

THE PROPOSED 2023 AMENDED AND RESTATED BYLAWS  
OF  
SALEMTOWNE CIVIC ASSOCIATION

ARTICLE I

DEFINITIONS

Section 1. "Association" means and refers to Salemtowne Civic Association, an Oregon not-for-profit organization, its successors and assigns.

Section 2. "Assessment" means any charge imposed or levied by the Association on or against an owner or lot pursuant to the provisions of the declaration or the bylaws.

Section 3. "Board" means the Board of Directors of the Salemtowne Civic Association.

Section 4. "Common expenses" means expenditures made by or financial liabilities incurred by the Association.

Section 5. "Common Property" means any real property or interest in real property and personal property which is owned, held or leased by the Association or owned as tenants in common by the lot owners, for the common use and enjoyment of the owners of the Association, and for the conduct of Association business.

Section 6. "Condominium" means property subject to the provisions of ORS chapter 100.

Section 7. "Declaration" means the instrument described in ORS 94.580, which establishes Salemtowne as a planned community, and any amendments to the instrument.

Section 8. "Lot" means any plot of land shown upon the recorded subdivision maps of the property with the exception of the Common Property.

Section 9. "Owner" means the owner of any lot in Salemtowne. All owners shall be members of the Association, and ownership shall be the sole qualification for membership in the Association.

Section 10. "Property" means that certain real property herein before described as Salemtowne, and such annexations or severances thereto as may hereafter be brought within or deleted from the jurisdiction of the Association.

Section 11. "Quorum" means the number of owners entitled to cast 20 percent (20%) of the votes and who are present at the beginning of a meeting of the Association.

Section 12. "Resident" means a person who makes his domicile in a unit at Salemtowne.

Section 13. "Unit" means a building or portion of a building located upon a lot and designated for separate occupancy or ownership, but does not include any building or portion of a building located on Common Property.

## ARTICLE II

### POWERS OF ASSOCIATION

#### Section 1. POWERS OF ASSOCIATION.

Except as otherwise provided in its declaration or bylaws, the Association may:

- (a) Adopt and amend Bylaws, Rules and Regulations for the Association;
- (b) Adopt and amend budgets for revenues, expenditures and reserves, and collect assessments from owners for common expenses;
- (c) Hire and terminate managing agents and other employees, agents and independent contractors;
- (d) Defend against any claims, proceedings or actions brought against it;
- (e) Initiate or intervene in litigation or administrative proceedings in its own name and without joining the individual owners in the following:
  - (1) Matters relating to the collection of assessments and the enforcement of governing documents;
  - (2) Matters arising out of contracts to which the Association is party;
  - (3) Actions seeking equitable or other nonmonetary relief regarding matters that affect the common interests of the owners, including but not limited to the abatement of nuisance;
  - (4) Matters relating to or affecting Common Property, including but not limited to actions for damage, destruction, impairment or loss of use of any Common Property;
  - (5) Matters relating to or affecting the lots or interests of the owners including but not limited to damage, destruction, impairment or loss of use of a lot or portion thereof, if
    - (A) Resulting from a nuisance or a defect in or damage to Common Property; or
    - (B) Required to facilitate repair to any Common Property; and
  - (6) Any other matter to which the Association has standing under law or pursuant to the Declaration or Bylaws.
- (f) Make contracts and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement and modification of Common Property;
- (h) Cause additional improvements to be made as a part of the Common Property;
- (i) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that Common Property may be conveyed or subjected to a security interest only pursuant to ORS 94.665;
- (j) Grant easements, leases, licenses and concessions through or over the Common Property;
- (k) Modify, close, remove, eliminate or discontinue the use of Common Property,

including any improvement or landscaping, regardless of whether the Common Property is mentioned in the Declaration, provided that:

- (1) Nothing in this paragraph is intended to limit the authority of the Association to seek approval of the modification, closure, removal, elimination or discontinuance by the owners; and
  - (2) Modification, closure, removal, elimination or discontinuance other than on a temporary basis of any swimming pool, spa or recreation or community building must be approved by at least a majority of owners voting on the matter at a meeting or by written ballot held in accordance with the Declaration, Bylaws or ORS 94.647;
- (l) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Property and services provided to owners;
  - (m) Adopt rules regarding the termination of utility services paid for out of assessments of the Association and access to and use of recreational and service facilities available to owners and, after giving notice and an opportunity to be heard, terminate the rights of any owners to receive such benefits or services until the correction of any violation covered by such rule has occurred;
  - (n) Impose charges for late payment of assessments and attorney fees related to the collection of assessments and, after giving written notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations of the Association if the charge imposed or the fine levied is based on a schedule contained in the Declaration or Bylaws, or an amendment to either that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners, or based on a resolution of the Association or its Board of Directors that is delivered to each lot, mailed to the mailing address of each lot or mailed to the mailing addresses designated in writing by the owners;
  - (o) Impose reasonable charges for the preparation and recordation of amendments to the Declaration;
  - (p) Provide for the indemnification of its officers and the Board of Directors and maintain liability insurance for directors and officers;
  - (q) Assign its right to future income, including the right to receive common expense assessments; and exercise any other powers necessary and proper for the administration and operation of the Association;
  - (r) Exercise any other powers necessary and proper for the administration and operation of the Association.

## Section 2. AUTHORITY OF ASSOCIATION TO SELL OR TRANSFER COMMON PROPERTY.

- (a) Except as otherwise provided in the Declaration, the Association may sell, convey or subject to a security interest any portion of the Common Property if 75 percent (75%) of the total votes allocated to all lots and units in the Association are cast in favor of that action. The Association shall treat proceeds of any sale under this section as an asset of the Association;
- (b) A sale, transfer or encumbrance of the Common Property or any portion of the Common Property made pursuant to a right reserved in the Declaration under this

section may provide that the Common Property be released from any restriction imposed on the Common Property by the Declaration. However, a sale, transfer or encumbrance may not deprive any lot of its right of access to or support for the lot without the consent of the owner of the lot.

### Section 3. PAYMENT OF ASSOCIATION EXPENSES

- (a) All assessments shall be deposited in a separate bank account, located within this state, in the name of the Association. All expenses of the Association shall be paid from the Association bank account;
- (b) The Association shall keep financial records sufficiently detailed for proper accounting purposes. After the end of the fiscal year, the Board of Directors shall distribute to each owner and, upon written request, any mortgagee of a lot, a copy of the annual financial statement consisting of a balance sheet and income and expenses statement for the preceding fiscal year;
- (c) The Association shall provide, within 10 business days of receipt of a written request from an owner, a written statement that provides:
  - (1) The amount of assessments due from the owner and unpaid at the time the request was received, including:
    - (A) Regular and special assessments;
    - (B) Fines and other charges;
    - (C) Accrued interest; and
    - (D) Late payment charges.
  - (2) The percentage rate at which interest accrues on assessments that are not paid when due;
  - (3) The percentage rate used to calculate the charges for late payment or the amount of a fixed charge for late payment.
- (d) The Association is not required to comply with paragraph (c) of this subsection if the Association has commenced litigation by filing a complaint against the owner and the litigation is pending when the statement would otherwise be due.

### Section 4. EXAMINATION OF RECORDS BY OWNER.

- (a) The Association shall make the documents, information and records described in Section 3 (b) and all other records of the Association reasonably available for examination by an owner and any mortgagee of a lot. Upon the written request of an owner or mortgagee of a lot, the Association shall make available during reasonable hours all such records for duplication. The documents, information and records described in Section 3 (b) and all other records of the Association shall be located within this state. The Association shall maintain a copy, suitable for the purpose of duplication, of the following:
  - (1) The Declaration, Bylaws, Association Rules and Regulations and any amendments or supplements to them;
  - (2) The most recent financial statement prepared pursuant to Section 3 (b);
  - (3) The current operating budget of the Association.
- (b) Upon written request of a prospective purchaser, the Association shall make available for examination and duplication during reasonable hours the documents

- and information specified in subsection (a) of this section;
- (c) The Association may charge a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs for furnishing the documents, information or records.

### ARTICLE III

#### ASSOCIATION BOARD OF DIRECTORS

##### Section 1. POWERS AND DUTIES.

The Board of Directors of the Association may act on behalf of the Association except as limited by the Declaration and the Bylaws. In the performance of their duties, officers and members of the Board of Directors shall exercise the care required of fiduciaries. In addition to carrying out the powers of the Association in Article II Section 1 of the Bylaws, the Board of Directors shall:

- (a) Keep complete and accurate minutes of all its proceedings. Minutes of all Board of Directors meetings, except meetings held in executive session, shall be available for examination by owners at the Association offices at reasonable times;
- (b) Hire, set compensation for, prescribe duties of, supervise, evaluate performance of and discharge as appropriate all employees of the Association, subject to criteria established by the Board of Directors. The Grounds Superintendent may hire, set compensation for, prescribe duties of, supervise, evaluate performance of, and discharge as appropriate all employees under his supervision, subject to criteria established by the Board of Directors;
- (c) At least annually adopt a budget and fix the amount of the annual assessment against each lot or unit as hereinafter provided. Within 30 days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all owners. If the Board of Directors fails to adopt a budget, the last adopted annual budget shall continue in effect;
- (d) (1) Procure and maintain insurance:
- (A) For all insurable improvements in the Common Property against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief. The insurance shall cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard if the insurance is available at reasonable cost; and
- (B) For a public liability policy covering all Common Property and all damage or injury caused by the negligence of the Association.
- (2) Obtain, if reasonably available, terms in insurance policies under ORS 94.680 which provide a waiver of subrogation by the insurer as to any claims against the Board of Directors of the Association, any owner or any guest of an owner;
- (3) Premiums for insurance obtained shall be a common expense of the Association. The policy may contain a reasonable deductible and the

amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

- (e) At least annually review the insurance coverage of the Association;
- (f) Cause the Association books of account to be maintained with appropriate financial statements made therefrom in accordance with accepted accounting standards, and cause them to be audited or reviewed from time to time by a certified public accountant (CPA);
- (g) Cause to be filed the necessary income tax returns for the Association;
- (h) Cause officers and employees having fiscal responsibilities to be bonded as the Board of Directors deem appropriate;
- (i) Develop and supervise a voting process, pursuant to Article V, Section 5;
- (j) Comply with Department of Housing and Urban Development requirements in order to continue to qualify for the 55 or older housing for older persons exemption. The Association is required to establish age verification procedures. The Board of Directors shall establish verification of occupancy every two years through reliable surveys and affidavits;
- (k) Cause the Common Property to be maintained;
- (l) Enforce requirements that cause the lots and exteriors of all units to be maintained within the limits and provisions of these Bylaws;
- (m) Prescribe rules for resident use of the Common Property including hours of use, personal conduct of residents and guests thereon;
- (n) Establish a schedule of penalties for violation of Bylaws and Rules and Regulations;
- (o) Appoint committees of owners as needed to discharge, under supervision of the Board of Directors, the responsibilities of the Association set forth in these Bylaws;
- (p) Cause any and all subsidiary corporations of the Association to operate strictly in accordance with these Bylaws at all times;
- (q) Adopt, publish, distribute and enforce Rules and Regulations as provided herein covering such rules and regulations as may be needed to discharge Association responsibilities where these Bylaws are silent on such matters. The Rules and Regulations shall be reviewed and updated annually by the Board of Directors. New and revised rules or regulations shall be added to the Rules and Regulations;
- (r) Review and improve service to residents and community;
- (s) Maintain a current mailing address of the Association;
- (t) Do all other appropriate things to discharge its responsibilities under these Bylaws.

Section 2. DIRECTORS. A board of five (5) directors who are resident members of the Association shall manage the affairs of the Association.

- (a) Directors shall be limited to two consecutive, elective terms on the Board of Directors;
- (b) Each director shall assume office on the first day of July following election, and shall serve a term of three (3) years;
- (c) Directors shall receive no compensation for any services rendered to the Association. However, any director may be reimbursed for actual expenses incurred in the performance of duties following approval by the Board of Directors;
- (d) Any director may be removed from office, with or without cause, by a majority vote

of all owners present and entitled to vote at any meeting of the owners at which a quorum is present. No removal of a director is effective unless the matter of removal is an item on the agenda and stated in the notice for the meeting required under ORS 94.650. In the event of death, resignation, or removal of a director, a successor shall be selected by the remaining members of the Board of Directors and shall serve the unexpired term of the predecessor;

- (e) The Board of Directors may declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent without due cause from three (3) or more consecutive regular meetings of the Board of Directors.

### Section 3. ELECTIONS OF DIRECTORS.

- (a) Elections to the Board of Directors shall take place at annual meetings, and shall be by secret written ballot. If the number of candidates does not exceed the number of open positions and there are no nominations from the floor, an election by voice vote may be taken.
- (b) Nominations for election to the Board of Directors shall be by a nominating committee. The nominating committee shall be appointed by the Board of Directors not less than sixty (60) days before the annual meeting at which it reports, and it will continue to serve until conclusion of the election. The nominating committee shall consist of a chairperson who shall be a member of the Board, and two or more other members of the Association who are not members of the Board of Directors. The nominating committee shall return as many nominations for election to the Board of Directors as they consider appropriate, but not less than the number of vacancies to be filled. All nominees must agree to stand for election and serve if elected;
- (c) Nominations may also be made by petition before the annual meeting, and from the floor at the annual meeting. Nominations by petition before the annual meeting shall contain the signatures of at least five owners as well as the signature of the nominee thereon agreeing to stand for election and to serve if elected. Nomination petitions must be submitted to the nominating committee at least three weeks before the annual meeting, and the nominee thereon shall appear on the printed ballot along with other nominees to be presented at the annual meeting;
- (d) Owners may cast as many votes as they are entitled to exercise under other provisions of the Declaration for each vacancy to be filled. Nominees receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

### Section 4. MEETINGS OF DIRECTORS.

- (a) Meetings of the Association and the Board of Directors shall use as a guide the latest edition of Robert's Rules of Order published by the Robert's Rules Association;
- (b) The Board of Directors shall elect one of its members as Chairperson of the Board of Directors and appoint other officers of the Association as the Board of Directors deems appropriate at the first meeting of the Board of Directors after July 1, each year. The Chairperson shall preside over Board of Directors meetings

- and meetings of the Association membership;
- (c) Regular business meetings of the Board of Directors shall be held at least monthly at such place and hour as may be fixed from time-to-time by resolution of the Board of Directors. Notice of Board of Directors' meetings shall be posted at a place or places on the property at least three days prior to the meeting or notice shall be provided by a method otherwise reasonably calculated to inform lot owners of such meetings. All meetings of the Board of Directors shall be open to owners, except meetings held in executive session;
  - (d) Forum meetings of the Board of Directors may be held at least semi-annually for the exclusive purpose of airing the views of owners. The date, hour and place shall be set by the Board of Directors and publicized to all owners at least 15 days in advance of the time;
  - (e) Special meetings of the Board of Directors shall be held when called by the Chairperson of the Board of Directors, or by any two directors. Business transacted at a special meeting shall be confined to the purposes stated in the notice;
  - (f) A meeting or part of a meeting of the Board of Directors may be closed to certain persons for deliberation on certain matters. This "executive session" may be held when called by the Chairperson of the Board of Directors, or by any two directors, for the following matters:
    - (1) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation, or criminal matters;
    - (2) Personnel matters, including salary negotiations and employee discipline; and
    - (3) The negotiation of contracts with third parties.
- Except in the case of an emergency, the Board of Directors shall vote in an open meeting whether to meet in executive session. If the Board of Directors votes to meet in executive session, the presiding officer of the Board of Directors shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. No executive sessions may be held for the purpose of taking final action or making a final decision;
- (g) Emergency meetings of the Board of Directors may be held without notice when called by the Chairperson of the Board of Directors, or by any two directors. The Board of Directors must be able to point to the reason why the meeting could not be delayed. An actual emergency must exist and minutes must state the reason for the emergency. An actual emergency must be dictated by events and cannot be predicated solely on the convenience or inconvenience of the directors. Any matter discussed at the emergency meeting shall be confined to the declared emergency. Only emergency meetings of the Board of Directors may be conducted by telephonic communications. Any decision made by such polling shall be ratified as an action of the Board of Directors at the next Board of Directors meeting;
  - (h) The meeting and notice requirements in this section may not be circumvented by chance or social meetings or by any other means;
  - (i) A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the entire Board of Directors at a duly held meeting shall be regarded as an act of the Board of Directors.



## ARTICLE IV

### RULES AND REGULATIONS

#### Section 1. AUTHORITY.

- (a) Article III Section 1 of the Bylaws give the Board of Directors the authority to “prescribe rules for resident use of the Common Property, including hours of use, personal conduct of residents and guests thereon, and penalties for violations of the rules” and to “appoint committees of owners as needed to discharge, under supervision of the Board of Directors, the responsibilities of the Association set forth in the Bylaws;”
- (b) Each committee shall have a liaison Board of Directors member. The allocation of these committees to the Board of Directors members shall be decided in August of each year.

Section 2. CONTENT. The Rules and Regulations shall contain rules and regulations adopted by the Board of Directors covering matters set forth in the Bylaws, the details of which stand silent herein.

Section 3. PUBLICATION OF RULES AND REGULATIONS: A revised edition of the Rules and Regulations incorporating all changes affecting owners since the last edition shall be published and distributed to each unit when there is a change. Changes during a year will be published and distributed in a circular before they become effective.

Section 4. AMENDMENTS TO THE RULES AND REGULATIONS: The Rules and Regulations may be amended at any regular meeting of the Board of Directors provided notice of the proposed amendment is given to each director at least one week in advance of the meeting at which the amendment will be considered.

Section 5. INTERPRETATION OF RULES AND REGULATIONS: Nothing shall be written in the Rules and Regulations that contravenes any provision of the Bylaws, and nothing in the Rules and Regulations shall be construed in contravention of anything in these Bylaws.

## ARTICLE V

### MEETINGS OF OWNERS

Section 1. ANNUAL MEETING. A meeting of the Association shall be held each calendar year at Salemtowne on the first Monday of June at 7:00 PM. If the day for the annual meeting is a holiday, the meeting shall be held at the same hour on the first day following that is not a legal holiday. The purpose of the annual meeting is to elect members of the Board of Directors and to consider any other business that is properly brought before the meeting.

## Section 2. SPECIAL MEETINGS.

- (a) Special meetings of the Association may be called by the Chairperson of the Board of Directors, a majority of the Board of Directors, or by written request of at least 20 percent (20%) of owners entitled to vote in accordance with Article II of the Declaration, and communicated to the Board of Directors;
- (b) Business transacted at a special meeting shall be confined to the purposes stated in the notice.

## Section 3. NOTICE OF MEETINGS.

- (a) Not less than ten (10) days nor more than fifty (50) days before any meeting called under this section, the Board of Directors shall cause notice to be hand delivered or mailed to the mailing address of each lot or to the mailing address designated in writing by the owner, and to all mortgagees that have requested such notice. Mortgagees may designate a representative to attend a meeting called under this section;
- (b) The notice of a meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes or any proposal to remove a director or officer. The notice will contain pertinent reports or other papers to be acted on at the meeting. Where an owner consists of more than one person or entity, written notice to one person or entity shall be notice to all.

Section 4. QUORUM. A quorum at any meeting of the Association shall consist of the presence or returned ballots of not fewer than the number of owners who are entitled to cast 20 percent (20%) of the votes and who are present at the beginning of the meeting. Absent a quorum, owners are empowered to adjourn such meetings without notice other than announcement at the meeting until a quorum shall be present.

## Section 5. PROCEDURES FOR USE OF WRITTEN BALLOTS FOR APPROVING OR REJECTING MATTERS SUBJECT TO MEETING OF ASSOCIATION MEMBERS.

- (a) Any question put to the Association membership where votes will be cast to approve or reject a matter shall be accompanied by an official ballot which may be returned by mail, delivered in advance to a collection point identified by the Board of Directors, or cast in person by the voting member at the appropriate Association meeting. The Board of Director's election process shall provide for identification of participating voters and ballot secrecy for the vote cast;
- (b) A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action;
- (c) The Board of Directors must provide owners with at least ten (10) days' notice before written ballots are mailed or otherwise delivered. A written ballot must be accompanied by a secrecy envelope, a return identification envelope to be signed by the owner, and instructions for marking and returning the ballot. Notwithstanding the applicable provisions of subsection (d) or (e) of this section, written ballots that are returned in secrecy envelopes may not be examined or

- counted before the deadline for returning ballots has passed;
- (d) All solicitations for votes by written ballot shall state the following:
    - (1) If approval of a proposal by written ballot requires that the total number of votes cast equal or exceed a certain quorum requirement, the number of responses needed to meet such quorum requirement; and
    - (2) If approval of a proposal by written ballot requires that a certain percentage of total votes cast approve the proposal, the required percentage of total votes needed for approval.
  - (e) All solicitations for votes by written ballot shall specify the period during which the Association shall accept written ballots for counting and the date certain on which all ballots must be returned to be counted;
  - (f) Except as otherwise provided in the Declaration or Bylaws, a written ballot may not be revoked.

## ARTICLE VI

### CONDOMINIUMS AND APARTMENTS

Section 1. UNDIVIDED OWNERSHIP OF COMMON PROPERTIES. Owners of condominiums, apartments, and like units in Salemtowne, and who share undivided ownership of common properties that are parts of such units shall also be governed by their own covenants or other documents of governance as to matters of party walls, maintenance and repair responsibilities, weather-proofing, rights of contribution, manner of dispute settlement, and the like.

Section 2. COMPLIANCE WITH BYLAWS. Nothing in this article shall be construed to exempt owners whose units are condominiums or apartments from full compliance with these Bylaws, and nothing shall be written into their own governing documents that might be invoked to exempt them from full compliance with these Bylaws.

## ARTICLE VII

### JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

Section 1. INTENT TO COMMENCE JUDICIAL OR ADMINISTRATIVE PROCEEDINGS. Any litigation or administrative proceeding by the Association will be conducted in accordance with ORS 94.630 (4) and ORS 94.662.

## ARTICLE VIII

### COMPLIANCE WITH BYLAWS

Section 1. COMPLIANCE WITH BYLAWS. Each owner shall comply with the Bylaws, and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the Declaration or in the deed to the lot. Failure to comply therewith shall be grounds for an action maintainable by the Association or by an aggrieved owner. Failure by the Association or any owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY. Invalidation of any one of these Bylaws or restrictions by judgment or court order shall in no wise affect other provisions that shall remain in full force and effect.

Section 3. INTERPRETATIONS. No provision of these Bylaws shall be interpreted in contravention to the Articles of Incorporation of the Salemtowne Civic Association and the Articles shall govern in any conflict found between these Bylaws and the Articles of Incorporation.

## ARTICLE IX

### AMENDMENT OF BYLAWS

Section 1. AMENDMENT OF BYLAWS. These Bylaws of Salemtowne Civic Association may be amended only by assent of the majority of the total votes allocated by Article II of the Declaration.

- (a) The amendment may be adopted at a meeting held in accordance with the governing documents or by another procedure permitted by the governing documents following the procedures prescribed in Article V;
- (b) An amendment adopted pursuant to this paragraph shall include a reference to the recording index numbers and date of recording of the Declaration or other governing document, if recorded, to which the amendment relates and a statement that the amendment is adopted pursuant to the applicable subparagraph of this paragraph.