



Staff Report

Agenda Item: **Reimbursement Agreement For Use of Town Facilities with Verde Valley Theatre– Approval of a 2008-2009 Reimbursement Agreement for the use of Town Facilities by the Verde Valley Theatre.**

Staff Contact: Kathy Bainbridge, Town Clerk

Meeting Date: July 22, 2008

Background:

Council approved last year's contract wherein VVT paid the Town \$1.00 for each paid ticket for all performances except opening night events. VVT paid the Town \$2,370.00 for their productions last year, which included, along with the four scheduled productions, a December production "Xmas Pageant", a German Touring Group, and Abandoned Minds an improvisational group. This year VVT will have four scheduled productions.

The major changes on the 2008/2009 Reimbursement Agreement are:

1. Fees have been changed from the \$1.00 per ticket to a flat fee for each of the four scheduled productions of \$475.00 for a total of \$1,900.00. A production includes time for auditions, rehearsals, set construction, and performance. Rising utility charges along with budget concerns have made it necessary for the Town to ensure they are recuperating the actual costs necessary for the operation of the Clark Memorial Clubhouse. Calculations were performed using actual utility costs in 2007/2008 for the clubhouse along with a proration for the actual square footage of each area, which were then broken down to a daily cost for each area. The daily cost was then multiplied by the estimated number of days the Theater used the auditorium last year to come up with a per production charge of \$475.00. Although last year's \$1.00 per ticket cost averaged the same as the \$475.00 per production charge, the Town will be ensured the reimbursement the utility costs based upon usage, not attendance.
2. Additional charges of \$15.00 per day, or any portion thereof will be charged for any additional time scheduled in the auditorium for auditions, rehearsals, set construction, and performances held or sponsored by VVT outside of the four scheduled performances, such as the German Touring Group, Abandoned Minds, or other traveling or improvisational groups.

3. A damage/security deposit in the amount of \$500.00 will also be paid by VVT to the Town for use if at any time, the Town staff is required to rectify any violation of the terms of the agreement.

The Verde Valley Theatre Board has reviewed a draft of the Reimbursement Agreement and is agreeable with the changes.

Recommendation: Staff recommends approval of the Reimbursement Agreement with VVT for use of Town Facilities in 2008-2009.

**Reimbursement Agreement For Use of Town Facilities
For the Verde Valley Theatre, Inc.**

Recitals

WHEREAS, the Verde Valley Theatre provide theatrical events for the benefit of the citizens of the Town of Clarkdale; and

Agreement

THIS AGREEMENT, is made and entered into as of the 1st day of July, 2008, by and between the Town of Clarkdale, Arizona, hereinafter referred to as "TOWN", and Verde Valley Theatre, hereinafter referred to as "VVT".

For and in consideration of the mutual covenants hereinafter set forth, and a nominal fee for reimbursement of the TOWN's costs, the TOWN hereby allows VVT to use Town facilities as herein described for recreational or educational uses for theatrical performances and rehearsals.

The parties intend and agree that by this agreement the TOWN does not waive the limitation of liability provided to owners who allow use of property for public recreational or educational purposes, pursuant to A.R.S. 33-1551.

Consideration

VVT agrees to pay the TOWN Four Hundred and Seventy-five Dollars (\$475.00) for each of the Four scheduled productions (respective auditions, rehearsals, set construction, and performances included) during the term of this Reimbursement Agreement for a total of One Thousand Nine Hundred Dollars (\$1,900.00). Payment will be due and payable 10 calendar days from the last performance of each production.

An additional charge of Fifteen Dollars (\$15.00) per day, or any portion thereof, will be due for any additional time scheduled in the auditorium for performances, auditions, rehearsals, or set construction held or sponsored by VVT outside of the Four scheduled performances. Payment will be due and payable 10 calendar days from the last performance of each production.

VVT agrees to pay the TOWN a cleaning and damage non-refundable payment of Fifty (\$50.00) per staged production for maintenance of the Ladies Lounge rug. Payment will be due and payable 10 calendar days from the last performance of each production.

Damage/Security Deposits

A Damage/Security deposit in the amount of \$500 will be paid by VVT to the Town. If at any time the TOWN staff is required to rectify any violation of the terms of this agreement, VVT hereby agrees to reimburse the TOWN at a rate of \$25.00 per hour, with a one hour minimum. A bill will be sent for each violation which will be due within 30 days.

Any past due billings will automatically be forfeited from the Damage/Security deposit. When the balance of this deposit falls below \$250.00, VVT agrees to pay to the Town an additional \$250.00 to maintain a total deposit of \$500.00

VVT shall reimburse the TOWN for any and all damage that may occur resulting from VVT's use of the facility.

Term

The term of this agreement shall be from July 1, 2008 to June 30, 2009.

In the event that the facility used by the VVT is defaced in any way as a result of the use by the VVT, the TOWN has the right to immediately void this agreement. Either party, for any reason, may cancel this agreement with written notice to the other party, effective 30 days from the date of the notice.

Premises

This agreement applies to all Town property used by the VVT.

Scheduling of Facilities

VVT will have scheduled use of the Auditorium, Ladies Lounge and Kitchen on the performance dates listed in Exhibit A. VVT will have scheduled use of the Auditorium only, for rehearsal dates listed in Exhibit A. (VVT Reservation Calendar). VVT will provide the Town a schedule of use of the Auditorium to include all rehearsals, set construction and audition days for Town approval without giving priority of use for dates not listed on Exhibit A. Areas not listed in the schedule may be used by VVT at the town's discretion. A thirty (30) day notice will be given to VVT if the lifeguard room is not available. (See Exhibit A)

Other Provisions

VVT covenants that no nuisance will be maintained upon the premises herein used. VVT will use and occupy the premises in a careful, safe and proper manner, in accordance with any and all rules/provisions. Any violation of this agreement shall constitute an automatic breach of covenant and shall subject this agreement to immediate cancellation and forfeiture of the Damage/Security Deposit.

1. Clubhouse Use- VVT may occupy and use the premises for production and performance of plays on specific dates and times scheduled with the TOWN.
2. Pre-Production Meetings – VVT will contact the Town at least 7-14 days prior to the commencement of rehearsals for a new production to schedule a pre-production meeting. Persons attending the meeting representing VVT will include the director, producer, stage manager and other persons with key roles for the production.
3. Use of Stage – The date that VVT may begin the stage set-up will be determined at or before each pre-production meeting.

4. Use of the Ladies Lounge – When using the Ladies Lounge the rug shall remain in place, unless otherwise approved in writing by the TOWN. VVT is responsible for cleaning any spills or stains immediately in a manner prescribed by the TOWN and to let the TOWN know about each occurrence as soon as possible so professional cleaning can be arranged if necessary.
5. Storage – Storage of items in the building is prohibited. Only props and sets for the current production may be “stored” on stage. All items shall be removed from the premises by VVT no later than 7 days after the last performance of each production. Failure to remove items within 7 days after the last performance will be a violation of the terms of this agreement.
6. Set Construction –Construction will begin no earlier than the date agreed upon at the pre-production meeting for each performance. VVT must obtain pre-approval and inspections by the Town for each production.
7. Extension Cords – Extension cords are acceptable for temporary uses, however they shall not run under carpets or similar materials and they shall be unplugged in accordance with the Exhibit B, Exit Checklist.
8. Fire Watch – During productions VVT will enact a fire watch as prescribed by the Clarkdale Fire Chief.
9. Fire Lane – Parking is not permitted in the fire lane behind the facility.
10. VVT is responsible for informing all its members and associated parties of the rules of the agreement.
11. Smoking - The TOWN complies with the Smoke Free Arizona Act established by Arizona State Statute § 36-601.01. Smoking must be outdoors more than 20 feet away from any entrance/exit or air handling device. For more information on the act, visit <http://www.smokefreearizona.org>
12. Alcohol - No alcohol is allowed in any building or public facility owned by TOWN except those functions which have been given specific prior approval for use of alcohol by the TOWN. Requests to serve alcohol must be submitted on the form prescribed by the TOWN and be received by the TOWN no later than 45 days in advance of the event. If a liquor license is necessary, VVT shall pay the usual TOWN rate for processing the application. Security is required for events where alcohol is served. VVT shall reimburse the TOWN in advance for security (provided by a TOWN Police Officer) at the rate of \$30 per hour per officer. A minimum of one officer for two hours is required.

13. Protection of Floors – VVT agrees that there will be no dragging or rolling of anything across the floors. Nothing is to be put on the floors without authorization from the TOWN. (i.e.: sawdust, wax cleaners, plywood, scaffolding, tape)
14. VVT agrees that there will be no painting, stapling, nailing, tacking or gluing on the floors, walls, ceilings, moldings, doors and/or furniture, etc. for any purpose at any time.
15. Open Flames/Flammable Items - VVT agrees that they will not have any open flames.. No paint or other flammable liquids or chemicals will be stored on the premises.
16. Other Uses – VVT agrees that there will be no use of the premises other than what is approved in this contract or in writing by the TOWN.
17. Cleaning - VVT shall: Immediately clean any spills and contact the TOWN as soon as possible. Remove trash from the premises daily. Clean all tables and chairs, and place them in their storage area when they are not in use. In no instances, leave liquid on the floor for any length of time. VVT shall not do any mopping of the facility.
18. Closing Procedures – VVT shall follow closing procedures as prescribed by the TOWN each time they leave the building, including but not limited to: locking all outside doors, unplugging extension cords, returning thermostats to their normal setting and turning-off lights upon leaving the building.
19. Vehicular Access – VVT agrees that no vehicles or trailers will be driven across landscaped or planted areas or anywhere there are irrigation lines.
20. All areas used by VVT will be maintained in an orderly and safe condition.
21. The TOWN and/or FIRE DISTRICT reserve the right to close the event if the health and safety of the public is endangered.
22. The TOWN and/or FIRE DISTRICT reserves the right to limit the number of participants allowed onto the site if the size of the crowd poses a threat to: 1) the public health and safety, 2) safety of the facility, or 3) the surrounding community, or if the event poses an inconvenience to other facility users.
23. VVT shall comply with proper and necessary arrangements for the serving of food, i.e. Yavapai County Health Codes, if serving of food is intended.
24. VVT understands and agrees that if the facility is rendered unusable or unsafe by any unforeseen event, the TOWN reserves the right to deny access to the facility and cancel performances and rehearsals. VVT agrees it will not

hold the TOWN for consequential damages or losses arising out of said denial of access or cancellation. A full refund of any and all fees and deposits paid to the TOWN due for the period of time the facility is rendered unusable or unsafe will be refunded to VVT and said refund of fees and deposits shall be VVT's sole and exclusive remedy

25. The Town will inventory all keys to the Clubhouse in possession by the VVT. A maximum of two keys will be signed out to VVT members prior to each performance at the pre-production meeting. Keys must be returned at the end of each performance.

26. The TOWN reserves the right to have a member or members of town staff on the premises during any period the facility is in use by VVT.

Insurance

VVT shall provide to the Town a Certificate of Insurance covering all uses of the Clarkdale Clubhouse and extend coverage for groups sponsored by the VVT. The Certificate of Insurance will evidence a comprehensive general liability insurance policy and Dram Shop insurance (liquor liability) in the aggregate amount of two million dollars. The period of coverage must be inclusive of the dates of this agreement and will name the Town of Clarkdale as additional named insured.

Indemnity

VVT agrees that the TOWN shall not at any time during the term of this Agreement be responsible or in any way accountable, for any loss, injury, death or damage to persons or property from any cause or causes whatsoever which at any time may be by VVT, or any other person while in or on the demised premises, and the VVT agrees to hold the TOWN harmless for any and all claims, liabilities, losses, damages, costs and expenses whatsoever arising out of any such loss, injury, death or damage.

Indemnification

VVT shall indemnify, defend and hold harmless the municipality and its officials, employees and agents from and against any and all liabilities, judgments, settlements, losses, costs or charges (including attorneys fees) incurred by the municipality and/or any of its officials, employees or agents as a result of any claim, demand, action, or suit relating to any bodily injury (including death), loss of property, damage caused by, arising out of, related to, or associated with this agreement".

Attorney's Fees

In any suit which may be brought by either party to enforce this Agreement or any part hereof, or to recover damages for the breach hereof, the Court, sitting without a jury, shall award a reasonable amount as and for attorney's fees to the prevailing party.

Applicable Law

The laws of the State of Arizona shall govern the construction, performance and enforcement

of this Agreement. Venue for any action arising out of the provisions of this Agreement shall be Yavapai County, Arizona.

Non Waiver of Statutory Limitation of Liability

The parties recognize and agree that the Town does not waive the limitation of liability provided to the Town for allowing recreational or educational uses of Town property, pursuant to A.R.S. Section 33-1551. The Parties further recognize and agree that the fees charged by the Town are nominal and intended to offset the Town's cost in making the subject property available for use by the public.

Severability

Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

IN WITNESS WHEREOF, the TOWN and VVT have hereunto executed this document, effective the day and year herein above written.

CLARKDALE

Verde Valley Theatre

Doug Von Gausig, Mayor

Robyn Prud'homme Bauer, Vice-President

Approved as to form:

Robert S. Pecharich
Boyle, Pecharich, Cline & Whittington
Attorneys for the Town of Clarkdale

Exhibit A

**2008 – 2009 Verde Valley Theatre Reservation Calendar
for the Clark Memorial Clubhouse Auditorium**

Note: Reservations are for the Clark Memorial Clubhouse Auditorium with the exception that on scheduled performance days, the Ladies Lounge and Kitchen are also reserved for the VVT.

AUGUST 2008

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24/31	25	26	27	28	29	30

SEPTEMBER 2008

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1 Elections Room not Available	2 Elections Room Not Available	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19 Rehearsal 6:00	20 Rehearsal 6:00
21 Rehearsal 6:00	22 Rehearsal 6:00	23 Rehearsal 6:00	24 Rehearsal 6:00	25 Rehearsal 6:00	26 God's Favorite Gala 6:00	27 God's Favorite 7:30
28 Gods' Favorite 2:00	29	30				

OCTOBER 2008

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2 God's Favorite 7:30	3 God's Favorite 7:30	4 God's Favorite 7:30
5 Gods' Favorite 2:00	6	7	8	9 God's Favorite 7:30	10 God's Favorite 7:30	11 God's Favorite 7:30
12 Gods' Favorite 2:00	13	14	15	16	17 Heritage Dance Set-up	18 Heritage Dance
19	20	21	22	23	24 Rehearsal 6:00	25 Rehearsal 6:00
26 Rehearsal 6:00	27 Rehearsal 6:00	28 Rehearsal 6:00	29 Rehearsal 6:00	30 Rehearsal 6:00	31 Rehearsal 6:00	

NOVEMBER 2008

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 Women in Black Gala 6:00
2 Women In Black 2:00	3 Elections Room not Available	4 Elections Room not Available	5	6 Women in Black 7:30	7 Women in Black 7:30	8 Women in Black 7:30
9 Women In Black 2:00	10	11	12	13 Women in Black 7:30	14 Women in Black 7:30	15 Women in Black 7:30
16 Women In Black 2:00	17	18	19	20	21 Heritage Dance Set-up	22 Heritage Dance
23/30	24	25	26	27	28	29

DECEMBER 2008

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

JANUARY 2009

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16 Heritage Dance Set-up	17 Heritage Dance
18	19	20	21	22	23	24
25	26	27	28	29	30	31

FEBRUARY 2009

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Rehearsal 6:00	19 Rehearsal 6:00	20 Heritage Dance Set-up	21 Heritage Dance
22 Rehearsal 6:00	23 Rehearsal 6:00	24 Rehearsal 6:00	25 Rehearsal 6:00	26 Rehearsal 6:00	27 Passport to Broadway Gala 6:00	28 Passport to Broadway 7:30

MARCH 2009

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1 Passport to Broadway 2:00	2	3	4	5 Passport to Broadway 7:30	6 Passport to Broadway 7:30	7 Passport to Broadway 7:30
8 Passport to Broadway 2:00	9	10	11	12 Passport to Broadway 7:30	13 Passport to Broadway 7:30	14 Passport to Broadway 7:30
15 Passport to Broadway 2:00	16	17	18	19	20 Heritage Dance Set-up	21 Heritage Dance
22	23	24	25	26	27	28
29	30	31				

APRIL 2009

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17 Rehearsal 6:00	18 Rehearsal 6:00
19 Rehearsal 6:00	20 Rehearsal 6:00	21 Rehearsal 6:00	22 Rehearsal 6:00	23 Rehearsal 6:00	24 Steel Magnolia's Gala 6:00	25 Steel Magnolia's 7:30
26 Steel Magnolia's 2:00	27	28	29	30 Steel Magnolia's 7:30		

MAY 2009

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1 Steel Magnolia's 7:30	2 Steel Magnolia's 7:30
3 Steel Magnolia's 2:00	4	5	6	7 Steel Magnolia's 7:30	8 Steel Magnolia's 7:30	9 Steel Magnolia's 7:30
10 Steel Magnolia's 2:00	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Exhibit B
Clarkdale Clubhouse Exit Check List

All users of the Clarkdale Clubhouse will ensure that the building has been cleaned and secured daily, before exiting.

Daily Security/Clean-up Check List

1. Clean-up kitchen, dispose of food, paper plates, cups and wash dirty dishes.
2. Remove objects, debris, furniture from walk ways and floors.
3. Empty trash into receptacle outside of the building.
4. Unplug all extension cords throughout the building.
5. Shut off electrical appliances.
5. Reset thermostat(s) to 60 degrees
6. Turn off evaporative coolers.
7. Shut Windows.
8. Verify that everyone has left the building
9. Shut off all lights.

10. Check and lock all doors. (see attached map)

Back Patio Kitchen Door

**Auditorium Doors- Front,
Side and 2 Rear**

Ladies Lounge Back Patio Door

Ladies Lounge Front Door

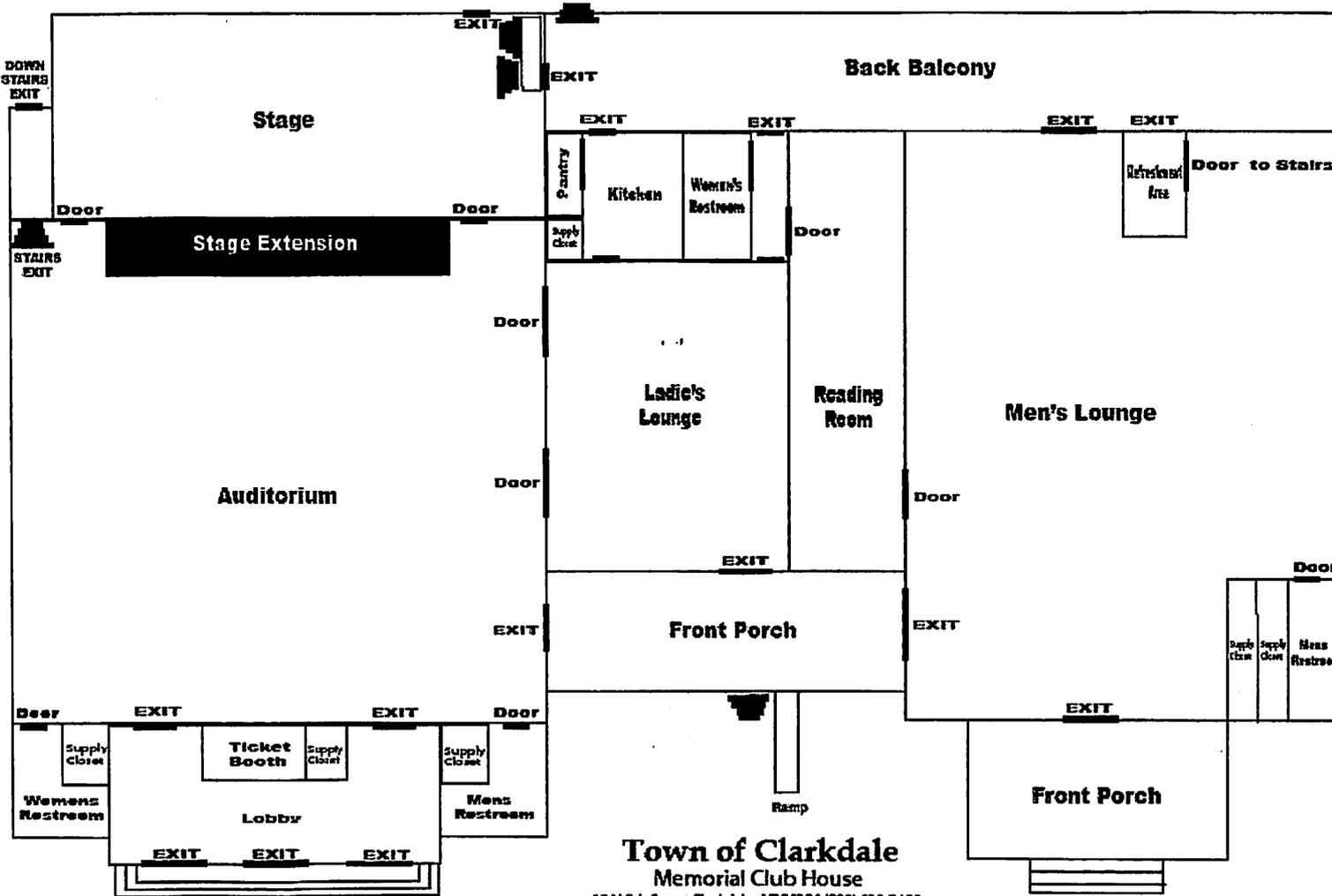
Lifeguard Room

During business hours, please contact Public Works, 639-2550, for maintenance problems involving plumbing, electrical or heating/cooling apparatus. After hours, call Police Dispatch, 634-2921.

06/08



Notes _____



Town of Clarkdale
Memorial Club House
19 N 9th Street Clarkdale, AZ 86324 (928) 639-2400