

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Innovator Corporation

8/15/02

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other Washington

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date:

2. Name and address of receiving party(ies)

Name: First USA, Inc.

Internal Address: Edgar Taylor, Jr.

Street Address: 69500 Bannock Road

City: St. Clairsville State: OH Zip: 43950

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Ohio Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1,850,427

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Innovator Corporation

Internal Address: David Kovanen

Street Address: 1000 Town Center, Suite 1

City: Browns Point State: WA Zip: 98422

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

N/A

DO NOT USE THIS SPACE

9. Signature.

Brett A. Schatz

Name of Person Signing

Signature

8/13/02

Date

15

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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TRADEMARK ASSIGNMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

WHEREAS, Innovator Corporation, a corporation organized under the laws of the State of Washington, is owner of the mark FIRST.NET, including U.S. Trademark Registration No. 1,850,427, issued August 16, 1994 for the mark FIRST.NET, and all the goodwill associated with the foregoing; and

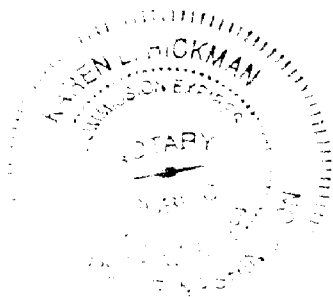
WHEREAS, First USA, Inc., having an office and principal place of business at St. Clairsville, Ohio, a corporation organized under the laws of the State of Ohio, is desirous of acquiring the entire right, title and interest in and to said mark;

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Innovator Corporation does hereby assign unto the said First USA, Inc. all right, title and interest of Innovator Corporation now held or hereafter acquired, in and to the said mark, together with the goodwill of the business symbolized by the mark, and the above-identified U.S. Trademark Registration No. 1,850,427 for said mark, and any divisional applications thereof.

By David J. Kovanen 8/8/02  
David J. Kovanen  
President

On the 8th day of August, 2002, before me personally appeared David J. Kovanen, personally known, who, being duly sworn, did say that he is President of Innovator Corporation; and that the foregoing instrument was executed on behalf of the corporation by authority of Innovator Corporation and said David J. Kovanen acknowledged the instrument to be the free act and deed of the corporation.

(SEAL)



[Signature]  
Notary Public

**COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT**

AGREEMENT, made by First USA, Inc., St. Clairsville, Ohio ("Borrower"), and Innovator Corporation, and its successors, assigns, and other legal representatives ("Secured Party").

WITNESSETH:

WHEREAS, Borrower and Secured Party are parties to a Purchase and Sale Agreement and Promissory Note, dated as of the date hereof and certain supplements, agreements, documents, and instruments entered into pursuant thereto (collectively, the "Loan Documents"), pursuant to which Secured Party may make certain loans and credit accommodations to Borrower; and

WHEREAS, Secured Party's willingness to enter into the Loan Documents and make the loans and credit accommodations available thereunder is subject to the condition, among others, that Borrower execute and deliver this Collateral Assignment and Security Agreement;

NOW, THEREFORE, in consideration of the promises contained herein for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in addition to, and not in limitation of, any rights of the Secured Party under the Loan Documents, Borrower hereby agrees for the benefit of Secured Party as follows:

1. DEFINITIONS.

1.1 All capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefore in the Purchase and Sale Agreement. In addition, the following terms shall have the meanings set forth in this Section 1 or elsewhere in this Security Agreement referred to below:

"PTO" shall mean the United States Patent and Trademark Office.

"Proceeds" shall mean any consideration received from the sale, exchange, license, lease, or other disposition or transfer of any right, interest, asset, or property which constitutes Trademark and Domain Name Collateral, any value received as a consequence of the ownership, possession, use, or practice of any Trademark and Domain Name Collateral, and any payment received from any insurer or other person or entity as a result of the destruction or the loss, theft, or other involuntary conversion, of whatever nature, of any right, interest, asset, or property which constitutes Trademark and Domain Name Collateral.

"Trade Name" shall be any the trade name utilized by First USA, Inc.

"Trademarks" shall mean all of the following now or hereafter owned or used by the Borrower:

(a) all trademarks of the United States or any other country, and all applications for trademarks of the United States or any other country;

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(b) all re-issues, continuations, divisions, continuations-in-part, renewals, or extensions thereof;

(c) the trademarks disclosed or claimed therein, including the right to make, use, practice, and/or sell or license or otherwise transfer or dispose of the trademarks disclosed or claimed therein; and

(d) the right (but not the obligation) to make and prosecute applications for such Trademarks.

Trademarks shall include but not be limited to FIRST.NET, U.S. Reg. No. 1,850,427, and the Domain Names.

"Domain Name" shall mean the following Internet registered names:

- (a) First.net
- (b) First.com
- (c) FirstNet.com
- (d) FirstNet.net
- (e) First.Net
- (f) FirstInternet.com

"Trademark and Domain Name Collateral" shall mean all of the Borrower's right, title, and interest in and to all of the Trademarks, the Trademark and Domain Name License Rights, and the Trademark Rights, and all additions and derivatives, improvements, and accessions thereto, all substitutions for and replacements of, and all products and Proceeds (including insurance proceeds) of any and all of the foregoing, and all books and records and technical information and data describing or used in connection with any and all such rights, interests, assets, or property.

"Trademark and Domain Name License Rights" shall mean any and all past, present, or future rights and interests of the Borrower pursuant to any and all past, present, and future licensing agreements in favor of the Borrower, or to which the Borrower is a party, pertaining to any Trademarks or Trademark Rights, owned or used by third parties in the past, present, or future, including the right in the name of the Borrower or Secured Party to enforce, sue, and recover for any past, present, or future breach or violation of any such agreements.

"Trademark Rights" shall mean any and all past, present, or future rights in, to, and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to the following: all such rights arising out of or associated with the Trademarks; the right (but not the obligation) to register claims under any federal, state, or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or bring cancellation proceedings in the name of the Borrower or the Secured Party for any and all past, present, and future infringements of or any other damages or injury to the Trademarks or the Trademark Rights, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present, or future infringement, damage, or injury; and the Trademark License Rights.

## 2. GRANT OF SECURITY; COLLATERAL ASSIGNMENT.

2.1 Grant of Security Interest. As collateral security for the complete and timely performance and satisfaction of all obligations of First USA, Inc. under this agreement and under the Purchase and Sale Agreement of even date, the Borrower hereby unconditionally grants to Secured Party a continuing security interest in and first priority lien on the Trademark and Domain Name Collateral and the Trade Name, and hereby pledges, mortgages, and hypothecates the Trademark and Domain Name Collateral and the Trade Name to Secured Party. Borrower hereby acknowledges that at no time shall any other security interest in, or lien on, the Trademark and Domain Name Collateral and the Trade Name have priority over that granted to Secured Party. Borrower hereby undertakes to maintain the Trademark and Domain Name Collateral and the Trade Name in such a manner such that at no time shall any other security interest in, or lien on, the Trademark and Domain Name Collateral and the Trade Name, have priority over that granted to Secured Party. Borrower further agrees to execute all documents necessary for Secured Party to establish and perfect a security interest in the Trademark and Domain Name Collateral and the Trade Name, including but not limited to a security agreement and promissory note in favor of Secured Party, its successor and assigns.

### 2.2 Collateral Assignment.

(a) In addition, and not by way of limitation of, the grant, pledge, mortgage, and hypothecation of the Trademark and Domain Name Collateral and the Trade Name provided in Section 2.1, to secure the complete and timely payment, performance, and satisfaction of all obligations of First USA, Inc. under this Agreement and under the Purchase and Sale Agreement of even date, the Borrower hereby grants, assigns, transfers, and conveys to Secured Party, BY WAY OF COLLATERAL SECURITY, the Borrower's entire right, title and interest in and to the Trademark and Domain Name Collateral and in the Trade Name. The foregoing grant, assignment, transfer, and conveyance shall be referred to from time to time herein as the "Section 2.2 Assignment." SECURED PARTY ASSUMES NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY EXCEPT RESULTING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(b) Unless and until there shall have occurred and be continuing an Event of Default and Secured Party has notified the Borrower that the license granted hereunder is terminated, Secured Party hereby grants to the Borrower the sole and exclusive, non-transferable, royalty-free, worldwide right and license under the Trademark and Domain Name Collateral to make, have made for it, use, sell, and otherwise practice the Trademarks and Domain Names for the Borrower's own benefit and account and for none other, with the right to prosecute and maintain Trademarks in the United States Patent and Trademark Office and in foreign countries and to utilize and commercially exploit the Domain Names through the Internet; provided, however, that the foregoing right and license shall be no greater in scope than, and limited by, the rights assigned to Secured Party by the Borrower hereby. The Borrower agrees not to sell, assign, transfer, or sub-license any of its rights or interests in the license granted to the Borrower in this Section 2.2(b), without the prior written consent of Secured Party; provided, however, that so long as no Event of Default shall have occurred and be continuing, the Borrower may license the Trademark and Domain Name Collateral in any lawful manner that is in the ordinary course of its business and is otherwise not inconsistent with the provisions of this Security Agreement or the Loan Documents. Any such sub-licenses

granted on or after the date hereof shall be terminable by Secured Party upon termination of the Borrower's license hereunder.

2.3 License. In addition to, and not by way of limitation of, all other rights of Secured Party and obligations of the Borrower pursuant to this Security Agreement and the other Loan Documents, upon the effectuation of a Section 2.2 Assignment, the Secured Party shall hold a fully-paid-up, worldwide right and license to make, use, practice, and sell (or license or otherwise transfer) the Trademark and Domain Name Collateral, for the exclusive purpose of, and to the extent necessary and sufficient for, the full and complete enjoyment and exercise of and realization upon the rights, remedies, and interests of Secured Party pursuant to this Security Agreement and the other Loan Documents.

2.4 Supplement to Loan Documents. The parties expressly acknowledge and agree that they have simultaneously executed and delivered the Loan Documents pursuant to which the Borrower unconditionally granted to Secured Party a continuing security interest in and first priority lien on the Collateral (including the Trademark and Domain Name Collateral). In no event shall this Security Agreement, the Section 2.2 Assignment of the Trademark and Domain Name Collateral hereunder, or the recordation of this Security Agreement (or any document hereunder) with the PTO, or any other governmental or public office or agency, adversely affect or impair, in any way or to any extent, the other Loan Documents, the security interest of Secured Party in the Collateral (including the Trademark and Domain Name Collateral) pursuant to the other Loan Documents, the attachment and perfection of such security interest under the Code, or the present or future rights and interests of Secured Party in and to the Collateral under or in connection with this Security Agreement, the other Loan Documents, and/or the Code. Any and all rights and interests of Secured Party in and to the Trademark and Domain Name Collateral (and any and all obligations of the Borrower with respect to the Trademark and Domain Name Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Secured Party (and the obligations of the Borrower) in, to, or with respect to the Trademark and Domain Name Collateral provided in or arising under or in connection with the other Loan Documents.

3. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE BORROWER. The Borrower represents and warrants to, and covenants and agrees with, Secured Party as follows:

3.1 Schedules of Trademarks and Licenses. Set forth in paragraph 1.1(d) above is a true and complete list of all Trademarks (excluding any trademarks for which trademark applications have not yet been filed). All licenses and other agreements applicable to the Trademarks are the valid and binding obligations of all of the parties thereto, enforceable against each of such parties in accordance with their respective terms (provided that, with respect to any such parties other than the Borrower and its affiliates, such representation and warranty is made to the best of the Borrower's knowledge and belief).

3.2 Title. Except as set forth in paragraph 3.1 above, the Borrower is and will, subject to license, continue to be the sole and exclusive owner of the entire legal and beneficial right, title, and interest in and to the Trademarks and the Trademark and Domain Name Collateral (other than the ownership and other rights reserved by the owners of the Licensed Trademarks), free and clear of any lien, charge, security interest, or other encumbrance, except for the security interest and conditional assignment created by this Agreement and the other

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Loan Documents, except for liens and encumbrances explicitly permitted pursuant to the Loan Documents. The Borrower will defend its right, title, and interest in and to the Trademarks, Domain Names and the Trademark Domain Name Collateral against any and all claims of any third parties.

3.3 **Validity and Enforceability.** The Trademarks and Trademark Rights related thereto are subsisting, have not been adjudged invalid or unenforceable.

3.4 **Exclusive Right to Use.** To the best of the Borrower's knowledge and belief, the Borrower has, and shall continue to have, the exclusive right to practice, make, sell, and use all the Trademarks and Domain Names, throughout the countries of issue, free and clear of any liens, charges, encumbrances, claims or rights of any third party, or restrictions on the rights of the Borrower to protect or enforce any of its Trademark Rights or Rights under the Domain Names against any third party.

3.5 **After-Acquired Trademark Collateral.** The Borrower agrees that, upon its commencement of use of or acquisition of any right, title, or interest in or to any Trademark or Trademark Right, other than the Trademarks or Trademark Rights set forth in paragraph 1.1(d) above (including any datives, reissues, continuations, divisions, continuations-in-part, renewals, or extensions thereof, or any variations or new versions of any such scheduled Trademarks and the Domain Names, Trademark Rights and Domain Names), the provisions of this Security Agreement shall automatically apply thereto; and the Borrower shall promptly notify Secured Party thereof (and for this purpose, Secured Party agrees that the Borrower may satisfy such notification obligation by providing to Secured Party, upon the use of a new trademark or upon the reasonable request of the Secured Party, up-to-date, amended and/or supplemented list set forth in paragraph 1.1(d) above). Secured Party shall be authorized to amend such list, as appropriate, to include such additional Trademarks and Trademark Rights, without the necessity for the Borrower's approval of or signature to such amendment, and the Borrower shall do all such other acts (at its own expense) deemed reasonably necessary or appropriate by Secured Party to implement or preserve Secured Party's interest therein (including, but not limited to, executing and delivering and recording in all places where this Security Agreement or notice hereof is recorded, an appropriate counterpart of or other instrument pursuant to this Security Agreement). Such additional Trademarks and Trademark Rights shall be automatically included in the "Trademarks" and "Trademark Rights" as defined herein, and all representations and warranties of the Borrower set forth herein shall be deemed to be restated by the Borrower as of the date of any such amendment of or supplement to said list, with the full force and effect as though made on such date.

3.6 **Maintenance Trademark and Domain Name Collateral.** The Borrower shall take any and all actions (including, but not limited to, institution and maintenance of suits, proceedings or actions) as are necessary or appropriate to properly maintain, protect, preserve, care for, and enforce the Trademark and Domain Name Collateral. Without limiting the generality of the foregoing, the Borrower shall pay when due such fees, taxes, and other expenses which shall be incurred or which shall accrue with respect to any of the Trademark and Domain Name Collateral. The Borrower shall not abandon or dedicate to the public any of the Trademarks or related Trademark Rights, nor do any act nor omit to do any act if such act or omission is of a character that tends to cause or contribute to the abandonment or dedication to the public of any Trademark or related Trademark Rights or loss of or adverse effect on any rights in any Trademark or related Trademark Rights, except in the ordinary course of its business in situations where the Borrower has ceased using the Trademarks or Trademark

Rights, and the Trademark and Domain Name Collateral has no continuing value. The Borrower shall promptly notify Secured Party of all maintenance activities. At the option of Secured Party, Secured Party shall have the right to participate in all maintenance activities, including but not limited to any suits in defense of the mark or to protect the trademark or domain name collateral. During the term of the Purchase and Sale Agreement and/or the Collateral Assignment and Security Agreement, no settlements shall be reached without first obtaining the prior written approval of Secured Party.

3.7 Enforcement of Licenses. The Borrower shall do all things which are necessary or appropriate to ensure that such licensee of any Trademark, in its use of any or all of the Trademark and Domain Name Collateral in its business, shall (a) comply fully with all applicable license agreements, and (b) satisfy and perform all the same obligations set forth herein (with respect to the Borrower's use of the Trademark and Domain Name Collateral) as fully as though such obligations were set forth with respect to such licensee's use of the licensed Trademark and Domain Name Collateral.

3.8 No Infringements. To the best of the Borrower's knowledge and belief, there is at present no material infringement or unauthorized or improper use of the Trademarks or related Trademark Rights. The Borrower shall use efforts consistent with past practices to detect any such infringement or unauthorized or improper use. In the event of any such infringement or unauthorized or improper uses by any third party has been reasonably established by the Borrower, the Borrower shall promptly notify Secured Party.

3.9 Filing for Perfection of Interest. Borrower shall cause this Security Agreement to be recorded with the PTO.

3.10 Collections. Except as otherwise provided in the Loan Documents, the Borrower shall continue to collect, at its own expense, all amounts due or to become due to the Borrower in respect of the Trademark Collateral or any part thereof; provided, however, that Borrower shall cause all such amounts to be paid over to the lock box account maintained by Borrower for the benefit of Secured Party in accordance with the Loan Documents.

3.11 Default. Upon the failure of First USA, Inc. to timely perform any obligation required under this agreement, it shall be in default and shall be considered an Event of Default ("Default"). The Default shall be immediate except for the case of late payment in which case IC shall provide notice to First USA and default shall not occur because of late payment until five (5) business days from said notice.

3.12 Remedies Upon Default; Secured Party's Right to Perform Borrower's Obligations. If the Borrower shall fail to do any act which is has covenanted to do hereunder or if any representation or warranty of the Borrower shall be breached, Secured Party, in its own name or that of the Borrower (in the sole discretion of Secured Party) may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and any cost or expense incurred by Secured Party in so doing shall be added to the principal amount of the obligations of First USA, Inc. under this agreement and under the Purchase and Sale Agreement of even date and shall bear interest at the rate applicable to overdue principal under the Loan Documents. The Borrower shall cooperate with Secured Party in any such act or remedy.



4. RIGHTS UPON AN EVENT OF DEFAULT.

4.1 Expanded Scope of Remedies. All remedies available to IC shall apply equally to any derivative or related Trademark or Domain Name containing "first", "1st", "FIRST", or "First", or any derivative or related term thereof, used commercially by First USA, Inc. during the term of the Purchase and Sale agreement or during any period of time that First USA, Inc. is in default under the Purchase and Sale Agreement, the Collateral Assignment and Security Agreement, or the Note.

4.2 Actions on Trademarks and Trademark and Domain Name Collateral. If any Event of Default shall have occurred and be continuing, then Secured Party shall have the right, as the true and lawful agent of the Borrower, with power of substitution for the Borrower and in the Borrower's name, Secured Party's name, or otherwise, for the use and benefit of Secured Party, (i) to notify any and all obligors with respect to the Trademark and Domain Name Collateral or any part thereof; (ii) upon notice from Secured Party, to receive, endorse, assign, and/or deliver any and all notes, acceptances, checks, drafts, money orders, or other evidences of payment relating to the Trademark and Domain Name Collateral or any part thereof; (iii) to demand, collect, sue for, and receive payment of, for its own use and account, and give receipt for and give discharges and releases of, all or any of the Trademark and Domain Name Collateral and all amounts due or to become due in respect of the Trademark and Domain Name Collateral; (iv) to sign the name of the Borrower on any invoice relating to any of the Trademark and Domain Name Collateral; (v) to commence and prosecute any and all suits, actions, or proceedings, at law or in equity, in any court of competent jurisdiction to collect or otherwise realize on all or any of the Trademark and Domain Name Collateral or to enforce any rights or remedies in respect of any Trademark and Domain Name Collateral; (vi) to settle, compromise, compound, adjust, or defend any actions, suits, or proceedings relating to or pertaining to all or any of the Trademark and Domain Name Collateral; (vii) to license, or to the extent permitted by any applicable law, sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis any of the Trademark and Domain Name Collateral throughout the world, for such term or terms, on such conditions, and in such manner as Secured Party shall determine (other than in violation of any then existing licensing arrangements to the extent that waivers or other adequate provision cannot be secured therefor); and (viii) generally to make, use, practice, sell, assign, transfer, pledge, make any agreement with respect to, or otherwise deal with all or any of the Trademark and Domain Name Collateral, and to do all other acts and things necessary to carry out the purposes of this Security Agreement and the Loan Documents, as fully and completely as though Secured Party were the absolute owner of the Trademark and Domain Name Collateral for all purposes; provided, however, that except as provided for by law or the Code or its equivalent in other jurisdictions, nothing herein contained shall be construed as requiring or obligating Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by Secured Party, or to present or file any claim or notice, or to take any action with respect to the Trademark and Domain Name Collateral or any part thereof, or the moneys due or to become due in respect thereof, or any property covered thereby, and no action taken by Secured Party or omitted to be taken with respect to the Trademark and Domain Name Collateral or any part thereof shall give rise to a defense, counterclaim, or offset in favor of the Borrower's claim or action against Secured Party. Whether or not Secured Party shall have so notified any obligors, the Borrower shall, at its expense, cooperate with Secured Party and render all reasonable assistance to Secured Party in enforcing claims against such obligors. It is understood and agreed that the appointment of Secured Party as the agent of the

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Borrower for the purposes set forth above in this Section 4.1 is coupled with an interest and is irrevocable.

4.3 Reassumption of Trademarks and Trademark and Domain Name Collateral. The Secured Party may at its option elect to take full re-possession of the Trademarks and Domain Name Collateral (plus any derivative or related properties) as fulfillment of Default, except that costs, fees, accrued interest shall still be due from First USA, Inc. If this option is elected then any amounts previous paid by First USA, Inc. shall be forfeited.

4.4 Other Remedies Upon Default. Upon the occurrence and during the continuation of an Event of Default, then, forthwith upon notice by Secured Party to the Borrower, in addition to all other rights and remedies of Secured Party, whether under law, the other Loan Documents, or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively, or concurrently, without notice to or consent by the Borrower, except as expressly provided otherwise herein), Secured Party's rights and remedies with respect to the Trademark and Domain Name Collateral shall include, but not be limited to, the following, without payment of royalty or compensation of any kind to the Borrower, except as expressly provided herein:

(a) The Borrower's license with respect to the Trademarks as set forth in Section 2.2(b) shall terminate, and the Borrower shall immediately cease and desist from the practice, manufacture, use, and sale (or license or other transfer) of the Trademarks.

(b) Secured Party may, to the same extent that the Borrower has the right to do so immediately prior to such notice, license or sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis, any of the Trademark and Domain Name Collateral, throughout the world, for such term or terms, on such conditions, and in such manner as Secured Party shall, in its sole discretion, determine.

(c) Secured Party may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right, but not the obligation to enforce) against any licensor, licensee, or sublicensee all Trademark License Rights of the Borrower, and take or refrain from taking any such action.

(d) Secured Party may, on one or more occasions at any time, with or without legal process and with or without previous notice or demand for performance, take possession of all tangible manifestations or embodiments of the Trademark and Domain Name Collateral and documentation relating thereto and all business records, documents, and files with respect to the Trademark and Domain Name Collateral and, without liability for trespass, to enter any premises where such tangible manifestations or embodiments, business records, documents, and files with respect to the Trademark and Domain Name Collateral may be located for the purpose of taking possession of or removing such tangible manifestations or embodiments, business records, documents, and files.

(e) In general, Secured Party may exercise, in respect of the Trademark and Domain Name Collateral, all of the rights and remedies provided under the other Loan Documents or otherwise, including, without limitation, all rights and remedies of a secured party on default under the Uniform Commercial Code (whether or not such Code applies to the affected Trademark and Domain Name Collateral).

4.5 No Obligation of Secured Party. Nothing herein shall be construed as obligating Secured Party to take any of the foregoing actions at any time.

4.6 Costs and Application of Proceeds. The Borrower agrees to pay when due all costs incurred in any license, assignment, sale, transfer, or other disposition of all or any portion of the Trademark and Domain Name Collateral to or by the Secured Party, including any taxes, fees, and reasonable attorneys' fees, and all such costs shall be added to the obligations of First USA, Inc. under this agreement or under the Purchase and Sale Agreement of even date. Secured Party may apply the Proceeds actually received from any such license, assignment, sale, transfer, other disposition, or other collection or realization, to the out-of-pocket costs and expenses thereof, including, without limitation, attorneys' fees and all legal, travel, and other expenses which may be incurred or paid by Secured Party in protecting or enforcing its rights upon or under this Security Agreement, the Trademark and Domain Name Collateral, the Collateral, or the Obligations, and any proceeds remaining shall be held by Secured Party as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Secured Party pursuant to Section 6) to the Obligations; and the Borrower shall remain liable and will pay the Secured Party on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid.

## 5. LIABILITIES, INDEMNITY AND COSTS.

5.1 Liability for Uses of Trademark and Domain Name Collateral. The Borrower shall be liable for any and all uses or misuses of and the practice, manufacture, sales (or other transfers or dispositions) of any of the Trademark and Domain Name Collateral by the Borrower and its affiliates and for any failure to take reasonable measures to avoid and prevent the improper use, practice or sale (or other transfer or disposition) of the Trademark and Domain Name Collateral by any other party (including but not limited to any licensee of the Trademarks), any failure to use or practice the Trademarks in accordance with this Security Agreement, or any other claim, suit, loss, damage, expense or liability of any kind or nature (except those resulting from any gross negligence or willful misconduct of Secured Party) arising out of or in connection with the Trademark and Domain Name Collateral or the production, marketing, delivery, sale, license or other transfer or disposition of the goods and services provided under or in connection with or which use, practice or incorporate any of the Trademarks or the Trademark and Domain Name Collateral prior to the termination of the Borrower's license pursuant to Section 4.2(a). The Borrower shall also be exclusively liable for any claim, suit, loss, damage, expense or liability arising out of or in connection with the fault, negligence, acts or omissions of the Borrower (regardless of whether such fault, negligence, acts or omissions occurred or occur prior to or after such license termination).

5.2 License Agreement Obligations. Nothing in this Security Agreement shall relieve the Borrower from any performance of any covenant, agreement or obligation of the Borrower under any license agreement now or hereafter in effect licensing any part of the Trademark and Domain Name Collateral, or from any liability to any licensee or licensor under any such license agreement or to any other party, or shall impose any liability on Secured Party for any act or omission of the Borrower in connection with any such license agreement.

5.3 Indemnification. The Borrower shall indemnify and hold harmless Secured Party from and against, and shall pay to Secured Party on demand, any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or

liabilities of any kind or nature (except those resulting from Secured Party's gross negligence or willful misconduct) arising in any way out of or in connection with this Security Agreement, the Trademark and Domain Name Collateral, custody, preservation, use, practice, operation, sale, license (or other transfer or disposition) of the Trademark and Domain Name Collateral, any alleged infringement of the intellectual property rights of any third party, the production, marketing, provision, delivery and sale of the goods and services provided under or in connection with or using or practicing any of the Trademarks or the Trademark and Domain Name Collateral, the sale of, collection from or other realization upon any of the Trademark and Domain Name Collateral, the failure of the Borrower to perform or observe any of the provisions hereof, or matters relating to any of the foregoing. The Borrower shall also indemnify and hold harmless Secured Party from and against any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities arising out of or in connection with any fault, negligence, act or omission of the Borrower (regardless of whether such fault, negligence, act or omission occurred or occurs prior to or after such license termination). The Borrower shall make no claim against Secured Party for or in connection with the exercise or enforcement by Secured Party of any right or remedy granted to it hereunder, or any action taken or omitted to be taken by Secured Party hereunder (except for the gross negligence or willful misconduct of Secured Party).

## 6. POWER OF ATTORNEY.

6.1 Grant. The Borrower hereby grants to Secured Party, and any officer or agent of Secured Party as Secured Party may designate in its sole discretion, a power of attorney, thereby constituting and appointing Secured Party (and Secured Party's designee) its true and lawful attorney-in-law and attorney-in-fact, effective upon the occurrence and during the continuation of an Event of Default, for the purpose of assigning, selling, licensing, or otherwise disposing of all right, title, and interest of the borrower in and to any of the Trademark and Domain Name Collateral. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

6.2 Irrevocable. The foregoing power of attorney is coupled with an interest and is irrevocable until this Security Agreement shall terminate.

6.3 Release. The Borrower hereby releases Secured Party from any claims, causes of action, and demands at any time arising out of or in connection with any actions taken or omitted to be taken by Secured Party under the power of attorney granted herein (except for the gross negligence or willful misconduct of Secured Party).

## 7. General Provisions.

7.1 Loan and Security Agreement Controls. This Security Agreement is supplemental to the Purchase and Sale Agreement, the terms of which, including, without limitation, the governing law provisions, and prohibitions of non-written waivers, the Borrower expressly accepts, confirms, and acknowledges are incorporated herein by reference. In the event of any irrevocable conflict between the provisions of this Security Agreement and the Purchase and Sale Agreement, the provisions of the Purchase and Sale Agreement shall govern.

7.2 Specific Enforcement. Due to the unique nature of the Trademark and Domain Name Collateral and in order to preserve its value, the Borrower agrees that the

Borrower's agreements, duties, and obligations under this Security Agreement shall be subject to specific enforcement and other appropriate equitable orders and remedies.

8. **Corporate Authority.** The parties entering into this Agreement represent that they have the necessary corporate authority, including but not limited to any required resolutions of the Board of Directors, Shareholders, Partners, or other obligors.

9. **Choice of Law:** This Agreement shall be governed for all purposes by the laws of the State of Washington. Prior to and including March 1, 2003, the Federal District Court for the Southern District of Ohio, Western Division, shall have sole jurisdiction over any disputes arising out of or related to this Agreement. After March 1, 2003, the Federal District Court for the Western District of Washington shall have sole jurisdiction over any disputes arising out of or related to this Agreement. Notwithstanding the foregoing, IC has the right to commence an action against First USA, Inc. before the Federal District Court for the Western District of Washington, either Tacoma or Seattle Division as elected by IC, as the exclusive jurisdiction and venue for any claim or cause of action arising out of or related to this Agreement. In the event litigation is initiated to enforce a Party's rights under this Agreement, the substantially prevailing party shall be entitled to recover its attorney fees and costs of litigation, including but not limited to costs associated with discovery, copying, expert witness expenses, and travel.

10. **Modification:** This Agreement shall not be modified or amended except by mutual consent of the Parties hereto. Any such modification or amendment shall be in writing and signed by all Parties. This present Agreement, however, is intended, to the extent it differs or conflicts with the original Agreement, to be a modification of that agreement. This Agreement shall bind the respective successors, assigns and heirs of the Parties.

11. **Headings:** The paragraph headings of this Agreement are for convenience of reference only and shall not be deemed to alter or effect any provision of this Agreement, or effect any construction of the Agreement of the Parties.

12. **Waiver:** The waiver of any breach of any provision, covenant or condition of this Agreement or the failure to enforce any such provision, covenant or condition hereof shall not operate or be construed as a waiver of any subsequent breach of any party and shall not operate as estoppel. All waivers shall be revocable unless otherwise agreed in writing.

13. **Severability:** If any term, covenant, condition, promise or provision of this Agreement or the application thereof to any person or circumstance, shall at any time or to any extent is held by a court of competent jurisdiction invalid or unenforceable then the remaining provisions of this Agreement shall not be effected thereby and shall be valid and fully enforceable to the fullest extent permitted by law.

14. **Arms Length:** This Agreement has been reached following arms-length discussion and negotiation between the Parties, and the Parties acknowledge and agree that their respective counsel have had the opportunity to review the terms hereof, and therefore, in the event there is a disagreement over the construction or interpretation of this Agreement, neither party shall be entitled to the rule of interpretation that in the event of an ambiguity, this Agreement shall be construed against the party drafting such agreement.

IN WITNESS WHEREOF, Borrower has caused this Security Agreement to be executed by its duly authorized officer as of the date first written above.

Agreed:

By Innovator Corporation

David J. Kovanen 8/8/02

David J. Kovanen, President

Date: 8/8/02

By First USA, Inc.

Ed Taylor

Ed Taylor, President

Date: 8/9/02

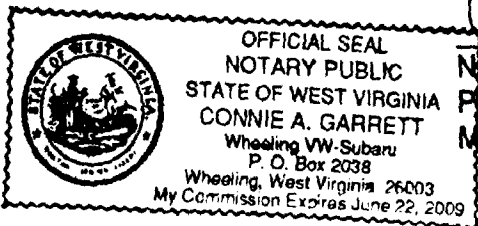
STATE OF OHIO )

County of Belmont )

ss.

I certify that I know or have satisfactory evidence that Edgar D. Taylor is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledge it as the President/CEO of First USA, Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: August 9, 2002.



Connie A. Garrett  
NOTARY PUBLIC  
Print Name: Connie A. Garrett  
My appointment expires: 6/22/09

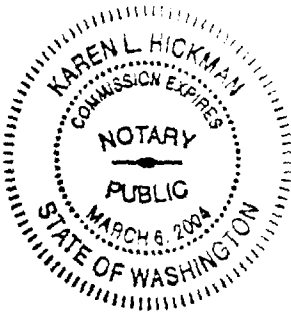
STATE OF Washington )

County of Pierce )

ss.

I certify that I know or have satisfactory evidence that David J. Kovanen is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath, stated that (s)he was authorized to execute the instrument and acknowledge it as the President of Innovator Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: Aug 8<sup>th</sup>, 2002.



Karen L. Hickman  
NOTARY PUBLIC  
Print Name: Karen Hickman  
My appointment expires: 3-6-04

*Handwritten initials: EDC, DK.*