

## **6.6 Insurance.**

- (a) The Borrower will, and will cause each Subsidiary to, maintain with financially sound and reputable insurance companies insurance on all their Property and liability insurance in such amounts, subject to such deductibles and self- insurance retentions and covering such Properties and risks as is consistent with sound business practice, and the Borrower will furnish to the Lender upon request full information as to the insurance carried.
- (b) The Borrower shall maintain coverage under a banker's blanket bond in an amount at least equal to the minimum coverage recommended by the applicable regulatory authority(ies), plus such excess fidelity coverage as the Lender may reasonably request from time to time.
- (c) Borrower will cause each Subsidiary Bank to ensure that the deposits of such Subsidiary Bank will at all times be insured by the FDIC.  
Promptly after Lender's request therefor, Borrower shall provide the Lender with evidence that Borrower and each Subsidiary maintain, the insurance required under this **Section 6.6**, and evidence of the payment of all premiums therefor.

**6.7 Compliance with Laws and Material Contractual Obligations.** The Borrower will, and will cause each Subsidiary to, (i) comply in all material respects with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws and (ii) perform in all material respects its obligations under Material Agreements to which it is a party.

**6.8 Maintenance of Properties.** The Borrower will, and will cause each Subsidiary to, do all things necessary to maintain, preserve, protect and keep its Property in good repair, working order and condition, ordinary wear and tear and casualty damage for which the Borrower and its Subsidiaries have sufficient insurance coverage excepted, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times.

**6.9 Books and Records; Inspection.** The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. The Borrower will, and will cause each Subsidiary to, upon prior written notice to the Borrower and during normal business hours, permit the Lender, by their respective representatives and agents, at the Borrower's expense, to inspect any of the Property, books and financial records of the Borrower and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Borrower and each Subsidiary, and to discuss the affairs, finances and accounts of the Borrower and each Subsidiary with, and to be advised as to the same by, their respective officers at reasonable times and intervals.

**6.10 Further Assurances.** The Borrower will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Lender such documents, agreements and instruments, and will take or cause to be taken such further actions, that may be required by law or that the Lender may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents, all in form and substance reasonably satisfactory to the Lender and all at the expense of the Borrower.

**6.11 Payment of Obligations.** The Borrower will pay and discharge each of the Obligations at or prior to the time each such Obligation becomes due and payable.

## ARTICLE VII NEGATIVE COVENANTS

Until payment in full, in cash, of all Obligations (other than contingent indemnification obligations to the extent no claims with respect thereto have been asserted), Borrower covenants and agrees with Lender as follows:

**7.1 Indebtedness.** The Borrower will not, nor will it permit any Subsidiary to, create, incur or suffer to exist any Indebtedness, other than the following (“**Permitted Indebtedness**”):

- (a) the Loans;
- (b) Subordinated Indebtedness, but only to the extent such Subordinated Indebtedness is listed on **Schedule 5.21** or, after the date hereof, (i) does not in the aggregate exceed the principal amount of \$2,000,000 or (ii) has been approved and/or consented to in writing by the Lender;
- (c) Indebtedness existing on the date hereof and described in **Schedule 7.1** and any renewal or extension of such Indebtedness that does not increase the principal amount thereof;
- (d) Indebtedness arising under Rate Management Transactions or other Financial Contracts, if any, in each case, that are entered into in the ordinary course of business and are non-speculative in nature;
- (e) Indebtedness securing Liens described in, and permitted under, **Sections 7.5(h) or (k)**;
- (f) Indebtedness assumed by Borrower in connection with Permitted Acquisitions; or
- (g) other Indebtedness; provided that the aggregate principal amount of such other Indebtedness does not exceed \$10,000,000 at any time outstanding.

**7.2 Merger.** The Borrower will not, nor will it permit any Subsidiary to, merge or consolidate with or into any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that (i) a Subsidiary may merge, consolidate, liquidate or dissolve into the Borrower (with the Borrower being the survivor thereof, and with the Borrower being the survivor of any merger with any Subsidiary), (ii) a Subsidiary may merge, consolidate, liquidate or dissolve into another Subsidiary, and (iii) the Borrower or any Subsidiary may merge or consolidate with or into any Person other than the Borrower or a Subsidiary in order to effect a Permitted Acquisition (with the Borrower or such Subsidiary being the survivor thereof).

**7.3 Sale of Assets.** The Borrower will not, nor will it permit any Subsidiary to, lease, sell or otherwise dispose of its Property to any other Person, except:

- (a) Sales of inventory, or used, worn-out or surplus equipment, all in the ordinary course of business.
- (b) The sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are applied with reasonable promptness to the purchase price of such replacement equipment.

- (c) Leases, sales or other dispositions of its Property that, together with all other Property of the Borrower and its Subsidiaries previously leased, sold or disposed of (other than as otherwise permitted in **Sections 7.3(a)** and **7.3(b)** above) as permitted by this Section during the 12-month period ending with the month in which any such lease, sale or other disposition occurs, do not constitute a Substantial Portion of the Property of the Borrower and its Subsidiaries taken as a whole; provided, however, that, notwithstanding the foregoing, no lease, sale or other disposition under this clause (c) shall be permitted if such lease, sale or other disposition would violate **Section 7.13** of this Agreement.
- (d) Sales of loans, loan participations, investments, securities or OREO sales by any Bank Subsidiary in the ordinary course of its banking business in accordance with safe and sound banking practices and applicable laws and regulations.

**7.4 Acquisitions; Investments.** The Borrower will not, nor will it permit any Subsidiary to, (i) make or commit to make any Acquisitions or any other acquisition of all or substantially all of the assets of another Person, or of any business or division of any Person, including without limitation by way of merger, consolidation or other combination, (ii) purchase or acquire, or make any commitment to purchase or acquire, any equity interests or any other securities of, or any interest in any Person, or (iii) make or purchase any advance, loan, extension of credit or capital contribution to or any other investment in, any Person (the items in (i), (ii) and (iii) above, collectively, referred to as “**Investments**”), except:

- (a) One or more Permitted Acquisitions;
- (b) Cash and Cash Equivalents or other readily marketable Investments which are reasonably acceptable to Lender;
- (c) Investments in the form of loans and other advances made or securities purchased or held in the ordinary course of the banking business of the Subsidiary Bank(s) in accordance with safe and sound banking practices and applicable laws and regulations;
- (d) Investments by Borrower or any Subsidiary in their respective Subsidiaries, or by a Subsidiary in the Borrower, in the form of capital contributions and investments in the form of capital contributions, loans or extensions of credit by any Subsidiary in any of its subsidiaries;
- (e) Investments existing on the Effective Date and set forth on **Schedule 7.4** and non-material changes thereto;
- (f) Investments held by Subsidiaries acquired after the Effective Date in a Permitted Acquisition or of a Person merged into the Borrower or into a Subsidiary in a Permitted Acquisition to the extent such investments were not made in contemplation of or in connection with such Permitted Acquisition and were in existence on the date of such Permitted Acquisition;
- (g) Investments consisting of non-cash loans or non-cash advances made by Borrower to its officers, directors and employees or those of one of its Subsidiaries which are used by such Persons to purchase promptly thereafter equity interests or options (or like instruments) in Borrower;
- (h) advances to management personnel, agents and employees for travel advances and other similar cash advances made to such Persons in the ordinary course of business consistent with past practices, and

- (i) other Investments by the Borrower or any Subsidiary in an aggregate amount not to exceed \$10,000,000.

**7.5 Liens.** The Borrower will not, nor will it permit any Subsidiary to, create, incur, or suffer to exist any Lien in, of, or on the Property of the Borrower or any of its Subsidiaries, except:

- (a) Liens for taxes, assessments or governmental charges or levies on its Property that are not at the time delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.
- (b) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business that secure payment of obligations not more than 60 days past due or that are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.
- (c) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation.
- (d) Easements, zoning restrictions, rights and restrictions of record, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to Properties of a similar character that do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the Borrower or its Subsidiaries.
- (e) Liens arising solely by virtue of any statutory or common law provision relating to bankers' liens, rights of set-off, or similar rights and remedies as to deposit accounts, securities accounts, or other funds maintained with a creditor depository institution; provided that (i) such account is not a dedicated cash collateral account and is not subject to restriction against access by Borrower or a Subsidiary in excess of those set forth by regulations promulgated by the Board of Governors of the Federal Reserve, and (ii) such account is not intended by the Borrower or any Subsidiary to provide collateral to the depository institution.
- (f) Liens existing on the date hereof and described in **Schedule 7.5**.
- (g) Liens on Property acquired in a Permitted Acquisition, provided that such Liens are not "blanket" or all-asset Liens, extend only to the specific Property so acquired, and were not created in contemplation of such acquisition.
- (h) Liens securing purchase money indebtedness and Capitalized Lease Obligations in an aggregate amount not exceeding \$10,000,000 outstanding at any time; provided that such Liens are not "blanket" or all-asset Liens and extend only to the specific Property so acquired.
- (i) Liens securing judgments that do not give rise to an Event of Default under **Section 8.9**.
- (j) Liens securing government deposits at any Subsidiary Bank.
- (k) Liens on Property and assets of any Subsidiary Bank that secure indebtedness of any Subsidiary Bank to creditors (including Federal Home Loan Banks, the Federal Reserve and in connection



with repurchase transactions) in the ordinary course of its banking business in accordance with safe and sound banking practices and applicable laws and regulations.

- (l) Liens in the form of cash collateral securing Indebtedness of the Borrower or any of its Subsidiaries of the type described in **Section 7.1(d)**.
- (m) The interest of any lessor under any Capitalized Lease entered into after the Effective Date, provided that (i) the Indebtedness secured thereby is otherwise permitted by this Agreement and (ii) such Lines are limited to the property acquired and do not secure Indebtedness other than the related Capitalized Lease Obligations for the purchase price of such property.
- (n) Other Liens securing Indebtedness, provided that the aggregate principal amount of Indebtedness secured by Liens described in this clause (n) at any time does not exceed \$5,000,000 at any time outstanding.

Notwithstanding anything in this **Section 7.5** to the contrary, in no event shall any Liens be permitted to the extent any such Liens would result in a breach or violation of **Section 7.12** of this Agreement.

**7.6 Affiliates.** The Borrower will not, and will not permit any Subsidiary to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than the Borrower or such Subsidiary would obtain in a comparable arms-length transaction.

**7.7 Subordinated Indebtedness.** The Borrower will not, and will not permit any Subsidiary to, make any amendment or modification to the indenture, note or other agreement evidencing or governing any Subordinated Indebtedness, or directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness other than (i) as permitted under an accompanying subordination agreement in form and substance reasonably satisfactory to the Lender or (ii) with respect to the NB&T Indenture and the Subordinated Indebtedness subject thereto, so long as (a) no Event of Default shall exist before or after giving effect to such action or be created as a result thereof, (b) Borrower is in compliance (on a pro forma basis) with the financial covenants in **Section 7.9** after giving effect thereto, (c) Borrower has obtained all necessary Governmental Authority approvals to take such action and (d) Lender has approved such action.

**7.8 Restricted Payments.** The Borrower will not, nor will it permit any Subsidiary to, make any Restricted Payment, except that, to the extent legally permissible: (i) any Subsidiary may declare and pay dividends or make distributions to the Borrower or to a Wholly-Owned Subsidiary, and (ii) the Borrower may declare and pay dividends on its capital stock provided that no Event of Default shall exist before or after giving effect to such dividends or be created as a result thereof and the Borrower shall be in compliance (on a pro forma basis) with the financial covenants in **Section 7.9** after giving effect thereto.

## **7.9 Financial Covenants.**

- (a) Regulatory Capital. The Borrower (a) shall, on a Consolidated basis, be "well capitalized" at all times, as defined and determined by the applicable Governmental Authority having jurisdiction over the Borrower, and (b) shall cause each Subsidiary Bank to be "well capitalized"

at all times, as defined and determined by the applicable Governmental Authority having jurisdiction over each such Subsidiary Bank.

- (b) Total Risk-Based Capital Ratio. The Borrower will not permit the Total Risk-Based Capital Ratio of the Borrower on a Consolidated basis or any of the Subsidiary Bank(s) (expressed as a percentage), to be less than 12.5% as of the last day of any fiscal quarter.
- (c) Non-Performing Assets to Tangible Primary Capital Ratio. The Borrower will not permit the ratio of Non-Performing Assets to Tangible Primary Capital of any of the Subsidiary Bank(s) (expressed as a percentage) to be greater than 20% as of the last day of any fiscal quarter.
- (d) Loan Loss Reserves. The Borrower shall cause each Subsidiary Bank to maintain the ratio of Loan Loss Reserves to Non-Performing Loans (expressed as a percentage) at all times to be not less than 70%.
- (e) Fixed Charge Coverage Ratio. The Borrower will not permit the Fixed Charge Coverage Ratio, determined for the Borrower and its Subsidiaries on a Consolidated basis as of the end of each of its fiscal quarters for the then most-recently ended four fiscal quarters, to be less than 1.25 to 1.00.

**7.10 Fiscal Year.** The Borrower will not, nor will it permit any Subsidiary to, change its fiscal year to end on a day other than December 31.

**7.11 Subsidiary Shares.**

- (a) The Borrower will not, directly or indirectly, authorize or issue, or permit any Subsidiary Bank to (i) authorize or issue, any new types, varieties or classes of equity interests of such Subsidiary Bank or any of its Subsidiaries, either preferred or common, voting or nonvoting, or any bonds or debentures (subordinated or otherwise) convertible into any equity interests of any Subsidiary Bank or such Subsidiary, or any stock options or warrants, or (ii) authorize or issue any additional shares of any existing class of any equity interests of such Subsidiary Bank or any of its Subsidiaries, or (iii) grant any Person other than the Lender any proxy for existing equity interests, or cause or allow or declare any stock splits of such Subsidiary Bank or any of its Subsidiaries, or (iv) take any other action which could, directly or indirectly, decrease Borrower's ownership (alone or together with any of Borrower's Subsidiaries) interest in such Subsidiary Bank or any of its Subsidiaries to a level below the percentage of equity interests Borrower holds in such Subsidiary Bank or of its Subsidiaries as of the Effective Date. Borrower shall not itself, nor shall it cause, permit or allow any Subsidiary Bank or any Subsidiary of any Subsidiary Bank to directly or indirectly create, assume, incur, suffer or permit to exist any pledge, encumbrance, security interest, assignment, Lien or charge of any kind or character on the equity interests of such Subsidiary Bank or any of its Subsidiaries. Borrower shall not itself, nor shall it cause, permit or allow any Subsidiary Bank or any of its Subsidiaries to sell, transfer, issue, reissue or exchange, or grant any option with respect to, any equity interests of such Subsidiary Bank or any of its Subsidiaries.
- (b) Solely as it relates to **Section 7.11(a)** above, Borrower irrevocably authorizes Lender to, and appoints the Lender as its attorney-in-fact to, execute on behalf of Borrower as debtor and file such financing statements as Lender, at any time and from time to time in the sole discretion of the Lender, may deem necessary or desirable.

**7.12 Sale and Leaseback Transactions.** The Borrower will not, nor will it permit any Subsidiary to, enter into any agreement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (such an agreement being referred to in this Agreement as a “**Sale/Leaseback Agreement**”); provided, however, that Borrower or a Subsidiary may enter into a Sale/Leaseback Agreement, so long as, (i) the transaction contemplated by such Sale/Leaseback Agreement is the result of an Acquisition, (ii) no Event of Default shall exist before or after giving effect to the transaction contemplated by such Sale/Leaseback Agreement or be created as a result thereof, (iii) Borrower is in compliance (on a pro forma basis) with the financial covenants in **Section 7.9** after giving effect thereto and (iv) Lender has approved the transaction contemplated by such Sale/Leaseback Agreement.

**7.13 Burdensome Agreements.** The Borrower will not, nor will it permit any Subsidiary to, enter into any agreement, directly or indirectly (other than this Agreement and the other Loan Documents) that (i) limits the ability of (A) any Subsidiary to make Restricted Payments to the Borrower or any other Subsidiary or to otherwise transfer property to the Borrower or any other Subsidiary, (B) any Subsidiary to guarantee the Indebtedness of the Borrower or (C) the Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; or (ii) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

## **ARTICLE VIII DEFAULTS**

The occurrence of any one or more of the following events shall constitute an Event of Default (each, an “**Event of Default**”):

**8.1** Any representation or warranty made or deemed made by or on behalf of the Borrower or any of its Subsidiaries to the Lender under or in connection with this Agreement, any Loan, or any certificate or other written information delivered in connection with this Agreement or any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained therein) on the date made or confirmed.

**8.2** The Borrower fails to pay any (i) principal of any Loan when due or (ii) interest upon any Loan, any non-usage fee, or any other obligation under any of the Loan Documents within five (5) Business Days after it becomes due.

**8.3** The Borrower breaches any of the terms or provisions of **Section 6.2**, **Section 6.3**, **Section 6.11**, or **Article VII**.

**8.4** The Borrower breaches (other than a breach that constitutes an Event of Default under another Section of this **Article VIII**) any of the terms or provisions of this Agreement or any other Loan Document and such breach is not remedied within 30 days after the earlier of (i) an Authorized Officer becoming aware of such breach and (ii) the Lender notifying the Borrower of such breach.

**8.5** The Borrower or any of its Subsidiaries fails to pay when due (beyond any applicable grace period) any payment (whether of principal, interest or any other amount) in respect of any Material Indebtedness (provided that, in the case of Rate Management Obligations, the amount counted for this purpose shall be the amount payable by the Borrower and its Subsidiaries if such Rate Management Obligations were terminated



at such time); the Borrower or any of its Subsidiaries defaults in the performance (beyond any applicable grace period) of any term, provision, or condition in any Material Indebtedness Agreement, or any other event or condition occurs, which causes, or permits the holder(s) of such Material Indebtedness or the lender(s) under any Material Indebtedness Agreement to cause, any portion of such Material Indebtedness to become due prior to its stated maturity or any commitment to lend under any Material Indebtedness Agreement to be terminated prior to its stated expiration date; any portion of Material Indebtedness of the Borrower or any of its Subsidiaries is declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or the Borrower or any of its Subsidiaries does not pay, or admits in writing its inability to pay, its debts generally as they become due.

**8.6** The Borrower or any of its Subsidiaries (i) has an order for relief entered with respect to it under the federal bankruptcy laws as now or hereafter in effect, (ii) makes an assignment for the benefit of creditors, (iii) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, examiner, liquidator, or similar official for it or any Substantial Portion of its Property, (iv) institutes any proceeding seeking an order for relief under the federal bankruptcy laws as now or hereafter in effect or seeking to adjudicate it a bankrupt or insolvent, or seeks dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) takes any corporate, limited liability company or partnership action to authorize or effect any of the foregoing actions set forth in this **Section 8.6** or (vi) fails to contest in good faith any appointment or proceeding described in **Section 8.7**.

**8.7** Without the application, approval, or consent of the Borrower or any of its Subsidiaries, a receiver, trustee, examiner, liquidator, or similar official is appointed for the Borrower or any of its Subsidiaries or any Substantial Portion of its Property, or a proceeding described in **Section 8.6(iv)** is instituted against the Borrower or any of its Subsidiaries, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for 60 consecutive days.

**8.8** Any court, government, or governmental agency condemns, seizes, or otherwise appropriates, or takes custody or control of, all or any portion of the Property of the Borrower and its Subsidiaries such that, when taken together with all other Property of the Borrower and its Subsidiaries so condemned, seized, appropriated, or taken custody or control of, during the 12- month period ending with the month in which any such action occurs, constitutes a Substantial Portion.

**8.9** The Borrower or any of its Subsidiaries fails within 60 days to pay, obtain a stay with respect to, or otherwise discharge one or more judgments or orders for the payment of money in excess of \$10,000,000 (or the equivalent thereof in currencies other than Dollars) in the aggregate, which judgment(s), in any such case, is/are not stayed on appeal or otherwise being appropriately contested in good faith, or any action is legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any of its Subsidiaries to enforce any such judgment.

**8.10** (a) With respect to a Plan, the Borrower or an ERISA Affiliate is subject to a lien in excess of \$5,000,000 pursuant to Section 430(k) of the Code or Section 302(c) of ERISA or Title IV of ERISA, or (b) an ERISA Event has occurred that, in the opinion of the Lender, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in material liability.

**8.11** Any Change in Control occurs.

**8.12** Intentionally Omitted.

**8.13** Any Loan Document fails to remain in full force or effect, other than as a result of any action taken by Lender, which action shall include any such Loan Document being cancelled or terminated in writing by the Lender.