

462275

Recording requested by:)
Declarant)
When recorded return to:)
Jay A. Wexler)
2223 Avenida de la Playa, Suite 201)
La Jolla, California 92077) THIS SPACE FOR RECORDER'S USE

DECLARATION OF COVENANTS AND RESTRICTIONS

FOR CRESTA HOMEOWNERS' ASSOCIATION

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Declaration"), dated January 1, 1983, is made by ESTANCIA PRIMERA DEVELOPMENT, a California partnership and Joe Ann Hoover (jointly referred to herein as "Declarant"), with reference to the following:

RECITALS:

9) A. Declarant is the owner of Tract J ("Tract J") of ESTANCIA PRIMERA, a planned residential community as defined in Planned Residential Community Zoning Ordinance 1981-3 of the City of Santa Fe, New Mexico. Tract J is more fully described in that certain plat of Estancia Primera, Phase 1-A, recorded in the office of the Clerk of Santa Fe County, New Mexico, on October 21, 1981, in Plat Book 107, page 22 ff.

B. Declarant has caused Tract J to be subdivided into twenty-four (24) Lots, in accordance with the approved final development plan for Estancia Primera, Phase 1-A, together with tract common area and community common area, all as reflected on that certain final plat, which has been recorded in the office of the Clerk of Santa Fe County, New Mexico, on October 21, 1981, at Santa Fe, as Document No. 486,756.

Tract J, as so subdivided, and the lots therein ("Property"), and as established under Planned Residential Community Zoning Ordinance 1981-3 of the City of Santa Fe, New Mexico, is the specific real property which is subject to this Declaration.

C. Declarant intends to establish the covenants, restrictions, terms and conditions contained herein as a general scheme for the management of the Property in order to enhance and protect the value, desirability and attractiveness of the Property and all subsequent development thereon for the benefit of Declarant and all owners thereof.

D. Declarant has incorporated the CRESTA HOMEOWNERS' ASSOCIATION ("Association") under the laws of this state in order to administer, enforce and achieve the purposes of this Declaration and to satisfy the requirements of the City of Santa Fe.

E. Capitalized terms not defined elsewhere herein are defined or referred to in Article II hereof.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be owned, held, transferred, sold, conveyed, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, easements, charges, and liens herein-after set forth or referred to. This Declaration is established to further a plan for the improvement and sale of the Property, and the individual lots within the boundaries of the Property, and for the purpose of enhancing the value, desirability and attractiveness of the Property and every part thereof. All of

the covenants, conditions, restrictions, easements, charges, and liens contained or referred to herein are equitable servitudes and shall run with the title to the real property subject hereto and every part thereof, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in any portion of the Property.

Declarant hereby delegates and assigns to the Association the maintenance and administration of the Tract Common Area and the right and obligation to administer and enforce this Declaration, to exercise the management responsibilities and other rights and duties specified herein or hereafter delegated to it, to collect assessments and disburse funds for the benefit of the Property, and to promote the recreation, health, safety and welfare of all owners and residents thereof; provided, however, that upon default by such Association with respect to any of its obligations under this Declaration, Declarant expressly acknowledges the residual right of the Estancia Primera Community Service Association ("Master Association") to perform such obligations in accordance with the terms and conditions of that certain Declaration of Covenants and Restrictions recorded in the office of the Clerk of Santa Fe County, New Mexico, on January 8, 1982, in Book 433 at pages 614 through 660 and any amendments thereto ("Master Declaration").

ARTICLE I

AFFIRMATION

1.1 Covenants and Restrictions of Master Association Binding on the Property. Declarant hereby affirms and declares that all of the terms and conditions of the Master Declaration shall apply to the Property and all portions thereof. To the extent that there is any conflict between the terms and conditions of the Master Declaration and this Declaration, then the more restrictive provision shall prevail.

ARTICLE II

DEFINITIONS

2.1 Incorporation by Reference. All definitions contained in Article I of the Master Declaration are hereby incorporated by reference, to be supplemented by the following definitions.

2.2 Declarant. For purposes of this Declaration, the term Declarant shall mean Estancia Primera Development and Joe Ann Hoover, acting jointly. Declarant has all rights and duties of a Declarant until such time as all lots within the Property have been sold to third parties.

2.3 Association. For purposes of this Declaration, the term Association shall mean the Cresta Homeowners' Association. The Association is a Tract Association and a Local Association within the meaning of the definitions referred to in Section 2.1, and shall have all rights, duties, powers and responsibilities which are specified in this Declaration, its Articles of Incorporation and its By-laws.

2.4 Master Association. For purposes of this Declaration, the term Master Association shall mean the Estancia Primera Community Services Association and its successors and assigns. The Master Association is the Community Association under the definitions referred to in Section 2.1.

2.5 Tract Common Area. For purposes of this Declaration, the term Tract Common Area shall mean all of the Property, save and except the twenty-four (24) lots reflected on the final plat thereof. Tract Common Area includes all private streets within the Property and is subject to such easements of use and maintenance as are reserved or provided for on the final plat. A copy of the final plat showing the lots and Tract Common Areas is attached hereto as Exhibit A.

ARTICLE III

POWERS AND DUTIES OF HOMEOWNERS' ASSOCIATION

3.1 Powers and Duties of Association. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of New Mexico. The Association shall have the power to do any and all acts that are authorized, required or permitted under this Declaration and any and all acts that may be reasonable and necessary for, or incidental to, the exercise of any express powers and duties granted to the Association. Without limiting the generality of the foregoing, the Association shall have the following powers and duties which, unless expressly provided otherwise, shall be exercised by its Board of

Directors or by such committees, persons or agents expressly designated by its Board of Directors.

(a) Management and Maintenance. The Association shall maintain, manage, operate, replace and repair the Tract Common Area and all facilities and improvements located thereon and all personal property acquired by the Association.

(b) Local General Assessments. The Association shall determine, levy, collect, and enforce all Local General Assessments pursuant to Article V.

(c) Right of Entry. The Association and its agents and representatives shall have the power and right to enter upon any portion of the Property, to the extent necessary, without liability to any Owner or Occupant, for the purpose of enforcing any of the provisions of this Declaration or for the purpose of performing maintenance and repair duties imposed herein on the Association. Such right of entry upon lots owned by Owners other than Declarant shall be exercised so as to interfere as little as reasonably possible with possession, use and enjoyment of such portion and shall be preceded by reasonable notice whenever the circumstances permit.

(d) Right of Enforcement. The Association, in its own name and on its own behalf or on behalf of any Owner or Owners who consent, shall have the power and authority to commence and maintain legal or equitable actions or proceedings to recover damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or to enforce any such provision by mandatory injunction or otherwise.

(e) Delegation of Duties. The Association shall have the right to delegate any of its powers under this Declaration.

(f) Insurance. The association shall contract for and maintain such policy or policies of insurance as may be required to protect the interests of the Association and its Members.

(f) Taxes. The Association shall pay any real and personal property taxes and other charges assessed against the Tract Common Area or any facilities or improvements located thereon, unless the same are separately assessed to the Owners.

(g) Rules. The Association may, from time to time, subject to this Declaration, adopt and enforce rules and regulations pertaining to the management, operation, and use of the Tract Common Area and any facilities and improvements thereon and any other subject within the jurisdiction of the Association.

ARTICLE IV

TRACT COMMON AREA

4.1 Establishment of Tract Common Area. The Tract Common Area is defined in Section 2.5 of this Declaration and is reflected on the final plat of the Property. Upon Declarant's conveyance of any Lot within the Property to one or more Owners, Declarant shall also convey an undivided one-twenty-fourth (.041666) interest in the Tract Common Area, in fee simple, provided that the ownership of such an undivided interest may not be severed from ownership of the Lot itself, and that all subsequent conveyances of such Lot shall be coupled with a conveyance of the undivided interest in the Tract Common Area. Declarant shall have such easements of use with respect to the Tract Common

Area as are reflected on the final plat of the Property, for purposes of maintaining utility systems, or the right of the Association or Master Association to perform such tasks as may be required to maintain stable and adequate drainage of the Property.

4.2 Owner's Easement of Use. Subject to the provisions of Section 4.1, every Owner shall have a right and easement of enjoyment in and to the Tract Common Area.

4.3 Liability of Owners for Damage. Each Owner shall be liable for all damage to Tract Common Area caused by such Owner, his invitees, licensees or tenants.

ARTICLE V

ASSESSMENTS

5.1 Agreement to Pay Assessments; Creation of Lien and Obligation. By acceptance of a deed for his respective Lot, each Owner hereby covenants and agrees to pay to the Association all Local General Assessments to be established and collected as provided herein. The lien for the first such Assessment shall attach as of the commencement date provided in Section 5.5(b). All of the Assessments, together with interest at ten percent (10%) per annum, costs and reasonable attorneys' fees shall be both: (a) a charge on the land and a continuing lien on the Lot against which each such Assessment is made; and (b) the personal obligation of the Owner of such Lot at the time the Assessment became due and payable. If more than one person or entity is the Owner of a Lot, the personal obligation to pay each such assessment shall be joint and several.

5.2 No Waiver By Non-Use. No Owner may exempt himself from payment of Assessments by waiver of the use or enjoyment of all or any portion of the Tract Common Area or by waiver of the use or enjoyment of, or by abandonment of his Lot.

5.3 Purpose of Assessments. The Assessments shall be used exclusively for the following purposes: (a) to promote the recreation, health, safety and welfare of the Members; (b) to meet the expenses, including, but not limited to the improvement, maintenance and operation of the Tract Common Area, thereby preserving and enhancing the value of the Property as a whole for the benefit of all Owners thereof; and (c) to accomplish the purposes, perform the duties and exercise the powers of the Association as provided herein.

5.4 Subordination of Lien. The lien for Local General Assessments shall be subordinate to the liens of first mortgages or first deeds of trust on the assessed Lots.

5.5 Local General Assessment. The Local General Assessment shall be an annual assessment fixed and levied by the Association in an amount based upon the estimated expenses, payable in quarterly installments, or as determined by the Association.

(a) Method of Determining Assessment. Prior to the beginning of each fiscal year, the Association shall prepare a budget of the total estimated operating expenses of the Association for said fiscal year. The budget shall estimate all expenses, based upon the actual services to be undertaken by the Association, and each Owner shall be assessed a proportionate share of the total required, determined as follows: Lot Nos. 8,

9, 11, 12, 13 through 24, which front on a private street (Paseo Cresta) shall solely bear the costs of maintaining that private street, as indicated on "Exhibit A" in addition to a proportionate share of the general assessments. Lot Nos. 1 through 7 and 10, which front on public streets, shall solely bear a proportionate share of the general assessments, and not be required to participate in the maintenance of Paseo Cresta.

(b) Date of Commencement of Local General Assessments. The first annual Local General Assessment for the Property subject to this Declaration shall commence on the first day of the month following recordation of this Declaration, and annually thereafter.

(c) Obligation of Declarant. Until such time as all Lots have been sold by Declarant to third parties, Declarant shall be responsible for paying the excess of the amount of any actual expense incurred by the Association over the amount of Association funds available to meet such expense.

5.6 Effect of Non-Payment of Assessments; Remedies of Community Association. Any Assessment, including any installment thereof, which is not paid when due shall be delinquent and shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. In the event of a default or defaults in payment of any Assessment, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows.

(a) Lawsuit. The Association may commence a suit or suits at law to enforce such obligation. Any judgment rendered in any such action shall include a sum for reasonable attorneys' fees and costs.

(b) Notice of Claim of Lien. Within thirty (30) days after the delinquency of any Assessment, the Association shall give a notice to the defaulting Owner which shall identify the Assessment, the date of the delinquency, the amount of the delinquency, and the interest charge for such delinquency, and shall make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after the effective date of delivery of such notice, the Association may elect to file a Notice of Claim of Lien against the Lot of such delinquent Owner. Such Notice of Claim of Lien shall state: (1) the name of the delinquent Owner; (2) a description of the Lot against which the claim of lien is made; (3) the amount claimed to be due and owing; (4) that a claim of lien is made by the Association pursuant to the provisions of this Declaration; and, (5) that a lien is claimed against said described Lot in an amount equal to the amount of the stated delinquency, plus interest and attorneys' fees, together with the amount of any further delinquencies incurred by such Owner. Any such Notice of Claim of Lien shall be signed and acknowledged by an authorized officer of the Association and shall be recorded in the Office of the Clerk of Santa Fe County, New Mexico. Each delinquency shall constitute a separate basis for a claim of lien. Any lien imposed under this Section 5.6(b) may be foreclosed by the Association in accordance

with the procedures for foreclosure of a mortgage under New Mexico law.

(c) Curing of Lien. Upon the timely curing of any default for which a Notice of Claim of Lien was filed by the Association, officers of the Association are hereby authorized to record an appropriate release of such Notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Association, to cover the cost of preparing and filing or recording such release.

(d) Additional Rights and Remedies. The Assessment liens and the rights to foreclosure and sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments as provided in Section 5.6(a).

(e) Delegation and Waiver of Owners. Each Owner hereby vests in, and irrevocably delegates to the Association or its duly authorized representatives the right and power to bring all actions at law or equity and lien foreclosures, whether judicially or by the power of sale or otherwise, against any Owner for the collection of delinquent Assessments as provided herein, and hereby expressly waives any objection to the enforcement of their obligation to pay Assessments in accordance with the provisions of this Declaration.

5.7 Rights of First Mortgagees and First Trust Deed Holders. Each holder of a first mortgage lien or first Deed of Trust lien on a Lot that comes into possession of such Lot by

virtue of foreclosure of such mortgage or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, takes such lot free of any claims for unpaid assessments and charges against the lot which accrued prior to the time such holder comes into possession, except for claims for a share of such assessments or charges resulting from a retroactive reallocation of such assessment among all lots within the property, including the mortgaged lot.

ARTICLE VI

USE RESTRICTIONS

6.1 Incorporation by Reference. Declarant hereby incorporates by reference all use restrictions contained in Article VI of the Master Declaration, and expressly adopts such use restrictions with respect to all lots and the entire Tract Common Area; provided, however, that rights reserved to Declarant in the Declaration for the Master Association shall inure to the benefit of Declarant herein.

6.2 Limitation on Use of Tract Common Area. Neither

Declarant, the Association nor any Owner shall be entitled to exercise the right to use and enjoy Tract Common Area in such a manner as to impair or otherwise diminish the exercise of such right by any and all other Owners.

ARTICLE VII

EASEMENTS

7.1 Declarant's Reservation of Easements. Declarant

reserves an easement and right-of-way through, over, under and across all portions of the property for the purpose of completing

its development and improvement work on the Property. In addition, Declarant reserves the right to continue to use the Property and any sales offices, model homes, signs and parking spaces located on the Property in its efforts to develop and market portions of the Property. This Section may not be amended without the prior written consent of Declarant. All rights of either Declarant hereunder are fully assignable to merchant builders acquiring Lots from Declarant.

ARTICLE VIII

RIGHT OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

8.1 Interest Subject to Lender's Rights. It is anticipated that part or all of the Lots may be financed or the loans therefor insured or guaranteed for the Owners through special agencies, such as the Federal Mortgage Agencies and others. The interest of the Association and each of the Owners (other than Declarant) is and shall be subject to and subordinate to the rules, regulations and requirements of such agencies purchasing, insuring or guaranteeing mortgages or deeds of trust for portions of the Property, as amended from time to time. Notwithstanding prior acquisition of title to any portion of the Property by any Owner, amendments to this Declaration shall be binding upon all Owners and the Association.

8.2 Access to Financial Records. Institutional Lenders holding first mortgages or deeds of trust on Lots within the Property shall, upon written request to the Association, be entitled to inspect the books and records of the Association during normal business hours, to receive a copy of an audited

financial statement of the Association (the cost of the audit to be at the expense of said Institutional Lenders) or, in the alternative, to receive an annual financial statement of the Association prepared in accordance with standard accounting practices.

8.3 Notice to Lenders. Institutional Lenders holding first mortgages or deeds of trust on Lots within the Property that have filed written notice of same with the Association shall be entitled to: (a) written notice of all meetings of the Association and the right to designate a representative to attend all such meetings; (b) written notice of any material amendment to this Declaration, the Bylaws or Articles of Incorporation.

ARTICLE IX

TERM, AMENDMENTS, DECLARANT'S RIGHTS

9.1 Term of Declaration. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and every part thereof, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, his respective legal representatives, heirs, successors and assigns, for a term of fifty-five (55) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by at least seventy-five percent (75%) of the Owners, has been recorded within the year preceding the beginning of any such ten-year period agreeing to terminate or revise this Declaration.

9.2 Amendment Procedure. This Declaration may be amended at any time by the affirmative vote of the Owners of sixteen (16) of the twenty-four (24) Lots in the property, provided that no such amendment may contravene the purposes or intent of the final development plan for the Property.

9.3 Rights of Declarant. For so long as the Declarant shall own any portion of the Property, its rights and interest shall not be prejudiced by any amendments to this Declaration, the Articles of Incorporation or the Bylaws (unless Declarant gives its prior written consent) which have been the following effects:

- (a) Discriminate or tend to discriminate against Declarant's rights as an Owner.
- (b) Change the Definitions in Article II in a manner which alters Declarant's rights or status.
- (c) Alter previously recorded or written agreements with public or quasi-public agencies or utilities with respect to easements and rights-of-way.
- (d) Alter the basis for assessments, as provided in Article V.
- (e) Alter the provisions of the use restrictions set forth in Article VI.
- (f) Alter the Declarant's easement rights, as provided in Article VII.
- (g) Alter the Declarant's rights provided under this Article IX.

MISCELLANEOUS PROVISIONS

10.1 Controlling Law. This Declaration shall be construed and enforced according to the laws of the State of New Mexico.

10.2 Successors in Interest. This Declaration shall be binding upon and inure to the benefit of the Owners, their heirs, personal representatives, assigns or other successors in interest whatsoever.

10.3 Severability. If any provision of this Declaration should be held invalid or unenforceable, such holding shall not affect the other provisions hereof, and this Declaration shall thereupon be construed and enforced in accordance with its valid and enforceable provisions.

10.4 Headings. The headings and captions herein are provided for reference and convenience only.

10.5 Gender and Number. Except where otherwise clearly indicated by context, the masculine and neuter genders shall include the feminine and neuter, the singular shall include the plural, and vice-versa.

EXECUTED this 4th day of May, 1983.

DECLARANT

ESTANCIA PRIMERA DEVELOPMENT

By: New Mexico Resources
Properties, Ltd.

By: Communique, Inc.


Jay A. Wexler, President

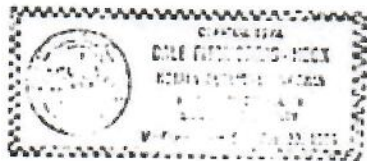
462292

Joe Ann Hoover

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss. ~

The foregoing Declaration was acknowledged before me this 4th
day of May, 1983, by Jay A. Wexler, the President of
Communique, Inc., on behalf of said corporation.



Dale Peterson - Notary
Notary Public

My commission expires:

April 30, 1986


ACKNOWLEDGEMENT

462293

Arizona
STATE OF CALIFORNIA)
San Diego) ss.
COUNTY OF SAN-DIEGO)

The foregoing Declaration was acknowledged before me this 27th
day of April, 1983, by Joe Ann Hower on behalf of New Mexico
Resources Properties, Ltd.

Shirley J. Gustafson
Notary Public

A circular notary seal for Shirley J. Gustafson, Notary Public, State of California. The seal contains the text "SHIRLEY J. GUSTAFSON", "NOTARY PUBLIC", and "STATE OF CALIFORNIA".

My commission expires:

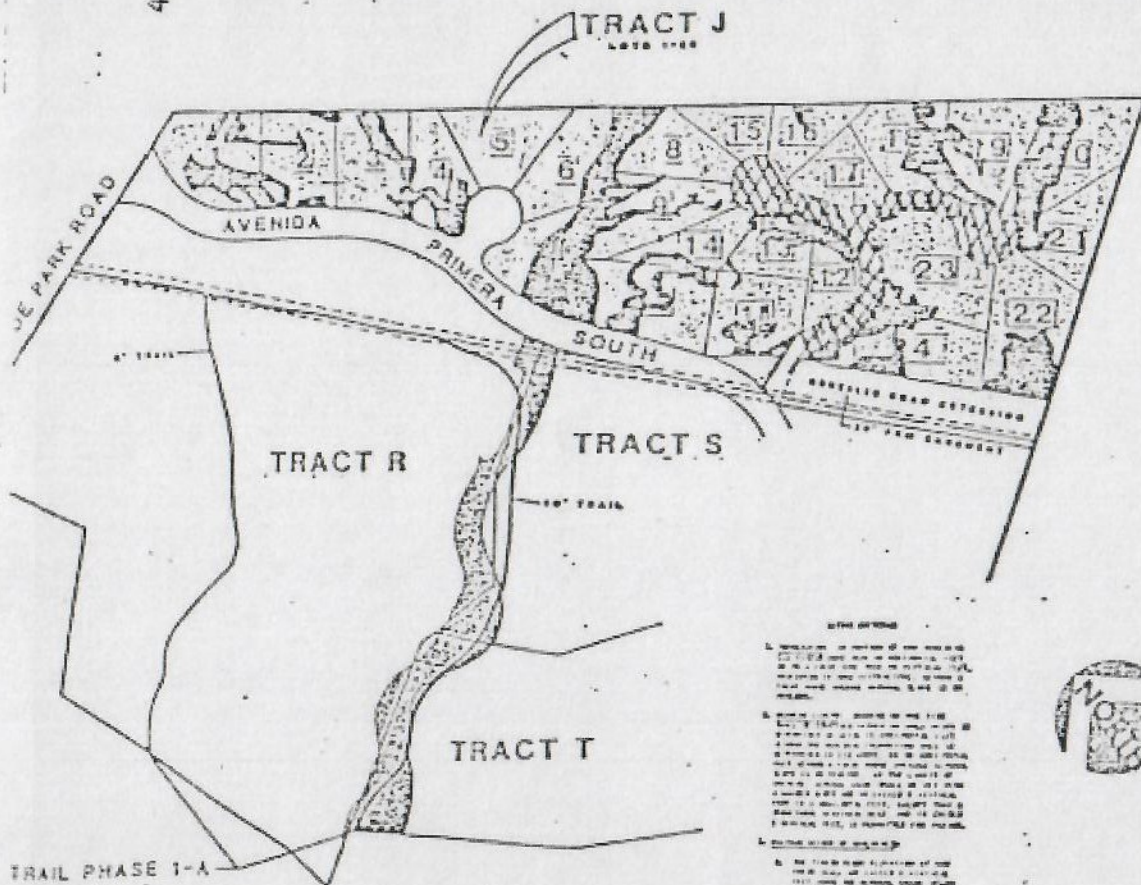
August 7, 1985

B11KMG003

462294

Cresta Reference map
(Tract J)

I



LEGEND
 1. SLOPE ANALYSIS MAP
 2. APPROX. JOGGING TRAIL LOCATION
 3. COMMON AREA INDICATED BY CROSS-HATCHING

LEGEND

- LESS THAN 10% SLOPE
- OVER 10% SLOPE
- FLATLAND

Common area indicated by cross-hatching

EXHIBIT A

NOTES
 1. SLOPE ANALYSIS MAP
 2. APPROX. JOGGING TRAIL LOCATION
 3. COMMON AREA INDICATED BY CROSS-HATCHING



TRAIL PHASE 1-A

TRAIL PHASE 1-A

PRIMERA FINAL PLAT TRACTS J,R,S,T

<p>TEC TRAIL JOGGING CONSULTANTS</p>	SLOPE ANALYSIS MAP		
	TRACT J		
	APPROX. JOGGING TRAIL LOCATION		
	DATE	SCALE	REV.
JULY 1988	1"=100'	NO. 01	