

PATENT ASSIGNMENT

Electronic Version v1.1
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| SUBMISSION TYPE: | NEW ASSIGNMENT |
| NATURE OF CONVEYANCE: | Offer and Acceptance to Purchase Assets |
| CONVEYING PARTY DATA | |
| Name | Execution Date |
| Perry Krieger & Associates Inc. | 03/12/2005 |
| RECEIVING PARTY DATA | |
| Name: | Cornelius Pools Corp. |
| Street Address: | 15 Cushman Rd. |
| City: | St. Catharines, Ontario |
| State/Country: | CANADA |
| Postal Code: | L2M 6S7 |
| PROPERTY NUMBERS Total: 2 | |
| Property Type | Number |
| Patent Number: | 5522188 |
| Patent Number: | 6795985 |
| CORRESPONDENCE DATA | |
| Fax Number: | (703)448-7780 |
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| ATTORNEY DOCKET NUMBER: | L-7137 |
| NAME OF SUBMITTER: | John S. Hale |
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OFFER TO PURCHASE ASSETS

MADE BY:

CORNELIUS POOLS CORP., a corporation incorporated under the laws of the Ontario

(hereinafter called the "Purchaser")

TO:

Century
PERRY KRIEGER & ASSOCIATES INC., a corporation incorporated under the laws of the ~~Province of Ontario~~ solely in its capacity as receiver of the property and assets of North American Pool Company.

(hereinafter called the "Vendor")

WHEREAS:

- A. Century Services Inc. ("Century") intends to purchase the debt (the "Debt") and the security (the "Security") held by Canadian Imperial Bank of Commerce (the "Bank") over the assets, property and undertaking of North American Pool Company (the "Debtor").
- B. The Debtor is in default of its obligations to the Bank.
- C. The Bank has made written demand on the Debtor for the repayment of the Debt.
- D. The Bank has issued to the Borrower a notice of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act*.
- E. The Bank is currently in a position to enforce the Security.
- F. The Purchaser wishes to purchase the Purchased Assets.
- G. Pursuant to the Security, Century intends to have the Vendor appointed as receiver of the property and assets of the Debtor to enable the Vendor to have the right to convey the right, title and interest of the Debtor in and to the Purchased Assets as herein provided and to accept this Offer and complete the Transaction.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Offer, unless there is something in the subject matter or content inconsistent therewith:

- (a) **"Business"** means the businesses of the Debtor.
- (b) **"Business Day"** means any day except Saturday, Sunday or any statutory holiday in the Province of Ontario.
- (c) **"Closing"** means the completion of the Transaction at the Time of Closing.
- (d) **"Closing Date"** means the 1st day after the acceptance of this Offer by the Vendor or such earlier or later date as may be mutually acceptable to the parties hereto.
- (e) **"Purchased Assets"** means the property, assets and undertaking of the Debtor described in Section 2.1 which the Purchaser has offered to purchase pursuant to this Offer.
- (f) **"Time of Closing"** means 2:00 p.m., Toronto time, on the Closing Date or such other time on the Closing Date as may be agreed upon in writing by the parties.
- (g) **"Transaction"** means the transaction of purchase and sale pursuant to this Offer.
- (h) **"Vendor"** means Perry Krieger & Associates Inc. or such other receiver as Century or the Court may appoint over the Purchased Assets.

1.2 Construction

- (a) The division of this Offer into Articles, Sections, subsections, paragraphs and clauses and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Offer.
- (b) Words importing the singular number only include the plural and *vice versa* and words importing gender include all genders.
- (c) The terms, "this Offer", "hereof", "hereunder", and similar expressions refer to the whole of the agreement as results from the acceptance of this Offer, as it may be amended, modified, revised, supplemented or restated from time to time, and not to any particular Article, Section, subsection, paragraph or other portion of this Offer.
- (d) The terms, "any" and "or", are not exclusive.
- (e) The term, "including", means including without limiting the generality of any description preceding such term.

- (f) The term, "person", means any individual, corporation, company, partnership, unincorporated association, trust, joint venture, governmental body or any other legal entity whatsoever.
- (g) Unless otherwise expressly provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to and including".
- (h) Every reference to a party hereto shall extend to and include such party's heirs, executors, administrators, other legal representatives, successors and permitted assigns, as if specifically named.
- (i) Unless otherwise expressly provided in herein, any reference in this Offer to any law shall include any by-law, regulation, order, act or statute of any governmental body and shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto.
- (j) Amounts of currency expressed herein are, except as otherwise expressly provided, in lawful money of Canada.
- (k) All financial or accounting determinations, reports and statements provided for in this Offer shall be made or prepared in accordance with Canadian generally accepted accounting principles applied in a consistent manner and shall, unless otherwise expressly provided, be made and prepared on a consolidated basis.
- (l) Time shall be in all respects of the essence herein.
- (m) If any of the provisions of this Offer shall be held invalid or unenforceable by any court having jurisdiction, this Offer shall be construed as if not containing those provisions, and the rights and obligations of the parties hereto should be construed and enforced accordingly.
- (n) This Offer shall be governed by, and construed in accordance with, the internal laws of the Province of Ontario and the federal laws of Canada applicable therein (other than conflict of laws rules) and shall be treated in all respects as an Ontario contract.

1.3 Schedules

The following schedules form part of this Offer:

| | |
|------------|------------------------|
| Schedule A | Excluded Assets |
| Schedule B | Permitted Encumbrances |

1 Subject to the terms and conditions hereof, the Vendor agrees to sell, assign and
transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor all right, title and
interest (if any) of the Debtor and the Vendor in the Purchased Assets being more particularly
described as all personal property of the Debtor as the same exists at the Time of Closing
including, without limitation, ~~all other assets, including but not limited to, machinery, equipment, contracts,~~

... any and all rights in and to any patents, patent applications, copyright, moral right, trade-mark, trade name, logo, service mark, trade secret, know-how, business method or process, confidential information, industrial design or other intellectual property right of any kind, whether or not registered or registrable in Canada or in any other country in which such interest subsists), but (for certainty) excluding only the assets described in Schedule A hereto (the "Excluded Assets")

The Purchase Price shall be paid to the Vendor as follows:

- [illegible]

3

In the

[illegible]

3.4

The Purchase Price shall be allocated to the Purchased Assets as follows:

[REDACTED]

~~SECRET~~

3.5

3.6

3.6 In the event that the Vendor accepts this Agreement and the Transaction does not close through no fault of the [REDACTED], [REDACTED] is hereby authorized and directed to forthwith forward the Deposit and any interest earned thereon to the [REDACTED] which deposit shall be dealt with in accordance with the terms of an agreement between [REDACTED] and the Purchaser.

3.7

3.7 In the event that a party entitled by statutory right or otherwise to redeem the Purchased Assets exercises such rights and in fact redeems the Purchased Assets, then, Chaitons LLP is hereby authorized and directed to return the Deposit to the Purchaser forthwith together with any interest earned thereon at which time this Agreement shall be terminated and the parties hereto shall have no further liability to each other.

ARTICLE 4 ACKNOWLEDGEMENTS BY PURCHASER

The Purchaser acknowledges that:

- (a) it is purchasing the Purchased Assets on an "as is, where is" basis;
- (b) it has conducted its own investigations and inspections of the Purchased Assets and all matters and things connected with or in any way related to the Purchased Assets; it has relied entirely upon such investigations and inspections and has satisfied itself with respect to all such matters and things;
- (c) any information now or hereafter provided by the Vendor or [REDACTED] describing the Purchased Assets has or will have been prepared solely for the convenience of the Purchaser and is not warranted to be complete or accurate or correct; none of such information is a part of this Agreement;
- (d) except as expressly provided herein, there is no representation, warranty or condition, express or implied, statutory or otherwise, as to the Purchased Assets or the Debtor including title, outstanding liens or charges, assignability, amount owing, description, fitness for purpose, collectibility, merchantability, quantity, condition (including environmental condition), defect (patent or latent), existence, value, quality thereof, validity or enforceability of any rights (including intellectual property rights), any requirement for licences, permits, approvals, consents for ownership, occupation or use or in respect of any other matter or thing whatsoever;
- (e) to the extent that any of the Purchased Assets or any claim, right or benefit arising under or resulting from the Purchased Assets (collectively, "Rights") is not capable of being sold, transferred, conveyed or assigned without the approval, consent or waiver of any third party or if the sale, transfer or assignment of a Right is subject to confidentiality or non-disclosure restrictions or would constitute a breach of any obligation under, or a violation of, any law, unless the approval, consent or waiver of such third party is obtained, then, this Agreement shall not constitute an agreement to sell, transfer, convey or assign such Rights unless and until such approval, consent or waiver has been obtained. In this regard, no adjustment shall be allowed to the Purchaser; and
- (f) no adjustment shall be allowed to the Purchaser for changes to the Purchased Assets (whether in condition, quality, quantity or otherwise) from the date hereof to the Closing.

4.2 The Purchaser acknowledges that the Vendor acts solely in its capacity as the receiver of the property and assets of the Debtor, with no personal or corporate liability on the part of the Vendor, whether in contract, tort or otherwise.

4.3 The Vendor shall not be required to furnish or produce any document, record or evidence of title with respect to the Purchased Assets, except those in its possession.

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4.4 The Purchaser shall be responsible to satisfy all governmental requirements applicable to the transfer of the Purchased Assets and the use and ownership thereof by the Purchaser.

4.5 For greater certainty and notwithstanding the provisions of Sections 4.3 and 4.4, the Vendor shall, on a post-closing basis, execute, acknowledge and deliver all such further acts, conveyances, transfers and assurances (collectively, the "Assurances") as the Purchaser shall reasonably require and as the Vendor shall reasonably and legally be able to provide for the purpose of transferring all of the Debtor's and the Vendor's right title and interest (if any) in the Debtor's patents, trademarks and other intellectual property being purchased by the Purchaser. The Vendor shall be entitled to its standard hourly rate in respect of same and shall be paid such rate and be reimbursed for all of its reasonable legal fees prior to the final release any of the Assurances. This section 4.5 shall survive Closing for a period of one year.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 By its acceptance hereof, the Vendor represents and warrants to the Purchaser as follows:

- (a) the Vendor has been duly appointed by [REDACTED] as the receiver of the property and assets of the Debtor and the Vendor has the full right, power and authority to accept this Offer and to sell the Purchased Assets to the Purchaser in accordance herewith;
- (b) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
- (c) the Vendor has done no act to encumber the Purchased Assets or to sell or dispose of same except as may occur in the ordinary course of business;
- (d) this Offer has been duly authorized, executed and delivered by the Vendor and is a valid and binding obligation of the Vendor, enforceable in accordance with its terms; and
- (e) on Closing, all documents then delivered by the Vendor to the Purchaser shall have been duly authorized, executed and delivered by the Vendor and shall be a valid and binding obligation of the Vendor, enforceable in accordance with its terms.

5.2 The Purchaser represents and warrants to the Vendor as follows:

- (a) the Purchaser is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) the Purchaser has the corporate power and capacity to enter into and to perform its obligations under this Offer;

- (c) this Offer is not in contravention of or in conflict with any of the Articles of Incorporation or by-laws of the corporate Purchaser or any applicable law, rule, regulation, order or decree binding upon the Purchaser or to which any of its assets or properties are subject, and this Offer does not and will not constitute a default under any agreement by which the Purchaser is bound or to which any of its assets or properties are subject;
- (d) no action of, approval, authorization, consent or order of, and no designation, filing, further registration, qualification or recording with any governmental body is required to authorize or is otherwise required in connection with or for the execution, delivery or performance by the Purchaser of this, except as already obtained;
- (e) this Offer has been duly authorized, executed and delivered by the Purchaser and is a valid and binding obligation of the Purchaser, enforceable in accordance with its terms;
- (f) on Closing, all documents then delivered by the Purchaser to the Vendor shall have been duly authorized, executed and delivered by the Purchaser and shall be a valid and binding obligation of the Purchaser, enforceable in accordance with its terms; and
- (g) the Purchaser is not a non-Canadian within the meaning of the *Investment Canada Act* (Canada).

ARTICLE 6 CONDITIONS OF CLOSING

The Purchaser shall not be obliged to complete the Transaction unless, on or before the Time of Closing, each of the following conditions shall have been satisfied, it being understood that the conditions are included for the exclusive benefit of the Purchaser and may be varied in writing in whole or in part by the Purchaser at any time:

- (a) All of the terms, covenants and agreements set forth in this Offer to be complied with or performed by the Vendor on or before the Time of Closing shall have been complied with or performed by the Vendor.
- (b) The representations and warranties contained in Section 5.1 shall be true and complete as of the Closing Date, with reference to the facts subsisting on such date, as if made on such date.
- (c) The Vendor shall have delivered to the Purchaser a bill of sale on the Vendor's standard form conveying the Purchased Assets to the Purchaser.

The Vendor shall not be obliged to complete the Transaction unless, on or before Time of Closing, each of the following conditions shall have been satisfied, it being

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understood that the conditions are included for the exclusive benefit of the Vendor and may be waived in writing in whole or in part by the Vendor at any time:

- (a) All of the terms, covenants and agreements set forth in this Offer to be complied with or performed by the Purchaser on or before the Time of Closing shall have been complied with or performed by the Purchaser.
- (b) The representations and warranties contained in Section 5.2 shall be true and complete as of the Closing Date, with reference to the facts subsisting on such date, as if made on such date.
- (c) The Purchaser shall have delivered to the Vendor all of the following, in form and substance reasonably satisfactory to the Vendor, which the Purchaser undertakes to do on or before Closing:
 - (i) a certificate of corporate status of the Purchaser, issued by the applicable governmental authority of the jurisdiction of incorporation of the Purchaser; and
 - (ii) an officer's certificate of corporate authority of the Purchaser, confirming the corporate authority of the Purchaser to enter into this Offer and the Other Documents and to complete the Transaction, as to the incumbency of the signing officers and as to such other matters as the Vendor may reasonably require
 - (iii) a statutory declaration that the Purchaser is a registrant within the meaning of Part IX of the Excise Tax Act of Canada (the "Act") and that the Purchaser's registration is in full force and effect;
 - (iv) satisfactory evidence, as determined by the Vendor of the Purchaser's registration under the Act;
 - (v) an undertaking by the Purchaser to remit any tax eligible under the Act in respect of this transaction and to indemnify the Vendor against all loss, costs and damages resulting from the Purchaser's failure to do so;
 - (vi) the Purchaser's undertaking to adjust forthwith upon request, any proper adjustment omitted from the Statement of Adjustments and to re-adjust, if necessary, any adjustments set out in the Statement of Adjustments; and
 - (vii) such other documentation as the Vendor or its solicitors shall reasonably require.

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3 Neither the Vendor nor the Purchaser shall be obliged to complete the Transaction unless, on or before the Time of Closing, each of the following conditions shall have been satisfied (which may only be waived by the Vendor and the Purchaser jointly):

- (a) no order shall have been made by any court of competent jurisdiction which has the effect of restraining or prohibiting the Closing.
- (b) the Purchased Assets shall not have been redeemed pursuant to any statutory right or otherwise.

4 If any of the conditions contained in this Article 6 shall not have been fulfilled or performed at the Time of Closing and the party or parties entitled to waive the same shall not have done so, this Offer shall be deemed to be terminated without further act by the Vendor or the Purchaser and Chaitons LLP is hereby authorized and directed to return the Deposit to the Purchaser forthwith with any interest earned thereon and the parties hereto shall have no further liability to each other.

ARTICLE 7 PENDING CLOSING

The Purchaser shall offer employment to all unionized employees employed by the Debtor immediately prior to the receivership and shall assume all liability for any employee whose employment has not been continued by the Purchaser on Closing including, without limitation, liability for vacation pay, severance or termination pay. In this regard, the Purchaser shall assume any and all liability in respect of any statutory liens, deemed trusts or similar priority payables ranking in priority to the Vendor or Century.

2 The Purchased Assets shall remain at the risk of the Vendor to the extent of its interest until completion of the Transaction. Pending Closing, the Vendor shall hold all insurance policies and proceeds thereof in trust for itself, the Purchaser and all other parties as their respective interests may appear.

3 In the event of substantial damage to the Purchased Assets prior to the Closing the Purchaser may at its option:

- (a) complete the Transaction without reduction of the Purchase Price, in which event all proceeds of insurance shall be payable to the Purchaser; or
- (b) terminate this Offer.

Pending Closing, the Vendor shall not encumber the Purchased Assets or sell or dispose of any of them, except for the sale of inventory in the ordinary course of business.

ARTICLE 8 CLOSING PROCEDURES

Closing shall take place at the Time of Closing ~~at~~ at

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8.2 On or before the Time of Closing, the Vendor and the Purchaser shall take or cause to be taken all actions, steps and proceedings necessary or desirable to validly and effectively approve or authorize the completion of the transactions herein provided for and shall deliver to one another all documents as may be reasonably required to complete the Transaction; and, upon fulfillment of all the conditions set out in Article 6 which have not been waived in writing as therein provided, the Vendor shall release to the Purchaser possession of the Purchased Assets (other than such items not in the possession of the Vendor) and the Purchaser shall take possession of the Purchased Assets wherever located. The Purchaser shall pay to the Vendor the portion of the Purchase Price payable at the Time of Closing pursuant to the provisions of Article 3 hereof.

8.3 In case of the equipment leased to the Debtor or any other property located at the various business premises of the Debtor to which the Vendor in good faith believes another person to have a prior claim (including an equipment lessor), the Vendor shall not, regardless of the inclusion in the Purchased Assets of any interest of the Vendor therein, be required to deliver possession thereof to the Purchaser without the written consent of such other person.

8.4 Upon Closing, the Transaction shall, notwithstanding the actual Time of Closing, be deemed to have been effective at 12:01 a.m. on the Closing Date for the purpose of the determining the time of the transfer of ownership of the Purchased Assets, the risk of loss associated therewith and the benefit and burden of the operation of the Business thereafter.

ARTICLE 9 GENERAL

9.1 The representations, warranties and covenants contained in this Offer, in any schedule hereto, in any documents to be executed and delivered pursuant to this Offer and in any documents executed and delivered in connection with the Transaction shall not merge on Closing, and notwithstanding the Closing and notwithstanding any investigations made by or on behalf of the parties hereto, shall continue in full force and effect from the Closing Date.

9.2 The Purchaser shall not enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other corporation herein called a "successor corporation") *whether by way of reorganization, reconstruction, consolidation, amalgamation, merger, transfer, sale, disposition or otherwise*, unless prior to or contemporaneously with the consummation of such transaction the Purchaser and the successor corporation shall have executed such instruments and done such things as, in the opinion of counsel to the Vendor, are necessary or advisable to establish that upon the consummation of such transaction:

- (a) the successor corporation will have assumed all the covenants and obligations of the Purchaser under this Offer, and
- (b) this Agreement will be a valid and binding obligation of the successor corporation entitling the Vendor, as against the successor corporation, to all the rights of the

Vendor under this Agreement.

The Purchaser shall indemnify and save harmless the Vendor against and from all costs, damages and expenses (including without limitation legal expenses on a solicitor and client basis) which the Vendor may sustain, incur, or be or become liable for by reason of or arising from any claim of the lessors under equipment leases resulting from the delivery to the Purchaser on Closing of the equipment subject to the equipment leases. This Section 9.3 shall survive the Closing.

Any notice, direction or other instrument required or permitted to be given to the Lessor hereunder shall be in writing and may be given by mailing the same postage prepaid or delivering the same addressed to the parties at the following address:

(a) to the Vendor at:

[REDACTED] C.

[REDACTED]

[REDACTED] 5

~~ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED~~
~~DATE 11-14-2001 BY 60322 UCBAW~~

(b) to the Purchaser at:

[REDACTED]

[REDACTED]

9.5 Any dispute arising out of or in connection with this Offer shall in accordance with the *Arbitration Act, 1991* (Ontario) be referred to and finally resolved by a single arbitrator without appeal to any court. If the parties are unable to agree upon the selection of the arbitrator, the arbitrator shall be appointed by the Court in accordance with the provisions of the said Act. Judgement upon the arbitration award may be entered in any court having jurisdiction over the matter. The arbitration shall take place in the City of Toronto, Canada.

9.6 This Offer supersedes all prior agreements and understandings relating to the subject matter hereof between any of the parties hereto and represents the entire transaction between the parties with respect thereto. Except as expressly set out herein or in any document delivered pursuant hereto, there are no representations, warranties or conditions, written or oral, express or implied, statutory or otherwise, concerning the subject matter hereof. No party hereto has relied on any express or implied representation, written or oral, of any person as an inducement to enter into this Offer.

9.7 Neither this Offer nor any provision hereof may be changed, waived, discharged or terminated except by instrument in writing, signed by the parties or by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9.8 Each of the parties represents and warrants to each other party that such party has not taken, and agrees that it will not take, any action that would cause any other party to become liable for any claim or demand for a brokerage commission, finder's fee or similar payment.

9.9 Each party shall pay all costs, charges and expenses, including fees and expenses of legal advisers, accountants and other professional advisers, incurred by such party in connection with this Agreement.

9.10 This Offer and the Other Documents may be executed in any, number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of this Offer or of any Other Document may be made by facsimile transmission. The sender undertakes to deliver promptly to each recipient an original of this Offer or such Other Document executed by the sender.

9.11 The parties shall not publicly announce the existence of this Offer or disclose any of its contents except:

- (a) in accordance with a written public statement or other form of disclosure satisfactory to all parties;
- (b) as required in connection with the application for order of the Court mentioned in Article 6 or the duties of the Vendor; or
- (c) as required by law.

9.12 The parties hereto shall, at the expense of the requesting party, sign such further and other papers, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full force and effect to this Offer and every part thereof.

9.13 Any tender of documents or money hereunder may be made upon the Vendor or the Purchaser or any party acting for them and money may be tendered by a negotiable cheque certified by a Canadian chartered bank or trust company.

9.14 This Offer shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

This Offer is irrevocable and shall remain open for acceptance until 5 p.m. (Toronto time) on the 16th day of March, 2005, and may be accepted by the Vendor up to that time by notice given in accordance with Section 9.4 whereupon a binding agreement of purchase and sale will be constituted between the Vendor and Purchaser as set forth above. Failing acceptance as aforesaid, this Offer shall thenceforth be null and void.

DATED at Toronto this 16 day of March, 2005.

CORNELIUS POOLS CORP.,

Per: 

Name:

Title:

ACCEPTED this 12 day of March, 2005.

Perry Krieger & Associates Inc. solely in its
capacity as receiver of the property and assets of
North American Pool Company and not in its
personal or corporate capacity

Per:

Name:

Title:

ASU.
PERRY KRIEGER
PRESIDENT

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**SCHEDULE A
EXCLUDED ASSETS**

1. [REDACTED] SECURITY INTEREST (PURCHASE MONEY) OR
[REDACTED]
2. [REDACTED]

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