

State of Minnesota

SECRETARY OF STATE

Certificate of Business Trust

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: A copy of the Declaration of Trust of the trust listed below was filed with this office on this date, by a member of the board of trustees of that trust, who swore that the copy filed was a true and correct copy of the declaration of trust. The trustee also set forth the name and address of the agent of the trust for service of process, and met all the filing requirements of Minnesota Statutes, Chapter 318.

Name of Business Trust:

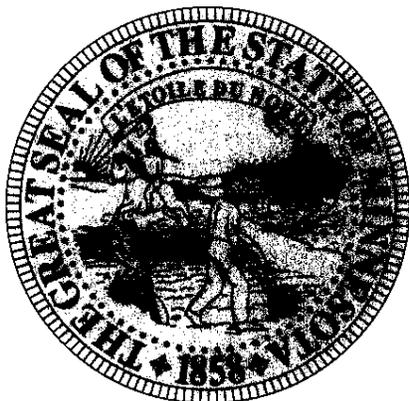
Washington Square Advisers Private Placement Trust Fund

File Number: 1064443-2

Name and Address of Agent for Service of Process:

CT Corporation
405 2nd Ave S %The Trust Corp System
Mpls MN 55401-

This certificate has been issued on 10/05/04.



Mary Kiffmeyer
Secretary of State.

BT OR



WASHINGTON SQUARE ADVISERS PRIVATE PLACEMENT TRUST FUND

“DECLARATION OF TRUST” PURSUANT TO
MINNESOTA STATUTES, CHAPTER 318

The undersigned hereby certifies that:

1. Attached hereto is a true and correct copy of the Trust Agreement (the “Trust Agreement”) of Washington Square Advisers Private Placement Trust Fund (the “Trust”). The Trust Agreement constitutes the “declaration of trust” for the Trust, as such term is defined in Minnesota Statutes, Section 318.02, Subd. 1, and is being filed pursuant to Minnesota Statutes, Chapter 318.

2. The full name and street address of an agent of the Trust in Minnesota, which shall be the Trust’s agent for service of process, are as follows:

CT Corporation
c/o The Trust Corporation System, Inc.
405 Second Avenue South
Minneapolis, Minnesota 55401

3. The undersigned is the Trustee of the Trust.

Dated: ~~September~~ ^{October} 4, 2004

U.S. BANK NATIONAL ASSOCIATION,
successor by merger to First Trust National
Association, as Trustee of the Trust

By Paul M. Dadez

Name: Paul M. Dadez

Title: Vice President USBNA as trustee

TRUST AGREEMENT OF
WASHINGTON SQUARE ADVISERS
PRIVATE PLACEMENT TRUST FUND

This TRUST AGREEMENT ("Trust") of **Washington Square Advisers Private Placement Trust Fund** (the "Trust") is made and entered into as of this 17th day of January, 1998, by and among Washington Square Advisers, Inc., a Minnesota corporation (the "Adviser"), First Trust National Association, a national banking association, organized under the laws of the United States, as trustee (the "Trustee"), and each other party who shall execute a counterpart of this Trust Agreement as an owner of a Trust Certificate representing a beneficial interest of the Trust or who becomes a party to this Trust by execution of a Subscription Agreement and Power of Attorney Signature Page or otherwise and who is shown in the books and records of the Trust as a Certificateholder (individually a "Certificateholder" and, collectively, the "Certificateholders").

WITNESSETH:

WHEREAS, the Adviser, as manager and sponsor of this Trust, the Trustee, as custodial trustee, and the Certificateholders, as investors, desire to form a business trust pursuant to and in accordance with the laws of the State of Minnesota, for the business and purpose of issuing Trust Certificates, the capital of which shall be used to engage in trading, buying, selling or otherwise acquiring, holding or disposing of corporate debt securities and other securities.

NOW THEREFORE, the parties hereto agree as follows:

1. *Declaration of Trust.*

The Adviser hereby acknowledges that the Trust has received the sum of \$23 million in a bank account opened in the name of the Trust from the Certificateholders, and the Trustee hereby declares that it shall hold such sum in trust upon and subject to the conditions set forth herein for the use and benefit of the Certificateholders. It is the intention of the parties hereto that this Trust Agreement shall constitute the governing instrument of the Trust.

Nothing in this Trust Agreement shall be construed to make the Certificateholders partners or members of a joint stock association except to the extent such Certificateholders, as constituted from time to time, are deemed to be partners under the Internal Revenue Code of 1986 (the "Code") and applicable state and local tax laws. Notwithstanding the foregoing, it is the intention of the parties hereto that the Trust be treated as a partnership for purposes of taxation under the Code and applicable state and local tax laws. Effective as of the date hereof, the

Trustee shall have all of the rights, powers and duties set forth herein with respect to accomplishing the purposes of the Trust.

2. *The Trustee.*

(a) *Term; Resignation.*

(i) First Trust National Association has been appointed and hereby agrees to serve as the Trustee of the Trust. The Trust shall have only one trustee unless otherwise determined by the Adviser. The Trustee shall serve until such time as (A) the Adviser removes the Trustee or the Trustee resigns and (B) a successor Trustee is appointed by the Adviser in accordance with the terms of Section 2(e) hereof.

(ii) Except as otherwise provided in Section 17(c), the Trustee may resign at any time upon the giving of at least sixty (60) days' advance written notice to the Trust; provided, that such resignation shall not become effective unless and until a successor Trustee shall have been appointed by the Adviser in accordance with Section 2(e) hereof. If the Adviser does not act within such sixty (60) day period, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(b) *Powers.* Except to the extent expressly set forth in this Section 2, the duty and authority of the Trustee shall be that of a directed, custodial trustee. Under this Trust Agreement, the authority to manage the business and affairs of the Trust is held exclusively by the Adviser. The Trustee shall have only the rights, obligations or liabilities specifically provided for herein and shall have no implied rights, obligations or liabilities with respect to the business or affairs of the Trust. The Trustee will take physical possession, and hold on behalf of the Trust, notes and other documents evidencing ownership of the securities acquired by the Trust (the "Securities Documents"). The Adviser will direct portfolio companies in which the Trust invests to issue and deliver the originally signed Securities Documents directly to the Trustee, and the Adviser agrees to promptly deliver to the Trustee any such Securities Documents that may come into the Adviser's possession. The Trustee shall have the power and authority to execute, deliver, acknowledge and file all necessary documents and to maintain all necessary records of the Trust. The Trustee shall provide prompt notice to the Adviser of its performance of any of the foregoing. The Adviser shall keep the Trustee informed of any actions taken by the Adviser with respect to the Trust that affect the rights, obligations or liabilities of the Trustee hereunder. The Trustee agrees to provide timely reports of the Trust's activities to the Adviser and to the Trust's accountants as directed by the Adviser.

(c) *Compensation and Expenses of the Trustee.* The Trustee shall be entitled to receive from the Trust or, if the assets of the Trust are insufficient, from

the Adviser reasonable compensation for its services hereunder in accordance with the Trustee's standard fee schedule, and shall be entitled to be reimbursed by the Trust or, if the assets of the Trust are insufficient, by the Adviser for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder, including without limitation, the reasonable compensation, out-of-pocket expenses and disbursements of counsel and such other agents as the Trustee may employ in connection with the exercise and performance of its rights and duties hereunder, to the extent attributable to the Trust.

(d) *Indemnification.* The Adviser agrees to assume liability for, and does hereby indemnify, protect, save and keep harmless the Trustee and its successors, assigns, legal representatives, officers, directors, agents and servants (the "Indemnified Parties") from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by the Trustee on or measured by any compensation received by the Trustee for its services hereunder or as indemnity payments pursuant to this Section 2(d)), claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever (collectively, "Expenses"), which may be imposed on, incurred by or asserted against the Indemnified Parties in any way relating to or arising out of the formation, operation or termination of the Trust, the execution, delivery and performance of any other agreements to which the Trust is a party or the action or inaction of the Trustee hereunder or thereunder, except for Expenses resulting from the gross negligence or willful misconduct of the Indemnified Parties. The indemnities contained in this Section 2(d) shall survive the termination of this Trust Agreement or the removal or resignation of the Trustee. In addition, the Indemnified Parties shall be entitled to indemnification from any cash on deposit in the accounts of the Trust, any other property held by the Trust, and all proceeds therefrom, including any rights of the Trust pursuant to any agreements to which this Trust is a party (the "Trust Estate") to the extent such expenses are attributable to the formation, operation or termination of the Trust as set forth above, and to secure the same, the Trustee shall have a lien against the Trust Estate which shall be prior to the rights of the Adviser and the Certificateholders to receive distributions from the Trust Estate. The Trustee nevertheless agrees that it will, at its own cost and expense, promptly take all action as may be necessary to discharge any liens on any part of the Trust Estate which result from claims against the Trustee personally that are not related to the ownership or the administration of the Trust Estate or the transactions contemplated by any documents to which the Trust is a party.

(e) *Successor Trustee.* Upon the resignation or removal of the Trustee, the Adviser shall appoint a successor Trustee by delivering a written instrument to the outgoing Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee shall not become effective until (i) a written acceptance of appointment is delivered by the successor Trustee to the outgoing Trustee and the Adviser, and (ii) the Trust has received an affirmation of its rating

by Fitch Investors Service, L.P. or another nationally recognized statistical rating organization. Following compliance with the preceding sentence, the successor Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee under this Trust Agreement, with like effect as if originally named as Trustee, and the outgoing Trustee shall be discharged of its duties and obligations under this Trust Agreement.

(f) *Liability of the Trustee.* Except as otherwise provided in this Section 2, in accepting the trust created hereby, First Trust National Association acts solely as Trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Trust Agreement and any other agreement to which the Trust is a party shall look only to the Trust Estate for payment or satisfaction thereof. The Trustee shall not be liable or accountable hereunder or under any other agreement to which the Trust is a party, except for the Trustee's own gross negligence or willful misconduct. In particular, but not by way of limitation:

(i) the Trustee shall have no liability or responsibility for the validity or sufficiency of this Trust Agreement or for the form, character, genuineness, sufficiency, value or validity of the Trust Estate;

(ii) the Trustee shall not be liable for any actions taken or omitted to be taken by it in accordance with the instructions of the Adviser;

(iii) other than the custodial duties specified in this Section 2, the Trustee shall not be liable for the management and affairs of the Trust;

(iv) the Trustee shall not have any liability for the acts or omissions of the Adviser or for any failure of the Adviser to comply with the investment policies and restrictions set forth in that certain Confidential Private Offering Memorandum dated September 1996, as amended or supplemented, relating to the offer and sale of the Trust Certificates (the "Private Offering Memorandum");

(v) the Trustee shall not be liable for its failure to supervise the performance of any obligations of the Adviser, including the Adviser's responsibility to comply with federal and states securities laws;

(vi) no provision of this Trust Agreement shall require the Trustee to expend or risk funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(vii) under no circumstances shall the Trustee be liable for indebtedness evidenced by or other obligations of the Trust arising under this Trust Agreement or any other agreements to which the Trust is a party;

(viii) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or any other agreements to which the Trust is a party, at the request, order or direction of the Adviser or any Certificateholders unless the Adviser or such Certificateholders have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by the Trustee (including, without limitation, the reasonable fees and expenses of its counsel) therein or thereby;

(ix) the Trustee shall not be obligated or responsible for any tax matter or tax election or for the preparation, filing and distribution of any tax information or returns; and

(x) notwithstanding anything contained herein to the contrary, the Trustee shall not be required to take any action in any jurisdiction other than in the State of Minnesota if the taking of such action will (a) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Minnesota, (b) result in any fee, tax or other governmental charge under the laws of any jurisdiction or any political subdivision thereof in existence as of the date hereof other than the State of Minnesota becoming payable by the Trustee or (c) subject the Trustee to personal jurisdiction other than the State of Minnesota for causes of action arising from personal acts unrelated to the consummation of the transactions by the Trustee, as the case may be, contemplated hereby.

(g) *Reliance by the Trustee and the Adviser; Advice of Counsel.*

(i) In the absence of bad faith, the Trustee and the Adviser may conclusively rely upon certificates or opinions furnished to the Trustee or the Adviser and conforming to the requirements of this Trust Agreement in determining the truth of the statements and the correctness of the opinions contained therein, and shall incur no liability to anyone in acting on any signature, instrument, notice, resolutions, request, consent, order, certificate, report, opinion, bond or other document or paper which is believed to be genuine and believed to be signed by the proper party or parties and need not investigate any fact or matter pertaining to or in any such document; provided, however, that the Trustee or the Adviser shall have examined any

certificates or opinions so as to determine compliance of the same with the requirements of this Trust Agreement. The Trustee or the Adviser may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee or the Adviser may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustee or the Adviser for any action taken or omitted to be taken by either of them in good faith in reliance thereon.

(ii) In the exercise or administration of the Trust hereunder and in the performance of their duties and obligations under this Trust Agreement, the Trustee and the Adviser, at the expense of the Trust to which such expense is attributable, (i) may act directly or through their agents, attorneys, custodians or nominees pursuant to agreements entered into with any of them, and neither the Trustee nor the Adviser shall be liable for the conduct or misconduct of such agents, attorneys, custodians or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Trustee or the Adviser with reasonable care and (ii) may consult with counsel, accountants and other skilled professionals to be selected with reasonable care by either of them; provided that neither the Trustee nor the Adviser shall allocate any of their internal expenses or overhead to the account of the Trust. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountant or other such persons.

(h) *Not Part of Trust Estate.* Amounts paid to the Trustee and to the Adviser from the Trust Estate pursuant to Section 2 (c) and Section 9 shall not be deemed to be part of the Trust Estate immediately after such payment.

3. *Principal Office.*

The address of the principal office of the Trust shall be c/o the Adviser, 100 Washington Avenue South, Suite 700, Minneapolis, Minnesota 55401-2121; telephone: 612-342-7171. The Trustee is located at 180 East Fifth Street, St. Paul, Minnesota 55101, Attention: Institutional Financial Services. The Trustee shall receive service of process on the Trust at the foregoing address.

4. *Business.*

The Trust's business and purpose is to trade, buy, sell or otherwise acquire, hold or dispose of corporate debt securities and other securities, and to engage in all activities necessary, convenient or incidental thereto. The Trust shall have the power to engage in all activities which are necessary, suitable, desirable, convenient or incidental to the accomplishment to the foregoing business and purposes. The Trust shall do so under the direction of the Adviser. It is expressly permissible for the Adviser to direct that the Trust invest in any regulated investment company (i.e., mutual fund), including mutual funds for which the Trustee or any affiliate of the Trustee serves as investment adviser, custodian or other service provider as specified in such funds' current prospectus. To the extent practicable, the Trustee will promptly invest the Fund's idle cash balances in a short-term investment fund or other short-term investments as directed by the Adviser; provided, however, that a portion of the Fund's idle cash may be temporarily uninvested from time to time in order to facilitate trust administration and to facilitate compliance by the Trustee with its standard operating procedures. Such procedures include, among other things, the deposit as a general deposit with the Trustee or any bank affiliate of the Trustee, cash and all checks and drafts (when collected funds are received) received from or with respect to the Trust Estate as well as amounts that are pending distribution from the Trust. The Adviser and Certificateholders acknowledge that the Trustee shall have no obligations to pay interest on such general deposits.

5. *Term, Dissolution, Fiscal Year and Net Asset Value.*

(a) *Term.* The term of the Trust commenced on the date of this Trust Agreement and shall end upon the first to occur of the following: (1) January 1, 2016; (2) receipt by the Trustee of a written demand to dissolve the Trust signed by Certificateholders owning Trust Certificates representing more than fifty percent (50%) of the ownership interests in the Trust, which demand shall only be effective if the Trust has failed during the preceding calendar year to make distributions of Trust income (rather than distributions that are a return of principal, which would reduce the outstanding balance of the Trust Certificate) to Certificateholders in an amount equal to or greater than 2% of the outstanding balance of the Trust Certificates and the failure to make such distribution has not been cured by the date of delivery to the Trustee of the aforementioned written demand; (3) death, insanity, bankruptcy, retirement, resignation, withdrawal, insolvency or dissolution of the Adviser or any other event that causes the Adviser to cease to be the adviser to the Trust unless, (i) at the time of such event there is at least one remaining adviser to the Trust who carries on the business of the Trust (and each remaining adviser to the Trust is hereby authorized to carry on the business of the Trust in such an event), or (ii) within 90 days after such event Certificateholders owning Trust Certificates representing more than fifty percent (50%) of the ownership

interests in the Trust agree in writing to continue the business of the Trust and to the appointment, effective as of the date of such event, of one or more advisers to the Trust; (4) dissolution of the Trust pursuant hereto; (5) all Trust assets have been liquidated and final distributions have been made to Certificateholders; or (6) any other event which shall make it unlawful for the existence of the Trust to be continued or shall require termination of the Trust.

(b) *Dissolution.* Upon the occurrence of an event causing the dissolution of the Trust, the Trust shall be dissolved and its affairs wound up.

Upon the dissolution of the Trust, the Adviser (or, if the Adviser has withdrawn, such person as the Certificateholders may select) shall wind up the Trust's affairs and, in connection therewith, shall distribute the Trust's assets in the following manner and order:

(i) **FIRST TO** payments and discharge of all claims of creditors of the Trust (including the Trustee, the Adviser and creditors who are Certificateholders);

(ii) **SECOND TO** creation of any reserve that the Adviser (or its successor) in its sole discretion may consider reasonably necessary for any losses, contingencies, liabilities or other matters of or relating to the Trust; provided, however, that if and when the cause for such reserve ceases to exist, the monies, if any, then in such reserve shall be distributed in the manner hereinafter provided; and

(iii) **THIRD TO** distribution in kind or in cash, as the liquidator may deem in the best interests of the Trust, of the remaining assets to the Certificateholders in proportion to their ownership interests.

(c) *Fiscal Year.* The fiscal year of the Trust shall end on December 31 of each year.

6. *Capital Contributions; Trust Certificates; Adviser's Liability.*

(a) Each Certificateholder shall sign a Subscription Agreement and Letter of Investment Intent in the form attached hereto as Exhibit A (the "Subscription Agreement"), which shall include, among other things, such Certificateholder's binding obligation to make total capital contributions to the Trust in the amount set forth in such Subscription Agreement. Such committed capital shall be paid to the Trust in such amounts and at such times as set forth in Section 6(d).

(b) Upon the initial contribution to the Trust by a Certificateholder, the Trust shall deliver a certificate, in the form attached hereto as Exhibit B, to such Certificateholder, evidencing an ownership interest in the Trust.

(c) Every Certificateholder, by virtue of having purchased or otherwise acquired a Trust Certificate, shall be deemed to have expressly consented and agreed to be bound by the terms of this Trust Agreement.

(d) The Certificateholders' respective capital contributions to the Trust shall be as shown on the books and records of the Trust. Each Certificateholder shall pay one-third of its total capital commitment to the Trust at the time of purchase of a Trust Certificate. An additional one-third of such capital commitment shall be due within 15 days after written notice to the Certificateholders, which notice shall be mailed not less than three months nor more than six months after the date of this Trust Agreement. The final one-third of each Certificateholder's capital commitment shall be due within 15 days after written notice to the Certificateholders, which notice shall be mailed not less than six months nor more than twelve months after the date of this Trust Agreement.

(e) Within sixty days after the date of this Trust Agreement, the Trust, at the discretion of the Adviser, may issue additional Trust Certificates to existing Certificateholders who agree to contribute additional capital or to new investors who sign a Subscription Agreement subsequent to the date of this Trust Agreement. Any such additional capital commitments shall be paid to the Trust in three installments in accordance with, and at the times set forth in, Section 6(d). Such additional investors shall invest on the same terms as the original investors and shall have their relative ownership interest in the Trust computed in the same manner as the original investors.

(f) In the event a Certificateholder fails to pay any installment of its capital commitment when due and such default is not cured within ten days after written notice has been given to such Certificateholder by the Adviser that such default has occurred, the defaulting Certificateholder shall be ineligible to make further capital contributions to the Trust. The amount of such defaulting Certificateholder's ownership interest in the Trust shall be accordingly reduced to reflect the reduction in the capital commitment of such defaulting Certificateholder. After, and in addition to, the reduction in the ownership interest in the Trust required by the preceding sentence, such defaulting Certificateholder's ownership interest in the Trust shall be further reduced by 25%, which amount shall be allocated among the remaining, non-defaulting Certificateholders in proportion to their respective ownership interests such that the sum of the ownership interests of all Certificateholders shall continue to be 100%. Such defaulting Certificateholder shall not be liable to the Trust for, and will not be permitted to make, any further capital contributions.

7. *No Liability of Adviser or Certificateholders.*

Neither the Adviser nor any Certificateholder shall have any liability for the repayment, satisfaction and discharge of any debts, liabilities or obligations of the Trust, except as otherwise provided with respect to the Adviser in Section 2(d).

8. *Allocations of Profits and Losses; Distributions of Cash to Certificateholders.*

(a) *Capital Accounts and Allocations.* A capital account shall be established for each Certificateholder by the Adviser. The initial balance of each capital account shall be the amount contributed to the Trust by such Certificateholder. The capital accounts shall be adjusted from time to time in accordance with the provisions of the Internal Revenue Code of 1986, as amended, and applicable rules and regulations thereunder.

(b) *Allocation of Profit and Loss for Federal Income Tax Purposes.* Each of the Adviser and the Certificateholders, but not the Trustee, by entering into this Trust Agreement, (i) expresses its intention that the Trust Certificates will qualify under applicable tax law as though the Trust Certificates were interests in a partnership which holds the Trust Estate for their benefit, (ii) agrees that it will file its own federal, state and local income, franchise and other tax returns in a manner that is consistent with the treatment of the Trust as though it were a partnership in which each of the Certificateholders is a partner and (iii) agrees to use reasonable efforts to notify the Adviser promptly upon a receipt of any notice from any taxing authority having jurisdiction over such Certificateholder with respect to the treatment of the Trust Certificates as anything other than interests in a partnership. As of the end of each fiscal year, income and expense and capital gain or loss of the Trust shall be allocated among the Certificateholders *pro rata* based on their relative ownership interests in the Trust.

(c) *Withholding Tax.* In the event that the Adviser determines the Trust shall be subject to taxation by any state or local or by any foreign taxing authority, the Adviser shall direct the Trustee to cause the Trust to pay such taxes to such jurisdiction. In the event that the Trust shall be required to make payments to any federal, state or local or any foreign taxing authority in respect of any Certificateholder's allocable share of the Trust's income, the amount of such taxes shall be considered a loan by the Trust to such Certificateholder, and such Certificateholder shall be liable for, and shall pay to the Trust, any taxes so required to be withheld and paid over by the Trust within ten (10) days after the Adviser's request therefor. Such Certificateholder shall also be liable for interest on the amount of taxes paid over by the Trust to the Internal Revenue Service ("IRS") or other taxing authority, from the date of the Adviser's request for payment to the date of payment at the rate of two percent (2%) over the prime rate charged from

time to time by Chemical Bank, New York, New York. Any amount payable by the Trust to such Certificateholder, shall be reduced by any obligations owed to the Trust by the Certificateholder, including, without limitation, the amount of any taxes required to be paid over by the Trust to the IRS or other taxing authority and interest thereon as aforesaid. Amounts, if any, deducted by the Trust from any actual distribution to such Certificateholder shall be treated as an actual distribution to such Certificateholder for all purposes of this Trust Agreement.

(d) *Trust Distributions to Certificateholders.* Prior to the tenth day of each calendar month, the Adviser shall determine, subject to the requirements and limitations set forth in the Private Offering Memorandum (as defined in Section 2(f)(iii) of this Trust Agreement), the amount of cash available for distribution by the Trust to Certificateholders in such month. On or before the fifteenth day of each month, the Trustee shall distribute, as directed by the Adviser, on behalf of the Trust, the amount so determined to the Certificateholders pro rata based on their respective ownership interests in the Trust. Notwithstanding the foregoing, all interest income accrued by the Trust prior to the date of issuance of any additional Trust Certificates pursuant to Section 6(f) shall be allocated and distributed entirely to the original Certificateholders who purchased Trust Certificates as of the date of this Trust Agreement.

(e) *Limited Liability of Certificateholders.* Each Trust Certificate, when purchased in accordance with this Trust Agreement, shall, except as otherwise provided by law, be fully paid and non-assessable. Any provisions of this Trust Agreement to the contrary notwithstanding, Certificateholders (including the Adviser, except to the extent otherwise provided herein) shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the laws of the State of Minnesota.

The Trust will indemnify, to the full extent permitted by law, each Certificateholder against any claims of liability asserted against such Certificateholder solely because such Certificateholder is a beneficial owner of the Trust (other than a respect of taxes due from such Certificateholder as such a beneficial owner).

9. *Management of the Trust.*

Washington Square Advisers, Inc. (the "Adviser") is hereby appointed, and hereby agrees to serve, as the adviser to the Trust. The Trust and the Adviser have entered into an Investment Advisory Agreement dated as of the date of this Trust Agreement, pursuant to which the Adviser shall receive a management fee (the "Advisory Fee"), payable from the assets of the Trust, which shall be paid monthly in an amount equal to 1/12th of .25% of the book value of the Trust's total assets as of the last day of each month. Any monthly payment of the advisory fee

shall be deferred if the Trust has not made a distribution of Trust income during the preceding calendar year in an amount equal to or greater than 2% of the weighted average balance of the outstanding Trust Certificates during such preceding year. Any such deferred advisory fee shall be paid in full, without interest, at such time as the Trust has fully made the aforementioned 2% distribution to Certificateholders. The Certificateholders hereby acknowledge and consent to the payment of such Advisory Fee throughout the term of the Trust. The Adviser, to the exclusion of the Certificateholders, shall control, conduct and manage the business of the Trust. Subject to the obligations and restrictions set forth in the Private Offering Memorandum (as defined in Section 2(f)(iii) of this Trust Agreement), the Adviser shall have sole discretion in determining what distributions of profits and income, if any, shall be made to the Certificateholders, shall execute various documents on behalf of the Trust and the Certificateholders pursuant to powers of attorney and supervise the liquidation of the Trust if an event causing dissolution of the Trust occurs.

Subject to the investment policies and restrictions set forth in the Private Offering Memorandum (as defined in Section 2(f)(iii) of this Trust Agreement), the Adviser may, in furtherance of the business of the Trust, cause the Trust to buy, sell, hold, or otherwise acquire or dispose of corporate debt securities and other securities. The Adviser is hereby specifically authorized to enter into, on behalf of the Trust, the loan agreements and related documents and any other contracts or agreements related to the business of the Trust, and any agreements or amendments that the Adviser in its discretion may enter into to restructure any Trust investment, without any further act, approval or vote of any Certificateholder, notwithstanding any other provisions of this Trust Agreement, or any applicable law, rule or regulations. The Adviser may take such other actions on behalf of the Trust as the Adviser deems necessary or desirable to manage the business of the Trust.

The Adviser may serve on one or more creditors' committees that might be formed with respect to portfolio securities and the Adviser shall be reimbursed by the Trust for the expenses incurred by the Adviser in its role on any such committee and in connection with renegotiating or restructuring any portfolio investment.

The Adviser is engaged, and may in the future engage, in other business activities and shall not be required to refrain from any other activity nor forego any profits from any such activity, whether or not in competition with the Trust. The Trustee and the Certificateholders may similarly engage in any such other business activities. The Adviser shall devote to the Trust such time as the Adviser may deem advisable to conduct the Trust's business and affairs.

The Adviser shall be under a fiduciary duty to conduct the affairs of the Trust in the best interests of the Trust, provided that the Adviser shall not be obligated to engage in any conduct on behalf of the Trust to the detriment of any other party or parties to which the Adviser owes similar fiduciary duties.

The Adviser is hereby authorized to perform all duties imposed by Sections 6221 through 6232 of the Code on the Adviser as the "tax matters partner" of the Trust.

The Trust shall reimburse the Adviser for all expenses incurred by the Adviser in connection with the organization of the Trust and the offer and sale of Trust Certificates. In addition, the Trust will be responsible for paying, or reimbursing the Adviser for, expenses incurred by the Adviser in connection with the business of the Trust.

The Trust will pay its ongoing administrative expenses, including the fees of the Trustee. All of the expenses which are for the account of the Trust shall be billed directly to the Trust. The Trust shall bear all of its own legal, accounting and administrative expenses, but none of the Adviser's "overhead" expenses incurred in connection with the administration of the Trust (including, but not limited to, salaries and rent) shall be charged to the Trust.

The Adviser may engage, at the expense of the Trust, attorneys, accountants and consultants on behalf of the Trust.

10. *Audits and Reports to Certificateholders.*

The Trust's books shall be audited annually by an independent certified public accountant at the direction of the Adviser. The Trust will use its best efforts to cause each Certificateholder and the NRSRO (as defined in this paragraph) to receive (i) within 90, but in no event later than 120 days, after the close of each fiscal year certified financial statements for the fiscal year then ended, (ii) within 30 days after the end of each month a report of the Trust's investment activity during such month and the status and value of the Trust's investment portfolio as of the end of such month, and (iii) within 90 days of the end of each fiscal year (but in no event later than March 15 of each year) such tax information as is necessary for a Certificateholder to complete its federal income tax return. Certificateholders or their duly authorized representatives may inspect the books and records relating to periods in which they are invested during normal business hours upon reasonable written notice to the Adviser and obtain copies of such records upon payment of reasonable reproduction costs; provided, however, upon request by the Adviser, the requesting Certificateholder shall represent that the inspection and/or copies of such records will not be for commercial purposes unrelated to such Certificateholder's interest as an investor in the Trust. The books and records of the Fund shall also be

made available to representatives of Fitch Investors Service L.P. or any successor nationally recognized statistical rating organization (the "NRSRO") at any time during normal business hours upon reasonable written notice to the Adviser.

The Adviser shall direct the Trust's accountant to prepare and file on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Trust. The Adviser shall cause the Trust to pay any taxes payable by the Trust; provided, however, that such taxes need not be paid if the Adviser or the Trust are in good faith and by appropriate legal proceedings contesting the validity, applicability or amount thereof and such contest does not materially endanger any right or interest of the Trust.

11. *Assignability of Trust Certificates.*

Each Certificateholder expressly agrees that it will not assign, transfer or dispose of, by gift or otherwise, any of its Trust Certificates or any part or all of its right, title and interest in the capital or profits of the Trust in violation of any applicable federal or state securities laws or without the advance written consent of the Adviser. No assignment, transfer or disposition by an assignee of Trust Certificates or of any part of its right, title and interest in the capital or profits of the Trust shall be effective against the Trust, the Trustee or the Adviser until the Adviser consents to the assignment. The Adviser may, in its sole discretion, grant or deny such consent. Each Certificateholder agrees that with the consent of the Adviser any assignee may become a substituted Certificateholder without need of the further act or approval of any Certificateholder. If the Adviser withholds consent, an assignee shall not become a substituted Certificateholder, and shall not have any of the rights of a Certificateholder, except that the assignee shall be entitled to receive that share of capital and profits and shall have that right of redemption to which his or her assignor would otherwise have been entitled. No assignment, transfer or disposition of Trust Certificates shall be effective against the Trust, the Trustee or the Adviser until the first business day of the calendar month following which the Adviser receives notice of such assignment, transfer or disposition, except that the Adviser in its discretion may permit a transfer to be effective as of any date.

12. *No Redemptions or Withdrawals.*

Trust Certificates cannot be redeemed, and Certificateholders and their assignees cannot withdraw or demand the return of all or any portion of their investment in the Trust or any Trust profits. In no event shall a Certificateholder or subsequent assignee be entitled to demand or receive property other than cash.

13. *Offering of Trust Certificates.*

All Trust Certificates subscribed for upon transfer of funds from a subscriber's account (or receipt of a check in the subscription amount) are issued subject to the collection of the funds represented by such transfer (or check). In the event that a transfer (or check) of a subscriber is not honored, the Trust shall cancel the Trust Certificates issued to such subscriber in consideration of such dishonored transfer (or check); provided that the Adviser may waive such cancellation upon receipt of what it believes to be reasonable assurances that such transfer (or check) will be honored or replaced by another transfer (or check) which will be honored within 10 business days of original dishonor. Each subscriber agrees to reimburse the Trust for any expense or losses incurred in connection with any such cancellation of Trust Certificates issued to him or her.

14. *Special Power of Attorney.*

Each Certificateholder by virtue of having purchased or otherwise acquired Trust Certificates does hereby irrevocably constitute and appoint the Adviser and each officer of the Adviser, with power of substitution, as its true and lawful attorney-in-fact, in its name, place and stead, to execute, acknowledge, swear to (and deliver as may be appropriate) on its behalf and file and record in the appropriate public offices and publish (as may in the reasonable judgment of the Adviser be required by law): (i) this Trust Agreement, including any amendments and/or restatements hereto duly adopted as provided herein; (ii) certificates in various jurisdictions, and amendments and/or restatements thereto; (iii) all conveyances and other instruments which the Adviser deems appropriate to qualify or continue the Trust in the jurisdictions in which the Trust may conduct business, or which may be required to be filed by the Trust or the Certificateholders under the laws of any jurisdiction, to reflect the dissolution or termination of the Trust or to reorganize or refile the Trust in a different jurisdiction; and (iv) to file, prosecute, defend, settle or compromise litigation, claims or arbitrations on behalf of the Trust. The Power of Attorney granted herein shall be irrevocable and deemed to be a power coupled with an interest (including, without limitation, the interest of the other Certificateholders in the Adviser being able to rely on the Adviser's authority to act as contemplated by this Section 14) and shall survive and shall not be affected by the subsequent incapacity, disability or death of a Certificateholder.

15. *Withdrawal of Adviser or a Certificateholder.*

The Trust shall be dissolved upon the withdrawal, dissolution, admitted or court-decreed insolvency of the Adviser, or any other event that causes the Adviser to cease to be the managing owner of the Trust, unless the Trust is continued pursuant to the terms of Section 5. In addition, the Adviser may withdraw from the Trust, without any breach of this Trust Agreement, at any time

upon 120 days' written notice by first class mail, postage prepaid, to the Trustee, each Certificateholder and assignee of whom the Adviser has notice.

The death, incompetency, withdrawal, insolvency, or dissolution of a Certificateholder or any other event that causes a Certificateholder to cease to be a beneficial owner in the Trust shall not terminate or dissolve the Trust, and a Certificateholder shall have no right to redeem or value such Certificateholder's interest.

16. *Standard of Liability; Indemnification.*

(a) *Standard of Liability for the Adviser.* The Adviser and its Affiliates, as defined below, shall have no liability to the Trust or to any Certificateholder for any loss suffered by the Trust which arises out of any action or inaction of the Adviser or its Affiliates, if the Adviser, in good faith, reasonably believed that such course of conduct was in the best interests of the Trust and such course of conduct did not constitute gross negligence or willful misconduct of the Adviser or its Affiliates.

(b) *Indemnification of the Adviser by the Trust.* To the fullest extent permitted by law, subject to this Section 16, the Adviser and its Affiliates shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by them in connection with the Trust; provided that such claims were not the result of gross negligence or misconduct on the part of the Adviser or its Affiliates, and the Adviser, in good faith, reasonably believed that such conduct was in the best interests of the Trust.

For the purposes of this Section 16, the term "Affiliates" shall mean any person acting on behalf of or performing services on behalf of the Trust who: (1) directly or indirectly controls, is controlled by, or is under common control with the Adviser; or (2) owns or controls 10% or more of the outstanding voting securities of the Adviser; or (3) is an officer of the Adviser; or (4) if the Adviser is an officer, director, partner or trustee, is any entity for which the Adviser acts in any such capacity.

Advances from the funds of the Trust to the Adviser or its Affiliates for legal expenses and other costs incurred as a result of a legal action will be made only if the Adviser or its Affiliates undertake to repay the advanced funds, with interest from the initial date of such advance, to the Trust in cases in which they would not be entitled to indemnification under the standard of liability set forth in Section 17(a).

In no event shall any indemnification obligations of the Trust under this subsection (b) of Section 16 subject a Certificateholder to any liability.

(c) *Indemnification by the Certificateholders.* In the event that the Trust is made a party to any claim, dispute or litigation or otherwise incurs any loss or expense as a result of or in connection with any activities of a Certificateholder, obligations or liabilities unrelated to the business of the Trust or as a result of or in connection with a transfer, assignment or other disposition or an attempted transfer, assignment or other disposition by a Certificateholder or an assignee of its Trust Certificates or of any part of its right, title and interest in the capital or profits of the Trust in violation of this Trust Agreement, such Certificateholder shall indemnify and reimburse the Trust for all loss and expense incurred, including reasonable attorneys' fees.

17. *Amendments; Meetings.*

(a) *Amendments with Consent of the Adviser.* If at any time during the term of the Trust the Adviser shall deem it necessary or desirable to amend this Trust Agreement, the Adviser may proceed to do so, provided that such amendment shall be effective only if embodied in an instrument approved by the Adviser and by the holders of Trust Certificates representing a majority, by dollar amount, of the outstanding Trust Certificates. The approval of the holders of a majority of the outstanding Trust Certificates may be granted in writing or by a vote taken at least 5 but not more than 60 days after delivery by the Adviser to each affected Certificateholder of record by certified mail of notice of the proposed amendment and voting procedures. Notwithstanding the following, the Adviser may amend this Trust Agreement without the consent of the Certificateholders in order (i) to clarify any clerical inaccuracy or ambiguity or reconcile any inconsistency (including any inconsistency between this Trust Agreement and the Private Offering Memorandum), (ii) to effect the intent of the allocations proposed herein to the maximum extent possible in the event of a change in the Code or the interpretations thereof affecting such allocations, (iii) to attempt to ensure that the Trust is not treated as an association taxable as a corporation for federal income tax purposes, (iv) to qualify or maintain the qualification of the Trust as a trust in any jurisdiction, (v) to delete or add any provision of or to this Trust Agreement required to be deleted or added by any federal agency or any state "Blue Sky" official or similar official, (vi) to make any amendment to this Trust Agreement which the Adviser deems advisable, provided that such amendment is for the benefit of and not adverse to the Certificateholders or the Trustee, or that is required by law, (vii) to make any amendment that is appropriate or necessary, in the opinion of the Adviser, to prevent the Trust or the Adviser or its directors, officers or controlling persons from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, and (viii) to make any amendment that is appropriate or necessary, in the opinion of the Adviser, to avoid causing the assets of the Trust from being considered for any purpose of ERISA or Section 4975 of the Code assets of any "employee benefit plan" as defined in and subject to ERISA, or a "plan" as defined in and subject to Section 4975 of the Code.

(b) *No Amendments without Consent of the Adviser.* Except as otherwise provided in Section 5, this Trust Agreement may not be amended without the approval of the Adviser.

(c) *Consent by Trustee.* The Trustee's written consent to any amendment of this Trust Agreement shall be required, such consent not to be unreasonably withheld, provided, however, that the Trustee may, in its sole discretion, withhold its consent to any such amendment that would adversely affect any right, duty or liability of, or immunity or indemnity in favor of, the Trustee under this Trust Agreement; or would cause or result in any conflict with or breach of any terms, conditions or provisions of, or default under, the charter documents or by-laws of the Trustee or any document contemplated hereby to which the Trustee is a party; provided, however, notwithstanding anything to the contrary contained in this Trust Agreement, the Trustee may immediately resign if, in its sole discretion, the Trustee determines that any amendment would adversely affect the Trustee in any manner.

18. *Governing Law.*

The validity and construction of this Trust Agreement shall be determined and governed by the laws of the State of Minnesota without regard to principles of conflicts of law; provided, that the foregoing choice of law shall not restrict the application of any state's securities laws to the sale of to its residents or within such state.

19. *Miscellaneous.*

(a) *Notices.* All notices under this Trust Agreement shall be in writing and shall be effective upon personal delivery, or if sent by first class mail, postage prepaid, addressed to the address set forth in Section 3 unless another address has been specified in writing, upon the deposit of such notice in the United States mails.

(b) *Binding Effect.* This Trust Agreement shall inure to and be binding upon all of the parties, their successors and assigns, custodians, estates, heirs and personal representatives. For purposes of determining the rights of any Certificateholder or assignee hereunder, the Trust and the Adviser and assignees, and all Certificateholders and assignees agree that their rights shall be determined and they shall be bound thereby.

(c) *Captions.* Captions in no way define, limit, extend or describe the scope of this Trust Agreement nor the effect of any of its provisions. Any reference to "persons" in this Trust Agreement shall also be deemed to include entities, unless the context otherwise requires.

20. *No Legal Title to Trust Estate.*

The Certificateholders shall not have legal title to any part of the Trust Estate.

21. *Legal Title.*

Legal title to all the Trust Estate shall be vested in the Trust as a separate legal entity; except where applicable law in any jurisdiction requires any part of the Trust Estate to be vested otherwise, the Adviser (or the Trustee, if required by law) may cause legal title to the Trust Estate of any portion thereof to be held by or in the name of the Adviser or any other person as nominee.

22. *Creditors.*

No creditors of any Certificateholders shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the Trust Estate.

IN WITNESS WHEREOF, the undersigned have duly executed this Trust Agreement as of the day and year first above written.

THE TRUSTEE:
First Trust National Association

By: *Deborah O. Hall*
Name: *Deborah O. Hall*
Title: *Vice President*

THE ADVISER:
Washington Square Advisers, Inc.

By: *[Signature]*
Name: Mark S. Jordahl
Title: Executive Vice President and
Managing Director

All Certificateholders now and hereafter admitted as Certificateholders of the Trust, pursuant to powers of attorney now and hereafter executed in favor of, and granted and delivered to, the Adviser.

By: *[Signature]*
Attorney-in-fact

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

OCT 05 2004

Mary Kiffmeyer
Secretary of State

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