

**PRINCE GEORGE’S COUNTY, MARYLAND
WESTPHALIA TOWN CENTER SPECIAL TAXING DISTRICT**

***AMENDED AND RESTATED
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES***

A Special Tax is hereby levied and shall be collected in the Westphalia Town Center Special Taxing District (the “District”) each Fiscal Year, beginning with the 2017-2018 Fiscal Year and continuing until the year provided for in Section F hereof, in an amount determined by the procedures described below. All of the real and personal property in the District, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms used herein shall have the following meanings:

“**Acts**” means the Special Taxing District Act and the Tax Increment Financing Act.

“**Adjusted Maximum Special Tax**” means the Special Tax determined in accordance with Section B.3.

“**Administrative Expenses**” means any or all of the following: the costs and expenses of the County incurred in connection with the discharge of its duties; the costs and expenses of the County in carrying out its duties under the Indenture of Trust, including, but not limited to, calculating, levying and collecting the Special Tax (whether collected by the County or otherwise) and complying with arbitrage rebate requirements and obligated persons disclosure requirements associated with applicable federal and state securities law, and the out-of-pocket costs and expenses of the County for any professionals retained by the County to provide services for such purposes; any amounts required to be rebated by the United States of America to comply with the arbitrage rebate requirements applicable to the Bonds, including payment in lieu of rebate; fees payable for any bond insurance or other financial guaranty or credit enhancement with respect to any Bonds or under any Indenture of Trust, including, without limitation, any credit facility for any reserve fund; any unpaid cost or expense of the County, including, without limitation, fees and expenses of legal counsel and any professionals retained by the County, for which the County is entitled to indemnification pursuant to a development agreement or other agreements relating to the District incurred in connection with the defense by the County or the bringing by the County of any claim, demand, suit or cause of action relating to the issuance of any Bonds, the establishment of the District, the levy or collection of Special Tax or any other matters related thereto; any fees, expenses or costs included in the definition of Administrative Expenses set forth in the Indenture of Trust and not specifically included herein; all other costs and expenses of the County, the Trustee, and the Administrator incurred in connection with the discharge of their respective duties, including legal fees and expenses associated with such duties, and, in the case of the County, in any way related to the administration of the District.

“**Administrator**” means the designee of the County for purposes of estimating the annual Special Tax Requirement and the Special Tax to be collected each Fiscal Year and for providing other

services as required herein, by the Indenture of Trust, or any other agreement relating to the District.

“Available Tax Increment Revenues” means the Tax Increment Revenues made available pursuant to the Indenture of Trust.

“Bonds” means any bonds or other debt, including refunding bonds, whether in one or more series, issued by the County pursuant to the Acts to fund the Public Improvements.

“Building Square Footage” or “BSF” means the actual, or for property not yet developed, the estimated, leasable building area as shown on the building permit, architectural plans or other available documents, as estimated by the Administrator.

“Commercial Property” means Taxable Property not classified as Residential Property, including any ancillary space hereto.

“County” means Prince George’s County, Maryland.

“County Executive” means the County Executive for the County.

“Date of Classification” means the date each year determined by the Administrator to classify property for purposes of determining the Special Tax for each Parcel.

“Developed Property” means Parcels of Taxable Property for which a building permit has been issued that allows the construction of a structure intended for occupancy.

“Director of Finance” means the director of finance of the County.

“District Maximum Special Tax” means \$2,917,360 for the 2017-2018 Fiscal Year. On each July 1, commencing July 1, 2018, the District Maximum, Special Tax shall be increased to 102 percent of the District Maximum Special Tax in effect in the previous Fiscal Year. The District Maximum Special Tax as of any date shall be reduced for any prepayments of Special Taxes pursuant to Sections I, J or K occurring prior to such date.

“Fiscal Year” means the period starting any July 1 and ending on the following June 30.

“For Sale A Residential Property” means Residential Property on which has been built or is intended to be built attached dwelling units located side by side in rows of four or more with a BSF equal to or less than 2,000 BSF, and may include rental units, not classified as Rental Residential Property.

“For Sale B Residential Property” means Residential Property on which has been built or is intended to be built attached dwelling units located side by side in rows of four or more with a BSF greater than 2,000 BSF, and may include rental units, not classified as Rental Residential Property.

“For Sale C Residential Property” means Residential Property on which has been built or is intended to be built single family detached residential dwelling units and may include rental units.

“For Sale D Residential Property” means Residential Property on which has been built or is intended to be built attached dwelling units located side by side in rows of three or less, and may include rental units, not classified as Rental Residential Property.

“For Sale E Residential Property” means Residential Property on which has been built or is intended to be built attached dwelling units in the form of stacked flats that are generally for sale and not classified as Rental Residential Property.

“Hotel Property” means Commercial Property for which an occupancy permit has been issued for purposes of occupying a building that contains six or more guest rooms or suite of guest rooms in which living and sleeping accommodations are provided for one or more paying visitor(s) and where temporary lodging is provided for compensation.

“Indenture of Trust” means the indenture of trust relating to the Bonds, as modified, amended and/or supplemented from time to time.

“Mandatory Prepayment of the Special Tax” means the required partial prepayment of the Special Tax pursuant to Section K.

“Maximum Special Tax” means the Special Tax determined in accordance with Section B.1. or B.2.

“Maximum Special Tax Rates” mean the rates provided for in Section B, as reduced pursuant to Section G.

“Net Land Area” means the estimated area of Taxable Property of a Parcel on which buildings, parking, or related improvements may be constructed, taking into consideration the development legally permissible, the proposed or planned development, and existing or proposed Public Property, exclusive use easements, and other areas on which development may not occur.

“Office Property” means Commercial Property used or intended for use primarily as the office of any recognized profession, including but not limited to doctors, dentists, lawyers, accountants, engineers or veterinarians, including any ancillary space thereto.

“Owner Association Property” means, for any Fiscal Year, any real property within the boundaries of the District that is owned by or irrevocably offered for dedication to a property owner's association and available for use in common by the homeowners; provided, however, that real property that has been irrevocably offered for dedication includes only those Parcels for which a copy of the offer has been provided to the Administrator.

“Parcel” means a lot or parcel of real property within the District with a parcel number assigned by the Supervisor.

“Proportionately” means that the ratio of the Special Tax actually to be collected as a percent of the Adjusted Maximum Special Tax is equal for each Parcel (excluding those Parcels for which the Adjusted Maximum Special Tax is zero).

“Public Improvements” means those improvements benefiting the District that the County has authorized to be funded by the proceeds of the Bonds.

“Public Property” means property within the boundaries of the District owned by, or irrevocably offered for dedication (in a plat map approved by the County or otherwise) to the federal government, State of Maryland, County, or other public agency or easements for the exclusive use of a public utility provider; provided, however, that exclusive use utility easements and real property that has been irrevocably dedicated includes only those parcels for which a copy of the easement or offer has been provided to the Administrator.

“Rental Residential Property” means Residential Property consisting of units that are generally stacked flats and are part of a resident planned and managed development for rent and under common management, including any ancillary uses thereto.

“Required Maximum Special Tax” means the required Maximum Special Tax as provided for in the Indenture of Trust.

“Residential Property” means Taxable Property for which a building permit has been or is intended to be issued for purposes of constructing a residential dwelling unit(s).

“Retail A Property” means Commercial Property that is used or intended for use primarily for the retail sale of goods or services to the general public with a BSF greater than 25,000 BSF, including any ancillary space thereto.

“Retail B Property” means Commercial Property that is used or intended for use primarily for the retail sale of goods or services to the general public with a BSF equal to or less than 25,000 BSF, including any ancillary space thereto.

“Retail C Property” means Commercial Property located on a separate lot that is used or intended for use primarily for the retail sale of goods or services to the general public, but including any ancillary space thereto.

“Special Tax” means the Special Tax that may be collected by the County each Fiscal Year to fund the Special Tax Requirement.

“Special Tax Credit” means for any Parcel, for a particular Fiscal Year, the Available Tax Increment Revenues collected for that Fiscal Year from that Parcel and available to apply to the Special Tax Requirement. For purposes of calculating the Tax Increment Revenues for each Parcel, the base year value shall be allocated to each Parcel on the basis of the assessed value of each Parcel.

“Special Taxing District Act” means Section 10-269 of the Prince George’s County Code, as amended, and Sections 21-501 through 21-518 and Section 21-523 of the Local Government Article of the Annotated Code of Maryland, as amended.

“Special Tax Requirement” has the meaning given to it in Section C.1.

“Supervisor” means the Supervisor of Assessments for the County.

“Tax Increment Financing Act” means Sections 12-201 through 12-213, inclusive of Economic Development Article of the Annotated Code of Maryland, as amended.

“Tax Increment Fund” means the tax increment fund established for the District pursuant to a resolution adopted by the County.

“Tax Increment Revenues” means the amounts paid into the Tax Increment Fund each year by the County.

“Taxable Property” means any Parcel that is not Public Property or Owner Association Property.

“Termination Date” means the last Fiscal Year in which Special Taxes have been levied and may be collected as provided for in Section F herein.

“Trustee” means the trustee appointed by the County for the District to carry out the duties of the trustee specified in the Indenture of Trust.

“Undeveloped Property” means Parcels of Taxable Property not classified as Developed Property.

“Warehouse, Distribution, and Direct to Retail Property” means Commercial Property used or intended for use primarily as for the warehousing, distribution or direct shipment to customers of merchandise, including any ancillary space thereto.

B. SPECIAL TAX RATES

1. Developed Property

The Maximum Special Tax for the 2017-2018 Fiscal Year for each Parcel of Developed Property shall be equal to the product of the number of residential dwelling units, Building Square Footage, and rooms that may be built on such Parcel and the Maximum Special Tax Rate for each land use class of property shown in Table A.

TABLE A
Developed Property
Maximum Special Tax Rates
2017-2018 Fiscal Year

Land Use Class	Maximum Special Tax Rate
Rental Residential Property	\$245 Per dwelling unit
For Sale A Residential Property	\$645 Per dwelling unit
For Sale B Residential Property	\$603 Per dwelling unit
For Sale C Residential Property	\$756 Per dwelling unit
For Sale D Residential Property	\$570 Per dwelling unit
For Sale E Residential Property	\$346 Per dwelling unit
Hotel Property	\$258 Per room
Retail A Property	\$310 Per 1,000 BSF
Retail B Property	\$492 Per 1,000 BSF
Retail C Property	\$728 Per 1,000 BSF
Office Property	\$217 Per 1,000 BSF
Warehouse, Distribution and Direct To Customer Retail	\$166 Per 1,000 BSF

On each July 1, commencing July 1, 2018, the Maximum Special Tax Rates shown in Table A shall be increased to 102 percent of the respective Maximum Special Tax Rate in effect in the previous Fiscal Year.

The computation of the number of units, BSF, or rooms for each Parcel shall be based on the information available regarding the use of the Parcel, which may include acreage and reasonable density ratios, and such computation shall be conclusive as long as there is a reasonable basis for such determination.

2. Undeveloped Property

The Maximum Special Tax for any Fiscal Year for each Parcel classified as Undeveloped Property shall be determined by the following formula:

$$A = (B - C) \times (D \div E)$$

Where the terms have the following meaning:

- A = The Maximum Special Tax for a Parcel of Undeveloped Property
- B = The District Maximum Special Tax
- C = The Maximum Special Taxes on all Parcels of Developed Property
- D = The Net Land Area of the Parcel for which the Special Tax is being calculated
- E = The Net Land Area of all of the Parcels of Undeveloped Property.

3. Adjusted Maximum Special Tax

The Adjusted Maximum Special Tax for each Parcel shall be equal to the lesser of (but not less than zero) (i) the Maximum Special Tax for the Parcel and (ii) the amount calculated by the following formula:

$$A = B - C$$

Where the terms have the following meaning:

A	=	The Adjusted Special Tax for a Parcel
B	=	The Maximum Special Tax for the Parcel
C	=	The Special Tax Credit for the Parcel

The Special Tax Credit applied to all Parcels shall not exceed the Available Tax Increment Revenues applied to the Special Tax Requirement as provided for in Section C. 1.

4. Personal Property

The special tax rate on personal property shall be zero.

C. LEVY AND COLLECTION OF THE SPECIAL TAX

Special Taxes have been levied each Fiscal Year, beginning with the 2017-2018 Fiscal Year and continuing until the year provided for in Section F hereof, at the Maximum Special Tax. The Special Taxes shall be collected each Fiscal Year as provided for below.

1. Special Tax Requirement

The Special Tax Requirement for any Fiscal Year shall be estimated by the Administrator and shall be an amount equal to (A) the amount required in any Fiscal Year to pay: (1) debt service and other periodic costs (including deposits to any sinking funds) on the Bonds to be paid from the Special Taxes collected in such Fiscal Year, (2) Administrative Expenses to be incurred in the Fiscal Year or incurred in any previous Fiscal Year and not paid by the Special Taxes in such previous Fiscal Year, (3) any amount required to replenish any reserve fund established in association with any Bonds, (4) an amount equal to the estimated delinquencies expected in payment of the Special Tax not otherwise taken into account, and (5) the costs of remarketing, credit enhancement, bond insurance, and liquidity facility fees (including such fees for instruments that serve as the basis of a reserve fund related to any indebtedness in lieu of cash), less (B) (1) Available Tax Increment Revenues available to apply to the Special Tax Requirement for that Fiscal Year, (2) any credits available pursuant to the Indenture of Trust, such as capitalized interest, reserves, and investment earnings on any account balances, and (3) any other revenues available to apply to the Special Tax Requirement.

2. Assignment to Land Use Categories

For each Fiscal Year, each Parcel shall be classified as Public Property, Owner Association Property, or Taxable Property. Each Parcel of Taxable Property shall be classified as Developed Property or Undeveloped Property. Each Parcel of Developed Property shall be classified as Commercial Property or Residential Property. Each Parcel of Commercial Property shall be classified as Hotel Property, Retail A Property, Retail B Property, Retail C Property, Office Property or Warehouse, Distribution and Direct to Customer Retail. Each Parcel of Residential Property shall be classified as Rental Residential Property, For Sale A Residential Property, For Sale B Residential Property, For Sale C Residential Property, For Sale D Residential Property, or For Sale E Residential Property. Each classification shall be made on the basis of the classification that most nearly matches the property being classified. The classification of Parcels shall be made based on the status of each Parcel as of the Date of Classification.

3. Determination of the Special Tax to be Collected

Commencing with Fiscal Year 2017-2018 and for each following Fiscal Year, the Special Tax shall be collected as provided below.

First: The Special Tax shall be collected Proportionately from each Parcel of Undeveloped Property up to the Adjusted Maximum Special Tax for such property to the extent necessary to fund the Special Tax Requirement.

Second: If additional monies are needed to fund the Special Tax Requirement after the first step has been completed, the Special Tax shall be collected Proportionately from each Parcel of Developed Property up to 100 percent of the Adjusted Maximum Special Tax for such property, to the extent necessary to fund the Special Tax Requirement.

The Administrator shall provide an estimate to the County prior to each Fiscal Year of the amount of the Special Tax to be collected from each Parcel in conformance with the provisions of this section.

4. Circumstances Under Which the Special Tax May be Increased as a Result of a Default

The circumstances under which the Special Tax to be collected on any Parcel may be increased as a result of a default in the payment of the Special Tax to be collected on any other Parcel is based on the provisions of Section C. 1. and C. 2. The Special Tax to be collected on any Parcel cannot be increased above the Adjusted Maximum Special Tax as a result of a default in the payment of the Special Tax levied on any other Parcel. However, if the Special Tax to be collected on any Parcel pursuant to the provisions of Section C. 1. and C. 2. is less than the Adjusted Maximum Special Tax for such Parcel, the Special Tax may be increased up to the Adjusted Maximum Special Tax as a result of a default in the payment of the Special Tax levied on any other Parcel.

D. EXEMPTIONS

A Special Tax shall not be levied on Public Property or Owner Association Property.

E. MANNER OF COLLECTION

The Special Tax shall be collected in the same manner and at the same time as ordinary real property taxes; provided, however, the Special Tax may be collected at a different time or in a different manner as determined by the County Executive, provided that such time or manner is not inconsistent with the provisions of the Indenture of Trust. The Special Tax shall be secured in the same manner as general ad valorem taxes and shall be subject to the same penalties and interest and the same procedure, sale and lien priority in case of delinquency as is provided for general ad valorem taxes.

F. TERMINATION OF SPECIAL TAX

Except for any delinquent Special Taxes and related penalties and interest, Special Taxes shall not be collected from any Parcel after the earlier of (i) the repayment or defeasance of the Bonds, (ii) the thirtieth (30th) Fiscal Year in which such Parcel was taxed as Developed Property, and (iii) such time provided for by the Indenture of Trust.

G. REDUCTION IN THE MAXIMUM SPECIAL TAX RATE

The Maximum Special Tax Rates may be reduced by the County Executive once all of the Bonds are issued to reflect the actual debt service on the Bonds such that the Maximum Special Tax that may be collected from all Parcels of Developed Property at the expected build-out of the District is equal to the minimum debt service coverage requirement provided for in the Indenture of Trust. The County Executive shall make any reduction in writing and shall provide a copy of such reduction to the Administrator and the Trustee.

H. APPEALS OF THE LEVY OF THE SPECIAL TAX

Any property owner claiming that the amount or application of the Special Tax is not correct and requesting a refund may file a written notice of appeal and refund to that effect with the Director of Finance not later than one calendar year after the due date (i.e., July 1) for the Special Tax that is disputed. Such appeal may not affect the due date of the payment of the Special Tax. The Director of Finance, or the designee of the Director of Finance, shall promptly review all information supplied by the appellant in support of the appeal and, if necessary, meet with the property owner, and decide the appeal. If the decision of the Director of Finance requires the Special Tax to be modified or changed in favor of the property owner, a cash refund shall not be made (except for the last year of levy or unless sufficient funds will otherwise be available to meet the Special Tax Requirement), but an adjustment shall be made to the next Special Tax levy on that Parcel. The decision of the Director of Finance may be appealed to the County Executive, who shall consider any written or oral evidence presented by appellant. This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to any other appeal or legal action by such owner.

I. PREPAYMENT OF SPECIAL TAX

The Special Tax for any Parcel may be prepaid and the obligation to pay the Special Tax for the Parcel permanently satisfied as provided for herein. The Special Tax prepayment amount shall be equal to the following: (a) the sum of the following: (i) Principal, (ii) Premium, (iii) Defeasance, and (iv) Fees, (b) less the Reserve Fund Credit, plus any delinquent Special Taxes on such Parcel, including any applicable penalties and related costs, where the terms have the following meanings:

Principal means a portion of the principal of the Bonds equal to (i) the Maximum Special Tax for the Parcel for which the Special Tax is being prepaid for the Fiscal Year in which such prepayment is made divided by (ii) the District Maximum Special Tax for the Fiscal Year in which such prepayment is made with the result multiplied by (iii) the total Bonds outstanding after application of the Special Taxes collected in the corresponding Fiscal Year plus any additional Bonds authorized to be issued net of costs associated with the issuance of such Bonds.

Premium means an amount equal to the Principal multiplied by the applicable redemption premium, if any, for the Bonds to be redeemed, as provided for in the Indenture of Trust. There shall be no Premium if the prepayment is made prior to the issuance of the Bonds.

Defeasance means the amount needed to pay interest on the Principal until the earliest call date for the Bonds, less (a) the amount that will be received by the Trustee from the reinvestment of the Special Tax prepayment until the Bonds are redeemed from the prepayment and (b) the Special Tax paid prior to the prepayment that will be applied to the interest on or principal of the Bonds that is included in the calculation of the Principal or Defeasance.

Fees means Administrative Expenses associated with the prepayment, including but not limited to the calculation of the prepayment, the costs of redeeming the Bonds, and the costs of recording or publishing any notices related to the prepayment and the redemption of the Bonds.

Reserve Fund Credit means any reduction in the reserve fund resulting from the redemption of Bonds, as provided for the Indenture of Trust.

The sum of the amounts calculated herein shall be paid to the County or the Trustee and shall be used to pay and redeem the Bonds in accordance with the Indenture of Trust and to pay the Administrative Expenses associated with the prepayment. Upon the payment of such prepayment amount to the County or the Trustee, the obligation to pay the Special Tax for such Parcel shall be deemed to be permanently satisfied, and the Special Tax shall not be collected thereafter from such Parcel.

J. PARTIAL PREPAYMENT OF THE SPECIAL TAX

The Special Tax for any Parcel may be partially prepaid in an amount convenient to call Bonds as determined by the Administrator and that portion of the Special Tax obligation permanently satisfied. The amount of the prepayment shall be calculated as in Section I; except, however, the principal portion shall be calculated according to the following formula:

$$A = B \times C$$

Where the terms have the following meaning:

- A = the principal portion of the partial prepayment
- B = the principal portion of the prepayment calculated according to Section I
- C = the percent by which the owner of the Parcels is to partially prepay the Special Tax

With respect to any Parcel for which the Special Tax is partially prepaid, the County shall (i) distribute the funds remitted to it by the settlement agent according to the Indenture of Trust, and (ii) indicate in the records of the District that there has been a partial prepayment of the Special Tax and that this portion of the Special Tax shall not be collected thereafter from these Parcels. Following a partial prepayment of the Special Tax with respect to any Parcels, the outstanding percentage of the Special Tax shall continue to be collected from such Parcels.

K. MANDATORY PREPAYMENT OF SPECIAL TAX

A Mandatory Prepayment of the Special Tax shall be required for any Parcel of Taxable Property if the Maximum Special Tax for that Parcel is less than the Required Maximum Special Tax. The Maximum Special Tax for the Parcel shall be calculated based on the Maximum Special Tax Rates and the development that is to occur on such Parcel. The development that is to occur on the Parcel shall be based on land use approvals from the County, if available, and if not available, information provided pursuant to any development, funding or other agreement or plan.

The Mandatory Prepayment of Special Tax shall be calculated as set forth in Section I; however, "Principal" shall be calculated according to the following formula:

$$A = (B - C) \div D \times E$$

Where the terms have the following meaning:

- A = the principal portion of the Mandatory Prepayment of Special Tax
- B = the Required Maximum Special Tax
- C = the Maximum Special Tax for the Parcel, calculated as set forth above
- D = the District Maximum Special Tax
- E = the total principal amount of Bonds outstanding.

The amounts calculated in the preceding formula shall be paid to the County or the Trustee and shall be used to pay and redeem the Bonds in accordance with the Indenture of Trust and to pay the Administrative Expenses associated with the Mandatory Prepayment of Special Tax.

The Mandatory Prepayment of Special Tax shall be due prior to the recordation, conveyance, or other action that results in a change to any Parcel resulting in a Mandatory Prepayment of Special Tax. In the event the Mandatory Prepayment of Special Tax is not paid prior to the change in any Parcel, the total Mandatory Prepayment of Special Tax may be collected from any and all of the

resulting Parcels. The Mandatory Prepayment of Special Tax shall have the same sale and lien priorities as provided for by law for Special Taxes.

The Mandatory Prepayment of Special Tax shall not exceed the amount required to provide for the payment or redemption of the principal amount of the outstanding Bonds plus the other amounts set forth in Section I.

L. ELIMINATION OF THE MANDATORY PREPAYMENT OF SPECIAL TAX

The Mandatory Prepayment of Special Tax may be terminated by the County Executive provided that at the time of such termination there are no Bonds outstanding that are subject to mandatory prepayment upon a change in a Parcel pursuant to the Indenture of Trust. The County Executive shall make such termination in writing and copy of any such termination shall be provided to the Administrator and the Trustee.

M. AMENDMENTS

This Rate and Method of Apportionment of Special Taxes may be amended by the County Executive and, to the maximum extent permitted by the Acts, such amendments may be made without further notice under the Acts and without notice to owners of Taxable Property within the District in order to (i) clarify or correct minor inconsistencies in the matters set forth herein, (ii) provide for lawful procedures for the collection and enforcement of the Special Tax so as to assure the efficient collection of the Special Tax for the benefit of the owners of the Bonds, and (iii) otherwise improve the ability of the County to fulfill its obligations to levy and collect the Special Tax and to make it available for the payment of the Bonds and Administrative Expenses. No such amendment shall be approved unless and until the County Executive has found and determined that the amendment is necessary and appropriate and does not materially adversely affect the rights of the owners of the Bonds. Any such amendment may not increase the Maximum Special Tax.

N. INTERPRETATION OF PROVISIONS

The County Executive shall make all interpretations and determinations related to the application of this Rate and Method of Apportionment of Special Taxes, unless stated otherwise herein or in the Indenture of Trust, and as long as there is a rational basis for the determination made by the County Executive, such determination shall be conclusive.