date had been substituted for the date of this Agreement in such representations and warranties, except that any representation or warranty expressly made as of a specified date will only need to have been true on and as of such date.

(b)Agreements. FBLB will have performed and complied in all material respects with each of its agreements contained in this Agreement.

(c)Officers' Certificate of FBLB. FBLB will have furnished to Heartland a certificate of the Chief Executive Officer and Chief Financial Officer of FBLB, dated as of the Closing Date, in which such officers will certify to the conditions set forth in Sections 7.3(a) and 7.3(b).

(d)FBLB Secretary's Certificate. FBLB will have furnished to Heartland (i) copies of the text of the resolutions by which the corporate action on the part of FBLB necessary to approve this Agreement and the transactions contemplated hereby were taken, and (ii) a certificate dated as of the Closing Date executed on behalf of FBLB by its corporate secretary or one of its assistant corporate secretaries certifying to Heartland that such copies are true, correct and complete copies of such resolutions and that such resolutions were duly adopted and have not been amended or rescinded.

(e)Indemnification Waiver Agreements. FBLB will have furnished to Heartland the Indemnification Waiver Agreements executed by the members of the KSOP Committee and the KSOP Trustees, as the case may be.

(f)KSOP Committee Certificate. FBLB will have furnished to Heartland copies of the KSOP Committee Certificate executed by the members of the KSOP Committee.

(g)Dissenting Shares. The total number of Dissenting Shares will be no greater than seven and one-half percent (7.5%) of the number of issued and outstanding shares of FBLB Common Stock.

(h)Required Consents. Each Required Consent will have been obtained and be in full force and effect.

(i)No Equity Claims. No Person (other than a holder of shares of FBLB Common Stock) will have asserted that such Person (i) is the owner of, or has the right to acquire or to obtain ownership of, any capital stock of, or any other voting, equity or ownership interest in, either of FBLB or FB&T or (ii) is entitled to any of the Merger Consideration.

(j)Orr Employment Agreement. The Orr Employment Agreement will be in full force and effect, and Orr will not have indicated any intention of not fulfilling his obligations under the Orr Employment Agreement.

(k)Garland Employment Agreement. The Garland Employment Agreement will be in full force and effect, and Garland will not have indicated any intention of not fulfilling his obligations under the Garland Employment Agreement.

(l)Payment of SAR Amounts. FBLB will have provided for the distribution of the appropriate amounts of the SAR Payment to each holder of SARs.

(m)The Bankers Bank Indebtedness; Release of Liens. FBLB will have delivered to Heartland on or prior to the second Business Day prior to the Closing Date a payoff letter from The Bankers Bank evidencing the aggregate amount of The Bankers Bank Indebtedness, including (i) a customary statement that (A) if the aggregate amount of The Bankers Bank Indebtedness is paid to The Bankers Bank on the Closing Date, The Bankers Bank Indebtedness will be repaid in full and (B) all Liens securing The Bankers Bank Indebtedness will thereafter be automatically released and terminated, (ii) an authorization to file any Uniform Commercial Code termination statements, terminations and releases of outstanding mortgages and security interests as are reasonably necessary to release such Liens, and (iii) a customary statement that, upon the receipt of payment of the amount of The Bankers Bank Indebtedness, all tangible collateral (including all equity certificates) securing the obligations under The Bankers Bank Indebtedness in possession of The Bankers Bank with respect thereto will be promptly delivered to Heartland (the “Payoff Letter”).

(n)Director Support Agreements. FBLB will have furnished Heartland with executed copies of the Director Support Agreements in the form and substance reasonably acceptable to Heartland.

(o)Other Materials. Heartland will have received the materials set forth in Section 2.9(a).

ARTICLE 8
TERMINATION, AMENDMENT AND WAIVER

8.1Reasons for Termination. This Agreement, by written notice given to the other party prior to or at the Closing, may be terminated:

(a)by mutual consent of the Boards of Directors of Heartland and FBLB;

(b)by either party in the event a Law or Governmental Order will have been enacted, entered, enforced, promulgated, issued or deemed applicable to the transactions contemplated by this Agreement by any Governmental Entity that prohibits the Closing;

(c)by either party in the event any approval, consent or waiver of any Governmental Entity required to permit the consummation of the transactions contemplated by this Agreement will have been denied and such denial has become final and non-appealable (unless such denial arises out of, or results from, a material breach by the party seeking to terminate this Agreement of any representation, warranty or covenant of such party);

(d)by FBLB if:

(i)the Closing has not occurred by July 31, 2018 (the “Termination Date”); provided that FBLB will not be entitled to terminate this Agreement pursuant to this clause (d)(i) if (x) FBLB’s failure to comply fully with its obligations under this Agreement has prevented the consummation of the transactions contemplated by this Agreement, (y) FBLB has refused, after satisfaction of the conditions set forth in Sections 7.1 and 7.2, to close in accordance with Section 2.9 or (z) the circumstances or events underlying the termination rights set forth in clauses (d)(iii) or (d)(iv) of this Section 8.1 will have occurred;

(ii)Heartland will have breached any representation, warranty or agreement of Heartland in this Agreement in any material respect and such breach cannot be or is not cured within thirty (30) days after written notice of such breach is given by FBLB to Heartland;

(iii)at the FBLB Shareholder Meeting, this Agreement will not have been duly adopted by the Required FBLB Shareholder Vote;

(iv)(A) FBLB will have delivered to Heartland a written notice of the intent of FBLB to enter into a merger, acquisition or other agreement (including an agreement in principle) to effect a Superior Proposal based on an Acquisition Proposal received by it, (B) five Business Days have elapsed following delivery to Heartland of such written notice by FBLB, (C) during such five Business Day period FBLB has fully complied with the terms of Section 5.8, including informing Heartland of the terms and conditions of such Acquisition Proposal and the identity of the Person making such Acquisition Proposal, with the intent of enabling Heartland to agree to a modification of the terms and conditions of this Agreement so that the transactions contemplated hereby may be effected, (D) at the end of such five business-day period the Board of Directors of FBLB will have continued reasonably to believe that such Acquisition Proposal constitutes a

Superior Proposal, (E) FBLB pays to Heartland the termination fee in accordance with Section 8.4, and (F) FBLB will have entered into a merger, acquisition or other agreement (including an agreement in principle) to effect a Superior Proposal or the Board of Directors of FBLB will have resolved to do so;

(v)at any time within five Business Days after the Determination Date, but only if:

(x) the Heartland Determination Date Stock Price (as defined below) is less than $41.37 per share; and
(y) the number obtained by dividing the Heartland Determination Date Stock Price by the Initial Heartland Stock Price (as defined below) is less than the number obtained by dividing (A) the Final Index Price (as defined below) by (B) the Initial Index Price (as defined below) and subtracting 0.175 from such quotient; provided, however, that a termination by FBLB pursuant to this Section 8.1(d)(v) will have no force and effect if Heartland agrees in writing (within five Business Days after receipt of FBLB's written notice of such termination) to increase the Exchange Ratio to an amount equal to (i) (X) the Exchange Ratio, divided by (Y) the Heartland Determination Date Stock Price, multiplied by (ii) $41.37. Notwithstanding anything to the contrary above, Heartland, at its option, may elect to retain the original Exchange Ratio, and, in lieu of altering such Exchange Ratio, increase the Actual Cash Consideration so that each holder of FBLB Common Stock is entitled to receive the same value as of the Effective Time for each share of FBLB Common Stock as such holder would have received had the original Exchange Ratio been altered in accordance with the preceding sentence. If within such five-Business Day period, Heartland delivers written notice to FBLB that Heartland intends to proceed with the Merger by paying such additional consideration as contemplated by the preceding sentence, and notifies FBLB in writing of the revised Exchange Ratio or the revised Actual Cash Consideration, then no termination will occur pursuant to this Section 8.1(d)(v), and this Agreement will remain in full force and effect in accordance with its terms (except that the Exchange Ratio or the Actual Cash Consideration will be modified in accordance with this Section 8.1(d)(v)).
For purposes of this Section 8.1(d)(v), the following terms will have the meanings indicated below:
"Final Index Price" means the average of the daily closing value of the Index for the 15 consecutive trading days ending on and including the trading day immediately preceding the 10th day prior to the Determination Date.
"Heartland Determination Date Stock Price" means (a) the sum, for each of the 15 consecutive trading days ending on and including the trading day immediately preceding the 10th day prior to the Determination Date, of the product of (i) the closing price of Heartland Common Stock as quoted on the NASDAQ Global Select Market for such trading day, multiplied by, (ii) the trading volume of Heartland Common Stock reported on the NASDAQ Global Select Market for such trading day, divided by (b) the aggregate trading volume over such 15-day period.
"Index" means the KBW NASDAQ Regional Banking Index (KRX) or, if such index is not available, such substitute or similar index as substantially replicates the KBW NASDAQ Regional Banking Index (KRX).
"Index Ratio" means the Final Index Price divided by the Initial Index Price.
"Initial Heartland Stock Price" means $50.15.
"Initial Index Price" means the closing value of the Index on the date immediately prior to the date of this Agreement.
If Heartland or any company belonging to the Index declares or effects a stock dividend, split-up, combination, exchange of shares or similar transaction between the date of this Agreement and the Determination Date, the prices for the common stock of such company will be appropriately adjusted for the purposes of applying this Section 8.1(d)(v); or

(vi)any of the conditions set forth in Sections 7.1 or 7.2 will have become impossible to satisfy (other than through a failure of FBLB to comply with its obligations under this Agreement); or

(e)by Heartland if:

(i)the Closing has not occurred by the Termination Date; provided, that Heartland will not be entitled to terminate this Agreement pursuant to this clause (e)(i) if (x) Heartland's failure to comply fully with its obligations under this Agreement has prevented the consummation of the transactions contemplated by this Agreement or (y) Heartland has refused, after satisfaction of the conditions set forth in Sections 7.1 or 7.3, to close in accordance with Section 2.9;

(ii)FBLB will have breached any representation, warranty or agreement in this Agreement in any material respect and such breach cannot be or is not cured within thirty (30) days after written notice of such breach is given by Heartland to FBLB;

(iii)at the FBLB Shareholder Meeting, this Agreement will not have been duly adopted by the Required FBLB Shareholder Vote; or

(iv)any of the conditions set forth in Sections 7.1 or 7.2 will have become impossible to satisfy (other than through a failure of Heartland to comply with its obligations under this Agreement).

8.2Effect of Termination. Except as provided in Sections 5.2(b), 8.2, 8.3 and 8.4 and any provisions set forth herein that survive the termination of this Agreement, if this Agreement is terminated pursuant to Section 8.1, this Agreement will forthwith become void, there will be no Liability under this Agreement on the part of Heartland, FBLB or any of their respective Representatives or Subsidiaries, and all rights and obligations of each party hereto will cease; provided, however, that, subject to Sections 8.3 and 8.4, nothing herein will relieve any party from Liability arising out of its own fraud or willful breach of this Agreement.

8.3Expenses. Except as otherwise provided in this Agreement, all Expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement will be paid by the party incurring such Expenses, whether or not the Merger is consummated. Notwithstanding the foregoing, if this Agreement is terminated pursuant to Sections 8.1(d)(iii), 8.1(e)(ii) or 8.1(e)(iii), then FBLB will pay to Heartland, within five Business Days of presentation by Heartland of reasonably detailed invoices for the same, all Expenses reasonably incurred by Heartland, and, if this Agreement is terminated pursuant to Section 8.1(d)(ii), then Heartland will pay to FBLB, within five Business Days of presentation by FBLB of reasonably detailed invoices for the same, all Expenses reasonably incurred by FBLB; provided, however, that neither party's reimbursement obligation hereunder will exceed $750,000 in the aggregate. As used in this Agreement, "Expenses" will consist of all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its Affiliates) incurred by a party in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement, the solicitation of the approval of the Merger by holders of FBLB Common Stock and all other matters related to the consummation of the Merger.

8.4FBLB Termination Fee. If this Agreement is terminated by FBLB pursuant to Section 8.1(d)(iv), or by Heartland pursuant to Section 8.1(e)(ii) because of a breach of any portion of Section 5.8 or Section 6.2(a), then FBLB will pay to Heartland (in lieu of any payment that may be due under Section 8.3), a termination fee of $7,400,000 as the sole and exclusive remedy of Heartland (including any remedy for specific performance), as agreed-upon liquidated damages.

8.5Amendment. This Agreement may not be amended except by an instrument in writing approved by the parties to this Agreement and signed on behalf of each of the parties hereto, provided, however, that Heartland may, in its sole discretion, amend Sections 4.14 and 5.1 to increase any of the dollar thresholds contained in those sections or to relax

any other requirements in those sections in order to obtain the Regulatory Approvals.

8.6Waiver. At any time prior to the Effective Time, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto or (b) waive compliance with any of the agreements of any other parties or with any conditions to its own obligations, in each case only to the extent such obligations, agreements and conditions are intended for its benefit.

ARTICLE 9
GENERAL PROVISIONS

9.1Press Releases and Announcements. Any public announcement, including any announcement to employees, customers, suppliers or others having dealings with any FBLB Entity, or similar publicity with respect to this Agreement or the transactions contemplated by this Agreement, will be issued, if at all, at such time and in such manner as Heartland will determine and approve, or as required by applicable Law. Notwithstanding the foregoing, Heartland and FBLB agree that (a) a press release for national dissemination announcing the execution of this Agreement in a form prepared by Heartland and reviewed and approved by FBLB (with such approval not to be unreasonably withheld, conditioned or delayed) may be made on the day after execution of this Agreement, or as soon thereafter as practicable, and (b) any press release or customer communication relating to this Agreement and the transactions contemplated hereby issued for dissemination in Lubbock, Texas prior to the Effective Time will be in a form prepared by Heartland and reviewed and approved by FBLB (with such approval not to be unreasonably withheld, conditioned or delayed). Heartland will have the right to be present for any in-Person announcement by FBLB. Unless consented to by Heartland or required by Law, FBLB will keep, and will cause FB&T to keep, confidential any non-public information regarding this Agreement and the transactions contemplated by this Agreement.

9.2Notices. All notices and other communications hereunder will be in writing and will be sufficiently given if made by hand delivery, by e-mail, by overnight delivery service, or by registered or certified mail (postage prepaid and return receipt requested) to the parties at the following addresses (or at such other address for a party as will be specified by it by like notice):

if to Heartland:
Heartland Financial USA, Inc.
707 17th Street, Suite 2950
Denver, Colorado 80202
Attention: J. Daniel Patten, Executive Vice President, Finance and Corporate Strategy
Telephone: (720) 873-3780
E-mail: DPatten@htlf.com

with copies to:
Heartland Financial USA, Inc.
1398 Central Avenue
P.O. Box 778
Dubuque, Iowa 52004-0778
Attention: Michael J. Coyle, Executive Vice President, Senior General Counsel and Corporate Secretary
Telephone: (563) 589-1994
E-mail: MCoyle@htlf.com

and
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Attention: Jay L. Swanson
Jonathan A. Van Horn
Telephone: (612) 340-2600
E-mail: swanson.jay@dorsey.com
van.horn.jonathan@dorsey.com

A-62

if to FBLB:
First Bank Lubbock Bancshares, Inc.
9816 Slide Road
Lubbock, Texas 79424
Attention: Barry Orr, Chairman, President and Chief Executive Officer
Denise Thomas, Executive Vice President and Chief Financial Officer
Telephone: (806) 788-0800
(806) 788-2804
E-mail: barry.orr@firstbanktexas.com
denise.thomas@firstbanktexas.com

with a copy to:
Fenimore, Kay, Harrison & Ford, LLP
812 San Antonio Street
Suite 600
Austin, Texas 78701
Attention: Geoffrey S. Kay
Telephone: (512) 583-5909
E-mail: gkay@fkhpartners.com

All such notices and other communications will be deemed to have been duly given as follows: when delivered by hand, if personally delivered; three Business Days after being deposited in the mail, postage prepaid, if delivered by mail; when receipt electronically acknowledged, if e-mailed; and the next day after being delivered to an overnight delivery service.
9.3Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned by any party to this Agreement without the prior written consent of the other party to this Agreement, except that Heartland may assign any of its rights under this Agreement to one or more Subsidiaries of Heartland, so long as Heartland remains responsible for the performance of all of its obligations under this Agreement. Subject to the foregoing, this Agreement and all of the provisions of this Agreement will be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

9.4No Third Party Beneficiaries. Except as provided in Section 6.7(c), which is intended to benefit each Indemnified Party and his or her heirs and representatives, nothing expressed or referred to in this Agreement confers any rights or remedies upon any Person that is not a party or permitted assign of a party to this Agreement.

9.5Schedules.

(a)Prior to or simultaneous with the execution of this Agreement, FBLB delivered to Heartland the Disclosure Schedules, which set forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Article 4 or to one or more covenants contained herein (whether or not such section of this Agreement expressly references a schedule thereto). Except as set forth in the Disclosure Schedules, the information contained therein is dated as of the date of this Agreement or, if delivered pursuant to Section 6.6, as of such date delivered. Notwithstanding anything in this Agreement to the contrary, the mere inclusion of an item as an exception to a representation or warranty will not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would be reasonably likely to have a Material Adverse Effect.

(b)For purposes of this Agreement, a Schedule relating to a certain section may incorporate by reference disclosures made in other Schedules; provided, however, that any disclosure with respect to a particular Schedule will be deemed

adequately disclosed in other Schedules to the extent it is readily apparent from the nature of the disclosure that such disclosure also applies to such other Schedules. Nothing in a Schedule is deemed adequate to disclose an exception to a representation or warranty made in this Agreement unless the Schedule identifies the exception with reasonable particularity.

9.6Interpretation. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. References to Sections and Articles refer to Sections and Articles of this Agreement unless otherwise stated. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby" and

"hereunder," and words of like import, unless the context requires otherwise, refer to this Agreement (including the Exhibits and Schedules hereto). As used in this Agreement, the masculine, feminine and neuter genders will be deemed to include the others if the context requires. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular if the context requires. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "but not limited to," whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. Any reference to any money or currency or use of "$" will be in U.S. dollars. Except as the context may otherwise require, references to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; provided, that with respect to any Contract listed on any Schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate Schedule. References to a statute will be to such statute, as amended from time to time, and to the rules and regulations promulgated thereunder. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. Any document described as having been "delivered or made available" by a party for purposes of this Agreement consists of any document or other information that (a) was provided in writing or electronically by one party or its Representatives to the other party and its Representatives prior to the date of this Agreement or (b) was filed by a party with the SEC and publicly available on EDGAR prior to the date of this Agreement.

9.7Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated, and the parties will negotiate in good faith to modify this Agreement and to preserve each party's anticipated benefits under this Agreement.

9.8Complete Agreement. This Agreement, together with the Ancillary Documents, contain the complete agreement between the parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral. FBLB acknowledges that Heartland has made no representations, warranties, agreements, undertakings or promises except for those expressly set forth in this Agreement or in any of the Ancillary Documents to which Heartland is a party.

9.9Governing Law. THE DOMESTIC LAW, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, OF THE STATE OF DELAWARE WILL GOVERN ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY AND INTERPRETATION OF THIS AGREEMENT AND THE PERFORMANCE OF THE OBLIGATIONS IMPOSED BY THIS AGREEMENT.

9.10Submission to Jurisdiction. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas or of the United States of America located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement and the Ancillary Documents, and in respect of the transactions contemplated hereby and thereby, and hereby waive, and agree not to assert, as a defense in any Litigation relating to the interpretation or enforcement of this Agreement or any of the Ancillary Documents, that either of such parties is not subject thereto or that such Litigation may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any Ancillary Document may not be enforced in or by such courts. The parties hereto irrevocably agree that all claims with respect to such Litigation will be heard and determined in such courts. The parties hereby consent to and grant any such court's jurisdiction over such parties and over the subject matter of such dispute, and agree that mailing of process or other papers in connection with any such Litigation in the manner provided in Section 9.2 or in such other manner as may be permitted by Law, will be valid and sufficient service thereof.

9.11Specific Performance. Each of the parties acknowledges and agrees that the subject matter of this Agreement, including the businesses, assets and properties of each FBLB Entity, is unique, that the other party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached, and that the remedies at Law would not be adequate to compensate such other parties not in default or in breach. Accordingly, each of the parties agrees that the other party will be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions of this Agreement in addition to any other remedy to which they may be entitled, at Law or in equity (without any requirement that Heartland provide any bond or other security). The parties waive any defense that a remedy at Law is adequate and any requirement to post bond or provide similar security in connection with actions instituted for injunctive relief or specific performance of this Agreement.

9.12Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES,

AND THEREFORE IT IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (III) IT MAKES SUCH WAIVER VOLUNTARILY AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.12.

9.13Investigation of Representations, Warranties and Covenants. No investigation made by or on behalf of the parties hereto or the results of any such investigation will constitute a waiver of any representation, warranty or covenant of any other party.

9.14Counterparts and Effectiveness. This Agreement may be executed in 2 or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

9.15No Survival of Representations. The representations, warranties and covenants made by FBLB and Heartland in this Agreement or in any instrument delivered pursuant to this Agreement will terminate on, and will have no further force or effect after, the first to occur of (a) the Effective Time or (b) the date on which this Agreement is terminated as set forth herein, except for those covenants contained herein or therein which by their terms apply in whole or in part after the Effective Time or survive the termination of this Agreement.

[The remainder of this page is intentionally blank.]

A-65

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written above.

HEARTLAND FINANCIAL USA, INC.

By: /s/ Lynn B. Fuller
Lynn B. Fuller
Chairman of the Board and Chief Executive Officer

FIRST BANK LUBBOCK BANCSHARES, INC.

By: /s/ Barry Orr
Barry Orr
Chairman, President and Chief Executive Officer

[Signature page to Agreement and Plan of Merger]

APPENDIX B

TEXAS DISSENTERS' RIGHTS STATUTES

§ 10.351. APPLICABILITY OF SUBCHAPTER.
(a) This subchapter does not apply to a fundamental business transaction of a domestic entity if, immediately before the effective date of the fundamental business transaction, all of the ownership interests of the entity otherwise entitled to rights to dissent and appraisal under this code are held by one owner or only by the owners who approved the fundamental business transaction.
(b) This subchapter applies only to a "domestic entity subject to dissenters' rights," as defined in Section 1.002. That term includes a domestic for-profit corporation, professional corporation, professional association, and real estate investment trust. Except as provided in Subsection (c), that term does not include a partnership or limited liability company.
(c) The governing documents of a partnership or a limited liability company may provide that its owners are entitled to the rights of dissent and appraisal provided by this subchapter, subject to any modification to those rights as provided by the entity's governing documents.
§ 10.352. DEFINITIONS.
In this subchapter:
(1) "Dissenting owner" means an owner of an ownership interest in a domestic entity subject to dissenters' rights who:
(A) provides notice under Section 10.356; and
(B) complies with the requirements for perfecting that owner's right to dissent under this subchapter.
(2) "Responsible organization" means:
(A) the organization responsible for:
(i) the provision of notices under this subchapter; and
(ii) the primary obligation of paying the fair value for an ownership interest held by a dissenting owner;
(B) with respect to a merger or conversion:
(i) for matters occurring before the merger or conversion, the organization that is merging or converting; and
(ii) for matters occurring after the merger or conversion, the surviving or new organization that is primarily obligated for the payment of the fair value of the dissenting owner's ownership interest in the merger or conversion;
(C) with respect to an interest exchange, the organization the ownership interests of which are being acquired in the interest exchange; and
(D) with respect to the sale of all or substantially all of the assets of an organization, the organization the assets of which are to be transferred by sale or in another manner.
§ 10.353. FORM AND VALIDITY OF NOTICE.
(a) Notice required under this subchapter:
(1) must be in writing; and
(2) may be mailed, hand-delivered, or delivered by courier or electronic transmission.

(b) Failure to provide notice as required by this subchapter does not invalidate any action taken.

§ 10.354. RIGHTS OF DISSENT AND APPRAISAL.

(a) Subject to Subsection (b), an owner of an ownership interest in a domestic entity subject to dissenters' rights is entitled to:

(1) dissent from:

(A) a plan of merger to which the domestic entity is a party if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of merger;

(B) a sale of all or substantially all of the assets of the domestic entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the sale;

(C) a plan of exchange in which the ownership interest of the owner is to be acquired;

(D) a plan of conversion in which the domestic entity is the converting entity if owner approval is required by this code and the owner owns in the domestic entity an ownership interest that was entitled to vote on the plan of conversion;

(E) a merger effected under Section 10.006 in which:

(i) the owner is entitled to vote on the merger; or

(ii) the ownership interest of the owner is converted or exchanged; or

(F) a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged; and

(2) Subject to compliance with the procedures set forth in this subchapter, obtain the fair value of that ownership interest through an appraisal.

(b) Notwithstanding Subsection (a), subject to Subsection (c), an owner may not dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, if:

(1) the ownership interest, or a depository receipt in respect of the ownership interest, held by the owner is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate:

(A) listed on a national securities exchange; or

(B) held of record by at least 2,000 owners;

(2) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner's ownership interest any consideration that is different from the consideration to be provided to any other holder of an ownership interest of the same class or series as the ownership interest held by the owner, other than cash instead of fractional shares or interests the owner would otherwise be entitled to receive; and

(3) the owner is not required by the terms of the plan of merger, conversion, or exchange, as appropriate, to accept for the owner’s ownership interest any consideration other than:

(A) ownership interests, or depository receipts in respect of ownership interests, of a domestic entity or non-code organization of the same general organizational type that, immediately after the effective date of the merger, conversion, or exchange, as appropriate, will be part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are:

(i) listed on a national securities exchange or authorized for listing on the exchange on official notice of issuance; or
(ii) held of record by at least 2,000 owners;
(B) cash instead of fractional ownership interests the owner would otherwise be entitled to receive; or
(C) any combination of the ownership interests and cash described by Paragraphs (A) and (B).
(c) Subsection (b) will not apply either to a domestic entity that is a subsidiary with respect to a merger under Section 10.006 or to a corporation with respect to a merger under Section 21.459(c).
§ 10.355. NOTICE OF RIGHT OF DISSENT AND APPRAISAL.
(a) A domestic entity subject to dissenters' rights that takes or proposes to take an action regarding which an owner has a right to dissent and obtain an appraisal under Section 10.354 will notify each affected owner of the owner's rights under that section if:
(1) the action or proposed action is submitted to a vote of the owners at a meeting; or
(2) approval of the action or proposed action is obtained by written consent of the owners instead of being submitted to a vote of the owners.
(b) If a parent organization effects a merger under Section 10.006 and a subsidiary organization that is a party to the merger is a domestic entity subject to dissenters' rights, the responsible organization will notify the owners of that subsidiary organization who have a right to dissent to the merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. The notice must also include a copy of the certificate of merger and a statement that the merger has become effective.
(b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization will notify the shareholders of that corporation who have a right to dissent to the plan of merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a statement of the merger's effective date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a statement of the merger’s effective date.
(c) A notice required to be provided under Subsection (a), (b), or (b-1) must:
(1) be accompanied by a copy of this subchapter; and
(2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or a demand under Section 10.356(b)(3), or both, may be provided.
(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:
(1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;
(2) under Subsection (a)(2) must be provided to:
(A) each owner who consents in writing to the action before the owner delivers the written consent; and
(B) each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and
(3) under Subsection (b-1) must be provided:
(A) if given before the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or

B-3

(B) if given after the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.
(e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization will give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(1).
(f) If the notice given under Subsection (b-1) did not include a statement of the effective date of the merger, the responsible organization will, not later than the 10th day after the effective date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the tender or exchange offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).
§ 10.356. PROCEDURE FOR DISSENT BY OWNERS AS TO ACTIONS; PERFECTION OF RIGHT OF DISSENT AND APPRAISAL.
(a) An owner of an ownership interest of a domestic entity subject to dissenters' rights who has the right to dissent and appraisal from any of the actions referred to in Section 10.354 may exercise that right to dissent and appraisal only by complying with the procedures specified in this subchapter. An owner's right of dissent and appraisal under Section 10.354 may be exercised by an owner only with respect to an ownership interest that is not voted in favor of the action.
(b) To perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:
(1) if the proposed action is to be submitted to a vote of the owners at a meeting, must give to the domestic entity a written notice of objection to the action that:
(A) is addressed to the entity's president and secretary;
(B) states that the owner's right to dissent will be exercised if the action takes effect;
(C) provides an address to which notice of effectiveness of the action should be delivered or mailed; and
(D) is delivered to the entity's principal executive offices before the meeting;
(2) with respect to the ownership interest for which the rights of dissent and appraisal are sought:
(A) must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners; and
(B) may not consent to the action if the action is approved by written consent; and
(3) must give to the responsible organization a demand in writing that:
(A) is addressed to the president and secretary of the responsible organization;
(B) demands payment of the fair value of the ownership interests for which the rights of dissent and appraisal are sought;
(C) provides to the responsible organization an address to which a notice relating to the dissent and appraisal procedures under this subchapter may be sent;
(D) states the number and class of the ownership interests of the domestic entity owned by the owner and the fair value of the ownership interests as estimated by the owner; and
(E) is delivered to the responsible organization at its principal executive offices at the following time:
(i) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(e) that the action has taken effect, if the action was approved by a vote of the owners at a meeting;

(ii) not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(d)(2) that the action has taken effect, if the action was approved by the written consent of the owners;
(iii) not later than the 20th day after the date the responsible organization sends to the owner a notice that the merger was effected, if the action is a merger effected under Section 10.006; or
(iv) not later than the 20th day after the date the responsible organization gives to the shareholder the notice required by Section 10.355(b-1) or the date of the consummation of the tender or exchange offer described by Section 21.459(c)(2), whichever is later, if the action is a merger effected under Section 21.459(c).
(c) An owner who does not make a demand within the period required by Subsection (b)(3)(E) or, if Subsection (b)(1) is applicable, does not give the notice of objection before the meeting of the owners is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.
(d) Not later than the 20th day after the date an owner makes a demand under Subsection (b)(3), the owner must submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment of the fair value of an ownership interest has been made under this section. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner’s rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.
(e) If a domestic entity and responsible organization satisfy the requirements of this subchapter relating to the rights of owners of ownership interests in the entity to dissent to an action and seek appraisal of those ownership interests, an owner of an ownership interest who fails to perfect that owner’s right of dissent in accordance with this subchapter may not bring suit to recover the value of the ownership interest or money damages relating to the action.
§ 10.357. WITHDRAWAL OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST.
(a) An owner may withdraw a demand for the payment of the fair value of an ownership interest made under Section 10.356 before:
(1) payment for the ownership interest has been made under Sections 10.358 and 10.361; or
(2) a petition has been filed under Section 10.361.
(b) Unless the responsible organization consents to the withdrawal of the demand, an owner may not withdraw a demand for payment under Subsection (a) after either of the events specified in Subsections (a)(1) and (2).
§ 10.358. RESPONSE BY ORGANIZATION TO NOTICE OF DISSENT AND DEMAND FOR FAIR VALUE BY DISSENTING OWNER.
(a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356(b)(3), the responsible organization will respond to the dissenting owner in writing by:
(1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or
(2) rejecting the demand and including in the response the requirements prescribed by Subsection (c).
(b) If the responsible organization accepts the amount claimed in the demand, the responsible organization will pay the amount not later than the 90th day after the date the action that is the subject of the demand was effected if the owner delivers to the responsible organization:
(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

(c) If the responsible organization rejects the amount claimed in the demand, the responsible organization will provide to the owner:
(1) an estimate by the responsible organization of the fair value of the ownership interests; and
(2) an offer to pay the amount of the estimate provided under Subdivision (1).
(d) If the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), the owner must provide to the responsible organization notice of the acceptance of the offer not later than the 90th day after the date the action that is the subject of the demand took effect
(e) If, not later than the 90th day after the date the action that is the subject of the demand took effect, a dissenting owner accepts an offer made by a responsible organization under Subsection (c)(2) or a dissenting owner and a responsible organization reach an agreement on the fair value of the ownership interests, the responsible organization will pay the agreed amount not later than the 120th day after the date the action that is the subject of the demand took effect, if the dissenting owner delivers to the responsible organization:
(1) endorsed certificates representing the ownership interests if the ownership interests are certificated; or
(2) signed assignments of the ownership interests if the ownership interests are uncertificated.
§ 10.359. RECORD OF DEMAND FOR FAIR VALUE OF OWNERSHIP INTEREST.
(a) A responsible organization will note in the organization's ownership interest records maintained under Section 3.151 the receipt of a demand for payment from any dissenting owner made under Section 10.356.
(b) If an ownership interest that is the subject of a demand for payment made under Section 10.356 is transferred, a new certificate representing that ownership interest must contain:
(1) a reference to the demand; and
(2) the name of the original dissenting owner of the ownership interest.
§ 10.360. RIGHTS OF TRANSFEREE OF CERTAIN OWNERSHIP INTEREST.
A transferee of an ownership interest that is the subject of a demand for payment made under Section 10.356 does not acquire additional rights with respect to the responsible organization following the transfer. The transferee has only the rights the original dissenting owner had with respect to the responsible organization after making the demand.
§ 10.361. PROCEEDING TO DETERMINE FAIR VALUE OF OWNERSHIP INTEREST AND OWNERS ENTITLED TO PAYMENT; APPOINTMENT OF APPRAISERS.
(a) If a responsible organization rejects the amount demanded by a dissenting owner under Section 10.358 and the dissenting owner and responsible organization are unable to reach an agreement relating to the fair value of the ownership interests within the period prescribed by Section 10.358(d), the dissenting owner or responsible organization may file a petition requesting a finding and determination of the fair value of the owner's ownership interests in a court in:
(1) the county in which the organization's principal office is located in this state; or
(2) the county in which the organization's registered office is located in this state, if the organization does not have a business office in this state.
(b) A petition described by Subsection (a) must be filed not later than the 60th day after the expiration of the period required by Section 10.358(d).
(c) On the filing of a petition by an owner under Subsection (a), service of a copy of the petition will be made to the responsible organization. Not later than the 10th day after the date a responsible organization receives service under this subsection, the responsible organization will file with the clerk of the court in which the petition was filed a list containing the names and addresses of each owner of the organization who has demanded payment for ownership interests under Section 10.356 and with whom agreement as to the value of the ownership interests has not been reached with the responsible organization. If the responsible organization files a petition under Subsection (a), the petition must be accompanied by this list.

(d) The clerk of the court in which a petition is filed under this section will provide by registered mail notice of the time and place set for the hearing to:
(1) the responsible organization; and
(2) each owner named on the list described by Subsection (c) at the address shown for the owner on the list.
(e) The court will:
(1) determine which owners have:
(A) perfected their rights by complying with this subchapter; and
(B) become subsequently entitled to receive payment for the fair value of their ownership interests; and
(2) appoint one or more qualified appraisers to determine the fair value of the ownership interests of the owners described by Subdivision (1).
(f) The court will approve the form of a notice required to be provided under this section. The judgment of the court is final and binding on the responsible organization, any other organization obligated to make payment under this subchapter for an ownership interest, and each owner who is notified as required by this section.
(g) The beneficial owner of an ownership interest subject to dissenters' rights held in a voting trust or by a nominee on the beneficial owner's behalf may file a petition described by Subsection (a) if no agreement between the dissenting owner of the ownership interest and the responsible organization has been reached within the period prescribed by Section 10.358(d). When the beneficial owner files a petition described by Subsection (a):
(1) the beneficial owner will at that time be considered, for purposes of this subchapter, the owner, the dissenting owner, and the holder of the ownership interest subject to the petition; and
(2) the dissenting owner who demanded payment under Section 10.356 has no further rights regarding the ownership interest subject to the petition.
§ 10.362. COMPUTATION AND DETERMINATION OF FAIR VALUE OF OWNERSHIP INTEREST.
(a) For purposes of this subchapter, the fair value of an ownership interest of a domestic entity subject to dissenters' rights is the value of the ownership interest on the date preceding the date of the action that is the subject of the appraisal. Any appreciation or depreciation in the value of the ownership interest occurring in anticipation of the proposed action or as a result of the action must be specifically excluded from the computation of the fair value of the ownership interest.
(b) In computing the fair value of an ownership interest under this subchapter, consideration must be given to the value of the domestic entity as a going concern without including in the computation of value any control premium, any minority ownership discount, or any discount for lack of marketability. If the domestic entity has different classes or series of ownership interests, the relative rights and preferences of and limitations placed on the class or series of ownership interests, other than relative voting rights, held by the dissenting owner must be taken into account in the computation of value.
(c) The determination of the fair value of an ownership interest made for purposes of this subchapter may not be used for purposes of making a determination of the fair value of that ownership interest for another purpose or of the fair value of another ownership interest, including for purposes of determining any minority or liquidity discount that might apply to a sale of an ownership interest.
§ 10.363. POWERS AND DUTIES OF APPRAISER; APPRAISAL PROCEDURES.
(a) An appraiser appointed under Section 10.361 has the power and authority that:
(1) is granted by the court in the order appointing the appraiser; and
(2) may be conferred by a court to a master in chancery as provided by Rule 171, Texas Rules of Civil Procedure.

(b) The appraiser will:
(1) determine the fair value of an ownership interest of an owner adjudged by the court to be entitled to payment for the ownership interest; and
(2) file with the court a report of that determination.
(c) The appraiser is entitled to examine the books and records of a responsible organization and may conduct investigations as the appraiser considers appropriate. A dissenting owner or responsible organization may submit to an appraiser evidence or other information relevant to the determination of the fair value of the ownership interest required by Subsection (b)(1).
(d) The clerk of the court appointing the appraiser will provide notice of the filing of the report under Subsection (b) to each dissenting owner named in the list filed under Section 10.361 and the responsible organization.
§ 10.364. OBJECTION TO APPRAISAL; HEARING.
(a) A dissenting owner or responsible organization may object, based on the law or the facts, to all or part of an appraisal report containing the fair value of an ownership interest determined under Section 10.363(b).
(b) If an objection to a report is raised under Subsection (a), the court will hold a hearing to determine the fair value of the ownership interest that is the subject of the report. After the hearing, the court will require the responsible organization to pay to the holders of the ownership interest the amount of the determined value with interest, accruing from the 91st day after the date the applicable action for which the owner elected to dissent was effected until the date of the judgment.
(c) Interest under Subsection (b) accrues at the same rate as is provided for the accrual of prejudgment interest in civil cases.
(d) The responsible organization will:
(1) immediately pay the amount of the judgment to a holder of an uncertificated ownership interest; and
(2) pay the amount of the judgment to a holder of a certificated ownership interest immediately after the certificate holder surrenders to the responsible organization an endorsed certificate representing the ownership interest.
(e) On payment of the judgment, the dissenting owner does not have an interest in the:
(1) ownership interest for which the payment is made; or
(2) responsible organization with respect to that ownership interest.
§ 10.365. COURT COSTS; COMPENSATION FOR APPRAISER.
(a) An appraiser appointed under Section 10.361 is entitled to a reasonable fee payable from court costs.
(b) All court costs will be allocated between the responsible organization and the dissenting owners in the manner that the court determines to be fair and equitable.
§ 10.366. STATUS OF OWNERSHIP INTEREST HELD OR FORMERLY HELD BY DISSENTING OWNER.
(a) An ownership interest of an organization acquired by a responsible organization under this subchapter:
(1) in the case of a merger, conversion, or interest exchange, will be held or disposed of as provided in the plan of merger, conversion, or interest exchange; and
(2) in any other case, may be held or disposed of by the responsible organization in the same manner as other ownership interests acquired by the organization or held in its treasury.
(b) An owner who has demanded payment for the owner's ownership interest under Section 10.356 is not entitled to vote or exercise any other rights of an owner with respect to the ownership interest except the right to:
(1) receive payment for the ownership interest under this subchapter; and

(2) bring an appropriate action to obtain relief on the ground that the action to which the demand relates would be or was fraudulent.
(c) An ownership interest for which payment has been demanded under Section 10.356 may not be considered outstanding for purposes of any subsequent vote or action.
§ 10.367. RIGHTS OF OWNERS FOLLOWING TERMINATION OF RIGHT OF DISSENT.
(a) The rights of a dissenting owner terminate if:
(1) the owner withdraws the demand under Section 10.356;
(2) the owner's right of dissent is terminated under Section 10.356;
(3) a petition is not filed within the period required by Section 10.361; or
(4) after a hearing held under Section 10.361, the court adjudges that the owner is not entitled to elect to dissent from an action under this subchapter.
(b) On termination of the right of dissent under this section:
(1) the dissenting owner and all persons claiming a right under the owner are conclusively presumed to have approved and ratified the action to which the owner dissented and are bound by that action;
(2) the owner's right to be paid the fair value of the owner’s ownership interests ceases;
(3) the owner's status as an owner of those ownership interests is restored, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were not canceled, converted, or exchanged as a result of the action or a subsequent action;
(4) the dissenting owner is entitled to receive the same cash, property, rights, and other consideration received by owners of the same class and series of ownership interests held by the owner, as if the owner's demand for payment of the fair value of the ownership interests had not been made under Section 10.356, if the owner's ownership interests were canceled, converted, or exchanged as a result of the action or a subsequent action;
(5) any action of the domestic entity taken after the date of the demand for payment by the owner under Section 10.356 will not be considered ineffective or invalid because of the restoration of the owner's ownership interests or the other rights or entitlements of the owner under this subsection; and
(6) the dissenting owner is entitled to receive dividends or other distributions made after the date of the owner's payment demand under Section 10.356, to owners of the same class and series of ownership interests held by the owner as if the demand had not been made, subject to any change in or adjustment to the ownership interests because of an action taken by the domestic entity after the date of the demand.
§ 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND APPRAISAL.
In the absence of fraud in the transaction, any right of an owner of an ownership interest to dissent from an action and obtain the fair value of the ownership interest under this subchapter is the exclusive remedy for recovery of: (1) the value of the ownership interest; or (2) money damages to the owner with respect to the action.

APPENDIX C

[Letterhead of Stephens Inc.]

December 12, 2017

Board of Directors
First Bank Lubbock Bancshares, Inc.
9816 Slide Road
Lubbock, TX 79424

Dear Members of the Board:

We have acted as your financial advisor in connection with the proposed merger of First Bank Lubbock Bancshares, Inc. (the "Company") with and into Heartland Financial USA, Inc. (the "Buyer") (collectively, the "Transaction"). We understand that the consideration expected to be received for the outstanding common stock of the Company will constitute 3.0934 shares of common stock of Buyer and $16.16 per share in cash for each share of common stock of the Company. The terms and conditions of the Transaction are more fully set forth in an Agreement and Plan of Merger (the "Agreement") dated as of December 12, 2017. You have requested that we provide our opinion (the "Opinion") as to whether the Transaction is fair to the unaffiliated shareholders of the Company from a financial point of view. For purposes of this letter, the 'unaffiliated shareholders' of the Company means the holders of outstanding shares of the Company's common stock, other than the directors, executive officers and affiliates of the Company.
In connection with rendering our Opinion we have:

(i) analyzed certain publicly available financial statements and reports regarding the Company and the Buyer;
(ii) analyzed certain audited financial statements regarding the Company and the Buyer;
(iii) analyzed certain internal financial statements and other financial and operating data concerning the Company and the Buyer prepared by management of the Company and Buyer, respectively;
(iv) analyzed, on a pro forma basis, the effect of the Transaction on the balance sheet, capitalization ratios, earnings and book value both in the aggregate and, where applicable, on a per share basis of the Buyer;
(v) reviewed the reported prices and trading activity for the common stock of the Buyer;
(vi) compared the financial performance of the Company and the Buyer with that of certain other publicly-traded companies and their securities that we deemed relevant to our analysis of the Transaction;
(vii) reviewed the financial terms, to the extent publicly available, of certain merger or acquisition transactions that we deemed relevant to our analysis of the Transaction;
(viii) reviewed the most recent draft of the Agreement and related documents provided to us by the Company;
(ix) discussed with management of the Company and the Buyer the operations of and future business prospects for the Company and the Buyer and the anticipated financial consequences of the Transaction to the Company and the Buyer;
(x) assisted in your deliberations regarding the material terms of the Transaction and your negotiations with the Buyer; and
(xi) performed such other analyses and provided such other services as we have deemed appropriate.

We have relied on the accuracy and completeness of the information and financial data provided to us by the Company and the Buyer and of the other information reviewed by us in connection with the preparation of our Opinion, and our Opinion is based upon such information. We have not assumed any responsibility for independent verification of the accuracy or completeness of any of such information or financial data. The managements of the

Company and the Buyer have assured us that they are not aware of any relevant information that has been omitted or remains undisclosed to us. We have not assumed any responsibility for making or undertaking an independent evaluation or appraisal of any of the assets or liabilities

of the Company or of the Buyer, and we have not been furnished with any such evaluations or appraisals; nor have we evaluated the solvency or fair value of the Company or of the Buyer under any laws relating to bankruptcy, insolvency or similar matters. We have not assumed any obligation to conduct any physical inspection of the properties or facilities of the Company or Buyer. With respect to the financial forecasts prepared by the Company, including the forecasts of potential cost savings and potential synergies, we have assumed that such financial forecasts have been reasonably prepared and reflect the best currently available estimates and judgments of the management of the Company as to the future financial performance of the Company and that the financial results reflected by such projections will be realized as predicted. We have not received or reviewed any individual credit files nor have we made an independent evaluation of the adequacy of the allowance for loan losses of the Company or the Buyer. We have not assumed any responsibility for making or undertaking an independent evaluation or analysis of the Employee Stock Ownership Plan (the "ESOP") of the Company and we have not been furnished with any such evaluation or analysis. We have relied solely on the information provided to us by the Company regarding the ESOP. We have also assumed that the representations and warranties contained in the Agreement and all related documents are true, correct and complete in all material respects.

As part of our investment banking business, we regularly issue fairness opinions and are continually engaged in the valuation of companies and their securities in connection with business reorganizations, private placements, negotiated underwritings, mergers and acquisitions and valuations for estate, corporate and other purposes. We are familiar with the Company and the Buyer. During the two years preceding the date of this letter we have not received any fees from the Company or the Buyer in connection with investment banking services. We serve as financial adviser to the Company in connection with the Transaction, and we are entitled to receive from the Company reimbursement of our expenses and a fee for our services as financial adviser to the Company, a significant portion of which is contingent upon the consummation of the Transaction. We are also entitled to receive a fee from the Company for providing our Opinion to the Board of Directors of the Company. The Company has also agreed to indemnify us for certain liabilities arising out of our engagement, including certain liabilities that could arise out of our providing this Opinion letter. Stephens expects to pursue future investment banking services assignments from participants in this Transaction. In the ordinary course of business, Stephens Inc. and its affiliates at any time may hold long or short positions, and may trade or otherwise effect transactions as principal or for the accounts of customers, in debt or equity securities or options
on securities of participants in the Transaction.

We are not legal, accounting, regulatory or tax experts, and we have relied solely, and without independent verification, on the assessments of the Company and its other advisors with respect to such matters. We have assumed, with your consent, that the Transaction will not result in any materially adverse tax consequences for the Company or its shareholders and that any reviews of legal, accounting, regulatory or tax issues conducted as a result of the Transaction will be resolved favorably to the Company and its shareholders.

The Opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of the date hereof. It should be understood that subsequent developments may affect this Opinion and that we do not have any obligation to update, revise or reaffirm this Opinion. We have assumed that the Transaction will be consummated on the terms of the latest draft of the Agreement provided to us, without material waiver or modification. We have assumed that in the course of obtaining the necessary regulatory, lending or other consents or approvals (contractual or otherwise) for the Transaction, no restrictions, including any divestiture requirements or amendments or modifications, will be imposed that would have a material adverse effect on the contemplated benefits of the Transaction to the Company or its shareholders. We are not expressing any opinion herein as to the price at which the common stock or any other securities of the Company will trade following the announcement of the Transaction.

This Opinion is for the use and benefit of the Board of Directors of the Company for purposes of assisting with its evaluation of the Transaction. Our Opinion does not address the merits of the underlying decision by the Company to

engage in the Transaction, the merits of the Transaction as compared to other alternatives potentially available to the Company or the relative effects of any alternative transaction in which the Company might engage, nor is it intended to be a recommendation to any person as to any specific action that should be taken in connection with the Transaction. This Opinion is not intended to confer any rights or remedies upon any other person. In addition, except as explicitly set forth in this letter, you have not asked us to address, and this Opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of the Company. We have not been asked to express any opinion, and do not express any opinion, as to the fairness of the amount or nature of the compensation to any of the Company's officers, directors or employees, or to any group of such officers, directors or employees, relative to the compensation to other shareholders of the Company. Our Fairness Opinion Committee has approved the Opinion set forth in this letter. Neither

this Opinion nor its substance may be disclosed by you to anyone other than your advisors without our written permission. Notwithstanding the foregoing, this Opinion and a summary discussion of our underlying analyses and role as financial adviser to the Company may be included in communications to shareholders of the Company, provided that we approve of the content of such disclosures prior to any filing or publication of such shareholder communications.

Based on the foregoing and our general experience as investment bankers, and subject to the assumptions and qualifications stated herein, we are of the opinion, on the date hereof, that the consideration to be received by the unaffiliated shareholders of the Company in the Transaction is fair to them from a financial point of view.

Very truly yours,

STEPHENS INC.

By: /s/ Stephens Inc.

C-3