

REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION

DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS

STATE OF HAWAII

1010 RICHARDS STREET

P. O. BOX 3469

HONOLULU, HAWAII 96801

**FINAL
HORIZONTAL PROPERTY REGIMES (CONDOMINIUM)
PUBLIC REPORT**

on

KE KUMULANI II
Corner of Kilepa Place and Kilinoe Street
Aiea, Oahu, Hawaii

REGISTRATION NO. 1626

IMPORTANT — Read This Report Before Buying

This Report Is Not an Approval or Disapproval of This Condominium Project

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project until

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: August 27, 1984
Expires: September 27, 1985

SPECIAL ATTENTION

A comprehensive reading of this report is by prospective purchasers urged in order that personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED ON AUGUST 7, 1984, AND INFORMATION SUBSEQUENTLY FILED WITH THE COMMISSION AS OF AUGUST 16, 1984. THE DEVELOPER, BY NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. KE KUMULANI II is a fee simple condominium project consisting of thirty-seven (37) detached single family one and two story homes to be built in accordance with floor plans filed with the Real Estate Commission.

2. No advertising and promotional matter, other than the Condominium Pre-Sale Offering to Owner-Occupants required under Act 189, has been filed pursuant to the rules and regulations promulgated by the Commission.

3. The Developer of the project has submitted to the Commission for examination all documents deemed necessary for the registration of a condominium project and the issuance of this Final Public Report.

The basic documents (Declaration of Horizontal Property Regime, Bylaws of Association of Apartment Owners, and copies of the Floor Plans) have been filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and recorded in the Bureau of Conveyances of the State of Hawaii.

The Declaration of Horizontal Property Regime, dated July 2, 1984, was filed in said Office as Document No. 1250729 and recorded in said Bureau in Liber 18059, page 628. The Bylaws, dated July 2, 1984, was filed in said Office as Document No. 1250730 and recorded in said Bureau in Liber 18059, page 650. The Floor Plans were also filed in said Office as Condominium Map No. 522 and also filed in said Bureau as Condominium Map No. 915.

4. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A of the Hawaii Revised Statutes, as amended, and the Rules and Regulations of the Hawaii Real Estate Commission which relate to Horizontal Property Regimes.

5. This Final Report is made a part of the registration of the KE KUMULANI II condominium project. The Developer is held responsible for placing this Final Report (white paper stock) and Disclosure Abstract in the hands of all purchasers and prospective purchasers and securing a signed Receipt therefor.

6. This Final Public Report automatically expires thirteen (13) months after date of issuance, August 27, 1984, unless a Supplementary Public Report is issued or the Commission, upon review of the registration, issues an order extending the effective period of this report.

NAME OF PROJECT: KE KUMULANI II

LOCATION: The project is located at the corner of Kilepa Place and Kilinoe Street, Aiea, Oahu, Hawaii, and is situate on one (1) parcel of land consisting of 222,637 square feet, more or less.

TAX KEY: First Division, 9-8-02:por. 50.

	<u>1</u>	<u>3</u>
Number of Rooms	7	7
Number of Stories	1	2
Gross Area	1,475	1,761

The approximate net living area of each type of dwelling unit consisting of the enclosed portion of the dwelling unit measured from the interior surface of the dwelling unit perimeter walls, and the area of the lanai or patio and garage is set forth below in square feet:

	<u>1</u>	<u>3</u>
Net living area:	1,038	1,205
Garage:	<u>384</u>	<u>426</u>
TOTAL:	1,422	1,631

Each of the apartments has immediate access to driveways on the grounds of the Project and to a public street.

COMMON ELEMENTS: The Declaration of Horizontal Property Regime states that the common elements shall include all the remaining portions of the project (but for the apartments) including specifically, but not limited to:

- (a) The land in fee simple.
- (b) All yards, grounds and landscaping, roads, walkways, loading areas, fences, driveways, refuse facilities and parking area.
- (c) All ducts, electrical equipment, wiring, pipes and other central and appurtenant transmission facilities, installations over, under and across the land of the project and/or within an apartment which serve more than one apartment for services such as power, light, water, gas, drainage, sewer, telephone and radio and television signal distribution.
- (d) Any and all apparatus and installations of common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

LIMITED COMMON ELEMENTS: Certain parts of the common elements, called "limited common elements", are designated and set aside for the exclusive use of certain apartments, and such apartments shall have appurtenant thereto easements for the use of such limited common elements as follows:

- (a) The various land areas numbered "36" through "72" as shown on the Condominium Map are limited common elements.
- (b) All other common elements of the Project which are rationally related to less than all of said Homes shall be limited to the use of such apartments.

All limited common elements, costs and expenses, including but not limited to, maintenance, repair, replacement, additions and improvements, shall be charged to the owner of the Home to which the limited common elements is appurtenant.

INTEREST TO BE CONVEYED TO PURCHASER: Each apartment shall have appurtenant thereto an undivided percentage interest in all common elements of the project and the same proportionate share in all common profits and expenses of the project and for all other purposes, including voting, as set forth in Exhibit "A".

PURPOSE OF BUILDING AND RESTRICTIONS AS TO USE: The Homes shall be occupied and used only for residential purposes and no dwelling unit shall be used as a tenement or rooming house or for or in connection with the carrying on of any business, trade or profession whatsoever. The Homes shall not be rented for transient or hotel purposes, which are defined as: (1) rental for any period less than thirty (30) days; or (2) any rental in which the occupants of the Homes are provided customary hotel services such as room service for food and beverages, maid service, laundry and linen or bellboy service. The Homes or any interest therein shall not be sold, transferred, conveyed, leased, occupied, rented or used for or in connection with any time-sharing purpose or under any time-sharing plan, arrangement or program, including without limitation any so-called "vacation license", "travel club membership", or "time-interval ownership" arrangement. The term "time-sharing" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Home or Homes in the project rotates among various persons on a periodically recurring basis according to a fixed or floating interval or period of time, whether by way of deed, lease, association or club membership, license, rental or use agreement, co-tenancy agreement, partnership or otherwise. Except for the foregoing, the owners of a Home shall have the absolute right to lease such Homes.

MERGER OF ADDITIONAL INCREMENTS: One or more condominium projects whether or not adjacent to the Project, but part of the same incremental plan of development and in the same vicinity, may be merged together with the Project from time to time so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for sharing of the common expenses of the projects among all the owners of the apartments in the merged projects. Except for the merger of this Project with the project known as "Ke Kumulani" that is expressly provided for, any merger or mergers shall be effective only upon the affirmative vote or written consent of seventy-five percent (75%) of the apartment owners and upon execution of the merger documents by two (2) officers of the Association and recordation of same.

In the Declaration of Horizontal Property Regime the Developer expressly reserves the right without the consent or joinder of persons then owning or leasing apartments in the

Project to merge the Project with the condominium project known as Ke Kumulani to permit the joint use of the common elements of the merged projects by all the apartment owners of both projects.

DISCLOSURES AND RESERVATIONS: Notwithstanding any of the other terms and conditions of the Declaration or the By-Laws, Owner may use any and all apartments for sales purposes, and hereby discloses that Developer intends on constructing and selling additional housing on lands adjoining the Project, and that the construction activity of Owner shall continue on the site and on adjacent land after apartment owners occupy their apartments and that this activity may result in noise, dust or other annoyances to the apartment owners, and Owner hereby:

(a) reserves the right for itself and its employees, subcontractors, vendors and suppliers to use the common elements for access to construction areas within the Project and on adjacent land;

(b) reserves the right to conduct sales activities, including the use of model dwelling units, signs and extensive sales displays and activities in the Project until Owner ceases development of additional housing in the vicinity of the Project; and

(c) reserves the right for itself, its sales representatives and prospective purchasers to utilize the common elements for ingress and egress to unsold apartments within the Project and within land areas in the vicinity of the Project in order to show apartments to prospective buyers.

In addition, the Declaration of Horizontal Property Regime contains the following reservation and exception:

"SUBJECT ALSO, to, and excepting and reserving all rights-of-way, reservations, and easements shown on the Condominium Map or heretofore or hereafter granted, conveyed, leased or required to construct, install, operate, maintain, repair and replace lines and other transmission facilities and appurtenances for roads, sidewalks, access, electricity, gas, telephone, water, sewer, drainage, radio and television signal distribution and other services and utilities over, across and under said property, the right to enter for such purposes, and to trim any trees in the way of such lines and the right to convey, grant or lease to any public utility, governmental authority, the Association, State of Hawaii, City and County of Honolulu, Board of Water Supply, or in favor of land in the general vicinity of the land being hereby submitted to the Horizontal Property Regime, or other corporation or entity

such easements, reservation, roads, sidewalks, access, rights and rights-of-way under the terms and conditions required by the grantee or lessee for such rights; provided, however, that such easements, rights and rights-of-way must be exercised in such manner as to not unreasonably interfere with the use of the land being hereby submitted to the Horizontal Property Regime, and in connection with the installation, maintenance or repair of any facilities pursuant to any of said easements, rights and rights-of-way, the premises shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the condition of the premises immediately prior to the exercise thereof."

NEWTOWN ESTATES ASSOCIATION: Each Home owner of this project will be a member of Newtown Estates Association and is subject to assessment by said Association. Each Home owner shall remain a member thereof until such time as his ownership of such lot ceases for any reason, at which time his membership in said Association shall automatically cease. Such membership shall be appurtenant to and may not be separate from the ownership of an apartment and shall be deemed to be conveyed or encumbered with such apartment even though such membership is not expressly mentioned or described in the conveyance or other instrument.

The provisions of the Declaration of Horizontal Property Regime for the project are subordinate and subject to all the provisions of that certain Master Declaration of Covenants, Conditions and Restrictions for Newtown Estates at Waimalu, Hawaii, dated May 26, 1972, filed in the Office of the Assistant Registrar of the Land Court as Document No. 582929, as amended.

OWNERSHIP OF LAND: The Developer has submitted to the Commission a preliminary title report dated June 25, 1984, prepared by Title Guaranty of Hawaii, Incorporated. This report reflects that the fee simple title to the land on which the project is situated is owned by Developer.

ENCUMBRANCES AGAINST TITLE: The preliminary title report dated June 25, 1984, reflects that the title to said land is subject to:

1. Lease of Right-of-Way in favor of Hawaiian Electric Company, Inc. and Hawaiian Telephone Company dated March 9, 1956, filed as Land Court Document No. 190860, leasing and demising Lot 1555 (besides other land) for a term expiring December 31, 1965, and thereafter from year to year until terminated.
2. Reservations contained in Deeds dated November 24, 1970, filed as Document No. 520690; dated November 17, 1970, filed as Document No. 520691; dated November 24,

1970, filed as Document No. 520692; dated November 18, 1970, filed as Document No. 520693; and dated December 1, 1970, filed as Document No. 520694, to-wit:

"RESERVING, HOWEVER, to the Grantor, for the benefit of Lot 48, as shown on Map 16, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application 950 (amended), the following:

A. The right of access over, under, upon and across Lots 47, 45 and 40, and Easements M, L and K, all as shown on said Map 16, from said Lot 48 to Moanalua Road. Such access will run from locations at approximately Points A, B and C, as shown on the plan attached to the Purchase and Sale Agreement dated April 17, 1970, by and between Dorothy Bradstreet Austin, Ariana Austin Fairbanks, James Walker Austin, John Frazar Austin, Jr. and Bishop Trust Company, Limited, as Trustee under the will and of the Estate of Edith Austin, deceased, as Sellers, and Herbert Horita, Shigeru Horita, Masakazu Horita, Iwao Kishimoto and Kinji Kanazawa, as Buyers. Until the Grantees or any governmental body will have constructed streets at least as wide as the City and County of Honolulu may require connecting Moanalua Road to said Lot 48 at approximately said Points A, B and C, the Grantor will have a general easement to use all of the premises hereby conveyed under Item First for such access or three easements each not less than 100 feet wide from approximately said Points A, B and C to the nearest public street connecting to Moanalua Road. As such streets are completed the Grantees will dedicate them to public use. Upon such dedication, the Grantor's rights will be limited to the three easements from said Lot 48 at said Points A, B and C to the nearest public highway leading to Moanalua Road. All such easements will include the right to lay, maintain, repair and replace in the respective easement areas sewer and water lines, pipes, wires and conduits and other utility lines and installations.

B. The right to use such sewer, water and other utility lines, pipes, wires and conduits installed by the Grantees in the premises as have not been conveyed to the City and County of Honolulu and to enter on the premises for the purpose of making connections thereto to serve such remaining land of the Grantor."

3. Declaration of Covenants, Conditions and Reservations for the Newtown Estates dated May 26, 1972, filed as Document No. 582929.

4. Easement "393" (43,734 square feet) for roadway purposes as shown on Map 77, as set forth by Land Court Order No. 70197, filed June 19, 1984.
5. MORTGAGE AND SECURITY AGREEMENT
 - MORTGAGOR : BLACKFIELD-LUSK PARTNERSHIP, a Hawaii general partnership
 - MORTGAGEE : BANK OF HAWAII, a Hawaii banking corporation
 - DATED : December 4, 1983
 - FILED : Land Court Document No. 1202098
 - RECORDED : Liber 17453, Page 65
 - AMOUNT : Revolving construction loan facility under which the mortgagor may borrow, repay and reborrow amounts at any one time outstanding not to exceed \$8,000,000.00 - (besides other land)
6. ADDITIONAL CHARGE MORTGAGE AND AMENDMENT TO THE MORTGAGE SET FORTH AS ENCUMBRANCE NO. 5.
 - MORTGAGOR : BLACKFIELD-LUSK PARTNERSHIP, a Hawaii general partnership
 - MORTGAGEE : BANK OF HAWAII, a Hawaii banking corporation
 - DATED : December 5, 1983
 - FILED : Land Court Document No. 1209828
 - RECORDED : Liber 17544 Page 489
 - AMOUNT : \$4,100,000.00 and \$2,000,000.00
7. For any real property taxes that are due and payable, reference is made to the office of the Finance Director, City and County of Honolulu.

PURCHASE MONEY HANDLING: The Developer has submitted to the Commission a copy of Specimen Sales Agreement and an Escrow Agreement dated May 30, 1984, identifying Title Guaranty Escrow Services, Inc., as the Escrow Agent. Upon examination, the specimen Sales Contract and the executed Escrow Agreement are found to be in compliance with Chapter 514A, Hawaii Revised Statutes, as amended.

It is incumbent upon the purchaser and prospective purchaser to read and understand the Escrow Agreement before executing the Sales Agreement, since the Escrow Agreement prescribes the procedure for receiving and disbursing purchasers' funds and the Sales Agreement specifically provides that funds may be disbursed for certain costs of the Project prior to completion of construction.

Among other things, the specimen Sales Agreement provides that:

1. The Sales Agreement shall not be construed as a present transfer of any interest in the property covered by the Sales Agreement, but rather it is an agreement to transfer in the future; that the purchaser acknowledges and agrees that all security interests obtained by the Lender in connection with the loan for construction costs, costs of acquiring Developer's interest in the Project and other associated costs of the Project, as well as any extensions, renewals and modifications thereof shall be and remain at all times a lien or charge on the Project, including the Property covered by the Sales Agreement, prior to and superior to any and all liens or charges on the Project arising from the Sales Agreement or any other prior reservation agreement.

2. The Developer has made no representations with respect to the possibility or probability of rental or other income from the apartments, or other economical benefits to be derived from the rental of the apartments, including but not limited to, any representations to the effect that Developer or the managing agent of the Project will provide services relating to the rental or sale of the apartments nor representations as to possible advantage from the rental of the apartments under federal or state tax laws. If a purchaser wishes to rent his apartment to third persons, purchaser must make his own arrangements.

3. The purchaser agrees for a period of two (2) years from and after the closing date that the purchaser shall not place anywhere within the Ke Kumulani project any "For Sale" or "For Rent" signs.

4. The contract shall not become fully binding until the third day after the Developer has taken the Buyer's receipt for a copy of the Real Estate Commission's Final Public Report on this Project. The contract shall become fully binding automatically on said day without further notice to Buyer.

5. All taxes, assessments and charges of any kind assessable against the Property shall be payable according to the terms of the Declaration and the ByLaws, and will be prorated between Developer and Purchaser as of the final closing date. Purchaser shall pay all closing costs in connection with the sale, including without limitation, escrow fees, preparation of the conveyance, preparation of any agreement of sale, preparation of any land trust and related documents, State of Hawaii conveyance tax, preparation of any mortgages and all costs related to obtaining the mortgage, all acknowledgment fees, all recording fees, the escrow fee and any proof of title, including the cost of any title insurance premiums, and certain prepayments, all as set forth in the Contract.

6. Seller informs Buyers of the existence of a piggery approximately 3,000 feet mauka of the project.

The Escrow Agreement provides, in part: A purchaser shall be entitled to a return of his funds and Escrow shall pay such funds to such purchaser, without interest, if any one of the following has occurred:

(a) Developer and the purchaser shall have requested Escrow in writing to return to purchaser the funds of purchaser held hereunder by Escrow; or

(b) Developer shall have notified Escrow of Developer's exercise of the option to cancel or rescind the sales contract pursuant to any right of cancellation or rescission provided therein or otherwise available to Developer; or

(c) With respect to a purchaser whose funds were obtained prior to the issuance of the Final Report, there shall have been a change in the building plans, subsequent to the execution of purchaser's sales contract, requiring approval of a county officer having jurisdiction over the issuance of building permits, unless such change is specifically authorized in the Declaration of Horizontal Property Regime or by the terms of the sales contract or unless a purchaser's written approval or acceptance of the specific change is obtained or ninety days have elapsed since the purchaser has accepted in writing the unit or the purchaser has first occupied the unit; or

(d) The Final Report differs in a material respect from the Preliminary Report, and the purchaser's written approval of such change shall not have been obtained; or

(e) The Final Report shall not have been issued within one (1) year from the date of issuance of the Preliminary Report and the purchaser has not waived or has not been deemed to have waived his right to a refund.

Escrow shall release from the Escrow fund and refund all sums received by it under a particular sales contract, subject only to such deductions as may be provided in said sales contract, upon receipt of evidence satisfactory to it from seller or purchaser thereunder or both that the conditions provided in such sales contract for such a refund have been met, or that the conditions provided in the Horizontal Property Act for such a refund have been met. Upon refund of said funds to the purchaser as aforesaid, Escrow shall return to seller such purchaser's sales contract and any conveyance documents delivered to Escrow, and thereupon neither the purchaser nor seller shall be deemed obligated thereunder.

ALTERATION OF PROJECT: The Declaration of Horizontal Property Regimes states that any restoration or replacement of any building or any construction of additional buildings or structural alteration or any addition to structure of material different from the Condominium Map will require the approval of the Board of Directors of the Association of Apartment Owners and by filing an amendment to the Declaration of Horizontal Property Regime and the Condominium Map.

Any restorations or rebuilding of improvements within an apartment or any alterations or additions within an apartment or within a limited common element appurtenant to and for the exclusive use of such apartment shall require only the prior written approval of the Board.

It is noted that this project and every owner is subject to the Master Declaration of Covenants, Conditions and Reservations for Newtown Estates. Section 3.03(h) of Article III of this Master Declaration of Covenants reads as follows:

"No substantial structural addition or alteration visible from a street on which any lot abuts shall be made after the initial residence has been completed without the prior approval of the Architectural Committee as to design, colors and materials. Plans for proposed work shall be presumed to be approved in the event no action has been taken on such plans for forty-five (45) days after submission thereof. An addition or alteration shall be deemed substantial if its fair replacement cost is in excess of \$500.00, measured in terms of purchasing power of the dollar in 1972."

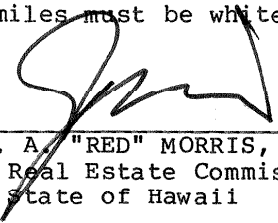
PROPERTY MANAGEMENT: Developer has submitted to the Commission a copy of an Agreement entitled "Condominium Property Management Agreement", which was executed by Developer on behalf of the Association of Apartment Owners with Hawaii Management Corporation, as Agent. Said Agreement provides for property management of the Project. The address of Hawaii Management Corporation is 1221 Kapiolani Boulevard, Suite 700, Honolulu, Hawaii 96814, and its telephone number is 538-3841. Hawaii Management Corporation is a wholly owned subsidiary corporation of Blackfield Hawaii Corporation, one of the partners of the Blackfield-Lusk Partnership.

STATUS OF THE PROJECT: The Developer has stated that site work for the Project has commenced and that the estimated date of completion of construction of the entire project is about December 31, 1984.

PRIVATE PARK: Lot 1140, area 40,908.0 square feet, as shown on Map 15, filed with Land Court Application No. 950 (amended) of Edith Austin, and others, is a portion of the land described in and covered by Transfer Certificate of Title No. 208,918, and is situated in the vicinity of the Project. The owner of said Lot is Venture Fifteen, Inc., a Hawaii corporation, and said owner has improved said lot as a private park for the benefit of certain condominium projects, to-wit: Chateau Newtown, Newtown Villa I, Newtown Villa II, Ke Kumulani, and other projects within the vicinity of said park. It is the intent of Venture Fifteen, Inc. to convey the title to said park to Newtown Estates Community Association or to an equivalent non-profit corporation to hold the title in trust for the benefit of said condominium projects. The Association of Apartment Owners or each apartment owner will be required to pay monthly assessments for the maintenance and upkeep of said private park.

The purchaser or prospective purchaser should be cognizant of the fact that this Public Report represents information disclosed by the Developer in the required Notice of Intention submitted August 7, 1984, and information subsequently filed as of August 16, 1984.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of REGISTRATION NO. 1626 filed with the Commission on August 7, 1984. The report, when reproduced, shall be a true copy of the Commission's Final Public Report. The paper stock used in making facsimiles must be white.



G. A. "RED" MORRIS, Chairman
Real Estate Commission
State of Hawaii

Distribution:
Department of Finance,
City and County of Honolulu
Bureau of Conveyances
Planning Department, City and
County of Honolulu
Federal Housing Administration
Escrow Agent

Registration No. 1626

August 27, 1984

<u>Apartment Number</u>	<u>Type of Dwelling Unit</u>	<u>Percent Ownership of Common Elements</u>
36	1R	2.7
37	1R	2.7
38	3R	2.7
39	3	2.7
40	1	2.7
41	1R	2.7
42	3	2.7
43	1	2.7
44	1R	2.7
45	3R	2.7
46	1	2.7
47	1R	2.7
48	3	2.7
49	1	2.7
50	1R	2.7
51	3	2.7
52	1	2.7
53	1R	2.7
54	3R	2.7
55	1	2.7
56	1R	2.7
57	3	2.7
58	1	2.7
59	1R	2.7
60	3R	2.7
61	1	2.7
62	1R	2.7
63	3R	2.7
64	1	2.7
65	1R	2.7
66	3R	2.7
67	1	2.7
68	1R	2.7
69	3R	2.7
70	1	2.7
71	1R	2.7
72	3MR	2.8

Where an "R" is set forth in the middle column entitled "Type of Dwelling Unit", this reflects that the floor plan of that particular dwelling unit is a mirror image of the type of designated dwelling unit. Where an "M" is set forth in the middle column entitled "Type of Dwelling Unit" (72 only), this reflects a modified location of the garage door.