

AGRICULTURE HOUSING TERMS AND CONDITIONS

**TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY
AGRICULTURE STUDENT HOUSING LICENSE AGREEMENT - 2009/2010
HOUSING and BUSINESS SERVICES
UNIVERSITY HOUSING
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
SAN LUIS OBISPO, CALIFORNIA 93407**

I. TERMS AND CONDITIONS

- (a) This License Agreement is subject to the regulations contained in Title 5 of the *California Code of Regulations*, Sections 42000-42103. A copy of those regulations is available at the University Library.
- (b) The Licensee agrees to comply with the housing facility regulations and the guidelines stated in the Agricultural Housing Handbook, and any subsequent amendments to either document.
- (c) This License Agreement shall not be transferred.
- (d) Licensee must maintain status as a student registered with a minimum of nine (9) Cal Poly quarter units. Exception requests must be submitted in writing to the Director of Housing and Business Services for approval. Dropping below the nine-unit minimum is not considered a standard for cancellation and will not release the Licensee from paying any housing related fees.
- (e) It is understood and agreed upon by the Licensee and University that no lease nor any other interest in real property is created by this Agreement.

II. ENHANCEMENT OF EDUCATIONAL EXPERIENCE

- (a) The University shall maintain Faculty Advisors to work with students to develop a community experience within the housing facility to enhance students' educational experience. University housing shall be operated to enhance the social, cultural, educational, and recreational opportunities available to the Licensee.
- (b) The Licensee agrees to recognize the importance of maintaining the housing facility as an environment which is conducive for fellow students to study, live and sleep in the housing facility. While in the housing facility, the Licensee agrees to not disturb this environment.

III. MAINTENANCE OF PREMISES

- (a) The University shall provide the Licensee with room and furnishings in the condition noted on the Room Condition Inventory. The Licensee agrees to give reasonable care to their living unit and its furnishings and to make payment for any damage or loss promptly upon demand by the University. The Licensee shall vacate the living unit in good order and repair, normal and reasonable wear and tear excepted. In the event the Licensee fails to maintain the living unit in good order and repair, Licensee shall pay University the reasonable costs incurred in returning the living unit to a condition of good order and repair.

LICENSEE AGREES TO BE JOINTLY RESPONSIBLE WITH OTHER RESIDENTS FOR THE PROTECTION OF THEIR LIVING UNIT INCLUDING FURNISHINGS AND EQUIPMENT. PAYMENT FOR DAMAGE OR LOSS OF COMMON AREA FURNISHINGS, UNLESS SPECIFICALLY ASSIGNED TO INDIVIDUALS, MAY BE CHARGED BY THE FACULTY ADVISOR TO RESIDENTS WHO HAVE ACCESS TO COMMON AREAS.

- (b) Licensee shall make no alteration or structural change to the housing facility without prior written permission of the Director of Housing and Business Services. Also, damage or unapproved alterations to the interior or exterior of the housing facilities as well as the grounds is prohibited.
- (c) The Licensee shall not possess any highly flammable material, firearms, ammunition, fireworks, explosives, dangerous weapons, or any other material or instrument which, in the opinion of the University, poses an unreasonable risk of damage or injury.

IV. CANCELLATION BY LICENSEE AFTER THE BEGINNING OF THE FEE PERIOD

- (a) This License may be cancelled based on the following standards with appropriate verification:
 - (1) Admission denied. The License can be cancelled without penalty if the student is not admitted to the University and gives written notification to the Director of Housing and Business Services within one week of student's notification of denied admission by the Admissions Office.
 - (2) End of student status.
 - (3) Marriage (during the License fee period).
 - (4) Hardship. The University's definition of hardship as used in this "Agriculture Student Housing License Agreement" is any occurrence in which the student is withdrawing from the University.
 - (5) University academic program requirements which mean International Study programs, Co-op, Internship, or residence hall/apartment assignments.
- (b) A Licensee who requests to vacate the housing facility shall give at least 30 days written notice of intention to vacate and the reason therefore directly to Housing and Business Services.
- (c) The University may grant or deny the request to vacate as submitted pursuant to subsection (b). If the request is granted, the student will be subject to a pro rata charge for the number of days of occupancy plus an additional charge for the number of days the notification period provided is less than the 30 days required. Revocation of this "Agriculture Student Housing License Agreement" does not qualify as a cancellation standard for a refund.

V. REVOCATION OF LICENSE AGREEMENT

- (a) The University may revoke this License Agreement upon the following conditions:
 - (1) Student Discipline, Article 2, as listed in Sections 41301 and 41302, Title 5, *California Code of Regulations*.
 - (2) "Immediate Removal from Campus" as listed in the California State University "Student Disciplinary Manual."
 - (3) Reasonable cause to protect personal safety or property and to insure the maintenance of order.
 - (4) Failure of Licensee to maintain status as a student at University.
 - (5) The Licensee's breach of any term or condition of this License Agreement, including failure to pay required fees.
 - (6) Administrative necessity of University.

- (b) The University shall provide the Licensee not less than three (3) days notice in the event of an occurrence described in Subsections (1), (4) or (5) and not less than 14 days' written notice in the event of an occurrence described in Subsection (6) except in cases of emergency.
- (c) Conduct revocation of the "Agriculture Student Housing License Agreement" is not considered a standard for cancellation and thus will not release the Licensee from paying any outstanding housing or related fees (e.g., damage charges, etc.).

VI. ABANDONMENT OR TERMINATION BY LICENSEE

Except as permitted in Section IV, termination of this License Agreement or abandonment of the premises by the Licensee shall not release the Licensee from paying any obligation due the University.

VII. DESTRUCTION OR UNAVAILABILITY

In the event that bed space or common areas are destroyed or become unavailable as the result of conditions not reasonably foreseen at the time this License Agreement is made, Licensee shall be entitled to a pro rata refund of any fees applicable to periods after the Licensee was required to vacate. The University shall not be held responsible or liable for the Licensee's accommodation if an assigned space is rendered uninhabitable due to circumstances beyond the reasonable control of the University, including but not limited to "Acts of Nature."

Such conditions include, but are not limited to, damage caused by floods, slides, fire, earthquake, other natural disasters and vandalism; civil disorder; compliance with state or federal law; unanticipated interruption of basic services. The University also reserves the right to make special room assignments to accommodate those conditions.

VIII. REFUNDS

The University shall authorize refunds only as provided for in Title 5 of the *California Code of Regulations* (and the Housing Facility Regulations).

IX. VACATING THE HOUSING FACILITY

The Licensee shall vacate the housing facility on the expiration of the license period or upon revocation of this License Agreement, whichever occurs first.

Upon expiration of this “Agriculture Student Housing License Agreement,” the Licensee agrees to vacate the premises. The Licensee shall remove all personal property; leave the assigned living space in a clean and orderly condition to avoid cleaning fees, and return room keys as instructed to avoid re-keying charges.

X. TREATMENT OF INDEBTEDNESS

Failure of the Licensee to satisfy the financial obligations of this License Agreement may result in the following:

- (a) Imposition of a late fee, in accordance with the fee schedule.
- (b) Revocation of the License Agreement.
- (c) Eviction.
- (d) Withholding of University services pursuant to Section 42380, Title 5, *California Administrative Code of Regulation*. This includes:
 - (1) Withholding official transcripts.
 - (2) Denial of registration.
- (e) Offset of paychecks, loans, grants, or scholarship payable through the University, and/or State income tax refunds or rebates.
- (f) Legal action to collect unpaid obligations.

XI. RIGHT OF ENTRY

The University shall have the right to enter the premises occupied by the Licensee for the purposes of emergency, health, safety, maintenance, management of applicable rules and regulations, or for any other lawful purpose. The University shall exercise these rights reasonably and with respect for the Licensee's right to be free from unreasonable searches and intrusions into study or privacy. University personnel or those contracted by the University may enter the Licensee's living unit as allowed by law and during normal working hours for cleaning, inventory, repairs, service and quarterly inspections, or as deemed necessary by the University. The University shall give the student reasonable notice of intent to enter said room, during operational working hours only, except 1) in cases of emergency or building evacuation, or 2) abandonment of the room or apartment by either the Licensee or Licensee's roommates, or 3) the Licensee consents at the time of entry and for the reasons stated in this provision. Licensee will be responsible for safeguarding his/her belongings. The Licensee agrees to waive any notice requirement and allow University personnel to enter the Licensee's room during normal working hours when the resident has requested service.

XII. INSURANCE

- (a) During the period covered by this License Agreement, it is highly recommended that the Licensee obtain health and accident insurance, on either an individual or group basis, to include coverage for hospital benefits, medical benefits, surgical benefits, emergency outpatient benefits, ambulance and/or medical transportation services. Please be advised, the University does not cover nor assume medical expenses or liability for students. Students interested in obtaining medical insurance through the CSU Domestic Student Health Plan can view information at <http://www/csuhealthlink.com/> (under Cal Poly San Luis Obispo, domestic students, brochure) or call Cal Poly's Health Services at (805) 756-1211.
- (b) The University shall have no liability for the loss or destruction of, or damage to, the student's property kept in the living unit or caused by any third parties. The University does not assume liability for a student's personal belongings, including during periods when the Licensee is not in occupancy or after the term of occupancy has expired. The University shall not be held liable for the loss or damage of the personal property of the Licensee. The University has no insurance to cover loss or damage of the personal property of the Licensee; therefore, the University recommends that individuals contact their insurance carrier for coverage options available.

XIII. VISITORS AND GUESTS

Licensee shall permit no visitors or guests to enter the housing facility except as permitted by Section 5 in the “Summary of Agriculture Housing Facility Regulations” portion of this License, and in accordance with the guest policy as outlined in the *Agricultural Housing Handbook*.

XIV. NONWAIVER

The waiver of any breach of a term or condition of this License Agreement shall not constitute a waiver of any subsequent breach.

XV. TAXABLE POSSESSORY INTEREST

It is the position of the University that this License Agreement does not create a taxable possessory interest in real property. However, pursuant to Revenue and Taxation Code No. 107.6, the

Licensee is hereby notified that a taxing authority may take a contrary view and may assess the Licensee property taxes based on the Licensee's interest in this License Agreement.

SUMMARY OF AGRICULTURE HOUSING FACILITY REGULATIONS:

XVI. SPECIAL CONDITIONS AND DISCLOSURES

Licensee shall avoid contact or exposure to conditions that may be considered hazardous. The Licensee is hereby notified that on-campus housing, which includes the Agriculture Housing units and general surroundings, may contain conditions or equipment that may pose a risk to the Licensee. Cal Poly's University Housing staff will take reasonable steps to insure that all hazardous areas are secured or posted with appropriate warnings signs. These conditions may include, but are not limited to, electrical substations, high voltage transmission lines, electrical transformers, or mechanical equipment.

Licensee may encounter building conditions or materials, within or surrounding the physical living environment that may be considered hazardous. Licensee shall minimize contact, exposure and report unsafe conditions. These conditions and materials may include, but are not limited to, asbestos, lead, mold, cleaning chemicals, moist conditions, or pesticides. The University maintains trained personnel to assist in the identification and response to hazardous conditions and materials. The University maintains written records of identified hazardous materials and their locations or uses.

While not conclusive, scientific controversy exists over possible health effects associated with exposure to electromagnetic fields from electrical sources such as transmission lines and substations. These areas are fenced and clearly marked with warning signage. Licensee is to avoid any contact and not enter these areas at any time.

For additional details on hazards or conditions that may exist with the University community, please contact the Housing and Business Services Office at (805) 756-1587 or the University Risk Management Office at (805) 756-6755.

1. OCCUPANCY

- (a) Residence in the Agriculture Housing facilities is dependent upon satisfactory performance and participation in the appropriate department's residential program.
- (b) It is agreed that as in-kind payment to the University for use of the Agriculture Housing facility, the residents will perform 30 hours of services per month for the College of Agriculture involving maintenance of the facilities, livestock and/or crops.
- (c) The Licensee may not transfer to any other University housing space without first obtaining the expressed written permission of their Faculty Advisor and the Housing and Business Services Office. This does not imply that permission will be granted. Furthermore, any transfers taking place without the expressed written permission of the Housing and Business Services Office will be seen as void and may result in disciplinary action. Instructions and regulations for room changes are outlined in the *Agriculture Housing Handbook*.
- (d) All residents are issued keys to the unit/room to which they are assigned at the time they check into the housing facility. Each Licensee is responsible for his or her own keys and under no circumstances is it to be duplicated or loaned to another individual. The lock core is changed whenever a key is lost or stolen. The charge for a lock change is \$75.00.
- (e) Continuing residents may leave their personal possessions in their rooms during holidays and periods between quarters; however, the University assumes no liability for personal belongings. They are left at the risk of the resident/Licensee.

2. STANDARD OF COMMUNITY LIVING

Because the Agriculture Housing units are student communities, it is important to acknowledge and respect the rights and needs of others. This is especially true in reference to sound. All Cal Poly housing facilities operate under continuous 24-hour Courtesy Hours, meaning that regardless of the time of day, any amplified sound or activity loud

enough to be heard outside a room should be curtailed. All residents agree to observe courtesy, quiet, and special quiet hours. ***THE RIGHT TO QUIET SUPERSEDES THE RIGHT TO MAKE NOISE.***

3. LIABILITY

- (a) Personal property left in the Licensee's living unit after expiration, termination, or cancellation of this "Agriculture Student Housing License Agreement" will be disposed of in accordance with applicable State law. The University is hereby relieved of any liability for personal property left on the premises.
- (b) The University assumes no liability for injuries, loss, or damage; including death, due to student use of on-campus housing living units, housing facilities (rooms, apartments, etc.); including, but not limited to, kitchens, recreational equipment, etc.
- (c) The Licensee shall be liable for any loss or damage caused to the community or furnishings provided by the University (including leaving said living unit or furnishings in an unsanitary or hazardous condition) and shall pay any and all damage charges upon presentation to the Licensee of a statement of charges.
- (d) The Licensee also shares, with his/her assigned roommate(s), liability for condition of the unit and its furnishings if individual liability cannot be determined.

4. SMOKE-FREE ENVIRONMENT

Smoking of any substance is prohibited throughout the University housing system at Cal Poly. This includes, but is not limited to, smoking in all student rooms and common areas. As per State codes and University policy, smoking is only permitted in designated smoking areas. Compliance with the smoke-free policy helps to promote a healthy and safer environment for all University housing students. Cigars, pipes, hookahs, or vaporized substances are prohibited at all times.

5. MAINTENANCE OF PREMISES

- (a) The Licensee shall not attach any object to the premises by nails, hooks or screws. Masking tape is recommended for hanging posters. Unapproved alterations of housing facilities or grounds is prohibited.

- (b) The Licensee shall not bring or maintain any waterbed on the premises.
- (c) Remodeling, painting, or renovation of any room or furniture is not permitted without the prior written consent of the Director of Housing and Business Services. Bumper stickers and decals are prohibited on doors, walls and furniture due to the permanent markings caused when used. Closet doors, screens, beds, desks, etc., cannot be removed and/or taken from the room.

6. VISITORS AND GUESTS

Residents are responsible and accountable at all times for their own actions as well as the actions of their guests and visitors. Harassment and aggressive behavior is not permitted.

The Licensee shall permit no visitors or guests to enter the housing facility except as permitted by the following policy. Residents are responsible for their guests' and visitors' behavior at all times. An overnight guest must have the approval of the hosting resident's roommate(s). Residents shall register all overnight guests at the Housing and Business Services Office. Any unapproved guest will be required to leave. For approved guests, there is no charge for the first two days of housing facility use per calendar month. A \$10 guest fee is charged for each day of such use in excess of two days per calendar month. No guest may stay in housing for more than two days per month without payment of guest fees. Guests without prior approval are charged a \$20 guest fee for each day of use. No guest may stay longer than four nights per month.

7. HOUSING FACILITY REGULATIONS

Students who live in University housing are expected to maintain a high level of responsibility, maturity, and accountability for their actions. When students sign the License Agreement to live on campus, they agree to live by the policies and community standards of the University housing facility. Residents are expected to respect the rights and privacy of other residents and adhere to all Federal and State laws and University regulations. Physical or verbal abuse or harassment against any member of the University housing community is prohibited.

- (a) The Licensee shall take reasonable care to prevent damage to the premises by fire or other causes. No open fires, personal barbecues, hibachis, camp stoves, dangerous chemicals, (e.g., gasoline, cleaning solvents, etc.) are

permitted in or around the housing facilities. This includes such items as candles and “Sterno” type devices. Burning incense is prohibited.

- (b) Weapons are prohibited on campus. No Licensee shall possess or discharge BB guns, sling shots, pellet guns, airsoft guns, paint guns, ammunition, fireworks, explosives, or any other material or instrument which poses an unreasonable risk of damage or injury, in or around the housing facilities. Knives are prohibited. Disciplinary actions, including revocation of housing license with no refund of housing fees, may be invoked.
- (c) Due to the obvious potential for personal injury and/or damage to the housing facilities, no liquid or objects (such as Frisbees, soccer balls, water balloons, etc.) may be thrown or rolled out of windows, in hallways, or down stairs. Water fights are not permitted at any time.
- (d) The improper discharge of a chemical agent (e.g., mace, pepper spray) in or around University housing facilities is prohibited.
- (e) Darts and dart boards are not allowed in or around housing facilities.
- (f) The University is governed by the Health and Safety laws of the State of California that pertain to use, sale, and possession of drugs. Being under the influence, unlawful possession, use, or distribution of drugs is prohibited. The use of prescribed drugs or over-the-counter drugs in an abusive manner is prohibited. Drug paraphernalia is prohibited in and around University housing facilities. Any drug and/or drug paraphernalia will be confiscated by the proper authority. Violations of the drug policy will result in disciplinary action and may result in revocation of the housing license with no refund of housing fees. Residents are to be knowledgeable about the “Community Standards of Conduct and Policies” that are reference in the *Agriculture Housing Handbook*.
- (g) Alcohol is prohibited. Possession, distribution, consumption, or being under the influence of alcoholic beverages, vaporized alcohol, or beverages advertised as nonalcoholic substitutes is prohibited as are containers which originally held any of the previously mentioned substances. Residents are required to be knowledgeable about the “Community Standards of Conduct and Policies” and to follow the “Alcohol Policy Guidelines,” as

defined in the *Agriculture Housing Handbook*. The inability to exercise care for one’s own safety, or the safety of others as a result of alcohol consumption, is a violation of the alcohol policy. Violations will result in disciplinary actions and may result in revocation of the housing license with no refund of housing fees.

- (h) The Licensee shall not bring or keep any animal in or around University housing other than fish in aquariums. No Licensee shall maintain an aquarium larger than five gallons in capacity. The University is not responsible for the loss or damage of personal property. The feeding, harboring, or possessing of any animal in or around any on-campus housing facility is not allowed. No “visiting” pets are allowed in or around any on-campus housing facility.
- (i) All telephone service is provided by the University. This service and equipment is installed and maintained by the University and any alterations or tampering with this service and equipment may result in a disciplinary action. In addition, the University may levy a service charge to correct difficulties due to unauthorized tampering with the service and/or equipment.

Basic telephone charges and local calls are included in housing fees. For long-distance/toll calls, students need to use either prepaid calling cards, phone company calling cards, or personal cell phones.
- (j) No Licensee shall cohabit with a person other than their roommate(s). Licensee shall not permit any other person to occupy their space.
- (k) Personal Care. Each Licensee is responsible for their own self-care, which is defined as appropriate personal hygiene, mental health, management of medical conditions or illnesses, and/or disability-related personal needs.
- (l) Cooking is permitted in designated kitchen areas only. Students are not allowed to have microwave units. Hot plates and electric skillets, toasters, blenders, room heaters, air conditioners, freestanding freezer units of any size, and similar appliances, as well as items referenced in the *Agriculture Housing Handbook*, are not permitted in student rooms.

Refrigerators in the housing facility rooms are permitted under the following stipulations.

- (1) Refrigerators must comply with all of the following requirements:
 - a. Cannot exceed 4.9 cubic feet.
 - b. Measures no larger than 23 inches wide by 23 inches deep by 34 inches high.
 - c. Must be either energy efficient or have the preferred “Energy Star” rating.
 - (2) Refrigerators must be kept in an open space affording ventilation; therefore, placement in closets is unacceptable.
 - (3) *NOTE:* Free-standing freezer units of any size are not permitted.
- (m) Use of a radio, clock, hair dryer, electric blanket, audio equipment, and TV is authorized. A one-unit automatic coffee pot, one-piece popcorn popper, or electric water kettles (with automatic shut-off) may be used for their intended purpose and not for cooking food items. Due to a variety of risks, halogen lights, holiday lights, light strips, and multi-socket plugs are prohibited. Only extension outlets/surge protectors with fuses are allowed.
 - (n) Within the University housing system, a Licensee shall not possess or display signs or similar articles which are not the property of the Licensee, and which are in the Licensee’s possession without the permission of the owner thereof. Public property signs or lighted neon signs are not permitted at any time.
 - (o) Objects placed in windowsills are permissible only if they are meant to enhance the interior decor of the room and do not block the use of the window. Signs, flags, posters or any other objects that impede the use of the window, to see through or to let in light, are not permitted. Window coverings installed in each room are not to be modified and, along with windows, and window screens, must be kept in place at all times. Nothing is to be adhered to or posted on the inside or outside of room doors.
 - (p) Motorcycles, mopeds, motor scooters, or similar motor-driven vehicles cannot be taken into any University housing building for any reason or operated on sidewalks, patios, or lawns in and around housing facility areas.
 - (q) Possession, display, and/or distribution of “obscene matter” as defined in the “California Penal Code, Section 311, et seq.,” or lewd behavior, is unlawful and therefore violates campus policy.
 - (r) Lofts, raised beds, or the use of other bed structural modifications; such as, PVC, cinderblocks, metal pipes, etc., are not allowed in resident rooms.
 - (s) All University-owned furniture must be maintained in its assigned room or area. Misuse or abuse of furniture, equipment, and buildings is prohibited.
 - (t) In addition, the provisions of Sections 41301 and 41302 of Title 5 of the *California Code of Regulation*, which relates to student conduct on campus, are applicable to the on-campus University housing system. A copy of these regulations is available at the Library, in the class schedule, and is posted on the University official bulletin board in the Administration Building.
 - (u) Residents must keep outside doors locked and fire safety equipment operational. Propping doors open and tampering with security and fire equipment is prohibited and a violation of State and Federal laws. Violations will result in disciplinary actions and may result in revocation of the housing license with no refund of housing fees.
 - (v) All electronic devices must be turned off and unplugged from power outlets if residents chose to leave during the winter break. Electronic devices include, but are not limited to, computers and all related devices, clock radios, television sets, and stereos. Fish tanks that meet the guidelines in Section (h) will not be unplugged.
 - (w) Soliciting is not permitted.
 - (x) The operation of any personal or outside business utilizing Housing facilities or resources is not allowed.
 - (y) Illegal gambling anywhere on State property is prohibited (e.g., activities played for money, checks, credit or other representative value).
 - (z) Unauthorized presence on rooftops, ledges or areas marked for restricted access in any housing facility is prohibited.
 - (aa) The installation of any door or area locks other than those provided by University Housing is prohibited.

- (bb) Residents have a responsibility to take appropriate action (including, but not limited to, informing a University Housing staff member) if they become aware of any policy violation.
- (cc) Any Licensee who knowingly causes any hazardous substance (e.g., motor oil, antifreeze, battery acid, paint, pesticides) to be deposited into campus storm drains or natural drainage systems or upon any campus road or property shall be liable for payment of the complete cost of cleanup. Such persona may be subject to fines or imprisonment (Penal Code 374.8).
- (dd) Tampering with, or removing, blinds, windows or window screens from any part of the building is prohibited. Addition of a front screen door is not allowed.
- (ee) Shaking, cleaning, hanging, or placing any articles from the windows, outside window ledges or on outside hallways/walkways of the living unit is prohibited.
- (ff) Network authentication is required prior to campus computer log-in. Unauthorized use, tampering with, or damage to, any part of the computer network connectivity system and/or violation of policies as stated in the University's "Responsible Use Policy" is prohibited. Violations result in permanent loss of computer network connectivity privileges to the Cal Poly network and possible revocation of the Housing License (see Section V – Revocation of License Agreement).
- (gg) University Housing is required to participate in Federal and State government data collection/census processes. This can occur at any time throughout the year and residents may be asked periodically to participate in these processes.
- (hh) To avoid any misunderstanding concerning the "Agriculture Student Housing License Agreement," you are advised that University Housing staff do not enter into any oral agreements or make or rely on any oral representation concerning license agreements. The entire "Agriculture Student Housing License Agreement" is expressed in writing and the License Agreement supersedes any understanding that may have been understood verbally. Neither the Licensee nor staff are relying on any oral agreement or representation or any understanding of fact or law that is not express in writing.