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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR JOHNSON RANCH
HOMEOWNERS ASSOCIATION, INC

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR JOHNSON RANCH
HOMEOWNERS ASSOCIATION, INC (the "Declaration") is made this 21 day of DECEMBER, 2016 by D&G
Development, LLC an Arizona limited liability company (the "Declarant")

ARITICLE I DEFINITIONS

- 1.1 "Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to Section of this Declaration.
- 1.2 "Architectural Committee" or "ARC" means the architectural committee of the Association to be created pursuant to Section of this Declaration and the Bylaws. The Board of Directors can opt to designate a separate Architectural Review Committee or can opt to perform the duties of the "ARC" solely.
- 1.3 "Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to Section of this Declaration and the Bylaws, as they may from time to time be amended or supplemented.
- 1.4 "Areas of Association Responsibility" means (i) all common areas, including the Improvements and landscaping situated thereon, (ii) any portion of the Improvements situated on a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another recorded document executed by the Association, and (iii) all real property, and the improvements situated thereon, within the Project located within dedicated rights-of way with respect to which the State of Arizona or Coconino County has not accepted responsibility for the maintenance.
- 1.5 "Articles" means the Articles of Incorporation of the Association, as they may from time to time be amended.
- 1.6 "Assessment" means an Annual Assessment, Special Assessment or Lot Specific Assessment.
- 1.7 "Association" means Johnson Ranch Homeowners Association, Inc. an Arizona nonprofit corporation and its successors and assigns.
- 1.8 "Association Lien" means the lien created and imposed by Section of this Declaration.
- 1.9 "Association Property" means any personal property owned or leased by the Association.
- 1.10 "Association Rules" means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 6.3 of this Declaration, as they may from time to time be amended.
- 1.11 "Board" means the Board of Directors of the Association.
- 1.12 "Bylaws" means the Bylaws of the Association, as amended from time to time.
- 1.13 "Common Area" means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest, including any and all tracts designated by the plat as open space or common area not otherwise dedicated to Coconino County. "Common Areas" shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosures, Sheriff's sale, Trustee's sale, tax sale, redemption or any other judicial, quasi-judicial, bankruptcy or regulatory action.
- 1.14 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.15 "Declarant" means D&G Development, LLC, an Arizona limited liability company, its successors and assigns.
- 1.16 "Declaration" means this Amended and Restate Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

- 1.17 "Dedicated and Open Space" or "DOS" shall mean those tracts which have been defined as Tracts____on the Plat which have been dedicated and conveyed to Coconino County.
- 1.18 "Detention Area" shall refer to any tract depicted and designated on the Plat for drainage and detention purposes.
- 1.19 "Eligible Mortgage Holder, Insurer or Governmental Guarantor" means a First Mortgagee, insurer or governmental guarantor who has requested notice of certain matter from the Association in accordance with Article 10 of this Declaration.
- 1.20 "Exterior Alteration" means any construction, installation, addition alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of the Lot or the located thereon.
- 1.21 "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deed of trust on the same lot.
- 1.22 "First Mortgagee" means the holder or beneficiary of any Mortgage.
- 1.23 "FUTS or PUBLIC Trail" means the trail or path which shall be constructed upon the Property and dedicated to Coconino County for use by citizens of the County as depicted on the Plat.
- 1.24 "Granny Flat or Separate Living Quarters" (SLQ) shall refer to a self-contained living quarter (with a living area, sleeping area, bathroom and kitchen(ette)) which is attached directly to or indirectly to any single family residence (SFR) via direct attachment or adjacent to connected with shared sidewalk, courtyard, etc. These quarters shall not exceed 1000 square feet.
- 1.25 "Guest House" shall refer to a self-contained detached living quarter (with a living area, sleeping area, bathroom and kitchen(ette)) which is not attached to the primary residence. A "guest house" shall only be permitted on properties that meet the minimum Coconino County Zoning and/or Subdivision Ordinance requirements and shall be subject to the same ARC guidelines and reviews. A "guest house" shall not exceed 1000 square feet. A "guest house" shall not be considered the primary residence. The "Owner" of the primary residence shall maintain ownership of the "Guest House". The Ownership of the "Guest House" may not be sold or transferred and the "Guest House" shall be considered an improvement to the Lot on which it is built and not be considered a separate residence for the purpose of membership to the Association.
- 1.26 "Improvement" means any building, fence, wall or other structure or any swimming pool, tennis court, road, driveway, parking area or any trees, plants, shrubs, grass or other landscaping improvements of every type and kind.
- 1.27 "Lessee" means a third-party lessee, sub lessee, tenant or subtenant under a lease, oral or written, of any Lot. As used herein a "third party" is any Person who in not the Owner.
- 1.28 "Lot" means each parcel of real property designated as a Lot on the Plat and where the context indicates or requires, shall include any Residential Unit, building structure or other Improvements situated on the Lot.
- 1.29 "Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard on maintenance or Improvements generally prevailing throughout the Project or as dictated by the Coconino County Zoning and/or Subdivision Ordinance.
- 1.30 "Member" means any Person who is a Member of the Johnson Ranch Home Owners Association.
- 1.31 "Owner" means the owner of record, whether one or more Persons, of legal, beneficial or equitable tide to the fee simple interest of the Lot. "Owner" shall not include (i) Persons having an interest in the Lot merely as security for the performance of an obligation, or (ii) a Lessee. In the case of Lots, the fee simple title to which is vested in the trustee pursuant to A.R.S. Section 33- 801, *et seq.*, the Trustor shall be deemed to be the "Owner." "Owner" shall also include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S Section 33-741, *et seq.* "Owner" shall not include purchasers under purchase contracts and receipts, escrow instructions or similar executory contracts pending the closing of a sale or purchase transaction.
- 1.32 "Person" means a natural person, corporation, business trust, estate, trust living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- 1.33 "Plat" means the final Plat of Johnson Ranch Association recorded in Case _____ Map(s). _____ records of Coconino County, Arizona and all amendments, supplements and corrections thereto.

- 1.34 "Property" or "Project" means the real property described on the Plat as Lots 1 through 61, inclusive, and Tract(s)_____together with all improvements located thereon.
- 1.35 "Project or Governing Documents" means this Declaration, the Articles, the Bylaws, the Association Rules, and the Architectural Committee Rules.
- 1.36 "Purchaser" means any Person who by means of a voluntary transfer becomes the Owner of a Lot.
- 1.37 "Recording" means placing an instrument of public record in the office of the County Recorder of Coconino County, Arizona and "Recorded" means having been so placed of public records.
- 1.38 "Resident" means each individual occupying or residing in any Residential Unit.
- 1.39 "Residential Unit" means any building, or portion of a building, situated upon a Lot and designated and intended for independent ownership and for use and occupancy as a residence.
- 1.40 "Single Family" means a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than eight (8) persons not all so related, who maintain a common household in a Residential Unit.
- 1.41 "Single Family Residence" or "SFR" shall mean any residence occupied and used by a single family in conformity with this Declaration and the requirements imposed by applicable zoning laws and other federal, state county or municipal statutes, ordinances, rules and regulations.
- 1.42 "Special Assessment" means any assessment levied and assessed pursuant to Section of this Declaration.
- 1.43 "Visible from Neighboring Property" means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 **Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the development and use of the Project and in order to protect and enhance the value and desirability of the Project. All of the property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person or Entity, for himself/herself or itself, their heirs, personal representatives, successors, transferees and assigns, binds him/herself, their heirs, personal representatives, successors, transferees and assigns to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by do doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his/her or its intent that all the provisions, obligations, limitation, restrictions, covenants, conditions, rules, and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, restrictive, and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of the conveyance or encumbrance may refer only to the Lot.

2.2 **Disclaimer of Representatives.** Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans of the project as they exist on the day this Declaration is recorded; (ii) any property subject to this Declaration will be committed to or developed for any use; or (iii) the use of any property subject to this Declaration will not be changed in the future.

ARTICLE 3

USE RESTRICTIONS

3.1 **Architectural Control.** In addition to any requirements imposed by Coconino County:

3.1.1 All improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the "ARC" or Board and/or without proper permit from Coconino County.

3.1.3 No Improvements shall be constructed or installed on any Lot without the prior written approval of the "ARC" or Board.

3.1.4 No Exterior Alteration shall be made or done without prior written approval of the "ARC" or Board.

3.1.5 Any Owner desiring approval of the "ARC" or Board for any Exterior Alteration shall submit to the "ARC" or Board a written request for approval specifying in detail the nature and extent of the Exterior Alteration that the Owner desires to make or perform. Any Owner requesting the approval of the "ARC" or Board shall also submit any additional information, plans and specifications which the "ARC" or Board may request. In the event that the "ARC" or Board fails to approve or disapprove, in writing, an application for approval within forty-five (45) days after receipt of the application and any supporting information, plans and specifications requested by the "ARC" or Board (the application shall not be deemed received until the last day at which all supporting information, plans and specifications have been received), approval will not be required and this Section will be deemed to have been complied with by the Owner who requested approval of such plans.

3.1.6 The approval by the "ARC" or Board for the content and aesthetic value of the plans shall not be deemed as approval to construct if the Exterior Alteration requires a building permit from Coconino County. Such building permit must be obtained and a copy submitted to the "ARC" or Board prior to the commencement of building. The Owner shall be responsible to determine if a building permit is required, that all code requirements are met and to obtain said permit prior to any construction. If no building permit is required, the Owner shall insure that all code requirements have been met and can commence making the Exterior Alteration upon "ARC" or Board approval. The "ARC" or Board shall make approvals of Exterior Alteration requests based on its visual impact on the neighboring properties and cannot offer any opinion as to the structural stability or code requirements for the Alteration and shall be held harmless for any and all claims which may arise from improper or inadequate construction procedures.

3.1.7 Upon receipt of approval from the "ARC" or Board and subsequent necessary County approvals for any Exterior Alteration, the Owner shall proceed to perform, construct, or make the Exterior Alteration as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the "ARC" or Board.

3.1.8 Any changes, deletion or addition to the plans and specifications approved by the "ARC" or Board, including plans deemed approved as a result of the "ARC's" failure to act, must be submitted to an approved in writing by the "ARC" or Board. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The "ARC" or Board shall have the right to charge a reasonable fee for reviewing requests for approval of any Exterior Alteration pursuant to this Sections, which fee shall be payable at the time of the application for approval is submitted to the "ARC" or Board.

3.1.10 The provisions of this Section do not apply to, and approval of the "ARC" or Board shall not be required for the construction, erection, installation addition, alteration, repair, change or replacement of any improvements made by, or on behalf of, the Declarant or its assigns.

3.1.11 The approval required of the "ARC" or Board pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, county or local law, statute, ordinance, rule or regulation.

3.1.12 The "ARC" Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.13 The "ARC" or Board may require that an Owner, before commencing construction of any Improvements approved by the "ARC" or Board, pay to the Association a reasonable deposit in an amount determined by the "ARC" or Board to be used by the Association to remove any construction debris from a Lot that is allowed to accumulate in violation of Section 3.3 of this Declaration or to repair any damage to the Common Area. The "ARC" or Board shall also have the right to determine which portion, if any, of the deposit will be non-refundable. Any portion of the deposit that is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, incomplete building, tent, shack, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings, trailers or other structures used during the construction of Exterior Alterations approved by the "ARC" or Board, interior remodeling, re-roofing or other work shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of one month without written approval of the "ARC" or Board.

3.3 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, an no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other properties. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

3.4 Diseases and Insects. No person shall permit anything or condition to exist upon any Lot or other property which shall induce, breed or harbor infections plant diseases or noxious insects.

3.5 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.6 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Lot or other property unless same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the "ARC" or Board. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the "ARC" or Board.

3.7 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or other property shall be allowed to overhand or otherwise to encroach upon sidewalk, street, pedestrian way, common area, private or public trail or other area from ground level to a height of eight (8) feet without the prior approval of the "ARC" or Board.

3.8 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use by a Single Family. Trade or Business shall be allowed within the Residential Unit as long as (i) the existence of the trade or business activity conforms to all applicable zoning ordinances of Coconino County, (ii) the trade or business is operated and/or conducted by the Owner or Resident of the Residential Unit and that the trade or business is not the primary or only use of the Residential Unit (iii) business activity is consistent with the rural character of the neighborhood and does not constitute as hazardous, a nuisance or offensive use or threaten the security or safety of other residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to a person other than the provider's family and for which the provided receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full time or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Residential units by the Owner thereof for periods of not less than thirty (30) consecutive days for use of residential purpose shall not constitute a business. Leasing of Residential Units for less than thirty (30) consecutive days shall require the approval of the "ARC" or Board and shall conform to the requirements of the Coconino County Vacation Rental Ordinance.

3.9 **Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner. No further covenants, conditions, restrictions or easements shall be recorded by an Owner, Lessee or other Person against any Lot without the provisions thereof having been first approved in writing by the "ARC" or Board. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any government authority by any Person unless the application for such request has been submitted and approved by the "ARC" or Board and the proposed use otherwise complies with this Declaration. The provisions of this Section do not apply to, and the approval of the "ARC" or Board shall not be required for rezoning, variances or use permits obtained by, or on behalf of, the Declarant or its assigns.

3.10 **Leasing of Lots.** Owners may lease all of their Residential Unit or other portions of their Lot that constitute a "Granny Flat", "SLQ" or "Guest House". Owners shall provide to the tenant(s) a copy of the covenants, conditions and restrictions and Owners shall be responsible for the conduct of his/her/its tenant(s). All Owners of Lots that are leased or subleased hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases or subleases that relate to violations by the Lessee or by Lessee's visitors, guests, invitees, employees or contractors of the Project Documents. The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents, including, without limitation, bringing actions at law or in equity and to recover, from the Owner and/or the Lessee against whom any enforcement effort or action is brought, the costs of enforcing the terms of the Project Documents with respect to violations thereof by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors. The "cost of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc.

3.11 **Single Family Residence.** No more than one (1) SFR together with additional out buildings as allowed by the Ordinance of Coconino county shall be constructed on each lot. Each Lot shall be used only by a single family and only for the purpose of a single family residence.

3.12 **Size of Residence.** Any SFR constructed must contain a minimum 1500 square feet of "Livable" area. "Livable" area shall include exterior and interior walls, interior closets, pantries, laundry rooms and similar habitable areas (excluding Granny Flat, SLQ or Guest House). "Livable" area shall not include attached and/or detached garages and sheds, porches, patios, walkways, breezeways, crawl spaces, courtyards or any similar area. In addition, each Lot shall have an enclosed garage attached or detached capable of housing a minimum of two (2) cars.

3.13 **Setback Requirements and Street Numbers.** Residential Units on any Lot shall be located within the building setback lines (building envelope) as indicated on the Plat for the Johnson Ranch Subdivision. No structure shall be constructed in any open space or public utility easement or drainage easement. Notwithstanding the above, all setbacks shall conform to any Ordinances adopted by the Coconino County. Each SFR shall have the address numbers affixed on the front of the building, in a location and adequately sized (minimum 4" height) of reflective material so that it is easily visible from the street.

3.14 **Restricted Architectural and Construction Requirements.** All structures shall be constructed of new material and must be erected and permanently affixed on the Lot. All driveways shall be constructed of concrete, asphalt or affixed ornate pavers and shall extend from the street to the garage. No buildings shall be moved onto the Lot from any other location, other than the temporary use of an office or construction facility while the residence is under construction. All temporary facilities must be removed immediately upon completion of construction. All construction shall be completed within one year from the start date, except when the ability to complete had been interrupted by acts of God, or other interference beyond the control of the owner or contractor. Financial inability of the owner or contractor shall not be deemed a cause beyond the control of the party responsible for completion. No mobile homes, prefabricated homes or manufactured homes of any kind shall be placed, erected or permitted on Lot at any time. The use of sustainable building practices is strongly encouraged. Owners and contractors can review the attached report and/or contact Coconino County for suggestions, information and resources pertaining to sustainable building practices.

3.15 **Roofing and Exterior Siding Material.** Roofing materials shall consist of tile, cement, non-reflective metal material with a Class B fire rating or greater or architectural grade asphalt shingles. All metal flashing, chimneys, gutters, down spouts, exposed wires or pipes shall be colored to best match the surface it rests

upon. Exterior siding and materials shall consist of solid brick, wood, cottage lap, masonite, smart side or similar siding material which is horizontally positioned in the front and similar materials in horizontal or vertical position on the sides and rear. The use of "T-111" shall be prohibited. Accent materials, if used, shall consist of brick, rock, cultured stone, board and batten, or other material which may be customarily used for accent purposes.

3.16 Colors. Exterior colors shall be subdued, blend with the environment and compliment the overall appearance of the neighborhood. No bright, neon or pastel colors will be allowed. The use of orange, red, pink, purple or other similar color shall not be allowed. Color selection(s) for new or repaint shall be submitted to the "ARC" or Board for approval prior to application. The provisions of this Section do not apply to, and approval of the "ARC" or Board shall not be required for the selection of colors.

3.17 Signs and Window Coverings. No emblem, logo, sign or billboard of any kind shall be displayed to the public view on any Lot with the exception of signs advertising a Lot for sale or as may be required for legal proceedings; which shall be removed immediately upon completion of sale or legal proceeding. No reflective materials, including aluminum foil, reflective screens or glass, mirrors or similar reflective items shall be install or placed on any window or other area of a SGR or other structure on the Lot.

3.18 Fences. All fences constructed on the Lot shall be built from new material which compliments the exterior of the home and neighborhood. Fence material may consist of wood, chain link, slatted chain link , field fencing or corral fencing, vinyl, rock, block or similar material. No fence shall exceed three (3) feet in height within 25 feet from any street line (front yards on most lots and front and street facing side yard on corner Lots). Back yard and non-street facing side yard fencing shall not exceed six (6) feet in height. No fence, block walls or other permanent structure shall be placed in any drainage easement. Standards for construction and maintenance of fencing adjacent to Hwy 89, more specifically, Lots 1, 3, 4, 5 & 6 shall be approved and maintained by the HOA. Perimeter fencing shall comply with Arizona Game and Fish wildlife compatible fencing and meet any Coconino County regulations and shall be maintained by the HOA. Interior fencing must meet guidelines of CCR's and Coconino County regulations and shall be maintained by property owners.

3.19 Screening of Materials and Devises. Clotheslines, wood piles, storage sheds shall be located only in the rear yard and be screened from view with fence or similar screening material. Satellite dishes or similar devises for the reception of TV or other satellite signals may be placed in any area necessary to achieve the best reception.

3.20 Sheds, Storage Facilities, Barns and Outbuildings. All sheds, storage facilities and outbuildings shall be constructed in a manner that compliments the SFR and neighborhood and shall be located behind the front line of the SFR (side or rear of the Lot). Such sheds, storage facilities, barns and outbuildings shall conform to Coconino County Ordinances with regard to size and number. Owners must obtain County approval for variance to size and number if applicable and provide proof of approval to the "ARC" or Board. This building shall be used for the purpose of storing tools, animals, tack and feed, equipment or similar items and shall not be used as guest quarters or otherwise inhabited in anyway.

3.21 Antennas and Satellite Dishes. Antennas and Satellite dishes may be installed in the most obscure location available that still allows for the best reception of the signal for which it isdesigned.

3.22 Exterior Lighting. In an effort to promote the "Dark Sky" atmosphere exterior lighting shall comply with Coconino County Ordinances, as it may be amended, and shall be limited to the amount which is adequate for the safety and comfort of the Owner, without being offensive or detrimental to neighboring Lots. The use of security, floodlights, or similar lighting shall be kept to a minimum and shall only be in use when necessary or be operated by the use of a "motion sensing device". All lighting shall be mounted, shielded and/or directed in such a manner that the light does not shine upward into the sky, onto neighboring Lots or onto adjacentstreets.

3.23 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for garbage refuse or hazardous waste, debris or similar waste material of any kind. All refuse shall be kept in refuse containers and removed from Lot regularly. No refuse pile, garbage, animal waste or unsightly objects shall be

placed, accumulated or allowed to remain anywhere on the Lot. The burning of trash, refuse or yard material shall only be done as permitted by Coconino County and with the approval of Summit Fire Department. No substance or material shall be placed or kept on the Lot that will emit a foul or undesirable odor. Lot Owners with horses, livestock or other animal(s) shall remove and dispose of all animal waste and related material on a regular basis.

The accumulation of animal waste, recycling or other material for use as compost shall be confined within a building or other area so not to create a nuisance to neighboring properties.

3.24 Hazardous Material. Except as may be necessary for normal household, landscaping or automotive use, no Owner shall be permitted to store, use, maintain, manufacture or dispose of any hazardous material (as defined under applicable laws) on any Lot.

3.25 Illegal Activity. No Owner shall knowingly engage in, suffer or conduct any illegal activity or be in violation of any local, state, federal law or ordinance on any Lot or structure on any Lot.

3.26 Animals. Horses, livestock, poultry or fowl may be kept in accordance with the types and numbers as permitted by the Coconino County Ordinances. A reasonable number of dogs, cats or other customary household pet(s) may be kept provided they are not bred or maintained for commercial purposes. No animals or pets shall be kept or confined in the front yard. Owners shall be responsible for the care, cleanup and conduct of all animal(s) and pet(s) kept on the Lot and shall comply with all animal related laws, ordinances and zoning restrictions. Animal(s) and pet(s) shall not be permitted to cause annoyance or property damage to other Owners or Lots.

3.27 Landscaping. Although no minimum landscaping is required, "natural" yards or landscaping, grass, and native plants and shrubbery shall be properly maintained and well-manicured. If additional landscaping is added, the use of native and/or low water consumption plants and materials is strongly encouraged.

3.28 Vehicles and Parking. Vehicle use, storage and parking shall conform to Coconino County Ordinances.

3.29 Recreational Vehicles. Motorhomes, travel trailers, boats, 5th wheel trailers, campers or similar recreational vehicles shall be permitted and shall be stored behind the front line of the house or enclosed in a garage or similar storage building. No recreational vehicle shall be used as living quarters.

3.30 Machinery and Equipment. Machinery and equipment shall be permitted as may be allowed by Coconino County Ordinances.

3.31 Drilling and Wells. No Lot shall be used in any manner to explore for, remove, refine, develop or store any oil, hydrocarbons, minerals, gravel or any other similar substance of any kind. No drilling for the purpose of the exploration of any material, mineral or water or for the installation of water well shall be allowed.

3.32 Construction in Setback. There shall be no construction within the designated setbacks of any Lot. There shall be no permanent structure, including fences, built within any designated open space, utility easement or drainage easement on any Lot.

3.33 Variances. The Board may, at its option and sole discretion, grant variances from the restriction, limitations, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner or Lessee and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners or Lessees or the Project and is consistent with the high quality of life intended for residents of the Project.

3.34 County Ordinances. Notwithstanding any other provision of this Article all Owners and Lessees shall conform to any Coconino County Ordinances governing the Project.

3.35 All sanitary wastes shall be disposed of by septic tanks and drain fields or sewer systems approved by the applicable city, county or state agencies. All septic systems shall be so situated as to conform to standards of regulations as set forth by city, county and state agencies.

ARTICLE 4

EASEMENTS

4.1 Owner's enjoyment of Easements

4.1.1 Every Owner or Lessee, and any person residing with such Owner or Lessee, shall have a right and easement of enjoyment in and to the Common Areas and/or Open Space which right shall be appurtenant to and shall pass with the tide to every Lot, subject to the following provisions:

- (i) The right of the Association to dedicate, convey, transfer or encumber the Common Areas or Open Space as provided in Section 5 of this Declaration.
- (ii) The right of the Association to regulate the use of the Common Areas through the Association Rules and to prohibit access to such portions of the Common Areas or Open Space, such as landscaped areas, not intended for use by the Owners or Lessees.
- (iii) The right of the Association to suspend the right of an Owner or Lessee and such Owner's or Lessee's family, tenants and guests to use the Common Areas or Open Space if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner or Lessee has violated any other provisions of the Project Documents and had failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation
- (iv) The right of the Association to suspend the right of an Owner or Lessee that vandalizes, defaces, or otherwise fails to respect the Common Areas or Open Space.

4.2 Blanket Easement. There is hereby created a blanket easement upon, across, over and under all Common Areas, Open Spaces, roadways, trails, utility easements and all other areas requiring access for ingress, egress, installation, replacing, repairing, and maintaining all utility and services lines and systems, including but not limited to water, gas, telephone, electricity, television cable, or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility, Service Company, the Association or their agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on the Property. Notwithstanding anything to the contrary contained herein, no electrical lines, water lines, or other utilities or service lines may be installed or relocated except as initially programmed and approved by the Declarant or thereafter by the Board. This easement shall in no way affect any other recorded easements.

4.3 Drainage Easements. No Owner shall fill, block or otherwise obstruct any drainage easement or related feature. No structure or fence shall be installed within the Drainage Easements. Drainage easements within the Coconino County Right-of Ways, as recorded on the Plat, shall become the property of Coconino County and shall be maintained and forever repaired by Coconino County. Drainage easements within the designated Association Common Area or Open Space, as recorded on the plat, shall become the property of the Association and shall be maintained and forever repaired by the Johnson Ranch Homeowners Association. Drainage easements otherwise located on Lots, as recorded on the Plat, shall become the property of the Lot Owner and shall be maintained and forever repaired by the Lot Owner. Owners shall be responsible for the drainage of their Lot and may not divert the natural drainage from their Lot onto other Lots. Upon approval by the County Engineer owners may install underground piping for the purpose of diverting drainage to a properly designated drainage easement or for collection and storage on the Lot for future use. The collection and use of "run off" water for landscaping and other non-potable use is strongly encouraged. In the event that any property Owner fails to maintain the Drainage Easement on their Lot the HOA shall be entitled to complete the necessary maintenance at the expense of the property Owner, which will be billed directly to the property owner, for cost of maintenance. In the event the HOA fails to properly maintain Association owned Drainage Easements Coconino County shall be entitled to complete the necessary maintenance at the expense of the HOA, which will be billed directly to the HOA, for cost of maintenance.

4.4 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project

and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate.

4.5 Declarant's Easements

4.5.1 The Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct all Improvements the Declarant may deem necessary and to use the Areas of Association Responsibility and any Lots and other property owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies, and fixtures, and the performance of work respecting the project.

4.5.2 The Declarant shall have the right and an easement upon, over and through the areas of Association Responsibility as may be reasonable necessary for the purpose of discharging its obligations and exercising the rights granted to or reserved by the Declarant by this Declaration.

4.6 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.6.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible

4.6.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots

4.6.3 For correction of emergency conditions in one or more Lots

4.6.4 For the purpose of enabling the Association, the Board, the ARC or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents

4.6.5 For inspection of the Lots (i) in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

4.7 Easement in Favor of Transwestern Pipeline. There shall be no access to or across the Transwestern Pipeline Easement except for driving over such on improved roadway. Lots 3, 4, 7, 8, 9, 10, 19, 20 are directly adjacent to the Transwestern Easement. No structure, including but not limited to fencing shall be placed on or in the Transwestern Pipeline Easement.

4.8 There exists a 1' no access easement between the Johnson Ranch Phase 1 and US Highway 89 for Lots 1 and 9-12, as well as a 1' no access easement between Johnson Ranch Phase 1 and the Coconino County National Forest for Lots 12-20.

ARTICLE 5

OPEN SPACE AND COMMON AREAS

5.1 Dedicated Open Space. The Dedicated Public Trail(s) ("DPT") recorded as Tract(s) _____ on the Plat shall be dedicated and conveyed to and become the property of Coconino County. No buildings, structures or fences shall be placed on constructed within in the DPT. No Owner shall obstruct any designated access in any way. Upon conveyance to and acceptance of the DPT by Coconino County, Coconino County shall assume responsibility for the maintenance and upkeep of the DPT therein and related accesses.

5.2 Common Areas, Open Space, Private Trails, and Detention Areas. The Common Areas, Open Space, Private Trails and Detention Areas as recorded as Tract(s) A, B, C and D on the Plat, shall be jointly owned and utilized for the use and enjoyment of all members of the Johnson Ranch Homeowners Association, Inc. ("JRHA"). The Common Areas, Open Space, Private Trails and Detention Areas shall be owned and maintained by JRHOA. No Owner shall place or construct any fence, building or structure in, deface, obstruct or otherwise alter any Common Area, Open Space, Private Trail or Detention Area or related access. Tracts A and B shall be used as part of the Wildlife Corridor and shall not have any buildings or other obstructions placed within them. Tract D shall be for drainage purposes and shall not be

obstructed in any way. Tract D shall be available as a Common Area and the addition of future amenities shall be permitted upon agreement and approval of the HOA. All motorized vehicles shall be limited to the paved roads only. No motor vehicle, including but not limited to, HOV's and motorcycles shall be driven on any easement, open space, common area or on the Equestrian/Pedestrian trail. The Access to the National Forest via the Equestrian/Pedestrian Trail between Lots 27 and 28 shall be for the use of pedestrian, equestrian and bicycle traffic only. The use of motorized vehicle, including HOV's and motorcycles shall be prohibited. This trail shall be maintained by JRHA.

5.3 Control of Common Areas, Open Space, Private Trails and Detention Areas. The control, development and enforcement of use regulations, upkeep and maintenance, related expenses and other aspects of the Common Areas, Open Space, Private Trails and Detention Areas shall be the responsibility of JRHA.

5.4 Taxation of Common Areas, Open Space, Private Trails and Detention Areas. The Areas as identified in Section 5.2 herein shall be established as separate tax parcels. JRHA will be responsible to pay the taxes and other assessments related to the Common Areas, Open Space, Private Trails, and Detention Areas and each member shall be responsible for its pro rata share of the taxes and assessments.

5.5 Right of Way shall be dedicated to Coconino County and paved roadways within the right of way shall be maintained by Coconino County. PUE's and Pedestrian/Equestrian Trail within the Right of Way shall be maintained by the HOA.

ARTICLE 6

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

6.1 The Association Rules. The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. Except as limited herein, the Association Rules may be adopted, amended, and repealed by a majority of the members of the Board. In the event that the Association Rules establish restrictions or limitations on the use and maintenance of Lots, such rules and regulations may be adopted, amended or repealed by three-fourths (3/4ths) of the members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provision of this Declaration shall prevail.

6.1.1 Formation of Association. The Association shall be a nonprofit Arizona Corporation charged with the duties and invested with the power prescribed by law and set for in the Project Documents. In the event or any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Rules, this Declaration shall control. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws.

6.2 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.3 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

6.4 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, become a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically

cease.

6.5 Classes of Members. The Association shall have two classes of voting membership.

6.5.1 Class A. Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A member shall be entitled to one (1) vote for each Lot owned.

6.5.2 Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earlier of (i) the date on which the votes entitled to be cast by the Class A members equals or exceeds the votes entitled to be cast by the Class B member; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

6.6 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

6.7 Voting By Mail. Unless the project documents require otherwise, when directors are to be elected or any other matter is submitted to a vote of the members, such vote may be conducted by mail as provided in the Bylaws or as determined by the Board.

6.8 Transfer of Membership. The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

6.9 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot or voluntarily surrenders its right to appoint and remove the members of the Architectural Committee, the members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules"). The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

6.10 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent of

affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes entitled to be cast by members of the Association.

6.11 Suspension of Voting Rights. If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

ARTICLE 7

COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

7.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fines and Penalties. The Declarant, for each Lot owned by it, and each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration and applicable Arizona law. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration and applicable Arizona law. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall, upon compliance with this Declaration and applicable Arizona law, be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Project Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

7.2 Annual Assessments.

7.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period, shall assess an Annual Assessment against each Lot. The initial Annual Assessment will be \$600.00. The Board shall not levy an Annual Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of the Members of the Association.

7.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may, subject to the twenty percent (20%) limit set forth in Section 6.2.1 above, increase the Annual Assessment for that

Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

7.3 Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the Association's fiscal year.

7.4 Rate of Assessment. The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

7.5 Special Assessments. The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of sixty-seven percent (67%) of the votes entitled to be cast by Members who are voting in person, by mail or by proxy at a meeting duly called for such purpose.

7.6 Lot Specific Assessments. Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner by refusing to undertake or complete the required cure or remedy shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments

7.7 Reserve Contribution. Upon purchase of a Lot, each Lot owner shall pay the Association a Reserve Contribution fee equal to one year's assessment which shall be utilized for replacement and maintenance reserves. The initial Reserve Contribution fee shall be \$200.

7.8 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

7.9 Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project and the Owners. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and residents, maintenance of landscaping on Common Areas and public rights-of-way and drainage areas within the Project, recreation, liability insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes or the Project Documents.

7.10 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment

Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

7.11 **Transfer, Refinance and Disclosure Fees.** Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to the Declaration and applicable Arizona law.

7.12 **Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board in compliance with the Declaration and applicable Arizona Law.

7.13 **Notice of Violation, Appeal and Payment of Fines and Penalties.**

7.1 3.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or Lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or Lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or Lessee of the Owner's or Lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or Lessee can offer any defenses or mitigating circumstances.

7.1 3.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or Lessee named in the Notice of Violation or sent to the Owner or Lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or Lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the Lessee by mail shall be addressed to the Residential Unit occupied by the Lessee. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

7.1 3.3 The Owner or Lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or Lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

7.1 3.4 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to the Declaration and applicable Arizona law.

7.14 **Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Project Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to the Declaration and applicable Arizona law.

7.15 **Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association.**

7.15.1 Any Assessment, fee, charge, fine or penalty, or any installment of an

Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due.

7.15.2 As set forth in Section 6.1, the Association shall have a lien, in accordance with the Declaration and applicable Arizona law, on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including late charges, interest, costs of collection, lien recording fees, lien release

fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

7.15.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

7.15.4 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

7.15.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities.

7.15.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

7.15.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

7.16 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 8

MAINTENANCE

8.1 Areas of Association Responsibility.

8.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the (i) Common Area, and all Improvements located thereon, and (ii) all Association Property.

8.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

8.2 Lots. Each Owner shall be responsible for maintaining his or her Lot. Each Owner shall be responsible for maintaining, repairing or replacing and all buildings, Residential Units, landscaping or other Improvements situated on his or her Lot. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot that are the responsibility of the Owner thereof shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Architectural Committee. No yard equipment, woodpiles or storage area may be maintained so as to be Visible From Neighboring Property or streets.

8.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, Lessee, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the Performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

8.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Association Lien.

ARTICLE 9

INSURANCE

9.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

9.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

9.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

9.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

9.1.4 Directors and officers liability insurance in an amount to be determined by the Board;

9.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

9.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act of omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) Statement of the name of the insured as the Association; and

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

9.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to who certificates of insurance have been issued.

9.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

9.4 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 9.5 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

9.5 Repair and Replacement of Damaged or Destroyed Common Area. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 10

RIGHTS OF FIRST MORTGAGEES

10.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

10.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

10.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

10.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

10.1.4 Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Section 10.2 or 10.3 of this Declaration.

10.2 Approval Required to Terminate Project. Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders

10.3 Approval Required for Amendment to Declaration, Articles or Bylaws.

10.3.1 The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the rights to their use;
- (ix) Convertibility of Lots into Common Areas or of Common Areas into Lots.

- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his/her Lot.
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;
- (xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

10.3.2 Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

10.4 First Mortgagee's Right of Inspection of Records. Any First Mortgagee will, upon written request, be entitled to (i) inspect the books and records of the Association during normal business hours, (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

10.5 Limitation on Partition and Subdivision. No Lot shall be partitioned or subdivided without the prior written approval of the holder of any first Mortgage on such Lot.

10.6 Prior Written Approval of First Mortgagees. Unless at least two-thirds (2/3) of the Eligible Mortgage Holders (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to:

10.6.1 Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

10.6.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

10.6.3 Change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;

10.6.4 Fail to maintain fire and extended coverage on insurance common area on current replacement cost basis in an amount of at least 100 percent of insurable value;

10.6.5 Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

10.7 No Priority over First Mortgagees. No provision of this Declaration gives or shall be construed as giving any Owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

10.8 Failure of First Mortgagees to Respond. Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

10.9 Conflicting Provisions. In the event of any conflict or inconsistency between the provision of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provisions of the Project Documents with respect to the number or percentage of Owners, First Mortgagees,

Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Section 10.2, 10.3 and 10.6 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that so long as there is a Class B membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles of the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement. The Association or any Owner shall have the right to enforce Project Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non-prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

11.2 Method of Termination. This Declaration shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes of the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Coconino County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 Amendments.

11.3.1 This Declaration may be amended at any time by the written approval or the affirmative vote of Owners of not less than two-thirds (2/3rds) of the Lots.

11.3.2 Notwithstanding the requirements of Section 10.3.1, the Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First

Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

11.3.3 Any amendment approved pursuant to Subsection 10.3.1 of this Declaration or by the Board pursuant to Subsection 10.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

11.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

11.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

11.6 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

11.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

11.8 Laws, Ordinances and Regulations.

11.8.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

11.8.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.9 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors,

successors and assignees.

11.10 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

11.11 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

11.12 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

11.13 Condemnations of Common Area. If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the written consent or affirmative vote of Owners representing at least eighty percent (80%) of the votes in the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining common Area to the extent land is available for such construction, unless within sixty (60) days after such taking the Owners having at least eighty percent (80%) of the votes in the Association, by written consent or affirmative vote, or any combination thereof, instruct the Board not to build replacement Improvements. If such replacement Improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements on the Common Area or if the Owners representing more than eighty percent (80%) of the votes in the Association decide not to construct any replacement Improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds may either be disbursed by the Association to the Owners with an equal share being disbursed to each Lot or retain such funds as additional operating or capital reserves.

IN WITNESS WHEREOF, D&G DEVELOPMENT, L.L.C., an Arizona limited liability company, has executed this Declaration as of the day and year first above written.

D&G Development, LLC

By: [Signature]
Philip Garrison, Managing Member

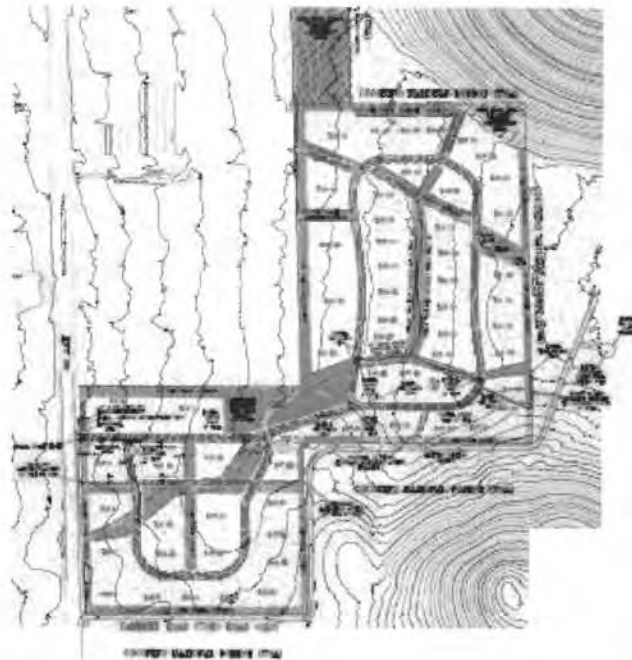
By: [Signature]
Christine Garrison, Managing Member



State of Arizona }
 } ss.
County of Coconino }

The foregoing instrument was acknowledged before me this 21 day of December, 2016 by, Christine Garrison and Philip Garrison

[Signature]
Notary Public
My commission expires: 10/24/20



JOHNSON RANCH SUBDIVISION

DONEY PARK, FLAGSTAFF, AZ 86004

Christie Dennis, Energy Analyst

Building Energy Performance— 1921 N Turquoise Dr., Flagstaff, AZ 86001

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BACKGROUND

PROJECT DESCRIPTION

The Johnson Ranch Subdivision is a new home development located in Doney Park, Flagstaff, AZ. Approximately 60 lots of 1 and 2.5 ac are located in a rural area, with Coconino National Forest abutting the East, South and partially to the North boundaries of the development. Viewsheds are of Mt. Elden to the West, treed areas to the East, with cinder hills to the North and South. Goals for the homes are a high level of energy performance utilizing passive solar as possible; affordability; and maximizing any mountain views to the West and possibly of the forest to the eastern border.

MODELING OBJECTIVES

Energy modeling objectives for the proposed design are:

- Most efficient orientation to maximize passive solar heat gain in winter months, taking into account the viewsheds
- Most efficient South glazing percentages
- Most efficient shading to minimize heat gain in summer months

Residential Unit Assumptions

- 2000 ft²
- 3 bed, 2 bath, 4 occupants
- Rectangular, single story
- 2012 IECC code construction

MODELING SOFTWARE

Energy modeling for this project was performed in BEopt (NREL) software, with sanity checks in REM/Rate (AEC). Model assumptions for additional components such as interior shading, lighting, plug loads, appliances, and others are based on standard options from the Building America House Simulation Protocols (NREL).

ENERGY MODELING DISCLAIMER

Building energy simulation modeling is based on rigorously vetted heat transfer calculations. However, as with all simulation modeling, there is always some degree of uncertainty. The energy simulation results should be used as a comparative tool in guiding design alternatives, in combination with robust "on the ground" building science expertise from the designer's and builder's experience. BEP strives to use accurate inputs in all modeling, and to provide conservative results so as not to overestimate the energy efficiency capabilities. Conservative values, particularly those concerning human behavior, are always used to keep variables in check. In addition, the costs used in the cost/benefit analyses are based on national averages for materials and labor; as such, they should be used for relative comparison purposes only, and not for actual bidding or budgeting.

SOURCE/SITE ENERGY RELATIONSHIP

The source/site energy ratios used in computing the natural gas and electricity are shown below, as well as the usage rates. Note that utility rates and fixed costs are estimated based on state averages. The site energy is the amount of fuel (gas and electricity) used by the house "at the meter". However, it doesn't account for all other losses, equipment efficiencies, etc. Source energy is that value. In energy modeling reporting, the source energy is the standard metric used, and that is what is reported in the results of the analysis presented in this report.

| Energy Source | Source/Site Ratio |
|--|-------------------|
| Electricity | 3.15 |
| Natural Gas (not used in this project) | 1.09 |

| Energy Source | Fixed monthly charge (\$/month) | Rate |
|---------------|---------------------------------|-------------------|
| Electricity | 8 | 1.1174 (\$/kWh) |
| Natural Gas | 8 | 1.3314 (\$/therm) |

BASELINE MODEL

The baseline construction model is detailed in Table 1 below. This is the model to which all design options will be compared.

Table 1: Baseline construction model component configurations

| Component | Baseline Configuration |
|--|--|
| Orientation | South |
| Area (ft ²) | 2000 |
| Window areas, per ft ² of conditioned space (Total, Front, Back, Right, Left) | Interior - Total: 25%; F:13%, B:2%, R:5%, L:5% West Views - Total: 25%; F:8%, B:2%, R:5%, L:10% East Views - Total: 25%; F:8%, B:2%, R:10%, L:5% |
| Window specs | Vinyl, double pane, 2012 IECC code compliant Zone 5: U-val=0.32, SHGC=0.4 |
| Wall R-value | 2X6, R-20 blown in cellulose |
| Roof R-value | R-49, blown in cellulose |
| Slab R-value | 2ft R-10 under slab perimeter, R-5 Gap |
| Fuel | Natural gas, electric |
| Mechanical-Heating | Gas Furnace, AFUE 80% |
| Mechanical- Cooling | None |
| Mechanical-Ventilation | Continuous exhaust fan |
| Mechanical-DHW | 0.67 EF gas water heater, 50 gal. |
| Infiltration | 3 ACH50 |
| Duct Location | Vented attic, R-8 insulation, 4CFM25/100 ft ² leakage |
| Thermostat Set points | Heating: 70°F Cooling: 75°F |

| | |
|----------------------------|---|
| Natural Ventilation | benchmark |
| Eaves | 1.5 ft all aspects |
| Lighting | 100% CFL |
| Plug Loads | benchmark |
| Appliances | energy efficient, Energy Star when available |
| Interior shading | Shaded 30% in summer and winter (benchmark value) |
| On-site Generation | none |

LOT SELECTION FOR MODELS

The lot layout for the development consists of approximately 60 lots, in two bands (Figure 1). Lots 41, 56, and 29 were selected as generic examples of the differing viewsheds. Lot 41 has significant mountain views to the West, Lot 29 has significant views of the forest to the East, and Lot 56 will have more limited views due to interior placement. Views are still likely, however, as tree coverage is limited, and lots are large at minimum 1 acre.

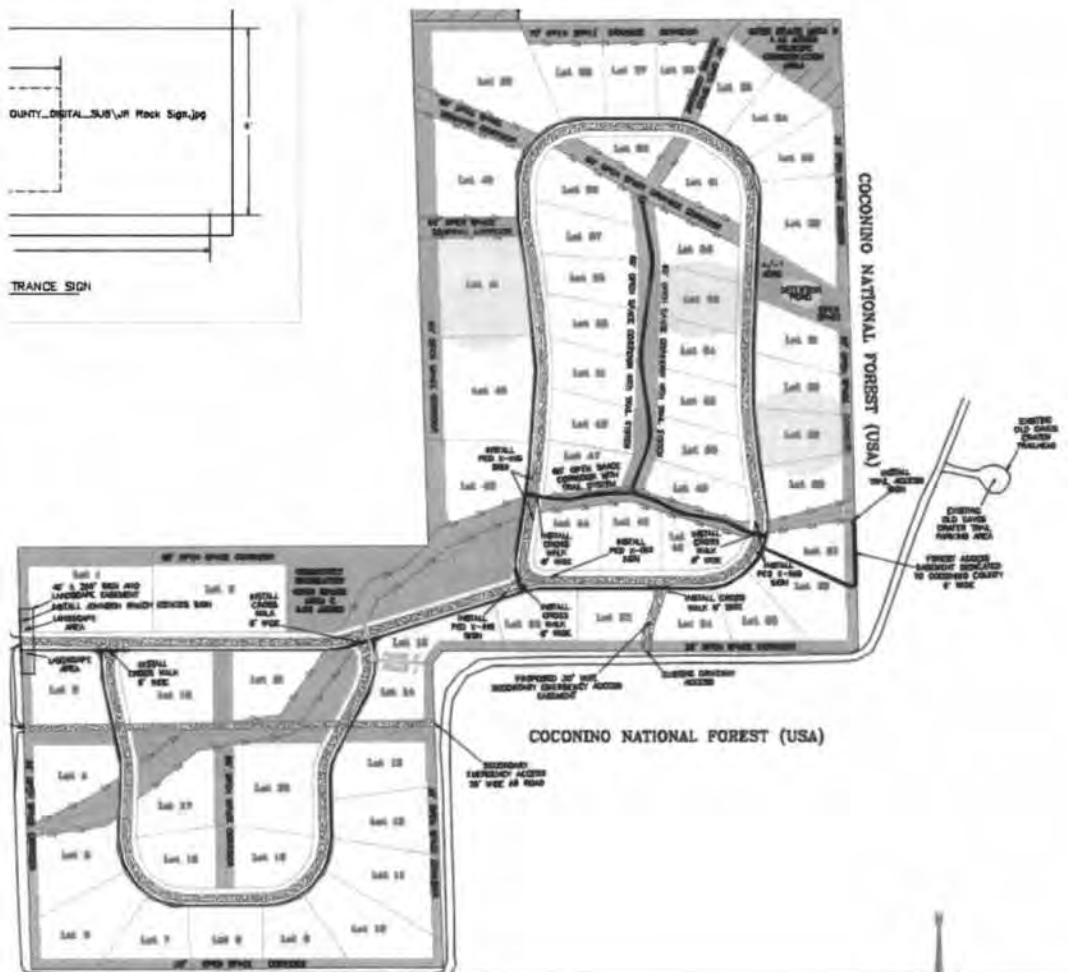


Figure 1: Lot layout for Johnson Ranch subdivision

MODEL COMPARISONS

The baseline house construction detailed in Table 1 was modeled to compare orientation, shading and glazing options for each of the lot selections. Since the building envelopes are at a minimum 50 ft. from another lot, any shading due to neighboring houses is negligible, similarly from trees on the eastern boundary (min 30 ft. open space setback). Full passive solar sun exposure can be assumed.

ORIENTATION

Passive solar orientations were modeled: true magnetic South, which for Flagstaff is -348° (Figure 2), and a 90° sweep to East and West in 22.5° increments, to provide the full comparison from non-optimum to optimum. From this point on in the report, directional labels (S, SSE, SSW, etc.) are from this reference point. A worst case scenario of N (168°) orientation was modeled for direct comparison. The baseline configuration, as outlined in Table 1 was utilized for each lot selection. Total window glazing for each scenario was kept at 25%, with variations in front, left and right glazing as detailed in Table 1. Of course, there are numerous glazing options in combination with varying orientations, but looking at all options would result in an overly large analysis beyond the scope of this report. The glazing options chosen will give a good idea of how to maximize the passive solar gain at a given orientation, and show the effects of increasing either the West or East glazing on energy use, while remaining in the same total glazing percentage.

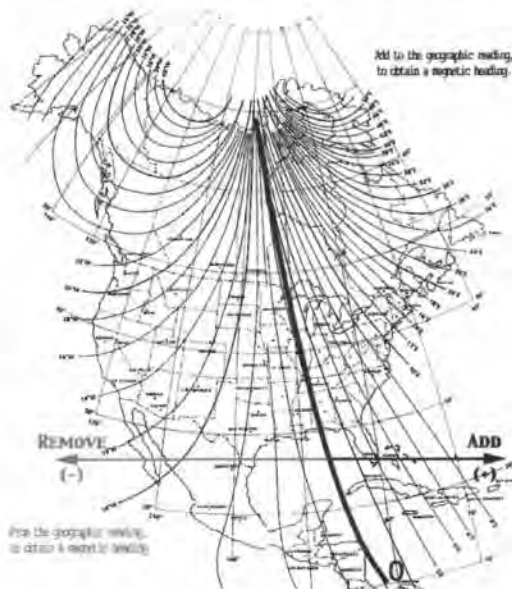


Figure 2: Magnetic declination

Table 2 shows the annual source energy use and utility costs for each of the orientations, by lot selection. Figure 3 compares the annual source energy use for the three window glazing options by orientation. The red circle indicates the range of SW to SE; orientations of any of the glazing options in this range results in the lowest energy use. Note that the "Interior lot" glazing option, where the South glazing was 13%, resulted in lower energy use than the options with 8% glazing. This will be explored further in the South glazing percentage analysis in this report. Figure 4 shows the source energy breakouts for the interior lot glazing option; in this plot the reduction in heat source energy use can be seen as the orientation changes. Additional source energy and utility break out plots for three glazing options are provided in Appendix A.

Figure 5 shows the indoor average hourly temperature profile by month for the "Interior lot" glazing option for the SW-SE orientations. While "overheating" is a subjective term, indoor temperatures above 78 or so would most likely be uncomfortable for a wide range of people. Looking at this plot, the temperatures for the SSW-SSE orientations exceed 78°F in the months of July and August. Overheating may be mitigated by additional shading; an overhang depth analysis is presented later in this report. More overheating is observed in the "West view lot" glazing option, with temperatures above 78 in June, July and August and September (Figure 14, Appendix). This is due to the increase in western sun heating in the summer. Again, this may be mitigated by additional shading, investigated in a section to follow. Summer indoor temperatures for the "East view lot" glazing option are similar to that found in the "interior lot" option, with overheating occurring in June, July and August (Figure 13, Appendix).

Looking at the worst case scenarios, it is obvious that minimizing North glazing is essential for energy efficiency. In scenarios where there is more North glazing, energy use was increased due to less solar gain and more heat loss in the winter. In addition, it is also preferable to minimize West and East glazing, as summer overheating can be an issue if shading is not addressed.

Table 2: Annual source energy use and annual utility costs for orientation options by lot selection

| Lot Selection/Glazing | Orientation (°)/Direction | | Annual source energy use (MMBtu/yr) | Annual utility costs (\$/yr)* | Comments |
|---|---------------------------|-------|-------------------------------------|-------------------------------|--|
| West views (Lot 41)/ Total: 25%; F:8%, B:2%, R:5%, L:10% | 78 | W | 152.7 | 1709 | For homes with a higher percentage of glazing on the front and left side of the house, orientation anywhere between S and SE results in the lowest range of energy use. Overheating is a concern in the summer months. |
| | 55.5 | WSW | 150.4 | 1687 | |
| | 33 | SW | 148.3 | 1666 | |
| | 10.5 | SSW | 145.9 | 1643 | |
| | 348 | S | 144 | 1625 | |
| | 325.5 | SSE | 143.1 | 1616 | |
| | 303 | SE | 143.4 | 1618 | |
| | 280.5 | ESE | 144.6 | 1631 | |
| | 258 | E | 146.7 | 1650 | |
| 168 | N | 154.6 | 1728 | | |
| East views (Lot 29)/ Total: 25%; F:8%, B:2%, R:10%, L:5% | 78 | W | 145.3 | 1637 | For homes with a higher percentage of glazing on the front and right side of the house, orientation anywhere between SSW and WSW results in the lowest range of energy use. Overheating is a concern in the summer months. |
| | 55.5 | WSW | 143.4 | 1618 | |
| | 33 | SW | 142.7 | 1612 | |
| | 10.5 | SSW | 143.4 | 1619 | |
| | 348 | S | 145.2 | 1636 | |
| | 325.5 | SSE | 147.5 | 1658 | |
| | 303 | SE | 149.5 | 1679 | |
| | 280.5 | ESE | 151.8 | 1700 | |
| | 258 | E | 154.2 | 1724 | |
| 168 | N | 153.3 | 1715 | | |
| Interior (Lot 56)/ Total: 25%; F:13%, B:2%, R:5%, L:5% | 78 | W | 147.9 | 1663 | For homes with a higher percentage of the glazing in the front of the house, and equal percentages |
| | 55.5 | WSW | 144.9 | 1634 | |
| | 33 | SW | 143.3 | 1618 | |

| | | | | |
|-------|-----|-------|------|--|
| 10.5 | SSW | 142.4 | 1609 | of glazing on the right and left, orientation anywhere between SSW and SSE results in the lowest range of energy use. Overheating may be a concern in the summer months, though less so than the previous two options (less East/West glazing) |
| 348 | S | 141.9 | 1604 | |
| 325.5 | SSE | 142 | 1605 | |
| 303 | SE | 143.3 | 1618 | |
| 280.5 | ESE | 146.3 | 1647 | |
| 258 | E | 150.7 | 1689 | |
| 168 | N | 158.5 | 1766 | |

*based on state average rates

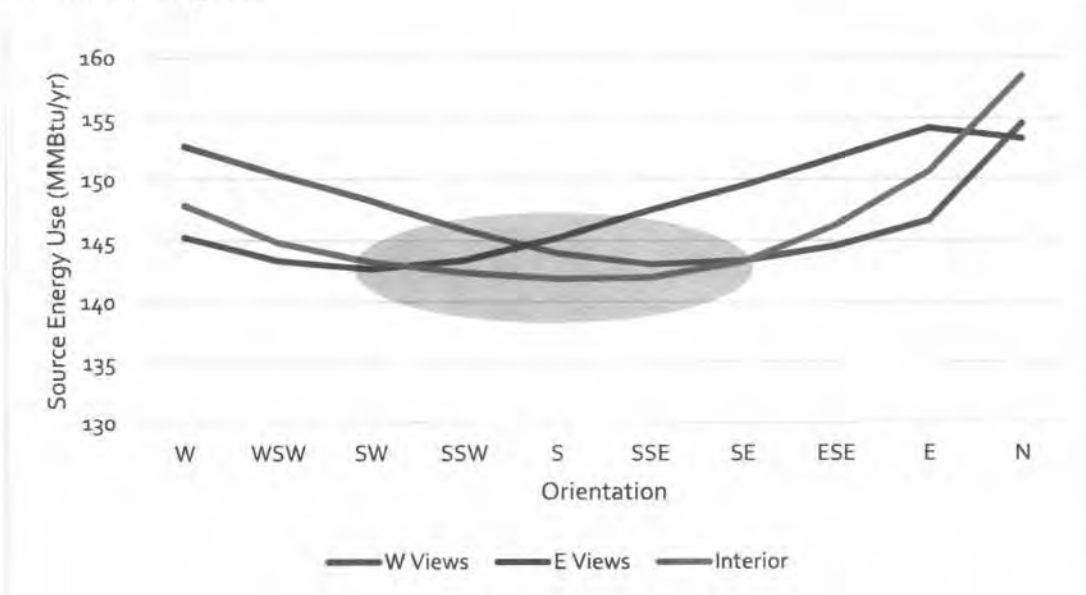


Figure 3: Orientation comparison for the three glazing configurations (see Table for configurations). Note the red circle "sweet spot," indicating the SW to SE orientation range that results in the lowest energy use for all three options.

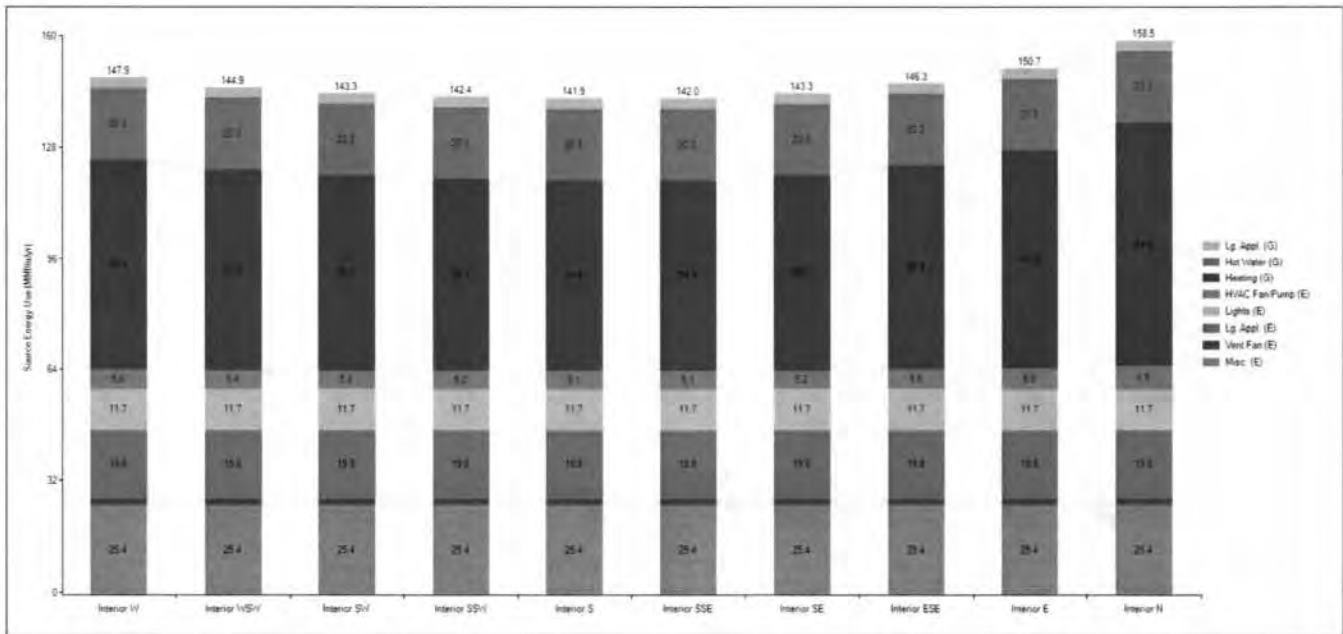


Figure 4: Annual source energy breakouts by orientation for the "interior" lot glazing option (Total: 25%; F:13%, B:2%, R:5%, L:5%)

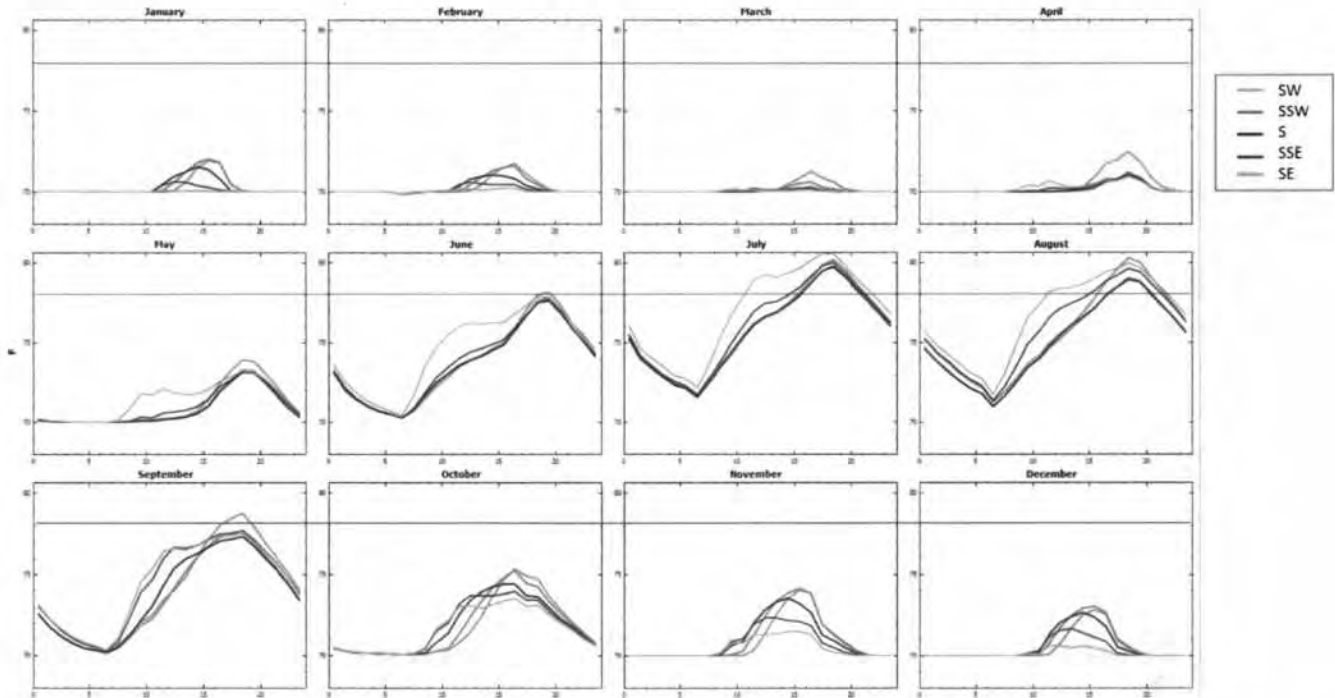


Figure 5: Hourly average temperature profile by month for the "interior" glazing option (Total: 25%; F:13%, B:2%, R:5%, L:5%). The red line indicates 78°F

SOUTH GLAZING

South facing glazing, as a percentage of the conditioned floor area, is an important factor in maximizing passive solar design. For South facing windows, glazing at 9-12% of the floor area is considered an ideal range. The key is finding the optimal balance between maximizing solar gain in winter, without causing overheating. Along with South glazing, the total glazing percentage is also important: too much glazing results in heating/cooling loss through convection due to the lower R-value of windows in general; while too little results in reduced solar gain, reduced daylighting and poor views to the exterior. For this analysis, a range of 5-25% South glazing was used for the interior lot selection, with 5% glazing on East and West aspects, 2% on North. All glazing options were modeled at South orientation. The last two South glazing percentages of 20% and 25% are unrealistic values, they are included to show the "max-out" for South glazing. Table 2 details the annual results for glazing options, with more south glazing leading to reduced heating energy and costs. With increased south glazing, however, overheating increases in July and August, particularly in the "maxed-out" glazing percentages (Figure 6). In the next section, an overhang shading analysis is performed to see if shading can mitigate the overheating in summer. South glazing of up to 10% maximizes the solar heat gain while minimizing summer overheating.

Table 3: Annual source energy use and utility costs for South glazing options

| Lot Selection | South/Total (% of conditioned floor space) | Annual source energy use (MMBtu/yr) | Annual utility costs (\$/yr)* | Months where overheating occurs |
|---|--|-------------------------------------|-------------------------------|---------------------------------|
| Interior (Lot 56) Total: 17-37%; F:5-25%, B:2%, R:5%, L:5% | 5/17 | 146.7 | 1651 | July |
| | 10/22 | 143.5 | 1619 | Very minimal in July and August |
| | 13/25 | 141.9 | 1604 | July and August |
| | 20/32 | 141.7 | 1602 | July and August |
| | 25/37 | 141.7 | 1602 | July and August |

*based on state average rates

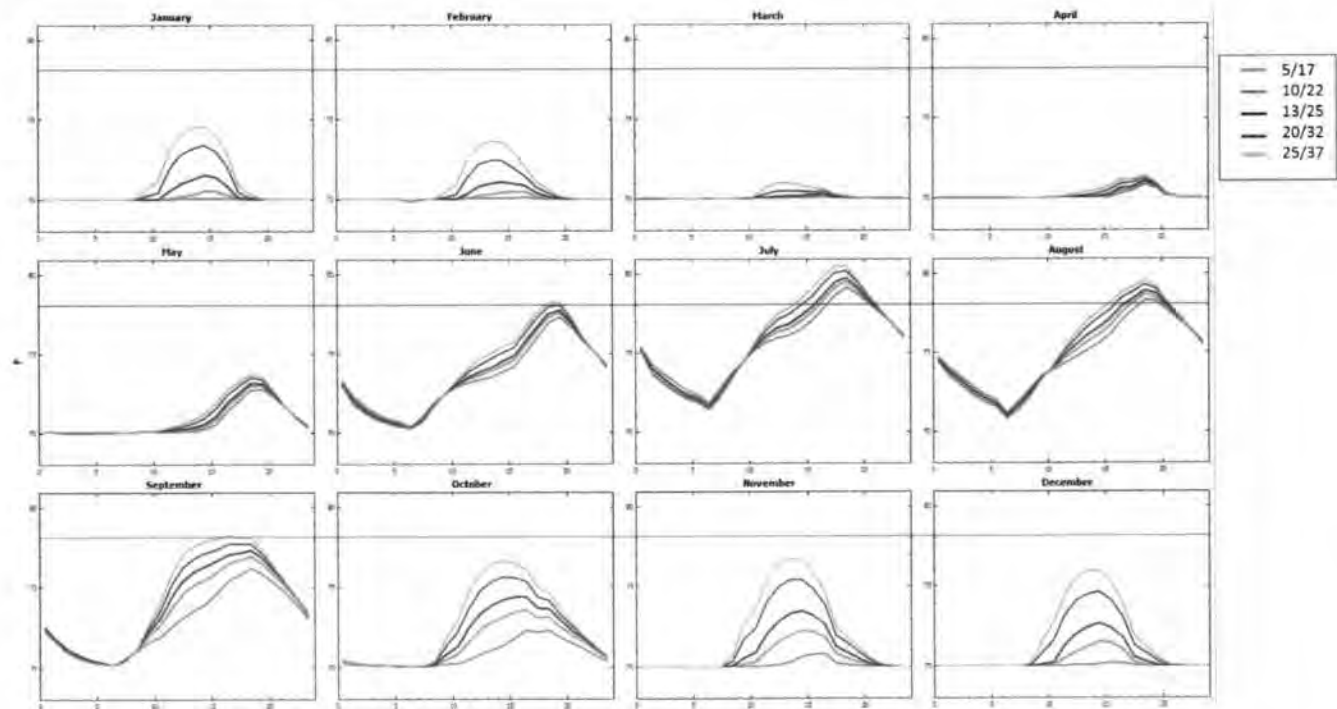


Figure 6: Average hourly indoor temperature profiles by month for South glazing percentage options. The red line indicates 78°F

EAVE DEPTH

Eave depths of 1.5, 2, and 3 ft. were modeled with the Interior, West view, and East view lot scenarios (Table 1) at a South orientation. Table 3 shows the annual source energy use of the lot scenarios at each of the overhang depths. As can be expected, increasing the overhang depth slightly increases the energy use, as the solar gain is decreased and heating loads increase (Figure 18, Appendix). The average hourly indoor temperatures in summer decrease, but overheating is not eliminated entirely. Looking at the interior lot scenario, overheating is still present in July, even with an overhang depth of 3 ft. (Figure 7). Likewise, in the West view and East view scenarios, indoor temperatures are reduced with greater overhang depth, but overheating is not eliminated (Figures 16 and 17, Appendix). When a 5' overhang on the East and West aspects is modeled, overheating is eliminated. However, this is not a feasible design option. With this in mind, the selection of eave depth may not be a "critical" design option, as it doesn't mitigate summer overheating (unless unrealistic overhangs are induced), and can raise the cost of construction considerably. Rather, a better option is to reduce east and west glazing. The interior lot scenario had fairly minimal overheating, since it had lower levels of East and West glazing (5% for both). Any lowering of the East or West, West in particular, glazing percentage from the 10% used in the West and East view scenarios will result in reduced summer indoor temperatures. 5% glazing, or lower is optimal.

Table 4: Annual source energy use and utility costs for view scenarios at varying overhang depth

| Lot Selection/Glazing | Overhang depth (ft) | Annual source energy use (MMBtu/yr) | Annual utility costs (\$/yr)* | Comments |
|---|---------------------|-------------------------------------|-------------------------------|--|
| West views (Lot 41)/ Total: 25%; F:8%, B:2%, R:5%, L:10% | 1.5 | 144 | 1625 | Increasing overhang reduces summer indoor temperatures. Complete reduction of overheating can only be achieved with a 5' OH on East, West aspects. |
| | 2 | 144.6 | 1630 | |
| | 3 | 146.5 | 1649 | |
| | 2 - S; 5 - E, W | 149.8 | | |
| East views (Lot 29)/ Total: 25%; F:8%, B:2%, R:10%, L:5% | 1.5 | 145.2 | 1636 | Increasing overhang reduces summer indoor temperatures |
| | 2 | 145.7 | 1641 | |
| | 3 | 147.6 | 1660 | |
| | 2 - S; 5 - E, W | 150.6 | | |
| Interior (Lot 56)/ Total: 25%; F:13%, B:2%, R:5%, L:5% | 1.5 | 141.9 | 1604 | Increasing overhang reduces summer indoor temperatures |
| | 2 | 142.5 | 1610 | |
| | 3 | 144.6 | 1630 | |
| | 2 - S; 5 - E, W | 146.6 | | |

*based on state average rates

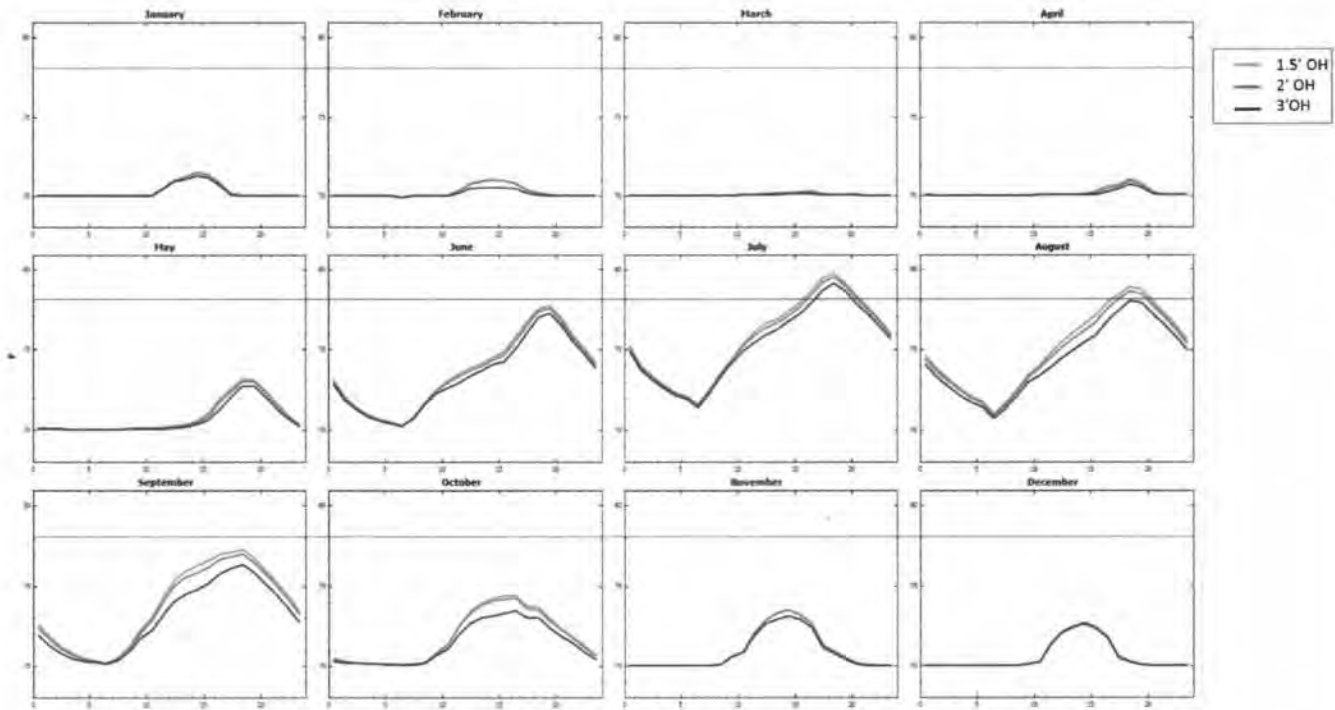


Figure 7: Average hourly temperature profile by month for interior lot scenario at varying overhang depths. The red line indicates 78°F

SUMMARY

- To maximize passive solar heat gain in the winter, home orientation for any of the lot scenarios should be in the SW to SE range, leaning towards SW for homes with East views (more East glazing), and towards SE for homes with West views (more West glazing).
- South glazing up to 10% provides solar heat gain in the winter, and doesn't result in overheating as long as East and West glazing, in particular West, are kept in check. South glazing up to 13% is also possible, with eave depth up to 3 ft. and again, keeping West and East glazing low.
- Overhang (eave) depth effects the summer overheating, but only mitigates western and eastern summer sun gain at depths that are not necessarily practical. A better design parameter would be to reduce East/West glazing as much as possible, without sacrificing views.

Additional modeling outside the objectives of this report may offer more assistance with decision factors. This could include narrowing down a range of East/West glazing options, cost/benefit analysis of building component options, or cost/benefit analysis of mechanical options.

APPENDIX

Additional plot results from the modeling analysis are provided here.

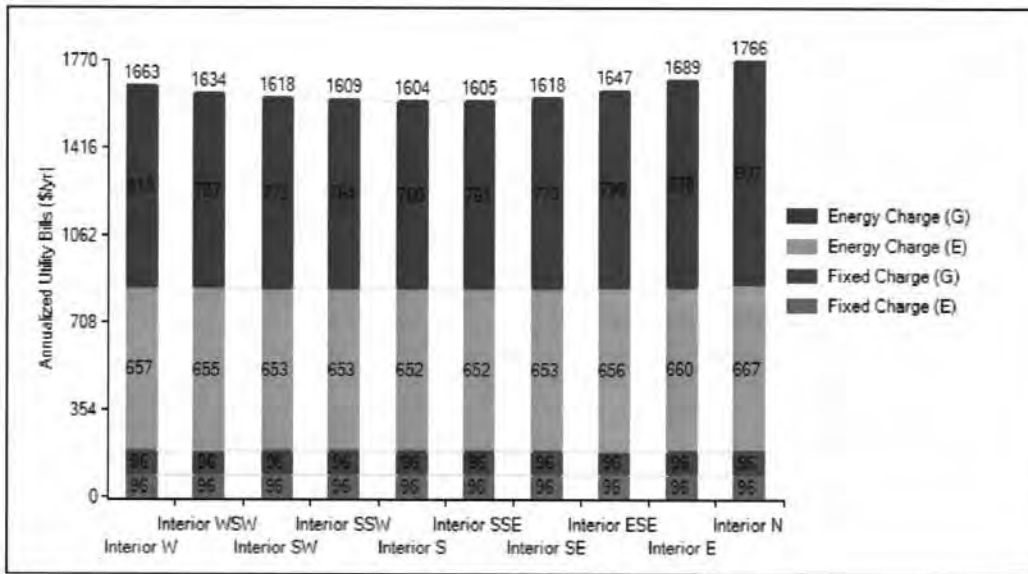


Figure 8: Annual utility bills for "interior" glazing option at range of orientations

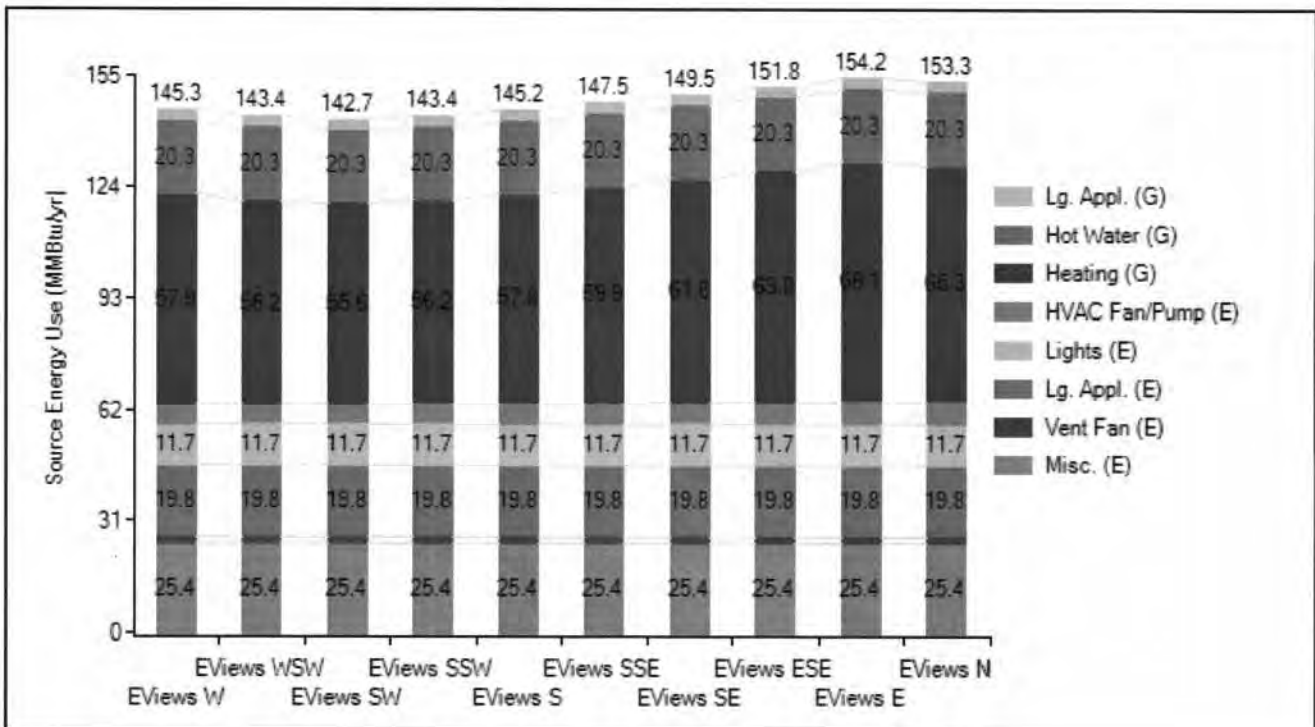


Figure 9: Annual source energy at range of orientations for lots with views to the East (higher glazing on right and front sides)

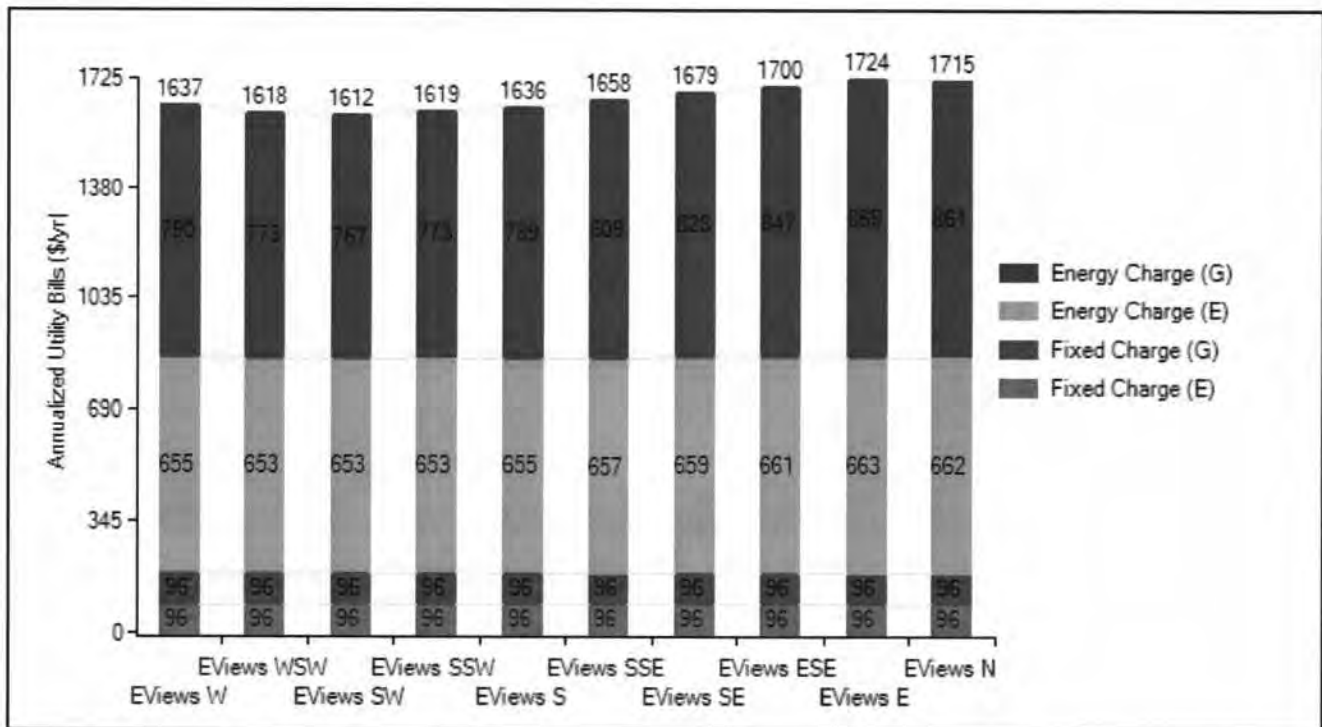


Figure 10: Annual utility bills for "East views" glazing option at range of orientations

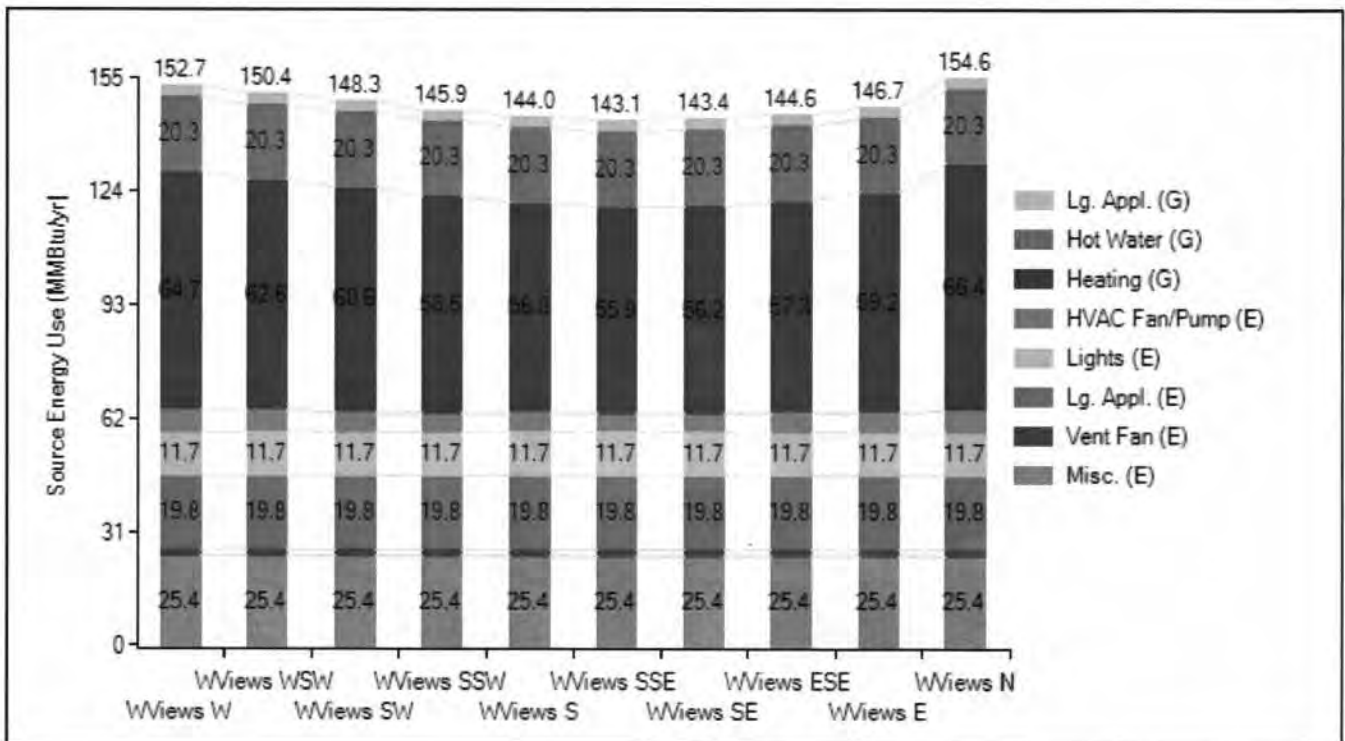


Figure 11: Annual source energy at range of orientations for lots with views to the West (higher glazing on West and South sides)

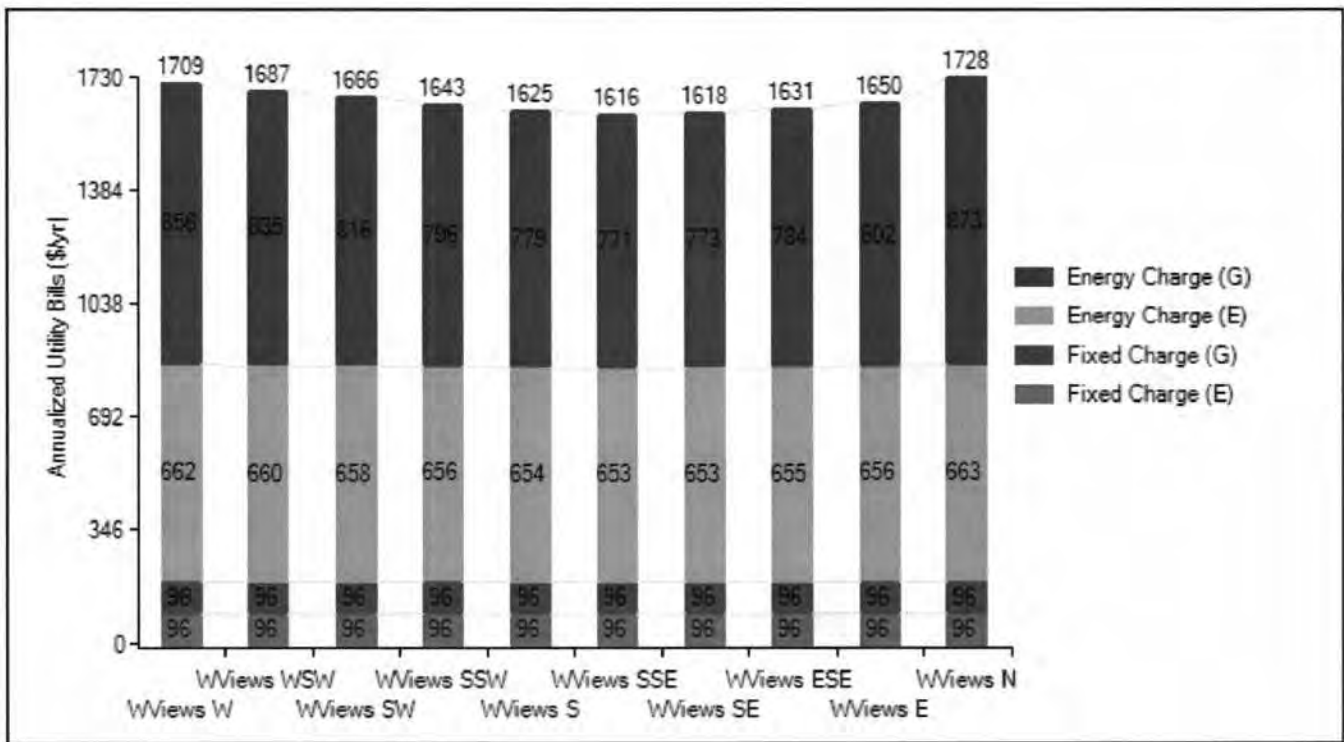


Figure 12: Annual utility bills for "West views" glazing option at range of orientations

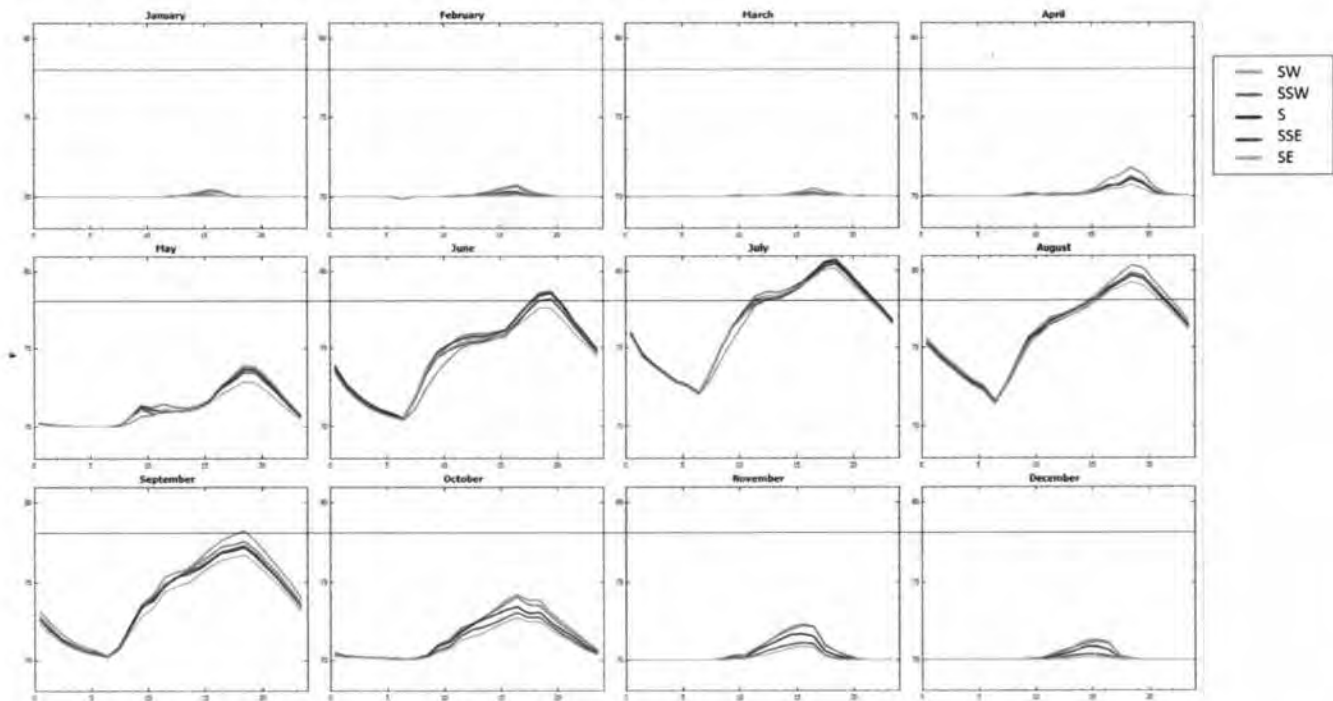


Figure 13: Hourly average temperature profiles for SW-SE orientation of the "East view" glazing option at a range of orientations. The red line indicates 78°F

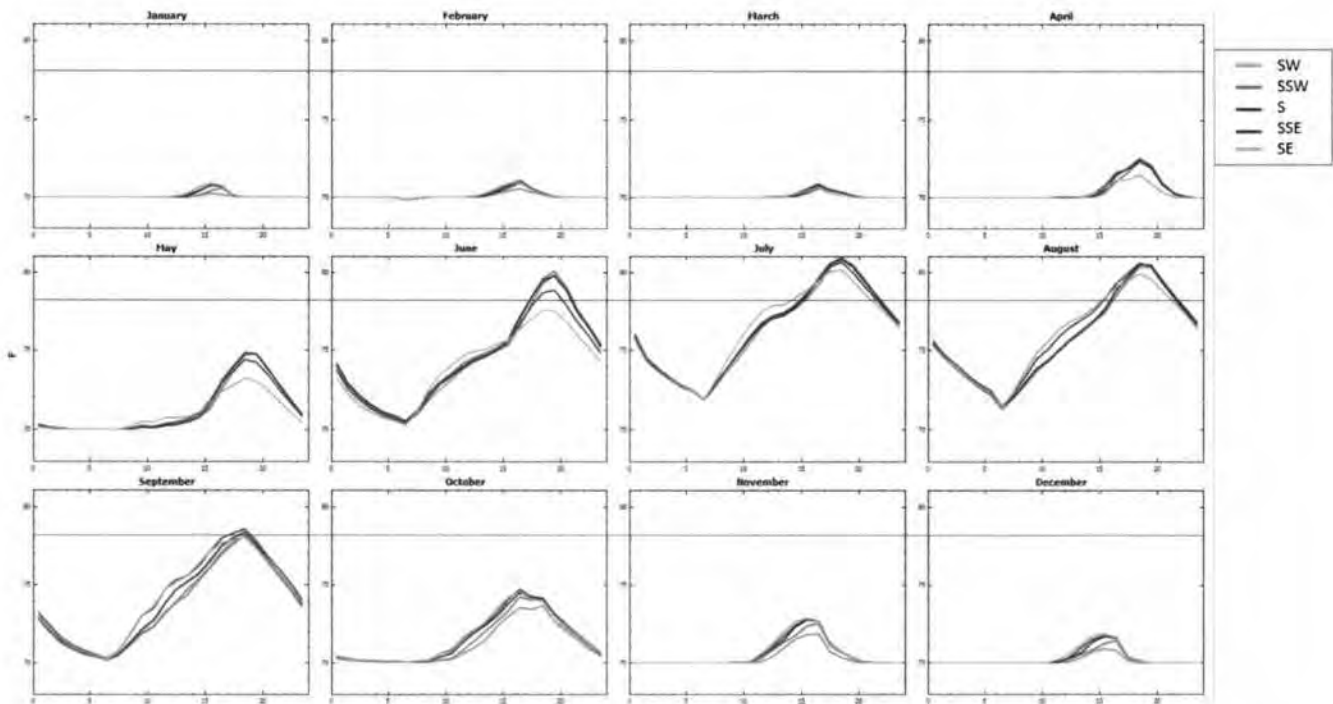


Figure 14: Hourly average temperature profiles for SW-SE orientation of the "West view" glazing option at a range of orientations. The red line indicates 78°F

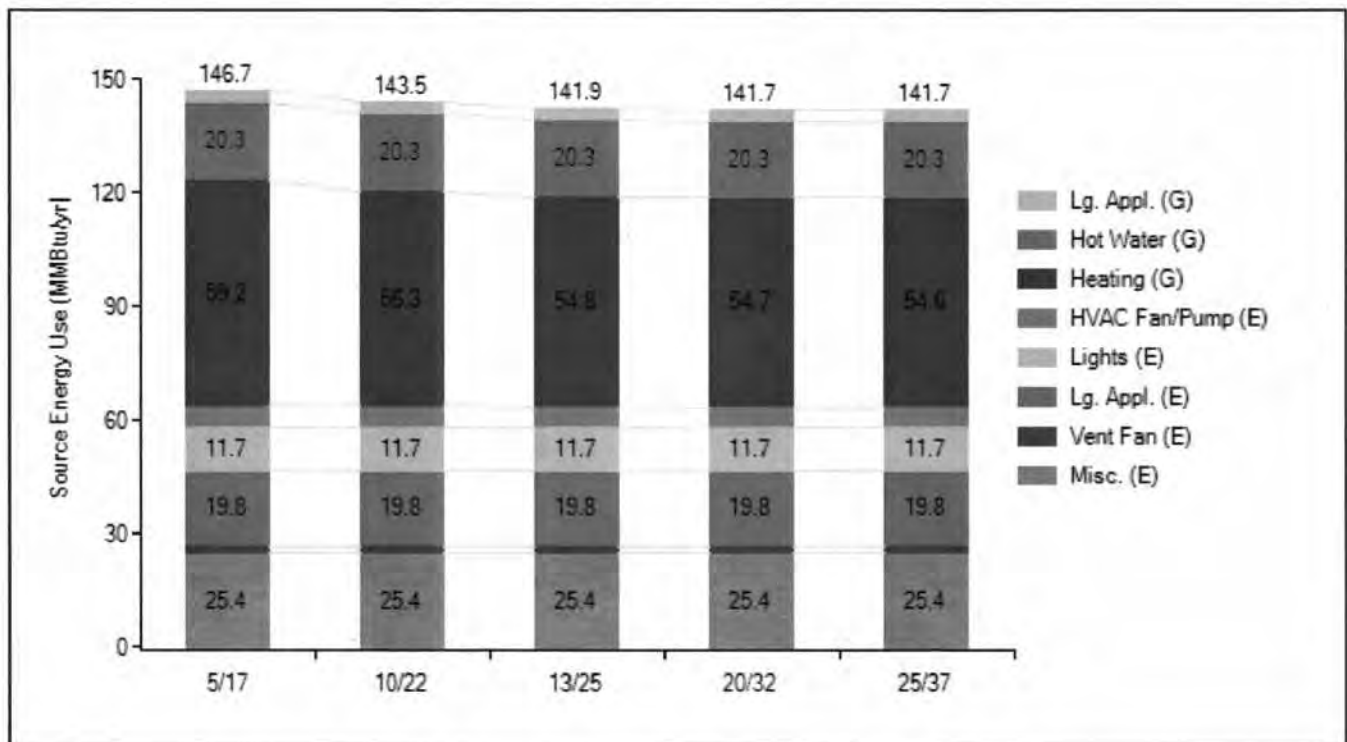


Figure 15: Annual source energy breakouts for South glazing percentage options

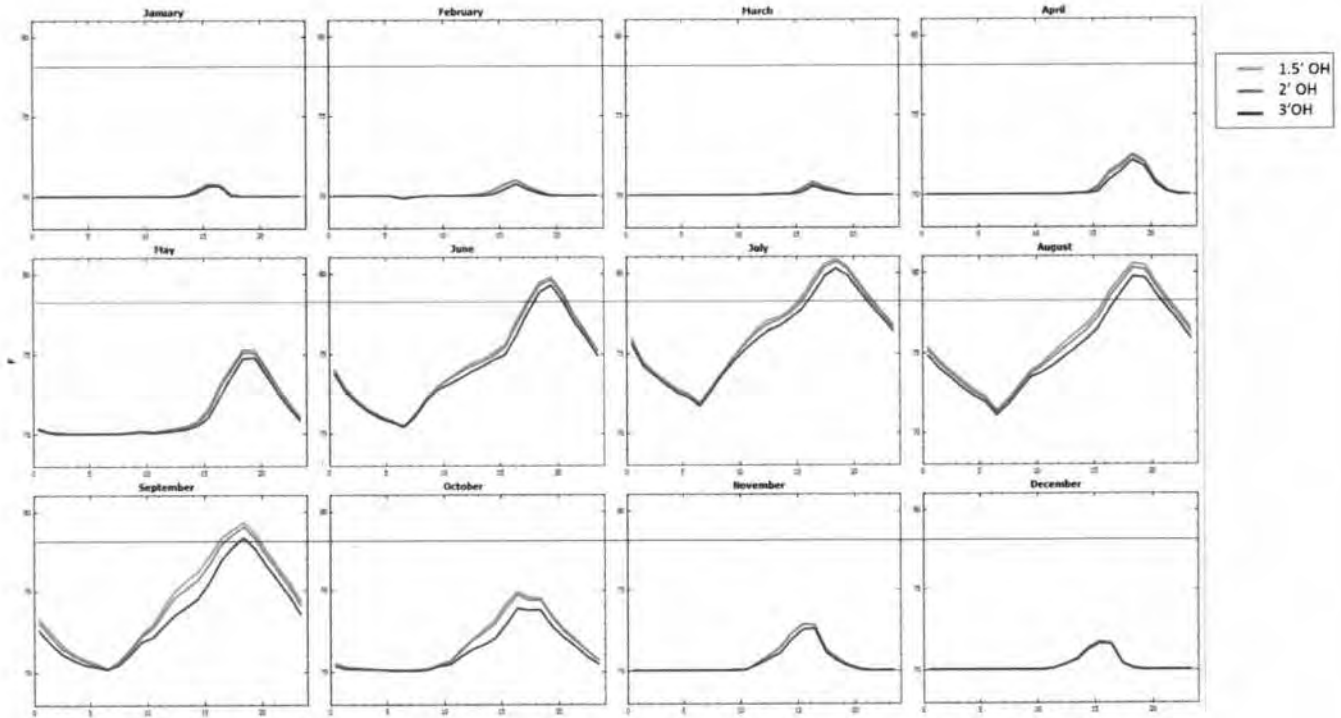


Figure 16: Average hourly temperature profile by month for West views lot scenario at varying overhang depths. The red line indicates 78°F

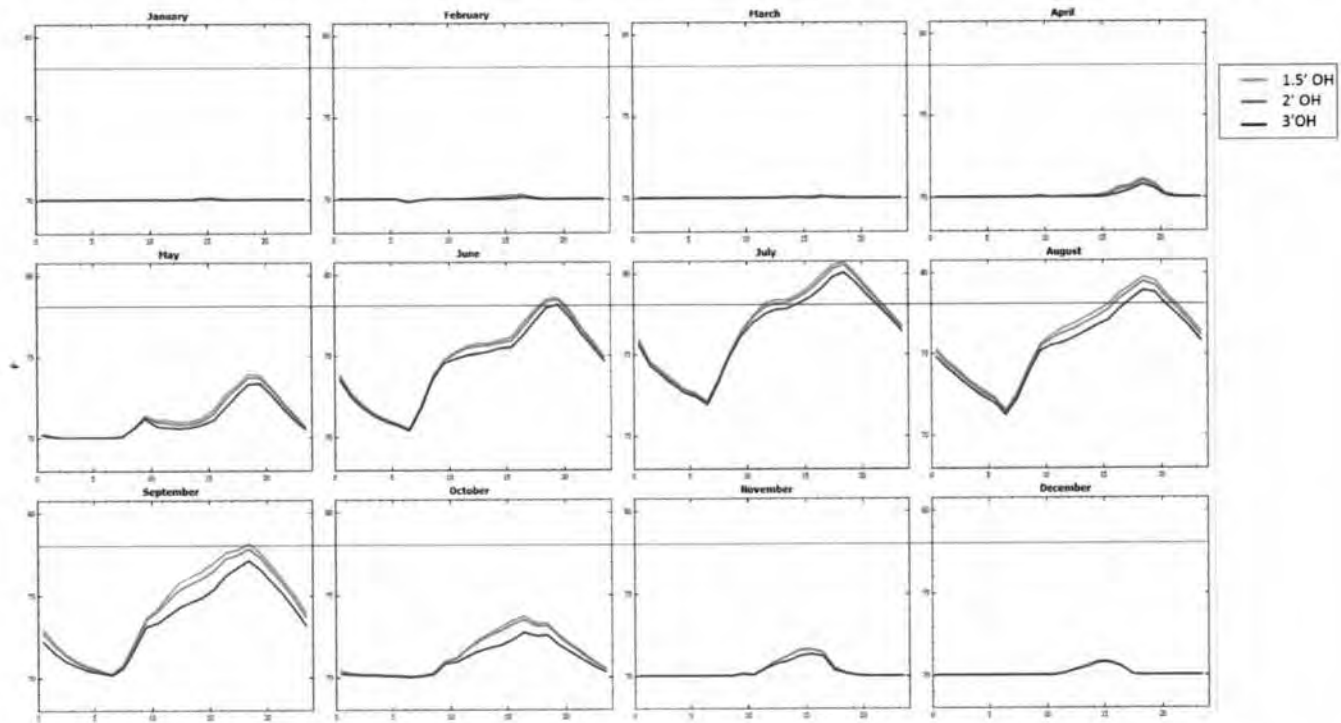


Figure 17: Average hourly temperature profile by month for East views lot scenario at varying overhang depths. The red line indicates 78°F

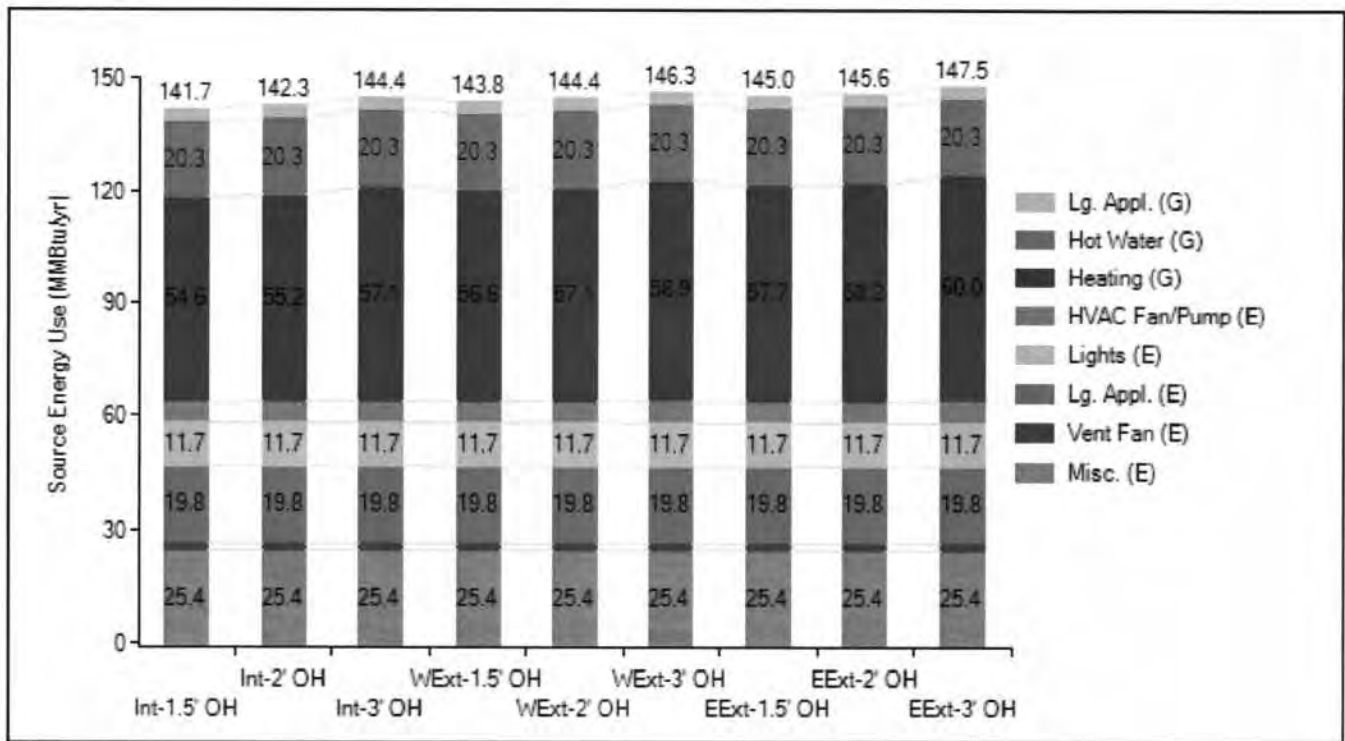


Figure 18: Annual source energy use for view scenarios with a range of overhang depths

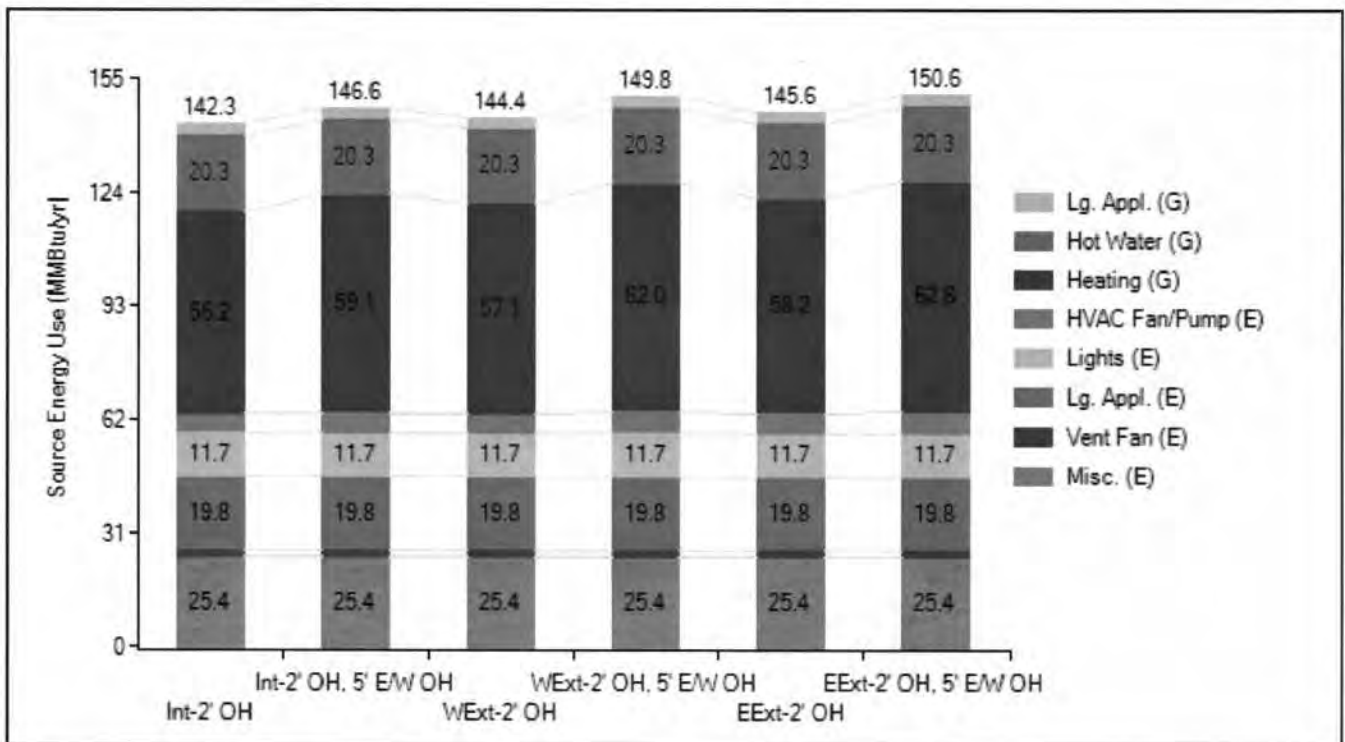


Figure 19: Annual source energy use for view scenarios with a "max-out" overhang depth of 5' on the East and West aspects

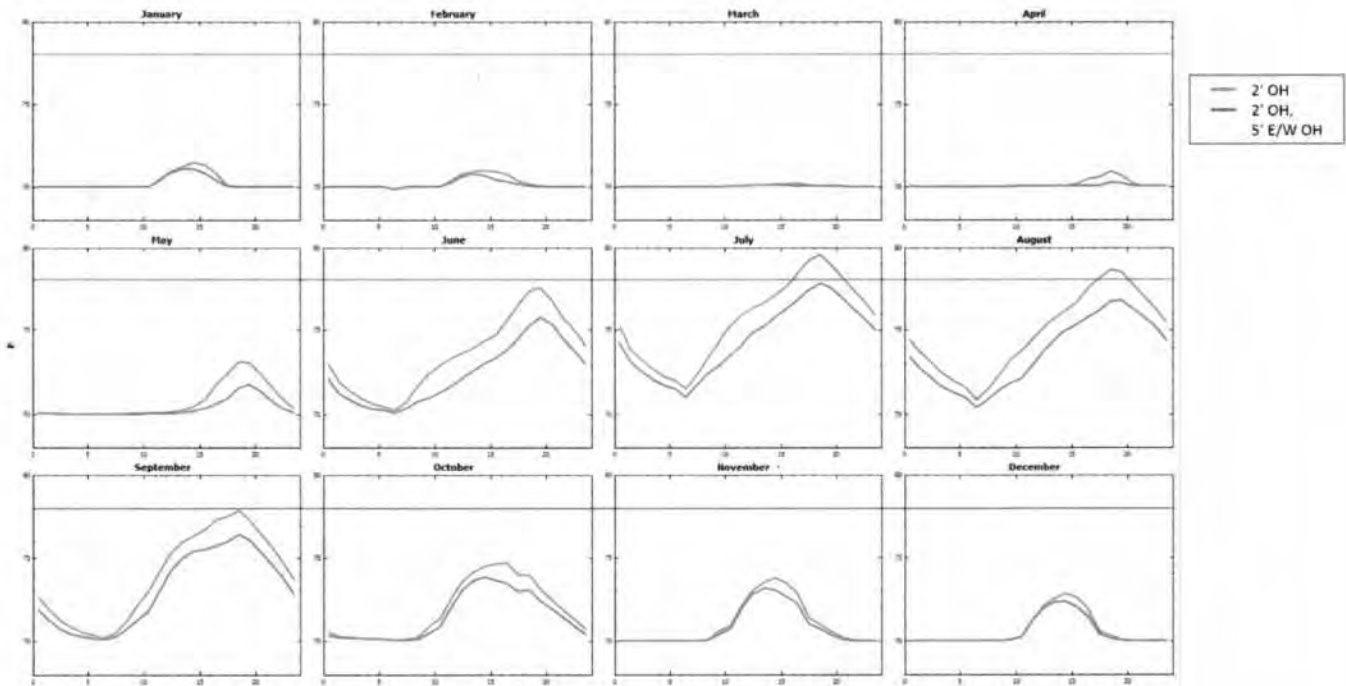


Figure 20: Average hourly temperature profile for interior view scenario, with and without 5' OH on East and West aspects. The red line indicates 78°F

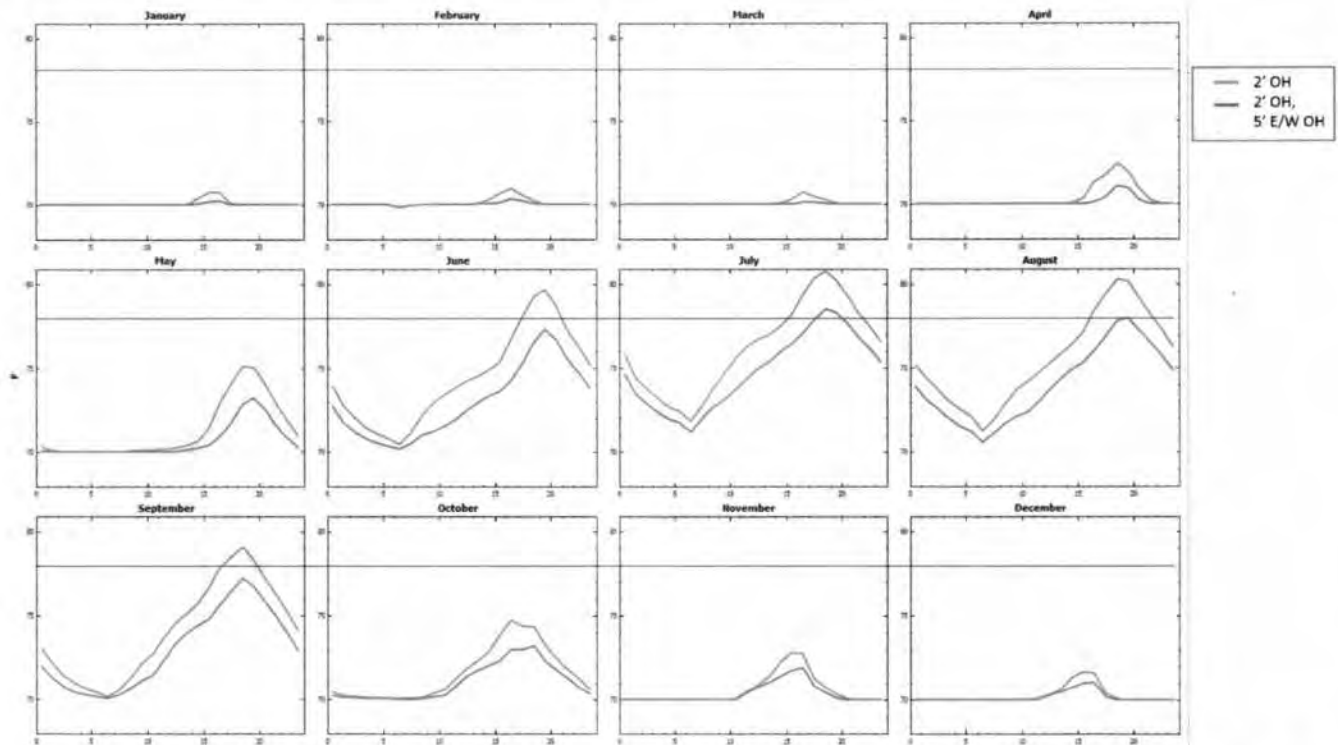


Figure 21: Average hourly temperature profile for West view scenario, with and without 5' OH on East and West aspects. The red line indicates 78°F

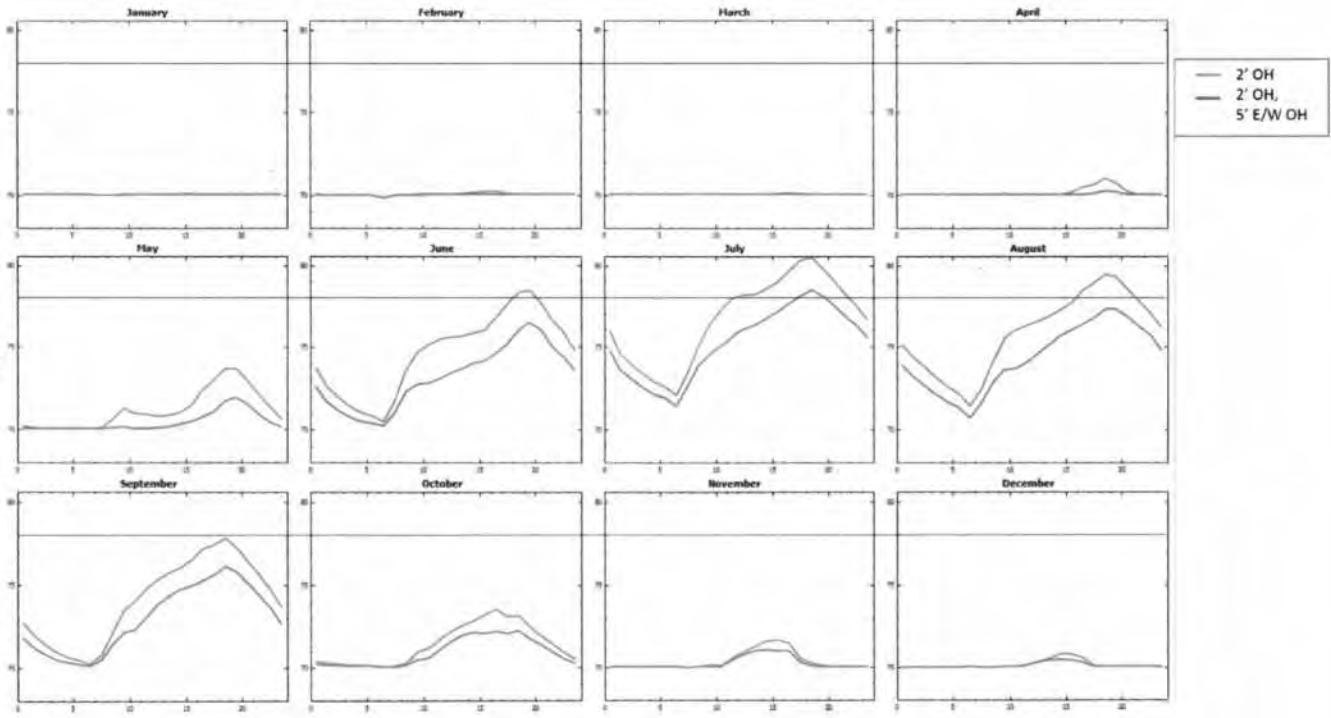


Figure 22: Average hourly temperature profile for East view scenario, with and without 5' OH on East and West aspects. The red line indicates 78°F