

**WORKFORCE HOUSING AGREEMENT,  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND OPTION TO PURCHASE**

This Workforce Housing Agreement, Declaration of Covenants, Conditions and Restrictions and Option to Purchase (“Agreement”) is entered into by and between the **CITY OF PORTLAND**, a public body corporate and politic with a mailing address of 389 Congress Street, Portland, Maine 04101 (“City”) and **STROUDWATER DEVELOPMENT PARTNERS, LLC**, a Maine Limited Liability Company with a mailing address of 40 South Street, Suite 305, Marblehead, Massachusetts 01945 (“Developer”).

**W I T N E S S E T H**

WHEREAS, the City has established a workforce housing requirement (the “Workforce Housing Ordinance”) in the Affordable Housing provisions of its Land Use Ordinance (Portland City Code §§ 14-484 to 488), and related regulations promulgated by the City’s Planning Board, which is intended to encourage production of housing that is affordable for households with moderate income; and

WHEREAS, Developer owns property located on 1700 & 1714 Westbrook Street, in the City of Portland, Maine, which property is more particularly described in Exhibit A, attached hereto and made a part hereof (the “Property”); and

WHEREAS, Developer plans to construct a development project consisting of a minimum of 124 home ownership units, over three phases, on the property (the “Development”); and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer has agreed and hereby agrees to certain restrictions on the resale of the Property, including restrictions on the price for which certain units within the Development may be sold, the parties who may purchase units within the Development, occupancy restrictions, and the grant of an option to purchase certain units within the Development to the City, all on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S. § 121 et seq.; and

WHEREAS, on November 28<sup>th</sup>, 2017, the City’s Planning Board approved the Development, on the condition that Developer provide a minimum of 12 affordable home ownership units in accordance with the Workforce Housing Ordinance (the “Workforce Units”); and

WHEREAS, in accordance with Section 14-487(e)(1) of the Workforce Housing Ordinance, the Workforce Units shall be provided in proportion to the development of market rate units such that in the currently approved phasing plan, Phase I shall include a minimum of four (4) Workforce Units, Phase II shall include a minimum of five (5) Workforce Units; and Phase III shall include a minimum of three (3) Workforce Units; and

WHEREAS, pursuant to Section 14-487(e)(3) of the Workforce Housing Ordinance, each phase will provide ten percent (10%) of the total number of bedrooms in each respective phase in affordable units, and the final bedroom count of affordable units shall be 10% of the total number of bedrooms of the Development; and

WHEREAS, the location of the Workforce Units within the development project is further described on the Subdivision Plan of Stroudwater Preserve in Exhibit C, attached hereto and made part hereof; and

WHEREAS, in order to fulfill the provisions of the Workforce Housing Ordinance, Developer hereby agrees to certain restrictions on the sale Workforce Units on the terms and conditions hereinafter provided and in accordance with Maine law, including 33 M.R.S.A. Sec. 121 *et seq.*;

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, the City and the Developer hereby agree as follows:

1. **Parties' Intent.** The terms and conditions contained herein have been freely and voluntarily accepted by the parties, each with the independent and informed advice of legal counsel. The provisions and restrictions contained herein exist to further the mutual purposes and goals of Developer and the City set forth herein to create and preserve access to decent and affordable housing and home ownership opportunities for moderate-income people in the City of Portland. It is the express understanding and intent of the parties that the terms and conditions hereof will enhance the marketability of the Workforce Units by making the Workforce Units affordable to moderate income families who, without such provisions, would be unable to afford property in the City similar to the Workforce Units.

2. **Enforceability of Covenants.** The covenants and restrictions set forth herein are intended to be and shall be considered covenants that run with the real estate described in Exhibit A attached hereto and made a part hereof and shall bind all subsequent owners and holders of any interest in said real estate, except to the extent herein provided. The City may enforce the covenants set forth herein as a contract beneficiary. The covenants set forth herein shall survive a sale, transfer, or other disposition of the Development by Developer and shall survive a foreclosure or transfer of title in lieu of foreclosure but shall cease to apply to the Development in the event of involuntary noncompliance caused by substantial destruction, seizure, requisition, or change in law or an action of a governmental agency that prevents the City from enforcing the covenants, even though compensated by insurance.

3. **Transfer to Qualified Buyer.** Except as may be set forth herein, Developer may sell, transfer, or otherwise dispose of a Workforce Unit only to a Qualified Buyer, as that term is defined herein. Any purported sale, transfer or other disposition to any other person or entity done without following the procedures set forth below, or in violation of the price limitations set forth

below, shall be ***null and void***. For purposes hereof, the parties agree that the term “**Qualified Buyer**” means a moderate-income person or household with a gross income not exceeding 120% of the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size as calculated by the City and which person or household must intend to and in fact occupy the Workforce Unit as their primary residence on a continuing basis. A Qualified Buyer shall occupy the Workforce Unit as its primary residence. Workforce Units may not be rented out by the Developer, or subletted by a Qualified Buyer, for short or long-term periods during the term of this Declaration.

4. **Transfer to Owner’s Heirs.** If the Developer or any subsequent owner should die still owning a Workforce Unit, then upon receipt of notice from the personal representative of the decedent’s estate given within ninety (90) days of the death of such owner (or the last surviving co-owner if the Workforce Unit was owned in joint tenancy), the City shall, except for good cause shown, consent to a transfer of the Workforce Unit to one or more of the following:

- A. the spouse of the deceased owner (in cases where such spouse was not a joint tenant with owner); or
- B. the child or children of the deceased owner; or
- C. member(s) of the deceased owner’s household who have resided in the Workforce Unit for at least three years prior to the owner’s death.

Any subsequent transfer by a transferee under A, B, or C, above, shall be subject to the terms of this Agreement.

5. **Notice to the City; Procedure for Sale; City’s Option to Purchase.**

A. In each instance that Developer intends to effect a sale, transfer or disposition of the a Workforce Unit to a third party, then prior to listing a Workforce Unit for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of a Workforce Unit, Developer shall first give the City written notice of such intent (the “**Notice of Intent**”) addressed to the City at the address set forth below or at such other address as the City shall provide to Developer by written notice.

B. Within ten (10) days of receiving the Notice of Intent, the City shall determine (1) the qualifications and income guidelines for a Qualified Buyer hereunder, and (2) Developer’s “**Maximum Allowable Price**” as determined under Section 5, below. The City shall communicate the results of such determinations to Developer within said ten (10) day period (the “**Notice of Determination**”).

C. Developer shall market Workforce Units to Qualified Buyers at a price not to exceed the Maximum Allowable Price. The City shall have the right in all cases to determine whether a proposed buyer is a Qualified Buyer, as defined herein. The City shall have ten (10) days from the date it receives all information about a prospective buyer

necessary to determine if Developer's prospective buyer is indeed a Qualified Buyer hereunder. Developer shall contractually require such potential buyers to provide the City with whatever reasonable information the City requests in order to make the determinations required under this subsection. To the extent permitted by law, all information provided regarding any prospective Qualified Buyer shall be kept and maintained in confidence by the City. The Qualified Buyer shall sign, acknowledge and agree to be bound by the terms and conditions of this Workforce Housing Declaration of Covenants, Conditions, Restrictions and Option to Purchase for Owner Occupied Units in substantially the same form as that attached hereto as **Exhibit B** (the "Buyer's Agreement") and, as part of the purchase of any of the Workforce Units, shall assume, in writing, all of the obligations of the "Developer" hereunder with respect to said Workforce Unit. The Buyer's Agreement shall be recorded in the Cumberland County Registry of Deeds concurrently with the deed from the Developer conveying the Workforce Unit. The Developer shall not be liable for the Qualified Buyer's performance of its obligations under the Buyer's Agreement.

D. In the event that Developer is unable to find a ready, willing and able Qualified Buyer after marketing any Workforce Unit for at least 180 days (such period being the "**Restricted Period**") following City's Notice of Determination, the Developer then shall notify the City that it wants to market that Workforce Unit to non-Qualified Buyers. Developer grants to City the option to purchase the particular Workforce Unit after the expiration of the Restricted Period on the terms set forth below

(i) Developer must establish, to the City's reasonable satisfaction, that Developer made good faith efforts to market the Workforce Unit for the entire Restricted Period for sale to Qualified Buyers at a price not in excess of the Maximum Affordable Price;

(ii) Upon a determination by City of such marketing efforts, which the City shall make within ten days after the last day of the Restricted Period, the City has thirty (30) days to decide if it will exercise its option to purchase the Workforce Unit for the Maximum Allowable Price.

(iii) If the City decides to exercise its option to purchase, it shall provide a notice of exercise of the option (the "Notice to Exercise") to the Developer. Failure to provide a Notice to Exercise within thirty (30) days of the determination that good faith efforts have been made to market the Workforce Unit to Qualified Buyers shall cause the City's option to expire.

(iv) The City shall consummate its purchase of a Workforce Unit pursuant to this paragraph within thirty (30) days of the date of service of the Notice to Exercise (the "City Closing Period"). Developer shall cooperate fully in City's efforts to acquire the Workforce Unit and shall take all reasonable steps necessary to clear any title defects. If the City fails to close on the Workforce Unit within the City Closing Period for any reason other than liens voluntarily placed on the Workforce Unit by Developer, then Developer shall immediately be free to sell the Workforce Unit to a non-Qualified Buyer.

E. If the City decides not to exercise its option to purchase a Workforce Unit (including as a result of a failure to give a Notice to Exercise), Developer shall be free to sell that Workforce Unit to a non-Qualified Buyer at any such agreed sale price provided however, that to the extent the agreed sale price exceeds the Maximum Allowable Price (as determined pursuant to Section 6 below), then any amount between the actual sale price and the Maximum Allowable Price (the “Excess”) shall be paid to the City at the time of the closing on the sale of the Workforce unit, and such Excess is to be set aside for affordable housing purposes by the City. Upon the payment of the Excess, if any, Developer and Developer’s heirs, successors and assigns, shall thereafter be free to sell the Workforce Unit free of the terms and conditions of this Agreement, which shall be deemed terminated as to such Workforce Unit.

F. At the request of Developer, and provided there has been full compliance by Developer with the terms of this Agreement, the City shall execute a written statement in recordable form acknowledging such compliance, including compliance with a sale of a Workforce Unit which results in the release of the Developer and the Workforce Unit from the terms of this Agreement.

6. **Determination of Maximum Allowable Price.** The Maximum Allowable Price for purposes of this Agreement shall be the highest price affordable to a **moderate** income person or household as determined by the City pursuant to the definition of “affordable” contained in Division 30 (Section 14-483 et seq.) of the City’s Land Use Ordinance and under the implementing regulations adopted in accordance with such Ordinance by the Portland Planning Board as of the month in which the Developer signs any purchase and sale agreement with a Qualified Buyer, another buyer (as permitted under this Agreement) or the City (pursuant to the City’s exercise of its option).

7. **Construction and Duration.** The covenants contained herein shall run with the Property and shall be perpetual. Developer covenants and agrees for him/her/its self, his/her/its heirs, personal representatives and assigns that the rights and restrictions contained herein shall be for the benefit of the City, its successors and assigns, and shall be binding on all future purchasers of a Workforce Unit in the Development. Developer and the City agree and intend that this Agreement and the covenants contained herein are to be interpreted as “Affordable Housing Covenants” as defined by 33 M.R.S.A. § 121 and satisfy the provisions of Section 14-484 to 488 of the City’s Workforce Housing Ordinance.

8. **Applicability of This Agreement to Mortgagees.** Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall not apply to the following types of transfers of a Workforce Unit:

- A. Transfers by the Developer to a mortgagee in lieu of foreclosure;
- B. Transfers by a mortgagee immediately following a transfer to such mortgagee by

deed in lieu of foreclosure;

- C. Transfers by a mortgagee of Developer pursuant to and as a result of a foreclosure judgment and sale;
- D. Transfers by a mortgagee immediately following a transfer to such mortgagee as a result of a foreclosure; or
- E. Transfers by the transferee of any transfer described in subsection C above which results from a mortgage servicing relationship between a servicing lender and a governmental entity serving as a secondary market mortgage purchaser;

*provided, however*, that this Agreement shall apply in full to all subsequent transfers of a Workforce Unit not described in subsections A through E of this Section 8, and any such subsequent transferees shall own a Workforce Unit as an “Owner” subject in all respects to all of the terms and conditions of this Agreement. The provisions in this paragraph shall apply in the same manner to all subsequent holders of mortgages on the Property.

9. **Other Requirements Incorporated into this Agreement.** In addition to the above restrictions, the Workforce Units shall be subject to the standards applicable to “Workforce housing unit for sale” set forth in Division 30, Section 14-484 et seq. of the City’s Workforce Housing Ordinance and applicable regulations, including without limitation, that preference shall be given first to individual Qualified Buyers who have not previously owned and occupied a residence, next to current residents of the City of Portland who have lived in Portland as their primary residence for the past two years, next to previous residents of the City of Portland who have been displaced within the past 12 months prior to the Workforce Unit becoming available, next to full time employees of the City, and finally, all others all as designated by the City in regard to the Developer’s sale of the Workforce Units.

10. **Disbursement of Insurance and Eminent Domain Proceeds.** In the event Developer receives proceeds as a result of a complete eminent domain taking of a Workforce Unit, Developer and the City shall share in such proceeds such that Developer shall receive an amount equal to no more than the Maximum Allowable Price as determined under Section 6 above, with the City receiving the balance of the proceeds, if any.

If a partial eminent domain taking occurs or if Developer receives any insurance proceeds as a result of any casualty loss to a Workforce Unit, then the parties shall share in the proceeds on a pro-rata basis, with Developer receiving a percentage of the Maximum Allowable Price based on the diminution of value of any Workforce Unit, with the City receiving the balance of the proceeds, if any.

11. **Miscellaneous.** Any sale or transfer conducted contrary to the terms and conditions contained herein shall be null and void. All sales or transfers of the Workforce Units shall be subject to all terms and conditions contained herein.

If any portion of this Agreement is declared unenforceable by a court of competent jurisdiction, such declaration shall not affect the validity or enforcement of the remaining provisions hereof.

Notices hereunder shall be in writing and, sent by first class mail, certified, return receipt requested, or by nationally recognized overnight courier services addressed to the recipient at the address set forth below:

If to the City:

89 Congress Street, Portland, Maine, 04101  
attention Housing and Community Development Office

*With mandatory simultaneous Copy to:*  
City of Portland, Office of the Corporation Counsel

If to the Developer:

Stroudwater Development Partners, LLC  
C/O JHR Development, LLC  
Attn: J. Hilary Rockett, Jr., Manager  
40 South Street, Suite 305  
Marblehead, MA 01945

*With mandatory simultaneous copy to:*  
Jason G. Howe, Esq.  
Bergen & Parkinson, LLC  
62 Portland Road, Suite 25  
Kennebunk, ME 04043

James B. Heffernan  
Rich May, P.C.  
176 Federal Street  
Boston, MA 02110-0223

If the Developer shall change addresses, it shall give notice of the new address in the manner provided in this paragraph.

In Witness Whereof, this Affordability Agreement and Declaration has been duly executed by the Developer and City as of May 24, 2018

**CITY OF PORTLAND**

Sonia Bean  
Witness

By: J.P. Jennings  
Name: Jon P. Jennings  
Its City Manager

APPROVED AS TO FORM:  
JLK  
CORPORATION COUNSEL'S OFFICE

State of Maine  
Cumberland, ss.

May 24, 2018

Personally appeared the above named Jon P. Jennings, City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Sonia T. Bean  
Notary Public/Attorney-at-Law

(Print or type name)

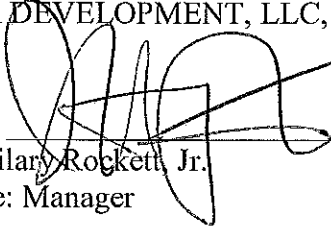
**SONIA T. BEAN**  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
April 8, 2024



**STROUDWATER DEVELOPMENT PARTNERS, LLC**  
BY: JHR DEVELOPMENT, LLC, ITS MANAGER

Witness



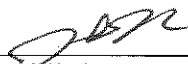
By:   
J. Hilary Rockett, Jr.  
Title: Manager

**State of Maine**  
**Cumberland, ss.**

Dated May 17, 2018

Personally appeared the above named JHR Development, LLC manager to Stroudwater Development Partners, LLC, by and through its manager, J. Hilary Rockett, Jr. duly authorized, who acknowledged the foregoing instrument to be his free act and deed in his said capacity, and thereby, the free act and deed of the said Stroudwater Development Partners, LLC by and through its manager JHR Development, LLC.

Before me,

  
\_\_\_\_\_  
Notary Public/Attorney-at-Law

Jason C. Howe, Esq.  
\_\_\_\_\_  
(Print or type name)

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Parcel One

A certain lot or parcel of land, together with the buildings thereon, situated in Portland, in the County of Cumberland and State of Maine, in that part of Portland which was formerly Deering, on the southerly side of the road leading from Stroudwater Village, so-called, to Westbrook formerly called Saccarappa; being all and the same property which was conveyed to Allura S. Castner by Rufus T. Boothby and Frank P. Tibbetts, et als., by their deeds or warranty dated March 11, 1899, as recorded in the Cumberland County Registry of Deeds in Book 671, Pages 424 and 425, said property being bounded and described in said deeds as follows:

Northerly by said road, easterly by land now or formerly of M. H. Dole and land of the heirs of M. Quimby, southerly by the Stroudwater River and westerly by land now or formally of Royal Burnham, containing forty-eight (48) acres, more or less, reference being made to said deeds and the record thereof for a more particular description of the premises.

Excepting from the above described premises those parcels of land conveyed by the grantor by the following conveyances: On June 7, 1938 to Carroll E. Hackett; recorded in the Cumberland County Registry of Deeds in Book 1548, Page 418; on April 25, 1949 to Grenville F. Allen et al., recorded in said Registry of Deeds in Book 1952, Page 354; on May 28, 1954 to Portland Water District recorded in said Registry of Deeds in Book 2198, Page 386; on July 14, 1955 to Frederick A. Butts et al., recorded in said Registry of Deeds in Book 2236, Page 405; on November 4, 1956 to Rosamond J. Allen, recorded in said Registry of Deeds in Book 2325, Page 358; on November 14, 1957 to Rosamond J. Allen, recorded in said Registry of Deeds in Book 2386, Page 205.

This conveyance is made subject to a right of way over the above described land taken by the Portland Pipe Line Corporation by condemnation proceedings and recorded in the Cumberland County Registry of Deeds in Book 1655, Page 294 to which reference is hereby made.

This conveyance is also subject to an easement granted to the Portland Water District recorded in the Cumberland County Registry of Deeds in Book 1399, Page 462 to which reference is hereby made.

This conveyance is also made subject to an easement for a sewer pipe granted to Frederick A. Butts et al. in deed recorded in the Cumberland County Registry of Deeds in Book 2236, Page 405.

Also excepting and reserving from the above described premises another certain lot or parcel of land adjoining and to the south of land of Lillian E. Hackett, formerly of Carroll E. Hackett mentioned above. Said lot or parcel or land being bounded and described as follows: Beginning at the southwest corner of said Hackett land; thence southerly projecting the line marking the western boundary of the said Hackett land and which projection would form a 90 degree angle with said Westbrook Street, one hundred (100) feet to an iron stake; thence at an angle of 90 degrees 46' easterly ninety-seven and sixty-two hundredths (97.72) feet to an iron stake; thence northerly one hundred (100) feet to a stake at the southeasterly corner of said Hackett land; thence westerly ninety-seven and sixty-two hundredths (97.62) feet along southern boundary of said Hackett land to the point of beginning.

Being the same premises conveyed to Stroudwater Development Partners, LLC by Deed dated March 26, 2018 and recorded in the Cumberland County Registry of Deeds in Book 34733, Page 76.

#### Parcel Two

A certain lot or parcel of land, situated in Portland, Cumberland County, Maine and bounded and described as follows:

BEGINNING on the southeasterly side of Westbrook Street at a fir stump marked at the corner of land now or formerly of one Leavitt;

THENCE southeasterly by said Westbrook Street, ten (10) chains and sixty-three (63) links to land formerly of Solomon Conant, et als;

THENCE southerly by said Conant Land twenty (20) chains eighty-seven (87) links to the Stroudwater River, across said river to land formerly of James Trickey, et als;

THENCE westerly by said River by said Trickey land and land formerly of George B. Leavitt to a stake;

THENCE by Leavitt land North 12° East (subject to variations since established) twenty-seven (27) chains and ninety-two (92) links to the first mentioned bounds, containing thirty (30) acres, more or less.

Excepting from the above-described premises those portions conveyed to Maine Turnpike Authority by Maurice S. Tomlinson, et al, by deed dated February 11, 1954 and recorded in the Cumberland County Registry of Deeds in Book 2166, Page 135; and by deed dated September 2, 1954, and recorded in said Registry of Deeds in Book 2166, Page 135.

Excepting from the above-described premises the parcel with a house thereon conveyed to Andrew D. Green and Judith C. Green by deed dated March 4, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11319, Page 55.

Excepting from the above-described premises the 1 acre parcel conveyed to Andrew D. Green by deed dated December 20, 2004, and recorded in the Cumberland County Registry of Deeds in Book 22163, Page 81. Regarding this exception, further reference is made to a certain Agreement Concerning Marital Property recorded in said Registry in Book 22163, Page 80, and a certain Abstract of Divorce recorded in said Registry in Book 22735, Page 32.

Being the same premises conveyed to Diversacorp, LLC by Deed from Judith A. Caminiti, f/k/a Judith C. Green dated February 17, 2017 and recorded in the Cumberland County Registry of Deeds in Book 33834, Page 269.

**EXHIBIT B**

RECEIPT OF WORKFORCE HOUSING AGREEMENT,  
DECLARATION OF COVENANTS, RESTRICTIONS,  
AND OPTION TO PURCHASE FOR  
\_\_\_\_\_ [Unit Number and Property Address]

I/We \_\_\_\_\_ (insert names) hereby acknowledge and agree that I am/we are in receipt of a copy of the Workforce Housing Agreement, Declaration of Covenants, Restrictions and Option to Purchase for \_\_\_\_\_ [Property Address] between the City of Portland and Stroudwater Development Partners, LLC which was recorded at the Cumberland County Registry of Deeds on \_\_\_\_\_ [date] at Book \_\_\_\_\_ and Page \_\_\_\_\_ (the "Covenants"). I/We acknowledge and agree that the Covenants are binding upon our unit identified as Unit No. \_\_\_\_\_ at \_\_\_\_\_ (insert address) (the "Workforce Unit") and that as owner(s) of the Workforce Unit, I am/we are bound by the all of the terms and restrictions on the sale and occupancy as set forth in the Covenants. Such terms and restrictions of the Covenant include but are not limited to: restrictions on; owning other residential real estate; prohibitions on renting out the Workforce Unit for short or long term periods to other households; mandatory certification that the Workforce Unit is the primary residence; and requirements that; the owner(s) is a/are permanent resident(s) of the United States.

ACKNOWLEDGED AND AGREED TO ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
20\_\_\_\_.

WITNESS:

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(Signature)

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(Print Name)

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(Signature)

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(Print Name)

OWNER(S):

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(Signature)

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(Print Name)

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(Signature)

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(Print Name)







